

SECURITIES AND EXCHANGE COMMISSION

FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

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FILER

**EMERITUS CORP\WA\**

CIK: 1001604 | IRS No.: 911605464 | State of Incorporation: WA | Fiscal Year End: 1231  
Type: 10-Q | Act: 34 | File No.: 001-14012 | Film No.: 96663952  
SIC: 8050 Nursing & personal care facilities

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

-----  
FORM 10-Q  
-----

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT 1934

For the quarterly period ended September 30, 1996.

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934

Commission file number 1-14012

EMERITUS CORPORATION

(Exact name of registrant as specified in its charter)

FOR THE QUARTER ENDED SEPTEMBER 30, 1996

WASHINGTON 91-1605464  
(State or other jurisdiction of (I.R.S. Employer  
incorporation or organization) Identification No.)

3131 Elliott Avenue, Suite 500  
Seattle, WA 98121  
(Address of principal executive offices)  
(206) 298-2909

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

As of November 13, 1996, there were 11,000,000 shares of the Registrant's Common Stock, par value \$.0001, outstanding.

EMERITUS CORPORATION

Index

Part I. Financial Information

<TABLE>  
<CAPTION>

<S>	<C>	<C>
Item 1.	Financial Statements:	Page No.
		-----
	Condensed Consolidated Balance Sheets as of December 31, 1995 and September 30, 1996.....	1

Condensed Consolidated Statements of Operations for the Three and Nine Months Ended September 30, 1995 and 1996.....	2
Condensed Consolidated Statements of Cash Flows for the Nine Months Ended September 30, 1995 and 1996.....	3
Notes to Condensed Consolidated Financial Statements.....	4
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.....	8
Part II. Other Information	
Item 6. Exhibits and Reports on Form 8-K.....	24
Signatures.....	26
Note: Items 1-5 of Part II are omitted because they are not applicable	

</TABLE>

EMERITUS CORPORATION  
CONDENSED CONSOLIDATED BALANCE SHEETS  
December 31, 1995 and September 30, 1996  
(In thousands, except share data)

<TABLE>  
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ASSETS

	December 31, 1995	September 30, 1996 (unaudited)
	-----	-----
<S>	<C>	<C>
Current Assets:		
Cash.....	\$ 9,507	\$ 9,967
Restricted cash.....	1,025	1,158
Trade accounts receivable.....	212	1,437
Prepaid expenses and other current assets.....	1,835	6,733
	-----	-----
Total current assets.....	12,579	19,295
Property and equipment, net.....	81,041	76,777
Property held for development.....	14,111	5,477
Investment securities available for sale.....	2,825	2,338
Notes receivable from and investments in affiliates.....	644	3,671
Other assets, net.....	4,435	18,020

Total assets.....	\$115,635	\$125,578
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current Liabilities:		
Short-term borrowings.....	\$ 520	\$ 251
Current portion of long-term debt.....	352	1,836
Accounts payable.....	4,249	3,169
Other current liabilities.....	3,367	5,203
Total current liabilities.....	8,488	10,459
Security deposits.....	740	1,303
Other long-term liabilities.....	242	3,996
Deferred gain on sale of communities.....	2,227	9,777
Deferred income.....	--	992
Convertible debentures.....	--	32,000
Long-term debt, less current portion.....	66,814	35,108
Total liabilities.....	78,511	93,635
Minority interest.....	2,229	2,057
Shareholders' Equity:		
Preferred stock, \$.0001 par value. Authorized 5,000,000 shares; no shares issued and outstanding.....	--	--
Common stock, \$.0001 par value. Authorized 40,000,000 shares; issued and outstanding 11,000,000 shares.....	1	1
Additional paid-in capital.....	44,910	44,788
Unrealized gain on investment securities.....	400	172
Accumulated deficit.....	(10,416)	(15,075)
Total shareholders' equity.....	34,895	29,886
Total liabilities and shareholders' equity.....	\$115,635	\$125,578

</TABLE>

See accompanying Notes to Condensed Consolidated Financial Statements and Management's Discussion and Analysis of Financial Condition and Results of Operations.

EMERITUS CORPORATION  
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
Three Months and Nine Months Ended September 30, 1995 and 1996  
(unaudited)  
(In thousands, except share data)

<TABLE>  
<CAPTION>

	Three months ended		Nine months ended	
	September 30, 1995	1996	September 30, 1995	1996
<S>	<C>	<C>	<C>	<C>
Revenues:				
Rent.....	\$6,116	\$16,617	\$11,618	\$42,853
Service fees.....	725	956	1,356	3,293
	-----	-----	-----	-----
Total operating revenues....	6,841	17,573	12,974	46,146
	-----	-----	-----	-----
Expenses:				
Community operations.....	5,122	12,908	9,577	32,508
General and administrative.....	632	1,835	1,801	4,218
Depreciation and amortization...	1,102	724	1,850	2,142
Rent.....	203	4,264	592	9,881
	-----	-----	-----	-----
Total operating expenses...	7,059	19,731	13,820	48,749
	-----	-----	-----	-----
Loss from operations.....	(218)	(2,158)	(846)	(2,603)
	-----	-----	-----	-----
Other income (expense):				
Interest expense, net.....	(1,929)	(500)	(3,775)	(2,037)
Other, net.....	(1,147)	297	(1,145)	175
	-----	-----	-----	-----
Net other expense.....	(3,076)	(203)	(4,920)	(1,862)
	-----	-----	-----	-----
Net loss.....	\$ (3,294)	\$ (2,361)	\$ (5,766)	\$ (4,465)
	=====	=====	=====	=====
Net loss per share.....	\$ (0.30)	\$ (0.21)	\$ (0.52)	\$ (0.41)
	=====	=====	=====	=====
Pro Forma				
Net loss (Note 2).....	\$ (3,104)	\$ (2,642)	\$ (7,625)	\$ (4,706)
	=====	=====	=====	=====
Net loss per share.....	\$ (0.28)	\$ (0.24)	\$ (0.69)	\$ (0.43)
	=====	=====	=====	=====
Weighted average number of common and common equivalent shares outstanding.....	11,000	11,000	11,000	11,000
	=====	=====	=====	=====

</TABLE>

See accompanying Notes to Condensed Consolidated Financial  
Statements and Management's Discussion and Analysis of  
Financial Condition and Results of Operations.

EMERITUS CORPORATION  
 CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
 Nine Months Ended September 30, 1995 and 1996  
 (unaudited)  
 (In thousands)

<TABLE>  
 <CAPTION>

	1995	1996
	-----	-----
<S>	<C>	<C>
Net cash used in operating activities (including changes in all operating assets and liabilities)....	\$ (1,227)	\$ (2,542)
	-----	-----
Cash flows from investing activities:		
Acquisition of property and equipment.....	(59,912)	(22,903)
Acquisition of property held for development.....	(8,142)	(947)
Deferred marketing and pre-opening costs.....	--	(542)
Proceeds from sale of property and equipment.....	--	49,757
Advances to affiliates.....	--	(3,027)
(Purchase)/sale of investment securities.....	(2,425)	259
Leasehold improvement advances.....	--	(1,824)
Other.....	(370)	--
	-----	-----
Net cash provided by (used in) investing activities.....	(70,849)	20,773
	-----	-----
Cash flows from financing activities:		
Increase in restricted cash.....	(1,184)	(6,432)
Deferred lease costs.....	--	(6,344)
Proceeds from (repayment of) short-term borrowings..	9,833	(269)
Proceeds from long-term borrowings.....	73,384	14,531
Proceeds from convertible subordinated debentures...	--	30,720
Repayment of long-term borrowings.....	(9,883)	(49,855)
Deferred loan fees.....	(672)	--
Sale of preferred stock.....	1,080	--
Other.....	--	(122)
	-----	-----
Net cash provided by (used in) financing activities.....	72,558	(17,771)
	-----	-----
Net increase in cash.....	482	460
Cash at the beginning of the period.....	220	9,507
	-----	-----
Cash at the end of the period.....	\$ 702	\$ 9,967
	=====	=====
Supplemental disclosure of cash flow information --		
cash paid during the period for interest.....	\$ 3,758	\$ 1,702
	=====	=====

</TABLE>

See accompanying Notes to Condensed Consolidated Financial Statements and Management's Discussion and Analysis of Financial Condition and Results of Operations.

EMERITUS CORPORATION  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. Basis of Presentation

The unaudited interim financial information furnished herein, in the opinion of management, reflects all adjustments which are necessary to state fairly the consolidated financial position, results of operations, and cash flows of Emeritus Corporation, ("the Company") as of September 30, 1996 and for the three and nine month periods ended September 30, 1996 and 1995. The Company presumes that users of the interim financial information herein have read or have access to the Company's 1995 audited consolidated financial statements and Management's Discussion and Analysis of Financial Condition and Results of Operations contained in Form 10-K filed March 29, 1996 by the Company under the Securities Act of 1934 and that the adequacy of additional disclosure needed for a fair presentation, except in regard to material contingencies, may be determined in that context. Accordingly, footnote and other disclosures which would substantially duplicate the disclosures contained in Form 10-K have been omitted. The financial information herein is not necessarily representative of a full year's operations.

Certain reclassifications of the 1995 amounts have been made to conform to the 1996 presentation.

2. Acquisitions

During the year ended December 31, 1995 and the nine months ended September 30, 1996, the Company completed several acquisitions of assisted-living, independent-living and skilled nursing communities. These acquisitions have been accounted for as purchases and, accordingly, the assets and liabilities of the acquired communities were recorded at their estimated fair values at the dates of acquisition. No goodwill was recorded with respect to any of the acquisitions. The results of operations of the communities acquired have been included in the Company's consolidated financial statements from the dates of the acquisitions.

EMERITUS CORPORATION  
 NOTES TO CONDENSED CONSOLIDATED  
 FINANCIAL STATEMENTS - (Continued)

<TABLE>  
 <CAPTION>

Communities acquired	Acquisition date	Total purchase price	Units
-----	-----	-----	-----
<S>	<C>	(in thousands) <C>	<C>
Vickery Towers (formerly Belmont Towers).....	March 31, 1995	\$10,000	237
Beneva Park Club (2).....	June 30, 1995	4,594	97
Central Park Village (2).....	June 30, 1995	8,477	177
College Park Club (2).....	June 30, 1995	3,415	86
Park Club of Brandon (2).....	June 30, 1995	4,219	89
Park Club of Ft Myers (2)....	June 30, 1995	3,671	77
Park Club of Oakbridge (2)...	June 30, 1995	4,799	88
Laurel Lake Estates (1).....	July 19, 1995	6,950	116
Other 1995 acquisitions.....	Various	8,860	210
Heritage Hills Retirement....	February 1, 1996	4,338	100
Lakewood Inn (3).....	March 1, 1996	2,800	47
Laurel Place (formerly Golden Park).....	April 25, 1996	2,100	72
Madison Glen (formerly Sunshine Manor).....	May 15, 1996	3,842	140
		-----	-----
		\$68,065	1,536
		=====	=====

- (1) Refinanced through a sale/leaseback with a Real Estate Investment Trust ("REIT"). Lease includes an initial term of 12 years, three five-year renewal options and an annual lease payment of approximately \$644,000.
- (2) Refinanced through sale/leaseback with a REIT. Lease includes an initial term of 11 years, four five-year renewal options and annual lease payments aggregating approximately \$3.5 million.
- (3) Refinanced through a sale/leaseback with a REIT. Lease includes an initial term of 13 years and four five-year renewal options. Upon completion of a \$7.1 million expansion project annual lease payments will be approximately \$690,000.

</TABLE>

EMERITUS CORPORATION  
 NOTES TO CONDENSED CONSOLIDATED  
 FINANCIAL STATEMENTS - (Continued)

The foregoing purchases have generally been financed through borrowings.

During the nine months ended September 30, 1996, the Company completed several acquisitions of communities through lease financing transactions with a REIT, pursuant to which the REIT leased such communities to the Company under operating leases. The results of operations of the communities acquired



have been included in the Company's consolidated financial statements from the dates of the acquisitions.

<TABLE>  
<CAPTION>

Communities leased	Lease Acquisition date	Initial Lease Term	Renewal Options	Annual Rent	Units
<S>	<C>	<C>	<C>	<C>	<C>
Carolina Communities (1)..	February 1996	15 years	Three five-year	\$4,146,000	648
Evergreen Lodge....	April 1996	13 years	Four five-year	573,000	98
Rosewood Court (2)..	April 1996	15 years	Three five-year	393,000	71
Barrington Place...	May 1996	12 years	Four five-year	414,000	80
Springtree.....	May 1996	12 years	Four five-year	1,410,000	185
The Terrace (2)....	August 1996	11 yrs/8 mos	Four five-year	417,000	88
Lodge at Mainlands.	August 1996	11 yrs/7 mos	Four five-year	925,000	154
Colonial Park Club.	August 1996	11 yrs/7 mos	Four five-year	771,000	90
				-----	-----
				\$9,049,000	1,414
				=====	=====

- (1) Consists of 10 long-term-care communities located in North and South Carolina.  
(2) Refinanced through a sale/leaseback with a REIT.

</TABLE>

EMERITUS CORPORATION  
NOTES TO CONDENSED CONSOLIDATED  
FINANCIAL STATEMENTS - (Continued)

The following summary, prepared on a pro forma basis, combines the results of operations as if the acquisitions, acquisitions through lease financings and sale/leaseback financings had been consummated as of January 1, 1995, after including the impact of certain adjustments such as depreciation on assets acquired, interest expense on acquisition financing and rent expense under leases entered into in lease transactions. Pro forma net loss per share also gives effect to the issuance of preferred stock on April 17, 1995, and subsequent conversion to common stock and the completion of an initial public offering of the Company's common stock on November 21, 1995 as if they had occurred on January 1, 1995.

<TABLE>  
<CAPTION>

	Three months ended		Nine months ended	
	September 30,		September 30,	
	1995	1996	1995	1996
	-----	-----	-----	-----
	(In thousands, except per share data)			
<S>	<C>	<C>	<C>	<C>
Revenue.....	\$17,187	\$18,104	\$49,672	\$54,043
Net loss.....	(3,104)	(2,642)	(7,625)	(4,706)

Net loss per share... \$ (0.28) \$ (0.24) \$ (0.69) \$ (0.43)

</TABLE>

The unaudited pro forma results are not necessarily indicative of what actually might have occurred if the acquisitions had been completed as of the beginning of the periods presented. In addition, they are not intended to be a projection of future results of operations and do not reflect any of the synergies that might be achieved from combined operations.

7

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### OVERVIEW

Since its organization in July 1993, the Company has achieved significant growth in revenues, primarily due to the acquisition and operation of residential communities. The Company believes that it is one of the largest providers of assisted-living services in the United States. The Company's revenues are derived primarily from rents and service fees charged to its residents. For the nine months ended September 30, 1995 and 1996, the Company generated total operating revenues of \$13.0 million and \$46.1 million, respectively. For the three months ended September 30, 1995 and 1996, the Company generated total operating revenues of \$6.8 million and \$17.6 million, respectively. As of September 30, 1996, the Company's cumulative net losses since inception were \$15.1 million and its total shareholders' equity was \$29.9 million. For the nine months ended September 30, 1995 and 1996, the Company generated losses from operations of \$846,000 and \$2.6 million, respectively. For the three months ended September 30, 1995 and 1996, the Company generated losses from operations of \$218,000 and \$2.2 million, respectively.

The Company's operating strategy is to increase operating margins at each acquired or newly developed community, whether leased or owned, primarily by increasing occupancy levels, encouraging residents to remain at the Company's communities longer by offering them a range of service options, increasing revenues through modifications in rate structures, where appropriate, and identifying opportunities to create operating efficiencies and reduce costs.

As of November 13, 1996, the Company holds ownership, leasehold or management interests in 70 residential communities (the "Operating Communities") consisting of approximately 5,800 units, located in 18 states. Three of the 70 communities were newly developed by the Company in the first quarter of 1996, two

8

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL  
CONDITION AND RESULTS OF OPERATIONS - (Continued)

were newly developed by the Company in the second quarter of 1996, one was newly developed by the Company in the third quarter of 1996 and one new development was acquired by the Company through a lease acquisition in the third quarter of 1996. As of November 13, 1996, three newly developed communities, two developed by the Company and one acquired through a lease acquisition, were opened in the fourth quarter of 1996. The Company has an agreement to purchase one existing community representing approximately 100 units located in Nevada which is expected to close in the fourth quarter of 1996. Additionally, the Company has agreements to purchase, letters of intent to purchase or letters of intent to lease eight additional existing communities representing approximately 1,000 units located in four states which are expected to close in the first quarter of 1997. ("Pending Acquisitions"). The Company owns, has a leasehold interest in or has acquired an option to purchase development sites for 41 new assisted-living communities (the "Development Communities"). Twenty-one of the Development Communities are currently under construction, five of which are scheduled to open throughout the remainder of 1996. The Company leases 43 of its residential communities, typically from a financial institution such as a REIT, owns 14 communities, manages eleven communities and has a joint venture interest in two communities. Assuming completion of the Pending Acquisitions and Development Communities scheduled to open throughout the remainder of 1996, the Company will own, lease or manage 76 properties in 18 states, containing an aggregate of approximately 6,300 units. There can be no assurance, however, that the Pending Acquisitions and Development Communities will be completed on schedule and will not be affected by construction delays, the effects of government regulation or other unforeseen factors.

When used in this discussion, the words "believes," "anticipates," "intends" and similar expressions are intended to identify forward-looking statements. Such statements are subject to certain risks and uncertainties that could cause actual

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL  
CONDITION AND RESULTS OF OPERATIONS - (Continued)

results to differ materially from those projected. See "Factors Affecting Future Results and Regarding Forward-Looking Statements" in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1995. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. The Company undertakes no obligation to publicly release the result of any revisions to these forward-looking statements that may be made to reflect recent events or circumstances after the date hereof or to reflect the occurrence of unanticipated events. The Company presumes that users of the interim financial information herein

have read or have access to the Company's 1995 audited consolidated financial statements and Management's Discussion and Analysis of Financial Condition and Results of Operations contained in Form 10-K filed March 29, 1996 by the Company and the Company's first quarter Form 10-Q and second quarter Form 10-Q filed May 15, 1996 and August 14, 1996, respectively, by the Company under the Securities Act of 1934.

RECENT EVENTS

Subsequent to the end of the third quarter of 1996, the Company opened two newly developed communities, completed a lease financing transaction on five communities located in Idaho, South Carolina and Washington and acquired a community located in Washington which consists of both assisted-living and independent-living. Additionally, the Company entered into two management agreements, one with an affiliate to provide management services for an independent-living community located in Idaho and one with an affiliate to provide management services for nine assisted-living communities located in New York. See "Liquidity and Capital Resources".

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS - (Continued)

RESULTS OF OPERATIONS

The following table sets forth, for the periods indicated, certain items of the Company's Condensed Consolidated Statements of Operations as a percentage of total revenues and the percentage change of the dollar amounts from period to period.

<TABLE>  
<CAPTION>

	Percentage of Revenues				Period to Period Percentage Increase (Decrease)	
	Three Months Ended		Nine Months Ended		Three Months Ended	Nine Months Ended
	September 30, 1995	September 30, 1996	September 30, 1995	September 30, 1996	September 30,	
<S>	<C>	<C>	<C>	<C>	<C>	<C>
Revenues.....	100 %	100 %	100 %	100 %	157 %	256 %
Expenses:						
Community operations.....	75	74	74	70	152	239
General and administrative.....	9	10	14	9	190	134
Depreciation and amortization...	16	4	14	5	(34)	16
Rent.....	3	24	5	21	2001	1569

Total operating expenses.....	103	112	107	105	180	253
Loss from operations.....	(3)	(12)	(7)	(5)	890	208
Other expense:						
Interest expense, net.....	28	3	29	4	(74)	(46)
Other, net.....	17	(2)	9	--	(126)	(115)
Net loss.....	(48)%	(13)%	(45)%	(9)%	(28)%	(23)%

</TABLE>

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL  
CONDITION AND RESULTS OF OPERATIONS - (Continued)

NINE MONTHS ENDED SEPTEMBER 30, 1996 COMPARED TO NINE MONTHS  
ENDED SEPTEMBER 30, 1995

REVENUES. Total operating revenues for the nine months ended September 30, 1996 were \$46.1 million, representing a \$33.2 million, or 256%, increase over operating revenues of \$13.0 million for the comparable period in 1995. Substantially all of this increase resulted from the opening of new developments and the acquisition of 32 communities after September 30, 1995 compared to 20 total communities operating at September 30, 1995.

COMMUNITY OPERATIONS. Expenses for community operations for the nine months ended September 30, 1996 were \$32.5 million, representing a \$22.9 million, or 239% increase over expenses for community operations of \$9.6 million for the comparable period in 1995, primarily due to the Company's opening of new developments and the acquisition of 32 communities after September 30, 1995 compared to 20 total communities operating at September 30, 1995. As a percentage of total operating revenues, expenses for community operations decreased to 70% for the nine months ended September 30, 1996, from 74% for the comparable period in 1995 primarily due to efficiencies created by the implementation of operating strategies and the acquisitions in the first nine months of 1996 of communities operating more efficiently.

GENERAL AND ADMINISTRATIVE. General and administrative expenses for the nine months ended September 30, 1996 were \$4.2 million, representing an increase of \$2.4 million, or 134% from general and administrative expenses of \$1.8 million for the comparable period in 1995. As a percentage of total operating revenues, general and administrative expenses decreased to 9% for the nine months ended September 30, 1996, from 14% for the comparable period in 1995 primarily as a result of an increase in revenue. The \$2.4 million dollar increase in general and administrative expenses was attributable to salaries, related payroll taxes, and employee benefits relating to additional employment associated with new business, increased accounting costs and higher travel and other costs relating to the Company's

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL  
CONDITION AND RESULTS OF OPERATIONS - (Continued)

acquisition and development program. General and administrative costs are expected to continue to increase at least through 1996 as the Company acquires additional existing communities and develops new communities.

DEPRECIATION AND AMORTIZATION. Depreciation and amortization for the nine months ended September 30, 1996 was \$2.1 million, or 5% of total operating revenues, compared to \$1.9 or 14% of total operating revenues, for the comparable period in 1995. The dollar increase was primarily due to the Company's opening new developments and the acquisition of seven communities after September 30, 1995. The decrease as a percentage of revenue was due to refinancing completed through sale/leaseback transactions on previously owned communities.

RENT. Rent expense for the nine months ended September 30, 1996 was \$9.9 million, representing an increase of \$9.3 million, or 1569% from rent expense of \$592,000 for the comparable period in 1995. As a percentage of total operating revenues, rent expense increased to 21% for the nine months ended September 30, 1996, from 5% for the comparable period in 1995. The dollar and percentage increases were due to the Company entering into lease financing or sale/leaseback transactions with respect to 35 out of 52 of its residential communities as of September 30, 1996 compared to two out of 20 communities as of September 30, 1995.

INTEREST EXPENSE, NET. Interest expense, net, for the nine months ended September 30, 1996 was \$2.0 million, compared to \$3.8 million for the comparable period in 1995, decreasing as a percentage of total operating revenues to 4% for the nine months ended September 30, 1996 from 29% for the comparable period in 1995. The dollar decrease was due to the repayment of existing mortgage debt with lower rate convertible debenture proceeds and refinancing of mortgage indebtedness through sale/leaseback transactions.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL  
CONDITION AND RESULTS OF OPERATIONS - (Continued)

OTHER INCOME AND EXPENSE, NET. Other income and expense, net, for the nine months ended September 30, 1996 was income of \$175,000 compared to expense of \$1.1 million for the comparable period in 1995. The dollar variance was primarily due to a reduction in the carrying value and subsequent write-down in 1995, of a note receivable from Extended Care Corporation, an entity that operated three long-term-care communities. The write-down occurred due to Extended Care Corporation's continued losses and the holder of the first mortgage's initiation of foreclosure

proceedings. Additionally, during the third quarter of 1996, the Company recognized a gain on sale of approximately \$242,000 from the sale of investment securities held in The Standish Care Company.

THREE MONTHS ENDED SEPTEMBER 30, 1996 COMPARED TO THREE MONTHS ENDED SEPTEMBER 30, 1995

REVENUES. Total operating revenues for the three months ended September 30, 1996 were \$17.6 million, representing a \$10.7 million, or 157% increase over operating revenues of \$6.8 million for the comparable period in 1995. Substantially all of this increase resulted from the opening of new developments and the acquisition of 32 communities after September 30, 1995 compared to 20 total communities operated at September 30, 1995.

COMMUNITY OPERATIONS. Expenses for community operations for the three months ended September 30, 1996 were \$12.9 million, representing a \$7.8 million, or 152% increase over expenses for community operations of \$5.1 million for the comparable period in 1995, primarily due to the Company's opening new developments and the acquisition of 32 communities after September 30, 1995 compared to 20 total communities operated at September 30, 1995. As a percentage of total operating revenues, expenses for community operations decreased to 74% for the three months ended September 30, 1996, from 75% for the comparable period in 1995 primarily due to efficiencies created by the implementation of operating strategies and the acquisitions in the first nine months of 1996 from communities operating more efficiently.

14

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL  
CONDITION AND RESULTS OF OPERATIONS - (Continued)

GENERAL AND ADMINISTRATIVE. General and administrative expenses for the three months ended September 30, 1996 were \$1.8 million, representing an increase of \$1.2 million, or 190% from general and administrative expenses of \$632,000 for the comparable period in 1995. As a percentage of total operating revenues, general and administrative expenses increased to 10% for the three months ended September 30, 1996, from 9% for the comparable period in 1995. The dollar and percentage increases in general and administrative expenses were attributable to salaries, related payroll taxes, and employee benefits relating to additional employment associated with new business, increased accounting costs and higher travel and other costs relating to the Company's acquisition and development program. These increases are expected to continue at least through 1996 as the Company acquires additional existing communities and develops new communities.

DEPRECIATION AND AMORTIZATION. Depreciation and amortization for the three months ended September 30, 1996 was \$724,000, or 4% of total operating revenues, compared to \$1.1 million or 16% of total operating revenues, for the comparable period in 1995. The dollar and percentage decrease was primarily due to refinancing completed through sale/leaseback transactions on previously owned communities.

RENT. Rent expense for the three months ended September 30,

1996 was \$4.3 million, representing an increase of \$4.1 million, or 2001% from rent expense of \$203,000 for the comparable period in 1995. As a percentage of total operating revenues, rent expense increased to 24% for the three months ended September 30, 1996, from 3% for the comparable period in 1995. The dollar and percentage increases were due to the Company entering into lease financing or sale/leaseback transactions with respect to 35 out of 52 of its residential communities as of September 30, 1996 compared to two out of 20 of its residential communities as of September 30, 1995. As the Company enters into additional lease financing and sale/leaseback transactions, its rent expense will continue to increase.

15

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL  
CONDITION AND RESULTS OF OPERATIONS - (Continued)

INTEREST EXPENSE, NET. Interest expense, net, for the three months ended September 30, 1996 was \$500,000, compared to \$1.9 million for the comparable period in 1995, decreasing as a percentage of total operating revenues to 3% for the three months ended September 30, 1996 from 28% for the comparable period in 1995. The dollar decrease was due to the repayment of existing mortgage debt with lower rate convertible debenture proceeds and refinancing of mortgage indebtedness through sale/leaseback transactions.

OTHER INCOME AND EXPENSE, NET. Other income and expense, net, for the three months ended September 30, 1996 was income of \$297,000 compared to expense of \$1.1 million for the comparable period in 1995. The dollar variance was due primarily to a reduction in the carrying value and subsequent write-down in 1995, of a note receivable from Extended Care Corporation, an entity that operated three long-term-care communities. The write-down occurred due to Extended Care Corporation's continued losses and the holder of the first mortgage's initiation of foreclosure proceedings. Additionally, during the third quarter of 1996, the Company recognized a gain on sale of approximately \$242,000 from the sale of investment securities held in The Standish Care Company.

STABILIZED, OPERATIONAL AND START-UP/REPOSITION COMMUNITIES  
COMPARISON

As of September 30, 1996, the Company had 17 communities that it had operated as assisted-living communities for at least 12 months ("Stabilized Communities"). Net losses for the third quarter of 1996 for Stabilized Communities were \$83,000, representing a \$259,000 or 76% decrease from net losses of \$342,000 for the fourth quarter of 1995.

The decrease in net losses between the third quarter of 1996 and the fourth quarter of 1995 was primarily due to decreasing operating expense, together with increases in operating revenue due to higher rents and service fees, resulting in an increase in operating margins from 27% to 30%. Lower lease expense compared to depreciation and interest expense was also recognized as a result of refinancings through sale/leaseback transactions.



MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL  
CONDITION AND RESULTS OF OPERATIONS - (Continued)

The change from net income of \$283,000 for the second quarter of 1996, to net losses of \$83,000 for the third quarter of 1996 were primarily due to lower operating revenues resulting from a decrease in average occupancy between the two quarters, as well as increases in operating expenses.

As of September 30, 1996, the Company had an ownership, leasehold or management interest in 40 communities as operational assisted-living communities ("Operational Communities") and 12 communities as newly opened developments and/or communities with significant ongoing repositioning and/or refurbishment ("Start-up/Reposition Communities"). The following tables set forth a comparison of operational and start-up/reposition communities results of operations for the three months ended September 30, 1996.

<TABLE>  
<CAPTION>

Three Months Ended September 30, 1996  
(In thousands, except per share information)

	Operational Communities (1)	Start-up/ Reposition Communities (2)	Overhead	Three Months Ended September 30, 1996
<S>	<C>	<C>	<C>	<C>
Revenue.....	\$16,210	\$ 1,336	\$ 27	\$17,573
Community operating expense.....	11,488	1,420	--	12,908
Community operating income (loss)...	4,722	(84)	27	4,665
General and administrative.....	--	--	1,835	1,835
Depreciation and amortization.....	361	248	115	724
Rent.....	3,800	377	87	4,264
Operating income (loss).....	561	(709)	(2,010)	(2,158)
Interest income (expense), net.....	(425)	(327)	252	(500)
Other income (expense).....	151	(76)	222	297
Net income (loss).....	\$ 287	\$ (1,112)	\$ (1,536)	\$ (2,361)

</TABLE>

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL  
CONDITION AND RESULTS OF OPERATIONS - (Continued)

(1) Operational Communities are those that have been operated as assisted-living (or the intended use) by the Company (40 out of 52 communities are included in this category) for at least one month during the third quarter. Overhead has not been allocated to the communities included

in this column.

(2) Start-up/Reposition Communities are those that have been newly developed and opened by the Company and those communities that are currently being repositioned to operate as assisted-living communities (12 out of 52 communities are included in this category). Overhead has not been allocated to the communities in this column.

Net income for the three months ended September 30, 1996 for the Operational Communities was \$287,000, representing a \$759,000 or 73% decrease from net income of \$1.0 million for the three months ended June 30, 1996. The dollar and percentage decrease in net income included an increase in operating expenses of approximately \$559,000 for the 35 communities operational for all three months of both quarters, as well as additional net losses of approximately \$246,000 for the communities that became operational during the second and third quarters.

The net losses for the three months ended September 30, 1996 for Start-up/Reposition Communities were \$1.1 million, representing a \$475,000 or 75% increase over the net losses of \$637,000 for the three months ended June 30, 1996. The dollar and percentage increases resulted primarily from the addition of six communities (three newly opened communities and three acquired communities being repositioned) after April 1996 that had longer periods of operation in the third quarter than in the second quarter.

During the three months ended September 30, 1996, the Company completed one repositioning of a community, Fulton Villa located in Stockton, California, and reclassified it as an Operational Community.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL  
CONDITION AND RESULTS OF OPERATIONS - (Continued)

LIQUIDITY AND CAPITAL RESOURCES

For the nine months ended September 30, 1995 and 1996, net cash flow used in operating activities was \$1.2 million and \$2.5 million, respectively. During the nine months ended September 30, 1996, the Company obtained \$49.8 million in proceeds from the sale of communities in sale/leaseback financing transactions and repaid related mortgage indebtedness of \$33.7 million as well as \$16.2 million of unrelated mortgage indebtedness. The Company also incurred additional long-term debt of \$45.3 million, including \$30.7 million of net proceeds from the private placement of convertible subordinate debentures and purchased additional property and equipment and property held for development of \$23.9 million. During the nine months ended September 30, 1995, the Company used \$68.1 million to acquire property and equipment and property held for development and obtained \$72.6 million in net cash provided by financing activities primarily related to net proceeds from long and short-term borrowings. As of September 30, 1996, the Company had working capital of \$8.8 million compared to a working capital of \$4.1 million as of December 31, 1995.

The Company has been, and expects to continue to be, dependent on third-party financing for its acquisition and development programs. There can be no assurance that financing for the Company's acquisition and development programs will be available to the Company on acceptable terms. Moreover, to the extent the Company acquires communities that do not generate positive cash flow, the Company may be required to seek additional capital or borrowings for working capital and liquidity purposes.

On July 1, 1996, the Company moved its executive offices to a new location in Seattle, Washington where the Company leases approximately 22,000 square feet of new space. The agreement includes a lease term of 10 years with two five-year renewal options.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL  
CONDITION AND RESULTS OF OPERATIONS - (Continued)

On July 10, 1996, the Company completed \$7.4 million in lease financing for a total of 100 assisted-living units in two to-be-constructed communities located in Amarillo, Texas and Clarksville, Tennessee. Both developments will contain 50 assisted-living units. Construction on the Amarillo development commenced in the second quarter of 1996 and construction on the Clarksville development commenced in the third quarter of 1996. The communities will be constructed and operated by the Company pursuant to an operating lease and leasehold improvement agreement with a REIT.

On July 23, 1996, the Company refinanced approximately \$5.3 million of its mortgage indebtedness secured by an 80 unit newly developed assisted living community, Garrison Creek Lodge located in Walla Walla, Washington through a sale/leaseback with a REIT, which was the original lender during the construction period. The lease consists of an initial term of 11 years, with six five-year renewal options and annual base rent of approximately \$593,000.

On July 26, 1996, the Company reached an agreement in principle to acquire 20% of the fully-diluted outstanding stock of Alert Care Corporation ("Alert"), an Ontario, Canada based owner/operator of assisted-living communities. The transaction would involve the Company purchasing approximately 6.9 million newly issued Preferred Shares of Alert at prices ranging from \$0.67 (Cdn) to \$0.74 (Cdn) per share for total proceeds of \$5.0 million (Cdn). The Preferred Shares would be convertible into class A non-voting shares of Alert on a one-for-one basis. The company would also receive an option to acquire an additional 4 million Preferred Shares at an exercise price of \$1 (Cdn) per share. On a fully-diluted basis, the exercise of this option would increase the Company's ownership to approximately 31%. In addition, the Company would receive an option to purchase an aggregate of 10 million common and Class A shares of Alert held by Eclipse Capital corporation ("Eclipse") (constituting approximately 50% of the currently issued Alert common and class A shares and approximately 29% of such shares on a fully-diluted

basis). This option is at \$3.25 (Cdn) per share.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL  
CONDITION AND RESULTS OF OPERATIONS - (Continued)

Binding agreements have been negotiated by the parties and the transaction has been approved by the board of directors of Alert and Eclipse. The transaction is still subject to approval by the directors of the Company. Approval by the shareholders of Alert and Eclipse is expected to occur by the end of November 1996.

Alert is an owner/operator of assisted-living communities based in Ontario, Canada. As a party to the transaction, Alert would enter into an exclusive management agreement to manage the Company's future assisted-living communities in Ontario. Eclipse, through its wholly-owned subsidiary, Eclipse Construction Inc., develops and constructs retirement homes for Alert on a contract basis. Under the agreement, Eclipse would enter into an exclusive development agreement with the Company and Alert to develop their construction projects in Ontario. Additionally, Eclipse would develop one facility in the United States for the Company.

On August 1, 1996, the Company completed \$9.3 million in lease financing for a total of 208 assisted-living units in three to-be-constructed communities located in Ocean Shores, Washington, Wichita Falls, Texas and San Angelo, Texas. The two developments located in Texas and the one development located in Washington will contain 79, 79 and 50 assisted-living units, respectively. Construction on all three developments commenced in the third quarter of 1996. The communities will be constructed and operated by the Company pursuant to operating leases and leasehold improvement agreements with a REIT.

On August 1, 1996, the Company completed a \$4.6 million lease financing transaction on an assisted-living community, Ridge Wind located in Chubbuck, Idaho. The community contains approximately 80 units and was acquired by the Company pursuant to an operating lease with a REIT. The lease includes an initial term of 11 years and 8 months, with four five-year renewal options and annual base rent of approximately \$458,000.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL  
CONDITION AND RESULTS OF OPERATIONS - (Continued)

On August 2, 1996, the Company refinanced approximately \$2.1 million of its mortgage indebtedness secured by an 88 unit assisted-living community, The Terrace located in Grand Terrace, California through a sale/leaseback transaction with a REIT. The lease includes an initial lease term of 11 years and 8 months,

with four five-year renewal options and annual base rent of approximately \$417,000.

On August 20, 1996, the Company completed a \$17.2 million lease financing transaction on two assisted-living communities, Lodge at Mainlands and Colonial Park Club located in Pinellas Park, Florida and Sarasota, Florida. The communities contain approximately 244 units and were acquired by the Company pursuant to operating leases with a REIT. The leases include initial terms of 11 years and 7 months, with four five-year renewal options and annual base rent of \$771,000 and \$925,000, respectively.

On August 23, 1996, the Company refinanced approximately \$5.1 million of its mortgage indebtedness secured by a 79 unit newly developed assisted-living community, Cambria located in El Paso, Texas through a sale/leaseback transaction with a REIT, which was the original lender during the construction period. The lease includes an initial lease term of 11 years, with six five-year renewal options and annual base rent of approximately \$544,000. The community commenced operations on October 2, 1996.

On September 3, 1996, the Company opened one newly developed 74 unit assisted-living community, Cobblestones at Fairmont located in Manassas, Virginia.

On September 12, 1996, Painted Post Partners, a general partnership affiliated with the Company, signed a leasehold agreement with Wegman Companies, Inc. to acquire a long-term leasehold interest in nine assisted-living communities located throughout the state of New York. The Company has signed an agreement with Painted Post Partners to provide certain services to the communities during the life of the leases. The acquisition closed on November 3, 1996. Eight of the nine communities are existing assisted-living communities and one community is a new development which commenced operations in the fourth quarter of 1996.

21

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL  
CONDITION AND RESULTS OF OPERATIONS - (Continued)

On September 17, 1996, the Company refinanced approximately \$4.9 million of its mortgage indebtedness secured by a 79 unit newly developed assisted-living community, Sherwood Place located in Odessa, Texas through a sale/leaseback transaction with a REIT, which was the original lender during the construction period. The lease includes an initial lease term of 11 years, with six five-year renewal options and annual base rent of approximately \$529,000. The community commenced operations on October 1, 1996.

Subsequent to the end of the third quarter, on October 1, 1996, the Company completed a \$17.7 million lease financing transaction on five communities located in Idaho, South Carolina and Washington. The two communities located in Idaho and Washington consist of 49 and 50 units, respectively. The three communities located in South Carolina consists of 75 independent living cottages, 30 assisted-living units and a 44 bed skilled nursing facility. All five communities were acquired by the Company pursuant to an operating lease with a REIT. The leases include initial terms of 11 years, with four five-year renewal options and annual base rent aggregating approximately \$1.8 million.

On November 1, 1996, the Company completed a \$5.2 million acquisition of a community located in Moses Lake, Washington. The community has 84 units consisting of 42 assisted-living and 42 independent-living. Also on November 1, 1996, the Company entered into a management agreement with Columbia House, LLC, an affiliate of the Company, to provide management services for an 88 unit independent-living community located in Couer d'Alene, Idaho.

In part, the Company's future capital needs depend on arranging sale/leaseback financing for existing assisted-living communities that have achieved stabilized occupancy rates, resident mix and operating margins after initial development or repositioning. There can be no assurance that the Company will generate sufficient cash flow during such time to fund its working capital, rent, debt service requirements or growth. In such event, the Company would have to seek additional financing through debt or equity offerings, bank borrowings or other sources.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL  
CONDITION AND RESULTS OF OPERATIONS - (Continued)

Impact of Inflation

To date, inflation has not had a significant impact on the Company. Inflation could, however, affect the Company's future revenues and operating income due to the Company's dependence on its senior resident population, most of whom rely on relatively fixed incomes to pay for the Company's services. As a result, the Company's ability to increase revenues in proportion to increased operating expenses may be limited. The Company typically does not rely to a significant extent on governmental reimbursement programs. In pricing its services, the Company attempts to anticipate inflation levels, but there can be no assurance that the Company will be able to respond to inflationary pressures in the future.

## PART II OTHER INFORMATION

Items 1-5 are not applicable.

Item 6: EXHIBITS AND REPORTS ON FORM 8-K

(a) Exhibits

<TABLE>  
<CAPTION>

Exhibit Number	Description
-----	-----
<S>	<C>
10.1	The Lodge at Mainlands in Pinellas Park, Florida, Colonial Park Club in Sarasota, Florida, Fairhaven Estates in Bellingham, Washington, Highland Hills in Pocatello, Idaho and Anderson Place in Anderson, South Carolina. The following agreement is representative of those executed in connection with these properties:
	10.1.1 Lease Agreement dated August and October 1996 between Emeritus Properties I, Inc ("Lessee") and Meditrust Acquisition Corporation I ("Lessor").
10.2	Colonial Park Club in Sarasota, Florida.
	10.2.1 Leasehold Improvement Agreement dated August 21, 1996 between Emeritus Properties I, Inc. ("Lessee") and Meditrust Acquisition Corporation I ("Lessor").
10.3	Garrison Creek Lodge in Walla Walla, Washington, Cambria in El Paso, Texas and Sherwood Place in Odessa, Texas. The following agreement is representative of those executed in connection with these properties:
	10.3.1 Lease Agreement dated July, August and September 1996 between the registrant ("Lessee") and American Health Properties, Inc. ("Lessor").
10.4	Colonie Manor in Latham, New York, Bassett Manor in Williamsville, New York, West Side Manor in Liverpool, New York, Bellevue Manor in Syracuse, New York, Perinton Park Manor in Fairport, New York, Bassett Park Manor in Williamsville, New York, Woodland Manor in Vestal, New York, East Side Manor in Fayetteville, New York and West Side Manor in Rochester, New York. The

following agreements are representative of those executed in connection with these properties:

- 10.4.1 Lease Agreement dated September 1, 1996 between Philip Wegman ("Landlord") and Painted Post Partners ("Tenant").
- 10.4.2 Management Services Agreement dated September 2, 1996 between the registrant and Painted Post Partners ("Operator").
- 10.5 Heritage Health Center in Hendersonville, North Carolina.
  - 10.5.1 Management Services Agreement between the registrant and Servicemaster Diversified Health Services, L.P. ("Manager") dated June 27, 1996.
- 10.6 Camlu in Couer d'Alene, Idaho.
  - 10.6.1 Management Services Agreement between the registrant ("Manager") and Columbia House, LLC ("Lessee") dated November 1, 1996.
- 10.7 The Hearthstone in Moses Lake, Washington.
  - 10.7.1 Purchase and Sale Agreement dated August 20, 1996 between the registrant ("Purchaser") and Hearthstone-5K Family Limited Partnership ("Seller").
  - 10.7.2 Loan Agreement dated October 30, 1996 between the registrant and Washington Mutual Bank ("Holder").
  - 10.7.3 Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated October 30, 1996 by the registrant ("Grantor"), Chicago Title Insurance Company ("Trustee"), and Washington Mutual Bank ("Beneficiary").
- 11.1 Statement re computation of per share earnings.
- 27.1 Financial Data Schedule.

</TABLE>

(b) Reports on Form 8-K

No reports on Form 8-K were filed during the quarter ended September 30, 1996.

#### SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of



1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Dated: November 13, 1996

EMERITUS CORPORATION  
(Registrant)

Kelly J. Price

-----  
Kelly J. Price, Chief Financial Officer

James S. Keller

-----  
James S. Keller, Controller and Director of Accounting  
(Principal Accounting Officer)

26

INDEX TO EXHIBITS

<TABLE>  
<CAPTION>

Exhibit Number	Description	Sequentially Numbered Page
-----	-----	-----
<S>	<C>	<C>
10.1	The Lodge at Mainlands in Pinellas Park, Florida, Colonial Park Club in Sarasota, Florida, Fairhaven Estates in Bellingham, Washington, Highland Hills in Pocatello, Idaho, and Anderson Place in Anderson, South Carolina. The following agreements are representative of those executed in connection with these properties:	
	10.1.1 Lease Agreement dated August and September 1996 between Emeritus Properties I, Inc. ("Lessee") and Meditrust Acquisition Corporation I ("Lessor").	
10.2	Colonial Park Club in Sarasota, Florida.	
	10.2.1 Leasehold Improvement Agreement dated August 21, 1996 between Emeritus Properties I, Inc. ("Lessee") and Meditrust Acquisition Corporation I ("Lessor").	
10.3	Garrison Creek Lodge in Walla Walla, Washington, Cambria in El Paso, Texas and Sherwood Place in Odessa, Texas. The following agreement is representative of those executed in connection with these properties:	
	10.3.1 Lease Agreement dated July, August and September, 1996 between the registrant ("Lessee") and American Health Properties, Inc. ("Lessor").	
10.4	Colonie Manor in Latham, New York, Bassett Manor in	

Williamsville, New York, West Side Manor in Liverpool, New York, Bellevue Manor in Syracuse, New York, Perinton Park Manor in Fairport, New York, Bassett Park Manor in Williamsville, New York, Woodland Manor in Vestal, New York, East Side Manor in Fayetteville, New York and West Side Manor in Rochester, New York. The following agreement is representative of those executed in connection with these properties:

10.4.1 Lease Agreement dated September 1, 1996 between Philip Wegman ("Landlord") and Painted Post Partners ("Tenant").

27

10.4.2 Management Services Agreement dated September 2, 1996 between the registrant and Painted Post Partners ("Operator").

10.5 Heritage Health Center in Hendersonville, North Carolina.

10.5.1 Management Services Agreement between the registrant and Servicemaster Diversified Health Services, L.P. ("Manager") dated June 27, 1996.

10.6 Camlu in Couer d'Alene, Idaho.

10.6.1 Management and Services Agreement between the registrant ("Manager") and Columbia House, LLC ("Lessee") dated November 1, 1996.

10.7 The Hearthstone in Moses Lake, Washington.

10.7.1 Purchase and Sale Agreement dated August 20, 1996 between the registrant ("Purchaser") and Hearthstone-5K Family Limited Partnership ("Seller").

10.7.2 Loan Agreement dated October 30, 1996 between the registrant and Washington Mutual Bank ("Holder").

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11.1 Statement re computation of per share earnings.

27.1 Financial Data Schedule.

</TABLE>



THE FOLLOWING AGREEMENT IS SUBSTANTIALLY THE SAME  
EXCEPT FOR THE FOLLOWING:

COMMUNITY	BASE RENT
Colonial Park Club Investment multiplied by 9.83%	Original Meditrust
Lodge at Mainlands	\$924,530.37
Fairhaven Estates Original Meditrust Investment multiplied by 9.9%	
Highland Hills Original Meditrust Investment multiplied by 9.9%	
Anderson Place Original Meditrust Investment multiplied by 9.9%	

COMMUNITY	ORIGINAL INVESTMENT
Colonial Park Club	\$7,841,931
Lodge at Mainlands	\$9,405,192
Fairhaven Estates	\$3,677,423
Highland Hills	\$3,360,000
Anderson Place	\$10,669,705

NOTE: Colonial Park Club's lease commenced August 21, 1996 and ends March 31, 2008; Lodge at Mainland's lease commenced August 20, 1996 and ends March 31, 2008; Fairhaven Estates, Highland Hills and Anderson Place leases commenced October 1, 1996 and ends September 30, 2007.

EMERITUS  
SARASOTA

FACILITY LEASE AGREEMENT

MEDITRUST ACQUISITION CORPORATION I

(A Massachusetts corporation)

as

Lessor

AND

EMERITUS PROPERTIES I, INC.

(A Washington corporation)

as

Lessee

Dated as of August \_\_, 1996

For Premises Located AT

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

#### FACILITY LEASE AGREEMENT

This FACILITY LEASE AGREEMENT ("Lease") is dated as of the \_\_\_\_ day of August, 1996 and is between MEDITRUST ACQUISITION CORPORATION I ("Lessor"), a Massachusetts corporation having its principal office at 197 First Avenue, Needham Heights, Massachusetts 02194, and EMERITUS PROPERTIES I, INC. ("Lessee"), a Washington corporation, having its principal office at c/o Emeritus Corporation, 3131 Elliott Avenue, Suite 500, Seattle, Washington 98121-2162.

#### ARTICLE 1

##### LEASED PROPERTY; TERM; CONSTRUCTION; EXTENSIONS

1.1 LEASED PROPERTY. Upon and subject to the terms and conditions hereinafter set forth, Lessor leases to Lessee and Lessee rents and leases from Lessor all of Lessor's rights and interests in and to the following real and personal property (collectively, the "Leased Property"):

(a) the real property described in EXHIBIT A attached hereto (the "Land");

(b) all buildings, structures, Fixtures (as hereinafter defined) and other improvements of every kind including, but not limited to, alleyways and connecting tunnels, sidewalks, utility pipes, conduits and lines, and parking areas and roadways appurtenant to such buildings and structures presently or hereafter situated upon the Land (collectively, the "Leased Improvements");

(c) all easements, rights and appurtenances of every nature and description now or hereafter relating to or benefitting any or all of the Land and the Leased Improvements;

(d) all equipment, machinery, building fixtures, and other items of property (whether realty, personalty or mixed), including all components thereof, now or hereafter located in, on or used in connection with, and permanently affixed to or incorporated into the Leased Improvements, including, without limitation, all furnaces, boilers, heaters, electrical equipment, heating, plumbing, lighting, ventilating, refrigerating, incineration, air and water pollution control, waste disposal, air-cooling and air-conditioning systems and apparatus, sprinkler systems and fire and theft protection equipment, and built-in oxygen and vacuum systems, all of which, to the greatest extent permitted by law, are hereby deemed by the parties hereto to constitute real estate, together with all replacements, modifications, alterations and additions thereto, but specifically excluding all items included within the category of Tangible Personal Property (as hereinafter defined) which are not permanently affixed to or incorporated in the Leased Property (collectively, the "Fixtures"); and

The Leased Property is leased in its present condition, AS IS, without representation or warranty of any kind, express or implied, by Lessor and subject to: (i) the rights of parties in possession; (ii) the existing state of title including all covenants, conditions, Liens (as hereinafter defined) and other matters of record (including, without limitation, the matters set forth in EXHIBIT B); (iii) all applicable laws and (iv) all matters, whether or not of a similar nature, which would be disclosed by an inspection of the Leased Property or by an accurate survey thereof.

1.2 TERM. The term of this Lease shall consist of: the "Initial Term", which shall commence on [August 21, 1996] (the "Commencement Date") and end on March 31, 2008 (the "Expiration Date"); provided, however, that this Lease may be sooner terminated as hereinafter provided. In addition, Lessee shall have the option(s) to extend the Term (as hereinafter defined) as provided for in Section 1.3.

1.3 EXTENDED TERMS. Provided that this Lease has not been previously terminated, and as long as there exists no Lease Default (as hereinafter defined) at the time of exercise and on the last day of the Initial Term or the then current Extended Term (as hereinafter defined), as the case may be, Lessee is hereby granted the option to extend the Initial Term of this Lease for four (4) additional periods (collectively, the "Extended Terms") as follows: four (4) successive five (5) year periods for a maximum Term, if all such options are exercised, which ends on March 31, 2028. Lessee's extension option rights shall be exercised by Lessee by giving written notice to Lessor of each such extension at least one hundred eighty (180) days, but not more than three hundred sixty (360) days, prior to the termination of the Initial Term or the then current Extended Term, as the case may be. Lessee shall have no right to rescind any such notice once given. Lessee may not exercise its option for more than one Extended Term at a time. During each effective Extended Term, all of the terms and conditions of this Lease shall continue in full force and effect, except that the Base Rent (as hereinafter defined) for each such Extended Term shall be

adjusted as set forth in Section 3.1(a).

Notwithstanding anything to the contrary set forth herein, Lessee's rights to exercise the options granted in this Section 1.3 are subject to the further condition that concurrently with the exercise of any extension option hereunder, Lessee shall have exercised its option to extend the terms of all of the Related Leases in accordance with the provisions of the Agreement Regarding Related Transactions and the provisions of Section 1.3 of each of the Related Leases.

ARTICLE 2

DEFINITIONS AND RULES OF CONSTRUCTION

2.1 DEFINITIONS. For all purposes of this Lease and the other Lease Documents (as hereinafter defined), except as otherwise expressly provided or unless the context otherwise requires, (i) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and (ii) all references in this Lease or any of the other Lease Documents to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this Lease or the other applicable Lease Document.

ACCOUNTS: As defined in the UCC.

ACCREDITATION BODY: Any person, including any Person having or claiming jurisdiction over the accreditation, certification, evaluation or operation of the Facility.

ADDED VALUE PERCENTAGE: The proportion of the Fair Market Added Value of Capital Additions paid for or financed by Lessee to the Fair Market Value of the entire Leased Property, expressed as a percentage.

ADDITIONAL CHARGES: As defined in Article 3.

ADDITIONAL LAND: As defined in Section 9.3.

ADDITIONAL RENT: As defined in Article 3.

ADDITIONAL RENT COMMENCEMENT DATE: As defined in Article 3.

AFFILIATE: With respect to any Person (i) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person, (ii) any other Person that owns, beneficially, directly or indirectly, five percent (5%) or more of the outstanding capital stock, shares or equity interests of such Person or (iii) any officer, director, employee, general partner or trustee of such Person, or any other Person controlling, controlled by, or under common control with, such Person (excluding trustees and Persons serving in a fiduciary or similar capacity who are not otherwise an Affiliate of such Person). For the purposes of this definition, "control" (including the correlative meanings of

the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of

3

such Person, through the ownership of voting securities, partnership interests or other equity interests provided, however, that, (a) for purposes of determining a Related Party Default, the percentage of outstanding capital stock, shares or equity interests referenced in (ii) above shall be fifty percent (50%) and (b) any Person who is an Affiliate by virtue of the ownership thereof by Daniel R. Baty or his status therein as an officer or director shall not be deemed an Affiliate for purposes of determining a Related Party Default.

**AFFILIATED PARTY SUBORDINATION AGREEMENT:** That certain Affiliated Party Subordination Agreement of even date by and among Lessee, the Guarantor, various Affiliates of Lessee and various Affiliates of Lessor.

**AGREEMENT REGARDING RELATED TRANSACTIONS (ACQUISITION):** The Fourth Amended and Restated Agreement Regarding Related Transactions (Acquisition) of even date, as amended from time to time, between Lessee, Lessor and any Related Party that is party to any Related Lease or Related Party Agreement. Lessor and Lessee anticipate that the Agreement Regarding Related Transactions will be amended from time to time to include Affiliates of Lessor and Lessee as parties thereto in connection with future transactions and acknowledge and agree that for all purposes under this Lease Agreement such amendments shall be deemed to be included in this definition.

**ANNUAL FACILITY UPGRADE EXPENDITURE:** An aggregate annual amount equal to the product of TWO HUNDRED DOLLARS (\$200) (as increased as of the first day of each Lease Year in which the Annual Facility Upgrade Expenditure is to be made by an amount equal to the product of the CPI Increase multiplied by TWO HUNDRED DOLLARS (\$200)) times the number of units in the Facility, such amount to be spent on Upgrade Renovations. The term "CPI Increase" means a fraction, the numerator of which is the Price Index in effect as of the first day of the Lease Year in which the Annual Facility Upgrade Expenditure is to be made and the denominator of which is the Price Index in effect as of the date hereof. The term "Price Index" means the Consumer Price Index for Urban Wage Earners and Clerical Workers, All Items-Series A (1982-84=100), published by the Bureau of Labor Statistics, U.S. Department of Labor. If the Bureau of Labor Statistics should cease to publish such Price Index in its present form and calculated on the present basis, then the most similar index published by the same Bureau shall be used for the same purpose. If there is no such similar index, a substitute index which is then generally recognized as being similar to such Price Index, such substitute index to be reasonably selected by Lessor.

**APPURTENANT AGREEMENTS:** Collectively, all instruments, documents and other agreements that now or hereafter create any utility, access or other rights or appurtenances benefiting or relating to the Leased Property.

4

**AWARD:** All compensation, sums or anything of value awarded,



paid or received on a total or partial Condemnation.

**BASE GROSS REVENUES:** The annualized Gross Revenues of the Facility for the period from and including [\_\_\_\_\_] and including [\_\_\_\_\_] , initially as shown by Lessee's certified Consolidated Financial Statements and as later verified by Lessee's Consolidated Financial Statements.

**BASE RENT:** As defined in Section 3.1.

**BUSINESS DAY:** Any day which is not a Saturday or Sunday or a public holiday under the laws of the United States of America, the Commonwealth of Massachusetts, the State or the state in which Lessor's depository bank is located.

**CAPITAL ADDITIONS:** Collectively, all new buildings and additional structures annexed to any portion of any of the Leased Improvements and material expansions of any of the Leased Improvements which are constructed on any portion of the Land during the Term, including, without limitation, the construction of a new wing or new story, the renovation of any of the Leased Improvements on the Leased Property and any expansion, construction, renovation or conversion in connection therewith (a) in order to provide a functionally new facility that is needed or used to provide services not previously offered or (b) in order to (i) increase the bed capacity of a Facility, (ii) change the purpose for which such beds are utilized and/or (iii) change the utilization of any material portion of any of the Leased Improvements provided that for the purposes of Article 9 hereof the Project shall not be treated as a Capital Addition.

**CAPITAL ADDITION COST:** The cost of any Capital Addition made by Lessee whether paid for by Lessee or Lessor. Such cost shall include all costs and expenses of every nature whatsoever incurred directly or indirectly in connection with the development, permitting, construction and financing of a Capital Addition as reasonably determined by, or to the reasonable satisfaction of, Lessor.

**CASH COLLATERAL:** As defined in the Deposit Pledge Agreement.

**CASH FLOW:** The Consolidated Net Income (or Consolidated Net Loss) before federal and state income taxes for any period plus (i) the amount of the provision for depreciation and amortization actually deducted on the books of the applicable Person for the purposes of computing such Consolidated Net Income (or Consolidated Net Loss) for the period involved, plus (ii) Rent and interest on all other Indebtedness which is fully subordinated to the Lease Obligations, plus (iii) any indebtedness which is fully subordinated to the Lease Obligations pursuant to the Affiliated Party Subordination Agreement or the Management Subordination Agreement.

**CASUALTY:** As defined in Section 13.1.

**CHATTEL PAPER:** As defined in the UCC.

**CLOSING:** As defined in Section 18.3.6.

**CODE:** The Internal Revenue Code of 1986, as amended.

**COLLATERAL:** All of the property in which security interests are granted to Lessor and the other Meditrust Entities pursuant to the Lease Documents and the Related Party Agreements to secure the Lease Obligations, including, without limitation, the Cash Collateral.

COMPETITIVE ACTIVITY: As defined in Section 11.5.

COMPLETION DATE: As defined in the Leasehold Improvement Agreement.

COMPLETION OF THE PROJECT: As defined in the Leasehold Improvement Agreement.

CONDEMNATION: With respect to the Leased Property or any interest therein or right accruing thereto or use thereof (i) the exercise of any governmental authority, whether by legal proceedings or otherwise, by a Condemnor or (ii) a voluntary sale or transfer by Lessor to any Condemnor, either under threat of Condemnation or Taking or while legal proceedings for Condemnation or Taking are pending.

CONDEMNOR: Any public or quasi-public authority, or private corporation or individual, having the power of condemnation.

CONSOLIDATED: The consolidated accounts of the relevant Person and its Subsidiaries consolidated in accordance with GAAP.

CONSOLIDATED FINANCIALS: For any fiscal year or other accounting period for any Person and its consolidated Subsidiaries, statements of earnings and retained earnings and of changes in financial position for such period and for the period from the beginning of the respective fiscal year to the end of such period and the related balance sheet as at the end of such period, together with the notes thereto, all in reasonable detail and setting forth in comparative form the corresponding figures for the corresponding period in the preceding fiscal year, and prepared in accordance with GAAP, and disclosing all liabilities of such Person and its consolidated Subsidiaries, including, without limitation, contingent liabilities.

CONSULTANTS: Collectively, the architects, engineers, inspectors, surveyors and other consultants that are engaged from time to time by Lessor to perform services for Lessor in connection with this Lease.

6

CONTRACTS: All agreements (including, without limitation, Provider Agreements, to the extent applicable, and any Residency Agreement), contracts (including without limitation, construction contracts, subcontracts, and architects' contracts), contract rights, warranties and representations, franchises, and records and books of account benefiting, relating to or affecting the Leased Property or the ownership, construction, development, maintenance, management, repair, use, occupancy, possession, or operation thereof, or the operation of any programs or services in conjunction with the Facility and all renewals, replacement and substitutions therefor, now or hereafter issued to any member of the Leasing Group by, or entered into by any member of the Leasing Group with, any Governmental Authority, Accreditation Body or Third Party Payor or maintained or used by any member of the Leasing Group or entered into by any member of the Leasing Group with any third Person.

CURRENT ASSETS: All assets of any Person which would, in accordance with GAAP, be classified as current assets.

CURRENT LIABILITIES: All liabilities of any Person which would, in accordance with GAAP, be classified as current liabilities.

DATE OF TAKING: The date the Condemnor has the right to possession of the property being condemned.

DEBT COVERAGE RATIO: The ratio of (i) Cash Flow for each applicable period to (ii) the total of all Rent (excluding Additional Rent due under this Lease) paid or payable during such period or accrued for such period.

DECLARATION: As defined in Article 23.

DEED: As defined in Section 18.3.

DEPOSIT: As defined in Section 18.3.

DEPOSIT PLEDGE AGREEMENT: The pledge and security agreement so captioned and dated as of even date herewith between Lessee and Lessor.

DOCUMENTS: As defined in the UCC.

ENCUMBRANCE: As defined in Section 20.3.

ENVIRONMENTAL INDEMNITY AGREEMENT: The Environmental Indemnity Agreement of even date herewith by and among Lessee the Guarantor and Lessor.

ENVIRONMENTAL LAWS: As defined in the Environmental Indemnity Agreement.

7

ERISA: The Employment Retirement Income Security Act of 1974, as amended.

EVENT OF DEFAULT: As defined in Article 16.

EXCESS GROSS REVENUES: Gross Revenues less Base Gross Revenues.

EXPIRATION DATE: As defined in Section 1.2.

EXTENDED TERMS: As defined in Section 1.4.

FACILITY: The 90 unit, 110 bed, fully licensed assisted living facility known as American House Sarasota on the Land (together with related parking and other amenities), together with (after the Completion Date) the fully licensed assisted living facility addition (the assisted living facility addition is defined as the Project under the Leasehold Improvement Agreement) to be constructed on the Land (together with related parking and other amenities).

FAILURE TO OPERATE: As defined in Article 16.

FAILURE TO PERFORM: As defined Article 16.

FAIR MARKET ADDED VALUE: The Fair Market Value of the Leased Property (including all Capital Additions) minus the Fair Market Value of the Leased Property determined as if no Capital Additions paid for by Lessee had been constructed.

FAIR MARKET VALUE OF THE CAPITAL ADDITION: The amount by which the Fair Market Value of the Leased Property upon the completion of a particular Capital Addition exceeds the Fair Market Value of the Leased Property just prior to the construction of the particular Capital Addition.

FAIR MARKET VALUE OF THE LEASED PROPERTY: The fair market value of the Leased Property, including all Capital Additions, and including the Land and all other portions of the Leased Property, and (a) assuming the same is unencumbered by this Lease, (b) determined in accordance with the appraisal procedures set forth in Section 18.2 or in such other manner as shall be mutually acceptable to Lessor and Lessee and (c) not taking into account any reduction in value resulting from any Lien to which the Leased Property is subject and which Lien Lessee or Lessor is otherwise required to remove at or prior to closing of the transaction. However, the positive or negative effect on the value of the Leased Property attributable to the interest rate, amortization schedule, maturity date, prepayment provisions and other terms and conditions of any Lien on

8

the Leased Property which is not so required or agreed to be removed shall be taken into account in determining the Fair Market Value of the Leased Property. The Fair Market Value shall be determined as the overall value based on due consideration of the "income" approach, the "comparable sales" approach, and the "replacement cost" approach.

FEE MORTGAGE: As defined in Section 20.3.

FEE MORTGAGEE: As defined in Section 20.3.

FINANCING PARTY: Any Person who is or may be participating with Lessor in any way in connection with the financing of any Capital Addition.

FINANCING STATEMENTS: Uniform Commercial Code financing statements evidencing the security interests granted to Lessor in connection with the Lease Documents.

FISCAL QUARTER: Each of the three (3) month periods commencing on January 1st, April 1st, July 1st and October 1st.

FISCAL YEAR: The twelve (12) month period from January 1st to December 31st.

FIXTURES: As defined in Article 1.

GAAP: Generally accepted accounting principles, consistently applied throughout the relevant period.

GENERAL INTANGIBLES: As defined in the UCC.

GOVERNMENTAL AUTHORITIES: Collectively, all agencies, authorities, bodies, boards, commissions, courts, instrumentalities, legislatures, and offices of any nature whatsoever of any government, quasi-government unit or political subdivision, whether with a federal, state, county, district, municipal, city or otherwise and whether now or hereinafter in existence.

GROSS REVENUES: Collectively, all revenues generated by reason of the operation of the Leased Property (including any Capital Additions), directly or indirectly received or to be received by Lessee or any Affiliate of Lessee, including, without limitation, all resident revenues received or receivable for the use of, or otherwise by reason of, all rooms, units and other facilities provided, meals served, services performed, space or facilities subleased or goods sold on or from the Leased Property and

further including, without limitation, except as otherwise specifically provided below, any consideration received under any subletting, licensing, or other arrangements with any Person relating to the possession or use of

the Leased Property and all revenues from all ancillary services provided at or relating to the Leased Property; provided, however, that Gross Revenues shall not include non-operating revenues such as interest income or gain from the sale of assets not sold in the ordinary course of business; and provided, further, that there shall be excluded or deducted (as the case may be) from such revenues:

(i) all applicable contractual allowances (relating to any period during the Term of this Lease and thereafter until the Rent hereunder is paid in full), if any, for billings not paid by or received from the appropriate Governmental Agencies or Third Party Payors,

(ii) all applicable allowances according to GAAP for uncollectible accounts,

(iii) all proper resident billing credits and adjustments according to GAAP, if any, relating to health care accounting,

(iv) federal, state or local sales, use, gross receipts and excise taxes and any tax based upon or measured by said Gross Revenues which is added to or made a part of the amount billed to the resident or other recipient of such services or goods, whether included in the billing or stated separately,

(v) provider discounts for hospital or other medical facility utilization contracts, if any,

(vi) the cost, if any, of any federal, state or local governmental program imposed specially to provide or finance indigent resident care (other than Medicare, Medicaid and the like),

(vii) deposits refundable to residents of the Facility, and

(viii) payments received on behalf of, and paid to, Persons who are not Affiliates of Lessee.

To the extent that the Leased Property is subleased or occupied by an Affiliate of Lessee, Gross Revenues calculated for all purposes of this Lease (including, without limitation, the determination of the Additional Rent payable under this Lease) shall include the Gross Revenues of such Sublessee with respect to the premises demised under the applicable Sublease (i.e., the Gross Revenues generated from the operations conducted on such subleased portion of the Leased Property) and the rent received or receivable from such Sublessee pursuant to such Subleases shall be excluded from Gross Revenues for all such purposes. As to any Sublease between Lessee and a non-Affiliate of Lessee, only the rental actually received by Lessee from such non-Affiliate shall be included in Gross Revenues.

GROUP TWO ACQUISITION FACILITIES: As defined in the Agreement Regarding Related Transactions.

GUARANTOR: Emeritus Corporation, a Washington corporation, and its successors and assigns.

GUARANTY OF LEASE OBLIGATIONS: The Guaranty of Lease Obligations of even date executed by Guarantor in favor of Lessor, relating to the Lease Obligations.

HAZARDOUS SUBSTANCES: As defined in the Environmental Indemnity Agreement.

IMPOSITIONS: Collectively, all taxes (including, without limitation, all capital stock and franchise taxes of Lessor, all ad valorem, property, sales and use, single business, gross receipts, transaction privilege, rent or similar taxes), assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term), ground rents, water and sewer rents, water charges or other rents and charges, excises, tax levies, fees (including, without limitation, license, permit, inspection, authorization and similar fees), transfer taxes and recordation taxes imposed as a result of this Lease or any extensions hereof, and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of either or both of the Leased Property and the Rent (including all interest and penalties thereon due to any failure in payment by Lessee), which at any time prior to, during or in respect of the Term hereof and thereafter until the Leased Property is surrendered to Lessor as required by the terms of this Lease, may be assessed or imposed on or in respect of or be a Lien upon (a) Lessor or Lessor's interest in the Leased Property, (b) the Leased Property or any rent therefrom or any estate, right, title or interest therein, or (c) any occupancy, operation, use or possession of, sales from, or activity conducted on, or in connection with, the Leased Property or the leasing or use of the Leased Property. Notwithstanding the foregoing, nothing contained in this Lease shall be construed to require Lessee to pay (1) any tax based on net income (whether denominated as a franchise or capital stock or other tax) imposed on Lessor or any other Person, except Lessee or its successors, (2) any net revenue tax of Lessor or any other Person, except Lessee and its successors, (3) any tax imposed with respect to the sale, exchange or other disposition by Lessor of the Leased Property or the proceeds thereof, or (4) except as expressly provided elsewhere in this Lease, any principal or interest on any Encumbrance on the Leased Property; provided, however, the provisos set forth in clauses (1) and (2) of this sentence shall not be applicable to the extent that any real or personal property tax, assessment, tax levy or charge which Lessee is obligated to pay pursuant to the first sentence of this definition and which is in effect at any time during the Term hereof is totally or partially repealed, and a tax, assessment, tax levy or charge set

11

forth in clause (1) or (2) is levied, assessed or imposed expressly in lieu thereof. In computing the amount of any franchise tax or capital stock tax which may be or become an Imposition, the amount payable by Lessee shall be equitably apportioned based upon all properties owned by Lessor that are located within the particular jurisdiction subject to any such tax.

INDEBTEDNESS: The total of all obligations of a Person, whether current or long-term, which in accordance with GAAP would be included as liabilities upon such Person's balance sheet at the date as of which Indebtedness is to be determined, and shall also include (i) all capital lease obligations and (ii) all guarantees, endorsements (other than for collection of instruments in the ordinary course of business), or other arrangements whereby responsibility is assumed for the obligations of

others, whether by agreement to purchase or otherwise acquire the obligations of others, including any agreement contingent or otherwise to furnish funds through the purchase of goods, supplies or services for the purpose of payment of the obligations of others.

INDEMNIFIED PARTIES: As defined in Section 12.2.2.

INDEX: The rate of interest of actively traded marketable United States Treasury Securities bearing a fixed rate of interest adjusted for a constant maturity of ten (10) years as calculated by the Federal Reserve Board.

INITIAL TERM: As defined in Section 1.2.

INSTRUMENTS: As defined in the UCC.

INSURANCE REQUIREMENTS: All terms of any insurance policy required by this Lease, all requirements of the issuer of any such policy with respect to the Leased Property and the activities conducted thereon and the requirements of any insurance board, association or organization or underwriters' regulations pertaining to the Leased Property.

LAND: As defined in Article 1.

LEASE: As defined in the preamble of this Lease.

LEASE DEFAULT: The occurrence of any default or breach of condition continuing beyond any applicable notice and/or grace periods under this Lease and/or any of the other Lease Documents.

LEASE DOCUMENTS: Collectively, this Lease, the Guaranty of Lease Obligations, the Agreement Regarding Related Transactions, the Leasehold Improvement Agreement, the Security Agreement, the Deposit Pledge Agreement, the Negative Pledge Agreement, the Permits Assignment, the Financing Statements, the Affiliated Party Subordination Agreement, the Environmental Indemnity Agreement, and any and all other instruments, documents, certificates or agreements executed or furnished by any member of the Leasing Group in connection with the transactions evidenced by the Lease and/or any of the foregoing documents.

LEASE OBLIGATIONS: Collectively, all indebtedness, covenants, liabilities, obligations, agreements and undertakings (other than Lessor's obligations) under this Lease and the other Lease Documents.

LEASE YEAR: A twelve month period ending on March 31st of each year; provided, that the first Lease Year shall begin on the Commencement Date and shall end on March 31, 1997.

LEASED IMPROVEMENTS: As defined in Article 1.

LEASED PROPERTY: As defined in Article 1.

LEASEHOLD IMPROVEMENT AGREEMENT: The Leasehold Improvement Agreement of even date by and between Lessee and Lessor.

LEASING GROUP: Collectively, Lessee, the Guarantor, the General Partner, any Sublessee which is an Affiliate of Lessee and any Manager which is an Affiliate of Lessee.

LEGAL REQUIREMENTS: Collectively, all statutes, ordinances, by-laws, codes, rules, regulations, restrictions, orders, judgments, decrees and injunctions (including, without limitation, all applicable building, health code, zoning, subdivision, and other land use and assisted living licensing statutes, ordinances, by-laws, codes, rules and regulations), whether now or hereafter enacted, promulgated or issued by any Governmental Authority, Accreditation Body or Third Party Payor affecting Lessor, any member of the Leasing Group or the Leased Property or the ownership, construction, development, maintenance, management, repair, use, occupancy, possession or operation thereof or the operation of any programs or services in connection with the Leased Property, including, without limitation, any of the foregoing which may (i) require repairs, modifications or alterations in or to the Leased Property, (ii) in any way affect (adversely or otherwise) the use and enjoyment of the Leased Property or (iii) require the assessment, monitoring, clean-up, containment, removal, remediation or other treatment of any Hazardous Substances on, under or from the Leased Property. Without limiting the foregoing, the term Legal Requirements includes all Environmental Laws and shall also include all Permits and Contracts issued or entered into by any

13

Governmental Authority, any Accreditation Body and/or any Third Party Payor and all Permitted Encumbrances.

LESSEE: As defined in the preamble of this Lease and its successors and assigns.

LESSEE'S ELECTION NOTICE: As defined in Section 14.3.

LESSEE'S PURCHASE OPTION NOTICE: As defined in Section 18.3.

LESSOR: As defined in the preamble of this Lease and its successors and assigns.

LIEN: With respect to any real or personal property, any mortgage, easement, restriction, lien, pledge, collateral assignment, hypothecation, charge, security interest, title retention agreement, levy, execution, seizure, attachment, garnishment or other encumbrance of any kind in respect of such property, whether or not inchoate, vested or perfected.

LIMITED PARTIES: As defined in Section 11.5.4; provided, however, in no event shall the term Limited Parties include any Person in its capacity as a shareholder of a public entity, unless such shareholder is a member of the Leasing Group or an Affiliate thereof.

MANAGED CARE PLANS: All health maintenance organizations, preferred provider organizations, individual practice associations, competitive medical plans, and similar arrangements.

MANAGEMENT AGREEMENT: Any agreement, whether written or oral, between Lessee or any Sublessee and any other Person pursuant to which Lessee or such Sublessee provides any payment, fee or other consideration to any other Person to operate or manage the Facility.



MANAGEMENT SUBORDINATION AGREEMENT: The Management Subordination Agreement as of even date herewith between Lessee and Lessor.

MANAGER: Any Person who has entered into a Management Agreement with Lessee or any Sublessee.

MATERIAL STRUCTURAL WORK: Any (i) structural alteration, (ii) structural repair or (iii) structural renovation to the Leased Property, which would customarily require or which require the design and/or involvement of a structural engineer or architect or which would require the issuance of a Permit.

14

MEDICAID: The medical assistance program established by Title XIX of the Social Security Act (42 USC 1396 et seq.) and any statute succeeding thereto.

MEDICARE: The health insurance program for the aged and disabled established by Title XVIII of the Social Security Act (42 USC 1395 et seq.) and any statute succeeding thereto.

MEDITRUST: As defined in Article 23.

MEDITRUST/EMERITUS TRANSACTION AFFILIATE: An Affiliate of Lessee, the business and activities of which are limited to those subject to Meditrust/Emeritus Transaction Documents (other than the Affiliated Party Subordination Agreement, the Agreement Regarding Related Transactions and comparable agreement now or hereafter in effect among Affiliates of Lessee and of Lessor) to which such Affiliate is a party.

MEDITRUST/EMERITUS TRANSACTION DOCUMENTS: As defined in the Agreement Regarding Related Transactions.

MEDITRUST ENTITIES: Collectively, Meditrust, Lessor and any other Affiliate of Lessor which may now or hereafter be a party to any Related Party Agreement.

MEDITRUST INVESTMENT: The sum of (i) the Original Meditrust Investment plus (ii) the aggregate amount of all Subsequent Investments plus (iii) so much of the Project Funds as Lessor has expended from time to time less the sum of any Net Award Amounts and/or Net Proceeds Amounts.

MONTHLY DEPOSIT DATE: As defined in Section 4.6.

NEGATIVE PLEDGE AGREEMENT: The Group Two Negative Pledge Agreement (Acquisition) of even date by and between Guarantor, Lessee and Lessor.

NET AWARD AMOUNT: As defined in Section 3.7.

NET INCOME (OR NET LOSS): The net income (or net loss, expressed as a negative number) of a Person for any period, after all taxes actually paid or accrued and all expenses and other charges determined in accordance with GAAP.

NET PROCEEDS AMOUNT: As defined in Section 3.7.

NET WORTH: An amount determined in accordance with GAAP

equal to the total assets of any Person, minus the total liabilities of such Person.

15

OBLIGATIONS: Collectively, the Lease Obligations and the Related Party Obligations.

OFFICER'S CERTIFICATE: A certificate of Lessee signed on behalf of Lessee by the Chairman of the Board of Directors, the President, any Vice President or the Treasurer of Lessee, or another officer authorized to so sign by the Board of Directors or By-Laws of Lessee, or any other Person whose power and authority to act has been authorized by delegation in writing by any of the Persons holding the foregoing offices.

ORIGINAL MEDITRUST INVESTMENT: The sum of SEVEN MILLION EIGHT HUNDRED FORTY-ONE THOUSAND NINE HUNDRED THIRTY-ONE DOLLARS (\$7,841,931).

OTHER PERMITTED USES: To the extent permitted under applicable Legal Requirements and under Insurance Requirements, and so long as the same do not detract in any material manner from the Primary Intended Use and do not occupy more than ten percent (10%) of the useable floor area of the building comprising the Facility, such uses as Lessee reasonably determines are appropriate and incidental to the Primary Permitted Use.

OVERDUE RATE: On any date, a rate of interest per annum equal to the greater of: (i) a variable rate of interest per annum equal to one hundred twenty percent (120%) of the Prime Rate, or (ii) eighteen percent (18%) per annum; provided, however, in no event shall the Overdue Rate be greater than the maximum rate then permitted under applicable law to be charged by Lessor.

PBGC: Pension Benefit Guaranty Corporation.

PERMITS: Collectively, all permits, licenses, approvals, qualifications, rights, variances, permissive uses, accreditation, certificates, certifications, consents, agreements, contracts, contract rights, franchises, interim licenses, permits and other authorizations of every nature whatsoever required by, or issued under, applicable Legal Requirements relating or affecting the Leased Property or the construction, development, maintenance, management, use or operation thereof, or the operation of any programs or services in conjunction with the Facility and all renewals, replacements and substitutions therefor, now or hereafter required or issued by any Governmental Authority, Accreditation Body or Third Party Payor to any member of the Leasing Group, or maintained or used by any member of the Leasing Group, or entered into by any member of the Leasing Group with any third Person with respect to the Leased Property.

PERMITS ASSIGNMENT: The Collateral Assignment of Permits, Licenses and Contracts of even date granted by Lessee to Lessor.

PERMITTED ENCUMBRANCES: As defined in Section 10.1.18.

16

PERMITTED PRIOR SECURITY INTERESTS: As defined in Section 6.1.2.

PERSON: Any individual, corporation, general partnership, limited partnership, joint venture, stock company or association, company, bank, trust, trust company, land trust, business trust, unincorporated organization, unincorporated association, Governmental Authority or other entity of any kind or nature.

PLANS AND SPECIFICATIONS: As defined in Section 13.1.3.

PRIMARY INTENDED USE: The use of the Facility as an assisted living facility with ninety (90) units, one hundred-ten (110) beds prior to the Completion Date, and additional units and beds after the Completion Date consisting of (i) an existing facility with ninety (90) units one hundred-ten (110) beds; and (ii) an assisted living addition as provided in the Leasehold Improvement Agreement; or such additional number of units or beds as may hereafter be permitted under this Lease, and such ancillary uses as are permitted by law and may be necessary in connection therewith or incidental thereto.

PRIME RATE: The variable rate of interest per annum from time to time announced by the Reference Bank as its prime rate of interest and in the event that the Reference Bank no longer announces a prime rate of interest, then the Prime Rate shall be deemed to be the variable rate of interest per annum which is the prime rate of interest or base rate of interest from time to time announced by any other major bank or other financial institution reasonably selected by Lessor.

PRINCIPAL PLACE OF BUSINESS: As defined in Section 10.1.28.

PROCEEDS: As defined in the UCC.

PROJECT: As defined in the Leasehold Improvement Agreement.

PROJECT FUNDS: As defined in the Leasehold Improvement Agreement.

PROVIDER AGREEMENTS: All participation, provider and reimbursement agreements or arrangements, if any, now or hereafter in effect for the benefit of Lessee or any Sublessee in connection with the operation of the Facility relating to any right of payment or other claim arising out of or in connection with Lessee's or such Sublessee's participation in any Third Party Payor Program.

PURCHASE OPTION: As defined in Section 18.3.

PURCHASE OPTION DATE: As defined in Section 18.3.

17

PURCHASE OPTION PURCHASE PRICE: As defined in Section 18.3.

PURCHASER: As defined in Section 11.5.

RECEIVABLES: Collectively, (i) all rights to payment for goods sold or leased or services rendered by Lessee or any other party, whether now in existence or arising from time to time hereafter and whether or not yet earned by performance, including, without limitation, obligations evidenced by an account, note, contract, security agreement, chattel paper, or other evidence of indebtedness, including Accounts and Proceeds, and (ii) a license to use such Instruments, Documents, Accounts, Proceeds, General Intangibles and Chattel Paper as are reasonably required for purposes of exercising the rights set forth in (i) above.

REFERENCE BANK: Fleet Bank of Connecticut, N.A.

RELATED LEASES: The Group Two Acquisition Facility Leases (as defined in the Agreement Regarding Related Transactions), together with such other new leases identified from time to time in the Agreement Regarding Related Transactions.

RELATED PARTIES: Collectively, each Person that may now or hereafter be a party to any Related Party Agreement other than the Meditrust Entities.

RELATED PARTY AGREEMENT: Any agreement, document or instrument now or hereafter evidencing or securing any Related Party Obligation, including, without limitation, the Related Leases.

RELATED PARTY DEFAULT: The occurrence of a default or breach of condition continuing beyond the expiration of any applicable notice and grace periods, if any, under the terms of any Related Party Agreement.

RELATED PARTY OBLIGATIONS: Collectively, all indebtedness, covenants, liabilities, obligations, agreements and undertakings due to, or made for the benefit of, Lessor or any of the other Meditrust Entities by Lessee or any other member of the Leasing Group or any of their respective Affiliates in connection with any of the properties described in EXHIBIT E to the Agreement Regarding Related Transactions, as the same may be modified and amended from time to time; whether such indebtedness, covenants, liabilities, obligations, agreements and/or undertakings are direct or indirect, absolute or contingent, liquidated or unliquidated, due or to become due, joint, several or joint and several, primary or secondary, now existing or hereafter arising.

RENT: Collectively, the Base Rent, Additional Rent, the Additional Charges and all other sums payable under this Lease and the other Lease Documents.

18

RENT ADJUSTMENT DATE: The first day of any of the Extended Terms.

RENT ADJUSTMENT RATE: 325 basis points over the Index.

RENT INSURANCE PROCEEDS: As defined in Section 13.8.

RESIDENCY AGREEMENT: All contracts, agreements and consents executed by or on behalf of any resident or other Person seeking services at the Facility, including, without limitation, assignments of benefits and guarantees.

RETAINAGE: As defined in Section 13.1.3.

SECURITY AGREEMENT: The Security Agreement as of even date herewith between Lessee and Lessor.

SELLER: American House Sarasota Limited Partnership, a Michigan limited partnership.

STATE: The state or commonwealth in which the Leased Property is located.

SUBLEASE: Collectively, all subleases, licenses, use agreements, concession agreements, tenancy at will agreements and other occupancy

agreements of every kind and nature (but excluding any Residency Agreement), whether oral or in writing, now in existence or subsequently entered into by Lessee, encumbering or affecting the Leased Property.

SUBLESSEE: Any sublessee, licensee, concessionaire, tenant or other occupant under any of the Subleases.

SUBSEQUENT INVESTMENTS: The aggregate amount of all sums expended and liabilities incurred by Lessor in connection with Capital Additions.

SUBSIDIARY OR SUBSIDIARIES: With respect to any Person, any corporation or other entity of which such Person, directly, or indirectly, through another entity or otherwise, owns, or has the right to control or direct the voting of, fifty percent (50%) or more of the outstanding capital stock or other ownership interest having general voting power (under ordinary circumstances).

TAKING: A taking or voluntary conveyance during the Term of the Leased Property, or any interest therein or right accruing thereto, or use thereof, as the result of, or in settlement of, any Condemnation or other eminent domain proceeding affecting the Leased Property whether or not the same shall have actually been commenced.

19

TANGIBLE PERSONAL PROPERTY: All machinery, equipment, furniture, furnishings, movable walls or partitions, computers or trade fixtures, goods, inventory, supplies, and other personal property owned or leased (pursuant to equipment leases) by Lessee and used in the operation of the Leased Property.

TERM: Collectively, the Initial Term and each Extended Term which has become effective pursuant to Section 1.4, as the context may require, unless earlier terminated pursuant to the provisions hereof.

THIRD PARTY PAYOR PROGRAMS: Collectively, all third party payor programs in which Lessee or any Sublessee presently or in the future may participate, including without limitation, Medicare, Medicaid, Blue Cross and/or Blue Shield, Managed Care Plans, other private insurance plans and employee assistance programs.

THIRD PARTY PAYORS: Collectively, Medicare, Medicaid, Blue Cross and/or Blue Shield, private insurers and any other Person which presently or in the future maintains Third Party Payor Programs.

TIME OF CLOSING: As defined in Section 18.3.

UCC: The Uniform Commercial Code as in effect from time to time in the State.

UNITED STATES TREASURY SECURITIES: The uninsured treasury securities issued by the United States Federal Reserve Bank.

UNSUITABLE FOR ITS PRIMARY INTENDED USE: As used anywhere in this Lease, the term "Unsuitable For Its Primary Intended Use" shall mean that, by reason of Casualty, or a partial or temporary Taking by Condemnation, in the good faith judgment of Lessor, the Facility cannot be operated on a commercially practicable basis for the Primary Intended Use, taking into account, among other relevant factors, the number of usable units or beds affected by such Casualty or partial or temporary Taking.

UNAVOIDABLE DELAYS: Delays due to strikes, lockouts, inability to procure materials, power failure, acts of God, governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty or other causes beyond the control of the party responsible for performing an obligation hereunder, provided that lack of funds shall not be deemed a cause beyond the control of either party hereto.

UPGRADE RENOVATIONS: Repair and refurbishing other than normal janitorial, cleaning and maintenance activities.

WORK: As defined in Section 13.1.1.

WORK CERTIFICATES: As defined in Section 13.1.3.

20

WORKING CAPITAL LOAN: As defined in Section 6.1.3.

WORKING CAPITAL STOCK PLEDGE: As defined in Section 16.1(h).

2.2 RULES OF CONSTRUCTION. The following rules of construction shall apply to the Lease and each of the other Lease Documents: (a) references to "herein", "hereof" and "hereunder" shall be deemed to refer to this Lease or the other applicable Lease Document, and shall not be limited to the particular text or section or subsection in which such words appear; (b) the use of any gender shall include all genders and the singular number shall include the plural and vice versa as the context may require; (c) references to Lessor's attorneys shall be deemed to include, without limitation, special counsel and local counsel for Lessor; (d) reference to attorneys' fees and expenses shall be deemed to include all costs for administrative, paralegal and other support staff and to exclude any fees and expenses of attorneys who are employees of an Affiliate of Lessor; (e) references to Leased Property shall be deemed to include references to all of the Leased Property and references to any portion thereof; (f) references to the Lease Obligations shall be deemed to include references to all of the Lease Obligations and references to any portion thereof; (g) references to the Obligations shall be deemed to include references to all of the Obligations and references to any portion thereof; (h) the term "including", when following any general statement, will not be construed to limit such statement to the specific items or matters as provided immediately following the term "including" (whether or not non-limiting language such as "without limitation" or "but not limited to" or words of similar import are also used), but rather will be deemed to refer to all of the items or matters that could reasonably fall within the broadest scope of the general statement; (i) any requirement that financial statements be Consolidated in form shall apply only to such financial statements as relate to a period during any portion of which the relevant Person has one or more Subsidiaries; (j) all accounting terms not specifically defined in the Lease Documents shall be construed in accordance with GAAP and (k) all exhibits annexed to any of the Lease Documents as referenced therein shall be deemed incorporated in such Lease Document by such annexation and/or reference.

### ARTICLE 3

#### RENT

3.1 RENT FOR LAND, LEASED IMPROVEMENTS, RELATED RIGHTS AND FIXTURES. Lessee will pay to Lessor, in lawful money of the United States of America, at Lessor's address set forth herein or at such other place or to such other Person as Lessor from time to time may

designate in writing, rent for the Leased Property, as follows.

21

3.1.1 BASE RENT: From and after the Commencement Date, Lessee shall pay to Lessor a base rent (the "Base Rent") per annum which is equal to the product of (i) the Original Meditrust Investment plus so much of the Project Funds as Lessor has expended from time to time multiplied by (ii) nine and eighty-three one hundredths percent (9.83%) calculated on a daily basis and that is payable in arrears in consecutive monthly installments due on the first day of each calendar month commencing on September 1, 1996; provided, however, that on each Rent Adjustment Date, the Base Rent shall be adjusted to equal the greater of (i) the then current Base Rent or (ii) the Original Meditrust Investment plus so much of the Project Funds as Lessor has expended from time to time plus Subsequent Investments multiplied by the Rent Adjustment Rate calculated on a daily basis and further provided, however, that Base Rent shall be prorated for any partial month.

3.1.2 ADDITIONAL RENT: In addition to the Base Rent, Lessee shall also pay to Lessor additional rent (the "Additional Rent") in an amount equal to five percent (5%) of Excess Gross Revenues. Additional Rent shall accrue commencing, September 1, 1998 (in each case, an "Additional Rent Accrual Date") and shall be payable during the Term, quarterly in arrears, commencing on the first day of the first fiscal quarter occurring following the Additional Rent Accrual Date and there shall be an annual reconciliation as provided in Section 3.2 below.

3.2 CALCULATION AND PAYMENT OF ADDITIONAL RENT; ANNUAL RECONCILIATION.

3.2.1 OFFICER'S CERTIFICATE AND PRORATION. Each quarterly payment of Additional Rent shall be delivered to Lessor, together with an Officer's Certificate setting forth the calculation thereof, within thirty (30) days after the end of the corresponding quarter. Additional Rent due for any portion of any calendar year shall be prorated accordingly.

3.2.2 ANNUAL STATEMENT. In addition, on or before the first day of April of each year following any calendar year for which Additional Rent is payable hereunder, Lessee shall deliver to Lessor an Officer's Certificate, reasonably acceptable to Lessor and certified by the chief financial officer of Lessee, setting forth the Gross Revenues for the immediately preceding calendar year.

3.2.3 DEFICITS. If the Additional Rent, as finally determined for any calendar year (or portion thereof), exceeds the sum of the quarterly payments of Additional Rent previously paid

22

by Lessee with respect to said calendar year, within thirty (30) days after such determination is required to be made hereunder, Lessee shall pay such deficit to Lessor and, if the deficit exceeds five percent (5%) of the Additional Rent which was previously

paid to Lessor with respect to said calendar year, then Lessee shall also pay Lessor interest on such deficit at the Overdue Rate from the date that such payment should have been made by Lessee to the date that Lessor receives such payment.

3.2.4 OVERPAYMENTS. If the Additional Rent, as finally determined for any calendar year (or portion thereof), is less than the amount previously paid with respect thereto by Lessee, Lessee shall notify Lessor either (a) to pay to Lessee an amount equal to such difference or (b) to grant Lessee a credit against Additional Rent next coming due in the amount of such difference.

3.2.5 FINAL DETERMINATION. The obligation to pay Additional Rent shall survive the expiration or earlier termination of the Term (as to Additional Rent payments that are due and payable prior to the expiration or earlier termination of the Term and during any periods that Lessee remains in possession of the Leased Property), and a final reconciliation, taking into account, among other relevant adjustments, any contractual allowances which related to Gross Revenues that accrued prior to the date of such expiration or earlier termination, but which have been determined to be not payable and Lessee's good faith best estimate of the amount of any unresolved contractual allowances, shall be made not later than two (2) years after said expiration or termination date. Within sixty (60) days after the expiration or earlier termination of the Term, Lessee shall advise Lessor of Lessee's best estimate of the approximate amount of such adjustments, which estimate shall not be binding on Lessee or have any legal effect whatsoever.

3.2.6 BEST EFFORTS TO MAXIMIZE. Lessee further covenants that the operation of the Facility shall be conducted in a manner consistent with the prevailing standards and practices recognized in the assisted living industry as those customarily utilized by reputable business operations. Subject to any applicable Legal Requirements, the members of the Leasing Group shall use their best efforts to maximize the Facility's Gross Revenues.

### 3.3 CONFIRMATION AND AUDIT OF ADDITIONAL RENT.

3.3.1 MAINTAIN ACCOUNTING SYSTEMS. Lessee shall utilize, or cause to be utilized, an accounting system for the Leased Property in accordance with usual and customary practices in the assisted living industry and in accordance with GAAP which will accurately record all Gross Revenues. Lessee shall retain, for at least three (3) years after the expiration of each calendar year (and in any event until the final reconciliation described in Section 3.2 above has been made), adequate records conforming to such accounting system showing all Gross Revenues for such calendar year.

3.3.2 AUDIT BY LESSOR. Lessor, at its own



expense except as provided hereinbelow, shall have the right from time to time to have its accountants or representatives audit the information set forth in the Officer's Certificate referred to in Section 3.2 and in connection with such audits, to examine Lessee's records with respect thereto (including supporting data, income tax and sales tax returns), subject to any prohibitions or limitations on disclosure of any such data under applicable law or regulations.

3.3.3 DEFICIENCIES AND OVERPAYMENTS. If any such audit discloses a deficiency in the reporting of Gross Revenues, and either Lessee agrees with the result of such audit or the matter is compromised, Lessee shall forthwith pay to Lessor the amount of the deficiency in Additional Rent which would have been payable by it had such deficiency in reporting Gross Revenues not occurred, as finally agreed or determined, together with interest on the Additional Rent which should have been payable by it, calculated at the Overdue Rate, from the date when said payment should have been made by Lessee to the date that Lessor receives such payment. Notwithstanding anything to the contrary herein, with respect to any audit that is commenced more than two (2) years after the date Gross Revenues for any calendar year are reported by Lessee to Lessor, the deficiency, if any, with respect to Additional Rent shall bear interest as permitted herein only from the date such determination of deficiency is made, unless such deficiency is the result of gross negligence or willful misconduct on the part of Lessee (or any Affiliate thereof). If any audit conducted for Lessor pursuant to the provisions hereof discloses that (a) the Gross Revenues actually received by Lessee for any calendar year exceed those reported by Lessee by more than five percent (5%), Lessee shall pay the reasonable cost of such audit and examination or (b) Lessee has overpaid Additional Rent, Lessor shall so notify Lessee and Lessee shall direct Lessor either (i) to refund the overpayment to Lessee or (ii) grant a credit against Additional Rent next coming due in the amount of such difference.

24

3.3.4 SURVIVAL. The obligations of Lessor and Lessee contained in this Section shall survive the expiration or earlier termination of this Lease.

3.4 ADDITIONAL CHARGES. Subject to the rights to contest as set forth in Article 15, in addition to the Base Rent and Additional Rent, (a) Lessee will also pay and discharge as and when due and payable all Impositions, all amounts, liabilities and obligations under the Appurtenant Agreements and all other amounts, liabilities and obligations which Lessee assumes or agrees to pay under this Lease, and (b) in the event of any failure on the part of Lessee to pay any of those items referred to in clause (a) above, Lessee will also promptly pay and discharge every fine, penalty, interest and cost which may be added for non-payment or late payment of such items (the items referred to in clauses (a) and (b) above being referred to herein collectively as the "Additional Charges"), and Lessor shall have all legal, equitable and contractual rights, powers and remedies provided in this Lease, by statute or otherwise, in the case of non-payment of the Additional Charges, as well as the Base Rent and Additional Rent. To the extent that Lessee pays any Additional Charges to Lessor pursuant to any requirement of this Lease, Lessee shall be relieved of its obligation to pay such Additional Charges to any other Person to which such Additional Charges would otherwise be due.

3.5 NET LEASE. The Rent shall be paid absolutely net to Lessor, so that this Lease shall yield to Lessor the full amount of the installments of Base Rent, and the payments of Additional Rent and, if and

to the extent payable to Lessor, Additional Charges throughout the Term.

3.6 NO LESSEE TERMINATION OR OFFSET.

3.6.1 NO TERMINATION. Except as may be otherwise specifically and expressly provided in this Lease, Lessee, to the extent not prohibited by applicable law, shall remain bound by this Lease in accordance with its terms and shall neither take any action without the consent of Lessor to modify, surrender or terminate the same, nor seek nor be entitled to any abatement, deduction, deferment or reduction of Rent, or set-off against the Rent, nor shall the respective obligations of Lessor and Lessee be otherwise affected by reason of (a) any Casualty or any Taking of the Leased Property, (b) the lawful or unlawful prohibition of, or restriction upon, Lessee's use of the Leased Property or the interference with such use by any Person (other than Lessor, except to the extent permitted hereunder) or by reason of eviction by paramount title; (c) any claim that Lessee has or might have against Lessor, (d) any default or breach of any warranty by Lessor or any of the other Meditrust Entities under this Lease, any other Lease Document or any Related Party Agreement, (e) any bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding up or other proceedings affecting Lessor or any assignee or transferee of Lessor or (f) for any other cause whether similar or dissimilar to any of the foregoing, other than a discharge of Lessee from any of the Lease Obligations as a matter of law.

3.6.2 WAIVER. Lessee to the fullest extent not prohibited by applicable law, hereby specifically waives all rights, arising from any occurrence whatsoever, which may now or hereafter be conferred upon it by law to (a) modify, surrender or terminate this Lease or quit or surrender the Leased Property or (b) entitle Lessee to any abatement, reduction, suspension or deferment of the Rent or other sums payable by Lessee hereunder, except as otherwise specifically and expressly provided in this Lease.

3.6.3 INDEPENDENT COVENANTS. The

obligations of Lessor and Lessee hereunder shall be separate and independent covenants and agreements and the Rent and all other sums payable by Lessee hereunder shall continue to be payable in all events unless the obligations to pay the same shall be terminated pursuant to the express provisions of this Lease or (except in those instances where the obligation to pay expressly survives the termination of this Lease) by termination of this Lease other than by reason of an Event of Default.

26

3.7 ABATEMENT OF RENT LIMITED. There shall be no abatement of Rent on account of any Casualty, Taking or other event, except that (a) in the event of a partial Taking or a temporary Taking as described in Section 14.3, the Base Rent shall be abated as follows: (i) in the case of such a partial Taking, the Meditrust Investment shall be reduced for the purposes of calculating Base Rent pursuant to Section 3.1 by subtracting therefrom, as applicable, the net amount of the Award received by Lessor, and (ii) in the case of such a temporary Taking, by reducing the Base Rent for the period of such a temporary Taking, by the net amount of the Award received by Lessor and (b) in the event of a Casualty, the Base Rent shall be abated as follows: the Meditrust Investment shall be reduced for the purposes of calculating Base Rent pursuant to Section 3.1 by subtracting therefrom, as applicable, the net amount of the insurance proceeds.

For the purposes of this Section 3.7, the "net amount of the Award received by Lessor" shall mean the Award paid to Lessor or Lessor's mortgagee on account of such Taking, minus all costs and expenses incurred by Lessor in connection therewith, and minus any amounts paid to or for the account of Lessee to reimburse for the costs and expenses of reconstructing the Facility following such Taking in order to create a viable and functional Facility under all of the circumstances ("Net Award Amount") and the "net amount of the insurance proceeds" shall mean the insurance proceeds paid to Lessor or Lessor's mortgagee on account of such Casualty, minus all costs and expenses incurred by Lessor in connection therewith and minus any amounts paid to or for the account of Lessee to reimburse for the costs and expenses of reconstructing the Facility following such Casualty in order to create a viable and functional Facility under all of the circumstances ("Net Proceeds Amount").

#### ARTICLE 4

IMPOSITIONS; TAXES; UTILITIES;  
INSURANCE PAYMENTS

##### 4.1 PAYMENT OF IMPOSITIONS.

4.1.1 LESSEE TO PAY. Subject to the provisions of Article 15, Lessee will pay or cause to be paid all Impositions before any fine, penalty, interest or cost may be added for non-payment, such payments to be made directly to the taxing authority where feasible, and Lessee will promptly furnish Lessor copies of official receipts or other satisfactory proof evidencing payment not later than the last day on which the same may be paid without penalty or interest. Subject to the provisions of Article 15 and Section 4.1.2, Lessee's obligation to pay such Impositions shall be deemed absolutely fixed upon the date such Impositions become a

4.1.2 INSTALLMENT ELECTIONS. If any such Imposition may, at the option of the taxpayer, lawfully be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Lessee may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and, in such event, shall pay such installments during the Term hereof (subject to Lessee's right to contest pursuant to the provisions of Section 4.1.5 below) as the same respectively become due and before any fine, penalty, premium, further interest or cost may be added thereto.

4.1.3 RETURNS AND REPORTS. Lessor, at its expense, shall, to the extent permitted by applicable law, prepare and file all tax returns and reports as may be required by Governmental Authorities in respect of Lessor's net income, gross receipts, franchise taxes and taxes on its capital stock, and Lessee, at its expense, shall, to the extent permitted by applicable laws and regulations, prepare and file all other tax returns and reports in respect of any Imposition as may be required by Governmental Authorities. Lessor and Lessee shall, upon request of the other, provide such data as is maintained by the party to whom the request is made with respect to the Leased Property as may be necessary to prepare any required returns and reports. In the event that any Governmental Authority classifies any property covered by this Lease as personal property, Lessee shall file all personal property tax returns in such jurisdictions where it may legally so file. Lessor, to the extent it possesses the same, and Lessee, to the extent it possesses the same, will provide the other party, upon request, with cost and depreciation records necessary for filing returns for any portion of Leased Property so classified as personal property. Where Lessor is legally required to file personal property tax returns, if Lessee notifies Lessor of the obligation to do so in each year at least thirty (30) days prior to the date any protest must be filed, Lessee will be provided with copies of assessment notices so as to enable Lessee to file a protest.

4.1.4 REFUNDS. If no Lease Default shall have occurred and be continuing, any refund due from any taxing authority in respect of any Imposition paid by Lessee shall be paid over to or retained by Lessee. If a Lease Default shall have occurred and be continuing, at Lessor's option, such funds shall be paid over to Lessor and/or retained by Lessor and applied toward Lease Obligations which relate to the Leased Property in accordance with the Lease Documents.

4.1.5 PROTEST. Upon giving notice to Lessor, at Lessee's option and sole cost and expense, and subject to compliance with the provisions of Article 15, Lessee may contest, protest, appeal, or institute such other proceedings as Lessee may

deem appropriate to effect a reduction of any Imposition and Lessor, at Lessee's cost and expense as aforesaid, shall fully cooperate in a reasonable manner with Lessee in connection with such protest, appeal or other action.

4.2 NOTICE OF IMPOSITIONS. Lessor shall give prompt notice to Lessee of all Impositions payable by Lessee hereunder of which Lessor at any time has knowledge, but Lessor's failure to give any such notice shall in no way diminish Lessee's obligations hereunder to pay such Impositions.

4.3 ADJUSTMENT OF IMPOSITIONS. Impositions imposed in respect of the period during which the expiration or earlier termination of the Term occurs shall be adjusted and prorated between Lessor and Lessee, whether or not such Impositions are imposed before or after such expiration or termination, and Lessee's obligation to pay its prorated share thereof shall survive such expiration or termination.

4.4 UTILITY CHARGES. Lessee will pay or cause to be paid all charges for electricity, power, gas, oil, water, telephone, cable television and other utilities used in the Leased Property during the Term and thereafter until Lessee surrenders the Leased Property in the manner required by this Lease.

4.5 INSURANCE PREMIUMS. Lessee will pay or cause to be paid all premiums for the insurance coverage required to be maintained pursuant to Article 12 during the Term, and thereafter until Lessee yields up the Leased Property in the manner required by this Lease. All such premiums shall be paid annually in advance and Lessee shall furnish Lessor with evidence satisfactory to Lessor that all such premiums have been so paid prior to the commencement of the Term and thereafter at least thirty (30) days prior to the due date of each premium which thereafter becomes due. Notwithstanding the foregoing, Lessee may pay such insurance premiums to the insurer in monthly installments so long as the applicable insurer is contractually obligated to give Lessor not less than a sixty (60) days notice of non-payment and so long as no Lease Default has occurred and is continuing. In the event of the failure of Lessee either to comply with the insurance requirements in Article 12, or to pay the premiums for such insurance, or to deliver such policies or certificates thereof to Lessor at the times required hereunder, Lessor shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums therefor, which premiums shall be a demand obligation of Lessee to Lessor.

4.6 DEPOSITS.

4.6.1 LESSOR'S OPTION. At the option of Lessor upon the occurrence of an event or circumstance which, with the giving of notice and/or the passage of time, would constitute a Lease Default, which may be exercised at any time thereafter, Lessee shall, upon written request of Lessor, on the first day on the calendar month immediately following such request, and on the first day of each calendar month thereafter during the Term (each of which dates is referred to as a "Monthly Deposit Date"), pay to and deposit with Lessor a sum equal to one-twelfth (1/12th) of the Impositions to be levied, charged, filed, assessed or imposed upon or against the Leased Property within one (1) year after said Monthly Deposit Date and a sum equal to one-twelfth (1/12th) of the premiums for the insurance policies required pursuant to Article 12 which are payable within one (1) year after said

Monthly Deposit Date. If the amount of the Impositions to be levied, charged, assessed or imposed or insurance premiums to be paid within the ensuing one (1) year period shall not be fixed upon any Monthly Deposit Date, such amount for the purpose of computing the deposit to be made by Lessee hereunder shall be estimated by Lessor based upon the most recent available information concerning said Impositions with an appropriate adjustment to be promptly made between Lessor and Lessee as soon as such amount becomes determinable. In addition, Lessor may, at its option, from time to time require that any particular deposit be greater than one-twelfth (1/12th) of the estimated amount payable within one (1) year after said Monthly Deposit Date, if such additional deposit is required in order to provide to Lessor a sufficient fund from which to make payment of all Impositions on or before the next due date of any installment thereof, or to make payment of any required insurance premiums not later than the due date thereof.

4.6.2 USE OF DEPOSITS. The sums deposited by Lessee under this Section 4.6 shall be held by Lessor and shall be applied in payment of the Impositions or insurance premiums, as the case may be, when due. Any such deposits may be commingled with other assets of Lessor, and shall be deposited by Lessor at such bank as Lessor may, from time to time select, and, provided that Lessor has invested such deposits in one or more of the investment vehicles described on SCHEDULE 4.6.2 attached hereto and incorporated by reference, Lessor shall not be liable to Lessee or any other Person (a) based on Lessor's (or such bank's) choice of investment vehicles, (b) for any consequent loss of principal or interest or (c) for any unavailability of funds based on such choice of investment. Furthermore, Lessor shall bear no responsibility for the financial condition of, nor any act or omission by, Lessor's depository bank. The income from such

30

investment or interest on such deposit shall be paid to Lessee on a semi-annual basis as long as no Lease Default has occurred and is then continuing, and as long as no fact or circumstance exists which, with the giving of notice and/or the passage of time, would constitute a Lease Default. Lessee shall give not less than ten (10) days prior written notice to Lessor in each instance when an Imposition or insurance premium is due, specifying the Imposition or premium to be paid and the amount thereof, the place of payment, and the last day on which the same may be paid in order to comply with the requirements of this Lease. If Lessor, in violation of its obligations under this Lease, does not pay any Imposition or insurance premium when due, for which a sufficient deposit exists, Lessee shall not be in default hereunder by virtue of the failure of Lessor to pay such Imposition or such insurance premium and Lessor shall pay any interest or fine assessed by virtue of Lessor's failure to pay such Imposition or insurance premium.

4.6.3 DEFICITS. If for any reason any deposit held by Lessor under this Section 4.6 shall not be sufficient to pay an Imposition or insurance premium within the time specified therefor in this Lease, then, within ten (10) days after demand by Lessor, Lessee shall deposit an additional amount with Lessor, increasing the deposit held by Lessor so that Lessor holds sufficient funds to pay such Imposition or premium in full (or in installments as otherwise provided for herein), together with any penalty or interest due thereon. Lessor may change its estimate of any

Imposition or insurance premium for any period on the basis of a change in an assessment or tax rate or on the basis of a prior miscalculation or for any other good faith reason; in which event, within ten (10) days after demand by Lessor, Lessee shall deposit with Lessor the amount in excess of the sums previously deposited with Lessor for the applicable period which would theretofore have been payable under the revised estimate.

4.6.4 OTHER PROPERTIES. If any Imposition shall be levied, charged, filed, assessed, or imposed upon or against the Leased Property, and if such Imposition shall also be a levy, charge, assessment, or imposition upon or for any other real or personal property that does not constitute a part of the Leased Property but for which a lien exists or can exist upon the Leased Property, then, at Lessor's reasonable discretion, the computation of the amounts to be deposited under this Section 4.6 shall be based upon the entire amount of such Imposition and Lessee shall not have the right to apportion any deposit with respect to such Imposition.

31

4.6.5 TRANSFERS. In connection with any assignment of Lessor's interest under this Lease, the original Lessor named herein and each successor in interest shall transfer all amounts deposited pursuant to the provisions of this Section 4.6 and still in its possession to such assignee (as the subsequent holder of Lessor's interest in this Lease) and upon such transfer, the original Lessor named herein or the applicable successor in interest transferring the deposits shall thereupon be completely released from all liability with respect to such deposits so transferred and Lessee shall look solely to said assignee, as the subsequent holder of Lessor's interest under this Lease, in reference thereto.

4.6.6 SECURITY. All amounts deposited with Lessor pursuant to the provisions of this Section 4.6 shall be held by Lessor as additional security for the payment and performance of the Obligations and, upon the occurrence of any Lease Default, Lessor may, in its sole and absolute discretion, apply said amounts towards payment or performance of such Obligations.

4.6.7 RETURN. Upon the expiration or earlier termination of this Lease, provided that all of the Lease Obligations relating to the Leased Property have been fully paid and performed, any sums then held by Lessor under this Section 4.6 shall be refunded to Lessee.

4.6.8 RECEIPTS. Lessee shall deliver to Lessor copies of all notices, demands, claims, bills and receipts in relation to the Impositions and insurance premiums upon the earlier to occur of (a) ten (10) days following receipt thereof by Lessee and (b) in the case of an invoice, demand or bill for the payment of an Imposition, prior to the date when such Imposition is due and payable.

## ARTICLE 5

OWNERSHIP OF LEASED PROPERTY AND PERSONAL PROPERTY;  
INSTALLATION, REMOVAL AND REPLACEMENT OF

PERSONAL PROPERTY;

5.1 OWNERSHIP OF THE LEASED PROPERTY. Lessee acknowledges that the Leased Property is the property of Lessor and that Lessee has only the right to the exclusive possession and use of the Leased Property upon the terms and conditions of this Lease.

32

5.2 PERSONAL PROPERTY; REMOVAL AND REPLACEMENT OF PERSONAL PROPERTY.

5.2.1 LESSEE TO EQUIP FACILITY. If and to the extent not included in the Leased Property, Lessee, at its sole cost and expense, shall install, affix or assemble or place on the Leased Property, sufficient items of Tangible Personal Property, to enable the operation of the Facility in accordance with the requirements of this Lease for the Primary Intended Use, and such Tangible Personal Property and replacements thereof, shall be at all times the property of Lessee.

5.2.2 SUFFICIENT PERSONAL PROPERTY. Lessee shall maintain, during the entire Term, the Tangible Personal Property in good order and repair and shall provide at its expense all necessary replacements thereof, as may be necessary in order to operate the Facility in compliance with all applicable Legal Requirements and Insurance Requirements and otherwise in accordance with customary practice in the industry for the Primary Intended Use and, if applicable, Other Permitted Uses. In addition, Lessee shall furnish all necessary replacements of such obsolete items of the Tangible Personal Property during the Term as are necessary to enable the operation of the Facility in accordance with the requirements of this Lease for the Primary Intended Use.

5.2.3 REMOVAL AND REPLACEMENT; LESSOR'S OPTION TO PURCHASE. Lessee shall not remove from the Leased Property any one or more items of Tangible Personal Property (whether now owned or hereafter acquired), the fair market value of which exceeds TWENTY-FIVE THOUSAND DOLLARS (\$25,000), individually or ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) collectively, if such Tangible Personal Property is necessary to enable the operation of the Facility in accordance with the requirements of this Lease for the Primary Intended Use. At its sole cost and expense, Lessee shall restore the Leased Property to the condition required by Article 8, including repair of all damage to the Leased Property caused by the removal of the Tangible Personal Property, whether effected by Lessee or Lessor. Upon the expiration or earlier termination of this Lease, Lessor shall have the option, which may be exercised by giving notice thereof within twenty (20) days prior to such expiration or termination, of (a) acquiring the Tangible Personal Property (pursuant to a bill of sale and assignments of any equipment leases, all in such forms as are reasonably satisfactory to Lessor) upon payment of its fair market value or (b) requiring Lessee to remove the Tangible Personal Property. If Lessor exercises its option to purchase the Tangible Personal Property, the price to be paid by Lessor shall be (i) reduced by the amount of all payments due on any equipment leases or any other Permitted Prior



Security Interests assumed by Lessor and (ii) applied to the Lease Obligations before any payment to Lessee. If Lessor requires the removal of the Tangible Personal Property, then all of the Tangible Personal Property that is not removed by Lessee within ten (10) days following such request shall be considered abandoned by Lessee and may be appropriated, sold, destroyed or otherwise disposed of by Lessor without first giving notice thereof to Lessee, without any payment to Lessee and without any obligation to account therefor.

## ARTICLE 6

### SECURITY FOR LEASE OBLIGATIONS

#### 6.1 SECURITY FOR LESSEE'S OBLIGATIONS; PERMITTED PRIOR SECURITY INTERESTS.

6.1.1 SECURITY. In order to secure the payment and performance of all of the Obligations, Lessee agrees to provide or cause there to be provided the following security:

(a) a first lien and exclusive security interest in the Collateral, as more particularly provided for in the Security Agreement;

(b) the Cash Collateral.

(c) a first lien and exclusive pledge and assignment of, and security interest in, all Permits and Contracts, as more particularly provided for in the Collateral Assignment of Permits and Contracts; and

(d) in the event that, at any time during the Term, Lessee holds the fee title to or a leasehold interest in any real property and/or personal property which is used as an integral part of the operation of the Leased Property (but is not subject to this Lease), Lessee shall (i) provide Lessor with prior notice of such acquisition and (ii) shall take such actions and enter into such agreements as Lessor shall reasonably request in order to grant Lessor a first priority mortgage or other security interest in such real property and personal property, subject only to the Permitted Encumbrances and other Liens reasonably acceptable to Lessor. Without limiting the foregoing, it is acknowledged and agreed that all revenues generated from the operation of such additional real property shall be included in the determination of Gross Revenues (subject to such adjustments as agreed upon hereunder).

Notwithstanding the foregoing, Lessor shall subordinate its security interest in Receivables to a prior security interest to secure a working capital line as provided in Section 6.1.3.

#### 6.1.2 PURCHASE-MONEY SECURITY

## INTERESTS AND EQUIPMENT LEASES.

Notwithstanding any other provision hereof regarding the creation of Liens, Lessee may (a) grant priority purchase money security interests in items of Tangible Personal Property, (b) lease Tangible Personal Property from equipment lessors as long as: (i) the aggregate value of such Tangible Personal Property shall not exceed TWO HUNDRED THOUSAND DOLLARS (\$200,000) or (ii) (A) the secured party or equipment lessor enters into an intercreditor agreement with, and satisfactory to, Lessor, pursuant to which, without limiting the foregoing, (1) Lessor shall be afforded the option of curing defaults and the option of succeeding to the rights of Lessee and (2) Lessor's security interest in Tangible Personal Property shall be subordinated to the security interest granted to such secured party, (B) all of the terms, conditions and provisions of the financing, security interest or lease are reasonably acceptable to Lessor, (C) Lessee provides a true and complete copy, as executed, of each such purchase money security agreement, financing document and equipment lease and all amendments thereto and (D) no such security interest, financing agreement or lease is cross-defaulted or cross-collateralized with any other obligation. Security interests granted by Lessee in full compliance with the provisions of this Section 6.1.2 are referred to as "Permitted Prior Security Interests".

### 6.1.3 RECEIVABLES FINANCING.

Notwithstanding any other provision hereof regarding the creation of Liens, Lessee shall also be permitted to grant a prior security interest in Receivables (with the Lessor retaining a junior security interest therein) to an institutional lender which is providing a working capital line of credit (a "Working Capital Loan") for the exclusive use of Guarantor, Lessee and Affiliates of Lessee as long as such Lender enters into an intercreditor agreement with, and satisfactory to, Lessor pursuant to which, without limiting the foregoing, (1) Lessor shall be provided with notice with respect to defaults under the Working Capital Loan simultaneously with the delivery of such notice to Lessee and shall be afforded the option of curing defaults thereunder, (2) such lender's use of Instruments, Documents, General Intangibles and Chattel Paper shall

35

be limited to a license only for the purpose of collecting Receivables and (3) the subordination of Lessor's interest in the Receivables shall be of no force and effect and Lessor's first priority security interest shall be reinstated from and after the occurrence of an Event of Default if, upon or following such Event of Default, Lessor either exercises any of its remedies set forth in Article 16 or Lessor notifies in writing such lender of Lessor's intention to invoke its right to reinstate its first priority security interest in the Receivables.

6.2 GUARANTY. All of the Lease Obligations shall be unconditionally and irrevocably guaranteed by the Guarantor pursuant to the Guaranty of Lease Obligations.

## ARTICLE 7

CONDITION AND USE OF LEASED PROPERTY;  
MANAGEMENT AGREEMENTS

7.1           CONDITION OF THE LEASED PROPERTY. Lessee acknowledges that Lessee has caused the Leased Property to be sold to Lessor and has concurrently entered into this Lease. Lessee acknowledges receipt and delivery of possession of the Leased Property and that Lessee has examined and otherwise has acquired knowledge of the condition of the Leased Property prior to the execution and delivery of this Lease and has found the same to be in good order and repair and satisfactory for its purposes hereunder. Lessee is leasing the Leased Property "AS-IS" in its present condition, provided, however, that nothing herein contained in this Section 7.1 shall be deemed to modify the terms and provisions of the Leasehold Improvement Agreement. Lessee waives any claim or action against Lessor in respect of the condition of the Leased Property. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO THE LEASED PROPERTY, EITHER AS TO ITS FITNESS FOR ANY PARTICULAR PURPOSE OR USE, ITS DESIGN OR CONDITION OR OTHERWISE, OR AS TO DEFECTS IN THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, LATENT OR PATENT; IT BEING AGREED THAT ALL RISKS RELATING TO THE DESIGN, CONDITION AND/OR USE OF THE LEASED PROPERTY ARE TO BE BORNE BY LESSEE. LESSEE HEREBY ASSUMES ALL RISK OF THE PHYSICAL CONDITION OF THE LEASED PROPERTY, THE SUITABILITY OF THE LEASED PROPERTY FOR LESSEE'S PURPOSES, AND THE COMPLIANCE OR NON-COMPLIANCE OF THE LEASED PROPERTY WITH ALL APPLICABLE REQUIREMENTS OF LAW, INCLUDING BUT NOT LIMITED TO ENVIRONMENTAL LAWS AND ZONING OR LAND USE LAWS.

36

Upon the request of Lessor, at any time and from time to time during the Term, Lessee shall engage one (1) or more independent professional consultants, engineers and inspectors, qualified to do business in the State and acceptable to Lessor to perform any environmental and/or structural investigations and/or other inspections of the Leased Property and the Facility as Lessor may reasonably request in order to detect (a) any structural deficiencies in the Leased Improvements or the utilities servicing the Leased Property or (b) the presence of any condition that (i) may be harmful or present a health hazard to the residents and other occupants of the Leased Property or (ii) constitutes a breach or violation of any of the Lease Documents. In the event that Lessor reasonably determines that the results of such testing or inspections are unsatisfactory, within thirty (30) days of notice from Lessor, Lessee shall commence such appropriate remedial actions as may be reasonably requested by Lessor to correct such unsatisfactory conditions and, thereafter, shall diligently and continuously prosecute such remedial actions to completion within the time limits prescribed in this Lease or the other Lease Documents.

7.2           USE OF THE LEASED PROPERTY; COMPLIANCE;  
MANAGEMENT.

7.2.1           OBLIGATION TO OPERATE. Lessee shall continuously operate the Leased Property in accordance with the Primary Intended Use and the Other Permitted Uses and maintain its qualifications for licensure and accreditation as required by all applicable Legal Requirements.

7.2.2           PERMITTED USES. During the entire Term,

Lessee shall use the Leased Property, or permit the Leased Property to be used, only for the Primary Intended Use and, if applicable, the Other Permitted Uses. Lessee shall not use the Leased Property or permit the Leased Property to be used for any other use without the prior written consent of Lessor, which consent may be withheld in Lessor's sole and absolute discretion.

7.2.3 COMPLIANCE WITH INSURANCE

REQUIREMENTS. No use shall be made or permitted to be made of the Leased Property and no acts shall be done which will cause the cancellation of any insurance policy covering the Leased Property, nor shall Lessee, any Manager or any other Person sell or otherwise provide to residents, other occupants or invitees therein, or permit to be kept, used or sold in or about the Leased Property, any article which may be prohibited by any of the Insurance Requirements. Furthermore, Lessee shall, at its sole cost and expense, take whatever other actions that may be necessary to comply with and to insure that the Leased Property complies with all Insurance Requirements.

37

7.2.4 NO WASTE. Lessee shall not commit or suffer to be committed any waste on, in or under the Leased Property, nor shall Lessee cause or permit any nuisance thereon.

7.2.5 NO IMPAIRMENT. Lessee shall neither permit nor knowingly suffer the Leased Property to be used in such a manner as (a) might reasonably tend to impair Lessor's title thereto or (b) may reasonably make possible a claim or claims of adverse usage or adverse possession by the public or of implied dedication of the Leased Property.

7.2.6 NO LIENS. Except as permitted pursuant to Section 6.1.2, Lessee shall not permit or suffer any Lien to exist on the Tangible Personal Property and shall in no event cause, permit or suffer any Lien to exist with respect to the Leased Property other than as set forth in Section 11.5.2.

7.3 COMPLIANCE WITH LEGAL REQUIREMENTS.

Lessee covenants and agrees that the Leased Property shall not be used for any unlawful purpose and that Lessee, at its sole cost and expense, will promptly (a) comply with, and shall cause every other member of the Leasing Group to comply with, all applicable Legal Requirements relating to the use, operation, maintenance, repair and restoration of the Leased Property, whether or not compliance therewith shall require structural change in any of the Leased Property or interfere with the use and enjoyment of the Leased Property and (b) procure, maintain and comply with (in all material respects), and shall cause every other member of the Leasing Group to procure, maintain and comply with (in all material respects), all Contracts and Permits necessary or desirable in order to operate the Leased Property for the Primary Intended Use and/or, if applicable, Other Permitted Uses, and for compliance with all of the terms and conditions of this Lease. Unless a Lease Default has occurred or any event has occurred which, with the passage of time and/or the giving of notice would constitute a Lease Default, Lessee may, upon prior written notice to Lessor, contest any Legal Requirement to the extent permitted by, and in accordance with, Article 15 below.

7.4 MANAGEMENT AGREEMENTS. Throughout the

Term, Lessee shall not enter into any Management Agreement without the

prior written approval of Lessor, in each instance, which approval shall not be unreasonably withheld. Lessee shall not, without the prior written approval of Lessor, in each instance, which approval shall not be unreasonably withheld, agree to or allow: (a) any change in the Manager or change in the ownership or control of the Manager, (b) the termination of any Management Agreement (other than in connection with the exercise by Lessee of any of its remedies under the Management Agreement as a result of any default by the Manager thereunder), (c) any assignment by the Manager of its interest under the Management Agreement or (d) any material amendment of the Management Agreement. In addition, Lessee

shall, at its sole cost and expense, promptly and fully perform or cause to be performed every covenant, condition, promise and obligation of the licensed operator of the Leased Property under any Management Agreement.

Each Management Agreement shall provide that Lessor shall be provided notice of any defaults thereunder and, at Lessor's option, an opportunity to cure such default. Lessee shall furnish to Lessor, within three (3) days after receipt thereof, or after the mailing or service thereof by Lessee, as the case may be, a copy of each notice of default which Lessee shall give to, or receive from any Person, based upon the occurrence, or alleged occurrence, of any default in the performance of any covenant, condition, promise or obligation under any Management Agreement.

Whenever and as often as Lessee shall fail to perform, promptly and fully, at its sole cost and expense, any covenant, condition, promise or obligation on the part of the licensed operator of the Leased Property under and pursuant to any Management Agreement, Lessor, or a lawfully appointed receiver of the Leased Property, may, at their respective options (and without any obligation to do so), after five (5) days' prior notice to Lessee (except in the case of an emergency) enter upon the Leased Property and perform, or cause to be performed, such work, labor, services, acts or things, and take such other steps and do such other acts as they may deem advisable, to cure such defaulted covenant, condition, promise or obligation, and any amount so paid or advanced by Lessor or such receiver and all costs and expenses reasonably incurred in connection therewith (including, without limitation, attorneys' fees and expenses and court costs), shall be a demand obligation of Lessee to Lessor or such receiver, and, Lessor shall have the same rights and remedies for failure to pay such costs on demand as for Lessee's failure to pay any other sums due hereunder.

7.5 PARTICIPATION IN THIRD PARTY PAYOR PROGRAMS. No provision of this Lease shall be deemed to require Lessee to commence participation in any Third Party Payor Program or any Managed Care Plan.

## ARTICLE 8

### REPAIRS; RESTRICTIONS

#### 8.1 MAINTENANCE AND REPAIR.

8.1.1 LESSEE'S RESPONSIBILITY. Lessee, at its sole cost and expense, shall keep the Leased Property (with respect to the Project, to the extent consistent with the stage of construction of the Project) and all private roadways, sidewalks and curbs appurtenant thereto which are under Lessee's control in good order and repair (whether or not the need for such repairs occurs as a

result of Lessee's use, any prior use, the elements or the age of the Leased Property or such private roadways, sidewalks and curbs or any other cause whatsoever other than Lessor's gross negligence or willful misconduct) and, subject to Articles 9, 13 and 14, Lessee shall promptly, with the exercise of all reasonable efforts, undertake and diligently complete all necessary and appropriate repairs, replacements, renovations, restorations, alterations and modifications thereof of every kind and nature, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen or arising by reason of a condition (concealed or otherwise) existing prior to the commencement of, or during, the Term and thereafter until Lessee surrenders the Leased Property in the manner required by this Lease. In addition, Lessee, at its sole cost and expense, shall make all repairs, modifications, replacements, renovations and alterations of the Leased Property (and such private roadways, sidewalks and curbs) that are necessary to comply with all applicable Legal Requirements and Insurance Requirements so that the Leased Property can be legally operated for the Primary Intended Use and, if applicable, the Other Permitted Uses. All repairs, replacements, renovations, alterations, and modifications required by the terms of this Section 8.1 shall be (a) performed in a good and workmanlike manner in compliance with all applicable Legal Requirements, Insurance Requirements and the requirements of Article 9 hereof, using new materials well suited for their intended purpose and (b) consistent with the operation of the Facility in a reputable manner. Lessee will not take or omit to take any action the taking or omission of which might materially impair the value or the usefulness of the Leased Property for the Primary Intended Use and, if applicable, the Other Permitted Uses. To the extent that any of the repairs, replacements, renovations, alterations or modifications required by the terms of this Section 8.1 constitute Material Structural Work, Lessee shall obtain Lessor's prior written approval (which approval shall not be unreasonably withheld) of the specific repairs, replacements, renovations, alterations and modifications to be performed by or on behalf of Lessee in connection with such Material Structural Work. Notwithstanding the foregoing, in the event of a bona fide emergency during which Lessee is unable to contact the appropriate representatives of Lessor, Lessee may commence such Material Structural Work as may be necessary in order to address such emergency without Lessor's prior approval, provided, however, that Lessee shall immediately thereafter advise Lessor of such emergency and the nature and scope of the Material Structural Work commenced and shall obtain Lessor's approval of the remaining Material Structural Work to be completed.

8.1.2 NO LESSOR OBLIGATION. Lessor shall not, under any circumstances, be required to build or rebuild any improvements on the Leased Property (or any private roadways, sidewalks or curbs appurtenant thereto), or to make any repairs, replacements, renovations, alterations, restorations, modifications, or renewals of any nature or description to the Leased Property (or any private roadways, sidewalks or curbs appurtenant thereto),

whether ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, or to make any expenditure whatsoever with respect thereto in connection with this Lease, or to maintain the Leased Property (or any private roadways, sidewalks or curbs appurtenant thereto) in any way.

#### 8.1.3 LESSEE MAY NOT OBLIGATE LESSOR.

Nothing contained herein nor any action or inaction by Lessor shall be construed as (a) constituting the consent or request of Lessor, express or implied, to any contractor, subcontractor, laborer, materialman or vendor to or for the performance of any labor or services for any construction, alteration, addition, repair or demolition of or to the Leased Property or (b) except as otherwise provided in this Lease, giving Lessee any right, power or permission to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Lessor for the payment thereof or to make any agreement that may create, or in any way be the basis for, any right, title or interest in, or Lien or claim against, the estate of Lessor in the Leased Property. Without limiting the generality of the foregoing and except as otherwise provided in this Lease, the right title and interest of Lessor in and to the Leased Property shall not be subject to liens or encumbrances for the performance of any labor or services or the furnishing of any materials or other property furnished to the Leased Property at or by the request of Lessee or any other Person other than Lessor. Lessee shall notify any contractor, subcontractor, laborer, materialman or vendor providing any labor, services or materials to the Leased Property of this provision.

#### 8.2 ENCROACHMENTS; TITLE RESTRICTIONS. If any

of the Leased Improvements shall, at any time, encroach upon any property, street or right-of-way adjacent to the Leased Property, or shall violate the agreements or conditions contained in any lawful restrictive covenant or other Lien now or hereafter affecting the Leased Property, or shall impair the rights of others under any easement, right-of-way or other Lien to which the Leased Property is now or hereafter subject, then promptly upon the request of Lessor, Lessee shall, at its sole cost and expense, subject to Lessee's right to contest the existence of any encroachment, violation or impairment as set forth in Article 15, (a) obtain valid and effective waivers or settlements of all claims, liabilities and damages resulting from each such

encroachment, violation or impairment or (b) make such alterations to the Leased Improvements, and take such other actions, as Lessee in the good faith exercise of its judgment deems reasonably practicable, to remove such encroachment, or to end such violation or impairment, including, if necessary, the alteration of any of the Leased Improvements. Notwithstanding the foregoing, Lessee shall, in any event, take all such actions as may be reasonably necessary in order to be able to continue the operation of the Leased Improvements for the Primary Intended Use and, if applicable, the Other Permitted Uses substantially in the manner and to the extent that the Leased Improvements were operated prior to the assertion of such encroachment, violation or impairment and nothing contained herein shall limit Lessee's obligations to operate the Leased Property in accordance with its Primary Intended Use. Any such alteration made pursuant to the terms of this Section 8.2 shall be completed in conformity with the applicable requirements of Section 8.1 and Article 9. Lessee's obligations under this Section 8.2 shall be in addition to and shall in no way discharge or diminish any obligation of any insurer under any policy of title or other insurance. If and to the extent any obligation of an insurer under any policy

of title or other insurance exists and Lessee has incurred costs and expenses with respect to the subject matter of such obligation and provided Lessor is reasonably satisfied with the resolution of such subject matter, at the request of Lessee, Lessor, at Lessor's option, shall either assign to Lessee any right it may have to proceed against such insurer or remit to Lessee any amount which Lessor recovers from such insurer, minus any amounts needed to reimburse Lessor for its reasonable costs and expenses, for the costs and expenses incurred by Lessee in reconstructing the Facility or taking such other action reasonably required in order to create a viable and functional Facility under all of the circumstances.

## ARTICLE 9

### MATERIAL STRUCTURAL WORK AND CAPITAL ADDITIONS

9.1 LESSOR'S APPROVAL. Without the prior written consent of Lessor, which consent may be withheld by Lessor, in its sole and absolute discretion, Lessee shall make no Capital Addition or Material Structural Work to the Leased Property (including, without limitation, any change in the size or unit capacity of the Facility), except as may be otherwise expressly required pursuant to Article 8.

9.2 GENERAL PROVISIONS AS TO CAPITAL ADDITIONS AND CERTAIN MATERIAL STRUCTURAL WORK. As to any Capital Addition or Material Structural Work (other than such Material Structural Work that is required to be performed pursuant to the terms of Section 8.1) for which Lessor has granted its prior written approval, the following terms and conditions shall apply unless otherwise expressly set forth in Lessor's written approval.

42

9.2.1 NO LIENS. Lessee shall not be permitted to create any Lien on the Leased Property in connection with any Capital Addition or Material Structural Work (including, without limitation, Liens relating to the provision of financing for a Capital Addition) other than Liens expressly permitted by the terms and provisions of this Lease Agreement.

9.2.2 LESSEE'S PROPOSAL REGARDING CAPITAL ADDITIONS AND MATERIAL STRUCTURAL WORK. If Lessee desires to undertake any Capital Addition or Material Structural Work, Lessee shall submit to Lessor in writing a proposal setting forth in reasonable detail any proposed Capital Addition or Material Structural Work and shall provide to Lessor copies of, or information regarding, the applicable plans and specifications, Permits, Contracts and any other materials concerning the proposed Capital Addition or Material Structural Work, as the case may be, as Lessor may reasonably request. Without limiting the generality of the foregoing, each such proposal pertaining to any Capital Addition shall indicate the approximate projected cost of constructing such Capital Addition, the use or uses to which it will be put and a good faith estimate of the change, if any, in the Gross Revenues that Lessee anticipates will result from the construction of such Capital Addition.

9.2.3 LESSOR'S OPTIONS REGARDING CAPITAL ADDITIONS AND MATERIAL STRUCTURAL WORK. Lessor shall have the options of: (a) denying permission for the construction of the applicable Capital Addition or Material Structural Work, (b) offering to finance the construction of the



Capital Addition pursuant to Section 9.3 on such terms as may be specified by Lessor, including the terms of any amendment to this Lease, including, without limitation, an increase in Base Rent based on Lessor's then existing terms and prevailing conditions to compensate Lessor for the additional funds advanced by it, (c) allowing Lessee to separately pay for or finance the construction of the Capital Addition, subject to compliance with the terms and conditions of Section 9.2.1, Section 9.4, Section 13.1.3, all applicable Legal Requirements, all other requirements of this Lease and to such other terms and conditions as Lessor may in its discretion reasonably impose or (d) any combination of the foregoing. Unless Lessor notifies Lessee in writing of a contrary election within thirty (30) days of Lessee's request or unless Lessor is required to consent thereto pursuant to this Section 9.2.3, Lessor shall be deemed to have denied the request for the Capital Addition or Material Structural Work. In the event and to the extent Lessor has granted permission for the construction of the applicable Capital Addition or Material Structural Work and (x) Lessor has not offered to finance the construction of the same or (y) Lessee declines to accept the financing offered by Lessor, Lessee may

43

separately finance such construction, subject to the limitation on Liens set forth in Section 9.2.1, or pay for such construction itself. In the event Lessee declines to accept the financing offered by Lessor or if Lessor has not offered such financing to Lessee and proposes to obtaining financing from another Person, Lessee shall inform Lessor in writing of the terms and conditions of such financing and shall provide Lessor with a copy of a commitment letter evidencing the same and Lessor may, by giving notice thereof to Lessee within twenty (20) days following being so informed, elect to provide financing to Lessee at the effective rate of interest as such financing. Lessor shall not unreasonably withhold its permission for the construction of Material Structural Work which is necessary to protect the safety or welfare of residents of the Facility.

9.2.4 LESSOR MAY ELECT TO FINANCE CAPITAL ADDITIONS. If Lessor elects to offer financing for the proposed Capital Addition and Lessee accepts Lessor's financing proposal, the provisions of Section 9.3 shall apply.

9.3 CAPITAL ADDITIONS FINANCED BY LESSOR.

9.3.1 ADVANCES. All advances of funds for any such financing shall be made in accordance with Lessor's then standard construction loan requirements and procedures, which may include, without limitation, the requirements and procedures applicable to Work under Sections 13.1.3 and 13.1.4.

9.3.2 LESSOR'S GENERAL REQUIREMENTS. If Lessor agrees to finance the proposed Capital Addition and Lessee accepts Lessor's proposal therefor, in addition to all other items which Lessor or any applicable Financing Party may reasonably require, Lessee shall provide to Lessor the following:

(a) prior to any advance of funds, (i) any information, opinions, certificates, Permits or documents reasonably requested by Lessor or any applicable Financing Party which are necessary to confirm that Lessee is reasonably expected to be able to use the Capital Addition upon completion thereof in accordance with the

Primary Intended Use and/or, if applicable, the Other Permitted Uses and (ii) evidence satisfactory to Lessor and any applicable Financing Party that all Permits required for the construction and use of the Capital Addition have been received, are in full force and effect and are not subject to appeal, except only for those Permits which cannot in the normal course be obtained prior to commencement or completion of the construction;

44

provided, that Lessor and any applicable Financing Party are furnished with reasonable evidence that the same is reasonably expected to be available in the normal course of business without unusual condition;

(b) prior to any advance of funds, an Officer's Certificate and, if requested, a certificate from Lessee's architect, setting forth in reasonable detail the projected (or actual, if available) Capital Addition Cost;

(c) bills of sale, instruments of transfer and other documents required by Lessor so as to vest title to the Capital Addition in Lessor free and clear of all Liens (except to the extent a Lien is being duly contested in accordance with the terms and provisions of this Lease), and amendments to this Lease and any recorded notice or memorandum thereof, duly executed and acknowledged, in form and substance reasonably satisfactory to Lessor, providing for any changes required by Lessor including, without limitation, changes in the Base Rent and the legal description of the Land;

(d) upon payment therefor, a deed conveying to Lessor title to any land acquired for the purpose of constructing the Capital Addition ("Additional Land") free and clear of any Liens except those approved by Lessor;

(e) upon completion of the Capital Addition, a final as-built survey thereof reasonably satisfactory to Lessor, if required by Lessor;

(f) during and following the advance of funds and the completion of the Capital Addition, endorsements to any outstanding policy of title insurance covering the Leased Property satisfactory in form and substance to Lessor (i) updating the same without any additional exception except as may be reasonably permitted by Lessor and (ii) increasing the coverage thereof by an amount equal to the Fair Market Value of the Capital Addition and/or increasing the coverage thereof by an amount equal to the Fair Market Value of the Additional Land and including the Additional Land in the premises covered by such title insurance policy;

(g) simultaneous with the initial advance of funds, if appropriate, (i) an owner's policy of title insurance insuring fee simple title to any Additional Land conveyed to Lessor pursuant to subparagraph (d) free and

clear of all Liens except those approved by Lessor and (ii) an owner's policy of title insurance reasonably satisfactory in form and substance to Lessor and a lender's policy of title insurance reasonably satisfactory in form and substance to any applicable Financing Party;

(h) following the completion of the Capital Addition, if reasonably deemed necessary by Lessor, an appraisal of the Leased Property by an M.A.I. appraiser acceptable to Lessor, which states that the Fair Market Value of the Leased Property upon completion of the Capital Addition exceeds the Fair Market Value of the Leased Property prior to the commencement of such Capital Addition by an amount not less than one hundred twenty-five percent (125%) of the Capital Addition Cost; and

(i) during or following the advancement of funds, prints of architectural and engineering drawings relating to the Capital Addition and such other materials, including, without limitation, the modifications to outstanding policies of title insurance contemplated by subsection (f) above, opinions of counsel, appraisals, surveys, certified copies of duly adopted resolutions of the board of directors of Lessee authorizing the execution and delivery of the lease amendment and any other documents and instruments as may be reasonably required by Lessor and any applicable Financing Party.

9.3.3 PAYMENT OF COSTS. By virtue of making a request to finance a Capital Addition, whether or not such financing is actually consummated, Lessee shall be deemed to have agreed to pay, upon demand, all costs and expenses reasonably incurred by Lessor and any Person participating with Lessor in any way in the financing of the Capital Addition Cost, including, but not limited to (a) fees and expenses of their respective attorneys, (b) all photocopying expenses, if any, (c) the amount of any filing, registration and recording taxes and fees, (d) documentary stamp taxes and intangible taxes (e) title insurance charges and appraisal fees.

9.4 GENERAL LIMITATIONS. Without in any way limiting Lessor's options with respect to proposed Capital Additions or Material Structural Work: (a) no Capital Addition or Material Structural Work shall be completed that could, upon completion, significantly alter the character or purpose or detract from the value or operating efficiency of the Leased Property, or significantly impair the revenue-producing capability of the Leased Property, or adversely affect the ability of Lessee to comply with the terms of this Lease; (b) no Capital Addition or Material Structural Work

shall be completed which would tie in or connect any Leased Improvements on the Leased Property with any other improvements on property adjacent to the Leased Property (and not part of the Land covered by this Lease) including, without limitation, tie-ins of buildings or other structures or utilities, unless Lessee shall have obtained the prior written approval of Lessor, which approval may be withheld in Lessor's sole and absolute discretion and (c) all proposed Capital Additions and Material Structural

Work shall be architecturally integrated and consistent with the Leased Property.

9.5 NON-CAPITAL ADDITIONS. Lessee shall have the obligation and right to make repairs, replacements and alterations which are not Capital Additions as required by the other Sections of this Lease, but in so doing, Lessee shall always comply with and satisfy the conditions of Section 9.4. Lessee shall have the right, from time to time, to make additions, modifications or improvements to the Leased Property which do not constitute Capital Additions or Material Structural Work as it may deem to be desirable or necessary for its uses and purposes, subject to the same limits and conditions imposed under Section 9.4. The cost of any such repair, replacement, alteration, addition, modification or improvement shall be paid by Lessee and the results thereof shall be included under the terms of this Lease and become a part of the Leased Property, without payment therefor by Lessor at any time. Notwithstanding the foregoing, all such additions, modifications and improvements which affect the structure of any of the Leased Improvements, or which involve the expenditure of more than FIFTY THOUSAND DOLLARS (\$50,000.00), shall be undertaken only upon compliance with the provisions of Section 13.1.3, all applicable Legal Requirements and all other applicable requirements of this Lease; provided, however, that in the event of a bona fide emergency during which Lessee is unable to contact the appropriate representatives of Lessor, Lessee may commence such additions, modifications and improvements as may be necessary in order to address such emergency without Lessor's prior approval, as long as Lessee immediately thereafter advises Lessor of such emergency and the nature and scope of the additions, modifications and improvements performed and obtains Lessor's approval of the remaining work to be completed. Any such addition, modification and improvement which affects the structure of any of the Leased Improvements which is not a Capital Addition or Material Structural Work shall be exempt from the requirements of Section 9.2 hereof.

9.6 COMPENSATION TO LESSEE FOR CAPITAL ADDITIONS PAID FOR OR FINANCED BY LESSEE. Upon the expiration or earlier termination of this Lease, except by reason of the default by Lessee hereunder, Lessor shall compensate Lessee for all Capital Additions paid for or financed by Lessee in any of the following ways, determined in the sole discretion of Lessor:

47

(a) By purchasing all Capital Additions paid for or financed by Lessee from Lessee for cash in the amount of the Fair Market Added Value (determined as of the date of such purchase) of all such Capital Additions paid for or financed by Lessee; or

(b) By purchasing such Capital Addition from Lessee by delivering to Lessee Lessor's purchase money promissory note in the amount of said Fair Market Added Value, due and payable no later than eighteen (18) months after the date of expiration or other termination of this Lease, bearing interest at a rate equal to one hundred ten percent (110%) of the applicable federal rate (determined at the time of execution of such note pursuant to Section 1274 of the Code or any successor section thereto), compounded semiannually, or, if no such rate exists, or such rate is in excess of that permitted under applicable law, at the Prime Rate, which interest shall be payable monthly, and which note shall be secured by a mortgage on the Leased Property, subject to all Liens on the Leased Property at the time of such purchase; or

(c) By Lessor assigning to Lessee under appropriate written instruments the right to receive an amount equal to the Added Value Percentage (determined as of the expiration of earlier termination of this Lease) from all rent and other consideration receivable by Lessor under any re-letting or other disposition of the Leased Property, after deducting all costs and expenses incurred by Lessor in connection with such re-letting or other disposition of the leased Property and all costs and expenses of operating and maintaining the Leased Property during any such new lease which are not borne by the tenant thereunder. The provisions of this Subparagraph (c) shall remain in effect until the sale or other final disposition of the Leased Property in which event Lessor shall pay to Lessee the outstanding balance of the Fair Market Added Value in accordance with Subparagraph (a), (b), or (d) of this Section 9.6, after deducting any amounts received by Lessee under this Subparagraph (c); or

(d) Such other arrangement regarding such compensation as shall be mutually acceptable to Lessor and Lessee.

## ARTICLE 10

### WARRANTIES AND REPRESENTATIONS

10.1 REPRESENTATIONS AND WARRANTIES. Lessee hereby represents and warrants to, and covenants and agrees with, Lessor that:

48

#### 10.1.1 EXISTENCE; POWER; QUALIFICATION.

Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Washington. Lessee has all requisite corporate power to own and operate its properties and to carry on its business as now conducted and is duly qualified to transact business and is in good standing in each jurisdiction where such qualification is necessary or desirable in order to carry out its business as presently conducted. As of the date of this Agreement, Lessee does not have any Subsidiaries and Lessee is not a member of any partnership or joint venture. Attached hereto as EXHIBIT C is a true and correct list of all of the shareholders of Lessee and their respective ownership interests in Lessee;

10.1.2 VALID AND BINDING. Lessee is duly authorized to make and enter into all of the Lease Documents to which Lessee is a party and to carry out the transactions contemplated therein. All of the Lease Documents to which Lessee is a party have been duly executed and delivered by Lessee, and each is a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms.

10.1.3 SINGLE PURPOSE. Lessee is, and during the entire time that this Lease remains in force and effect shall be, engaged in no business, trade or activity other than the operation and development of the Leased Property for the Primary Intended Use and such other activities in which Lessee may be permitted to engage by the provisions of Meditrust/Emeritus Transaction

Documents. The fiscal year of Lessee, and the Guarantor is the Fiscal Year.

10.1.4 NO VIOLATION. The execution, delivery and performance of the Lease Documents by the members of the Leasing Group and the consummation by the members of the Leasing Group of the transactions thereby contemplated shall not result in any breach of, or constitute a default under, or result in the acceleration of, or constitute an event which, with the giving of notice or the passage of time, or both, could result in default or acceleration of any obligation of any such member of the Leasing Group under any of the Permits or Contracts or any other contract, mortgage, lien, lease, agreement, instrument, franchise, arbitration award, judgment, decree, bank loan or credit agreement, trust indenture or other instrument to which any member of the Leasing Group is a party or by which any member of the Leasing Group may be bound or affected and do not violate or contravene any Legal Requirement.

49

10.1.5 CONSENTS AND APPROVALS. Except as already obtained or filed or, with respect to the Project, reasonably expected to be obtained in the ordinary course of business prior to or upon the Completion of the Project, as the case may be, no consent or approval or other authorization of, or exemption by, or declaration or filing with, any Person and no waiver of any right by any Person is required to authorize or permit, or is otherwise required as a condition of the execution, delivery and performance of its obligations under the Lease Documents by any member of the Leasing Group or as a condition to the validity (assuming the due authorization, execution and delivery by Lessor of the Lease Documents to which it is a party) and the first priority of any Liens granted under the Lease Documents, except the filing of the Financing Statements.

10.1.6 NO LIENS OR INSOLVENCY PROCEEDINGS. Each member of the Leasing Group in existence as of the date hereof is financially solvent and there are no actions, suits, investigations or proceedings including, without limitation, outstanding federal or state tax liens, garnishments or insolvency or bankruptcy proceedings, pending or, to the best of Lessee's knowledge and belief, threatened:

(a) against or affecting any member of the Leasing Group, which if adversely resolved to such member of the Leasing Group, would materially adversely affect the ability of any of the foregoing to perform their respective obligations under the Lease Documents;

(b) against or affecting the Leased Property or the ownership, construction, development, maintenance, management, repair, use, occupancy, possession or operation thereof; or

(c) which may involve or affect the validity, priority or enforceability of any of the Lease Documents, at law or in equity, or before or by any arbitrator or Governmental Authority.

10.1.7 INTENTIONALLY DELETED.

10.1.8 COMMERCIAL ACTS. Lessee's performance of and compliance with the obligations and conditions set forth herein and in the other Lease Documents will constitute commercial acts done and performed for commercial purposes.

50

10.1.9 ADEQUATE CAPITAL, NOT INSOLVENT. After giving effect to the consummation of the transactions contemplated by the Lease Documents, each member of the Leasing Group:

(a) will be able to pay its debts as they become due;

(b) will have sufficient funds or available capital to carry on its business as now conducted or as contemplated to be conducted (in accordance with the terms of the Lease Documents); and

(c) will not be rendered insolvent as determined by applicable law.

10.1.10 NOT DELINQUENT. Except as permitted under Section 11.3.8, no member of the Leasing Group which exists as of the date hereof is delinquent or claimed to be delinquent under any obligation for the payment of borrowed money.

10.1.11 NO AFFILIATE DEBT. Lessee has not created, incurred, guaranteed, endorsed, assumed or suffered to exist any liability (whether direct or contingent) for borrowed money from the Guarantor (or any of its Affiliates) or any Affiliate of Lessee which has not been fully subordinated to the Lease Obligations.

10.1.12 TAXES CURRENT. Each member of the Leasing Group which exists as of the date hereof has filed all federal, state and local tax returns which are required to be filed as to which extensions are not currently in effect and has paid all taxes, assessments, impositions, fees and other governmental charges (including interest and penalties) which have become due pursuant to such returns or pursuant to any assessment or notice of tax claim or deficiency received by each such member of the Leasing Group. No tax liability has been asserted by the Internal Revenue Service against any member of the Leasing Group or any other federal, state or local taxing authority for taxes, assessments, impositions, fees or other governmental charges (including interest or penalties thereon) in excess of those already paid.

## 10.1.13 FINANCIALS COMPLETE AND ACCURATE.

The financial statements of each member of the Leasing Group given to Lessor in connection with the execution and delivery of the Lease Documents were true, complete and accurate, in all material respects, and fairly presented the financial condition of each such member of the Leasing Group as of the date thereof and for the periods covered thereby, having been prepared in accordance with GAAP and such financial statements disclosed all liabilities, including, without limitation, contingent liabilities, of each such member of the Leasing Group as of the date thereof. There has been no material adverse change since such date with respect to the Net Worth of any such member of the Leasing Group or with respect to any other matters contained in such financial statements, nor have any additional material liabilities, including, without limitation, contingent liabilities, of any such member of the Leasing Group arisen or been incurred or asserted since such date except as otherwise disclosed to Lessor.

The projections heretofore delivered to Lessor continue to be reasonable (with respect to the material assumptions upon which such projections are based) and Lessee reasonably anticipates based on information currently available to it after due inquiry the results projected therein will be achieved, there having been (a) no material adverse change in the business, assets or condition, financial or otherwise of any such member of the Leasing Group or the Leased Property and (b) no material depletion of the cash or decrease in working capital of any such member of the Leasing Group.

## 10.1.14 PENDING ACTIONS, NOTICES AND

REPORTS.

(a) There is no action or investigation pending or, to the best knowledge and belief of Lessee, threatened, anticipated or contemplated (nor, to the knowledge of Lessee, is there any reasonable basis therefor) against or affecting the Leased Property or any member of the Leasing Group (or any Affiliate thereof) before any Governmental Authority which could prevent or hinder the consummation of the transactions contemplated hereby or call into question the validity of any of the Lease Documents or any action taken or to be taken in connection with the transactions contemplated thereunder or which in any single case or in the aggregate might result in any material adverse change in the business, prospects, condition, affairs of any member of the Leasing Group or the Leased Property (including, without limitation, any action to revoke, withdraw or suspend any Permit necessary or desirable for the operation of the Leased Property in accordance with its Primary Intended Use and any action to transfer or relocate any such Permit to a location other than the Leased Property) or any material impairment of the right or ability of any member of the Leasing Group to carry on its operations as presently conducted or, with respect to the Project, proposed upon

Completion of the Project to be conducted with respect to the Leased Property or with respect to its obligations under the Lease Documents.

(b) Neither the Facility nor any member of the Leasing Group has received any notice of any claim, requirement or demand of any Governmental Authority, Accreditation Body, if



any, Third Party Payor or any insurance body having or claiming any licensing, certifying, supervising, evaluating or accrediting authority over the Leased Property to rework or redesign the Leased Property, its professional staff or its professional services, procedures or practices in any material respect or to provide additional furniture, fixtures, equipment or inventory or to otherwise take action so as to make the Leased Property conform to or comply with any Legal Requirement;

(c) The most recent utilization reviews, if any, relating to the Leased Property by all applicable Third Party Payors, Accreditation Bodies and Governmental Authorities and all applicable reviews or scrutiny by any managed care or utilization review companies, if any, have not had a material adverse impact on the utilization of units or programs at any of the Leased Property. No claims or assertions have been made in any utilization review that any of the practices or procedures used at the Leased Property are improper or inappropriate other than such claims or assertions which singly and in the aggregate will not have a material adverse impact on the Leased Property; and

(d) Lessee has delivered or caused to be delivered to Lessor true and correct copies of all licenses, inspection surveys and accreditation reviews, if any, relating to the Leased Property, issued by any Governmental Authority during the most recent licensing period, together with all plans of correction relating thereto.

10.1.15 COMPLIANCE WITH LEGAL AND OTHER REQUIREMENTS.

(a) Lessee and the Leased Property (with respect to the Project, to the extent consistent with the stage of construction of the Project) and the ownership, construction, development, maintenance, management, repair, use, occupancy, possession and operation thereof comply with all applicable Legal Requirements and there is no claim of any violation thereof known to Lessee. Without limiting the foregoing, Lessee has obtained all Permits that are necessary or desirable to operate the Leased Property in accordance with its Primary Intended Use or, with respect to the Project, reasonably expects to obtain such Permits prior to, or upon, the Completion of the Project.

53

(b) Except as previously delivered to Lessor pursuant to Section 10.1.14(d) hereof, there are no outstanding notices of deficiencies, notices of proposed action or orders of any kind relating to the Leased Property, if any, issued by any Governmental Authority requiring conformity to any of the applicable Legal Requirements.

10.1.16 NO ACTION BY GOVERNMENTAL AUTHORITY OR ACCREDITATION BODY. There is no action pending or, to the best knowledge and belief of Lessee, recommended, by any Governmental Authority to revoke, repeal, cancel, modify, withdraw or suspend any Permit or Contract or to take any other action of any other type which could have a material adverse effect on the Leased Property.

10.1.17 PROPERTY MATTERS.

(a) The Leased Property is free and clear of

agreements, covenants and Liens, except those agreements, covenants and Liens to which this Lease is expressly subject, whether presently existing, as are listed on EXHIBIT B or were listed on the UCC lien search results delivered to Lessor at or prior to the execution and delivery of this Lease (and were not required to be terminated as a condition of the execution and delivery of this Lease), or which may hereafter be created in accordance with the terms hereof (collectively referred to herein as the "Permitted Encumbrances"); and Lessee shall warrant and defend Lessor's title to the Leased Property against any and all claims and demands of every kind and nature whatsoever;

(b) There is no Condemnation or similar proceeding pending with respect to or affecting the Leased Property, and Lessee is not aware, to the best of Lessee's knowledge and belief, that any such proceeding is contemplated;

(c) No part of the Collateral or the Leased Property has been damaged by any fire or other casualty. The Leased Improvements (except the Project prior to completion of the Project) are in good operating condition and repair, ordinary wear and tear excepted, free from known defects in construction or design;

(d) None of the Permitted Encumbrances has or is likely to have a material adverse impact upon, nor interfere with or impede, in any material respect, the operation of the Leased Property in accordance with the Primary Intended Use;

54

(e) All buildings, facilities and other improvements necessary, both legally and practically, for the proper and efficient operation of the Facility are (or in the case of the Project, will be) located upon the Leased Property and all real property and personal property currently utilized by Lessee is (or in the case of the Project, will be) included within the definition of the Leased Property or the Collateral;

(f) The Leased Property abuts on and has direct vehicular access to a public road or access to a public road via permanent, irrevocable, appurtenant easements;

(g) The Leased Property constitutes a parcel(s) for real estate tax purposes separate from any real property that does not constitute a portion of the Leased Property and no portion of any real property that does not constitute a portion of the Leased Property is part of the same tax parcel as any part of the Leased Property;

(h) All utilities necessary for the use and operation of the Facility are available to the lot lines of the Leased Property:

(i) in sufficient supply and capacity;

(ii) through validly created and existing easements of record appurtenant to or encumbering the Leased Property (which easements shall not impede or restrict the operation of the Facility);

(iii) without need for any Permits and/or Contracts to be issued by or entered into with any Governmental Authority, except as already obtained or executed, as the case may be, or as otherwise shown to the satisfaction of Lessor to be readily obtainable; and

(iv) Lessee has made no structural alterations or improvements to any of the Leased Improvements that changed the foot-print of any of the Leased Improvements, added an additional story to any of the Leased Improvements, decreased the amount of parking available on the Leased Property or otherwise involved any alteration which would be regulated by applicable zoning requirements, in each case without the express written consent of Lessor. Except for matters which have been disclosed to Lessor or concerning which Lessor has independent actual knowledge, Lessee has no actual knowledge of any such structural alteration or

55

improvement made to any of the Leased Improvements during the last ten (10) years and has no knowledge of any such structural alteration or renovation made to any of the Leased Improvements or any such decrease in parking during such period.

10.1.18 THIRD PARTY PAYOR AGREEMENTS.

Neither Lessee nor the Facility is qualified as a provider of services under or participates in any Third Party Payor Programs and neither Lessor nor the Facility is accredited by any Accreditation Body.

10.1.19 RATE LIMITATIONS. The State currently imposes no restrictions or limitations on rates which may be charged to private pay residents receiving services at the Facility.

10.1.20 FREE CARE. There are no Contracts, Permits or applicable Legal Requirements which require that, a percentage of units in any program at the Facility be reserved for Medicaid or Medicare eligible residents or that the Facility provide a certain amount of welfare, free or charity care or discounted or government assisted resident care.

10.1.21 NO PROPOSED CHANGES. Lessee has no actual knowledge of any applicable Legal Requirements which have been enacted, promulgated or issued within the eighteen (18) months preceding the date of this Lease or any proposed applicable Legal Requirements currently pending in the State which may materially adversely affect rates at the Facility (or any program operated by a member of the Leasing Group in conjunction with the Facility) or may result in the likelihood of increased competition at the Facility or the imposition of Medicaid, Medicare, charity, free care, welfare or other discounted or government assisted residents at the Facility or require that Lessee or the Facility obtain a certificate of need, Section 1122 approval or the equivalent, which Lessee or the Facility does not currently possess.

10.1.22 ERISA. No employee pension benefit plan

maintained by any member of the Leasing Group has any accumulated funding deficiency within the meaning of the ERISA, nor does any member of the Leasing Group have any material liability to the PBGC established under ERISA (or any successor thereto) in connection with any employee pension benefit plan (or other class of benefit which the PBGC has elected to insure), and there have been no "reportable events" (not waived) or "prohibited transactions" with respect to any such plan, as those terms are

56

defined in Section 4043 of ERISA and Section 4975 of the Internal Revenue Code of 1986, as now or hereafter amended, respectively.

10.1.23 NO BROKER. No member of the Leasing Group nor any of their respective Affiliates has dealt with any broker or agent in connection with the transactions contemplated by the Lease Documents.

10.1.24 NO IMPROPER PAYMENTS. No member of the Leasing Group nor any of their respective Affiliates has:

(a) made any contributions, payments or gifts of its funds or property to or for the private use of any government official, employee, agent or other Person where either the payment or the purpose of such contribution, payment or gifts is illegal under the laws of the United States, any state thereof or any other jurisdiction (foreign or domestic);

(b) knowingly established or maintained any unrecorded fund or asset for any purpose or knowingly made any false or artificial entries on any of its books or records for any reason;

(c) made any payments to any Person with the intention or understanding that any part of such payment was to be used for any other purpose other than that described in the documents supporting the payment; or

(d) made any contribution, or reimbursed any political gift or contribution made by any other Person, to candidates for public office, whether federal, state or local, where such contribution would be in violation of applicable law.

10.1.25 NOTHING OMITTED. Neither this Lease, nor any of the other Lease Documents, nor any certificate, agreement, statement or other document, including, without limitation, any financial statements concerning the financial condition of any member of the Leasing Group, furnished to or to be furnished to Lessor or its attorneys in connection with the transactions contemplated by the Lease Documents, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to prevent all statements contained herein and therein from being misleading. There is no fact within the special knowledge of Lessee which has not been disclosed herein or in writing to Lessor that materially adversely affects, or in the future, insofar as Lessee can reasonably foresee

based on the information currently available to it after due inquiry, may materially adversely affect the business, properties, assets or condition, financial or otherwise, of any member of the Leasing Group or the Leased Property.

10.1.26 NO MARGIN SECURITY. Lessee is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System), and no part of the proceeds of the Meditrust Investment will be used to purchase or carry any margin security or to extend credit to others for the purpose of purchasing or carrying any margin security or in any other manner which would involve a violation of any of the regulations of the Board of Governors of the Federal Reserve System. Lessee is not an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

10.1.27 NO DEFAULT. No event or state of facts which constitutes, or which, with notice or lapse of time, or both, could constitute, a Lease Default has occurred and is continuing.

10.1.28 PRINCIPAL PLACE OF BUSINESS. The principal place of business and chief executive office of Lessee is located at 3131 Elliott Avenue, Suite 500, Seattle, Washington 98121-2162 (the "Principal Place of Business").

10.1.29 LABOR MATTERS. There are no proceedings now pending, nor, to the best of Lessee's knowledge, threatened with respect to the operation of the Facility before the National Labor Relations Board, State Commission on Human Rights and Opportunities, State Department of Labor, U.S. Department of Labor or any other Governmental Authority having jurisdiction of employee rights with respect to hiring, tenure and conditions of employment, and no member of the Leasing Group has experienced any material controversy with any Facility administrator or other employee of similar stature or with any labor organization which has, or is likely, to have a materially adverse effect upon the financial condition and/or operations of the Facility.

10.1.30 INTELLECTUAL PROPERTY. Lessee is duly licensed or authorized to use all (if any) copyrights, rights of reproduction, trademarks, trade-names, trademark applications, service marks, patent applications, patents and patent license rights, (all whether registered or unregistered, U.S. or foreign), inventions, franchises, discoveries, ideas, research, engineering, methods, practices, processes, systems, formulae, designs, drawings, products, projects, improvements, developments,

know-how and trade secrets which are used in or necessary for the development and/or operation of the Facility in accordance with its Primary Intended Use, without conflict with or infringement of any, and subject to no restriction, lien, encumbrance, right, title or interest in others.

10.1.31 MANAGEMENT AGREEMENTS. There is no

Management Agreement in force and effect as of the date hereof.

10.2 CONTINUING EFFECT OF REPRESENTATIONS AND WARRANTIES. All representations and warranties contained in this Lease and the other Lease Documents shall constitute continuing representations and warranties which shall remain true, correct and complete throughout the Term. Notwithstanding the provisions of the foregoing sentence but without derogation from any other terms and provisions of this Lease, including, without limitation, those terms and provisions containing covenants to be performed or conditions to be satisfied on the part of Lessee, the representations and warranties contained in Sections 10.1.6, 10.1.7, 10.1.10, 10.1.14, 10.1.15, 10.1.17(b), 10.1.17(c), 10.1.17(i), 10.1.18, 10.1.19, 10.1.20, 10.1.21, 10.1.22, 10.1.27, 10.1.29, in the second sentence of Section 10.1.12, in the second and third sentences of Section 10.1.13 and in the second sentence of Section 10.1.25 shall not constitute continuing representations and warranties throughout the Term provided, however, that nothing contained in the first sentence of Section 10.1.25 shall be construed as imposing any obligation on Lessee to update after the Commencement Date the information furnished to Lessor prior to the execution and delivery of this Lease but without derogation of any other obligation Lessee has under this Lease to provide information to Lessor.

## ARTICLE 11

### FINANCIAL AND OTHER COVENANTS

11.1 STATUS CERTIFICATES. At any time, and from time to time, upon request from the other, Lessee and Lessor shall furnish to the other, within ten (10) Business Days' after receipt of such request, an Officer's Certificate certifying that this Lease is unmodified and in full force and effect (or that this Lease is in full force and effect as modified and setting forth the modifications) and the dates to which the Rent has been paid. Any Officer's Certificate furnished pursuant to this Section at the request of Lessor shall be addressed to any prospective purchaser or mortgagee of the Leased Property as Lessor may request and may be relied upon by Lessor and any such prospective purchaser or mortgagee of the Leased Property.

59

### 11.2 FINANCIAL STATEMENTS; REPORTS; NOTICE AND INFORMATION.

11.2.1 OBLIGATION TO FURNISH. Lessee will furnish and shall cause to be furnished to Lessor the following statements, information and other materials:

(a) ANNUAL STATEMENTS. Within ninety (90) days after the end of each of their respective fiscal years, (i) a copy of the Consolidated Financials for each of (x) Lessee, (y) the Guarantor and (z) any Sublessee which is an Affiliate of Lessee for the preceding fiscal year, certified and, in the case of Guarantor, audited by, and with the unqualified opinion of, independent certified public accountants acceptable to Lessor and certified as true and correct by Lessee, the Guarantor or the applicable Sublessee, as the case may be (and, without limiting anything else contained herein, the Consolidated

Financials for Lessee and for each such Sublessee shall include a detailed balance sheet for Leased Property as of the last day of such fiscal year and a statement of earnings from the Leased Property for such fiscal year showing, among other things, all rents and other income therefrom and all expenses paid or incurred in connection with the operation of the Leased Property); (ii) separate statements, certified as true and correct by Lessee, the Guarantor, any Manager which is an Affiliate of Lessee and each such Sublessee which is an Affiliate of Lessee, stating whether, to the best of the signer's knowledge and belief after making due inquiry, Lessee, the Guarantor, such Manager or any such Sublessee, as the case may be, is in default in the performance or observance of any of the terms of this Lease or any of the other Lease Documents and, if so, specifying all such defaults, the nature thereof and the steps being taken to immediately remedy the same; (iii) a copy of all letters from the independent certified accountants engaged to perform the annual audits referred to above, directed to the management of the Guarantor regarding the existence of any reportable conditions or material weaknesses; (iv) a statement certified as true and correct by Lessee setting forth all Subleases as of the last day of such fiscal year, the respective areas demised thereunder, the names of the Sublessees thereunder, the respective expiration dates of the Subleases, the respective rentals provided for therein, and such other information pertaining to the Subleases as may be reasonably requested by Lessor; and (v) evidence satisfactory to Lessor that Lessee has fulfilled its obligation to make the

Annual Facility Upgrade Expenditure, provided, however, that no such evidence shall be required to be submitted until the fourth Lease Year with respect to that portion of the Leased Property comprised only of the Project.

(b) MONTHLY STATEMENTS OF LESSEE. Within thirty (30) days after the end of each calendar month during the pendency of this Lease, (i) a statement certified as true and correct by Lessee setting forth the Gross Revenues of the Leased Property for the immediately preceding month, (ii) an unaudited, detailed month and year to date income and expense statement for the Leased Property which shall include a comparison to corresponding budget figures, occupancy statistics (including the actual number of residents, the number of units available and total resident days for such month) and resident mix breakdowns (for each resident day during such month classifying residents by the type of care required and source of payment) and (iii) an express written calculation showing the compliance or non-compliance, as the case may be, with the specific financial covenants set forth in Section 11.3 for the applicable period, including, with respect to the calculation of Lessee's Debt Coverage Ratio, a schedule substantially in the form attached hereto as EXHIBIT E.

(c) QUARTERLY STATEMENTS. Within thirty (30) days after the end of each respective fiscal quarter, unaudited Consolidated Financials for each

of (i) Lessee and (ii) each Sublessee which is an Affiliate of Lessee certified as true and correct by Lessee or such applicable Sublessee, as the case may be and within thirty (30) days after each calendar quarter, Lessee shall also provide Lessor with a calculation of the Additional Rent payable for such quarter.

(d) QUARTERLY STATEMENTS OF THE GUARANTOR. Within forty-five (45) days after the end of each fiscal quarter, unaudited Consolidated Financials for the Guarantor certified as true and correct by the Guarantor.

(e) PERMITS AND CONTRACTS. Within ten (10) days after the issuance or the execution thereof, as the case may be, true and complete copies of (i) all Permits which constitute operating licenses for the Facility issued by any Governmental Authority having jurisdiction over assisted living matters and (ii) Contracts (involving payments in the aggregate in excess of

61

\$100,000 per annum), including, without limitation, all Provider Agreements.

(f) CONTRACT NOTICES. Promptly but in no event more than ten (10) days after the receipt thereof, true and complete copies of any notices, consents, terminations or statements of any kind or nature relating to any of the Contracts (involving payments in the aggregate in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000) per annum) other than those issued in the ordinary course of business.

(g) PERMIT OR CONTRACT DEFAULTS. Promptly but in no event more than ten (10) days after the receipt thereof, true and complete copies of all surveys, follow-up surveys, licensing surveys, complaint surveys, examinations, compliance certificates, inspection reports, statements (other than those statements that are issued in the ordinary course of business), if any, terminations and notices of any kind (other than those notices that are furnished in the ordinary course of business) issued or provided to Lessee, the Manager or any Sublessee by any Governmental Authority, Accreditation Body, or any Third Party Payor, including, without limitation, any notices pertaining to any delinquency in, or proposed revision of, Lessee's, the Manager's or any Sublessee's obligations under the terms and conditions of any Permits or Contracts now or hereafter issued by or entered into with any Governmental Authority, Accreditation Body, or Third Party Payor and the response(s) thereto made by or on behalf of Lessee, the Manager or any Sublessee.

(h) OFFICIAL REPORTS. Upon completion or filing thereof, complete copies of all applications (other than those that are furnished in the ordinary course of business), notices (other than those that are furnished in the ordinary course of business), statements, annual reports, cost reports and other reports or filings of any kind (other than those that are furnished



in the ordinary course of business) provided by Lessee, the Manager or any Sublessee to any Governmental Authority, Accreditation Body, or any Third Party Payor with respect to the Leased Property.

62

(i) OTHER INFORMATION. With reasonable promptness, such other information as Lessor may from time to time reasonably request respecting (i) the financial condition and affairs of each member of the Leasing Group and the Leased Property and (ii) the licensing and operation of the Leased Property; including, without limitation, financial statements, certificates and consents from accountants and all other financial and licensing/operational information as may be required or requested by any Governmental Authority.

(j) DEFAULT CONDITIONS. As soon as possible, and in any event within five (5) days after the occurrence of any Lease Default, or any event or circumstance which, with the giving of notice or the passage of time, or both, would constitute a Lease Default, a written statement of Lessee setting forth the details of such Lease Default, event or circumstance and the action which Lessee proposes to take with respect thereto.

(k) OFFICIAL ACTIONS. Promptly but in no event more than ten (10) days after the commencement thereof, notice of all actions, suits and proceedings before any Governmental Authority or Accreditation Body, which could have a material adverse effect on any member of the Leasing Group or the Leased Property.

(l) AUDIT REPORTS. Promptly but in no event more than ten (10) days after receipt, a copy of all audits or reports submitted to Lessee by any independent public accountant in connection with any annual, special or interim audits of the books of Lessee and, if requested by Lessor, any letter of comments directed by such accountant to the management of Lessee.

(m) ADVERSE DEVELOPMENTS. Promptly but in no event more than ten (10) days after Lessee acquires knowledge thereof, written notice of:

(i) the potential termination of any Permit or Provider Agreement necessary for the operation of the Leased Property;

(ii) any loss, damage or destruction to or of the Leased Property in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) (regardless of whether the same is covered by insurance);

(iii) any material controversy involving Lessee or any Sublessee which is an Affiliate of Lessee and (x) Facility administrator or Facility employee of similar stature or (y) any labor organization or (z) the Manager or any employee of the Manager which has, or is reasonably likely to have, a materially adverse effect on the financial condition and/or operations of the Facility;

(iv) any controversy that calls into question the eligibility of the Facility for the participation in any Medicaid, Medicare or other Third Party Payor Program in which the Facility is participating;

(v) any refusal of reimbursement by any Third Party Payor which, singularly or together with all other such refusals by any Third Party Payors, could reasonably be expected to have a material adverse effect on the financial condition of Lessee or any Sublessee which is an Affiliate of Lessee; and

(vi) any fact within the special knowledge of any member of the Leasing Group, or any other development in the business or affairs of any member of the Leasing Group, which could reasonably be expected to be materially adverse to the

business, properties, assets or condition, financial or otherwise, of any member of the Leasing Group or the Leased Property.

(n) RESPONSES TO INSPECTION REPORTS. Within thirty (30) days after receipt of an

inspection report relating to the Leased Property from Lessor, a written response describing in detail prepared plans to address concerns raised by the inspection report.

(o) PUBLIC INFORMATION. Upon the completion or filing, mailing or other delivery thereof, complete copies of all financial statements, reports, notices and proxy statements, if any, sent by any member of the Leasing Group (which is a publicly held corporation) to its shareholders and of all reports, if any, filed by any member of the Leasing Group (which is a publicly held corporation) with any securities exchange or with the Securities Exchange Commission.

(p) ANNUAL BUDGETS. Prior to the end of each Fiscal Year, Lessee, any Sublessee which is an Affiliate of Lessee and/or any Manager which is an Affiliate of Lessee shall submit to Lessor a preliminary annual financial budget for the Facility for the next Fiscal Year, a preliminary capital expenditures budget for the Facility for the next Fiscal Year and a report detailing the capital expenditures made in the then current Fiscal Year and on or before the end of the first month of each Fiscal Year, Lessee, any such Sublessee and/or any such Manager shall submit to Lessor revised finalized versions of such budgets and report.

(q) WORKING CAPITAL LOAN. Promptly after receipt thereof, copies of any notices with respect to default from a lender of a Working Capital Loan.

11.2.2 RESPONSIBLE OFFICER. Any certificate, instrument, notice, or other document to be provided to Lessor hereunder by any member of the Leasing Group shall be signed by an executive officer of such member (in the event that any of the foregoing is not an individual), having a position of Vice President or higher and with respect to financial matters, any such certificate, instrument, notice or other document shall be signed by the chief financial officer of such member.

65

11.2.3 NO MATERIAL OMISSION. No certificate, instrument, notice or other document, including without limitation, any financial statements furnished or to be furnished to Lessor pursuant to the terms hereof or of any of the other Lease Documents shall contain any untrue statement of a material fact or shall omit to state any material fact necessary in order to prevent all statements contained therein from being misleading.

11.2.4 CONFIDENTIALITY. Lessor shall afford any information received pursuant to the provisions of the Lease Documents the same degree of confidentiality that Lessor affords similar information proprietary to Lessor; provided, however, that Lessor shall have the unconditional right to (a) disclose any such information as Lessor deems necessary or appropriate in connection with any sale, transfer, conveyance, participation or assignment of the Leased Property or any of the Lease Documents or any interest therein and (b) use such information in any litigation or arbitration proceeding between Lessor and any

member of the Leasing Group. Without limiting the foregoing, Lessor may also utilize any information furnished to it hereunder as and to the extent (i) counsel to Lessor determines that such utilization is necessary pursuant to 15 U.S.C. 77a-77aa or 15 U.S.C. 78a-78jj and the rules and regulations promulgated thereunder, (ii) Lessor is required or requested by any Governmental Authority to disclose any such information and/or (iii) Lessor is requested to disclose any such information by any of the Meditrust Entities' lenders or potential lenders. Lessor shall not be liable in any way for any subsequent disclosure of such information by any Person to which Lessor has provided such information in accordance with the terms hereof. Nevertheless, in connection with any such disclosure, Lessor shall inform the recipient of any such information of the confidential nature thereof. Lessor shall observe any prohibitions or limitations on the disclosure of any such information under applicable confidentiality law or regulations, to the extent that the same are applicable to such information.

11.3 FINANCIAL COVENANTS. Lessee covenants and agrees that, throughout the Term and as long as Lessee is in possession of the Leased Property:

66

11.3.1 DEBT COVERAGE RATIO OF LESSEE.

From and after the second anniversary of the date hereof until the fourth anniversary hereof, Lessee shall maintain with respect to the Facility and all other Group Two Acquisition Facilities for each Fiscal Quarter an aggregate Debt Coverage Ratio equal to or greater than 1.1 to 1 and from and after the fourth anniversary thereof and for the remainder of the Term, Lessee shall maintain with respect to the Facility and all other Group Two Acquisition Facilities each Fiscal Quarter an aggregate Debt Coverage Ratio equal to or greater than 1.2 to 1.

11.3.2 INTENTIONALLY DELETED.

11.3.3 INTENTIONALLY DELETED.

11.3.4 INTENTIONALLY DELETED.

11.3.5 CURRENT RATIO - GUARANTOR. From and after December 31, 1999 and for the remainder of the Term, the Guarantor shall maintain a ratio of Consolidated Current Assets to Consolidated Current Liabilities equal to or greater than 1 to 1 as of the end of each fiscal year.

11.3.6 INTENTIONALLY DELETED.

11.3.7 NET WORTH - GUARANTOR. The Guarantor shall maintain, at all times, a Net Worth of not less than TWENTY MILLION DOLLARS (\$20,000,000).

11.3.8 NO INDEBTEDNESS. Lessee shall not create, incur, assume or suffer to exist any liability for borrowed money except (i) Indebtedness to Lessor under the Lease Documents and, (ii) Impositions allowed pursuant to the provisions of the Lease, (iii) unsecured normal trade debt incurred upon customary terms in the ordinary course of business, (iv) Indebtedness created in connection with any financing of any Capital Addition, provided, that each such financing has been approved by Lessor in accordance with the terms of Article 9 hereof, (v) Indebtedness to any Affiliate, provided, that, such Indebtedness is fully subordinated to this Lease pursuant to the Affiliated Party Subordination Agreement, (vi) other Indebtedness of Lessee in the aggregate amount not to exceed TWO HUNDRED THOUSAND DOLLARS (\$200,000) incurred, for the exclusive use of the Leased Property, on account of purchase money indebtedness or finance lease arrangements, each of which shall not exceed the fair market value of the assets or property acquired or leased and shall not extend to any assets or property other than those purchased or leased and purchase money security interests in equipment and equipment leases which comply with the provisions

67

of Section 6.1.2 and (vii) Indebtedness specifically permitted by the Meditrust/Emeritus Transaction Documents.

11.3.9 NO GUARANTIES. Lessee shall not assume, guarantee, endorse, contingently agree to purchase or otherwise become directly or contingently liable (including, without limitation, liable by way of agreement, contingent or otherwise, to purchase, to provide funds for payment, to supply funds to or otherwise to invest in any debtor or otherwise to assure any creditor against loss) in connection with any Indebtedness of any other Person, except by the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business and except for a guaranty of the Indebtedness of the Guarantor in connection with a Working Capital Loan which expressly limits recourse under such guaranty to the Receivables.

11.4 AFFIRMATIVE COVENANTS. Lessee covenants and agrees that throughout the Term and any periods thereafter that Lessee remains in possession of the Leased Property:

11.4.1 MAINTENANCE OF EXISTENCE. If Lessee is a corporation, trust or partnership, during the entire time that this Lease remains in full force and effect, Lessee shall keep in effect its existence and rights as a corporation, trust or partnership under the laws of the state of its incorporation or formation and its right to own property and transact business in the State.

11.4.2 MATERIALS. Except as provided in Section 6.1.2, Lessee shall not suffer the use in connection with any renovations or other construction relating to the Leased Property of any materials, fixtures or equipment intended to become part of the Leased Property which are purchased upon lease or conditional bill of sale or to which Lessee does not have absolute and unencumbered title, and Lessee covenants to cause to be paid punctually all sums becoming due for labor, materials, fixtures or equipment used or purchased in connection with any such renovations or construction, subject to Lessee's right to contest to the extent provided for in Article 15.

11.4.3 COMPLIANCE WITH LEGAL REQUIREMENTS AND APPLICABLE AGREEMENTS. Lessee and the Leased Property and all uses thereof shall comply with (i) all applicable Legal Requirements (except to the extent being duly contested in accordance with the terms hereof), (ii) all Permits and Contracts, (iii) all Insurance Requirements, (iv) the Lease Documents, (v) the Permitted Encumbrances and (vi) the Appurtenant Agreement.

68

11.4.4 BOOKS AND RECORDS. Lessee shall cause to be kept and maintained, and shall permit Lessor and its representatives to inspect at all reasonable times and upon reasonable notice, accurate books of accounts in which complete entries will be made in accordance with GAAP reflecting all financial transactions of Lessee (showing, without limitation, all materials ordered and received and all disbursements, accounts payable and accounts receivable in connection with the operation of the Leased Property).

11.4.5 PARTICIPATION IN THIRD PARTY PAYOR PROGRAMS. If Lessee or a Sublessee which is an Affiliate of Lessee elects to participate in Third Party Payor Programs, Lessee or such Sublessee shall remain eligible to participate in such Third Party Payor Programs in accordance with all requirements thereof (including, without limitation, all applicable Provider Agreements), if and to the extent remaining eligible shall be necessary for the prudent operation of the Facility in the good faith exercise of commercially reasonable business judgment.

11.4.6 CONDUCT OF ITS BUSINESS. Lessee will maintain, and cause any Sublessee and any Manager to maintain, experienced and competent professional management with respect to its business and with respect to the Leased Property. Lessee, any Sublessee and any Manager shall conduct, in the ordinary course, the operation of the Facility, and Lessee and any Sublessee which is an Affiliate of Lessee shall not enter into any other business or venture during the Term or such time as Lessee or any such Sublessee is in possession of the Leased Property other than activities in which Lessee or such Sublessee are permitted to engage by the provisions of the Meditrust/Emeritus Transaction Documents.

11.4.7 ADDRESS. Lessee shall provide Lessor thirty (30) days' prior written notice of any change of its Principal Place of Business from its current Principal Place of Business. Lessee shall maintain the Collateral, including without limitation, all books and records relating to its business, solely at its Principal Place of Business and at the Leased Property. Lessee shall not (a) remove the Collateral, including, without limitation, any books or records relating to Lessee's business from either the Leased Property or Lessee's Principal Place of Business or (b) relocate its Principal Place of Business until after receipt of a certificate from Lessor, signed by an officer thereof, stating that Lessor has, to its satisfaction, obtained all documentation that it deems necessary or desirable to obtain, maintain, perfect and confirm the first priority security interests granted in the Lease Documents.

11.4.8 SUBORDINATION OF AFFILIATE TRANSACTIONS. Without limiting the provisions of any other Section of this Lease or the Affiliated Party Subordination Agreement, any payments to be made by Lessee to (a) any member of the Leasing Group (or any of its Affiliates) or (b) any Affiliate of Lessee, in connection with any transaction between Lessee and such Person, including, without limitation, the purchase, sale or exchange of any property, the rendering of any service to or with any such Person (including, without limitation, all allocations of any so-called corporate or central office costs, expenses and charges of any kind or nature) or the making of any loan or other extension of credit or the making of any equity investment, shall be subordinate to the complete payment and performance of the Lease Obligations; provided, however, that all such subordinated payments may be paid at any time unless: (x) after giving effect to such payment, Lessee shall be unable to comply with any of its obligations under any of the Lease Documents or (y) a Lease Default has occurred and is continuing and has not been expressly waived in writing by Lessor or an event or state of facts exists, which, with the giving of notice or the passage of time, or both, would constitute a Lease Default.

11.4.9 INSPECTION. At reasonable times and upon reasonable notice, Lessee shall permit Lessor and its authorized representatives (including, without limitation, the Consultants) to inspect the Leased Property as provided in Section 7.1 above, provided, however, that, in the event results of any such testing or inspection reflect the same satisfactory results as the results of a similar testing or inspection initiated by Lessor within the prior twelve (12) months period, the costs and expense of such testing or inspection shall be the responsibility of Lessor.

11.4.10 ANNUAL FACILITY UPGRADE EXPENDITURE. Lessee shall spend an amount equal to the Annual Facility Upgrade Expenditure on Upgrade Renovations to the Facility each Lease Year provided, however, that such expenditures shall not be required until the fourth Lease Year with respect to that portion of the Leased Property consisting of units added to the Leased Property through construction of the Project. Lessee will furnish and shall cause to be furnished to Lessor evidence satisfactory to Lessor that Lessee has fulfilled its obligation to make the Annual Facility Upgrade Expenditure within ninety (90) days after the end of Lessee's Fiscal year, provided, however, that no such evidence shall be required to be submitted until the fourth Lease Year with respect to that portion of the Leased Property comprised only of the Project.

11.5 ADDITIONAL NEGATIVE COVENANTS. Lessee covenants and agrees that, throughout the Term and such time as Lessee remains in possession of the Leased Property:

11.5.1 RESTRICTIONS RELATING TO LESSEE. Except as may otherwise be expressly provided in Section 19.4 or in any of the other Lease Documents, Lessee shall not, without the

prior written consent of Lessor, in each instance, which consent may be withheld in the sole and absolute discretion of Lessor:

(a) convey, assign, hypothecate, transfer, dispose of or encumber, or permit the conveyance, assignment, transfer, hypothecation, disposal or encumbrance of all or any part of any legal or beneficial interest in this Lease, its other assets or the Leased Property except as expressly permitted by the terms of this Lease Agreement; provided, however, that this restriction shall not apply to (i) the Permitted Encumbrances that may be created after the date hereof pursuant to the Lease Documents; (ii) Liens created in accordance with Section 6.1.2 against Tangible Personal Property securing Indebtedness permitted under Section 11.3.8(v); (iii) the sale, conveyance, assignment, hypothecation, lease or other transfer of any material asset or assets (whether now owned or hereafter acquired), the fair market value of which equals or is less than TWENTY-FIVE THOUSAND DOLLARS (\$25,000), individually, or ONE HUNDRED THOUSAND DOLLARS (\$100,000) collectively; (iv) without limitation as to amount, the disposition in the ordinary course of business of any obsolete, worn out or defective fixtures, furnishings or equipment used in the operation of the Leased Property provided that the same are replaced with fixtures, furnishings or equipment of equal or greater utility or value or Lessee provides Lessor with an explanation (reasonably satisfactory to Lessor) as to why such fixtures, furnishings or equipment is no longer required in connection with the operation of the Leased Property; (v) without limitation as to amount, any sale of inventory by Lessee in the ordinary course of business; and (vi) subject to the terms of the Negative Pledge Agreement and the Affiliated Party Subordination Agreement, distributions to the shareholders of Lessee;

(b) permit the use of the Facility for any purpose other than the Primary Intended Use and the Other Permitted Uses; or

71

(c) liquidate, dissolve or merge or consolidate with any other Person except, subject to Lessor's prior written consent, which consent shall not be unreasonably withheld, a Meditrust/Emeritus Transaction Affiliate.

11.5.2 NO LIENS. Lessee will not directly or indirectly create or allow to remain and will promptly discharge at its expense any Lien, title retention agreement or claim upon or against the Leased Property (including Lessee's interest therein) or Lessee's interest in this Lease or any of the other Lease Documents, or in respect of the Rent, excluding (a) this Lease and any permitted Subleases, (b) the Permitted Encumbrances, (c) Liens which are consented to in writing by Lessor, (d) Liens for those taxes of Lessor which Lessee is not required to pay hereunder, (e) Liens of mechanics, laborers, materialmen, suppliers or vendors for sums either not yet due or being contested in strict compliance with the terms and conditions of Article 15, (f)



any Liens which are the responsibility of Lessor pursuant to the provisions of Article 20, (g) Liens for Impositions which are either not yet due and payable or which are in the process of being contested in strict compliance with the terms and conditions of Article 15 (h) the Liens incurred pursuant to the provisions of Section 6.1.2 and (i) involuntary Liens caused by the actions or omissions of Lessor.

11.5.3 LIMITS ON AFFILIATE TRANSACTIONS.

Lessee shall not enter into any transaction with any Affiliate, including, without limitation, the purchase, sale or exchange of any property, the rendering of any service to or with any Affiliate and the making of any loan or other extension of credit, except in the ordinary course of, and pursuant to the reasonable requirements of, Lessee's business and upon fair and reasonable terms no less favorable to the Lessee than would be obtained in a comparable arms'-length transaction with any Person that is not an Affiliate.

11.5.4 NON-COMPETITION. Lessee acknowledges

that upon and after any termination of this Lease, any competition by any member of the Leasing Group with any subsequent owner or subsequent lessee of the Leased Property (the "Purchaser") would cause irreparable harm to Lessor and any such Purchaser. To induce Lessor to enter into this Lease, Lessee agrees that, from and after the date hereof and thereafter until (a) in the case of the expiration of the Initial Term or a termination of this Lease, the fifth (5th) anniversary of the termination hereof or of the expiration of the Initial Term, as applicable, and (b) in the case of an expiration of any of the Extended Terms, the second (2nd)

anniversary of the expiration of the applicable Extended Term, no member of the Leasing Group nor any Person holding or controlling, directly or indirectly, any interest in any member of the Leasing Group (collectively, the "Limited Parties") shall be involved in any capacity in or lend any of their names to or engage in any capacity in any assisted living facility, center, unit or program (or in any Person engaged in any such activity or any related activity competitive therewith) other than (a) those set forth on Schedule 11.5.4 annexed hereto, (b) those activities in which a Meditrust/Emeritus Transaction Affiliate is permitted to engage by the provisions of the Meditrust/Emeritus Transaction Documents which relate to any such facility, center, unit or program and (c) the acquisition of an ownership interest in any such facility, center, unit or program which is part of a single transaction in which an ownership interest in at least four (4) other facilities, centers, units or programs (provided, however, that if such acquisition occurs within the last twelve month period of the Initial Term or any of the Extended Terms, Lessee shall have the benefit of this clause (c) only if at the time such acquisition occurs Lessee has already (x) exercised in that twelve month period its right under Section 1.3 hereof to extend the Term for another Extended Term or (y) given a Purchase Option Notice and has waived any right to rescind the same based upon the determination of the Fair Market Value of the Leased Property), whether such competitive activity shall be as an officer, director, owner, employee, agent, advisor, independent contractor, developer, lender, sponsor, venture capitalist, administrator, manager, investor, partner, joint venturer, consultant or other participant in any capacity whatsoever with respect to an assisted living facility, center, unit or program located within a five

(5) mile radius of the Leased Property.

Lessee hereby acknowledges and agrees that none of the time span, scope or area covered by the foregoing restrictive covenants is or are unreasonable and that it is the specific intent of Lessee that each and all of the restrictive covenants set forth hereinabove shall be valid and enforceable as specifically set forth herein. Lessee further agrees that these restrictions are special, unique, extraordinary and reasonably necessary for the protection of Lessor and any Purchaser and that the violation of any such covenant by any of the Limited Parties would cause irreparable damage to Lessor and any Purchaser for which a legal remedy alone would not be sufficient to fully protect such parties.

Therefore, in addition to and without limiting any other remedies available at law or hereunder, in the event that any of the Limited Parties breaches any of the restrictive covenants hereunder or shall threaten breach of any of such covenants, then Lessor and any Purchaser shall be entitled to obtain equitable remedies, including specific performance and injunctive relief, to prevent or

73

otherwise restrain a breach of this Section 11.5.4 (without the necessity of posting a bond) and to recover any and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses and court costs) incurred in enforcing the provisions of this Section 11.5.4. The existence of any claim or cause of action of any of the Limited Parties or any member of the Leasing Group against Lessor or any Purchaser, whether predicated on this Lease or otherwise, shall not constitute a defense to the enforcement by Lessor or any Purchaser of the foregoing restrictive covenants and the Limited Parties shall not defend on the basis that there is an adequate remedy at law.

Without limiting any other provision of this Lease, the parties hereto acknowledge that the foregoing restrictive covenants are severable and separate. If at any time any of the foregoing restrictive covenants shall be deemed invalid or unenforceable by a court having jurisdiction over this Lease, by reason of being vague or unreasonable as to duration, or geographic scope or scope of activities restricted, or for any other reason, such covenants shall be considered divisible as to such portion and such covenants shall be immediately amended and reformed to include only such covenants as are deemed reasonable and enforceable by the court having jurisdiction over this Lease to the full duration, geographic scope and scope of restrictive activities deemed reasonable and thus enforceable by said court; and the parties agree that such covenants as so amended and reformed, shall be valid and binding as through the invalid or unenforceable portion has not been included therein.

The provisions of this Section 11.5.4 shall survive the termination of the Lease and any satisfaction of the Lease Obligations in connection therewith or subsequent thereto. The parties hereto acknowledge and agree that any Purchaser may enforce the provisions of this Section 11.5.4 as a third party beneficiary.

11.5.5 INTENTIONALLY DELETED.

11.5.6 INTENTIONALLY DELETED.

11.5.7 INTENTIONALLY DELETED.

11.5.8 ERISA. Lessee shall not establish or permit any Sublessee to establish any new pension or defined benefit plan or modify any such existing plan for employees subject to ERISA, which plan provides any benefits based on past service without the advance consent of Lessor (which consent shall not be unreasonably withheld) to the amount of the aggregate past service liability thereby created.

74

11.5.9 FORGIVENESS OF INDEBTEDNESS. Lessee will not waive, or permit any Sublessee or Manager which is an Affiliate to waive any debt or claim, except in the ordinary course of its business.

11.5.10 VALUE OF ASSETS. Except as disclosed in the financial statements provided to Lessor as of the date hereof, Lessee will not write up (by creating an appraisal surplus or otherwise) the value of any assets of Lessee above their cost to Lessee, less the depreciation regularly allowable thereon.

11.5.11 CHANGES IN FISCAL YEAR AND ACCOUNTING PROCEDURES. Upon notice to Lessor, Lessee may (a) change its fiscal year or capital structure or (b) change, alter, amend or in any manner modify in accordance with GAAP any of its current accounting procedures related to the method of revenue recognition, billing procedures or determinations of doubtful accounts or bad debt expenses or permit any of its Subsidiaries to so change its fiscal year, provided that, in the event of such change, modification or alteration, Lessee and Lessor shall make such adjustments to the calculation of Additional Rent and the financial covenants contained herein as Lessor shall reasonably require to make the same consistent in result with the calculation thereof immediately prior to such change, modification or alteration.

## ARTICLE 12

### INSURANCE AND INDEMNITY

12.1 GENERAL INSURANCE REQUIREMENTS. During the Term of this Lease and thereafter until Lessee surrenders the Leased Property in the manner required by this Lease, Lessee shall at its sole cost and expense keep the Leased Property, the Tangible Personal Property located thereon and the business operations conducted on the Leased Property insured as set forth below.

12.1.1 TYPES AND AMOUNTS OF INSURANCE. Lessee's insurance shall include the following:

(a) property loss and physical damage insurance on an all-risk basis (with only such exceptions as Lessor may in its reasonable discretion approve) covering the Leased Property (exclusive of Land) for its full replacement cost, which cost shall be reset once a year at Lessor's option, with an agreed-amount endorsement and a deductible not in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000). Such insurance shall

include, without limitation, the following coverages: (i) increased cost of construction, (ii) cost of demolition, (iii) the value of the undamaged portion of the Facility and (iv) contingent liability from the operation of building laws, less exclusions provided in the normal "All Risk" insurance policy. During any period of construction, such insurance shall be on a builder's-risk, completed value, non-reporting form (including all risk and extended coverage, collapse, cost of demolition, increased cost of construction and value of undamaged portion of the improvements protection) with permission to occupy;

(b) flood insurance (if the Leased Property or any portion thereof is situated in an area which is considered a flood risk area by the U.S. Department of Housing and Urban Development or any future governmental authority charged with such flood risk analysis in the future) in limits reasonably acceptable to Lessor and subject to the availability of such flood insurance;

(c) boiler and machinery insurance (including related electrical apparatus and components) under a standard comprehensive form, providing coverage against loss or damage caused by explosion of steam boilers, pressure vessels or similar vessels, now or hereafter installed on the Leased Property, in limits acceptable to Lessor;

(d) earthquake insurance (if reasonably deemed necessary by Lessor) in limits and with deductibles acceptable to Lessor;

(e) environmental impairment liability insurance (if available on commercially reasonable terms and deemed reasonably necessary by Lessor) in limits and with deductibles acceptable to Lessor;

(f) business interruption insurance in an amount equal to the annual Base Rent due hereunder plus the aggregate sum of the Impositions relating to the Leased Property due and payable during one year;

(g) comprehensive general public liability insurance including coverages commonly found in the Broad Form Commercial Liability Endorsements with amounts not less than FIVE MILLION DOLLARS (\$5,000,000) per occurrence with respect to bodily injury

and death and THREE MILLION DOLLARS (\$3,000,000) for property damage and with all limits based solely upon occurrences at the Leased Property without any other impairment;

(h) professional liability insurance in an amount not less than TEN MILLION DOLLARS

(\$10,000,000) for each medical incident;

(i) physical damage insurance on an all-risk basis (with only such exceptions as Lessor in its reasonable discretion shall approve) covering the Tangible Personal Property for the full replacement cost thereof and with a deductible not in excess of one percent (1%) of the full replacement cost thereof;

(j) "Workers' Compensation and Employers' Liability Insurance providing protection against all claims arising out of injuries to all employees of Lessee or of any Sublessee (employed on the Leased Property or any portion thereof) in amounts equal for Workers' Compensation, to the statutory benefits payable to employees in the State and for Employers' Liability, to limits of not less than ONE HUNDRED THOUSAND DOLLARS (\$100,000) for injury by accident, ONE HUNDRED THOUSAND DOLLARS (\$100,000) per employee for disease and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease policy limit;

(k) subsidence insurance (if deemed necessary by Lessor) in limits acceptable to Lessor; and

(l) such other insurance as Lessor from time to time may reasonably require and also, as may from time to time be required by applicable Legal Requirements and/or by any Fee Mortgagee.

#### 12.1.2 INSURANCE COMPANY

REQUIREMENTS. All such insurance required by this Lease or the other Lease Documents shall be issued and underwritten by insurance companies licensed to do insurance business by, and in good standing under the laws of, the State and which companies have and maintain a rating of A:X or better by A.M. Best Co.

77

12.1.3 POLICY REQUIREMENTS. Every policy of insurance from time to time required under this Lease or any of the other Lease Documents (other than worker's compensation) shall name Lessor as owner, loss payee, secured party (to the extent applicable) and additional named insured as its interests may appear. If an insurance policy covers properties other than the Leased Property, then Lessor shall be so named with respect only to the Leased Property. Each such policy, where applicable or appropriate, shall:

(a) include an agreed amount endorsement and loss payee, additional named insured and secured party endorsements, in forms acceptable to Lessor in its reasonable discretion;

(b) include mortgagee, secured party, loss payable and additional named insured endorsements reasonably acceptable to each Fee Mortgagee;

(c) provide that the coverages may not be cancelled or materially modified except upon thirty (30) days' prior written notice to Lessor and any Fee Mortgagee;

(d) be payable to Lessor and any Fee Mortgagee notwithstanding any defense or claim that the insurer may have to the payment of the same against any other Person holding any other interest in the Leased Property;

(e) be endorsed with standard noncontributory clauses in favor of and in form reasonably acceptable to Lessor and any Fee Mortgagee;

(f) expressly waive any right of subrogation on the part of the insurer against Lessor, any Fee Mortgagee or the Leasing Group; and

(g) otherwise be in such forms as shall be reasonably acceptable to Lessor.

12.1.4 NOTICES; CERTIFICATES AND POLICIES. Lessee shall promptly provide to Lessor copies of any and all notices (including notice of non-renewal), claims and demands which Lessee receives from insurers of the Leased Property. At least ten (10) days prior to the expiration of any insurance policy required hereunder, Lessee shall deliver to Lessor certificates and evidence of insurance relating to all renewals and replacements thereof, together with evidence, satisfactory to Lessor, of payment of the premiums thereon. Lessee shall deliver to Lessor original counterparts or copies certified by the insurance company to be true and complete copies, of all insurance policies required hereunder not later than ten (10) days after receipt thereof by Lessee. Lessee shall use its best efforts to obtain such counterparts or copies within ninety (90) days after the effective date of each such policy.

12.1.5 LESSOR'S RIGHT TO PLACE INSURANCE. If Lessee shall fail to obtain any insurance policy required hereunder by Lessor, or shall fail to deliver the certificate and evidence of insurance relating to any such policy to Lessor, or if any insurance policy required hereunder (or any part thereof) shall expire or be cancelled or become void or voidable by reason of any breach of any condition thereof, or if Lessor reasonably determines that such insurance coverage is unsatisfactory by reason of the failure or impairment of the capital of any insurance company which wrote any such policy, upon demand by Lessor, Lessee shall promptly but in any event in not more than ten (10) days thereafter obtain new or additional insurance coverage on the Leased Property, or for those risks required to be insured by the

provisions hereof, satisfactory to Lessor, and, in the event Lessee fails to perform its obligations under this Section and at its option, Lessor may obtain such insurance and pay the premium or premiums therefor; in which event, any amount so paid or advanced by Lessor and all costs and expenses incurred in connection therewith (including, without limitation, reasonable attorneys' fees and expenses and court costs), shall be a demand obligation of Lessee to Lessor, payable as an Additional Charge.

12.1.6 PAYMENT OF PROCEEDS. All insurance policies required hereunder (except for general public liability, professional liability and workers' compensation and employers liability insurance) shall provide that in the event of loss, injury or damage, subject to the rights of any Fee Mortgagee, all proceeds shall be paid to Lessor alone (rather than jointly to Lessee and Lessor). Lessor is hereby authorized to adjust and compromise any such loss with the consent of Lessee or, following any Lease Default, whether or not cured, without the consent of Lessee, and to collect and receive such proceeds in the name of Lessor and Lessee, and Lessee appoints Lessor (or any agent designated by

79

Lessor) as Lessee's attorney-in-fact with full power of substitution, to endorse Lessee's name upon any check in payment thereof. Subject to the provisions of Article 13, such insurance proceeds shall be applied first toward reimbursement of all costs and expenses reasonably incurred by Lessor in collecting said insurance proceeds, then toward payment of the Lease Obligations or any portion thereof, which have not been paid when due and payable or within any applicable cure period, in such order as Lessor determines, and then in whole or in part toward restoration, repair or reconstruction of the Leased Property for which such insurance proceeds shall have been paid.

12.1.7 IRREVOCABLE POWER OF ATTORNEY. The power of attorney conferred on Lessor pursuant to the provisions of Section 12.1, being coupled with an interest, shall be irrevocable for as long as this Lease is in effect or any Lease Obligations are outstanding, shall not be affected by any disability or incapacity which Lessee may suffer and shall survive the same. Such power of attorney, is provided solely to protect the interests of Lessor and shall not impose any duty on Lessor to exercise any such power, and neither Lessor nor such attorney-in-fact shall be liable for any act, omission, error in judgment or mistake of law, except as the same may result from its gross negligence or wilful misconduct.

12.1.8 BLANKET POLICIES. Notwithstanding anything to the contrary contained herein, Lessee's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Lessee and its Affiliates; provided, however, that the coverage afforded to Lessor shall not be reduced or diminished or otherwise be different from that which would exist under a separate policy meeting all other requirements of this Lease by reason of the use of such blanket policy of insurance, and provided, further that the requirements of Section 12.1 are otherwise satisfied.

12.1.9 NO SEPARATE INSURANCE. Lessee shall not, on Lessee's own initiative or pursuant to the request or requirement of any other Person, take out separate insurance

concurrent in form or contributing in the event of loss with the insurance required hereunder to be furnished by Lessee, or increase the amounts of any then existing insurance by securing an additional policy or additional policies, unless (a) all parties having an insurable interest in the subject matter of the insurance, including Lessor, are included therein as additional insureds and (b) losses are payable under said insurance in the same manner as losses are required to be payable under this Lease. Lessee shall

80

immediately notify Lessor of the taking out of any such separate insurance or of the increasing of any of the amounts of the then existing insurance by securing an additional insurance policy or policies.

12.1.10 ASSIGNMENT OF UNEARNED PREMIUMS. Lessee hereby assigns to Lessor all rights of Lessee in and to any unearned premiums on any insurance policy required hereunder to be furnished by Lessee which may become payable or are refundable after the occurrence of an Event of Default hereunder, which premium, upon receipt thereof, Lessor shall at Lessor's option apply toward the Lease Obligations or hold as security therefor. In the event that this Lease is terminated for any reason (other than the purchase of the Leased Property by Lessee), the insurance policies required to be maintained hereunder, including all right, title and interest of Lessee thereunder, shall become the absolute property of Lessor subject to any limitation on assignment provided for therein.

12.2 INDEMNITY.



12.2.1 INDEMNIFICATION. Except with respect to the gross negligence or wilful misconduct of Lessor or any of the other Indemnified Parties, as to which no indemnity is provided, Lessee hereby agrees to defend with counsel reasonably acceptable to Lessor, against all claims and causes of action and to indemnify and hold harmless Lessor and each of the other Indemnified Parties from and against all damages, losses, liabilities, obligations, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees, court costs and other expenses of litigation) suffered by, or claimed or asserted against, Lessor or any of the other Indemnified Parties, directly or indirectly, by any Person other than a member of the Leasing Group who prevails in such claim or action based on, arising out of or resulting from (a) the use and occupancy of the Leased Property or any business conducted therein, (b) any act, fault, omission to act or misconduct by (i) any member of the Leasing Group, (ii) any Affiliate of Lessee or (iii) any employee, agent, licensee, business invitee, guest, customer, contractor or sublessee of any of the foregoing parties, relating to, directly or indirectly, the Leased Property, (c) any accident, injury or damage whatsoever caused to any Person, including, without limitation, any claim of malpractice, or to the property of any Person in or about the Leased Property or outside of the Leased Property where such accident, injury or damage results or is claimed to have resulted from any act, fault, omission to act or misconduct by any member of the Leasing Group or any Affiliate of Lessee or any employee, agent, licensee, contractor or sublessee of any of the foregoing parties, (d) any Lease Default, (e) any claim brought or threatened against Lessor by any member of the Leasing Group or by any other Person on account of (i) Lessor's relationship with any member of the Leasing Group pertaining in any way to the Leased Property and/or the transaction evidenced by the Lease Documents and/or (ii) Lessor's negotiation of, entering into and/or performing any of its obligations and/or exercising any of its right and remedies under any of the Lease Documents, (f) any attempt by any member of the Leasing Group or any Affiliate of Lessee to transfer or relocate any of the Permits to any location other than the Leased Property and/or (g) the enforcement of this indemnity. Any amounts which become payable by Lessee under this Section 12.2.1 shall be a demand obligation of Lessee to Lessor, payable as an Additional Charge. The indemnity provided for in this Section 12.2.1 shall survive any termination of this Lease.

12.2.2 INDEMNIFIED PARTIES. As used in this Lease the term "Indemnified Parties" shall mean the Meditrust Entities, any Fee Mortgagee and their respective successors, assigns, employees, servants, agents, attorneys, officers, directors, shareholders, partners and owners.

12.2.3 LIMITATION ON LESSOR LIABILITY. Neither Lessor nor any Affiliate of Lessor shall be liable to any member of the Leasing Group or any Affiliate of any member of the Leasing Group, or to any other Person whatsoever for any damage, injury, loss, compensation, or claim (including, but not limited to, any claim for the interruption of or loss to any business conducted on the Leased Property) based on, arising out of or

resulting from any cause whatsoever, including, but not limited to, the following: (a) repairs to the Leased Property, (b) interruption in use of the Leased Property; (c) any accident or damage resulting from the use or operation of the Leased Property or any business conducted thereon; (d) the termination of this Lease by reason of Casualty or Condemnation, (e) any fire, theft or other casualty or crime, (f) the actions, omissions or misconduct of any other Person, (g) damage to any property, or (h) any damage from the flow or leaking of water, rain or snow. All Tangible Personal Property and the personal property of any other Person on the Leased Property shall be at the sole risk of Lessee and Lessor shall not in any manner be held responsible therefor (except in the event of loss caused by the gross negligence or willful misconduct of Lessor). Notwithstanding the foregoing, Lessor shall not be released from liability for any injury, loss, damage or liability suffered by Lessee to the extent caused directly by the gross negligence or willful misconduct of Lessor, its servants, employees or agents acting within the scope of their authority on or about the Leased Property or in regards to the Lease; provided, however, that in no event shall Lessor, its servants, employees or agents have any liability based on any loss for any indirect or consequential damages. or

12.2.4 RISK OF LOSS. During the Term of this Lease, the risk of loss or of decrease in the enjoyment and beneficial use of the Leased Property in consequence of any damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise, or in consequence of foreclosures, levies or executions of Liens (other than those created by Lessor in accordance with the provisions of Article 20) is assumed by Lessee and, in the absence of the gross negligence or willful misconduct as set forth in Section 12.2.3, Lessor shall in no event be answerable or accountable therefor (except for the obligation to account for insurance proceeds and Awards to the extent provided for in Articles 13 and 14) nor shall any of the events mentioned in this Section entitle Lessee to any abatement of Rent (except for an abatement, if any, as specifically provided for in Section 3.7).

## ARTICLE 13

### FIRE AND CASUALTY

13.1 RESTORATION FOLLOWING FIRE OR OTHER CASUALTY.

13.1.1 FOLLOWING FIRE OR CASUALTY. In the event of any damage or destruction to the Leased Property by reason of fire or other hazard or casualty (a "Casualty"), Lessee shall give immediate written notice thereof to Lessor and, subject to the terms of this Article 13 and any applicable Legal Requirements, Lessee shall proceed with reasonable diligence, in full compliance with all applicable Legal Requirements, to perform such repairs, replacement and reconstruction work (referred to herein as the "Work") to restore the Leased Property to the condition it was in immediately prior to such damage or destruction and to a condition adequate to operate the Facility for

the Primary Intended Use and, if applicable, the Other Permitted Uses and in compliance with applicable Legal Requirements. All Work shall be performed and completed in accordance with all applicable Legal Requirements and the other requirements of this Lease within one hundred and twenty (120) days following the occurrence of the damage or destruction plus a reasonable time to compensate for Unavoidable Delays (including for the purposes of this Section, delays in obtaining Permits and in adjusting insurance losses), but in no event beyond two-hundred and seventy (270) days following the occurrence of the Casualty.

13.1.2 PROCEDURES. In the event that any Casualty results in non-structural damage to the Leased Property in excess of FIFTY THOUSAND DOLLARS (\$50,000) or in any structural damage to the Leased Property, regardless of the extent of such structural damage, prior to commencing the Work, Lessee shall comply with the following requirements:

(a) Lessee shall furnish to Lessor complete plans and specifications for the Work (collectively and as the same may be modified and amended from time to time pursuant to the terms hereof, the "Plans and Specifications"), for Lessor's approval, in each instance, which approval shall not be unreasonably withheld. The Plans and Specifications shall bear the signed approval thereof by an architect, licensed to do business in the State, reasonably satisfactory to Lessor (in the event Lessor reasonably determines that the Work is of a nature for which the involvement of an architect is appropriate) and shall be accompanied by a written estimate from the architect, bearing the architect's seal, of the entire cost of

84

completing the Work, and to the extent feasible, the Plans and Specifications shall provide for Work of such nature, quality and extent, that, upon the completion thereof, the Leased Property shall be at least equal in value and general utility to its value and general utility prior to the Casualty and shall be adequate to operate the Leased Property for the Primary Intended Use and, if applicable, the Other Permitted Uses;

(b) Lessee shall furnish to Lessor certified or photostatic copies of all Permits and Contracts required by all applicable Legal Requirements in connection with the commencement and conduct of the Work to the extent the same can be secured in the ordinary course prior to the commencement of construction;

(c) Lessee shall furnish to Lessor a cash deposit or a payment and performance bond sufficient to pay for completion of and payment for the Work in an amount not less than the architect's estimate of the entire cost of completing the Work, less the amount of property insurance proceeds (net of costs and expenses incurred by Lessor in collecting the same), if any, then held by Lessor and which Lessor shall be required to apply toward restoration of the Leased Property as provided in Section 13.2;

(d) Lessee shall furnish to Lessor such insurance with respect to the Work (in addition to the

insurance required under Section 12.1 hereof) in such amounts and in such forms as is reasonably required by Lessee; and

(e) Lessee shall not commence any of the Work until Lessee shall have complied with the requirements set forth in clauses (a) through (d) immediately above, as applicable, and, thereafter, Lessee shall perform the Work diligently, in a good and workmanlike fashion and in good faith in accordance with (i) the Plans and Specifications referred to in clause (a) immediately above, (ii) the Permits and Contracts referred to in clause (b) immediately above and (iii) all applicable Legal Requirements and other requirements of this Lease; provided, however, that in the event of a bona fide emergency during which Lessee is unable to contact the appropriate representatives of Lessor, Lessee may commence such Work as may be necessary in order to address such emergency without Lessor's prior approval,

85

as long as Lessee immediately thereafter advises Lessor of such emergency and the nature and scope of the Work performed and obtains Lessor's approval of the remaining Work to be completed.

#### 13.1.3 DISBURSEMENT OF INSURANCE

PROCEEDS. If, as provided in Section 13.2, Lessor is required to apply any property insurance proceeds toward repair or restoration of the Leased Property, then as long as the Work is being diligently performed by Lessee in accordance with the terms and conditions of this Lease, Lessor shall disburse such insurance proceeds from time to time during the course of the Work in accordance with and subject to satisfaction of the following provisions and conditions. Lessor shall not be required to make disbursements more often than at thirty (30) day intervals. Lessee shall submit a written request for each disbursement at least ten (10) Business Days in advance and shall comply with the following requirements in connection with each disbursement:

(a) Prior to the commencement of any Work, Lessee shall have received Lessor's written approval of the Plans and Specifications (which approval shall not be unreasonably withheld) and the Work shall be supervised by an experienced construction manager with the consultation of an architect or engineer qualified and licensed to do business in the State (in the event Lessor reasonably determines that the Work is of a nature for which the involvement of such architect or engineer is appropriate). Lessee shall not make any changes in, and shall not permit any changes in, the quality of the materials to be used in the Work, the Plans and Specifications or the Work, whether by change order or otherwise, without the prior written consent of Lessor, in each instance (which consent may be withheld in Lessor's sole and absolute discretion); provided, however, that such consent shall not be required for any individual change which has been approved by the architect, which does not materially affect the structure or exterior of the Facility, and the cost of which does not exceed TEN THOUSAND DOLLARS (\$10,000) or which changes, in the aggregate,

do not exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000) in cost. Notwithstanding the foregoing, prior to making any change in Plans and Specifications, copies of all change orders shall be submitted by Lessee to Lessor and Lessee shall also deliver to Lessor evidence satisfactory to Lessor, in its reasonable discretion, that all necessary Permits and/or Contracts required by any Governmental Authority in connection therewith have been obtained or entered into, as the case may be.

86

(b) Each request for payment shall be accompanied by (x) a certificate of the architect or engineer, bearing the architect's or engineer's seal, and (y) a certificate of the general contractor, qualified and licensed to do business in the State, that is performing the Work (collectively, the "Work Certificates"), each dated not more than ten (10) days prior to the application for withdrawal of funds, and each stating:

(i) that all of the Work performed as of the date of the certificates has been completed in compliance with the approved Plans and Specifications, applicable Contracts and all applicable Legal Requirements;

(ii) that the sum then requested to be withdrawn has been paid by Lessee or is justly due to contractors, subcontractors, materialmen, engineers, architects or other Persons, whose names and addresses shall be stated therein, who have rendered or furnished certain services or materials for the Work, and the certificate shall also include a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts so paid or due to each of said Persons in respect thereof and stating the progress of the Work up to the date of said certificate;

(iii) that the sum then requested to be withdrawn, plus all sums previously withdrawn, does not exceed the cost of the Work insofar as actually accomplished up to the date of such certificate;

(iv) that the remainder of the funds held by Lessor will be sufficient to pay for the full completion of the Work in accordance with the Plans and Specifications;

(v) that no part of the cost of the services and materials described in the applicable Work Certificate has been or is being made the basis of the withdrawal of any funds in any previous or then pending application; and

(vi) that, except for the amounts, if any, specified in the applicable Work Certificate to be due for services and materials, there is no outstanding indebtedness known, after due inquiry, which is then due and payable for work, labor, services or materials in connection with the Work which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's or materialman's statutory or other similar Lien upon the Leased Property.

(c) Lessee shall deliver to Lessor satisfactory evidence that the Leased Property and all materials and all property described in the Work Certificates are free and clear of Liens, except (i) Liens, if any, securing indebtedness due to Persons (whose names and addresses and the several amounts due them shall be stated therein) specified in an applicable Work Certificate, which Liens shall be discharged upon disbursement of the funds then being requested or duly contested in accordance with the terms of this Lease Agreement, (ii) any Fee Mortgage and (iii) the Permitted Encumbrances. Lessor shall accept as satisfactory evidence of the foregoing lien waivers in customary form from the general contractor and all subcontractors performing the Work, together with an endorsement of its title insurance policy (relating to the Leased Property) in form acceptable to Lessor, dated as of the date of the making of the then current disbursement, confirming the foregoing.

(d) If the Work involves alteration or restoration of the exterior of any Leased Improvement that changes the footprint of any Leased Improvement, Lessee shall deliver to Lessor, upon the request of Lessor, an "as-built" survey of the Leased Property dated as of a date within ten (10) days prior to the making of the first and final advances (or revised to a date within ten (10) days prior to each such advance) showing no encroachments other than such encroachments, if any, by the Leased

Improvements upon or over the Permitted Encumbrances as are in existence as of the date hereof.

(e) Lessee shall deliver to Lessor (i) an opinion of counsel (satisfactory to Lessor both as to counsel and as to the form of opinion) prior to the first advance opining that all necessary Permits for the repair,

replacement and/or restoration of the Leased Property which can be obtained in the ordinary course as of said date have been obtained and that the Leased Property, if repaired, replaced or rebuilt in accordance, in all material respects, with the approved Plans and Specifications and such Permits, shall comply with all applicable Legal Requirements subject to such limitations as may be imposed on such opinion under local law and (ii) if applicable, an architect's certificate (satisfactory to Lessor both as to the architect and as to the form of the certificate) prior to the final advance, certifying that the Leased Property was repaired, replaced or rebuilt in accordance, in all material respects, with the approved Plans and Specifications and complies with all applicable Legal Requirements, including, without limitation, all Permits referenced in the foregoing clause (i).

(f) There shall be no Lease Default or any state of facts or circumstance existing which, with the giving of notice and/or the passage of time, would constitute any Lease Default.

Lessor, at its option, may waive any of the foregoing requirements in whole or in part in any instance. Upon compliance by Lessee with the foregoing requirements (except for such requirements, if any, as Lessor may have expressly elected to waive), and to the extent of (x) the insurance proceeds, if any, which Lessor may be required to apply to restoration of the Leased Property pursuant to the provisions of this Lease and (y) all other cash deposits made by Lessee, Lessor shall make available for payment to the Persons named in the Work Certificate the respective amounts stated in said certificate(s) to be due, subject to a retention of ten percent (10%) as to all hard costs of the Work (the "Retainage"). It is understood that the Retainage is intended to provide a contingency fund to assure Lessor that the Work shall be fully completed in accordance with the Plans and Specifications and the requirements of Lessor. Upon the full and final completion of all of the Work in accordance with the provisions hereof, the Retainage shall be made available for payment to those Persons entitled thereto.

89

Upon completion of the Work, and as a condition precedent to making any further advance, in addition to the requirements set forth above, Lessee shall promptly deliver to Lessor:

(i) if applicable, written certificates of the architect or engineer, bearing the architect's or engineer's seal, and the general contractor, certifying that the Work has been fully completed in a good and workmanlike manner in material compliance with the Plans and Specifications and all applicable Legal Requirements;

(ii) an endorsement of its title insurance policy (relating to the Leased Property) in form reasonably acceptable to Lessor insuring the Leased Property against all mechanic's and materialman's liens accompanied by the final lien waivers from the general contractor and all

subcontractors;

(iii) a certificate by Lessee in form and substance reasonably satisfactory to Lessor, listing all costs and expenses in connection with the completion of the Work and the amount paid by Lessee with respect to the Work; and

(iv) a temporary certificate of occupancy (if obtainable) and all other applicable Permits and Contracts issued by or entered into with any Governmental Authority with respect to the Primary Intended Use not already delivered to Lessor and, to the extent applicable, the Other Permitted Uses and by the appropriate Board of Fire Underwriters or other similar bodies acting in and for the locality in which the Leased Property is situated with respect to the Facility; provided, that within thirty (30) days after completion of the Work, Lessee shall obtain and deliver to Lessor a permanent certificate of occupancy for the Leased Property, subject to seasonal delays.

Upon completion of the Work and delivery of the documents required pursuant to the provisions of this Section 13.1, Lessor shall pay the Retainage to Lessee or to those Persons entitled thereto and if there shall be insurance proceeds or cash deposits, other than the Retainage, held by Lessor in excess of the amounts disbursed pursuant to the foregoing provisions, then provided that no Lease Default has occurred and is continuing, nor any state of facts or circumstances which, with the giving of notice and/or the passage of time would constitute a Lease Default, Lessor shall pay over such proceeds or cash deposits to Lessee.

No inspections or any approvals of the Work during or after construction shall constitute a warranty or representation by Lessor, or any of its agents or Consultants, as to the technical sufficiency, adequacy or safety of any structure or any of its component parts, including, without limitation, any fixtures, equipment or furnishings, or as to the subsoil conditions or any other physical condition or feature pertaining to the Leased Property. All acts, including any failure to act, relating to Lessor are performed solely for the benefit of Lessor to assure the payment and performance of the Lease Obligations and are not for the benefit of Lessee or the benefit of any other Person.

## 13.2 DISPOSITION OF INSURANCE PROCEEDS.

13.2.1 PROCEEDS TO BE RELEASED TO PAY FOR WORK. In the event of any Casualty, except as provided for in Section 13.2.2, Lessor shall release proceeds of property insurance held by it to pay for the Work in accordance with the



provisions and procedures set forth in this Article 13, only if:

(a) all of the terms, conditions and provisions of Sections 13.1 and 13.2.1 are satisfied;

(b) Lessee demonstrates to Lessor's satisfaction that Lessee has the financial ability to satisfy the Lease Obligations during such repair or restoration; and

(c) no Sublease material to the operation of the Facility immediately prior to such damage or taking shall have been cancelled or terminated, nor contain any still exercisable right to cancel or terminate, due to such Casualty if and to the extent that the income from such Sublease is necessary in order to avoid the violation of any of the financial covenants set forth in this Lease or otherwise to avoid the creation of an Event of Default.

91

If a Fee Mortgagee prevents Lessor from releasing proceeds of property insurance notwithstanding the satisfaction of the foregoing requirements, Lessee shall have no obligation to restore the Casualty to which such proceeds pertain.

13.2.2 PROCEEDS NOT TO BE RELEASED. If, as the result of any Casualty, the Leased Property is damaged to the extent it is rendered Unsuited For Its Primary Intended Use and if either: (a) Lessee, after exercise of diligent efforts, cannot within a reasonable time (not in excess of ninety (90) days) obtain all necessary Permits in order to be able to perform all required Work and to again operate the Facility for its Primary Intended Use and, if applicable, the Other Permitted Uses within two hundred and seventy (270) days from the occurrence of the damage or destruction in substantially the manner as immediately prior to such damage or destruction or (b) such Casualty occurs during the last twenty-four (24) months of the Term and would reasonably require more than nine (9) months to obtain all Permits and complete the Work, then Lessee may either (i) acquire the Leased Property from Lessor for a purchase price equal to the greater of (x) the Meditrust Investment or (y) the Fair Market Value of the Leased Property minus the Fair Market Added Value, with the Fair Market Value and the Fair Market Added Value to be determined as of the day immediately prior to such Casualty and prior to any other Casualty which has not been fully repaired, restored or replaced, in which event, Lessee shall be entitled upon payment of the full purchase price to receive all property insurance proceeds (less any costs and expenses incurred by Lessor in collecting the same), or (ii) terminate this Lease, in which event (subject to the provisions of the last sentence of this Section 13.2.2) Lessor shall be entitled to receive and retain the insurance proceeds; provided, however, that Lessee shall only have such right of termination effective upon payment to Lessor of all Rent and other sums due under this Lease and the other Lease Documents through the date of termination plus an amount, which when added to the sum of (1) the Fair Market Value of the Leased Property as affected by all unrepaired or unrestored damage due to any Casualty (and giving due regard for delays, costs and expenses incident to completing all repair or restoration required to fully repair or restore the same) plus (2) the amount of insurance proceeds actually received by

Lessor (net of costs and expenses incurred by Lessor in collecting the same) equals (3) the greater of the Meditrust Investment or the Fair Market Value of the Leased Property minus the Fair Market Added Value, with the Fair Market Value and the Fair Market Added Value to be determined as of the day immediately prior to such Casualty and prior to any other Casualty which has not been fully repaired. Any acquisition of the Leased Property pursuant to the terms of this Section 13.2.2 shall be consummated in accordance with the provisions of Article 18, mutatis, mutandis. If

92

such termination becomes effective, Lessor shall assign to Lessee any outstanding insurance claims and, at Lessee's expense, shall cooperate in Lessee's efforts to secure the same. In the event this Lease is terminated pursuant to the provisions of this Section 13.2.2 and the insurance proceeds received by Lessor in connection therewith (net of costs and expenses incurred in obtaining such proceeds) exceeds one hundred fifteen percent (115%) of the Fair Market Value of the Leased Premises at the time of such termination, Lessor shall pay to Lessee fifty percent (50%) of the amount of such excess.

13.3 TANGIBLE PERSONAL PROPERTY. All insurance proceeds payable by reason of any loss of or damage to any of the Tangible Personal Property shall be paid to Lessor as secured party, subject to the rights of the holders of any Permitted Prior Security Interests, and, thereafter, provided that no Lease Default, nor any fact or circumstance which with the giving of notice and/or the passage of time could constitute a Lease Default, has occurred and is continuing, Lessor shall pay such insurance proceeds to Lessee to reimburse Lessee for the cost of repairing or replacing the damaged Tangible Personal Property, subject to the terms and conditions set forth in the other provisions of this Article 13, mutatis mutandis.

13.4 RESTORATION OF CERTAIN IMPROVEMENTS AND THE TANGIBLE PERSONAL PROPERTY. If Lessee is required or elects to restore the Facility, Lessee shall either (a) restore (i) all alterations and improvements to the Leased Property made by Lessee and (ii) the Tangible Personal Property or (b) replace such alterations and improvements and the Tangible Personal Property with improvements or items of the same or better quality and utility in the operation of the Leased Property provided, however, that Lessee shall be obligated to so restore or replace the Tangible Personal Property only to the extent desirable for the prudent operation of the Facility in the good faith exercise of commercially reasonable business judgment.

13.5 NO ABATEMENT OF RENT. In no event shall any Rent abate as a result of any Casualty except as expressly provided in Section 3.7.

13.6 TERMINATION OF CERTAIN RIGHTS. Any termination of this Lease pursuant to this Article 13 shall cause any right of Lessee to extend the Term of this Lease granted to Lessee herein and any right of Lessee to purchase the Leased Property contained in this Lease to be terminated and to be without further force or effect.

13.7 WAIVER. Lessee hereby waives any statutory rights of termination which may arise by reason of any damage or destruction to the Leased Property due to any Casualty which Lessee is obligated to restore or may restore under any of the provisions of this Lease.

## 13.8 APPLICATION OF RENT LOSS AND/OR BUSINESS

INTERRUPTION INSURANCE. Lessor shall direct all proceeds of rent loss and/or business interruption insurance (collectively, "Rent Insurance Proceeds") to be paid to Lessee, provided no fact or circumstance exists which constitutes, or with notice, or passage of time, or both, would constitute, a Lease Default pertaining to the Facility or the Leased Property.

If a Lease Default or such fact or circumstance exists, Lessor may rescind such direction and apply all such insurance proceeds towards the Lease Obligations pertaining to the Facility or the Leased Property or hold such proceeds as security therefor.

## 13.9 OBLIGATION TO ACCOUNT. Upon Lessee's written

request, which may not be made not more than once in any three (3) month period, Lessor shall provide Lessee with a written accounting of the application of all insurance proceeds received by Lessor.

## ARTICLE 14

## CONDEMNATION

## 14.1 PARTIES' RIGHTS AND OBLIGATIONS. If during the

Term there is any Taking of all or any part of the Leased Property or any interest in this Lease, the rights and obligations of the parties shall be determined by this Article 14.

## 14.2 TOTAL TAKING. If there is a permanent Taking of all

or substantially all of the Leased Property, this Lease shall terminate on the Date of Taking. In the event this Lease is terminated pursuant to the provisions of this Section 14.2 and the Award received by Lessor in connection therewith (net of costs and expenses incurred in obtaining such Award) exceeds one hundred fifteen percent (115%) of the Fair Market Value of the Leased Premises at the time of such termination, Lessor shall pay to Lessee fifty percent (50%) of the amount of such excess.

## 14.3 PARTIAL OR TEMPORARY TAKING. If there is a

Permanent Taking of a portion of the Leased Property, or if there is a temporary Taking of all or a portion of the Leased Property, this Lease shall remain in effect so long as the Leased Property is not thereby rendered permanently Unsuitable For Its Primary Intended Use or temporarily Unsuitable For Its Primary Intended Use for a period not likely to, or which does not, exceed two hundred and seventy (270) days. If, however, the Leased Property is thereby so rendered permanently or temporarily Unsuitable For Its Primary Intended Use: (a) if only rendered temporarily Unsuitable For Its Primary Intended Use, Lessee shall have the right to restore the Leased Property, at its own expense (subject to the right under certain circumstances as provided for in Section 14.5 to receive the net proceeds of an Award for reimbursement), to the extent possible, to substantially the same condition as existed immediately before the partial or

temporary Taking or (b) Lessee shall have the right to acquire the Leased Property from Lessor (i) upon payment of all Rent due through the date that the purchase price is paid, for a purchase price equal to the greater of (x) the Meditrust Investment or (y) the Fair Market Value of the Leased Property minus the Fair Market Added Value, with the Fair Market Value of the Leased Property and the Fair Market Added Value to be determined as of the day immediately prior to such partial or temporary Taking and (ii) in

accordance with the terms and conditions set forth in Article 18; in which event, this Lease shall terminate upon payment of such purchase price and the consummation of such acquisition. Notwithstanding the foregoing, Lessor may overrule Lessee's election under clause (a) or (b) and instead either (1) terminate this Lease (with no obligation on the part of Lessee to acquire the Leased Property as a result thereof) as of the date when Lessee is required to surrender possession of the portion of the Leased Property so taken if (X) such portion comprises more than thirty percent (30%) of the Leased Property or of the residential building(s) located thereon or (Y) possession thereof is to be surrendered within two years of the expiration of the Term or (2) compel Lessee to keep the Lease in full force and effect and to restore the Leased Property as provided in clause (a) above, but only if the Leased Property may be operated for at least eighty percent (80%) of the licensed unit capacity of the Facility in effect prior to the Taking. Lessee shall exercise its election under this Section 14.3 by giving Lessor notice thereof ("Lessee's Election Notice") within sixty (60) days after Lessee receives notice of the Taking. Lessor shall exercise its option to overrule Lessee's election under this Section 14.3 by giving Lessee notice of Lessor's exercise of its rights under Section 14.3 within thirty (30) days after Lessor receives Lessee's Election Notice. If, as the result of any such partial or temporary Taking, this Lease is not terminated as provided above, Lessee shall be entitled to an abatement of Rent, but only to the extent, if any, provided for in Section 3.7, effective as of the date upon which the Leased Property is rendered Unsuited For Its Primary Intended Use.

14.4 RESTORATION. If there is a partial or temporary Taking of the Leased Property and this Lease remains in full force and effect pursuant to Section 14.3, Lessee shall accomplish all necessary restoration and Lessor shall release the net proceeds of such Award to reimburse Lessee for the actual reasonable costs and expenses thereof, subject to all of the conditions and provisions set forth in Article 13 as though the Taking was a Casualty and the Award was insurance proceeds. If the cost of the restoration exceeds the amount of the Award (net of costs and expenses incurred in obtaining the Award), Lessee shall be obligated to contribute any excess amount needed to restore the Facility or pay for such costs and expenses. To the extent that the cost of restoration is less than the amount of the Award (net of cost and expenses incurred in obtaining the Award), the remainder of the Award shall be retained by Lessor and Rent shall be abated as set forth in Section 3.7.

14.5 AWARD DISTRIBUTION. In the event Lessee completes the purchase of the Leased Property, as described in Section 14.3, the entire Award shall, upon payment of the purchase price and all Rent and other sums due under this Lease and the other Lease Documents, belong to Lessee and Lessor agrees to assign to Lessee all of Lessor's rights thereto or, to the extent Lessor has received payment of the Award, the amount of such payment shall be credited against the purchase price. In any other event, the entire Award (except for such portion thereof which the Condemner designates as allocable to Lessee's loss of business or Tangible Personal Property) shall belong to and be paid to Lessor.

14.6 CONTROL OF PROCEEDINGS. Subject to the rights of any Fee Mortgagee, unless and until Lessee completes the purchase of the Leased Property as provided in Section 14.3, all proceedings involving any Taking and the prosecution of claims arising out of any Taking against the Condemnor shall be conducted, prosecuted and settled by Lessor; provided, however, that Lessor shall keep Lessee apprised of the progress of all such proceedings and shall solicit Lessee's advice with respect thereto and shall

give due consideration to any such advice. In addition, Lessee shall reimburse Lessor (as an Additional Charge) for all costs and expenses, including reasonable attorneys' fees, appraisal fees, fees of expert witnesses and costs of litigation or dispute resolution, in relation to any Taking, whether or not this Lease is terminated; provided, however, if this Lease is terminated as a result of a Taking, Lessee's obligation to so reimburse Lessor shall be diminished by the amount of the Award, if any, received by Lessor which is in excess of the Meditrust Investment.

## ARTICLE 15

### PERMITTED CONTESTS

15.1 LESSEE'S RIGHT TO CONTEST. To the extent of the express references made to this Article 15 in other Sections of this Lease, Lessee, any Sublessee or any Manager on their own or on Lessor's behalf (or in Lessor's name), but at their sole cost and expense, may contest, by appropriate legal proceedings conducted in good faith and with due diligence (until the resolution thereof), the amount, validity or application, in whole or in part, of any Imposition, Legal Requirement, the decision of any Governmental Authority related to the operation of the Leased Property for its Primary Intended Use and/or, if applicable, any of the Other Permitted Uses or any Lien or claim relating to the Leased Property not otherwise permitted by this Agreement; provided, that (a) prior written notice of such contest is given to Lessor, (b) in the case of an unpaid Imposition, Lien or claim, the commencement and continuation of such proceedings shall suspend the collection thereof from Lessor and/or compliance by any applicable member of the Leasing Group with the contested Legal Requirement or other matter may be legally delayed pending the prosecution of any such proceeding without the occurrence or creation of any Lien, charge or liability of any kind against the Leased Property, (c) neither the Leased Property nor any rent therefrom would be in any immediate danger of being sold, forfeited, attached or lost as a result of such proceeding, (d) in the case of a Legal Requirement, neither Lessor nor any member of the Leasing Group would be in any immediate danger of civil or criminal liability for failure to comply therewith pending the outcome of such proceedings, (e) in the event that any such contest shall involve a sum of money or potential loss in excess of TWENTY FIVE

THOUSAND DOLLARS (\$25,000), Lessee shall deliver to Lessor an Officer's Certificate and opinion of counsel, if Lessor deems the delivery of an opinion to be appropriate, certifying or opining, as the case may be, as to the validity of the statements set forth to the effect set forth in clauses (b), (c) and (d), to the extent applicable, (f) Lessee shall give such cash security as may be demanded in good faith by Lessor to insure ultimate payment of any fine, penalty, interest or cost and to prevent any sale or forfeiture of the affected portion of the Leased Property by reason of such non-payment or non-compliance, (g) if such contest is finally resolved against Lessor or any member of the Leasing Group, Lessee shall promptly pay, as Additional Charges due hereunder, the amount required to be paid, together with all interest and penalties accrued thereon and/or comply (and cause any Sublessee and any Manager to comply) with the applicable Legal Requirement, and (h) no state of facts or circumstance exists which constitutes, or with the passage of time and/or the giving of notice, could constitute a Lease Default; provided, however, but without limiting any other right Lessee may have under the Lease Documents to contest the payment of Rent, the provisions of this Article 15 shall not be construed to permit Lessee to contest the payment of Rent or any other sums payable by

97

Lessee to Lessor under any of the Lease Documents. If such contest is finally resolved in favor of Lessee, Lessee shall be entitled to any refund resulting therefrom.

15.2 LESSOR'S COOPERATION. Lessor, at Lessee's sole cost and expense, shall execute and deliver to Lessee such authorizations and other documents as may reasonably be required in any such contest, so long as the same does not expose Lessor to any civil or criminal liability, and, if reasonably requested by Lessee or if Lessor so desires, Lessor shall join as a party therein.

15.3 LESSEE'S INDEMNITY. Lessee, as more particularly provided for in Section 12.2, shall indemnify, defend (with counsel acceptable to Lessor) and save Lessor harmless against any liability, cost or expense of any kind, including, without limitation, attorneys' fees and expenses that may be imposed upon Lessor in connection with any such contest and any loss resulting therefrom and in the enforcement of this indemnification.

## ARTICLE 16

### DEFAULT

16.1 EVENTS OF DEFAULT. Each of the following shall constitute an "Event of Default" hereunder and shall entitle Lessor to exercise its remedies hereunder and under any of the other Lease Documents:

(a) any failure of Lessee to pay any amount due hereunder or under any of the other Lease Documents within ten (10) days following the date when such payment was due;

(b) any failure in the observance or performance of any other covenant, term, condition or warranty provided in this Lease or any of the other Lease Documents, other than the payment of any monetary obligation and other than as specified in subsections (c) through (v) below (a "Failure to Perform"), continuing for thirty (30) days after the giving of notice by Lessor to Lessee specifying the nature of the Failure to Perform;

except as to matters not susceptible to cure within thirty (30) days, provided that with respect to such matters, (i) Lessee commences the cure thereof within thirty (30) days after the giving of such notice by Lessor to Lessee, (ii) Lessee continuously prosecutes such cure to completion, (iii) such cure is completed within one hundred twenty (120) days after the giving of such notice by Lessor to Lessee and (iv) such Failure to Perform does not impair the value of, or Lessor's rights with respect to, the Leased Property or otherwise impair the Collateral or Lessor's security interest therein;

98

(c) the occurrence of any default or breach of condition continuing beyond the expiration of the applicable notice and grace periods, if any, under any of the other Lease Documents, including, without limitation, the Agreement Regarding Related Transactions;

(d) if any representation, warranty or statement contained herein or in any of the other Lease Documents proves to be untrue in any material respect as of the date when made or at any time during the Term if such representation or warranty is a continuing representation or warranty pursuant to Section 10.2;

(e) if any member of the Leasing Group shall (i) voluntarily be adjudicated a bankrupt or insolvent, (ii) seek or consent to the appointment of a receiver or trustee for itself or for the Leased Property, (iii) file a petition seeking relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, (iv) make a general assignment for the benefit of creditors, (v) make or offer a composition of its debts with its creditors or (vi) be unable to pay its debts as such debts mature;

(f) if any court shall enter an order, judgment or decree appointing, without the consent of any member of the Leasing Group, a receiver or trustee for such member or for any of its property and such order, judgment or decree shall remain in force, undischarged or unstayed, ninety (90) days after it is entered;

(g) if a petition is filed against any member of the Leasing Group which seeks relief under the bankruptcy or other similar laws of the United States, any state or any other jurisdiction, and such petition is not dismissed within ninety (90) days after it is filed;

(h) in the event that:

i. all or any portion of the interest of any partner, shareholder, member in any member of the Leasing Group (other than Guarantor) shall be, on any one or more occasions, directly or indirectly, sold, assigned, hypothecated or otherwise transferred (whether by operation of law or otherwise), if such member of the Leasing Group shall be a partnership, joint venture, syndicate or other group, without the prior written consent of Lessor, in each instance, which consent may be withheld by Lessor in its reasonable discretion with respect to a

sale, assignment, hypothecation or other transfer to a Meditrust/Emeritus Transaction Affiliate and in all other cases, in its sole and absolute discretion;

ii. the shares of the issued and outstanding capital stock of any member of the Leasing Group (other than Guarantor) shall be, on any one or more occasions, directly or indirectly, sold, assigned, hypothecated or otherwise transferred (whether by operation of law or otherwise), if such member of the Leasing Group shall be a corporation, without the prior written consent of Lessor, in each instance, which consent may be withheld by Lessor in its reasonable discretion with respect to a sale, assignment, hypothecation or other transfer to a Meditrust/Emeritus Transaction Affiliate and in all other cases, in its sole and absolute discretion; or

iii. all or any portion of the beneficial interest in any member of the Leasing Group (other than Guarantor) shall be, directly or indirectly, sold or otherwise transferred (whether by operation of law or otherwise), if such member of the Leasing Group shall be a trust, without the prior written consent of Lessor, in each instance, which consent may be withheld by Lessor in its reasonable discretion with respect to a sale, assignment, hypothecation or other transfer to a Meditrust/Emeritus Transaction Affiliate and in all other cases, in its sole and absolute discretion;

Notwithstanding the foregoing, no consent of Lessor to a pledge by Lessee of its stock to the lender of a Working Capital Loan satisfying the requirements of Section 6.1.3 shall be required (a "Working Capital Stock Pledge").

(i) the death, incapacity, liquidation, dissolution or termination of existence of any member of the Leasing Group or the merger or consolidation of any member of the Leasing Group with any other Person except as expressly permitted by the terms of this Lease Agreement;

100

(j) except as provided in Section 19.1 hereof, if, without the prior written consent of Lessor, in each instance, which consent may be withheld by Lessor in its sole and absolute discretion, Lessee's or any interest of a Sublessee which is an Affiliate of Lessee in the Leased Property shall be, directly or indirectly, mortgaged, encumbered (by any voluntary or involuntary Lien other than the Permitted Encumbrances),



subleased, sold, assigned, hypothecated or otherwise transferred (whether by operation of law or otherwise);

(k) the occurrence of a default or breach of condition continuing beyond the expiration of the applicable notice and grace periods, if any, in connection with the payment or performance of any other material obligation of Lessee or any Sublessee which is an Affiliate of Lessee, if the applicable creditor or obligee elects to declare the obligations of Lessee or the applicable Sublessee under the applicable agreement due and payable or to exercise any other right or remedy available to such creditor or obligee, or, whether or not such creditor or obligee has so elected or exercised, such creditor's or obligee's rights and remedies, if exercised, may involve or result in the taking of possession of, or the creation of a Lien on, the Leased Property; provided, however, that in any event, the election by the applicable creditor or obligee to declare the obligations of Lessee under the applicable agreement due and payable or to exercise any other right or remedy available to such creditor or obligee shall be an Event of Default hereunder only if such obligations, individually or in the aggregate, are in excess of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000);

(l) the occurrence of a Related Party Default;

(m) the occurrence of any default or breach of condition which is not cured within any applicable cure period under a Working Capital Loan secured by a Working Capital Stock Pledge (or any documents executed in connection therewith) or the exercise of any ownership rights by the lender of a Working Capital Loan secured by a Working Capital Stock Pledge;

(n) except as a result of Casualty or a partial or complete Condemnation (including a temporary taking), if Lessee or any Sublessee ceases operation of the Facility for a period in excess of thirty (30) days (a "Failure to Operate");

(o) if one or more judgments against Lessee or any Sublessee which is an Affiliate of Lessee or attachments against Lessee's interest or any such Sublessee's interest in the

101

Leased Property, which in the aggregate exceed TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) or which may materially and adversely interfere with the operation of the Facility, remain unpaid, unstayed on appeal, undischarged, unbonded or undismissed for a period of thirty (30) days;

(p) if any malpractice award or judgment exceeding any applicable professional liability insurance coverage by more than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) shall be rendered against any member of the Leasing Group and either (i) enforcement proceedings shall have been commenced by any creditor upon such award or judgment or (ii) such award or judgment shall continue unsatisfied and in effect for a period of ten (10) consecutive days without an insurance company satisfactory to Lessor (in its sole and absolute discretion) having agreed to fund such award or judgment in a manner satisfactory to Lessor (in its sole and absolute discretion) and in either case such award or judgment shall, in the reasonable opinion

of Lessor, have a material adverse affect on the ability of Lessee or any Sublessee to operate the Facility;

(q) if any Provider Agreement material to the operation or financial condition of the Leased Property shall be terminated prior to the expiration of the term thereof or, without the prior written consent of Lessor, in each instance, which consent may be withheld in Lessor's reasonable discretion, shall not be renewed or extended upon the expiration of the stated term thereof;

(r) if, after Lessee or any Sublessee has obtained approval for Medicare and/or Medicaid funding, a final unappealable determination is made by the applicable Governmental Authority that Lessee or any Sublessee shall have failed to comply with applicable Medicare and/or Medicaid regulations in the operation of the Facility, as a result of which failure Lessee or such Sublessee is declared ineligible to continue its participation in the Medicare and/or Medicaid programs and such determination could reasonably be expected to have a material adverse effect on the operation or financial condition of the Leased Property;

(s) if any member of the Leasing Group receives notice of a final unappealable determination by applicable Governmental Authorities of the revocation of any Permit required for the lawful construction or operation of the Facility in accordance with the Primary Intended Use and, if applicable, the Other Permitted Uses or the loss of any Permit under any other circumstances under which any member of the Leasing Group is required to permanently cease the construction or operation of the Facility in accordance with the Primary Intended Use and the Other Permitted Uses; and

102

(t) any failure to maintain the insurance required pursuant to Section 13 of this Lease in force and effect at all times until the Lease Obligations are fully paid and performed;

(u) the appointment of a temporary manager (or operator) for the Leased Property by any Governmental Authority;

(v) the entry of an order by a court with jurisdiction over the Leased Property to close the Facility, to transfer one or more residents the Facility as a result of an allegation of abuse or neglect or to take any action to eliminate an emergency situation then existing at the Facility, if such order has not been stayed pending appeal within ten (10) following such entry; or

(w) the occurrence of any default or breach of condition continuing for more than thirty (30) days under any credit agreement, loan agreement or other agreement establishing a major line of credit (including, without limitation, a major line of credit or a Working Capital Loan which is not secured by a Working Capital Stock Pledge) (or any documents executed in connection with such lines of credit) on behalf of Guarantor without regard to whether the applicable creditor has elected to declare the indebtedness due and payable under such line of credit or to exercise any other right or remedy available to it or the occurrence of any such default or breach of condition if the applicable creditor has elected to declare the indebtedness due and payable under such line of credit or to exercise any other right or remedy available to it. For the purpose of this provision, a major

line of credit shall mean and include any line of credit established in an amount equal to or greater than ONE MILLION DOLLARS (\$1,000,000) with respect to a line of credit for which Guarantor is an obligor, endorser, surety or guarantor.

16.2 REMEDIES.

(a) If any Lease Default shall have occurred, Lessor may at its option terminate this Lease by giving Lessee not less than ten (10) days' notice of such termination, or exercise any one or more of its rights and remedies under this Lease or any of the other Lease Documents, or as available at law or in equity and upon the expiration of the time fixed in such notice, the Term shall terminate (but only if Lessor shall have specifically elected by a written notice to so terminate the Lease) and all rights of Lessee under this Lease shall cease. Notwithstanding the foregoing, in the event of Lessee's failure to pay Rent, if such Rent remains unpaid beyond ten (10) days from the due date thereof, Lessor shall not be obligated to give ten (10) days notice of such termination or exercise of any of its other rights and remedies under this Lease, or the other Lease Documents, or otherwise available at law or in equity, and Lessor shall be at liberty to pursue any one or more of such rights or remedies without further notice. No taking of possession of the Leased Property by or on behalf of Lessor, and no other act done by or on behalf of Lessor, shall constitute an acceptance of surrender of the Leased Property by Lessee or reduce Lessee's obligations under this Lease or the other Lease Documents, unless otherwise expressly agreed to in a written document signed by an authorized officer or agent of Lessor.

(b) To the extent permitted under applicable law, Lessee shall pay as Additional Charges all costs and expenses (including, without limitation, attorneys' fee and expenses) reasonably incurred by or on behalf of Lessor as a result of any Lease Default.

(c) If any Lease Default shall have occurred, whether or not this Lease has been terminated pursuant to Paragraph (a) of this Section, Lessee shall, to the extent permitted under applicable law, if required by Lessor so to do, upon not less than ten (10) days' prior notice from Lessor, immediately surrender to Lessor the Leased Property pursuant to the provisions of Paragraph (a) of this Section and quit the same, and Lessor may enter upon and repossess the Leased Property by reasonable force, summary proceedings, ejectment or otherwise, and may remove Lessee and all other Persons and any and all of the Tangible Personal Property from the Leased Property, subject to the rights of any residents of the Facility and any Sublessees who are not Affiliates of any member of the Leasing Group and to any requirements of applicable law, or Lessor may claim ownership

of the Tangible Personal Property as set forth in Section 5.2.3 hereof or Lessor may exercise its rights as secured party under the Security Agreement. Lessor shall use reasonable, good faith efforts to relet the Leased Property or otherwise mitigate damages suffered by Lessor as a result of Lessee's breach of this Lease.

104

(d) In addition to all of the rights and remedies of Lessor set forth in this Lease and the other Lease Documents, if Lessee shall fail to pay any rental or other charge due hereunder (whether denominated as Base Rent, Additional Rent, Additional Charges or otherwise) within ten (10) days after same shall have become due and payable, then and in such event Lessee shall also pay to Lessor (i) a late payment service charge (in order to partially defray Lessor's administrative and other overhead expenses) equal to TWO HUNDRED FIFTY DOLLARS (\$250) and (ii) to the extent permitted by applicable law, interest on such unpaid sum at the Overdue Rate; it being understood, however, that nothing herein shall be deemed to extend the due date for payment of any sums required to be paid by Lessee hereunder or to relieve Lessee of its obligation to pay such sums at the time or times required by this Lease.

16.3 DAMAGES. None of (a) the termination of this Lease pursuant to Section 16.2, (b) the eviction of Lessee or the repossession of the Leased Property, (c) the inability after reasonable diligence of Lessor, notwithstanding reasonable good faith efforts, to relet the Leased Property, (d) the reletting of the Leased Property or (e) the failure of Lessor to collect or receive any rentals due upon any such reletting, shall relieve Lessee of its liability and obligations hereunder, all of which shall survive any such termination, repossession or reletting. In any such event, Lessee shall forthwith pay to Lessor all Rent due and payable with respect to the Leased Property to and including the date of such termination, repossession or eviction. Thereafter, Lessee shall forthwith pay to Lessor, at Lessor's option, either:

(i) the sum of: (x) all Rent that is due and unpaid at later to occur of termination, repossession or eviction, together with interest thereon at the Overdue Rate to the date of payment, plus (y) the worth (calculated in the manner stated below) of the amount by which the unpaid Rent for the balance of the Term after the later to occur of the termination, repossession or eviction exceeds the fair market rental value of the Leased Property for the balance of the Term, plus (z) any other amount necessary to compensate Lessor for all damage proximately caused by Lessee's failure to perform the Lease Obligations or which in the ordinary course would be likely to result therefrom and less the amount of rent that has actually been received by Lessor following the termination of this Lease from a Person other than an Affiliate of Lessor (which for purposes hereof shall include the net income received by Lessor or an Affiliate of Lessor from its own operation of the Leased Property in the event it elects to resume operation thereof in lieu of hiring a third party manager or re-letting the Leased Property); or

(ii) each payment of Rent as the same would have become due and payable if Lessee's right of possession or other rights under this Lease had not been terminated, or if Lessee had not been evicted, or if the Leased Property had not been repossessed which Rent, to the extent permitted by law, shall bear interest at the Overdue Rate from the date when due until the date paid, and Lessor may enforce, by action or otherwise, any other term or covenant of this Lease. There shall be credited against Lessee's obligation under this Clause (ii) amounts actually collected by Lessor from another tenant to whom the Leased Property may have actually been leased or, if Lessor is operating the Leased Property for its own account, the actual Cash Flow of the Leased Property.

In making the determinations described in subparagraph (i) above, the "worth" of unpaid Rent shall be determined by a court having jurisdiction thereof using the lowest rate of capitalization (highest present worth) reasonably applicable at the time of such determination and allowed by applicable law and the Additional Rent shall be deemed to be the same as the average Additional Rent of the preceding five (5) full calendar years, or if shorter, the average Additional Rent for the calendar years or portions thereof since the date that Additional Rent commenced to accrue or such other amount as either party shall prove reasonably could have been earned during the remainder of the Term or any portion thereof.

16.4 LESSEE WAIVERS. If this Lease is terminated pursuant to Section 16.2, Lessee waives, to the extent not prohibited by applicable law, (a) any right of redemption, re-entry or repossession, (b) any right to a trial by jury in the event of summary proceedings to enforce the remedies set forth in this Article 16, and (c) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt.

16.5 APPLICATION OF FUNDS. Any payments otherwise payable to Lessee which are received by Lessor under any of the provisions of this Lease during the existence or continuance of any Lease Default shall be applied to the Lease Obligations in the order which Lessor may reasonably determine or as may be required by the laws of the State.

16.6 FAILURE TO CONDUCT BUSINESS. For the purpose of determining rental loss damages or Additional Rent, in the event Lessee fails to conduct business upon the Leased Property, exact damages or the amount of Additional Rent being unascertainable, it shall be deemed that the Additional Rent for such period would be equal to the average annual Additional Rent during the five (5) preceding calendar years or such shorter period of time as may have existed between the date Additional Rent commenced to accrue and the date of computation.

16.7 LESSOR'S RIGHT TO CURE. If Lessee shall fail to make any payment, or to perform any act required to be made or performed under this Lease and to cure the same within the relevant time periods provided in Section 16.1, Lessor, after five (5) Business Days' prior notice to Lessee (except in an emergency when such shorter notice shall be given as is reasonable under the circumstances), and without waiving or releasing any obligation or Event of Default, may (but shall be under no obligation

to) at any time thereafter make such payment or perform such act for the account and at the expense of Lessee, and may, to the extent permitted by law, enter upon the Leased Property for such purpose and take all such action thereon as, in Lessor's opinion, may be necessary or appropriate therefor. No such entry shall be deemed an eviction of Lessee. All sums so paid by Lessor and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses, in each case, to the extent permitted by law) so incurred shall be paid by Lessee to Lessor on demand as an Additional Charge. The obligations of Lessee and rights of Lessor contained in this Article shall survive the expiration or earlier termination of this Lease.

16.8 NO WAIVER BY LESSOR. Lessor shall not by any act, delay, omission or otherwise (including, without limitation, the exercise of any right or remedy hereunder) be deemed to have waived any of its rights or remedies hereunder or under any of the other Lease Documents unless such waiver is in writing and signed by Lessor, and then, only to the extent specifically set forth therein. No waiver at any time of any of the terms, conditions, covenants, representations or warranties set forth in any of the Lease Documents (including, without limitation, any of the time periods set forth therein for the performance of the Lease Obligations) shall be construed as a waiver of any other term, condition, covenant, representation or warranty of any of the Lease Documents, nor shall such a waiver in any one instance or circumstances be construed as a waiver of the same term, condition, covenant, representation or warranty in any subsequent instance or circumstance. No such failure, delay or waiver shall be construed as creating a requirement that Lessor must thereafter, as a result of such failure, delay or waiver, give notice to Lessee or any Guarantor, or any other Person that Lessor does not intend to, or may not, give a further waiver or to refrain from insisting upon the strict performance of the terms, conditions, covenants, representations and warranties set forth in the Lease Documents before Lessor can exercise any of its rights or remedies under any of the Lease Documents or before any Lease Default can occur, or as establishing a course of dealing for interpreting the conduct of and agreements between Lessor and Lessee, the Guarantor or any other Person.

The acceptance by Lessor of any payment that is less than payment in full of all amounts then due under any of the Lease Documents at the time of the making of such payment shall not: (a) constitute a waiver of the right to exercise any of Lessor's remedies at that time or at any subsequent time, (b) constitute an accord and satisfaction or (c) nullify any prior

107

exercise of any remedy, without the express written consent of Lessor. Any failure by Lessor to take any action under this Lease or any of the other Lease Documents by reason of a default hereunder or thereunder, acceptance of a past due installment, or indulgences granted from time to time shall not be construed as a novation of this Lease or any of the other Lease Documents or as a waiver of such right or of the right of Lessor thereafter to insist upon strict compliance with the terms of this Lease or any of the other Lease Documents, or (d) prevent the exercise of such right of acceleration or any other right granted hereunder or under applicable law for purposes of obtaining the damages set forth in Section 16.3, specific performance or equitable remedies; and to the maximum extent not prohibited by applicable law, Lessee hereby expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

16.9 RIGHT OF FORBEARANCE. Whether or not for consideration paid or payable to Lessor and, except as may be otherwise

specifically agreed to by Lessor in writing, no forbearance on the part of Lessor, no extension of the time for the payment of the whole or any part of the Obligations, and no other indulgence given by Lessor to Lessee or any other Person, shall operate to release or in any manner affect the original liability of Lessee or such other Persons, or to limit, prejudice or impair any right of Lessor, including, without limitation, the right to realize upon any collateral, or any part thereof, for any of the Obligations evidenced or secured by the Lease Documents; notice of any such extension, forbearance or indulgence being hereby waived by Lessee and all those claiming by, through or under Lessee.

16.10 CUMULATIVE REMEDIES. The rights and remedies set forth under this Lease are in addition to all other rights and remedies afforded to Lessor under any of the other Lease Documents or at law or in equity, all of which are hereby reserved by Lessor, and this Lease is made and accepted without prejudice to any such rights and remedies. All of the rights and remedies of Lessor under each of the Lease Documents shall be separate and cumulative and may be exercised concurrently or successively in Lessor's sole and absolute discretion.

## ARTICLE 17

### SURRENDER OF LEASED PROPERTY OR LEASE; HOLDING OVER

17.1 SURRENDER. Lessee shall, upon the expiration or prior termination of the Term (unless occasioned by Lessee's purchase of the Leased Property pursuant to the terms of this Lease Agreement), vacate and surrender the Leased Property to Lessor in good repair and condition, in compliance with all applicable Legal Requirements, all Insurance Requirements, and in compliance with the provisions of Article 8, except for: (a) ordinary wear and tear (subject to the obligation of Lessee to maintain the Leased Property in good order and repair during the entire Term of the Lease), (b) damage caused by the gross negligence or willful acts of Lessor, and (c) any damage or destruction resulting from a Casualty or Taking that Lessee is not required by the terms of this Lease to repair or restore.

17.2 TRANSFER OF CONTRACTS AND PERMITS. In connection with the expiration or any earlier termination of this Lease (unless occasioned by Lessee's purchase of the Leased Property pursuant to the terms of this Lease Agreement), upon any request made from time to time by Lessor, Lessee shall (a) promptly and diligently use its best efforts to (i) transfer and assign all Permits and Contracts necessary or desirable for the operation of the Leased Property in accordance with its Primary Intended Use to Lessor or its designee to the extent the same are assignable under applicable Legal Requirements and/or (ii) arrange for the transfer or assignment of such Permits and Contracts to Lessor or its designee and (b) cooperate in every respect (and to the fullest extent possible) and assist Lessor or its designee in obtaining such Permits and Contracts (whether by

transfer, assignment or otherwise) provided, however, that unless a termination is the result of a Lease Default, Casualty or Condemnation, Lessee's efforts and cooperation shall not require Lessee to pay the costs and expenses incurred by Lessor or Lessor's designated transferee of the Contracts and Permits. Such efforts and cooperation on the part of Lessee shall include, without limitation, the execution, delivery and filing with appropriate Governmental Authorities and Third Party Payors of any applications, petitions, statements, notices, requests, assignments and other documents or instruments requested by Lessor. Furthermore, Lessee shall not take any action or refrain from taking any action which would defer, delay or jeopardize the process of Lessor or its designee obtaining said Permits and Contracts (whether by transfer, assignment or otherwise). Without limiting the foregoing, Lessee shall not seek to transfer or relocate any of said Permits or Contracts to any location other than the Leased Property. The provisions of this Section 17.2 shall survive the expiration or earlier termination of this Lease.

110

Lessee hereby appoints Lessor as its attorney-in-fact, with full power of substitution to take such actions, in the event that Lessee fails to comply with any request made by Lessor hereunder, as Lessor (in its sole absolute discretion) may deem necessary or desirable to effectuate the intent of this Section 17.2. The power of attorney conferred on Lessor by the provisions of this Section 17.2, being coupled with an interest, shall be irrevocable until the Obligations are fully paid and performed and shall not be affected by any disability or incapacity which Lessee may suffer and shall survive the same. Such power of attorney is provided solely to protect the interests of Lessor and shall not impose any duty on the Lender to exercise any such power and neither Lessor nor such attorney-in-fact shall be liable for any act, omission, error in judgment or mistake of law, except as the same may result from its gross negligence or willful misconduct.

17.3 NO ACCEPTANCE OF SURRENDER. Except at the expiration of the Term in the ordinary course, no surrender to Lessor of this Lease or of the Leased Property or any interest therein shall be valid or effective unless agreed to and accepted in writing by Lessor and no act by Lessor or any representative or agent of Lessor, other than such a written acceptance by Lessor, shall constitute an acceptance of any such surrender.

17.4 HOLDING OVER. If, for any reason, Lessee shall remain in possession of the Leased Property after the expiration or any earlier termination of the Term, such possession shall be as a tenant at sufferance during which time Lessee shall pay as rental each month, one and one-half times the aggregate of (i) one-twelfth of the aggregate Base Rent, and Additional Rent payable at the time of such expiration or earlier termination of the Term; (ii) all Additional Charges accruing during the month and (iii) all other sums, if any, payable by Lessee pursuant to the provisions of this Lease with respect to the Leased Property. During such period of tenancy, Lessee shall be obligated to perform and observe all of the terms, covenants and conditions of this Lease, but shall have no rights hereunder other than the right, to the extent given by law to tenants at sufferance, to continue its occupancy and use of the Leased Property. Nothing contained herein shall constitute the consent, express or implied, of Lessor to the holding over of Lessee after the expiration or earlier termination of this Lease.



## ARTICLE 18

## PURCHASE OF THE LEASED PROPERTY

18.1 PURCHASE OF THE LEASED PROPERTY. In the event Lessee purchases the Leased Property from Lessor pursuant to any of the terms of this Lease, Lessor shall, upon receipt from Lessee of the applicable purchase price, together with full payment of any unpaid Rent due and payable with respect to any period ending on or before the date of the purchase, deliver to Lessee a deed with covenants only against acts of Lessor conveying the entire interest of Lessor in and to the Leased Property to Lessee subject to all applicable Legal Requirements, all of the matters described in clauses (a), (b), (e) and (g) of Section 11.5.2, Impositions, any Liens created by Lessee, any Liens created in accordance with the terms of this Lease (except to the extent specifically excluded by the terms hereof) or consented to by Lessee, the claims of all Persons claiming by, through or under Lessee, any other matters assented to by Lessee and all matters for which Lessee has responsibility under any of the Lease Documents, but otherwise not subject to any other Lien created by Lessor from and after the Commencement Date (other than an Encumbrance permitted under Article 20 which Lessee elects to assume). The applicable purchase price shall be paid in cash to Lessor, or as Lessor may direct, in federal or other immediately available funds except as otherwise mutually agreed by Lessor and Lessee. All expenses of such conveyance, including, without limitation, the cost of title examination or standard or extended coverage title insurance, attorneys' fees incurred by Lessor in connection with such conveyance, recording and transfer taxes and recording fees and similar charges and specifically excluding any prepayment penalties, if any, due Lessor's mortgagee, shall be paid by Lessee.

## 18.2 APPRAISAL.

18.2.1 DESIGNATION OF APPRAISERS. In the event that it becomes necessary to determine the Fair Market Value of the Leased Property for any purpose of this Lease, the party required or permitted to give notice of such required determination shall include in the notice the name of a Person selected to act as appraiser on its behalf. Within ten (10) days after receipt of any such notice, Lessor (or Lessee, as the case may be) shall by notice to Lessee (or Lessor, as the case may be) either accept such Person to be the sole appraiser to determine the Fair Market Value of the Leased Property or appoint a second Person as appraiser on its behalf.

18.2.2 APPRAISAL PROCESS. The appraisers thus appointed, each of whom must be a member of the American Institute of Real Estate Appraisers (or any successor organization thereto), shall, within forty-five (45) days after the date of the

notice appointing the first appraiser, proceed to appraise the Leased Property to determine the Fair Market Value of the Leased Property as of the relevant date (giving effect to the impact, if any, of inflation from the date of their decision to the relevant date); provided, however, that if only one appraiser shall have been so appointed, or if two appraisers shall have been so appointed but only one such appraiser shall have made such determination within fifty (50) days after the making of Lessee's or Lessor's request, then the determination of such appraiser shall be final and binding upon the parties. If two appraisers shall have been appointed and shall have made their determinations within the respective requisite periods set forth above and if the difference between the amounts so determined shall not exceed ten per cent (10%) of the lesser of such amounts, then the Fair Market Value of the Leased Property shall be an amount equal to fifty percent (50%) of the sum of the amounts so determined. If the difference between the amounts so determined shall exceed ten percent (10%) of the lesser of such amounts, then such two appraisers shall have twenty (20) days to appoint a third appraiser, but if such appraisers fail to do so, then either party may request the American Arbitration Association or any successor organization thereto to appoint an appraiser within twenty (20) days of such request, and both parties shall be bound by any appointment so made within such twenty (20) day period. If no such appraiser shall have been appointed within such twenty (20) days or within ninety (90) days of the original request for a determination of Fair Market Value of the Leased Property, whichever is earlier, either Lessor or Lessee may apply to any court having jurisdiction to have such appointment made by such court. Any appraiser appointed by the original appraisers, by the American Arbitration Association or by such court shall be instructed to determine the Fair Market Value of the Leased Property within thirty (30) days after appointment of such Appraiser. The determination of the appraiser which differs most in terms of dollar amount from the determinations of the other two appraisers shall be excluded, and fifty percent (50%) of the sum of the remaining two determinations shall be final and binding upon Lessor and Lessee as the Fair Market Value of the Leased Property.

#### 18.2.3 SPECIFIC ENFORCEMENT AND COSTS.

This provision for determination by appraisal shall be specifically enforceable to the extent such remedy is available under applicable law, and any determination hereunder shall be final and binding upon the parties except as otherwise provided by applicable law. Lessor and Lessee shall each pay the fees and expenses of the appraiser appointed by it and each shall pay one-half of the fees and expenses of the third appraiser and one-half of all other cost and expenses incurred in connection with each appraisal.

#### 18.3 LESSEE'S OPTION TO PURCHASE.

18.3.1 CONDITIONS TO OPTION. On the conditions (which conditions Lessor may waive, at its sole option, by notice to Lessee at any time) that (a) at the time of exercise of the Purchase Option and on the applicable Purchase Option Date, there then exists no Lease Default, nor any state of facts or

circumstance which constitutes, or with the passage of time and/or the giving of notice, would constitute a Lease Default and (b) Lessee strictly complies with the provisions of this Section 18.3, then Lessee shall have the option to purchase the Leased Property, at the price and upon the terms hereinafter set forth (the "Purchase Option").

18.3.2 EXERCISE OF OPTION; DEPOSIT. Such Purchase Option shall permit Lessee to purchase the Leased Property (a) on the last day of the Initial Term or (b) on the last day of any Extended Term effectively exercised by Lessee (each of such dates are referred to herein as a "Purchase Option Date") and shall be exercised by notice given by Lessee to Lessor (the "Lessee's Purchase Option Notice") at least one hundred eighty (180) days (but not more than three hundred sixty (360) days) prior to the relevant Purchase Option Date. Notwithstanding anything to the contrary set forth in this Lease, Lessee's right to purchase the Leased Property is subject to the further conditions that (i) concurrently with the exercise of the option set forth under this Section 18.3, the Lessee shall have exercised its right to purchase the premises demised under each of the Related Leases in accordance with the provisions of Section 18.3 of each of the Related Leases, (ii) the conveyance of the Leased Property pursuant to the provisions of this Section 18.3 shall occur simultaneously with the conveyance of the premises demised under each of the Related Leases pursuant to Section 18.3 of each of the Related Leases and (iii) all conditions contained in the Agreement Regarding Related Transactions pertaining to the Purchase Option are satisfied. Lessee shall have no right to rescind Lessee's Purchase Option Notice once given unless (a) a notice of such rescission is given (i) within ten (10) days following receipt of the final determination of the Fair Market Value of the Leased Property or (ii) within thirty (30) days following an event of Casualty or Condemnation as to which Lessee has waived any right of termination set forth in Section 13.2.2 hereof and (b) simultaneously with such notice of rescission, Lessee, by notice given pursuant to Section 1.3 hereof extends the Term.

18.3.3 CONVEYANCE. If the Purchase Option is exercised by Lessee in accordance with the terms hereof, the Leased Property shall be conveyed by a good and sufficient deed with covenants only against acts of Lessor (the "Deed") running to

114

Lessee or to such grantee as Lessee may designate by notice to Lessor at least seven (7) days before the Time of Closing.

18.3.4 CALCULATION OF PURCHASE PRICE. The price to be paid by Lessee for the acquisition of the Leased Property pursuant to this Purchase Option (the "Purchase Price") shall be equal to the greater of (a) the Meditrust Investment or (b) an amount equal to the then Fair Market Value of the Leased Property minus the Fair Market Added Value, subject to the terms of the Agreement Regarding Related Transactions.

18.3.5 PAYMENT OF PURCHASE PRICE. The Purchase Price shall be paid by Lessee at the Time of Closing by certified, cashier's, treasurer's or bank check(s) or wire transfer pursuant to instructions received from Lessor in accordance with the terms of the Agreement Regarding Related Transactions as reduced by the principal balance of any Fee Mortgage which Lessee has elected to, and has the right to, assume in accordance

with the terms hereof.

18.3.6 PLACE AND TIME OF CLOSING. If this Purchase Option is exercised, the closing shall occur and the Deed shall be delivered (the "Closing") at the office of Lessor at 12:00 o'clock noon (E.S.T.) on the applicable Purchase Option Date (such time, as the same may be extended by mutual written agreement of Lessor and Lessee, being hereinafter referred to as the "Time of Closing") in accordance with the terms of the Agreement Regarding Related Transactions. It is agreed that time is of the essence of this Purchase Option.

18.3.7 CONDITION OF LEASED PROPERTY. The Leased Property is to be purchased "AS IS" and "WHERE IS" as of the Time of Closing.

18.3.8 QUALITY OF TITLE. If Lessor shall be unable to give title or to make conveyance, as stipulated in this Section 18.3, then, at Lessor's option, Lessor shall use reasonable efforts to remove all defects in title and the applicable Purchase Option Date and Time of Closing shall be extended for period of thirty (30) days other than with respect to any Encumbrances which Lessor has caused to exist. Lessor shall not be required to expend more than FIFTY THOUSAND DOLLARS (\$50,000) (inclusive of attorney's fees) in order to have used "reasonable efforts."

115

18.3.9 LESSOR'S INABILITY TO PERFORM. If at the expiration of the extended time Lessor shall have failed so to remove any such defects in title, then all other obligations of all parties hereto under Section 18.3 shall cease and Section 18.3 shall be void and without recourse to the parties hereto. Notwithstanding the foregoing, Lessee shall have the election, at either the original or extended Purchase Option Date and Time of Closing, to accept such title as Lessor can deliver to the Leased Property in its then condition and to pay therefor the Purchase Price without reduction, in which case Lessor shall convey such title; provided, that, in the event of such conveyance, if any portion of the Leased Property shall have been taken by Condemnation prior to the applicable Purchase Option Date and Time of Closing, Lessor shall pay over or assign to Lessee at the Time of Closing, all Awards recovered on account of such Taking, less any amounts reasonably expended by Lessor in obtaining such Award and less any amounts expended for restoration pursuant to the provisions of Article 14 hereof, or, to the extent such Awards have not been recovered as of the applicable Purchase Option Date and Time of Closing, Lessor shall assign to Lessee all its rights with respect to any claim therefor and further provided, that, in the event of such conveyance, if any portion of the Leased Property shall have suffered a Casualty prior to the applicable Purchase Option Date and Time of Closing, Lessor shall pay over or assign to Lessee at the Time of Closing, all insurance proceeds recovered on account of such Casualty, less any amounts reasonably expended by Lessor in obtaining such proceeds and less any amounts expended for restoration pursuant to the provisions of Article 13 hereof, or, to the extent such proceeds have not been recovered as of the

applicable Purchase Option Date and Time of Closing, Lessor shall assign to Lessee all its rights with respect to any claim therefor.

18.3.10 MERGER BY DEED. The acceptance of the Deed by Lessee or the grantee designated by Lessee, as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation to be performed by Lessor contained or expressed in this Lease.

18.3.11 USE OF PURCHASE PRICE TO CLEAR TITLE. To enable Lessor to make conveyance as provided in this Section, Lessor may, at the Time of Closing, use the Purchase Price or any portion thereof to clear the title of any Lien, provided that all instruments so procured are recorded contemporaneously with the Closing or reasonable arrangements are made for a recording subsequent to the Time of Closing in accordance with customary conveyancing practices.

116

18.3.12 LESSEE'S DEFAULT. If Lessee delivers Lessee's Purchase Option Notice and fails to consummate the purchase of the Leased Property in accordance with the terms hereof for any reason other than Lessor's willful and unexcused refusal to deliver the Deed or exercise of the right of rescission in Section 18.3.2 hereof, (a) Lessee shall thereafter have no further right to purchase the Leased Property pursuant to this Section, although this Lease shall otherwise continue in full force and effect and (b) Lessor shall have the right to sue for specific performance of Lessee's obligations to purchase the Leased Property provided such suit for specific performance is commenced within one (1) year after the applicable Purchase Option Date on which such sale was supposed to occur.

## ARTICLE 19

### SUBLETTING AND ASSIGNMENT

19.1 SUBLETTING AND ASSIGNMENT. Lessee may not, without the prior written consent of Lessor, which consent may be withheld in Lessor's sole and absolute discretion, assign or pledge all or any portion of its interest in this Lease or any of the other Lease Documents (whether by operation of law or otherwise) or sublet all or any part of the Leased Property. For purposes of this Section 19.1, the term "assign" shall be deemed to include, but not be limited to, any one or more sales, pledges, hypothecations or other transfers (including, without limitation, any transfer by operation of law) of any of the capital stock of or partnership interest in Lessee or sales, pledges, hypothecations or other transfers (including, without limitation, any transfer by operation of law) of the capital or the assets of Lessee. Any such assignment, pledge, sale, hypothecation or other transfer made without Lessor's consent shall be void and of no force and effect. Notwithstanding the foregoing, Lessors consent shall not be unreasonably withheld with respect to an assignment or pledge of an interest of Lessee in this Lease or a sublet of all or a part of the Leased Property to a Meditrust/Emeritus Transaction Affiliate.

19.2 ATTORNMENT. Lessee shall insert in each Sublease approved by Lessor, provisions to the effect that (a) such Sublease is subject and subordinate to all of the terms and provisions of this Lease and

to the rights of Lessor hereunder, (b) in the event this Lease shall terminate before the expiration of such Sublease, the Sublessee thereunder will, at Lessor's option, attorn to Lessor and waive any right the Sublessee may have to terminate the Sublease or to surrender possession thereunder, as a result of the termination of this Lease and (c) in the event the Sublessee receives a written notice from Lessor stating that Lessee is in default under this Lease, the Sublessee shall thereafter be obligated to pay all rentals

accruing under said Sublease directly to Lessor or as Lessor may direct. All rentals received from the Sublessee by Lessor shall be credited against the amounts owing by Lessee under this Lease.

## ARTICLE 20

### TITLE TRANSFERS AND LIENS GRANTED BY LESSOR

20.1 NO MERGER OF TITLE. Except as otherwise provided in Section 18.3.10, there shall be no merger of this Lease or of the leasehold estate created hereby with the fee estate in the Leased Property by reason of the fact that the same Person may acquire, own or hold, directly or indirectly (a) this Lease or the leasehold estate created hereby or any interest in this Lease or such leasehold estate and (b) the fee estate in the Leased Property.

20.2 TRANSFERS BY LESSOR. If the original Lessor named herein or any successor in interest shall convey the Leased Property in accordance with the terms hereof, other than as security for a debt, and the grantee or transferee of the Leased Property shall expressly assume all obligations of Lessor hereunder arising or accruing from and after the date of such conveyance or transfer, the original Lessor named herein or the applicable successor in interest so conveying the Leased Property shall thereupon be released from all future liabilities and obligations of Lessor under this Lease arising or accruing from and after the date of such conveyance or other transfer as to the Leased Property and all such future liabilities and obligations shall thereupon be binding upon the new owner.

20.3 LESSOR MAY GRANT LIENS. Without the consent of Lessee, but subject to the terms and conditions set forth below in this Section 20.3, Lessor may, from time to time, directly or indirectly, create or otherwise cause to exist any lien, encumbrance or title retention agreement upon the Leased Property or any interest therein ("Encumbrance"), whether to secure any borrowing or other means of financing or refinancing, provided that Lessee shall have no obligation to make payments under such Encumbrances. Lessee shall subordinate this Lease to the lien of any such Encumbrance, on the condition that the beneficiary or holder of such Encumbrance executes a non-disturbance agreement in conformity with the provisions of Section 20.4. To the extent that any such Encumbrance consists of a mortgage or deed of trust on Lessor's interest in the Leased Property the same shall be referred to herein as a "Fee Mortgage" and the holder thereof shall be referred to herein as a "Fee Mortgagee".

## 20.4 SUBORDINATION AND NON-DISTURBANCE.

Concurrently with the execution and delivery of any Fee Mortgage entered into after the date hereof, provided that the Lessee executes and delivers an agreement of the type described in the following paragraph, Lessor shall obtain and deliver to Lessee an agreement by the holder of such Fee Mortgage, pursuant to which, (a) the applicable Fee Mortgagee consents to this Lease and (b) agrees that, notwithstanding the terms of the applicable Fee Mortgage held by such Fee Mortgagee, or any default, expiration, termination, foreclosure, sale, entry or other act or omission under or pursuant to such Fee Mortgage or a transfer in lieu of foreclosure, (i) Lessee shall not be disturbed in peaceful enjoyment of the Leased Property nor shall this Lease be terminated or cancelled at any time, except in the event that Lessor shall have the right to terminate this Lease under the terms and provisions expressly set forth herein, (ii) Lessee's option to purchase the Leased Property shall remain in force and effect pursuant to the terms hereof and (iii) in the event that Lessee elects its option to purchase the Leased Property and performs all of its obligations hereunder in connection with any such election, the holder of the Fee Mortgage shall release its Fee Mortgage upon payment by Lessee of the purchase price required hereunder, provided, that (1) such purchase price is paid to the holder of the Fee Mortgage, in the event that the Indebtedness secured by the applicable Fee Mortgage is equal to or greater than the purchase price or (2) in the event that the purchase price is greater than the Indebtedness secured by the Fee Mortgage, a portion of the purchase price equal to the Indebtedness secured by the Fee Mortgage is paid to the Fee Mortgagee and the remainder of the purchase price is paid to Lessor.

At the request from time to time by any Fee Mortgagee, Lessee shall (a) subordinate this Lease and all of Lessee's rights and estate hereunder to the Fee Mortgage held by such Fee Mortgagee and (b) agree that Lessee will attorn to and recognize such Fee Mortgagee or the purchaser at any foreclosure sale or any sale under a power of sale contained in any such Fee Mortgage as Lessor under this Lease for the balance of the Term then remaining. To effect the intent and purpose of the immediately preceding sentence, Lessee agrees to execute and deliver such instruments in recordable form as are reasonably requested by Lessor or the applicable Fee Mortgagee; provided, however, that such Fee Mortgagee simultaneously executes, delivers and records a written agreement of the type described in the preceding paragraph.

## ARTICLE 21

## LESSOR OBLIGATIONS

21.1 QUIET ENJOYMENT. As long as Lessee shall pay all Rent and all other sums due under any of the Lease Documents as the same become due and shall fully comply with all of the terms of this Lease and

the other Lease Documents and fully perform its obligations thereunder, Lessee shall peaceably and quietly have, hold and enjoy the Leased Property throughout the Term, free of any claim or other action by Lessor or anyone claiming by, through or under Lessor, but subject to all the Permitted Encumbrances and such Liens as may hereafter be consented to by Lessee. No failure by Lessor to comply with the foregoing covenant shall give Lessee any right to cancel or terminate this Lease, or to fail to perform any other sum payable under this Lease, or to fail to perform any other obligation of Lessee hereunder. Notwithstanding the foregoing, Lessee shall have the right by separate and independent action to pursue any claim it may have against Lessor as a result of a breach by Lessor of the covenant of quiet enjoyment contained in this Article 21.

21.2 MEMORANDUM OF LEASE. Lessor and Lessee shall, promptly upon the request of either, enter into a short form memorandum of this Lease, in form suitable for recording under the laws of the State, in which reference to this Lease and all options contained herein shall be made. Lessee shall pay all recording costs and taxes associated therewith.

21.3 DEFAULT BY LESSOR. Lessor shall be in default of its obligations under this Lease only if Lessor shall fail to observe or perform any term, covenant or condition of this Lease on its part to be performed and such failure shall continue for a period of thirty (30) days after notice thereof from Lessee (or such shorter time as may be necessary in order to protect the health or welfare of any residents of the Facility or to ensure the continuing compliance of the Facility with applicable Legal Requirements), unless such failure cannot with due diligence be cured within a period of thirty (30) days, in which case such failure shall not be deemed to continue if Lessor, within said thirty (30) day period, proceeds promptly and with due diligence to cure the failure and diligently completes the curing thereof within one hundred twenty (120) days after notice thereof.

## ARTICLE 22

### NOTICES

Any notice, request, demand, statement or consent made hereunder or under any of the other Lease Documents shall be in writing and shall be deemed duly given if personally delivered, sent by certified mail, return receipt requested, or sent by a nationally recognized commercial overnight delivery service with provision for a receipt, postage or delivery charges prepaid, and shall be deemed given when so personally delivered, three (3) business days following the date postmarked or the next business day when placed in the possession of such mail delivery service and addressed as follows:

If to Lessee: c/o Emeritus Corporation  
3131 Elliott Avenue, Suite 500  
Seattle, WA 98121-2162  
Attention: Daniel R. Baty, Chief



With a copy to: The Nathanson Group  
1411 Fourth Avenue, Suite 905  
Seattle, WA 98101  
Attn: Randi S. Nathanson, Esquire

If to the Guarantor: Emeritus Corporation  
Market Place One  
3131 Elliott Avenue, Suite 500  
Seattle, WA 98121-2162  
Attention: Daniel R. Baty, Chief  
Executive Officer

With a copy to: The Nathanson Group  
1411 Fourth Avenue, Suite 905  
Seattle, WA 98101  
Attn: Randi S. Nathanson, Esquire

If to Lessor: Meditrust Acquisition Corporation I  
197 First Avenue  
Needham Heights, Massachusetts 02194  
Attn: President

With copies to: Meditrust Acquisition Corporation I  
197 First Avenue  
Needham Heights, Massachusetts 02194  
Attn: General Counsel

121

and Mintz, Levin, Cohn, Ferris, Glovsky  
and Popeo, P.C.

One Financial Center  
Boston, MA 02111  
Attn: Joshua Davis, Esquire

or such other address as Lessor, Lessee or the Guarantor shall hereinafter from time to time designate by a written notice to the others given in such manner. Any notice given to Lessee or the Guarantor by Lessor at any time shall not imply that such notice or any further or similar notice was or is required.

#### ARTICLE 23

#### LIMITATION OF MEDITRUST LIABILITY

The Declaration of Trust establishing the sole shareholder of Lessor, Meditrust, a Massachusetts business trust ("Meditrust"), dated August 6, 1985 (the "Declaration"), as amended, a copy of which is duly filed in the office of the Secretary of State of the Commonwealth of Massachusetts, provides that the name "Meditrust" refers to the trustees under the Declaration collectively as trustees, but not individually or personally; and that no trustee, officer, shareholder, employee or agent of Meditrust or any of its Subsidiaries shall be held to any personal liability, jointly, or severally, for any obligation of, or claim against Meditrust or any of its Subsidiaries. All Persons dealing with Meditrust or Lessor, in any way, shall look only to the assets of Meditrust or Lessor, as applicable, for the payment of any sum or the performance of any obligation. Furthermore, in no event shall Meditrust or Lessor ever be liable to Lessee

or any other Person for any indirect or consequential damages incurred by Lessee or such other Person resulting from any cause whatsoever. Notwithstanding the foregoing, Lessee hereby acknowledges and agrees that Meditrust is not a party to this Lease and that Lessee shall look only to the assets of Lessor for the payment of any sum or performance of any obligation due by or from Lessor pursuant to the terms and provisions of the Lease Documents.

ARTICLE 24

MISCELLANEOUS PROVISIONS

24.1 BROKER'S FEE INDEMNIFICATION. Lessee and Lessor each shall and hereby agrees to indemnify, defend (with counsel acceptable to the other) and hold the other harmless from and against any and all claims for premiums or other charges, finder's fees, taxes, brokerage fees or commissions and other similar compensation due to a broker or finder allegedly employed or retained by it in connection with any of the transactions contemplated by the Lease Documents. Notwithstanding the foregoing, the indemnified party shall have the option of conducting its own defense against any such claims with counsel of such party's choice, but at the expense of the indemnifying party, as aforesaid. This indemnification shall include all reasonable attorneys' fees and expenses and court costs reasonably incurred by the indemnified party in connection with the defense against any such claims and the enforcement of this indemnification agreement and shall survive the termination of this Lease.

24.2 NO JOINT VENTURE OR PARTNERSHIP. Neither anything contained in any of the Lease Documents, nor the acts of the parties hereto, shall create, or be construed to create, a partnership or joint venture between Lessor and Lessee. Lessee is not the agent or representative of Lessor and nothing contained herein or in any of the other Lease Documents shall make, or be construed to make, Lessor liable to any Person for goods delivered to Lessee, services performed with respect to the Leased Property at the direction of Lessee or for debts or claims accruing against Lessee.

24.3 AMENDMENTS, WAIVERS AND MODIFICATIONS. None of the terms, covenants, conditions, warranties or representations contained in this Lease or in any of the other Lease Documents may be renewed, replaced, amended, modified, extended, substituted, revised, waived, consolidated or terminated except by an agreement in writing signed by all parties to this Lease or the other Lease Documents, as the case may be, in the case of any renewal, replacement, amendment, modification, extension, substitution, revisions, consolidation or termination and by the Person against whom enforcement is sought in the case of a waiver or except as otherwise expressly provided for herein or in any other Lease Document. The provisions of this Lease and the other Lease Documents shall extend and be applicable to all renewals, replacements, amendments, extensions, substitutions, revisions, consolidations and modifications of any

of the Lease Documents, the Management Agreements, the Related Party Agreements, the Permits and/or the Contracts. References herein and in the other Lease Documents to any of the Lease Documents, the Management Agreements, the Related Party Agreements, the Permits and/or the Contracts shall be deemed to include any renewals, replacements, amendments, extensions, substitutions, revisions, consolidations or modifications thereof.

123

Notwithstanding the foregoing, any reference contained in any of the Lease Documents, whether express or implied, to any renewal, replacement, amendment, extension, substitution, revisions, consolidation or modification of any of the Lease Documents or any Management Agreement, Related Party Agreement, Permit and/or the Contract is not intended to constitute an agreement or consent by Lessor to any such renewal, replacement, amendment, substitution, revision, consolidation or modification; but, rather as a reference only to those instances where Lessor may give, agree or consent to any such renewal, replacement, amendment, extension, substitution, revision, consolidation or modification as the same may be required pursuant to the terms, covenants and conditions of any of the Lease Documents.

24.4 CAPTIONS AND HEADINGS. The captions and headings set forth in this Lease and each of the other Lease Documents are included for convenience and reference only, and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of, or the scope or intent of, this Lease, any of the other Lease Documents or any parts hereof or thereof.

24.5 TIME IS OF THE ESSENCE. Time is of essence of each and every term, condition, covenant and warranty set forth herein and in the other Lease Documents.

24.6 COUNTERPARTS. This Lease and the other Lease Documents may be executed in one or more counterparts, each of which taken together shall constitute an original and all of which shall constitute one in the same instrument.

24.7 ENTIRE AGREEMENT. This Lease and the other Lease Documents set forth the entire agreement of the parties with respect to the subject matter and shall supersede in all respect the letter of intent, dated January 31, 1996 (and all prior iterations thereof), from Meditrust to Lessee.

24.8 WAIVER OF JURY TRIAL. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LESSOR AND LESSEE HEREBY MUTUALLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT WHICH ANY PARTY HERETO MAY NOW OR HEREAFTER HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE LEASE OR ANY OF THE LEASE DOCUMENTS. Lessee hereby certifies that neither Lessor nor any of Lessor's representatives, agents or counsel has represented expressly or otherwise that Lessor would not, in the event of any such suit, action or proceeding seek to enforce this waiver to the right of trial by jury and acknowledges that Lessor has been induced by this waiver (among other things) to enter into the transactions evidenced by this Lease and the other

124

Lease Documents and further acknowledges that Lessee (a) has read the provisions of this Lease, and in particular, the paragraph containing this waiver, (b) has consulted legal counsel, (c) understands the rights that it is granting in this Lease and the rights that it waiving in this paragraph in particular and (d) makes the waivers set forth herein knowingly, voluntarily and intentionally.

24.9           SUCCESSORS AND ASSIGNS. This Lease and the other Lease Documents shall be binding upon and inure to the benefit of (a) Lessee and Lessee's legal representatives and permitted successors and assigns and (b) Lessor and any other Person who may now or hereafter hold the interest of Lessor under this Lease and their respective successors and assigns.

24.10           NO THIRD PARTY BENEFICIARIES. This Lease and the other Lease Documents are solely for the benefit of Lessor, its successors, assigns and participants (if any), the Meditrust Entities, Lessee, the Guarantor, the other members of the Leasing Group and their respective permitted successors and assigns, and, except as otherwise expressly set forth in any of the Lease Documents, nothing contained therein shall confer upon any Person other than such parties any right to insist upon or to enforce the performance or observance of any of the obligations contained therein. All conditions to the obligations of Lessor to advance or make available proceeds of insurance or Awards, or to release any deposits held for Impositions or insurance premiums are imposed solely and exclusively for the benefit of Lessor, its successors and assigns. No other Person shall have standing to require satisfaction of such conditions in accordance with their terms, and no other Person shall, under any circumstances, be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lessor at any time, if, in Lessor's sole and absolute discretion, Lessor deems it advisable or desirable to do so.

24.11           GOVERNING LAW. This Lease shall be construed and the rights and obligations of Lessor and Lessee shall be determined in accordance with the laws of the State.

Lessee hereby consents to personal jurisdiction in the courts of the State and the United States District Court for the District in which the Leased Property is situated as well as to the jurisdiction of all courts from which an appeal may be taken from the aforesaid courts, for the purpose of any suit, action or other proceeding arising out of or with respect to any of the Lease Documents, the negotiation and/or consummation of the transactions evidenced by the Lease Documents, the Lessor's relationship of any member of the Leasing Group in connection with the transactions evidenced by the Lease Documents and/or the performance of any obligation or the exercise of any remedy under any of the Lease Documents and expressly waives any and all objections Lessee may have as to venue in any of such courts.

125

24.12           GENERAL. Anything contained in this Lease to the contrary notwithstanding, all claims against, and liabilities of, Lessee or Lessor arising prior to any date of termination of this Lease or any of the other Lease Documents shall survive such termination.

If any provision of this Lease or any of the other Lease Documents or any application thereof shall be invalid or unenforceable, the remainder of this Lease or the other applicable Lease Document, as the case may be, and any other application of such term or provision shall not be affected thereby. Notwithstanding the foregoing, it is the intention of the parties

hereto that if any provision of any of this Lease is capable of two (2) constructions, one of which would render the provision void and the other of which would render the provision valid, then such provision shall be construed in accordance with the construction which renders such provision valid.

If any late charges provided for in any provision of this Lease or any of the other Lease Documents are based upon a rate in excess of the maximum rate permitted by applicable law, the parties agree that such charges shall be fixed at the maximum permissible rate.

Lessee waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance and waives all notices of the existence, creation, or incurring of new or additional obligations, except as to all of the foregoing as expressly provided for herein.

## ARTICLE 25

### SUBSTITUTION OF PROPERTY

25.1           SUBSTITUTION OF PROPERTY FOR THE LEASED PROPERTY. Provided that no Event of Default has occurred under this Lease (excluding any Event of Default which has been waived, in writing, by the Lessor), nor any event which, with the giving of notice or the passage of time or both, would constitute such an Event of Default, Lessee shall have the right from time to time (referred to herein as the "Substitution Right"), exercisable upon not less than ninety (90) days' prior written notice to Lessor (referred to herein as a "Substitution Notice") to substitute, on a date specified in such Substitution Notice (such date, as the same may be extended by express written agreement of lessor, shall be referred to herein as a "Substitution Date"), the Leased Property with a Comparable Facility. As used herein, the term "Comparable Facility" shall be defined as a health care facility or facilities which Lessor determines (a) has an appraised Fair Market Value greater than or equal to the greater of (i) the appraised Fair Market Value of the Leased Property as of the Completion Date or (ii) the appraised Fair Market Value of the Leased Property at the time that the

applicable Substitution Notice is furnished to Lessor (based on appraisal criteria then in effect), (b) has a Facility Debt Coverage Ratio greater than or equal to the greater of (i) the Facility Debt Coverage Ratio of the Leased Property as of the Commencement Date, (ii) the Facility Debt Coverage Ratio of the Leased Property at the time that the applicable Substitution Notice is furnished to Lessor, (c) provides a mix of services similar to the Leased Property and (d) is otherwise reasonably acceptable, in all respects, to Lessor (based on Lessor's usual and customary property evaluation criteria then in effect). Lessee may not exercise its Substitution Right more than once in any calendar year.

25.2 CONDITIONS TO SUBSTITUTION. Without limiting the foregoing, as conditions precedent to the consummation of any proposed substitution:

(a) as of the applicable Substitution Date, no Event of Default shall have occurred under the Lease (excluding any Event of Default which has been waived, in writing, by Lessor), nor any event which with the giving of notice or the passage of time or both would constitute such an Event of Default;

(b) Lessor shall have received engineering and inspection reports relating to the assisted living facility identified by Lessee in the applicable Substitution Notice (referred to herein as a "Proposed Facility"), reasonably satisfactory in all respects to Lessor;

127

(c) Lessee shall have delivered to Lessor (i) an MAI appraisal of the Proposed Facility (prepared by an appraiser selected by Lessee and approved by Lessor), in form and substance reasonably satisfactory to Lessor and (ii) an instrument survey of the premises upon which the Proposed Facility is located acceptable to Lessor and the title insurance company providing insurance with respect to the Proposed Facility;

(d) Lessor shall be satisfied as to compliance of Lessee, the Proposed Facility, the owner of the Proposed Facility (to the extent such owner is not Lessee as provided in subsection (l) below) and/or the proposed substitution, as the case may be, with (i) all applicable land use, zoning, subdivision and environmental laws and regulations, (ii) all applicable assisted living licensure laws and regulations and (iii) such other matters as Lessor reasonably deems relevant (including, without limitation, whether the conveyance of the property to Lessor in connection with the proposed substitution may be avoided under the Bankruptcy Code);

(e) Lessee shall have delivered to Lessor a valid and binding owner's or lessee's (as applicable) title insurance commitment issued by a title insurer reasonably acceptable to Lessor (the "Title Company"), in an amount equal to the Fair Market Value of the Proposed Facility, with such endorsements and affirmative coverages, and in such form, as Lessor may reasonably require insuring Lessor's fee title or leasehold title to the Proposed Facility, subject to no Liens except those approved or assumed by Lessor and arrangements satisfactory to Lessor shall have been made for the issuance of a title insurance policy on the Substitution Date in accordance with such title insurance commitment;

(f) Lessee shall have delivered an environmental site assessment report relating to the Proposed Facility, in form and substance reasonably acceptable to Lessor and prepared by an environmental consultant reasonably acceptable to Lessor;

(g) Lessor shall have obtained, at Lessee's cost, an opinion of Lessor's counsel, in form and substance acceptable to Lessor, confirming that (i) the substitution of the Proposed Facility for the Leased Property will qualify as an exchange solely of property of a like-kind under Section 1031 of the Code, in which, generally, except for "boot" such as cash needed to equalize exchange values or discharge indebtedness, no gain or loss is recognized to Lessor, (ii) the substitution or sale will not result in ordinary recapture income to Lessor pursuant to Code Section 1250(d)(4) or any other Code provision, (iii) the substitution or sale will result in income, if any, to Lessor of a type described in Code Section 856(c)(2) or (3) and will not result in income of the types described in Code Section 856(c)(4) or result in the tax imposed under Code Section 857(b)(6) and (iv) the substitution or sale, together with all other substitutions and sales made or requested by Lessee or any Affiliate of Lessee or of any Guarantor pursuant to any other leases with Lessor (or any of its Affiliates) or any other

128

transfers of the Leased Property or the properties leased under other such leases, during the relevant time period, will not jeopardize the qualification of Lessor as a real estate investment trust under Code Sections 856-860;

(h) Lessor shall have received opinions of Lessee's counsel as to (i) the compliance of the Proposed Facility with land use, zoning, subdivision and environmental laws and regulations, (ii) the compliance of Lessee, the owner of the Proposed Facility (to the extent such owner is not Lessee as provided in subsection (l) below), the proposed substitution and the Proposed Facility with applicable assisted living laws and regulations, (iii) the due authorization, execution and enforceability of the Substitution Documents and (iv) such other matters as are reasonably requested; in form and substance reasonably acceptable to Lessor;

(i) Lessee and each Guarantor shall have executed and delivered, or caused to be executed and delivered, such documents as are reasonably required by Lessor to effectuate the substitution (collectively, the "Substitution Documents"), including, without limitation, (i) a deed with full warranties or assignment of a leasehold estate with full warranties (as applicable) conveying to Lessor title to the Proposed Facility free and clear of all Liens, except those approved or assumed by Lessor, (ii) a facility lease (the "Substitution Lease") duly executed, acknowledged and delivered by Lessee, containing the same terms and conditions as are contained herein except that (1) the legal description of the land shall refer to the Proposed Facility, (2) the Minimum Repurchase Price of the Proposed Facility shall be an amount equal to the Minimum Repurchase Price of the Leased Property increased by any Cash Adjustment paid by Lessor, (3) the Rent under the Substitution Lease in all respects shall provide Lessor with a substantially equivalent yield at the time of the substitution (i.e., annual return on its equity in such Proposed Facility) to that received (and reasonably expected to be received thereafter) from the Leased Property, taking into account the Cash Adjustment, if any, paid by Lessor and any other relevant factors and (4) such other changes therein as may be necessary or appropriate under the circumstances shall be made; (iii) a collateral assignment of permits, licenses, approvals and contracts relating to the Proposed Facility, substantially in the form of the Permits Assignment; (iv) UCC financing statements; (v) a guaranty substantially in the form of the Guaranty of Lease Obligations shall be executed by Guarantor, (vi) an affiliated party subordination agreement, substantially in the form of the Affiliated Party Subordination Agreement, shall be executed by the Lessee, and such other Affiliates of the Lessee as are deemed necessary or appropriate by the Lessor and (vii) the Agreement Regarding Related Transactions shall be amended to reflect the substitution of the

Proposed Facility. The Substitution Documents shall be based upon and contain the same terms and conditions as are set forth in Lessee Documents in effect prior to the substitution, except that such changes shall be made as may be necessary or reasonably appropriate under the circumstances to effectuate the substitution and secure the protection and priority of the property and security interests conveyed and/or granted to Lessor;

129

(j) without limiting any other provision contained herein, Lessee shall have delivered to Lessor such other information and materials relating to Lessee, the owner of the Proposed Facility (to the extent that such owner is not Lessee as provided in subsection (l) below) and the Proposed Facility as Lessor may reasonably request, including, without limitation, leases, receipted bills, management agreements and other Contracts, Provider Agreements, cost reports, Permits, evidence of legal and actual access to the Proposed Facility, evidence of the availability and sufficiency of utilities servicing the Proposed Facility, historical and current operating statements, detailed budgets and financial statements and Lessor shall have found the same to be satisfactory in all respects;

(k) Lessee or an Affiliate of Lessee shall be the licensed operator of the Proposed Facility as of the date of the consummation of the substitution;

(l) the Proposed Facility shall be owned or leased by Lessee or an Affiliate of Lessee; provided, however that in the event that the Proposed Facility is owned by any such Affiliate, (i) said Affiliate shall execute and deliver to Lessor such Substitution Documents as may be reasonably required by Lessor and (ii) Lessor shall be provided with such evidence as it may require to determine that the conveyance of the Proposed Facility (or a leasehold interest therein) to Lessor does not constitute a fraudulent conveyance (under applicable federal or state law);

(m) Lessee shall have delivered to Lessor an insurance certificate evidencing compliance with all of the insurance requirements set forth in the Substitution Documents;

(n) Lessee shall have delivered to Lessor an Officer's Certificate certifying as of the Substitution Date that (i) the Proposed Facility has been accepted by Lessee for all purposes of the Substitution Lease and there has been no material damage to the improvements located on the Proposed Facility, nor is any condemnation or eminent domain proceeding pending with respect thereto; (ii) all Permits (including, but not limited to, a permanent, unconditional certificate of occupancy and all certificates of need, licenses and Provider Agreements) which are necessary to permit the use of the Proposed Facility in accordance with the provisions of the Substitution Lease have been obtained and are in full force and effect; (iii) under applicable zoning and use laws, ordinances, rules and regulations, the Proposed Facility may be used for the purposes contemplated by Substitution Documents and all necessary subdivision approvals have been obtained; (iv) to the best knowledge of Lessee, there exists no Event of Default under this Lease, and no defense, offset or claim exists with respect to any sums to be paid by Lessee hereunder, and (v) any exceptions to Lessor's title to the Proposed Facility do not materially interfere with the intended use of the Proposed Facility by Lessee;

130



(o) Lessor shall have determined that the Proposed Facility constitutes a Comparable Facility, and

(p) Lessor shall have received all Rent due and payable hereunder through the Substitution Date.

In the event that the equity value of the Proposed Facility (i.e., the Fair Market Value of the Proposed Facility minus the Liens to which Lessor will take the Proposed Facility subject) as of the Substitution Date is greater than the equity value of the Leased Property (i.e., the Fair Market Value of the Leased Property minus the Liens to which Lessee will take the Leased Property subject other than those Liens which Lessee is obligated to pay or discharge pursuant to the terms of this Lease) as of the Substitution Date, subject to the limitation set forth below, Lessor shall pay an amount equal to the difference to Lessee; provided, however, that Lessor shall not be obligated to consummate such substitution if Lessor would be required to make a payment to Lessee of an amount equal to or in excess of fifteen percent (15%) of said Fair Market Value of the Leased Property (the amount of cash paid by Lessor to Lessee being referred to herein as the "Cash Adjustment"). Without limiting the generality or effect of the preceding sentence, in the event that, on the Substitution Date, Lessor is obligated to pay a Cash Adjustment to Lessee and Lessor does not have sufficient funds available, or elects not to make such payment in cash, Lessor shall provide Lessee with (and Lessee shall accept) a purchase money note and mortgage for a term not to exceed eighteen (18) months from the Substitution Date and bearing interest, payable monthly, at the rate described in Section 10.2.

25.3 CONVEYANCE TO LESSEE. If the Lessor shall have determined that the Proposed Facility constitutes a Comparable Facility, on the Substitution Date, after the consummation of a substitution in accordance with the terms hereof, Lessor will convey the Leased Property to Lessee in accordance with the provisions of Article 18 (except as to payment of any expenses in connection therewith which shall be governed by Section 22.4 below) and this Lease shall thereupon terminate as to the Leased Property. Upon completion of the purchase of the Leased Property, no Rent shall thereafter accrue with respect thereto.

25.4 EXPENSES. Whether or not any proposed substitution is consummated, Lessee shall pay all of the out-of-pocket expenses and other costs incurred or expended by Lessor in connection with any proposed substitution (collectively referred to herein as "Substitution Closing Costs"), including, without limitation, reasonable attorneys' fees and expenses, engineering costs, consultants' fees, appraisal costs, audit and tax review costs, out-of-pocket travel expenses, inspection fees, title insurance premiums and other title fees, survey expenses, mortgage taxes, transfer, documentary stamp and other taxes, search charges of any nature, recording, registration and filing costs, broker's fees and commissions, if

any, escrow fees, fees and expenses, if any, incurred in qualifying Lessor and maintaining its right to do business in the state where the Proposed Facility is located, the cost of obtaining, preparing and recording a release of the Leased Property from the lien of any Fee Mortgage on the Facility (other than the amount necessary to payoff such Fee Mortgage) and any other costs expended or incurred by Lessor in connection with the preparation for and the documentation and/or the closing of the proposed substitution. The Substitution Closing Costs shall be a demand obligation of Lessee to Lessor and, if not paid within ten (10) days after demand, shall thereafter (to the extent permitted by applicable law) bear interest at the

Overdue Rate until the date of payment.

25.5 LIMITATION. In the event that Lessee exercises its right to construct the Project pursuant to the Leasehold Improvement Agreement, no Substitution Right may be exercised earlier than the fifth anniversary of the Completion Date.

[INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Lease to be executed and attested by their respective officers thereunto duly authorized.

WITNESS: LESSEE: EMERITUS PROPERTIES I,  
INC., a Washington  
corporation

/s/ Catherine L. Pasquan By: /s/ Kelly J. Price  
-----

Name: Catherine L. Pasquan Name: Kelly J. Price  
Title: Secretary

WITNESS: LESSOR: MEDITRUST  
ACQUISITION  
CORPORATION I, a  
Massachusetts corporation

/s/ Kim M. Priesing

By: /s/ Michael S. Benjamin

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Name: Kim M. Priesing

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Name: Michael S. Benjamin, ESQ.  
Title: Senior Vice President

SARASOTA

LEASEHOLD IMPROVEMENT AGREEMENT

AMONG

MEDITRUST ACQUISITION CORPORATION I

AND

EMERITUS PROPERTIES I, INC.

AND

EMERITUS CORPORATION

## LEASEHOLD IMPROVEMENT AGREEMENT

THIS LEASEHOLD IMPROVEMENT AGREEMENT is made as of August 21, 1996 by and among EMERITUS PROPERTIES I, INC., a Washington corporation (the "Lessee"), and MEDITRUST ACQUISITION CORPORATION I, a Massachusetts corporation (the "Lessor").

### 1. BACKGROUND

#### 1.1 Lessee.

Lessee is a corporation which is a wholly-owned Subsidiary the Guarantor (as hereinafter defined). The Guarantor is a corporation the stock of which is publicly traded on the American Stock Exchange.

#### 1.2 The Land and Existing Improvements.

Lessor is the owner of a certain parcel of land located in Sarasota, Sarasota County, Florida and more particularly described on EXHIBIT A (the "Land").

#### 1.3 The Facility Lease.

Lessor and Lessee have entered into that certain Facility Lease Agreement of even date herewith, relating to the Land (the "Facility Lease"), a Memorandum of which is to be recorded with the Sarasota County, Florida real estate records.

#### 1.4 Project.

Lessee is currently contemplating a proposal to construct an addition of [ ] units and [ ] beds to the existing assisted living facility and other improvements, including, without limitation, accessory parking and landscaping on the Land (collectively, the "Improvements"). The Land and the Improvements are collectively referred to herein as the "Project". Lessee shall have until December 15, 1996 to notify Lessor in writing of its decision to construct the Project, and Lessor shall have no obligation to fund or permit the construction of the Project contemplated hereunder until such time as Lessee has so elected in writing to proceed with the construction of the Project. The obligations contained in this Leasehold Improvement Agreement shall not take effect until Lessor receives such notice from Lessee of its election to proceed with the construction of the Project. Notwithstanding any other provision contained herein, this Leasehold Improvement Agreement shall become null and void if such notice is not received by Lessor by December 15, 1996.

#### 1.5 Lessor's Agreement to Fund the Project and Lessee's Agreement to Supervise the Project.

Lessee and Lessor have agreed that the Project will be a benefit to the premises demised under the Facility Lease and to Lessee's and Lessor's respective interests therein. Lessor and Lessee have further agreed that, pursuant to, and in accordance with, the terms and conditions of this Agreement, Lessor shall fund an amount not to exceed TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000) of the cost of the Project (the "Project Funds"). Lessee has agreed to supervise and manage the construction of the Project and Lessor has agreed to advance the Project Funds to pay for the cost of the construction of the Project; all pursuant to the terms and conditions of this Agreement.

#### 1.6 Plans; the Architect and Architect's Contract.

The Improvements are to be constructed and equipped in accordance with the plans and specifications to be delivered as provided herein (collectively, the "Project Plans"), prepared or to be prepared by an architect to be approved by Lessor, which approval shall not be unreasonably withheld (the "Architect") pursuant to the contract to be entered into by and between Lessee and the Architect and approved by Lessor (the "Architect's Contract").

#### 1.7 Construction Contracts.

All of the Improvements are to be constructed pursuant to a guaranteed maximum contract (the "Construction Contract") to be delivered as provided herein by and between Lessee and a contractor to be approved by Lessor, which approval shall not be unreasonably withheld, and approved by Lessor (the "General Contractor").

#### 1.8 Schedule of Work and Completion Date; Schedule of Draws.

The work necessary to complete and fully equip the Project is to be (a) undertaken and completed in accordance with the schedule of work and schedule of values ("Schedules") to be delivered as provided herein and approved by Lessor; and (b) substantially completed by the first anniversary of the date hereof (the "Completion Date") in accordance with the terms hereof.

#### 1.9 Project Budget.

Lessee shall submit in accordance with the terms hereof prior to the making of the first advance which includes amounts to be expended on the construction or equipping of the Improvements, to Lessor a line item budget (the "Project Budget"), for the design and construction of the Project, including (a) a breakdown of construction costs (itemized as to trade category, subdivision of the work to be performed and the

names of each contractor), (b) a breakdown of all soft costs in connection with the construction of the Project, including, without limitation, costs for such items as real estate taxes, legal and accounting fees, survey costs, permits and inspection fees, insurance premiums, architect's and engineer's fees, marketing, management, leasing and advertising expenses, and all

amounts due in connection with the Advance of Project Funds pursuant to this Agreement, (c) a projected draw schedule and (d) a projected progress schedule for the construction of the Project.

#### 1.10 Use of Project Funds.

The Project Funds are to be used, to the extent sufficient therefore, solely for the payment of Project costs set forth in the Project Budget.

#### 1.11 Project Funds.

Subject to all of the terms, conditions and provisions of this Agreement, and of the agreements and instruments referred to herein, Lessor agrees to advance the Project Funds and Lessee agrees to supervise and manage the construction of the Project and to pay the Rent (as hereinafter defined) due under the Facility Lease (as the same may from time to time be adjusted pursuant to the terms and conditions set forth therein); it being understood that Lessee shall be liable for the payment of Rent regarding such sums as shall have been advanced from time to time under this Agreement to Lessee.

#### 1.12 Guaranties and Indemnities.

As an inducement to Lessor to enter into this Agreement, advance the Project Funds and enter into the Facility Lease, the Guarantor has agreed to furnish certain guaranties as hereinafter described.

### 2. DEFINITIONS

In this Agreement, except as otherwise expressly provided in the text of this Agreement or unless the context otherwise requires, all capitalized terms shall have the meaning ascribed to them in EXHIBIT E.

### 3. LEASEHOLD IMPROVEMENT FEE.

Lessee shall pay the Leasehold Improvement Fee to Lessor simultaneously with the execution of this Agreement; provided, however, that, at Lessor's option, the Leasehold Improvement Fee shall be held in an escrow account established with a Person designated by Lessor pursuant to an escrow arrangement satisfactory to Lessor, with interest thereon benefiting Lessor. If Lessor exercises its option to require that the Leasehold Improvement Fee be held in such an escrow

account (a) the Leasehold Improvement Fee shall be disbursed from said escrow account only upon the joint instructions of Lessee and Lessor which instructions from Lessee shall be immediately given upon he request of Lessor) and in no event shall the Leasehold Improvement Fee be disbursed therefrom, in whole or in part, unless and until so requested by Lessor and (b) Lessor shall bear he risk of loss of or misappropriation of the Leasehold Improvement Fee by such escrow agent.

#### 4. LEASE DOCUMENTS; COLLATERAL SECURITY

##### 4.1 Lease Documents.

The Project Funds shall be advanced, evidenced, administered and governed by all of the terms, conditions and provisions of each of the following:

- A. an Agreement Regarding Related Transactions of even date herewith by and among Lessee, Lessor and ESC G.P. I Inc., as the same may be amended from time to time;
- B. this Agreement;
- C. the Facility Lease;
- D. a Collateral Assignment of Permits, Approvals, Licenses, and Contracts of even date granted by Lessee to Lessor (the "Permits Assignment") and related UCC Financing Statements;.
- E. a Security Agreement of even date by and between Lessee and Lessor (the "Security Agreement")
- F. a Completion Guaranty of even date executed by the Guarantor for the benefit of Lessor guarantying the completion of the Project and the satisfaction of the other Guarantied Obligations (the "Completion Guaranty");
- G. by the Guarantor for the benefit of Lessor guarantying the payment and performance of the Lease Obligations (the "Guaranty of Lease Obligations");
- H. an Environmental Indemnity Agreement of even date by and among Lessee, the Guarantor and Lessor (the "Environmental Indemnity Agreement");
- I. a Deposit Pledge Agreement of even date by and between Lessee and Lessor (the "Deposit Pledge Agreement");
  
- J. a Group Two Negative Pledge (Acquisition) Agreement dated May 1, 1996 by and among Lessee, Lessor and Guarantor (the "Negative Pledge Agreement");
- K. an Assignment of Construction Contract granted by Lessee to Lessor and containing the consent of the General Contractor (the "Construction Assignment");
- L. an Assignment of Architect's Contract of even date granted by Lessee to Lessor and containing the consent of the Architect (the "Architect's Assignment");



- M. an Affiliated Party Subordination Agreement of even date by and among Lessee, the Guarantor, various Affiliates of Lessee and Lessor (the "Affiliated Party Subordination Agreement"); and
- N. all other documents, instruments, or agreements now or hereafter evidencing or securing the obligations under this Agreement and the Facility Lease.

Items (A) through (N) above, as the same from time to time may be hereinafter amended, modified or supplemented, are referred to herein as the "Lease Documents".

#### 4.2 Lease Obligations.

Lessee agrees to pay and perform all indebtedness, covenants, liabilities, obligations, agreements and undertakings (other than Lessor's obligations) under this Agreement and all of the other Lease Documents (collectively, the "Lease Obligations").

#### 4.3 Collateral Security.

The Lease Obligations shall be secured by the following:

- A. a perfected first priority security interest in all Permits and Contracts pursuant to the Permits Assignment;
  - B. a security interest in Tangible Personal Property, and certain other Collateral and a security interest in Receivables, all pursuant to the Security Agreement;
  - C. the Completion Guaranty;
  - D. the Guaranty of Lease Obligations;
  - E. the Environmental Indemnity;
- 5
- F. a perfected first priority interest in the Cash Collateral pursuant to the Deposit Pledge Agreement;
  - G. all other security interests in such other property for which provision is made in the Lease Documents or at law or in equity; and
  - H. certain other Related Party Agreements.

All of the property in which security interests are granted as described in items (A) through (H) above are referred to herein as the "Collateral".

#### 5. REPRESENTATIONS AND WARRANTIES

In order to induce Lessor to advance the Project Funds pursuant to the terms and conditions of this Agreement, Lessee represents and warrants to Lessor that:

#### 5.1 Architect's Contract and Construction Contract.

The Architect's Contract and the Construction Contract, at the time of the execution thereof will be, validly executed by, and will upon execution be binding upon Lessee. Lessee has no reason to believe that such agreements will not be validly executed by and binding upon the other parties thereto;

#### 5.2 Project Plans.

The Project Plans which will be delivered to Lessor by Lessee in accordance with Section 7.1 will be filed with and approved by all appropriate Governmental Authorities. All necessary Permits relating to the Project Plans to be issued or granted by any applicable Governmental Authority having or claiming jurisdiction over the Leased Property which can be obtained in the ordinary course as of the date hereof have been obtained and all such Permits are in full force and effect, are not subject to any unexpired appeal periods or any appeals or challenges which have not been fully resolved in favor of Lessee, and do not contain any conditions or terms relating to the Leased Property which have not been fully satisfied or which will not be fully satisfied by the completion of the construction of the Project (in accordance with the Project Plans and the terms and provisions of this Agreement). Furthermore, the Project Plans will be the plans and specifications which shall be approved in writing by Lessor and all future construction on the Project shall be performed in accordance with the Project Plans, as the same may be amended or modified from time in accordance with section 6.3.2 hereof, and the terms and conditions of this Agreement. There are no structural defects in the

6

Project of which Lessee has been advised or of which Lessee has notice or knowledge except as otherwise described in writing to Lessor or actually known by Lessor. Lessee has not received any notice claiming that, and Lessee has no knowledge that, the Project Plans violate any Legal Requirement;

#### 5.3 Prior Construction Work.

No Person has performed any construction work or furnished any services in connection with any construction carried on or to be carried on at the Leased Property who or which remains unpaid at the time of execution of this Agreement, except as indicated in the requisition submitted simultaneously herewith or otherwise expressly approved by Lessor and, if applicable, the Other Permitted Uses;

#### 5.4 Suitability of Project Plans.

The Project Plans shall provide for the construction and renovation of all buildings and related improvements necessary, both legally and practically, for the construction of the Project in accordance with the terms of this Agreement and, after the completion of the construction thereof, for the operation of the project for its Primary Intended Use;

#### 5.5 Compliance with Legal Requirements and Applicable Agreements.

Upon the completion of construction of the Project, which shall be constructed in accordance with the Project Plans and the terms and provisions of this Agreement, the Project shall be in compliance with (a) all Legal Requirements; (b) all Permits and Contracts and (c) all applicable by-laws, codes, rules, regulations and restrictions of the Board of Fire Underwriters or other insurance underwriters or similar bodies.

#### 5.6 Permits and Contracts.

All Permits and Contracts required by or entered into with any Governmental Authority or quasi-governmental authority or agency for, or in connection with, the construction of the Project which can be obtained in the ordinary course as of the date hereof have been obtained or executed, as the case may be. All such Permits and Contracts are in full force and effect, are not subject to any unexpired appeal periods or any appeals or challenges which have not been conclusively resolved in favor of any member of the Leasing Group, and do not contain any conditions or terms which have not been fully satisfied or which will not be fully satisfied by the completion of the construction of the Project (if constructed in accordance with the Project Plans and the terms and provisions of this Agreement). There is

7

no action pending, or, to the best knowledge and belief of Lessee, recommended by the applicable Governmental Authority having jurisdiction thereof, either to revoke, repeal, cancel, modify, withdraw or suspend any such Permit or Contract relating to the construction of the Project, or any other action of any other type which would have a material adverse effect on the Project. All other Permits and Contracts required for the completion of the construction of the Project and the operation of the Facility are described on SCHEDULE 5.6 annexed hereto and Lessee has no reason to believe such Permits and Contracts shall not be obtainable as and when needed.

#### 5.7 First Advance.

As of the date of the first advance of Project Funds to Lessee pursuant to this Agreement, the amount of the money expended by Lessee on account of the construction of the Project in accordance with the Project Plans and the items listed on Project Budget will not be less than the amount of such first advance.

#### 5.8 Valid and Binding.

Lessee is duly authorized to make and enter into all of the Lease Documents to which Lessee is a party and to carry out the transactions contemplated therein. All of the Lease Documents to which Lessee is a party have been duly executed and delivered by Lessee, and each is a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms.

#### 5.9 No Violation.

The execution, delivery and performance of the Lease Documents and the consummation of the transactions thereby contemplated shall not result in any breach of, or constitute a default under, or result in the acceleration of, or constitute an event which, with the giving of notice or the passage of time, or both, would result in default or acceleration of any obligation of any member of the Leasing Group under any of the Permits or Contracts or any other contract, mortgage, lien, lease, agreement, instrument, franchise, arbitration award, judgment, decree, bank loan or credit agreement, trust indenture or other instrument to which any member of the Leasing Group is a party or by which any member of the Leasing Group may be bound or affected and do not violate or contravene any Legal Requirement.

#### 5.10 Consents and Approvals.

Except as already obtained or filed or as reasonably expected to be obtained in the ordinary course of business prior to or upon the Completion of the Project, as the case may be, no consent or approval or other authorization of, or exemption by, declaration or filing with,

8

any Person and no waiver of any right by any Person is required to authorize or permit, or is otherwise required as a condition of the execution, delivery and performance of its obligations under the Lease Documents, the Construction Contract if and when the same is duly executed by the parties thereto or the Architect's Agreement by any member of the Leasing Group or as a condition to the validity (assuming the due authorization; execution and delivery by Lessor of the Lease Documents to which it is a party) and the priority of any Liens granted to Lessor under the Lease Documents, except the filing of the Financing Statements.

#### 5.11 Pending Actions, Notices and Reports.

(a) There is no action or investigation pending or, to the best knowledge and belief of Lessee, threatened, anticipated or contemplated (nor, to the knowledge of Lessee, is there any reasonable basis therefor) against or affecting the Leased Property or any member of the Leasing Group (or any Affiliate thereof) before any Governmental Authority, which could prevent or hinder the consummation of the transactions contemplated hereby or call into question the validity of any of the Lease Documents or any action taken or to be taken in connection with the transactions contemplated thereunder or which in any single case or in the aggregate might result in any material adverse change in the business, prospects, condition, affairs or operations of any member of the Leasing Group or the Leased Property

(including, without limitation, any action to revoke, withdraw or suspend any Permit necessary or desirable for the construction of the Project for its Primary Intended Use. (b) No member of the Leasing Group has received any notice of any claim, requirement or demand of any Governmental Authority, to take action so as to make the Project or the Leased Property conform to or comply with any applicable Legal Requirement.

## 6. COVENANTS

### 6.1 Collection and Enforcement Costs.

Upon demand, Lessee shall reimburse Lessor for all costs and expenses, including, without limitation, attorneys' fees and expenses and court costs, paid or reasonably incurred by Lessor in connection with the collection of any sum due hereunder, or in connection with the enforcement of any of Lessor's rights or any member of the Leasing Group's obligations under this Agreement or any of the other Lease Documents. Any amount due and payable to Lessor pursuant to the provisions of this Section shall be a demand obligation and, to the extent permitted by law, shall be added to the Lease Obligations and shall be secured by the Liens created by the Lease Documents as fully and effectively and with the same priority as every other obligation of

9

Lessee secured thereby and, if not paid within ten (10) days after demand, shall thereafter, to the extent permitted by applicable law, bear interest at the Overdue Rate until the date of payment. The obligation of Lessee to pay all costs, charges and sums due hereunder or under any of the other Lease Documents shall continue in full force and effect and in no way shall be impaired, until the actual payment thereof to Lessor. In the event of (a) a sale, conveyance, transfer or other disposition of the Leased Property, (b) any further agreement given to secure the payment of the obligations set forth herein or (c) any agreement or stipulation extending the time or modifying the terms of payment set forth herein, Lessee shall nevertheless remain obligated to pay the indebtedness evidenced by this Agreement, as extended or modified by any such agreement or stipulation, unless Lessee is released and discharged from such obligation by a written agreement executed by Lessor.

### 6.2 Continuing Effect of Representation and Warranties.

All representations and warranties contained in this Leasehold Improvement Agreement shall constitute continuing representations and warranties which shall remain true, correct and complete throughout the Term.

### 6.3 Construction Covenants.

#### 6.3.1 Commencement of Construction.

If construction of the Project has not already begun, Lessee shall commence construction of the Project within thirty (30) days from the later of the date hereof or of issuance of a building permit for the Project. Lessee shall diligently and continuously cause the Project to be constructed and completed and made ready for occupancy and use in accordance with the Project Plans all in a manner satisfactory to Lessor on or before the Completion Date. Notwithstanding anything to the contrary contained herein, Lessee shall be and shall remain unconditionally liable to Lessor for (a) the complete construction of the Project in accordance with the Project Plans on or before the Completion Date and whether or not proceeds of the Project Funds remaining to be disbursed hereunder, if any, are sufficient to cover all costs of construction and (b) the complete performance of all other obligations, covenants, agreements and liabilities of Lessee hereunder.

#### 6.3.2 Quality of Materials and Workmanship.

The materials used in the Project shall be of the quality called for by the Project Plans, and the workmanship shall be in conformity with the Construction Contract and this Agreement, and both the quality of such materials and such workmanship shall be satisfactory to Lessor. Lessee shall not make any changes in, and shall not permit the General

10

Contractor or the Architect to make any changes in, the quality of such materials, the Project Plans or the Project Budget, whether by change order or otherwise, without the prior written consent of Lessor, in each instance (which consent may be withheld in Lessor's reasonable discretion); provided, however, that such consent shall not be required for any individual change which has been approved by the Architect, which does not materially affect the structure or exterior of the Project, and the cost of which does not exceed TEN THOUSAND DOLLARS (\$10,000) or which changes, in the aggregate, do not exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000) in cost. Notwithstanding the foregoing, prior to making any change in Project Plans, copies of all change orders shall be submitted by Lessee to Lessor and Lessee shall also deliver to Lessor evidence satisfactory to Lessor, in its reasonable discretion, that all necessary Permits and/or Contracts required by any Governmental Authority in connection therewith have been obtained or entered into, as the case may be.

#### 6.3.3 Project Budget.

Upon the request of Lessor, Lessee shall furnish Lessor with revisions for the Project Budget to reflect (a) any changes approved by Lessor to the Project Budget, (b) the total cost of the construction of the Project completed through any specific date and (c) the remaining cost to complete the construction of the Project in accordance with the Project Plans and the terms and provisions of this Agreement.

#### 6.3.4 Architect Certificates.

Lessee agrees to cause the Architect to furnish such statements as to

progress and certificates of completion as Lessor may reasonably require from time to time during such period as this Agreement may be in effect, all without expense to Lessor; provided, however, that to the extent the delivery of such certificates will require a visit to the Project, Lessee shall have no obligation to deliver the same more frequently than with every other advance request hereunder. Lessee agrees to cause the Architect to make the Project Plans available to Lessor without expense to Lessor, and to agree that, in the event that Lessor shall take over the Project by reason of an occurrence of a Lease Default, Lessor shall be entitled to use said Project Plans without any additional compensation to the Architect above what is required (and was not previously paid) under the Architect's Contract.

6.3.5 Intentionally Deleted.

6.3.6 Lessor's Consultants.

Lessee agrees to pay the costs and expenses reasonably incurred by Lessor to retain the Consultants to perform various services to Lessor in

11

connection with the construction of the Project and the advances of Project Funds contemplated hereunder, including, without limitation, the following:

- A. to review and analyze the Project Plans and advise Lessor whether the same are satisfactory for the intended purposes thereof;
- B. to make periodic inspections of the Leased Property for the purpose of assuring that construction performed in connection with the Project prior to the date of such inspection has been completed in accordance with the Project Plans and Agreement;
- C. to review Lessee's then current requisition to determine whether it is consistent with the obligations of Lessee under this Agreement, and to advise Lessor of the anticipated costs of, and the time for, the completion of the Project in accordance with the Project Plans, and the adequacy of reserves and contingencies related thereto;
- D. to review and analyze any proposed changes to the Project Plans and advise Lessor regarding the same;
- E. to review and analyze the Project Budget and advise Lessor as to the sufficiency thereof; and
- F. to review and analyze the Architect's Contract and the Construction Contract entered into by Lessee in connection with the construction of the Project and advise Lessor regarding the same. Except as otherwise expressly provided herein, Lessee agrees promptly to make such changes or corrections in the construction of the Project as may be required by Lessor, based on the recommendation of any of the Consultants, unless Lessee

demonstrates to Lessor's satisfaction that such corrective work is inconsistent with the Project Plans

6.3.7 Title To Materials and Security Interest Granted to Lessor

Except as otherwise expressly provided herein, Lessee shall not suffer the use in connection with any construction relating to the Project of any materials, fixtures or equipment intended to become part of the Project which are purchased upon lease or conditional bill of sale or to which Lessee does not have absolute and unencumbered title. Lessee covenants to cause to be paid punctually all sums becoming due for labor, materials, fixtures or equipment used or purchased in connection with any such construction and, in recognition of the fact that it is intended that the Project Funds be used to pay for the costs of

12

the construction of the Project on behalf of the Lessor, Lessee agrees that title to all materials, fixtures and equipment that are incorporated into the Project shall automatically pass to Lessor upon such incorporation without the need for the execution or delivery of any further instrument of conveyance. Notwithstanding the foregoing, in order to more fully secure Lessor with reference to all advances of Project Funds made hereunder, Lessee hereby conveys to Lessor a security interest in all of Lessee's right, title and interest in materials on the Leased Property which are not at any relevant time incorporated into the Project and materials, wherever located, intended for incorporation into the Project. Lessee agrees:

- A. that Lessor shall have all the rights, with reference to such security, as a secured party is entitled to hold with reference to any security interest under the UCC;
- B. that such security interest shall cover cash and non-cash proceeds of such materials;
- C. that such materials will not be held for sale to others or disposed of by Lessee without the prior written consent of Lessor and, if at any time located on the Leased Property shall be suitably stored, secured and insured and furthermore, shall not be removed from the Leased Property; and
- D. that such security interest shall be prior to the rights of any other Person other than the Permitted Prior Security Interests.

The undertakings of Lessee in this Section shall also be applicable to any personal property that is owned by Lessee and that is used (or to be used) in connection with the Project, whether or not the purchase thereof was financed by advances of Project Funds made by Lessor.

Lessee agrees to execute such instruments as Lessor may from time to time request to perfect the security interest of Lessor in any and all rights under



this Agreement and the other Lease Documents, and any and all property of Lessee which, under applicable provisions of this Agreement and/or any of the other Lease Documents, may or shall stand as security for advances of Project Funds under this Agreement and for the complete performance of the Lease Obligations.

6.3.8 Compliance With Legal Requirements And  
Applicable Agreements.

Lessee, the Project Plans and the Leased Property and all uses thereof (including, without limitation, the construction of the Project) shall comply with (a) all Legal Requirements, (b) all Permits and Contracts, (c) all

13

applicable by-laws, codes, rules, regulations and restrictions of the Board of Fire Underwriters or other insurance underwriters or similar body and (d) the Lease Documents, except to the extent any of the matters represented in clause (a) or (c) are being duly contested in accordance with the terms of the Lease.

6.3.9 Liens.

The Leased Property shall at all times be free from any attachment, encumbrance, lis pendens, mechanic's or materialmen's lien or notice arising from the furnishing of materials or labor and, with the exception of the Permitted Encumbrances, all other Liens of any kind except to the extent the same is being duly contested in accordance with the terms of the Lease or the terms hereof. Lessee shall not permit the recording of any notice of contract or mechanic's or materialmen's lien relating to construction of the Project or otherwise affecting the Leased Property except to the extent the same is being duly contested in accordance with the terms of the Lease or the terms hereof. Notwithstanding the foregoing provisions of this. Section 6.3.09, the existence of an attachment or lis pendens for a period not in excess of thirty (30) days shall not be deemed to be a default hereunder provided that (a) there shall be no cessation of construction of the Project, (b) a Lease Default has not occurred and (c) Lessee shall proceed promptly to cause such attachment or lis pendens to be removed, but Lessor shall not be obliged to make any further advance under this Agreement while such attachment or lis pendens remains outstanding, unless a bond, satisfactory to Lessor, has been posted as security for such attachment or lis pendens.

6.3.10 Books And Records.

Lessee shall cause to be kept and maintained, and shall permit Lessor and its representatives to inspect at all reasonable times, accurate books of accounts in which complete entries will be made in accordance with GAAP, if applicable, reflecting all financial transactions of Lessee relating to the Project (showing, without limitation, all materials ordered and received and all disbursements, accounts payable and accounts receivable in connection with the construction of the Project and the operation of the Leased Property). Such books and records must accurately reflect that all funds

advanced hereunder for construction of the Project have been used solely for the payment of obligations and expenses properly incurred in accordance with the Project Budget.

#### 6.3.11 Inspection Of Construction.

Lessor and its representatives including, without limitation, the Consultants, shall, at all times as long as this Agreement remains in effect, have the right to enter the Leased Property, upon reasonable

14

notice to Lessee and at reasonable times (except in the event of an emergency) for the purpose of inspecting the Project and the progress of the work and materials thereon, and if any such inspection reveals that Lessee is not in compliance herewith (in its sole and absolute discretion), then Lessor shall not be obligated to make any further advances under this Agreement to Lessee.

#### 6.3.12 Notice Of Delay.

Lessee shall give to Lessor prompt written notice of any fire, explosion, accident, flood, storm, earthquake or other casualty or strike, lock out, act of God or interruption of the construction of the Project which is reasonably anticipated to interfere with the ability of Lessee to complete the Project by the Completion Date.

#### 6.3.13 Bonds.

Performance, payment and lien bonds, in form and substance and guaranteed by sureties satisfactory to Lessor (in its sole and absolute discretion), shall be furnished to Lessor in connection with the Construction Contract in amounts at least equivalent to the amount of such contract, naming Lessor as a dual obligee and shall be furnished to Lessor prior to the commencement of any work pursuant to such contract.

#### 6.3.14 Use of Project Funds.

Lessee shall utilize all advances by Lessor pursuant to the terms of this Agreement only for those items for which requisitions are permitted under this Agreement or for reimbursement of expenditures already made for items for which requisitions are so permitted. Lessee agrees to hold all advances by Lessor hereunder as a trust fund for the purpose of payment of the costs and expenses permitted under this Agreement.

#### 6.3.15 Occupancy of the Project.

Lessee shall not permit any occupancy of the Project (other than such occupancy as is required in connection with the construction thereto) prior to (a) the substantial completion of that portion of the Project being occupied and (b) the issuance by the appropriate Governmental Authorities of a Certificate of Occupancy (or its equivalent) permitting the occupancy of the Project for its Primary Intended Use and, if

applicable, the Other Permitted Uses. The Project shall not be deemed to have been completed unless and until constructed in accordance with this Agreement and a Certificate of Occupancy (or its equivalent) permitting the occupancy of the Project for its Primary Intended Use has been issued by the applicable Governmental Authorities.

## 7. CONSTRUCTION ADVANCES

### 7.1 Conditions Precedent to First Advance of Project Funds.

Prior to the first advance of Project Funds contemplated by this Agreement, and as a condition of Lessee's right to receive any of the proceeds of the Project Funds, there shall have been furnished to Lessor:

- A. An owner's title insurance policy in form and substance satisfactory to Lessor, in its sole and absolute discretion, issued by a title insurance company or companies satisfactory to Lessor (the "Title Company") with such endorsements, reinsurance and/or co-insurance as Lessor may require, insuring Lessor's fee title to the Leased Property free from all Liens and without exception for (i) filed or unfiled mechanics' liens, (ii) survey matters, (iii) rights of parties in possession, (iv) environmental liens and (v) any other matters of any kind or nature whatsoever other than the Permitted Encumbrances (the "Title Policy");
- B. Such evidence as Lessor may require that the use contemplated for the Project, and all of the improvements and construction contemplated by the Project Plans, comply with all applicable Legal Requirements, to the extent in force and applicable;
- C. Insurance policies and/or Certificates of Insurance required pursuant to the terms and provisions of the Facility Lease;
- D. Such evidence as Lessor may require to determine that the total cost of completion of the Project in all respects, including all related direct and indirect costs as previously approved by Lessor, will not exceed the amount set forth in the Project Budget;
- E. Such evidence as Lessor may require that Lessee's representations and warranties contained herein and in all of the other Lease Documents are true and correct in every material respect;
- F. Such evidence as Lessor may require as to the satisfaction of such of the terms and conditions of this Agreement and of the other Lease Documents as may by their nature be satisfied prior to the making of

- G. Such evidence as Lessor may require that all outstanding Impositions which are due and payable as of the date of the First Advance pertaining to the Leased Property have been paid in full in accordance with the terms of the Facility Lease;
- H. A current instrument survey, satisfactory in form and content to Lessor, prepared in accordance with the requirements set forth in EXHIBIT G (the "Survey") and a certificate substantially in the form of EXHIBIT H (the "Surveyor's Certificate"), prepared and signed by a surveyor licensed to do business in the state where the Leased Property is located with his or her seal affixed thereto;
- I. True and correct copies of the Construction Contract and the Architect's Contract in effect with respect to the Project, as well as all receipted bills paid by Lessee to the General Contractor and the Architect for goods and/or services rendered with respect to the Project prior to the date hereof;
- J. A certificate from an engineer and/or architect, registered as such in the state where the Leased Property is located, substantially in the form attached hereto as EXHIBIT H, certifying as to the (i) compliance of the Leased Property with all , applicable Legal Requirements, (ii) the availability and adequacy of access/egress to and from the Leased Property and (iii) the availability and adequacy of sewer, drainage, water, electric and other utility services to the lot line of the Leased Property; together with such other assurances concerning the design of the Project as Lessor may require;
- K. Lessor's receipt of opinions, in forms satisfactory to Lessor (in its sole and absolute discretion), from Lessee's counsel and the Guarantor's counsel, regarding (i) the due execution, authority and enforceability of the Lease Documents; (ii) the compliance of the Leased Property and the Project, in all material respects, with applicable zoning and other land-use Legal Requirements (except in such instances in which a satisfactory title insurance zoning endorsement has been issued); (iii) the valid issuance of the Certificate of Need, if applicable, and all other Permits required for the construction of the Project, the continuing effectiveness of said Certificate of Need, if applicable, and other Permits and Lessee's and Project's compliance therewith and (iv) such other matters as Lessor may reasonably request (collectively,

- L. Payment of the Leasehold Improvement Fee (subject, however, to the provisions of Section 3 hereof);
- M. True and correct copies of all Permits and Contracts relating to the construction and operation of the Project (including, without limitation, an unconditional building permit or a building permit which is subject only to such conditions as will be fully satisfied by the completion of the construction of the Project in accordance with the Project Plans and this Agreement);
- N. Such evidence as Lessor may require that there has been no material adverse change in the financial condition and strength of Lessee and the Guarantor, and that the Leased Property shall have sustained no impairment, reduction, loss or damage which has not been fully restored and repaired, and that no Condemnation proceedings or other governmental action is or shall be pending against or with respect thereto;
- O. Such evidence as Lessor may require that the General Contractor and the Architect maintain adequate insurance, as determined in Lessor's reasonable discretion;
- P. True and correct copies of all payment, performance and completion bonds required pursuant to 6.3.13 hereof;
- Q. A fully executed Construction Assignment, in form and substance satisfactory to Lessor; and
- R. A fully executed and authorized Architect's Assignment, in form and substance satisfactory to Lessor.
- S. The Project Plans, in form and substance satisfactory to Lessor;
- T. The Schedules, in form and substance satisfactory to Lessor;
- U. The Project Budget, in form and substance satisfactory to Lessor;
- V. Funding forecasts, in form and substance satisfactory to Lessor.

## 7.2 Lessor's Right to Advance the Project Funds.

Without at any time waiving any of Lessor's rights hereunder, Lessor shall have the right to make the first advance of a portion of the

Project Funds hereunder without the satisfaction of each and every condition precedent to Lessor's obligation to make such advance, and Lessee agrees to accept such advance as Lessor may elect to make. The making of any advance hereunder shall not constitute an approval or acceptance by Lessor of any work on the Project theretofore completed.

### 7.3 Submission of Requests for Advances of the Project Funds.

Advances under this Agreement shall be made not more than once each month and at least ten (10) days before the date upon which an advance is requested, Lessee shall give notice to Lessor, specifying the total advance which will be desired, accompanied by :

- A. Itemized requisitions for advances or, at Lessee's option, for reimbursements to Lessee for prepaid items, signed by Lessee, the Architect and the General Contractor on A.I.A. Forms G702, G702A or G703 or such other form(s) as Lessor may reasonably require (together with copies of invoices or receipted bills relating to items covered by such requisitions when so requested by Lessor). All such requisitions shall include an indemnification of Lessor by the Architect, the General Contractor and Lessee, jointly and severally, to the extent such indemnification is available from the General Contractor and the Architect upon Lessee's best efforts to obtain such indemnification, against any and all claims of any subcontractors, laborers and suppliers;
- B. A certificate executed by Lessee substantially in the form attached hereto as EXHIBIT I;
- C. A certificate executed by the General Contractor substantially in the form attached hereto as EXHIBIT J;
- D. With respect to every other Advance requested, a certificate executed by the Architect substantially in the form attached hereto as EXHIBIT K.
- E. At Lessor's request, certificates executed by the Consultants in such form as Lessor may reasonably require;
- F. To the event the Advance is not clearly subject to effective coverage, an endorsement of the Title Policy issued by the Title Company, satisfactory in form and substance to Lessor, redating the Title Policy to the

date that the then current advance will be made, increasing the coverage afforded by the Title Policy so that the same shall constitute insurance in an amount at, least equal to the sum of the amount of the insurance then existing under the Title Policy plus the amount of the then current advance of Project Funds to be disbursed to Lessee under this Agreement and subject to no additional exceptions other than the Permitted Encumbrances;

- G. If and when reasonably requested by Lessor, satisfactory assurance that the construction of the Project has been performed in accordance with the requirements of the Construction Contract, the Project Plans, this Agreement and all of the other Lease Documents and has been inspected and found satisfactory by the parties hereto;
- H. If and when reasonably requested by Lessor, an updated Surveyor's Certificate substantially in the form attached hereto as EXHIBIT G and/or updated Engineer's/Architect's Certificate substantially in the form attached hereto as EXHIBIT H;
- I. If and when requested by Lessor, updated Opinions from Lessee's counsel and the Guarantor's counsel (in form and substance satisfactory to Lessor in its sole and absolute discretion);
- J. If and when requested by Lessor, satisfactory evidence that the funds remaining unadvanced under this Agreement are sufficient for the payment of all related direct and indirect costs for the completion of the Project in accordance with the terms and provisions hereof. If the evidence furnished shall not be satisfactory to Lessor, in its sole and absolute discretion, it shall be a condition to the making of any further advance hereunder that Lessee will provide Lessor with such financial guaranties (whether in the form of a bond, cash deposit, letter of credit or otherwise) as are acceptable to Lessor, in its sole and absolute discretion, to assure the completion of the construction of the Project in accordance with the Project Plans and the terms and conditions of this Agreement. In the event that Lessor requires a cash deposit from Lessee, Lessee shall deposit with Lessor such funds, to be held in an interest bearing account with the interest accruing thereon to the benefit of Lessee, which, together with such unadvanced funds of

the Loan, shall be sufficient to pay all of the aforesaid costs. All funds so deposited with Lessor

along with the proceeds thereof, shall be disbursed prior to any further advance hereunder and upon completion of the Project any remaining funds so deposited or any unadvanced portion of the Project Funds, shall be remitted to Lessee;

- K. A certification of work completed by the General Contractor, together with a statement of the payment due therefor;
- L. Partial lien waivers from the General Contractor for all work theretofore performed, and from all other contractors and all subcontractors and suppliers for all work, the cost of which in each instance exceeds ONE THOUSAND DOLLARS (\$1,000.00), which was the subject of a requisition in the immediately preceding month;
- M. If and when reasonably requested, Lessee shall deliver to Lessor an updated Survey of the Leased Property, acceptable to Lessor (in its reasonable discretion);
- N. Evidence satisfactory to Lessor (in its reasonable discretion) that all materials and other property furnished by any contractors, subcontractors, materialmen or other Persons, the cost of which will be paid with the proceeds of the advance to be made by Lessor, are free and clear of all Liens, except (a) encumbrances, if any, (securing indebtedness due to Persons whose names, addresses and amounts due to them are identified to Lessor) that shall be discharged upon the disbursement of the funds then being requested, (b) the Liens created by the Lease Documents and (c) the Permitted Encumbrances;
- O. Such evidence as Lessor may require that there has been no material adverse change in the financial condition and strength of Lessee and the Guarantor, and that the Leased Property shall have sustained no impairment, reduction, loss or damage which has not been fully restored and repaired and that no condemnation is or shall be pending against or with respect thereto; and
- P. Prior to the first advance which includes amounts to be expended on the construction or equipping of the Improvements, Lessee shall, to the extent not previously delivered to Lessor, submit to Lessor true and correct copies of (i) the Project Budget, (ii) the Project Plans,

21

(iii) the Schedules and (iv) the Construction Contract, each of which shall be in form and content satisfactory to Lessor (in its sole and absolute discretion);

Lessee hereby designates George Lenes as Lessee's construction



representative with authority to approve requisitions and to execute certificates to be delivered pursuant to Section 13.3B on behalf of Lessee.

#### 7.4 Advances by Wire Transfer.

All advances hereunder shall be made by wire transfer of funds into a bank account maintained by either Lessee or an authorized agent of Lessee.

#### 7.5 Conditions Precedent to All Advances:

A. Advances hereunder shall be made solely for the payment of the costs and expenses incurred by Lessee directly in connection with the construction of the Project; consistent with the Project Budget, which are required to be paid out-of-pocket to all other Persons or to reimburse Lessee for out-of-pocket costs incurred by it pursuant to the Project Budget. No funds advanced by Lessor shall be utilized for any purpose other than as specified herein and none of the Project Funds shall be paid over to any officer, stockholder or employee of any member of the Leasing Group or to any of the Persons collectively constituting any member of the Leasing Group or those holding a beneficial interest in any member of the Leasing Group, or any employee thereof, except to the extent funds are used to pay compensation to an employee for and with respect to activity of such employee in construction of the Project.

B. The amount of each requisition shall represent (i) the cost of the work completed on the Project as of the date of such requisition, which has not been paid for under prior requisitions, (ii) the cost of all equipment, fixtures and furnishings included within the Project Budget approved by Lessor, which has not been paid for under prior requisitions, but not incorporated into any contract and which have been delivered to the Leased Property for incorporation into the Project; provided that, in Lessor's judgment, such materials are suitably stored, secured and insured and that Lessee can furnish Lessor with evidence satisfactory to Lessor of Lessee's unencumbered title thereto and (iii) approved soft costs, which have not been paid for under prior requisitions.

C. All requisitions for the first fifty percent (50%) of the Project Funds shall be subject to a ten percent (10%) retainage for the completion of the Project, and no retainage shall be required with respect to all requisitions thereafter. It is understood that such retainage is intended to provide a contingency fund to assure that the construction of the Project shall be fully completed in accordance with the Project Plans and the terms

and provisions of this Agreement. All amounts so withheld shall be disbursed after (i) construction of the Project has been fully completed in accordance with the Project Plans and the terms and provisions of this Agreement, (ii) all of the items set forth in Section 7.6 hereof have been delivered to Lessor and (iii) the expiration of the period during which liens may be perfected with respect to any work performed or labor or materials supplied in connection with the construction of the Project or the receipt of such evidence as may be required to assure Lessor that no claim may thereafter arise with respect to any work performed or labor or materials supplied in connection with the construction of the Project.

- D. At the time of each advance, no event which constitutes, or which, with notice or lapse of time, or both, would constitute, a Lease Default shall have occurred and be continuing.
  
- E. Without at any time waiving any of Lessor's rights under this Agreement, Lessor shall always have the right to make an advance hereunder without satisfaction of each and every condition upon Lessor's obligation to make an advance under this Agreement, and Lessee agrees to accept any advance which Lessor may elect to make under this Agreement. Notwithstanding the foregoing, Lessor shall have the right, notwithstanding a waiver relative to the first advance or any subsequent advance hereunder, to refuse to make any and all subsequent advances under this Agreement until each and every condition set forth in this Section has been satisfied. The making of any advance hereunder shall not constitute an approval or acceptance by Lessor of any work on the Project theretofore completed.
  
- F. If, while this Agreement is in effect, a claim is made that the Project does not comply with any Legal Requirement or an action is instituted before any Governmental Authority with jurisdiction over the Leased Property or Lessee in which a claim is made as to whether the Project

does so comply, Lessor shall have the right to defer any advance of Project Funds which Lessor would otherwise be obligated to make until such time as any such claim is finally disposed of favorably to the position of Lessee, without any obligation on the part of Lessor to make a determination of, or judgment on, the merits of any such claim. For the purposes of the foregoing sentence, the term "claim" shall mean an assertion by any Governmental Authority or Person as to which, in each case, Lessor has made a good faith determination that the assertion may properly be made by the party asserting the

same, that the assertion, on its face, is not without foundation and that the interests of Lessor require that the assertion be treated as presenting a bona fide risk of liability or adverse effect on the Project.

If any such proceeding is not favorably resolved within thirty (30) days after the commencement thereof, Lessor shall also have the right, at its option, to treat the commencement of such action as a Lease Default, for which Lessor shall have all rights herein specified for a Lease Default. As aforesaid, Lessor shall have no obligation to make a determination with reference to the merits of any such claim. No waiver of the foregoing right shall be implied from any forbearance by Lessor in making such election or any continuation by Lessor in making advances under this Agreement.

In all events, Lessee agrees to notify Lessor forthwith upon learning of the assertion of any such claim or the commencement of any such proceedings.

- G. It is contemplated that all advances of the Project Funds made by Lessor to Lessee will be pursuant to this Agreement.
  
- H. No inspections or any approvals of the Project during or after construction shall constitute a warranty or representation by Lessor or any of the Consultants as to the technical sufficiency, adequacy or safety of any structure or any of its component parts, including, without limitation, any fixtures, equipment or furnishings, or as to the subsoil conditions or any other physical condition or feature pertaining to the Leased Property. All acts, including any failure to act, relating to the Leased Property by any agent, representative or designee of Lessor (including, without limitation, the Consultants) are performed solely for the benefit of Lessor to assure the payment and performance of the Obligations and are not for the benefit of Lessee or the benefit of any other Person.

#### 7.6 Completion of the Project.

Upon the completion of the construction of the Project in accordance with the Project Plans and the terms and provisions of this Agreement, Lessee shall provide Lessor with (A) true, correct and complete copies of (i) a final unconditional Certificate of Occupancy (or its equivalent) issued by the appropriate governmental authorities, permitting the occupancy and use of the Project for its Primary Intended Use and (ii) all Permits issued by the appropriate Governmental Authorities which are necessary in order to operate the Project as a fully-licensed assisted living facility, (B) a certification from the Architect or the Consultants stating that the Project was completed in accordance with the Project Plans, (C) an updated Survey of the Leased Property, acceptable to Lessor (in its sole and absolute discretion), (D) updated Opinions and (E) such other items relating to the

operation and/or construction of the Project as may be reasonably requested by Lessor.

8. LESSOR'S RIGHT TO MAKE PAYMENTS AND TAKE  
OTHER ACTION

Lessor may, after ten (10) Business Days' prior notice to Lessee of its intention so to do (except in an emergency when such shorter notice shall be given as is reasonable under the circumstances), under Lessee demonstrates the same has already been paid, pay any sums due or claimed to be due for labor or materials furnished in connection with the ownership, construction, development, maintenance, management, repair, use or operation of the Leased Property, and any other sums which in the reasonable opinion of Lessor, or its attorneys, it is expedient to pay, and may take such other and further action which in the reasonable opinion of Lessor is reasonably necessary in order to secure (A) the completion of the Project in accordance with the Project Plans and the terms and conditions of this Agreement, (B) the protection and priority of the security interests granted to Lessor pursuant to the Lease Documents and (C) the performance of all obligations under the Lease Documents. Lessor, in its sole and absolute discretion, may charge any such payments against any advance that may otherwise be due hereunder to Lessee or may otherwise collect such amounts from Lessee, and Lessee agrees to repay to Lessor all such amounts, which may exceed the line item amount therefor in the Project Budget. Any amount which is not so charged against advances due hereunder and all costs and expenses reasonably incurred by Lessor in connection therewith (including, without limitation, attorneys' fees and expenses and court costs) shall be a demand obligation of Lessee and, to the extent permitted by applicable law, shall be added to the Lease Obligations and secured by the Liens created by the Lease Documents, as fully and effectively and with the same priority as every other obligation of Lessee thereunder and, if not paid within ten (10) days after demand, shall thereafter, to the extent

25

permitted under applicable law, bear interest at the Overdue Rate until the date of payment.

If Lessee fails to observe or cause to be observed any of the provisions of this Agreement and such failure continues beyond any applicable notice or cure period provided for under this Agreement, Lessor or a lawfully appointed receiver of the Leased Property, at their respective options, from time to time may perform, or cause to be performed, any and all repairs and such other work as they deem necessary to bring the Leased Property into compliance with the provisions of this Agreement may enter upon the Leased Property for any of the foregoing purposes, and Lessee hereby waives any claim against Lessor or such receiver arising out of such entry or out of any other act carried out pursuant to this Section. All amounts so expended or incurred by Lessor and by such receiver and all costs and expenses reasonably incurred in connection therewith (including, without limitation, attorneys' fees and expenses and court costs), shall be a demand obligation of Lessee to Lessor or such receiver, and, to the extent permitted

by law, shall be added to the Obligations and shall be secured by the Liens created by the Lease Documents as fully and effectively and with the same priority as every other obligation of Lessee secured thereunder and, if not paid within ten (10) days after demand, shall hereafter, to the extent permitted by applicable law, bear interest at the Overdue Rate until the date of payment.

## 9. INSURANCE; CASUALTY; TAKING

### 9.1 General Insurance Requirements.

Lessee shall at its sole cost and expense keep the Leased Property and the business operations conducted thereon insured as required under the Facility Lease.

### 9.2 Fire or Other Casualty or Condemnation.

In the event of any damage or destruction to the Leased Property by reason of fire or other hazard or casualty (a "Casualty") or a taking by power of eminent domain or conveyance in lieu thereof of all or any portion of the Leased Property (a "Condemnation"), Lessee shall give immediate written notice hereof to Lessor and comply with the provisions of the Facility lease governing Casualties and Condemnations.

26

## 10. EVENTS OF DEFAULT

Each of the following shall constitute an "Event of Default" hereunder and shall entitle Lessor to exercise its remedies hereunder and under any of the other Lease Documents:

- A. any failure of Lessee to pay any amount due hereunder or under any of the other Lease Documents within ten (10) days following the date when such payment was due;
- B. any failure in the observance or performance of any other covenant, term, condition or warranty provided in this Agreement or any of the other Lease Documents, other than the payment of any monetary obligation and other than as specified in subsections (C) through (F) below (referred to herein as a "Failure to Perform"), continuing for thirty (30) days after the giving of notice by Lessor to Lessee specifying the nature of the Failure to Perform; except as to matters not susceptible to cure within thirty (30) days, provided that with respect to such matters, (i) Lessee commences the cure thereof

within thirty (30) days after the giving of such notice by Lessor to Lessee, (ii) Lessee continuously prosecutes such cure to completion, (iii) such cure is completed within one hundred twenty (120) days after the giving of such notice by Lessor to Lessee and (iv) such Failure to Perform does not impair Lessor's rights with respect to the Leased Property or otherwise impair the Collateral or Lessor's security interest therein;

- C. the occurrence of any default or breach of condition continuing beyond the expiration of the applicable notice and grace periods, if any, under any of the other Lease Documents;
- D. if any representation, warranty or statement contained herein or in any of the other Lease Documents proves to be untrue in any material respect as of the date when made or at any time during the Term if such representation or warranty is a continuing representation or warranty pursuant to Section 6.2;
- E. except as a result of any Casualty or a partial or complete Condemnation, if a suspension of any work in connection with the construction of the Project occurs for a period in excess of ten (10) Business Days, irrespective of the cause thereof, provided that Lessee shall not be deemed to be in default under this Subsection if such suspension is for circumstances not reasonably within its control, but only if Lessor, in its sole and absolute discretion, shall determine that such suspension shall not create any risk that the construction of the Project will not be

27

completed (in accordance with the Project Plans and the terms and conditions of this Agreement) on or before the Completion Date; and

- F. if construction of the Project shall not be completed in accordance with the Project Plans and this Agreement (including, without limitation, satisfaction of the conditions set forth in Section 7.6) on or before the Completion Date.

#### 11. REMEDIES IN EVENT OF DEFAULT

Upon the occurrence of an Event of Default, at the option of Lessor, which may be exercised at any time after an Event of Default shall have occurred, Lessor shall have all rights and remedies available to it, at law or in equity, including, without limitation, all of the rights and remedies under the Facility Lease and the other Lease Documents. Subject to the requirements of applicable law, all materials at that time on or near the Leased Property which are the property of Lessee and which are to be used in connection with the completion of the Project shall be subject to the Liens created by the Lease Documents.

In addition to, and without limitation of, the foregoing, Lessor is authorized to charge all money expended for completion the Project against sums hereunder which have not already been advanced (even if the aggregate

amount of such sums expended and all amounts previously advanced hereunder exceed the amount of the Project Funds which Lessor has agreed to advance hereunder); and Lessee agrees to pay to Lessor Rent under the Facility Lease calculated, in part, thereunder based upon all sums advanced hereunder, including, without limitation, all sums expended in good faith by Lessor in connection with the completion of the project), and, in addition thereto, Lessee agrees to pay to Lessor (as Rent under the Facility Lease), for services in connection with said completion of the Project, such additional sums as shall compensate Lessor for the time and effort Lessor and its employees shall have expended in connection therewith. Lessor is authorized, but not obligated in any event, to do all such things in connection with the construction of the Project as Lessor, in its sole and absolute discretion, may deem advisable, including, without limitation, the right to make any payments with respect to any obligation of Lessee to Lessor or to any other Person in connection with the completion of construction of the Project and to make additions and changes in the Project Plans, to employ contractors, subcontractors and agents and to take any and all such action, either in Lessor's own name or in the name of Lessee, and Lessee hereby grants Lessor an irrevocable power of attorney to act in its name in connection with the foregoing. This power of attorney, being coupled with an interest, shall be irrevocable until all of the Obligations are fully paid and performed and shall not be affected by any disability or incapacity which Lessee may suffer and shall survive the same. The power of attorney conferred on Lessor by the provisions of this Section 11 is

28

provided solely to protect the interests of Lessor and shall not impose any duty on Lessor to exercise any such power and neither Lessor nor such attorney-in-fact shall be liable for any act, omission, error in judgment or mistake of law, except as the same may result from its gross negligence or wilful misconduct. In the event that Lessor takes possession of the Leased Property and assumes control of the project as aforesaid, it shall not be obligated to continue the construction of the Project and/or the operation of the Project for any period of time longer than Lessor shall see fit (in its sole and absolute discretion), and Lessor may thereafter, at any time, abandon its efforts and refuse to make further payments for the account of Lessee, whether or not the Project has been completed.

In addition, at Lessor's option and without demand, notice or protest, the occurrence of any Event of Default shall also constitute a default under any one or more of the Related Party Agreements.

## 12. GENERAL

The provisions set forth in Article 23 and Sections 2.2, 16.8 through 16.10, 24.2 through 24.6, and 24.8 through 24.12 of the Lease are hereby incorporated by reference, mutatis, mutandis, and shall be applicable to this Agreement as if set forth in full herein.

This Agreement, the other Lease Documents and the other Lease Documents set forth the entire agreement of the parties with respect to the subject matter and shall supersede in all respect the Letter of Intent.

13. LEASE PROVISIONS PARAMOUNT.

In the event of a conflict between the provisions hereof and the provisions of the Lease, the provisions of the Lease are paramount.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal on the day and year first above written.

WITNESS:

LESSEE:

EMERITUS PROPERTIES I, INC.

/s/ Catherine L. Pasquan  
-----

Name: Catherine L. Pasquan

By: /s/ Kelly J. Price  
-----

Name: Kelly J. Price

Title: Secretary

WITNESS:

LESSOR:

MEDITRUST ACQUISITION  
CORPORATION I, a  
Massachusetts corporation

/s/ Kim M. Priesing  
-----

Name: Kim M. Priesing

By: /s/ Michael S. Benjamin,  
-----

Name: Michael S. Benjamin, ESQ.

Title: Senior Vice President





\_\_\_\_\_ LEASE

by and between

AHP OF TEXAS, INC.

"Landlord"

and

EMERITUS CORPORATION

"Tenant"

Dated as of \_\_\_\_\_, 1996

## LEASE

This LEASE is executed as of \_\_\_\_\_, 1996, by and between AHP OF TEXAS, INC., a Texas corporation, having its principal office at 6400 South Fiddler's Green Circle, Suite 1800, Englewood, Colorado 80111, as Landlord, ("LANDLORD") and EMERITUS CORPORATION, a Washington corporation, having its principal office at 3131 Elliott Avenue, Suite 500, Seattle, Washington 98121 as Tenant ("TENANT")

## RECITALS

A. Landlord's parent, American Health Properties, Inc., a Delaware corporation (the "LENDER"), and Emeritus Real Estate III, L.L.C., a Delaware limited liability company ("BORROWER") entered into a Construction Loan Agreement, dated as of August 21, 1995 (the "LOAN AGREEMENT"), pursuant to which Lender has agreed to advance funds for the purpose of constructing an eighty-unit assisted living facility on a parcel of land in \_\_\_\_\_. Landlord and Lender have entered into a Purchase Agreement dated as of August 21, 1995 (the "PURCHASE AGREEMENT") with Borrower, pursuant to which Landlord has agreed to purchase the land and improvements comprising the facility which constitutes the Property which is subject to this Lease, upon completion of construction of the improvements.

B. As an inducement to Lender to enter into the Loan Agreement and to Landlord to enter into the Purchase Agreement, Tenant has agreed hereby to lease the land and improvements comprising the facility from Landlord and to secure its obligations to Landlord under this Lease as provided herein.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

## ARTICLE I DEFINITIONS

For the purpose of this Lease, unless otherwise expressly provided in

this Agreement or the context in which such term is used indicates a contrary intent, (a) the terms defined in this Article shall have the meanings ascribed to them in this Article, (b) all accounting terms not otherwise defined in this Article shall have the meanings ascribed to them in

accordance with generally accepted accrual method accounting principles at the time applicable, (c) all references in this Lease to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this Lease and (d) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.

"ADDITIONAL AGREEMENTS" shall mean all contracts and agreements between Landlord and Tenant, or between any member of the Landlord Group and Tenant or any Affiliates thereof, other than this lease and any Additional Leases.

"ADDITIONAL CHARGES" shall have the meaning ascribed to such term in Section 4.5.

"ADDITIONAL LEASES" shall mean all leases between any member of the Landlord Group, as Landlord, and Tenant or any Affiliates thereof, as Tenant, in effect on any date of determination.

"ADDITIONAL RENT" shall have the meaning ascribed to such term in Section 4.4.

"ADDITIONAL RENT COMMENCEMENT DATE" shall mean with respect to the Fixed Term, the first day of the first calendar month which commences after the Base Year; and with respect to each Extended Term, the one year anniversary of the first day of such Extended Term.

"ADDITIONAL RENT PERCENTAGE" shall mean a percentage amount equal to the greater of (a) two and one half percent (2-1 /2 %) and (b) the percentage increase (if any) in the Consumer Price Index for All Urban Consumers (1982-84=100), for the region which includes the Property, published by the U.S. Department of Labor, (the "Index") from the Index in effect on the commencement of the preceding Base Year or Calculation Period, as the case may be to the Index in effect on the commencement of the current Calculation Period.

"AFFILIATE" of any person or entity (the "Subject") shall mean (a) any person which, directly or indirectly, controls or is controlled by or is under common control with the Subject, (b) any person owning, beneficially, directly or indirectly, ten percent (10%) or more of the outstanding capital stock, shares or equity interests of the Subject or

(c) any officer, director, employee, general partner or trustee of the Subject or any person controlling, controlled by or under common control with the Subject (excluding trustees and persons serving in similar capacities who are not otherwise an Affiliate of the Subject). As used in this definition, the term "person" means and includes governmental agencies and authorities, political subdivisions, individuals, corporations, limited liability companies, general partnerships, limited partnerships, stock companies or

2

associations, joint ventures, associations, trusts, banks, trust companies, land trusts, business trusts and any other entity of any form whatsoever, and "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, through the ownership of voting securities, partnership interests or other equity interests, or through any other means.

"AHP" shall mean American Health Properties, Inc., a Delaware corporation.

"APPRECIATION AMOUNT" shall mean the amount, if any, by which the Fair Market Value of the Property exceeds Landlord's Total Investment.

"AWARD" shall have the meaning ascribed to such term in Section 16.1(c).

"BASE RENT" shall mean, with respect to the Fixed Term, an amount, determined as of the Commencement Date, calculated by multiplying (x) the Initial Investment Cost by (y) the Base Rent Interest Rate.

"BASE RENT INTEREST RATE" shall mean an interest rate equal to 350 basis points in excess of the Ten Year Treasury Rate as of such date, and, with respect to each Extended Term, the amount determined pursuant to Section 3.2; provided, however, that in no event shall the Base Rent Interest Rate be less than 10.5 % nor more than 11.5 %.

"BASE YEAR" shall mean, with respect to the Fixed Term, the first period of 12 full months period following the Commencement Date and, with respect to each Extended Term, the first 12-month period commencing on, or immediately following, the first day of such Extended Term.

"BUSINESS DAY" shall mean any day on which banking institutions in Denver, Colorado are open for the conduct of normal banking business.

"CALCULATION PERIOD" shall mean, with respect to the Fixed

Term and each Extended Term, a 12-month period commencing on the Additional Rent Commencement Date or any anniversary of such date through the Fixed Term or each Extended Term, as the case may be.

"CAPITAL ADDITIONS" shall mean (a) one or more new buildings located on the Land or to be used, directly or indirectly, as part of the Facility, (b) one or more additional structures annexed to any portion of any of the Improvements, (c) the material expansion of existing Improvements, (d) the construction of a new wing or new story on existing Improvements, or (e) any expansion, construction, renovation or conversion of

3

existing Improvements to (i) increase the bed or service capacity of the Facility or (ii) change the purpose for which the Facility is utilized. Notwithstanding anything to the contrary contained in Article XI, in the event it is necessary to abate or otherwise take corrective action with respect to the existence of a Hazardous Substance (as hereinafter defined) located in, on or under the Property or in the Improvements, such abatement or corrective action shall not be deemed to be a Capital Addition and shall be the sole responsibility of Tenant at its sole cost and expense.

"CAPITAL ADDITIONS COST" shall mean the cost of any Capital Additions made by Tenant, whether paid for by Tenant or Landlord. Such cost shall include (a) the costs of constructing the Capital Additions, including site preparation and improvement, materials, labor, supervision, developer and administrative fees, the costs of design, engineering and architectural services, the costs of fixtures, the costs of construction financing (including but not limited to capitalized interest) and other similar costs approved in writing by Landlord, (b) if agreed to by Landlord in writing in advance, the purchase price and other acquisition costs, or applicable ground lease rental payable for any period such ground lease is in effect to and including the date upon which such Capital Addition is completed and occupied or in operation, as the case may be, of any land which is acquired or leased for the purpose of placing thereon all or any portion of the Capital Additions or for providing means of access thereto, or parking facilities therefor (including the costs of surveying the same and recording, title insurance and escrow fees and charges), (c) insurance premiums, real estate taxes, water and sewage charges and other carrying charges for such Capital Additions during their construction, (d) fees and expenses of legal counsel, (e) any documentary transfer or similar taxes, (f) any applicable regulatory or administrative fees and charges, and any costs, charges, fees or expenses paid or incurred in connection with obtaining any applicable permits, licenses, franchises, authorizations, certificates of need, certificates of occupancy and similar authorizations and entitlements and (g) all other reasonable costs and expenses of Landlord or Tenant, as applicable, and any lending institution which has committed to finance the Capital Additions, including, but not limited to, (i) the fees and expenses of their respective legal counsel, (ii) any printing,

duplicating and messenger expenses, (iii) any filing, registration and recording taxes and fees, (iv) any documentary transfer or similar taxes, (v) any title insurance charges and appraisal fees, (vi) any rating agency fees and (vii) any commitment or similar fees charged by any lending institution financing or offering to finance any portion of such Capital Additions.

"CLAIMS" shall have the meaning specified in Section 22.1.

"CASH FLOW" shall mean, for any period of determination, an amount equal to the sum of the amounts for such period of (i) net income before income taxes, (ii) depreciation, amortization and other similar non-

4

cash charges, including depreciation and interest expense related to the Equipment, (iii) Base Rent and (iv) Additional Rent.

"CODE" shall mean the Internal Revenue Code of 1986, as amended.

"COMMENCEMENT DATE" shall have the meaning ascribed to such term in Section 3.1.

"CONDEMNATION" shall have the meaning ascribed to such term in Section 16.1(a).

"CONDEMNOR" shall have the meaning ascribed to such term in Section 16.1(d).

"CONSOLIDATED FINANCIALS" shall mean, for any fiscal year (or other accounting period) for Tenant and Affiliates thereof statements of earnings and retained earnings and of changes in financial position for such period and for the period from the beginning of the respective fiscal year to the end of such period and the related balance sheet as at the end of such period, together with the notes thereto, all in reasonable detail and setting forth in comparative form the corresponding figures for the corresponding period in the preceding fiscal year (or period), all of which shall be prepared in accordance with generally accepted accounting principles.

"DATE OF TAKING" shall have the meaning ascribed to such term in Section 16.1(b).

"DEED OF TRUST" means the Deed of Trust from Landlord for the benefit of Tenant securing. Tenant's rights under Section 26.2.

"ENCUMBRANCE" shall have the meaning ascribed to such term in Article XXVII.

"EVENT OF DEFAULT" shall have the meaning ascribed to such term in Section 17.1.

"EXTENDED TERM" shall have the meaning ascribed to such term in Section 3.2.

"FACILITY" shall mean the assisted living facility presently operated on the Land, or with Landlord's consent, such other general health care facility, nursing home, retirement center, congregate living facility, health care related apartments or hotel, being operated or proposed to be operated on the Land from time to time in accordance with the Provisions of this Lease.

"FACILITY MORTGAGE" shall have the meaning ascribed to such term in Section 14.1.

5

"FACILITY MORTGAGEE" shall have the meaning ascribed to such term in Section 14.1.

"FAIR MARKET RENTAL" shall mean, with respect to the Property (including any Capital Additions or portions thereof paid for by Landlord) the rental paid on a net basis as provided in Section 4.8 hereof which a willing Tenant not compelled to rent would pay to a willing Landlord not compelled to lease for the highest and best medical use and occupancy of such Property permitted pursuant to this Lease for the term in question, assuming that Tenant is not in default under this Lease, but without taking into account Additional Rent. For purposes of this Lease, Fair Market Rental shall be determined in accordance with the appraisal procedures set forth in Article XXV.

"FAIR MARKET VALUE" shall mean, with respect to the Property, including all Capital Additions, the price that a willing buyer not compelled to buy would pay to a willing seller not compelled to sell for such Property (except as otherwise provided below), assuming that (a) this Lease is not in effect with respect to the Property, (b) such seller must pay any closing costs and title insurance premiums with respect to such sale, and (c) the Property is fully licensed by all governmental agencies having jurisdiction thereof, and is and will continue to be operated for the Primary Intended Use and is otherwise a going concern. Notwithstanding the foregoing, the computation of Fair Market Value shall assume that this Lease is in effect with respect to the Property in the event that Tenant elects to acquire the Property pursuant to Section 15.2(b). For purposes of this Lease, Fair Market Value shall be determined in accordance with the appraisal procedures set forth in Article XXV.

"FISCAL YEAR" shall mean the 12-month period commencing



January 1 and terminating December 31.

"FIXED TERM" shall have the meaning ascribed to such term in Section 3.1.

"FIXTURES" shall have the meaning ascribed to such term in clause (d) of Article II.

"HAZARDOUS SUBSTANCES" shall mean those substances, materials, and wastes listed in the United States Department of Transportation Table (49 CFR 172 101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law including, without limitation, any material, waste or substance which is (i) hydrocarbons, petroleum and petroleum products, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) formaldehyde, (v) radioactive substances, (vi) flammables and explosives, (vii) described as a "hazardous substance" pursuant to

6

Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U. S. C. Section 1321 or listed pursuant to Section 307 of the Clean Water Act (33 U. S. C. Section 1317), (viii) defined as a "hazardous waste " pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U. S. C. Section 6901 et seq. (42 U. S. C. Section 6903), (ix) defined as a " hazardous substance " pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et. seq. (42 U.S.C. Section 9601), as the same may be amended from time to time, or (x) any other substance, waste or material which could presently or at any time in the future cause a detriment to or impair the value or beneficial use of the Land or other Property (which, for purposes of this definition shall include all air, soils, ground water, surface water and soil vapor) or constitute or cause a health, safety or environmental hazard on, under or about the Land or other Property or to any person who may enter on, under, or about the Land or other Property or require remediation at the behest of any governmental agency.

"IMPACTED FACILITY" shall have the meaning specified in Section 15.2.

"IMPOSITIONS" shall mean all taxes (including without limitation all real properly taxes imposed upon the Land, Improvements or other portions of the Property, including, but not limited to all tangible and intangible personal Property, ad valorem, sales, use, single business, gross receipts, transaction privilege, documentary stamp (if any are associated with this Lease or the transactions contemplated hereby), rent or similar taxes relating to or imposed upon Landlord, any portion of the Property, Tenant

or its business conducted upon the Land), assessments (including without limitation all supplemental real Property tax assessments or assessments for public improvements or benefit, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term), ground rents, water, sewer or other rents and charges, excises, tax levy, fees (including without limitation license, permit, franchise, inspection, authorization and similar fees) and all other governmental charges, in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character or nature whatsoever with respect to or connected with the Property or the business conducted thereon by Tenant (including all interest, penalties and fines thereon due to any failure or delay in payment thereof) which at any time prior to, during or with respect to the Term hereof may be assessed or imposed on or with respect to, or may be a lien upon (a) Landlord's interest in the Property, (b) the Property, or (d) any occupancy thereof or any Rent therefrom or any estate, right, title or interest therein, (c) Landlord's capital invested in the State as represented by the Property, or (d) any occupancy, operation, use or possession of, or sales from, or activity conducted on or in connection with the Property or the leasing or use of the Property or any part thereof by Tenant. Impositions shall not include (1) any tax based on revenue or income (whether denominated as a franchise, capital stock or other tax)

7

imposed upon Landlord or any other person, whether imposed on "net taxable earned surplus" or otherwise, (2) any transfer tax imposed upon Landlord or any other person or (3) any tax imposed with respect to the sale, exchange or other disposition by Landlord of any Property or the proceeds thereof, nor any tax, assessment, tax levy or charge described in the first sentence of this paragraph which is in effect at any time during the Term hereof to the extent such tax, assessment, tax levy or charge is totally or partially repealed, unless a tax, assessment, tax levy or charge set forth in clause (1) or (2) is levied, assessed or imposed expressly in lieu thereof, in which case the substitute tax, assessment, tax levy or charge shall be deemed to be an Imposition.

"IMPROVEMENTS" shall have the meaning ascribed to such term in clause (b) of Article II.

"INITIAL INVESTMENT COST" shall mean, as of the date of determination, an amount equal to the "Purchase Price" paid by Landlord to the Seller under the terms of the Purchase Agreement.

"INITIAL RENT" shall mean the initial rent payable by Tenant to Landlord pursuant to clause (i) of Section 4.1.

"INSURANCE REQUIREMENTS" shall mean all terms and conditions of any insurance policy required by this Lease and all

requirements of the issuer of any such insurance policy.

"LAND" shall mean all of that certain real Property situated in the City and County of El Paso, State of Texas and more particularly described in Exhibit A attached hereto and incorporated herein by reference, and any other parcel of land acquired or leased and made subject to this Lease in connection with a Capital Addition.

"LANDLORD GROUP" shall mean any one or more of Landlord, AHP, any Affiliate of Landlord or AHP and any shareholder of AHP.

"LANDLORD'S LENDER" shall have the meaning ascribed to that term in Section 14.1.

"LANDLORD'S MINIMUM RETURN ALLOCATION" shall mean an amount that yields an internal rate of return on Landlord's Total Investment, for the period commencing on the Commencement Date and ending on the closing date of the purchase provided for in Section 26.2 hereof, which internal rate of return is expressed as a percentage equal to the sum of (y) Base Rent Interest Rate and (z) 350 basis points.

"LANDLORD'S TOTAL INVESTMENT" shall mean an amount equal to the sum of (y) the Initial Investment Cost and (z) all Capital Additions Costs pertaining to the Property paid for by Landlord pursuant to Section 11.2 of the Lease.

8

"LANDLORD'S TRANSACTION EXPENSES" shall mean all out-of-pocket expenses incurred by Landlord in connection with (i) the preparation of this Lease, the Purchase Agreement and any Substitute Lease and the instruments contemplated hereunder and thereunder, and any other instruments required to be executed and delivered by Tenant to Landlord in connection, herewith or therewith (whether or not the transactions hereby or thereby contemplated shall be consummated) and (ii) the transactions contemplated to be performed hereunder and thereunder, including but not limited to the fees and disbursements of Landlord's legal counsel, title insurance premiums, recording taxes and fees, survey fees, valuation or appraisal fees, engineering fees and architects' fees.

"LEASE" shall mean this document, as the same may be amended from time to time in accordance herewith.

"LEGAL REQUIREMENTS" shall mean all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, common law, decrees and injunctions affecting the Property or the maintenance, construction, use, alteration, occupancy or operation thereof, whether now or hereafter enacted and in force (including

any of the foregoing which may require repairs, modifications or alterations in or to the Property), all permits, licenses, certificates, franchises, authorizations, land use entitlements, zoning and regulations relating thereto, and all Covenants, conditions, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Tenant (other than encumbrances created by Landlord without the consent of Tenant), at any time in force affecting the Property.

"MINIMUM REPURCHASE PRICE" shall mean the Initial Investment Cost, plus the Capital Additions Cost of any Capital Additions financed or paid for by Landlord, less the net amount (after deduction of all reasonable legal fees and other costs and expenses, including without limitation expert witness fees, incurred by Landlord in connection with obtaining any such proceeds or awards) of any proceeds of insurance paid to and retained by Landlord in accordance with Article XV of this Lease and of any Awards received by Landlord and not applied to restoration of the Property in accordance with Article XVI

"NOTICE" shall mean a notice given pursuant to Section 30.8 hereof.

"OFFICER'S CERTIFICATE" shall mean a certificate of Tenant signed by the chief financial officer or another officer authorized so to sign by resolutions adopted by the board of directors or the articles of incorporation or by-laws of the general partner of the Tenant or by any other person whose power and authority to act has been authorized by delegation in writing by the chief financial officer of the general partner of the Tenant.

9

"OVERDUE RATE" shall mean, as of a specified date, a rate of interest equal to the Prime Rate plus three percent, but in no event greater than the maximum rate of interest then permitted under applicable law.

"PAYMENT DATE" shall mean any due date for the payment of any installment of Base Rent.

"PERMITTED ENCUMBRANCES" shall mean the matters, if any, set forth in Exhibit B attached hereto and incorporated herein by reference.

A "PERSON" shall mean any natural person, corporation, limited liability company, business trust, association, company, partnership or government (or any agency or political subdivision thereof) or, for purposes of the definition of "Change of Control" herein, any group acting in concert (within the meaning of Section 13(d) of the Securities Exchange Act of 1934).

"PRIMARY INTENDED USE" shall mean an assisted living facility

licensed by the State, and such additional uses which are licensed or applied for on the date hereof or are permitted by Landlord from time to time hereunder.

"PRIME RATE" shall mean the fluctuating rate of interest most recently announced by Wells Fargo at its principal office in San Francisco, California as its "Prime Rate". The "Prime Rate" is one of Wells Fargo's base rates and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto. The "Prime Rate" is evidenced by the recording thereof after its announcement in such internal publication or publications as Wells Fargo may designate and may not be the lowest of Wells Fargo's base rates. Any change in any of the interest rates chargeable hereunder resulting from a change in the Prime Rate shall become effective as of the Business Day on which each change in the "Prime Rate" is announced.

"PROPERTY" shall have the meaning ascribed to such term in Article II.

"PURCHASE AGREEMENT" shall have the meaning given to that term in the Recitals to this Lease.

"REMEDIAL WORK" shall have the meaning specified in Section 8.4.

"RENT" shall mean the Base Rent, Additional Rent and Additional Charges.

"SECURITY AGREEMENT" shall mean the Security and Pledge Agreement of even date between Tenant, as Debtor, and Landlord, as Secured Party.

10

"SECURITY LETTER OF CREDIT" shall have the meaning ascribed thereto in Section 29. 3.

"SHARED APPRECIATION PURCHASE PRICE" shall mean an amount determined by subtracting from (y) the Fair Market Value, (z) Tenant's Share of the Appreciation Amount.

"SHORTFALL" shall have the meaning specified in Section 15.2.

"STATE" shall mean the State of Texas.

"TAKING" shall mean a taking or voluntary conveyance during the Term hereof of all or any part of the Property, or any interest therein, right with respect thereto or use thereof, as a result of, incidental to, or in settlement of any condemnation or other eminent domain proceedings

affecting such Properly, regardless of whether such Proceedings shall have actually been commenced.

"TANGIBLE NET WORTH" shall mean, as of the date of determination, the sum of the following for Tenant and its consolidated subsidiaries, if any, on a consolidated basis, determined in accordance with generally accepted accounting principles (a) the amount of capital or stated capital (after deducting the cost of any shares held in the applicable entity's treasury); (b) plus the amount of capital surplus and retained earnings; or (c) in the case of a capital or retained earnings deficit, minus the amount of such deficit, (d) less the amount, if any, carried on the books of the entity and any consolidated subsidiaries of the entity for goodwill, patents, trademarks, copyrights, licenses, and other assets which are properly classified as intangible assets under generally accepted accounting principles, (e) plus the amount of the Security Letter of Credit.

"TEN-YEAR TREASURY RATE" shall mean, as of the date of determination, the monthly average yield to maturity of actively traded marketable United States Treasury securities bearing a fixed rate of interest, adjusted for a constant maturity of ten years, as calculated by the Federal Reserve Board for the four preceding calendar weeks and published in said board's Statistical Release H. 15.

"TENANT'S PERSONAL PROPERTY" shall mean all machinery, equipment, furniture, furnishings, movable walls or partitions, computers or other personal Property, and consumable inventory and supplies, including, without limiting the generality of the foregoing, mail boxes, desks, lamps, chairs, beds, bedstands, non-affixed cabinetry, tables, and similar movable equipment, owned by Tenant and used or useful in Tenant's business on the Land, but in no event any items included within the definition of Equipment or Fixtures.

11

"TENANT'S SHARE OF THE APPRECIATION AMOUNT" shall mean an amount determined by (x) subtracting the sum of Landlord's Total Investment and the Appreciation Amount from (y) Landlord's Minimum Return Allocation, and (z) multiplying the resultant amount by one-half.

"TERM" shall mean the Fixed Term and any Extended Terms, as the context may require, unless earlier terminated pursuant to the Provisions of this Lease.

"TOTAL RENT" shall mean the sum of Base Rent, Additional Rent and Additional Charges.

"UNAVOIDABLE DELAYS" shall mean delays due to strikes, lockouts, inability to procure materials, power failures, acts of God, governmental restrictions, enemy action, civil commotion, unavoidable casualty and other causes beyond the control of the party responsible for performing an obligation hereunder, provided that lack of funds shall not be deemed a cause beyond the control of either party hereto.

"WELLS FARGO" shall mean Wells Fargo Bank, N.A., a national banking association.

ARTICLE II  
LEASE OF PROPERTY

Landlord hereby leases, demises and lets to Tenant, and Tenant hereby hires, takes and leases from Landlord, upon the terms and subject to the conditions hereinafter set forth, TO HAVE AND TO HOLD, all of Landlord's right, title and interest in and to all of the following (the "PROPERTY"):

(a) the Land;

(b) all buildings, structures and other improvements of every kind, including but not limited to the Facility, all buildings and structures hereafter constructed upon the Land and all alleyways and connecting tunnels, sidewalks, utility pipes, conduits and lines (on-site and off site), parking areas, roadways and other related on-site and off- site improvements appurtenant to such buildings and structures presently or hereafter situated upon the Land, and any and all Capital Additions paid for by Landlord pursuant to Section 11.2 of this Lease (the "IMPROVEMENTS");

(c) all easements, licenses, rights-of way and appurtenances relating to the Land and the Improvements; and

12

(d) all " fixtures " as that term is defined in the State now and hereafter located in, on or used and incorporated into the Land or Improvements (the "FIXTURES").

ARTICLE III  
TERM OF LEASE

3.1 TERM OF LEASE. The initial term of this Lease shall commence

on \_\_\_\_\_, 1996 ("COMMENCEMENT DATE"), and, unless extended or terminated earlier in accordance with the provisions of this Lease, shall remain in effect until October 31, 2006 (the "FIXED TERM"). Notwithstanding the foregoing, if, for any reason, through no fault of Landlord, Landlord cannot deliver possession of the Property to Tenant on the Commencement Date, Landlord shall not be subject to any liability, nor shall such failure affect the validity of this Lease or the obligations of Tenant hereunder or extend the Term hereof, but in such case, Tenant shall not be obligated to pay Rent or to perform any other obligation of Tenant under this Lease until possession of the Property is tendered to Tenant.

### 3.2 OPTION TO EXTEND TERM OF LEASE.

(a) Landlord hereby grants to Tenant an option to extend the term of this Lease for six additional consecutive five-year renewal terms (each, an "EXTENDED TERM, " and collectively, the "EXTENDED TERMS"). Each of the Extended Terms shall be upon the same terms and conditions as those set forth for the Fixed Term except that (i) Base Rent shall be the then current Fair Market Rental which, unless otherwise mutually agreed to by Landlord and Tenant, shall be determined by appraisal pursuant to the provisions of Article XXV; provided that the annual Base Rent for each Extended Term shall not be less than 102.50% of the sum of Base Rent plus Additional Rent payable during the last year of the Initial Term or preceding Extended Term, as the case may be, and (ii) the Base Year utilized for calculation of Additional Rent shall change as provided in Article I. Each such option may only be exercised by Tenant if, at the time such option is exercised, (iii) an Event of Default shall not exist and be continuing, and (iv) the Tenant under each Additional Lease in effect at such time which contains an option permitting such Tenant to extend the term thereof, is concurrently electing to extend the term of such Additional Lease. Each such option to extend the term hereof shall be exercised by Tenant by delivery of Notice to that effect to Landlord not less than 180 days but not more than 360 days prior to the date upon which this Lease otherwise would terminate. Tenant's exercise of any option to extend the term of this Lease for an extended term pursuant to this Section 3.2 shall constitute Tenant's irrevocable and binding commitment to lease the Property on the terms stated in this Lease for the whole of such Extended Term. If Tenant is unable to exercise any option due to the provisions

of this Lease, the time during which such option may be exercised shall not be extended or enlarged. The failure of Tenant to exercise any of the options for the Extended Terms within the respective times specified in this Section shall thereby terminate any remaining such options.

(b) Time is strictly of the essence with respect to the requirement



that Tenant give timely Notice of its exercise of any options hereunder, including, but not limited to, the options for the Extended Terms, and Tenant's failure timely to exercise any option strictly in accordance with its terms shall constitute a material, irredeemable and incurable failure to satisfy a condition precedent to the vesting of any rights in Tenant pursuant to such option, and Tenant hereby expressly waives any right to claim relief from forfeiture, or any other form of equitable relief, from consequences of an untimely exercise of any such option strictly in accordance with its terms. The implied covenant of good faith and fair dealing under this Lease shall not be construed to impose upon Landlord any obligation to notify Tenant in advance of the impending deadline for the exercise of any option hereunder, nor shall it obligate Landlord to excuse the tardy exercise of any option however slight.

#### ARTICLE IV RENT

4.1 PAYMENT OF INITIAL RENT AND LANDLORD'S TRANSACTION EXPENSES. On the Commencement Date Tenant (i) shall pay to Landlord, as Initial Rent, an amount equal to three fourths of one percent ( $3/4\%$ ) of the Initial Investment Cost, without right of offset, in the manner specified in Section 4.2 hereof, and (ii) shall pay to Landlord all Landlord's Transaction Expenses.

4.2 PAYMENT OF BASE RENT, ADDITIONAL RENT AND ADDITIONAL CHARGES. During the Term, Tenant shall pay to Landlord at the times specified herein, in lawful money of the United States of America, without right of abatement, deduction, counterclaim, defense, reduction, recoupment or offset, by wire transfer of Federal Funds to such account or accounts as Landlord may designate from time-to-time in a Notice, the Base Rent, the Additional Rent and the Additional Charges.

4.3 BASE RENT. Commencing on the first Business Day of the first full calendar month occurring coincident with or after the Commencement Date, and thereafter on the first day of each calendar month occurring during the Term hereof, for the period beginning on such first Business Day and ending on the last day of the Term hereof, Tenant shall pay to Landlord an amount calculated by dividing (x) Base Rent by (y) 12, provided that the first payment of Base Rent shall include an additional pro rata payment for any partial calendar month occurring between the Commencement Date and

the date of the first payment of Base Rent. Any payment of Base Rent for a period of less than one calendar month shall be prorated based upon the number of days for which such Base Rent is due divided by 30.

4.4 ADDITIONAL RENT. From and after the Additional Rent Commencement Date, during each Calculation Period, "Additional Rent" shall accrue, in the manner and at the times set forth in this Section 4.4. With respect to the first Calculation Period Additional Rent shall be an amount equal to the Additional Rent Percentage of total Base Rent payable for the Base Year. With respect to the second and subsequent calculation Periods, Additional Rent shall be an amount equal to (a) Additional Rent for the immediately preceding Calculation Period, plus (b) an amount equal to the Additional Rent Percentage of the sum of Base Rent and Additional Rent payable for the immediately preceding Calculation Period. Notwithstanding the foregoing, in no event shall Base Rent and Additional Rent payable in any Calculation Period be more than 104% of Base Rent and Additional Rent payable in the preceding Calculation Period. On the 45th day after the last day of the calendar quarter which commences on the Additional Rent Commencement Date, and, thereafter, on the 45th day after the last day of every calendar quarter commencing during the Term of this Lease, Tenant shall pay Additional Rent on a quarterly basis. The quarterly payment shall be one fourth of the Additional Rent payable for such Calculation Period.

4.5 ADDITIONAL CHARGES. Subject to Article XIII hereof, Tenant shall pay and discharge as and when due and payable all Impositions and other amounts, liabilities and obligations which Tenant assumes or agrees to pay under this Lease. If Tenant fails or refuses to pay any of the items referred to in the immediately preceding sentence, Tenant shall promptly pay and discharge every fine, penalty, interest and cost which may arise or accrue for the non-payment or late payment of such items. The aforementioned amounts, liabilities, obligations, Impositions, fines, penalties, interest and costs are referred to herein as " ADDITIONAL CHARGES. " The Additional Charges shall constitute Rent hereunder. If any Rent (but as to Additional Charges, only those which are payable directly to Landlord) shall not be paid on its due date, Tenant shall pay to Landlord on demand, as an Additional Charge, a late charge to the extent permitted by law, computed at the Overdue Rate on the amount of such Rent from the due date of such Rent to the date such Rent is paid. Any payment by Tenant of Additional Charges to Landlord pursuant to any requirement of this Lease shall relieve Tenant of its obligation to pay such Additional Charges to the entity to which they would otherwise be paid.

#### 4.6 TRIPLE NET LEASE.

(a) TRIPLE NET LEASE. This Lease is what is commonly called a "net net net lease ", it being understood that Landlord shall receive all Rent as provided in this Article free and clear of any and all Impositions, encumbrances, charges, obligations or expenses of any nature whatsoever in connection with the ownership and operation of the Property. In addition to the Rent reserved by this Article, except as expressly provided herein to the contrary, Tenant shall pay to the parties respectively entitled thereto all Impositions, insurance premiums, operating charges, maintenance charges, construction costs and any other charges, costs and expenses which arise or may be contemplated under any provisions of this Lease during the Term hereof. All of such charges, costs and expenses shall constitute Rent, and upon the failure of Tenant to pay any such costs, charges or expenses, Landlord shall have the same rights and remedies as otherwise provided in this Lease for the failure of Tenant to pay Rent and Landlord shall be indemnified and saved harmless by Tenant from and against the same. It is the intention of the parties hereto that this Lease shall not be terminable for any reason by the Tenant and that Tenant shall in no event be entitled to any abatement of or reduction in Rent payable under this Lease except as herein expressly provided. Any present or future law to the contrary shall not alter this agreement of the parties.

(b) BANKRUPTCY. Provided that there has been no rejection hereof by Landlord or any trustee or receiver of Landlord, Tenant covenants and agrees that it shall remain obligated under this Lease in accordance with its terms, and that Tenant shall not take any action to terminate, rescind or avoid this Lease, notwithstanding the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Landlord or any assignee of Landlord in any such proceeding and notwithstanding any action with respect to this Lease which may be taken by any trustee or receiver of Landlord or any such assignee in any such proceeding or by any court in any such proceeding.

(i) In the event that Tenant shall file a petition, or an order for relief is entered against Tenant, under Chapter 7, 9, 11 or 13 of the Bankruptcy Code, 11 U.S.C.S. 101 et seq. (the "BANKRUPTCY CODE") and the trustee of Tenant shall elect to assume this Lease for the purpose of assigning the same, such assumption or assignment may only be made if all the conditions of subsections (ii) and (iii) of this Section 4.8(b) are satisfied. If Tenant's trustee or debtor-in-possession, as the case may be, shall fail to elect to assume this Lease within 60 days (or additional time fixed by the court) after such trustee shall have been appointed, or the date of filing of the petition, at Landlord's election (and in its sole and absolute discretion) this Lease shall be deemed to have been rejected and, in such event, Landlord shall thereupon immediately be entitled to possession of the

Property without further obligation to the trustee or Tenant, and this Lease shall be cancelled, but Landlord's right to be compensated for damages in the bankruptcy proceedings shall survive such cancellation.

(ii) No election to assume this Lease shall be effective unless in writing and addressed to Landlord and unless, in Landlord's business judgment, all the following conditions, which Landlord and Tenant acknowledge to be commercially reasonable, have been satisfied:

(A) The trustee (or Tenant, as debtor-in-possession) has cured or has provided Landlord adequate assurance that:

(I) within ten days from the date of such assumption, the trustee (or debtor-in-possession) will cure all monetary defaults under this Lease; and

(II) within 30 days from the date of such assumption, the trustee (or debtor-in-possession) will cure all non-monetary defaults under this Lease or commence to cure within 30 days and thereafter diligently pursue to completion.

(B) The trustee (or debtor-in-possession) has compensated, or has provided to Landlord adequate assurance that within ten days from the date of assumption Landlord will be compensated, for any pecuniary loss incurred by Landlord arising from the default of the Tenant or the trustee (or the debtor-in possession) as recited in Landlord's written statement of pecuniary loss sent to the trustee (or debtor-in-possession);

(C) The trustee (or debtor-in possession) has provided Landlord with adequate assurance of the future performance of each of Tenant's obligations under this Lease, provided that:

(I) the trustee (or debtor-in-possession) shall also deposit with Landlord, as security for the timely payment of Rent, an amount equal to (w) three months' Base Rent and (x) the last quarterly payment of Percentage Rent and (y) the other monetary charges accruing under this Lease; and

(II) the obligations imposed upon the trustee (or debtor-in-possession) shall continue with respect to Tenant after completion of bankruptcy proceedings.

(D) Landlord has determined that the assumption of the Lease will not:

(I) breach any provision in any agreement by

which Landlord is bound relating to the Property; or

(II) disrupt, in Landlord's reasonable judgment, the reputation and profitability of the Property.

(E) For purposes of this subsection, "adequate assurance" shall mean:

(I) Landlord shall determine that the trustee (or debtor-in-possession) has and will continue to have sufficient unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that the trustee (or debtor-in-possession) will have sufficient funds to fulfill the obligations of Tenant under this Lease; and

(II) an order shall have been entered segregating sufficient cash payable to Landlord, or there shall have been granted a valid and perfected first lien and security interest in Property of the Tenant or trustee (or debtor-in-possession), acceptable as to value and kind to Landlord, to secure to Landlord the obligation of the Trustee (or debtor-in-possession) to cure the monetary or non-monetary defaults under this Lease within the time periods set forth above.

(iii) If the trustee (or debtor-in-possession) has assumed the Lease pursuant to all the provisions of subsections (i) and (ii) of this Section 4 8(b), for the purpose of assigning (or electing to assign) Tenant's interest under this Lease or the estate created thereby to any other person, such interest or estate may be so assigned only if Landlord shall acknowledge in writing that the intended assignee has provided adequate assurance of future performance of all the terms, covenants and conditions of this Lease to be performed by Tenant. For purposes of this subsection (iii), "adequate assurance of future performance " means that Landlord shall have ascertained that each of the following conditions has been satisfied:

(A) the assignee has submitted a current financial statement audited by a certified public accountant which shows tangible net worth and working capital in amounts determined to be sufficient by Landlord to assure the future performance by such assignee of Tenant's obligations under this Lease;

(B) if requested by Landlord, the assignee shall have obtained guarantees in form and substance satisfactory to Landlord from one or more persons who satisfy Landlord's standards of creditworthiness.

(C) Landlord has obtained all consents to waivers

from any third parties required under any lease, mortgage, financing arrangement or other agreement by which Landlord is bound to enable Landlord to permit such assignment;

18

(D) the assignee has deposited an adequate security deposit with Landlord; and

(E) the assignee has demonstrated that its intended use of the Property is consistent with the terms of this Lease and will not diminish the reputation of the Facility, or violate any "exclusive" which has been granted by Tenant to any permitted subtenant in the Property.

(iv) When, pursuant to the Bankruptcy Code, the trustee (or debtor-in-possession) shall be obligated to pay reasonable use and occupancy charges for the use of the Property or any portion thereof, such charges shall not be less than the Rent.

(v) Neither Tenant's interest in the Lease, nor any lesser interest of Tenant herein, nor any estate of Tenant hereby created, shall pass to any trustee, receiver, assignee for the benefit of creditors or any other person by operation of law or otherwise unless Landlord shall consent to such transfer in writing. No acceptance by Landlord of rent or any other payments from any such trustee, receiver, assignee or person shall be deemed to have waived, nor shall it waive the need to obtain Landlord's consent to, or Landlord's right to terminate this Lease for, any transfer of Tenant's interest under this Lease without such consent.

(vi) Any person to whom this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Landlord an instrument confirming such assumption.

## ARTICLE V IMPOSITIONS

5.1 PAYMENT OF IMPOSITIONS. Tenant shall pay, or cause to be paid, all impositions prior to delinquency and before any fine, penalty, interest or cost may be added for non-payment (subject to Tenant's rights of contest pursuant to the provisions of Article XIII). Such payments shall be made directly to the authorities levying such Impositions, if possible. Tenant shall, promptly upon request by Landlord, furnish to Landlord original or certified copies of receipts or other reasonably satisfactory evidence of such payments. Tenant's obligation to pay Impositions shall be deemed absolutely fixed upon the date such

Impositions become a lien upon the Property or any part thereof. Notwithstanding the foregoing, if any such Imposition may, at the option of the payor, lawfully be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), and so long as no Event of Default shall have occurred hereunder and be continuing, Tenant may pay the same (and shall pay any accrued interest on the unpaid balance of such Imposition) in installments, and in such event shall pay such

installments (subject to Tenant's right of contest pursuant to the provisions of Article XIII) as the same become due and before any fine, penalty, premium, further interest or cost is added thereto. Landlord shall, at its expense and to the extent required or permitted by applicable laws and regulations, prepare and file all returns with respect to Landlord's net income, gross receipts, sales, use, single business, transaction privilege, rent, ad valorem and franchise taxes, and with respect to taxes on Landlord's capital stock. Tenant shall, at its expense, and to the extent required or permitted by applicable laws and regulations, prepare and file all other tax returns and reports with respect to any Imposition as may be required of Tenant by governmental agencies or authorities. If any refund shall be due from any taxing authority with respect to any Imposition paid by Tenant, the same shall be paid over to and retained by Tenant unless an Event of Default shall have occurred hereunder and be continuing, in which case such refund shall be paid over to and retained by Landlord. Any such funds retained by Landlord due to an Event of Default shall be applied as provided in Article XVII. Landlord and Tenant shall, each upon a request by the other, provide such information as is maintained by the party to whom the request is made with respect to the Property as may be reasonably necessary to prepare any required returns or reports. If any governmental agency or authority classifies any Property covered by this Lease personal Property, Tenant shall file all personal Property tax returns in such jurisdictions where it may legally so file. Landlord, to the extent it possesses the same, and Tenant, to the extent it possesses the same, will provide to the other party, promptly upon request, cost and depreciation records reasonably necessary for filing returns for any Property so classified as personal Property. If Landlord is legally required to file any personal property tax returns, Landlord shall provide Tenant with copies of any assessment notices with respect thereto in sufficient time for Tenant to file a protest with respect thereto if it so elects pursuant to Article XIII. If no Event of Default is then continuing, Tenant may at its option and sole cost and expense, upon written notice to Landlord, protest, appeal or institute such other proceedings as Tenant reasonably may deem appropriate to effect a reduction of real estate or personal Property assessments so long as such action is conducted in good faith and with due diligence. In such event, Landlord, at Tenant's sole cost and expense, shall fully cooperate with Tenant in such protest, appeal, or other action. Tenant hereby agrees to indemnify, defend, save and hold Landlord

harmless from and against any and all losses, demands, claims, obligations and liabilities against or incurred by Landlord in connection with such cooperation by Landlord. Billings by either party to the other for reimbursement of personal Property taxes shall be accompanied by copies of a bill therefor and evidence of payments thereof which identify the personal Property with respect to which such payments have been made.

20

5.2 NOTICE OF IMPOSITIONS. Landlord shall give prompt Notice to Tenant of all Impositions payable by Tenant hereunder of which Landlord at any time has knowledge. Notwithstanding the foregoing, however, Landlord's failure to give any such Notice shall in no way diminish Tenant's obligations hereunder to pay such Impositions, but Landlord shall be responsible for any fine, penalty or interest resulting from its failure to give such notice and any default by Tenant hereunder shall be obviated for a reasonable time after Tenant receives Notice of any Imposition which it is obligated to pay.

5.3 ADJUSTMENT OF IMPOSITIONS. Impositions imposed with respect to the tax period during which the Term expires or terminates shall be adjusted and prorated between Landlord and Tenant, whether or not such Imposition is imposed before or after such expiration or termination, so that Tenant is only obligated to pay that portion of such Imposition(s) pertaining to the tax period within the Term. The obligation of Tenant to pay its prorated share of Impositions shall survive expiration or earlier termination of this Lease.

5.4 UTILITY CHARGES. Tenant shall pay or cause to be paid all charges for all utilities, including but not limited to electricity, power, gas, oil and water, used in the Property during the Term.

5.5 INSURANCE PREMIUMS. Tenant shall pay or cause to be paid all premiums for insurance coverage required to be maintained pursuant to Article XIV.

#### ARTICLE VI TERMINATION OR ABATEMENT OF LEASE

Without limiting the provisions of Section 4.6, Tenant, to the full extent permitted by law, shall remain bound by this Lease in accordance with its terms. Tenant shall not take any action without the prior written consent of Landlord to modify, surrender or terminate this Lease. The



obligations of Landlord and Tenant hereunder shall be separate and independent covenants and agreements, and Rent and all other sums shall continue to be payable by Tenant hereunder in any event unless the obligation of Tenant to pay the same terminates pursuant to the express provisions of this Lease or by termination of this Lease (other than by reason of an Event of Default). Without limiting the generality of the immediately preceding sentence, Tenant shall not seek or be entitled to any abatement, deduction, deferment or reduction of Rent, or set-off against Rent, nor shall the respective obligations of Landlord and Tenant be otherwise affected (except as set forth in this Lease) by reason of: (a) any damage to, or destruction of, all or any portion of the Property from whatever cause or any Taking of all or any portion of the Property; (b) the lawful or unlawful prohibition of, or restriction upon,

21

Tenant's use of all or any portion of the Property, or the interference with such use or with Tenant's quiet enjoyment of the Property by any person or entity other than Landlord, or by reason of eviction by paramount title; (c) any claim which Tenant has or may have against Landlord by reason of any default or breach of any warranty by Landlord under this Lease or under any other agreement between Landlord and Tenant or to which Landlord and Tenant are parties; (d) any bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding up or other proceeding affecting Landlord or any assignee or transferee of Landlord; or (e) any other cause, whether similar or dissimilar to any of the foregoing (other than a discharge of Tenant from any such obligations as a matter of law). Except as specifically set forth in this Lease to the contrary, Tenant hereby specifically waives all rights, arising from any occurrence whatsoever, which (i) may now or hereafter be conferred upon it by law to modify, surrender or terminate this Lease or quit or surrender all or any portion of the Property or (ii) entitle Tenant to any abatement, reduction, suspension or deferment of Rent or other sums payable by Tenant hereunder.

## ARTICLE VII OWNERSHIP OF PROPERTY

7.1 OWNERSHIP OF THE PROPERTY. As between Landlord and Tenant the Property is, and throughout the Term shall continue to be, the Property of Landlord. Tenant has only the right to the exclusive possession and use of the Property, upon the terms and subject to the conditions set forth in this Lease.

7.2 TENANT'S PERSONAL PROPERTY; SECURITY INTEREST. Tenant may, at its expense, install, affix, assemble or place on the Property any items of Tenant's Personal Property and may, subject to the conditions

set forth below, remove Tenant's Personal Property upon the expiration or earlier termination of this Lease or in the ordinary course of business (other than a termination upon an Event of Default) so long as any damage caused by such removal shall be promptly repaired by Tenant. Notwithstanding the foregoing, in order to secure the payment and the performance of all of Tenant's obligations under this Lease, Tenant hereby grants to Landlord a security interest in (and hereby pledges and collaterally assigns to Landlord) all of Tenant's rights, title and interest in and to Tenant's Personal Property, all whether now existing or hereafter acquired and hereby further agrees to execute and deliver to Landlord, forthwith after demand by Landlord from time to time, any security agreement in a reasonable form determined by Landlord and such additional writings and instruments, including without limitation financing statements, as may be reasonably required by Landlord for the purpose of effectuating the intent of this sentence and Tenant agrees that Landlord shall have with respect to all Personal Property all rights and

22

remedies of a secured party under the Uniform Commercial Code as adopted in the State, including, but not limited to, the right after the occurrence of an Event of Default to use or sell Tenant's Personal Property, and Landlord shall not be required to remove any of such Personal Property from the Property and in no event shall Landlord be liable to Tenant for use of such Personal Property. Pending disposition of such Personal Property by Landlord, Landlord shall be entitled to use such Personal Property in connection with the operation (if any) of the Facility. Tenant shall not permit the Property or Personal Property to become subject to any liens or encumbrances of any kind without first obtaining the prior written consent of Landlord, except for liens or encumbrances permitted by Section 29.1 (a). This Lease and the security interest granted Landlord hereby shall be subordinate to any purchase money security interest or capital lease permitted under Section 29.1 (a). Landlord further agrees that Tenant may lease Personal Property, and Landlord shall execute and deliver such agreements as may be reasonably required by any permitted equipment lessor or the holder of a permitted purchase money security interest to confirm that Landlord's lien on the Personal Property in question is subordinate to the rights of such equipment lessor or lender and in each case Tenant shall use its best efforts to obtain from the holder of the purchase money debt or lessor of Personal Property, as the case may be, its agreement to (i) notify Landlord or its successors and assigns of any default by Tenant, (ii) allow Landlord or its successors and assigns an opportunity to cure any default, (iii) recognize Landlord or its successors and assigns as succeeding to Tenant's rights under the agreement in question and to the undisturbed use of the equipment, provided that Landlord fully complies with the terms of such agreement. Tenant shall provide and maintain on the Property during the entire Term such Tenant's Personal Property as shall be necessary to operate

the Facility in compliance with all licensure and certification requirements, in substantial compliance with all Legal Requirements and Insurance Requirements and otherwise in accordance with customary practice in the health care industry with respect to the Primary Intended Use or other uses then conducted on the Property by Tenant and permitted hereunder. All Tenant's Personal Property not removed by Tenant within thirty days following the expiration or earlier termination of this Lease shall be considered abandoned by Tenant and may be appropriated, sold, destroyed or otherwise disposed of by Landlord without first giving Notice thereof to Tenant and without any payment or obligation to account to Tenant. Tenant shall, at its sole cost and expense, restore the Property to the condition required by Section 10.1(d), including repair of all damage to the Property caused by the removal of Tenant's Personal Property, whether effected by Tenant or Landlord, except that caused by the gross negligence or willful misconduct of Landlord.

ARTICLE VIII  
CONDITION AND USE OF PROPERTY

8.1 CONDITION OF THE PROPERTY. LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AND SHALL BE SUBJECT TO NO LIABILITY WITH RESPECT TO, NOR SHALL THE VALIDITY OF THIS LEASE BE AFFECTED BY ANY CLAIM, DEMAND OR CAUSE OF ACTION REGARDING THE PROPERTY OR ANY PART THEREOF, EITHER AS TO ITS DESIGN, CONDITION OR FITNESS FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, LATENT OR PATENT. TENANT ACKNOWLEDGES AND AGREES THAT THE PROPERTY HAS BEEN INSPECTED BY TENANT, HAS BEEN APPROVED FOR OCCUPANCY BY ALL GOVERNMENT AGENCIES HAVING JURISDICTION THEREOVER AND IS SATISFACTORY TO IT IN ALL RESPECTS, INCLUDING FOR ITS PRIMARY INTENDED USE, AND THAT TENANT IS LEASING THE PROPERTY "AS IS" IN ITS PRESENT CONDITION AND SUBJECT TO (A) THE EXISTING STATE OF TITLE, INCLUDING ALL COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, LICENSES, LEGAL REQUIREMENTS, MORTGAGES, DEEDS OF TRUST, ASSIGNMENTS OF LEASES, FIXTURE FILINGS AND OTHER FINANCING INSTRUMENTS AND ANY AND ALL OTHER MATTERS OF RECORD AND OTHERWISE EXCEPT TO THE EXTENT ANY OF THE FOREGOING WERE

CAUSED OR CREATED BY LANDLORD, AND (B) MATTERS WHICH WOULD BE DISCLOSED BY AN INSPECTION OF THE PROPERTY OR BY AN ACCURATE SURVEY OF THE LAND. TENANT WAIVES ANY AND ALL CLAIMS, DEMANDS AND CAUSE OR CAUSES OF ACTION HERETOFORE OR HEREAFTER ARISING AGAINST LANDLORD WITH RESPECT TO THE CONDITION OF THE PROPERTY.

## 8.2 USE OF THE PROPERTY.

(a) Tenant has obtained or duly applied for and shall maintain in effect all permits, licenses, authorizations and approvals needed to use and operate the Property and the Facility for Tenant's Primary Intended Use in accordance with all Legal Requirements.

(b) Throughout the entire Term, Tenant shall use or cause to be used the Property in accordance with its Primary Intended Use and for such other uses as may be necessary in connection with or incidental to such use. Tenant shall not use the Property or any portion thereof for any other purpose whatsoever without the prior written consent of Landlord. The parties agree that Landlord's consent will not be deemed to be unreasonably withheld if, in the reasonable opinion of Landlord, the Tenant's proposed

24

use of the Property will significantly alter the character or purpose or detract from the value or operating efficiency of the Property, or significantly impair the revenue-producing capability of the Property. No use shall be made or permitted to be made of the Property and no acts shall be done which violate any Legal Requirements or Insurance Requirements or which will cause the cancellation of any insurance policy covering the Property or any part thereof, nor shall Tenant sell or otherwise provide to patients therein, or permit to be kept, used or sold in, about or under the Property any Hazardous Substance (except in strict compliance with all Legal Requirements, but only as may be necessary to the operation of the Facility, with respect to such substances other than asbestos and hydrocarbons) or any other article which may be prohibited by the Legal Requirements or Insurance Requirements. Tenant shall, at its sole cost, comply with all of the requirements pertaining to the Property of any insurance board, association, organization or company necessary for the maintenance of the insurance required pursuant to this Lease,

(c) Tenant shall not commit or suffer to be committed any waste nor shall Tenant cause or permit any nuisance on the Property.

(d) Tenant shall neither suffer nor permit all or any portion of Tenant's Personal Property or the Property, including any Capital Addition whether or not financed or paid for by Landlord, to be used in such a

manner as (i) may impair the owner's title thereto or to any portion thereof or (ii) may make possible a claim or claims of adverse usage, adverse possession or implied dedication of all or any portion of the Property to the public, except as is necessary in the ordinary and prudent operation of the Property.

8.3 LANDLORD TO GRANT EASEMENTS. Subject to the provisions of this Section 8.3, Landlord shall, from time to time so long as no Event of Default has occurred and is continuing, at the request of Tenant and at Tenant's sole cost and expense (but subject to the approval of Landlord, which approval shall not be unreasonably withheld or delayed), (a) grant easements and other rights in the nature of easements burdening the Property for the benefit of real Property adjacent to the Land or for the exclusive use and enjoyment of persons or entities specified by Tenant in such request but only as may be necessary for the operations of the Facility; (b) dedicate or transfer unimproved portions of the Property for road, highway or other public purposes but only as may be necessary for the operation of the Facility; (c) execute petitions to have the Property annexed to any municipal corporation or utility district; and (d) execute amendments to any covenant, conditions, restrictions and equitable servitudes affecting the Property, but only if each such grant, dedication, transfer, petition or amendment is not detrimental to the proper conduct of the business of Tenant on the Property and does not materially reduce the value of the Property in Landlord's reasonable discretion.

25

#### 8. 4 HAZARDOUS SUBSTANCES.

(a) All operations or activities upon, or any use or occupancy of the Property, or any portion thereof, by Tenant, or any agent, contractor, employee or subtenant of Tenant shall at all times during the Term be in all respects in strict compliance with any and all Legal Requirements and Insurance Requirements relating to Hazardous Substances, including, but not limited to, the discharge and removal of Hazardous Substances. Tenant will keep the Property free and clear of all Hazardous Substances other than those Hazardous Substances which are necessary for the operation of the Facility for the Primary Intended Use (which Hazardous Substances shall be handled, used and disposed of in strict compliance with the Legal Requirements and Insurance Requirements) and Tenant shall pay all costs required properly to use, handle and dispose of all Hazardous Substance and shall keep the Property free and clear of any lien relating to Hazardous Substances which may be imposed pursuant to the Legal Requirements and Insurance Requirements. Neither Tenant, nor any agent, contractor employee or Subtenant of Tenant shall allow the manufacture, storage, voluntary transmission or presence of any Hazardous Substances over or upon the Property (except in strict compliance with the Legal Requirements

and Insurance Requirements). Landlord shall have the right at any time with notice to Tenant (but not more often than once in any calendar year) to conduct an environmental audit of the Property and Tenant shall cooperate in the conduct of such environmental audit. Furthermore, neither Tenant, nor any agent, contractor, employee or any subtenant of Tenant shall install or permit to be installed in or on the Property friable asbestos or any substance containing asbestos or similarly deemed hazardous by governmental authorities or the Legal Requirements respecting such materials, and with respect to any such materials currently present in the Property, shall promptly either (x) remove any material which such Legal Requirements deem hazardous and require be removed, at its sole cost and expense, or (y) otherwise comply with the Legal Requirements. Tenant shall promptly notify Landlord in writing of any order, receipt of any notice of violation or noncompliance with any applicable law, rule, regulation, standard or order, any threatened or pending action by any regulatory agency or other governmental authority or any claims made by any third party relating to Hazardous Substances on, emanations on or from, releases on or from, or threats of releases on or from any of the Property and shall promptly furnish Landlord with copies of any correspondence, notices or legal pleadings in connection therewith. Landlord shall have the right, but shall not be obligated, to notify any governmental authority of any state of facts which may come to its attention with respect to Hazardous Substances on, released from or emanating on or from any part of the Property.

(b) Without limiting Section 22.1, Tenant shall, with the right to participate in the applicable proceedings, indemnify, protect, defend (with counsel reasonably approved by Landlord) and hold Landlord, and the

directors, officers, shareholders, employees and agents of Landlord, harmless from any claims (including, but not limited to, third party claims for personal injury or real or personal Property damage), or natural resources damage, actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlements of claims), interest or losses, including reasonable attorneys' and paralegals' fees and expenses (including any such fees and expenses incurred in enforcing the covenants and obligations of Tenant under this Lease or collecting any sums due hereunder), consultant fees, and expert fees, together with all other costs and expenses of any kind or nature ( " Costs " ) that arise directly or indirectly from or in connection with the presence, suspected presence, release or threatened release of any Hazardous Substance in or into or at, on, about, under or within the Property, to the extent that such Costs are not attributable to the gross negligence or willful misconduct of Landlord. The indemnification provided in this Section 8.4(b) shall specifically apply to and include claims or actions brought by or on behalf

of employees or contractors of Tenant or employees or contractors of Tenant, and Tenant hereby expressly waives any immunity to which Tenant may otherwise be entitled under any industrial or workers' compensation laws. In the event Landlord shall suffer or incur any such Costs, Tenant shall pay to Landlord the total of all such Costs suffered or incurred by Landlord upon demand therefor by Landlord. Without limiting the generality of the foregoing, the indemnification provided by this Section 8.4(b) shall specifically cover Costs, including capital, operating and maintenance costs, incurred in connection with any investigation or monitoring of site conditions, any cleanup, containment, remedial, removal or restoration work required or performed by any federal, state or local governmental agency or political subdivision or performed by any non-governmental entity or person because of the presence; suspected presence, release or suspected release of any Hazardous Substance in or into the air, soil, groundwater, surface water or soil vapor at, on, about, under or within the Property (or any portion thereof, and any claims of third parties for loss or damage due to such Hazardous Substance, to the extent that such Costs are not attributable to the gross negligence or willful misconduct of Landlord. In addition, such indemnification shall include, but not be limited to, all loss or damage sustained by Landlord or any third party to whom Landlord may be liable due to any Hazardous Substance (i) that is present or suspected to be present on, about, under or within the Property or (ii) that migrates, flows, percolates, diffuses or in any way moves onto, into or under the air soil groundwater surface water or soil vapor at, on, about, under or within the Property, irrespective of whether such Hazardous Substance shall be present or suspected to be present on, about, under or within the Property as a result of any release, discharge, disposal, dumping, spilling or leaking (accidental or otherwise) onto the Property or caused by any person or entity; provided, however, that the indemnification obligation arising out of clauses (i) and (ii) above shall

27

apply solely to the extent that such loss or damage is not attributable to the gross negligence or willful misconduct of Landlord.

(c) In the event any investigation or monitoring of site conditions or any clean-up, containment, restoration, removal or other such work ("REMEDIAL WORK ") is required under any applicable Legal Requirements, including, but not limited to, any judicial order or order of any governmental entity, or in order to comply with any agreements affecting the Property because of, or in connection with, any occurrence or event described in Section 8. 4(b), Tenant shall perform or cause to be performed the Remedial Work in compliance with such law, regulation, order or agreement and subject to the final review and approval of Landlord, which approval shall not be unreasonably withheld or delayed; provided, however, that Tenant may withhold such performance

pursuant to a good faith dispute regarding the application, interpretation or validity of the law, regulation, order, or agreement, subject to the requirements of Section 8.4(d); provided, further, however, that Landlord shall reasonably cooperate with Tenant to the extent necessary to deliver such authorizations as may be required in order for Tenant to perform its obligations under this Section 8.4(c). All Remedial Work shall be performed by one or more contractors, selected by Tenant and approved in advance in writing by Landlord, which approval shall not be unreasonably withheld or delayed, and under the supervision of a consulting engineer, selected by Tenant and approved in advance in writing by Landlord, which approval shall not be unreasonably withheld or delayed. All costs and expenses of Remedial Work shall be paid by Tenant, including, but not limited to, the charges of such contractors and consulting engineer, and Landlord's reasonable attorneys' and paralegals' fees and other costs incurred in connection with the monitoring or review of such Remedial Work. In performing its obligations hereunder, Tenant shall be subrogated to any rights Landlord may have under any indemnifications or warranties from any present, future or former owners, Tenants or occupants or users of the Property, to the extent available. In the event Tenant shall fail timely to commence, diligently to prosecute to completion or to complete to Landlord's reasonable satisfaction any necessary Remedial Work, Landlord may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof paid or incurred by Landlord in connection therewith shall be Costs within the meaning of Section 8.4(b). Landlord's disapproval of or dissatisfaction with any Remedial Work shall be deemed to be reasonable so long as Landlord's requirements for any Remedial Work are consistent with the then current requirements and standards imposed by prudent institutional investors in connection with their management of real Property. All such Costs shall be due and payable upon demand therefor by Landlord. If Tenant fails to perform its obligations hereunder, Landlord shall be subrogated to any rights Tenant may have under any indemnifications from any present, future or former owners, Tenants or

28

other occupants or users of the Property relating to the matters covered by this Section 8.4.

Notwithstanding any provision of this Section 8.4 to the contrary, but without limiting the provisions of Article XIII, Tenant shall be permitted to contest or cause to be contested, subject to compliance with the requirements of this Section 8.4(d) and Article XIII, by appropriate action any Remedial Work requirement, and Landlord shall not perform such requirement on its behalf, so long as Tenant has given Landlord written notice that Tenant is contesting or shall contest or cause to be contested the same, and Tenant actually contests or causes to be contested the application,



interpretation or validity of the law, regulation, order or agreement pertaining to the Remedial Work by appropriate proceedings conducted in good faith with due diligence, provided that such contest shall not subject Landlord to civil liability nor jeopardize Landlord's interest in the Property or affect in any way the payment of any sums to be paid to Landlord. Tenant shall give such security or assurances as may be reasonably required by Landlord to insure compliance with the Legal Requirements pertaining to the Remedial Work (and payment of all costs, expenses, interest and penalties in connection therewith) and to prevent any sale, forfeiture or loss by reason of such nonpayment or noncompliance.

(e) The provisions of this Section may be enforced by Landlord without regard to any other rights and remedies Landlord may have against Tenant under this Lease and without regard to any limitations on Landlord's recourse as may be otherwise provided in this Lease. Tenant agrees that, notwithstanding any provision in this Lease to the contrary, a separate action or actions to enforce Tenant's obligations under this Section 8.4 may be brought and prosecuted against Tenant. Any costs and other payments required to be paid by Tenant to Landlord under this Section 8.4 which are not paid within fifteen days of demand therefor shall thereupon be considered delinquent. Tenant shall pay to Landlord immediately upon demand therefor interest on such overdue amounts, from the date when due until paid, at the Overdue Rate.

## ARTICLE IX

### LEGAL REQUIREMENTS AND INSURANCE REQUIREMENTS

9.1 COMPLIANCE WITH LEGAL REQUIREMENTS, INSURANCE REQUIREMENTS AND INSTRUMENTS. Subject to the rights of Tenant as provided in Article XIII relating to permitted contests, Tenant, at its sole cost and expense, shall promptly (a) comply with all applicable Legal Requirements and Insurance Requirements with respect to the use, operation, maintenance, repair and restoration of the Property, whether or not compliance therewith shall require structural change in any of the Improvements or interfere with the use and enjoyment of the Property, and (b) procure, maintain and comply with all appropriate

29

licenses, certificates of need, provider agreements and other permits, licenses, franchises and authorizations required for any use of the Property and Tenant's Personal Property then being made, and for the proper erection, installation, operation and maintenance of the Property or any part thereof, including without limitation any Capital Additions.

9. 2 COVENANTS REGARDING LEGAL REQUIREMENTS.

Tenant Covenants and agrees that it shall not use the Property or Tenant's Personal Property for any purpose which violates the Legal Requirements. Tenant has obtained or duly applied for and shall maintain all appropriate licenses, certificates, permits, provider agreements, franchises, authorizations and approvals necessary to operate the Property in its customary manner for the Primary Intended Use, and any other use conducted on the Property by Tenant and permitted by Landlord hereunder Tenant may, however, contest the legality or applicability of any such Legal Requirement as provided in Article XIII hereof.

ARTICLE X  
CONDITION OF THE PROPERTY

10.1 MAINTENANCE AND REPAIR.

(a) Tenant, at its sole cost and expense, shall keep the Property and all private roadways, sidewalks and curbs appurtenant thereto and which are under Tenant's control in good order, condition and repair and, except as otherwise expressly provided to the contrary in Article XLV, XV, or XVI with reasonable promptness, shall make all necessary and appropriate repairs and replacements thereto of every kind and nature, whether interior or exterior, structural or nonstructural, ordinary or extraordinary, patent or latent, foreseen or unforeseen, or arising by reason of a condition existing prior to the commencement of the Term of this Lease and regardless of the cause necessitating repair. Tenant shall also be obligated at its expense to make all repairs, modifications and renovations necessary to comply with all licensing, safety and health and building code, regulations applicable to the Property so that it can be legally operated for its Primary Intended Use. All repairs by Tenant shall, to the extent reasonably achievable, be at least equal in quality to the original work. Tenant shall not take or omit to take any action, the taking or omission of which might materially impair the value or the usefulness of all or any portion of the Property for the Primary Intended Use. Tenant shall give Landlord ten days prior written notice of any repair, replacement, modification or renovation pursuant to this Section the cost of which exceeds \$200,000 and, prior to commencing any such repair, replacement, modification or renovation, shall provide to Landlord either (i) a lien payment and completion bond in form and substance and issued by a surety reasonably acceptable to Landlord or (ii) a payment and

30

completion guaranty in form and substance and executed by a guarantor reasonably acceptable to Landlord, as Tenant may elect.

(b) Landlord shall not under any circumstances be required to make any repairs, replacements, alterations, restorations or renewals of any

nature or description to the Property, whether interior or exterior, structural or non-structural, ordinary or extraordinary, patent or latent, foreseen or unforeseen, or to make any expenditure whatsoever with respect thereto, in connection with this Lease, nor shall Landlord under any circumstances be required to maintain the Property in any other way, except as specifically provided herein. Tenant hereby waives, to the fullest extent permitted by law, the right to make repairs at the expense of Landlord pursuant to any law or equitable principle in effect at the time of the execution of this Lease or hereafter enacted. Landlord shall have the right to give, record and post, as appropriate, notices of non-responsibility under any mechanic's lien laws now or hereafter existing, and any other notices of a similar nature that Landlord may reasonably elect to give, record or post from time to time during the Term.

(c) Nothing contained in this Lease, and no action or inaction by Landlord, shall be deemed or construed in any manner as (i) constituting the consent or request of Landlord, expressed or implied; to any contractor, subcontractor, laborer, materialman or vendor to or for the performance of any labor or services or the furnishing of any materials or other properly for the construction, alteration, addition, repair or demolition of or to all or any portion of the Property or (ii) giving Tenant any right, power or permission to contract for or permit the performance of any labor or services or the furnishing of any materials or other Property in such a manner as would permit the making of any claim against Landlord with respect thereto, or to make any agreement that may create, or in any way may be the basis for the assertion of any right, title, interest, lien, claim or other encumbrance upon the estate of Landlord in all or any portion of the Property.

(d) Unless Landlord conveys title to any of the Property to Tenant pursuant to the provisions of this Lease, Tenant shall, upon the expiration or earlier termination of this Lease, vacate and surrender the Property to Landlord in the condition in which the Property was originally received from Landlord, except as repaired, rebuilt, restored, altered or added to as permitted or required by the provisions of this Lease, and except for or ordinary wear and tear (but subject to the obligation of Tenant under this Section to maintain the Property in good order, condition and repair during the entire Term of this Lease) and except for damage or destruction by casualty or condemnation which Tenant is not required to repair by the provisions of this Lease.

10.2 ENCROACHMENTS AND RESTRICTIONS. If any of the Improvements shall at any time during the Term violate any agreement or

condition contained in any lawful covenant, condition, restriction, equitable servitude or other agreement affecting all or any portion of the Property, or shall impair the rights of others under any easement or right-of-way burdening the Property, provided that such agreement, covenant, condition, restriction or easement has not been created by Landlord, then promptly upon the request of Landlord, or at the behest of any person affected by violation or impairment and in such case, in the event of an adverse final determination, Tenant shall either (a) obtain valid and effective waivers or settlements of all claims, liabilities and damages resulting from each such encroachment, violation or impairment, whether the same shall affect Landlord or Tenant, provided that Landlord shall consent to all such settlements or waivers or (b) make such changes in the Improvements and take such other actions as Tenant in the reasonable and good faith exercise of its judgment deems practicable to remove such encroachment and to end such violation or impairment, including, if necessary, the alteration of any of the Improvements provided that Landlord shall consent to all such alterations and the changes are not the result of any condition created solely by Landlord. With respect to any encroachments identified on the ALTA surveys of the Property delivered by Tenant to Landlord pursuant to the Purchase Agreement, Landlord agrees that it shall not require Tenant to obtain a waiver of or otherwise correct any such encroachment unless and until an affected third party notifies Landlord of its objection to any such encroachment. In any event Tenant shall, subject to Landlord's consent, take all such actions as may be necessary in order to be able to continue the operation of the Improvements for the Primary Intended Use substantially in the manner and to the extent the Improvements were operated prior to the assertion of such violation or impairment. Tenant shall not be responsible for any claims covered by Landlord's title insurance policy, and Landlord agrees that any proceeds recovered under such title insurance policy shall be made available to Tenant to remedy the claimed violation or restriction.

## ARTICLE XI CAPITAL ADDITIONS

### 11.1 CONSTRUCTION OF CAPITAL ADDITIONS.

(a) If no Event of Default shall have occurred and be continuing, Tenant may, subject to the terms and conditions contained in this Article, construct or install Capital Additions on the Property with the prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed as expressly provided herein. Tenant shall not be permitted to create any Encumbrance on the Property in connection with any such Capital Addition, except upon Landlord's prior written consent.

(b) Prior to commencing construction of any Capital Addition, Tenant shall submit to Landlord in writing a proposal setting forth in reasonable detail any proposed Capital Addition and shall provide to Landlord such plans and specifications, permits, licenses, contracts and other information concerning the proposed Capital Addition as Landlord may reasonably request. Without limiting the generality of the foregoing, such proposal shall indicate the approximate projected cost of constructing such Capital Addition, the use or uses to which it will be put and a good faith estimate of the change, if any, in the Gross Revenues that Tenant anticipates will be caused by such Capital Addition.

(c) No Capital Addition shall be made which would tie in or connect any Improvements with any other improvements on Property adjacent to the Property (and not part of the Property), including without limitation, tie-ins of buildings or other structures or utilities unless Tenant shall have obtained the prior written consent of Landlord, which consent Landlord may grant, withhold or delay in its sole discretion. All proposed Capital Additions shall be architecturally integrated and consistent with the Property.

#### 11.2 CAPITAL ADDITIONS FINANCED OR PAID FOR BY LANDLORD.

(a) Tenant shall be required to request that Landlord provide or arrange financing for any Capital Addition by providing to Landlord such information about such Capital Addition as Landlord may reasonably request. Landlord may, but shall be under no obligation to, meet the request, and within 60 days of receipt of such information, Landlord shall notify Tenant as to whether it will finance the proposed Capital Addition and, if so, the terms and conditions upon which it would do so, including the terms of any amendment to this Lease (including, without limitation, the increase in Base Rent described in clause (iii) of subparagraph (b), below to compensate Landlord for the additional funds advanced by it). Notwithstanding the foregoing, Landlord shall not finance the cost of any proposed Capital Addition if such cost is less than \$100,000. In no event shall the portion of the material, labor charges and fixtures of the Capital Additions Cost be less than seventy-five percent (75 %) of the total amount of such cost. Tenant shall, within thirty (30) days of Tenant's receipt of Landlord's affirmative notice that Landlord will finance the proposed Capital Addition, give Landlord a notice accepting or rejecting Landlord's proposed financing.

(b) If Landlord finances the Capital Additions Cost of the proposed Capital Addition, Tenant shall provide Landlord with the following (unless waived by Landlord in writing):

(i) prior to any disbursement of funds, such information, certificates, licenses, permits, authorizations, evidence of zoning and other documents reasonably requested by Landlord, or by any third party lender with whom Landlord has agreed or may agree to provide financing, as necessary to confirm that Tenant will be able to use the Capital Addition upon completion thereof in accordance with the Primary intended Use for such Capital Addition, including all required federal, state or local government licenses, permits, authorizations and approvals.

(ii) prior to any disbursement of funds, an Officer's Certificate and, if requested, a certificate from Tenant's architect, setting forth in reasonable detail the projected (or actual, if available) Capital Additions Cost;

(iii) prior to or coincident with the first disbursement of funds, an amendment to this Lease (together with a memorandum thereof in recordable form), duly executed and acknowledged, in form and substance reasonably satisfactory to Landlord, providing for an increase in the Base Rent equal to the product of (x) the Capital Additions Cost of such Capital Addition and (y) 350 basis points in excess of the Ten-Year Treasury Rate determined as of the date of such amendment to the Lease, along with the legal description of any land obtained in connection with such Capital Addition and such other provisions as may be necessary or appropriate;

(iv) prior to or coincident with the first disbursement of funds, a construction and development agreement setting forth the terms for Landlord's financing and Tenant's construction of such Capital Additions;

(v) prior to or coincident with payment for any land obtained in connection with such Capital Addition, a deed conveying to Landlord title to such land, or, if applicable, a ground lease on terms acceptable to Landlord, which title or leasehold shall be free and clear of any liens, encumbrances or other exceptions to or matters affecting title except those approved by Landlord, and, upon completion of the Capital Addition, a final as-built survey thereof reasonably satisfactory to Landlord;

(vi) during construction and following completion of the Capital Addition, endorsements to any outstanding policy of title insurance covering the Property, or commitments therefor reasonably satisfactory in form and content to Landlord (x) updating the same without any additional exception except such as may be reasonably permitted by Landlord and (y) adding to its coverage any land acquired or leased in connection with such Capital Addition and increasing the coverage thereof by an amount equal to the Fair Market Value of the Capital Addition (except to the extent covered by the owner's policy of title insurance referred to in subparagraph (vii))

below);

(vii) following the advance of funds, if appropriate, (x) an extended coverage owner's policy of title insurance insuring fee simple title to any land conveyed to Landlord pursuant to subparagraph (v), free and clear of all liens and encumbrances except those approved by Landlord, and (y) a lender's policy of title insurance reasonably satisfactory in form and substance to Landlord and to any Lender with whom Landlord has agreed or may agree to provide financing; and

(viii) during or following the advancement of funds, prints or architectural and engineering drawings relating to the Capital Addition and such other certificates (including, but not limited to, endorsements increasing the insurance coverage, if any, at the time required by Section 14.1), documents, opinions or counsel, appraisals, surveys, certified copies of duly adopted resolutions of the board of directors of Tenant authorizing the execution and delivery of the lease amendment, construction and development agreement and any other instruments as may be reasonably required by Landlord and any lender from whom Landlord has agreed or may agree to obtain financing.

(c) Any new mortgage or supplement to any existing mortgage entered into by Landlord with any lending institution covering the Property or any land referred to in subparagraph (iv) above shall be subject to the rights of Tenant under this Lease, as this Lease may be amended from time to time.

(d) If Landlord finances the cost of any such Capital Addition, Tenant will reimburse Landlord for all fees, costs and expenses (including fees and costs of in-house and outside attorneys) incurred by Landlord in connection therewith.

11. 3 CAPITAL ADDITIONS PAID FOR BY TENANT. If Landlord does not finance the cost of a Capital Addition under the terms of Section 11.2 and Tenant elects nevertheless to construct or cause to be constructed such Capital Addition, (i) Tenant shall not Commence any construction with respect to such Capital Addition without first obtaining the prior written consent of Landlord (which Landlord shall not unreasonably withhold so long as the proposed Capital Addition will not, in Landlord's reasonable opinion, either (x) diminish the value of the Property or (y) impair the Facility's ability to produce Gross Revenues and which consent shall be delivered to Tenant within 60 days of receipt by Landlord of Tenant's written proposal with respect to such Capital Addition), and (ii) Tenant shall pay the cost of such Capital Addition, and there shall be no adjustment in the Rent by reason of any such Capital Addition.

11.4 DISPOSITION OF CAPITAL ADDITIONS UPON EXPIRATION OR TERMINATION OF LEASE. Upon the expiration or earlier termination of this Lease, all Capital Additions shall pass to and become the Property of Landlord, free and clear of all encumbrances.

35

11.5 NON-CAPITAL ADDITIONS. Tenant shall have the right to make additions, modifications or improvements to the Property which are not Capital Additions from time to time as it, in its reasonable discretion, may deem to be desirable for the Property's uses and purposes permitted hereunder, provided that such action does not (i) significantly and adversely alter the character or purpose or detract in any manner from the value or operating efficiency of the Property, (ii) significantly impair the revenue-producing capability of the Property, (iii) materially and adversely affect the ability of Tenant to comply with the provisions of this Lease, or (iv) result in a violation of any of the provisions of this Lease (including, but not limited to Articles XII or XXIX), and provided that, if the cost of such non-capital additions, modifications or improvements exceed \$200,000 in any 12-month period, Tenant gives Landlord ten days' prior Notice of such addition, modification or improvement. The cost of such non-capital additions, modifications or improvements to the Property shall be paid by Tenant, and all such non-capital additions, modifications and improvements shall, without payment by Landlord at any time, be included under the terms of this Lease, and upon expiration or earlier termination of this Lease shall pass to and become the Property of Landlord.

11.6 SALVAGE. All materials which are scrapped or removed in connection with the construction of either Capital Additions permitted by Section 11.1, non-capital additions permitted by Section 11.5, or repairs required by Article X shall be or become the Property of the party which paid for, or provided the financing for such work.

11.7 NO LIENS ON LANDLORD'S INTEREST. In no event shall the interest of Landlord be subject to liens for improvements made by Tenant, whether under Article 10, this Article 11, Article 15 or otherwise, and Tenant shall notify any and all contractors making any improvements, repairs or additions to any portion of the Property that any lien to which such contractor may be entitled pursuant to the laws of the State shall not extend to the interest of Landlord in the Property.

## ARTICLE XII LIENS

Subject to the provisions of Article XIII relating to permitted contests, Tenant shall not directly or indirectly create or allow to remain and shall



promptly discharge at its expense any lien, encumbrance, security interest, attachment, title retention agreement or claim upon the Property or any attachment, levy, claim or encumbrance in respect of Rent, not including, however, (a) this Lease, (b) Permitted Encumbrances, (c) restrictions, liens and other encumbrances which are consented to in writing by Landlord or expressly permitted under Section 29.1 (a) hereof, (d) liens for those taxes of Landlord which Tenant is not required to pay hereunder, (e) subleases

36

permitted by Article XXIII, (f) liens for Impositions or for sums resulting from noncompliance with Legal Requirements so long as the same are not yet payable or are payable without the addition of any fine or penalty and are in the process of being contested as permitted by Article XIII, (g) liens of mechanics, laborers, materialmen, suppliers or vendors for sums either disputed or not yet due, provided that (i) the payment of such sums shall not be postponed for more than five days after the completion of the action giving rise to such lien and such reserve or other appropriate provisions as shall be required by law or generally accepted accounting principles shall have been made therefor or (ii) any such liens are in the process of being contested as permitted by Article XIII, and (h) any liens which are the responsibility of Landlord pursuant to the provisions of Article XXVII or are directly created or permitted by Landlord.

#### ARTICLE XIII CONTESTS

If no Event of Default has occurred and is then continuing, Tenant, on its own or on Landlord's behalf (or in Landlord's name ), but at Tenant's sole cost and expense, upon ten days' prior Notice to Landlord, may contest, by appropriate legal proceedings conducted in good faith and with due diligence, without prejudice to Landlord's rights hereunder the amount, validity or application, in whole or in part, of any Imposition, Legal Requirement, Insurance Requirement, lien, attachment, levy, encumbrance, charge or claim not otherwise permitted by Article XII, provided that (a) in the case of an unpaid Imposition, lien, attachment, levy, encumbrance, charge or claim, the Commencement and continuation of such proceedings shall suspend the collection thereof from Landlord and from the Property, (b) neither the Property nor any Rent therefrom nor any part thereof or interest therein would be subject to any risk of being sold, forfeited, attached, foreclosed, or lost, (c) in the case of a Legal Requirement; Landlord would not be in any danger of incurring any lien, charge, fine, penalty, or other civil or criminal liability for failure to comply therewith pending the outcome of such proceedings, (d) in the event that any such contest shall involve a sum of money or potential loss in excess of \$100,000 then, in any such event, Tenant shall deliver to Landlord an Officer' s Certificate to the effect set forth in clauses (a), (b) and (c), to the extent applicable, (e) in the case of a Legal Requirement or an Imposition,

lien, encumbrance or charge, Tenant shall give such reasonable security as may be demanded by Landlord to insure ultimate payment of the same and to prevent any loss or injury to Landlord, including but not limited to any sale or forfeiture of the affected portion of the Property or the Rent by reason of such non-payment or non-compliance; provided, however, the provisions of this Article shall not be construed to permit Tenant to contest the payment of Rent (except as to contests concerning the method of computation or the basis of levy of any Imposition) or any other sums

payable by Tenant to Landlord hereunder, (f) in the case of an Insurance Requirement, the coverage required by Article XIV shall be maintained, and (g) if such contest be finally resolved against Landlord or Tenant, Tenant shall, as Additional Charges due hereunder, promptly pay the amount required to be paid, together with all interest and penalties accrued thereon, or comply with the applicable Legal Requirement or Insurance Requirement. Landlord, at Tenant's expense, shall execute and deliver to Tenant such authorizations and other documents as may reasonably be required in any such contest and, if reasonably requested by Tenant or if Landlord so desires, Landlord shall join as a party therein. Tenant shall indemnify and save Landlord harmless against any liability, cost or expense of any kind that may be imposed upon Landlord in connection with any such contest and any loss resulting therefrom.

ARTICLE XIV  
INSURANCE

14.1 GENERAL INSURANCE REQUIREMENTS. Tenant shall at all times maintain policies of insurance insuring the Property, and all Property located in or on the Property, against the kind of risks and in the amounts of coverage described below. All such insurance shall be written by companies of recognized responsibility authorized to conduct an insurance business in the State. All such insurance (other than insurance with respect to Tenant's Personal Property) shall name Landlord as an additional insured. Proceeds of insurance policies payable to compensate any loss shall be payable to Landlord or Tenant as provided in Article XV. All such insurance shall name as an additional insured or loss payee, as appropriate, the holder (a "FACILITY MORTGAGEE") of any mortgage, deed of trust or other security agreement securing any Encumbrance placed on the Property in accordance with the provisions of Article XXVII ("FACILITY MORTGAGES") by way of a standard form of mortgagee's loss payable endorsement. Any loss adjustment or other settlement in excess of \$250,000 shall require the written consent of Landlord and each Facility Mortgagee and any other lender of Landlord or its Affiliates ("LANDLORD

LENDER") having any contractual insurance requirements which would impact on the insurance requirements of this Lease to the extent so required and Landlord has given Tenant written notice thereof. Originals or certified copies of all insurance policies obtained pursuant to this Article shall be deposited with Landlord and, if requested, with any Facility Mortgagee(s) or Landlord Lender(s). The policies on the Property, including the Improvements, Fixtures and Tenant's Personal Property, shall insure against the following risks:

(a) loss or damage by fire, vandalism and malicious mischief, extended coverage perils, and all physical loss perils insurance including but not limited to sprinkler leakage, in an amount not less than 100% of the then full replacement cost thereof (as defined below in Section 14.2) or such lesser amount as is approved by Landlord in writing;

38

(b) loss or damage by explosion of steam boilers, pressure vessels or similar apparatus, now or hereafter installed in the Facility in such amounts with respect to any one accident as may be reasonably requested by Landlord from time to time;

(c) business interruption or loss of rental under a rental value insurance policy covering risk of loss during the lesser of the first 12 months of reconstruction or the actual reconstruction period necessitated by the occurrence of any of the hazards described in Sections 14.1(a) or 14.1(b), in an amount sufficient to prevent Landlord from becoming a coinsurer:

(d) claims for personal injury or Property damage under a policy of comprehensive general public liability insurance, in an amount not less than one million dollars per occurrence with respect to bodily injury and death and three million dollars with respect to Property damage;

(e) flood (when the Property is located in whole or in part within an area designated by an appropriate agency or authority of the United States as a flood plain) and such other hazards and in such amounts as may be customary for comparable properties in the area and as may be available from insurance companies, insurance pools, or other appropriate companies authorized to do business in the State; and

During any period during which any Capital Addition is under construction, course of construction insurance and all risks insurance in such amounts as Landlord shall reasonably require.

14.2 REPLACEMENT COST. The term "full replacement cost" as used herein shall mean the actual replacement cost of the Property requiring replacement from time to time, less exclusions provided in a normal fire

insurance policy. If either party believes that full replacement cost (the then replacement cost less such exclusions) has increased or decreased at any time during the Lease Term, it may have such full replacement cost redetermined by the insurer then providing the largest amount of fire insurance coverage carried on the Property.

14.3 ADDITIONAL INSURANCE. In addition to the insurance described. in Section 14.1, throughout the Term Tenant shall maintain such additional insurance as may be required from time to time by Landlord provided that the types and amounts of any such additional insurance required by Landlord is then customarily maintained by the operators of similar assisted living facilities in the region in which the Facility is located. Tenant shall further maintain adequate workers' compensation insurance coverage for all persons employed by Tenant on the Property. Such workers' compensation insurance shall be in accordance with the requirements of applicable local, state and federal law.

39

14.4 WAIVER OF SUBROGATION. All insurance policies carried by Landlord or Tenant covering the Property, the Fixtures, the Facility or Tenant's Personal Property shall expressly waive any right of subrogation on the part of the insurer against the other party. Landlord and Tenant agree that the respective policies of insurance carried by them will include such waiver clauses or endorsements so long as the same are obtainable without extra cost. If such clauses and endorsements are only available upon the payment of an extra charge, the other party, at its election, may pay the same, but shall not be obligated to do so; provided that the Tenant shall at all times be obligated to carry the policies or insurance required under this Article regardless of whether the waiver of subrogation required under this Section 14.4 is available.

14.5 FORM OF INSURANCE. All of the policies of insurance referred to in this Article shall be written in a form, and issued by insurance companies, satisfactory to Landlord. Landlord agrees that it will not unreasonably withhold or delay its approval as to the form of the policies or the insurance companies selected by Tenant. Tenant shall pay all of the premiums therefor, and shall deliver an original or certified copy of any policy, or renewal thereof, to Landlord, any Facility Mortgagee and any Landlord Lender at least 10 days prior to the expiration of the existing policy to which such renewal policy relates. If Tenant either fails to effect such insurance as herein required or to pay the premiums therefor, or to deliver such policies or certified copies thereof to Landlord at the times required, Landlord shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums therefor, which premiums shall be repayable to Landlord upon demand therefor in a Notice, and failure by Tenant to repay the same shall constitute an Event of Default within the meaning of Section 17.1 (d). Each insurer mentioned in this

Article shall agree, by endorsement on the policy or policies issued by it, or by independent instrument furnished to Landlord, that it will give to Landlord (and to any Facility Mortgagee and Landlord Lender of which Tenant has notice, if required) 30 days prior written notice before such policy or policies expire, are altered or are cancelled.

14.6 CHANGE IN LIMITS. If either party shall at any time deem the limits of the personal injury or Property damage public liability insurance or malpractice insurance then carried by Tenant to be insufficient or excessive, the parties shall endeavor in good faith to agree promptly upon the proper and reasonable limits for such insurance to be carried, and such insurance shall thereafter be carried with the limits thus agreed upon until further change pursuant to the provisions of this Section.

14.7 BLANKET POLICY. Notwithstanding anything to the contrary contained in this Article, Tenant's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant so long as (a) the coverage afforded to Landlord is not reduced or diminished

40

or otherwise altered from that which would exist under a separate policy meeting all other requirements of this Lease by reason of the use of such blanket policy of insurance and (b) the requirements of this Article are otherwise satisfied.

14.8 NO SEPARATE INSURANCE. Tenant shall not obtain separate insurance concurrent in form or contributing in the event of loss with that required in this Article XIV to be furnished by, or which may reasonably be required to be furnished by Tenant, nor shall Tenant increase the amount of any then existing insurance by securing an additional policy or additional policies, unless all parties having an insurable interest in the subject matter of the insurance, including in all cases Landlord and all Facility Mortgagees, are named therein as additional insureds, and the loss is payable under said insurance in the same manner as losses are payable under this Lease. Tenant shall immediately notify Landlord of the obtaining of any such separate insurance or of the increasing of any of the amounts of the then existing insurance.

#### ARTICLE XV INSURANCE PROCEEDS

15.1 HANDLING OF INSURANCE PROCEEDS. Subject to Section 15.4 hereof, all proceeds from any policy of insurance required by Article XIV of this Lease shall be paid to Landlord and held in trust by Landlord (subject to the provisions of Section 15.7) and shall be made available for

reconstruction, repair or replacement, as the case may be, of any damage to or destruction of all or any portion of the Property to which such proceeds relate, and shall be paid out by Landlord from time to time subject to the provisions hereof for the cost of such reconstruction, repair or replacement. Any unused portion shall be retained by Landlord free and clear upon completion of such repair and restoration but shall be applied by Landlord against Tenant's obligations for Rent next coming due under this Lease. If neither Landlord nor Tenant is required or elects to repair and restore, and the Lease is terminated without purchase by Tenant as described in Section 15.2(a), then all such insurance proceeds shall be retained by Landlord. All salvage resulting from any risk covered by insurance shall belong to Landlord, except that any salvage relating to Tenant's Personal Property shall be the property of Tenant.

15. 2 RECONSTRUCTION IN THE EVENT OF DAMAGE OR  
DESTRUCTION COVERED BY INSURANCE.

(a) Except as provided in Section 15.7, if during the Term a portion of the Property is totally or substantially destroyed by a risk covered by the insurance described in Article XIV so that the Facility thereby is rendered unsuitable for its Primary Intended Use, in Tenant's reasonable

opinion (taking into account all relevant factors, including but not limited to the number of useable beds, the amount of square footage reasonably available for use by Tenant and the type and amount of Gross Revenues lost) (the "IMPACTED FACILITY"), Tenant shall at its option either (i) restore the Impacted Facility to substantially the same condition as existed immediately before the damage or destruction or (ii) acquire the Property from Landlord for a purchase price equal to the greater of the Minimum Repurchase Price or the Fair Market Value Purchase Price of the Property immediately prior to such damage or destruction, or (iii) terminate the Lease with respect to the Property effective upon Landlord's receipt of the insurance proceeds and any "Shortfall" (as hereinafter defined) and in such event Landlord shall be entitled to retain or collect for its own benefit the insurance proceeds, provided that, in the event the amount of the insurance proceeds received by Landlord are less than the amount which would be payable in the aggregate under the insurance policies specified in Section 14.1(a) such termination shall not be effective until Tenant pays Landlord the amount of such shortfall ("SHORTFALL") in cash. If Tenant restores the Impacted Facility, the insurance proceeds shall be paid out by Landlord to Tenant or its designee from time to time as reasonably requested by Tenant to pay for the reasonable costs of such restoration and any excess proceeds remaining after such restoration shall be retained by Tenant. If Tenant acquires the Property, all applicable insurance proceeds shall be the

property of Tenant.

(b) Except as provided in Section 15.7, if during the Term, the Improvements or Fixtures are partially destroyed due to a risk covered by the insurance described in Article XIV but the Impacted Facility is not thereby rendered unsuitable for the Primary Intended Use, in Tenant's reasonable opinion (taking into account all relevant factors, including but not limited to the number of useable beds, the amount of square footage reasonably available for use by Tenant and the type and amount of Gross revenues lost), Tenant shall restore the Impacted Facility to substantially the same condition as existed immediately before the damage or destruction. Such damage or construction shall not terminate this Lease; provided, however, that if Tenant cannot, with reasonable diligence and within a reasonable time, obtain all government approvals, including building permits, licenses, conditional use permits and any certificates of need, necessary to perform all required repair and restoration work and to operate the Impacted Facility in substantially the same manner and for the Primary Intended Use, Tenant shall either (i) offer to purchase the Property for a purchase price equal to the greater of the Minimum Repurchase Price or the Fair Market Value Purchase Price immediately prior to such damage or destruction or (ii) continue to operate under the Lease which shall remain in full force and effect and Landlord shall be entitled to retain the insurance proceeds, less the amount needed to restore the Property so that the portion of the Facility unaffected by the casualty can be used as a complete architectural unit. If Tenant shall make such offer and Landlord

42

does not accept the same within 120 days of Landlord's receipt of such offer, Tenant may either (x) withdraw such offer, in which case this Lease shall remain in full force and effect and Tenant shall proceed to restore the Impacted Facility as soon as reasonably practicable to substantially the same condition as existed immediately before such damage or destruction, or (y) terminate this Lease after recovery by Landlord of all insurance proceeds and the payment by Tenant of any Shortfall in cash. If Tenant so restores the Impacted Facility, insurance proceeds shall be paid out by Landlord from time to time as reasonably requested by Tenant to pay for the reasonable costs of such restoration, and any excess proceeds remaining after such restoration shall be retained by Tenant.

(c) If Tenant elects to repair or restore any damage or destruction to the Property and the cost of such repair or restoration exceeds the amount of proceeds received by Landlord from the insurance required under Article XIV, Tenant shall contribute any and all excess amounts necessary to repair or restore the Facility.

(d) If Landlord accepts Tenant's offer to purchase the Property this Lease shall terminate as to the Property upon payment of the purchase price

therefor and Landlord shall thereupon remit to Tenant all insurance proceeds pertaining to the Property less Landlord's reasonable expenses, including attorneys' fees, and assign Landlord's rights in any uncollected insurance proceeds to Tenant.

15.3 RECONSTRUCTION IN THE EVENT OF DAMAGE OR DESTRUCTION NOT COVERED BY INSURANCE. Except as provided in Section 15.7 below, if during the Term the Facility is totally destroyed or materially damaged (i) from a risk not covered by insurance described in Article XIV but that would have been covered if Tenant carried the insurance customarily maintained by, and generally available to, the operators of reputable facilities which are used for the Primary Intended Use in the region in which the Facility is located, (ii) from a risk for which insurance coverage is voided due to any act or omission by Tenant, or (iii) as result of an earthquake, whether or not such damage or destruction renders the Impacted Facility unsuitable for their Primary Intended Use (taking into account all relevant factors, including but not limited to the number of useable beds, the amount of square footage reasonably available for use by Tenant and the type and amount of Gross Revenues lost), Tenant shall restore the Impacted Facility to substantially the same condition as existed immediately before such damage or destruction and not terminate this Lease. Otherwise, if the Facility is totally destroyed or materially damaged by a risk not covered by insurance such that the Facility shall be unusable for its Primary Intended Use, this Lease shall terminate within 90 days of such destruction or damage, provided that the Tenant may elect to restore the Impacted Facility, in which event, this Lease shall continue in full force and effect. If such damage or destruction does not render the

43

Impacted Facility unusable for its Primary Intended Use, in Tenant's reasonable opinion, Tenant shall also restore the Facility to substantially the same condition as existed immediately before the damage or destruction.

15.4 PAYMENT OF PROCEEDS ON TENANT'S PROPERTY AND CAPITAL ADDITIONS PAID BY TENANT. Notwithstanding any provision herein, all insurance proceeds payable by reason of any loss of or damage to any of Tenant's Personal Property or Capital Additions paid for by Tenant shall be paid to Tenant and Tenant shall hold such insurance in trust to pay the cost of repairing or replacing damaged Tenant's Personal Property or Capital Additions paid for by Tenant; provided, however, that if the damaged Tenant's Personal Property or Capital Additions paid for by Tenant were no longer necessary to Tenant's operations prior to their destruction, Tenant shall not be obligated to repair or replace them.

15.5 RESTORATION OF TENANT'S PROPERTY. Upon any restoration of the Impacted Facility as provided in Section 15.2 or 15.3,



Tenant shall either (i) at Tenant's sole cost and expense, restore all alterations and improvements made by Tenant, Tenant's Personal Property and all Capital Additions paid for by Tenant, or (ii) at Tenant's sole cost and expense, replace such alterations and improvements, Tenant's Personal Property or Capital Additions with improvements or items of the same or better quality and utility in the operation of the Property; provided, however, that if the damaged Tenant's Personal Property or Capital Additions paid for by Tenant were no longer necessary to Tenant's operations prior to their destruction, Tenant shall not be obligated to replace them.

15. 6 ABATEMENT OF RENT. Unless and until Tenant shall pay the purchase price for the Property to Landlord in accordance with this Article XV (and this Lease is thereby terminated or otherwise terminated as provided in this Article XV), in the event of any damage or destruction of the Property, this Lease shall remain in full force and effect and Tenant's obligation to make rental payments and to pay all other charges required by this Lease shall not be abated by reason of any damage or destructions to the Property or the subsequent loss of Landlord's entitlement to the Property.

15. 7 DAMAGE NEAR END OF TERM. Notwithstanding any provisions of this Article XV to the contrary, if damage to or destruction of the Facility occurs during the last 12 months of the then applicable term (whether Fixed or Extended), if Tenant has not elected to extend such term, and if such damage or destruction cannot be fully repaired and restored within six months immediately following the date of loss, then Tenant shall have the right to terminate this Lease by giving written Notice thereof to Landlord within 30 days after the date of such damage or destruction, in which event, Landlord shall collect any insurance proceeds to which it is entitled, and Tenant shall assign Tenant's rights in any additional insurance

44

proceeds. In the event that the Facility is totally destroyed or damaged (i) from a risk not covered by insurance described in Article XIV but that would have been covered if Tenant carried the insurance customarily maintained by, and generally available to, the operators of reputable facilities which are used for the Primary Intended Use in the region in which the Facility is located, (ii) from a risk for which insurance coverage is voided due to any act or omission by Tenant, or (iii) as a result of an earthquake, whether or not such damage or destruction renders the Facility unsuitable for its Primary Intended Use (taking into account all relevant factors, including but not limited to the number of useable beds, the amount of square footage reasonably available for use by Tenant and the type and amount of Gross Revenues lost), then Tenant shall pay to Landlord a sum equal to the amount reasonably necessary to repair such damage or destruction.

15. 8 TERMINATION OF OPTION TO PURCHASE. Any termination of this Lease pursuant to this Article shall cause any option to purchase granted to Tenant under this Lease and the right to extend the Term by any Extended Term to be terminated and to be without further force or effect.

15.9 WAIVER. Tenant hereby waives any statutory rights of termination which may arise by reason of any damage or destruction of the Facility which Landlord is obligated to restore or may restore under any of the provisions of this Lease.

ARTICLE XVI  
CONDEMNATION

16.1 DEFINITIONS.

For purposes of this Article XVI the following terms have the meanings specified in this Section 16.1.

(a) " CONDEMNATION " means (a) the exercise of any governmental power, whether by legal proceedings or otherwise, by a Condemnor, or (b) a voluntary sale or transfer by Landlord with Tenant's consent (provided no Event of Default has occurred and is continuing at such time) to any Condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

(b) "DATE OF TAKING" means the first date the Condemnor has the right to immediate possession of the Property being condemned.

(c) "AWARD" means all compensation, sums and any other value awarded, paid or received on a total or partial condemnation.

45

(d) "CONDEMNOR" means any public or quasi-public authority, or private corporation or individual, having the power of condemnation

16.2 PARTIES' RIGHTS AND OBLIGATIONS. If during the Term there is any Taking of all or any part of the Property or of any interest in this Lease by Condemnation; the rights and obligations of the parties with respect to such Condemnation shall be determined by this Article.

16. 3 TOTAL TAKING. If title to the whole of Tenant' s interest in the Property shall be taken or condemned by any Condemnor, this Lease shall cease and terminate as of the Date of Taking. If title to less than the

whole of the Property shall be so taken or condemned, which nevertheless renders the Property unsuitable for its Primary Intended Use, in Tenant's reasonable opinion (taking into account all relevant factors, including but not limited to the number of useable beds, the amount of square footage reasonably available for use by Tenant, and the type and amount of gross Revenues lost), Tenant and Landlord each shall have the option by Notice to the other, at any time prior to the taking of possession by, or the date of vesting of title in, such Condemnor, whichever first occurs, to terminate this Lease as of such earlier to occur date. Upon such earlier to occur date, if such Notice has been given, this Lease shall cease and terminate. In either of such events, all Rent paid or payable by Tenant hereunder shall be apportioned as of the date the Lease shall have been so terminated as aforesaid.

16.4 ALLOCATION OF PORTION OF AWARD. Subject to the rights of any Facility Mortgagee, the total Condemnation Award made with respect to all or any portion of the Property shall be distributed to Landlord and Tenant ratably in accordance with the value of their respective interests in and to such Property as hereafter set forth in this Section 16.4. All of the Award shall be the sole and exclusive Property of Landlord and shall be payable to Landlord, subject to the rights of any Facility Mortgagee; provided that any portion of such Condemnation Award which is expressly allocated by the Condemnor to the taking of Tenant's leasehold interest in the Property, Tenant's Share of Appreciation Amount (if any), the taking of any Capital Additions (or any portion thereof paid for by Tenant, any loss of business by Tenant during the remaining Term of this Lease, the taking of Tenant's Personal Property, or any removal and relocation expenses of Tenant in any such proceedings shall be the sole Property of and payable to Tenant. In any Condemnation proceedings Landlord and Tenant each shall seek their own Award in conformity herewith, at their own expense.

16.5 PARTIAL TAKING. If title to less than the whole of the Property shall be taken or condemned, and the Property is still suitable for its then Primary Intended Use, in Tenant's reasonable opinion, or if Tenant or Landlord shall be entitled (but shall not elect) to terminate this Lease as provided in Section 16.3 hereof, Tenant at its own cost and expense shall with all reasonable diligence restore the untaken portion of any

Improvements so that such improvements shall constitute a complete architectural unit of the same general character and condition (as nearly as may be possible under the circumstances) as the Improvements existing immediately prior to such Condemnation or Taking. Landlord and Tenant shall each contribute to the cost of restoration that part of their Award specifically allocated to such restoration, if any (or if no such specific allocation is made, a just, fair and reasonable portion of its Award as reasonably determined by Landlord and Tenant or by arbitration in

accordance with Section 28.14 if Landlord and Tenant are unable to agree within 30 days of the Award), together with any and all severance and other damages awarded for any taken Improvements; provided, however, the amount of such contribution shall not exceed such cost. If such amounts are not sufficient to cover the cost of restoration Landlord and Tenant shall contribute any additional amounts needed for restoration in proportion to the amounts already contributed by them, provided that in no event shall Landlord contribute any amount to such restoration in excess of its Award. Thereafter, any excess restoration cost shall be borne solely by Tenant. Landlord agrees that Tenant shall be entitled to an equitable abatement of Base Rent in the event of a partial taking of the Property, but such abatement shall be strictly limited to any amount of excess Award paid to Landlord after the restoration cost has been paid.

16.6 TEMPORARY TAKING. If the whole or any part of the Property or of Tenant's interest under this Lease shall be taken or condemned by any Condemnor for its temporary use or occupancy for a period of not more than one hundred-eighty (180) days, this Lease shall not terminate, and Tenant shall continue to pay, in the manner and at the times herein specified, the full amounts of Base Rent, Additional Rent, if any, and Additional Charges, provided that during any such Temporary Taking Tenant shall pay Additional Rent at a rate equal to the average Additional Rent during the three immediately preceding Fiscal Years (or if three Fiscal Years shall not have elapsed, the average during the last preceding Fiscal Years occurring during the Term). Except to the extent Tenant may be prevented from so doing pursuant to the terms of the order of the Condemnor, Tenant shall continue to perform and observe all of the other terms, covenants, conditions and obligations hereof on the part of the Tenant to be performed and observed as though such Taking or Condemnation had not occurred. Upon any such Taking or Condemnation described in this Section, the entire amount of any such Award made for such Taking or Condemnation allocable to the Term of this Lease, whether paid by way of damages, Rent or otherwise, shall be paid to Tenant. Tenant covenants that upon the termination of any such Taking or Condemnation set forth in this Section Tenant will, at its sole cost and expense (subject to any contribution by Landlord as set forth in Section 16.5), restore the Property as nearly as may be reasonably possible to the condition in which the same was immediately prior to such Taking or Condemnation, unless such period of temporary use or occupancy shall expire less than six months prior to termination of this Lease or extend beyond the expiration of the Term, in which case Tenant shall not be required to make such restoration.

ARTICLE XVII  
DEFAULTS AND REMEDIES

17.1 EVENTS OF DEFAULT. Any one or more of the following

events shall be deemed an "EVENT OF DEFAULT" hereunder:

(a) Tenant shall fail to pay Rent payable by Tenant under this Lease when the same becomes due and payable and such failure continues for three days after notice of such failure (except that Landlord shall not be required to give more than one such notice in any 12-month period);

(b) Tenant shall violate the covenant described in Section 29.3(c) hereof:

(c) Any representation or warranty made by the Tenant in connection with this Lease or the Security Agreement, or in any report, certificate, financial statement or other instrument furnished in connection herewith or therewith, from time to time, whether under Article XXIV of this Lease or otherwise, shall prove to be false or misleading in any material respect and shall not be remedied within 30 days after Tenant receives notice thereof;

(d) Tenant shall fail to observe or perform any other term, covenant or condition of this Lease and such failure is not cured by Tenant within a period of 30 days after Notice thereof from Landlord, unless such failure cannot with due diligence be cured within a period of 30 days, in which case such failure shall not be deemed to continue if Tenant proceeds promptly and with due diligence to cure the failure and diligently completes the curing thereof;

(e) Tenant shall: (i) admit in writing its inability to pay its debts generally as they mature, (ii) make a general assignment for the benefit of its creditors; (iii) have appointed a trustee, receiver or liquidator pursuant to an order of a court of competent jurisdiction of itself or of the whole or any part of its Property which is not discharged in sixty (60) days, (iv) terminate or suspend its business, (v) have any of its assets executed upon, attached or judicially seized and such execution, attachment or seizure is not vacated or set aside within sixty (60) days;

(f) Tenant shall: (i) file a voluntary case under any applicable bankruptcy, insolvency, debtor relief or other similar law or statute of the United States of America or any State thereof now or hereinafter in effect ("Bankruptcy Laws"), (ii) consent to or acquiesce in the appointment of a receiver, liquidator, assignee, trustee, custodian or sequestrator (or similar official of itself or of the whole or any part of its property) which is not discharged in thirty (30) days, or (iii) fail generally to pay its debts as they mature or become due;

(g) Tenant shall, on a petition filed under any applicable

Bankruptcy Laws against any of them, be adjudicated a bankrupt or have an order for relief thereunder entered against it or fail to oppose any such proceeding or if a court of competent jurisdiction shall enter an order or decree appointing, without its consent, a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of itself or of the whole or any part of its Property and such judgment, order or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of the entry thereof; or

(h) Tenant shall be liquidated or dissolved, or shall voluntarily begin proceedings toward such liquidation or dissolution, or shall, in any manner, permit the sale or divestiture of substantially all of its assets;

(i) an Event of Default under the terms of the Security Agreement shall occur and be continuing;

(j) Tenant shall fail to make when due any scheduled payment with respect to indebtedness (other than indebtedness which is subordinated to this Lease), unless such failure is being diligently contested in accordance with the requirements of this Lease or any lease pursuant to which it enjoys the use of any real or personal property and such failure shall continue for five days following its receipt of written advice with respect thereto, if the effect of such failure is to have a material adverse effect on the business, operations, properties or condition (financial or otherwise) of Tenant.

(k) any Notification Event described in Section 29.2(c) shall occur, which is reasonably likely to result in liability to the Tenant having a material adverse effect on the business, operations, properties or condition (financial or otherwise) of Tenant and Tenant shall fail to cure (to Landlord's reasonable satisfaction) the events or state of affairs constituting such Notification Event within thirty days after notice thereof was due from Tenant pursuant to Section 29.2(c);

(l) Tenant shall fail to maintain a Tangible Net Worth of at least \$5.0 million, as evidenced by Tenant's balance sheet included in its financial statements furnished by Tenant pursuant to Section 24.2(a); or

(m) an Event of Default shall occur under any of the Additional Leases or Additional Agreements.

No Event of Default (other than a failure to make a payment of money) shall be deemed to exist under clause (d) above during any time the curing thereof is prevented by an Unavoidable Delay, provided that upon the cessation of such Unavoidable Delay, Tenant immediately shall remedy such default.

Tenant shall immediately notify Landlord of the occurrence of any event set forth in subsections 17.1(b) through (1).

17. 2 CERTAIN REMEDIES. Upon any Event of Default, Landlord shall have all legal, equitable and contractual rights, powers and remedies provided either in this Lease, at Common law or in equity, or by statute or otherwise. Tenant expressly acknowledges and agrees that the Landlord will also have the right of injunction in accordance with applicable law.

Without limiting the foregoing, if an Event of Default occurs, is not cured within the period, if any, for any such cure provided in Section 17.1, and is continuing, Tenant shall, to the extent permitted by law and if required by Landlord so to do, immediately surrender to Landlord the Property and quit the same. Landlord may enter upon and repossess the Property by reasonable force, summary proceedings, ejection or otherwise, and may remove Tenant and all other persons and any and all personal Property from the Property subject to rights of any residents or patients and to any requirement of law. No such entry or repossession by Landlord shall be deemed an election by Landlord to terminate this Lease unless specifically stated by Landlord in writing from Landlord to Tenant. Thereafter Landlord shall use reasonable, good faith efforts to relet the Property or otherwise mitigate Landlord's damages. Landlord may so terminate Tenant's right of possession and may repossess the Premises without liability for trespass or conversion, without demand or notice of any kind to Tenant and without terminating this Lease, in which event Landlord may, but shall be under no obligation to, relet the same for the account of Tenant for such rent and upon such terms as shall be satisfactory to Landlord. For the purpose of such reletting, Landlord is authorized to decorate or to make any repairs, changes, alterations, or additions in or to the Premises that may be necessary or convenient. If Landlord exercises the remedies provided in this subparagraph, Tenant shall pay to Landlord, and Landlord shall be entitled to recover from Tenant, an amount equal to the total of the following: (A) unpaid Rent, plus interest at the Overdue Rate, owing under the Lease for all periods of time that the Premises are not relet (including any period prior to Landlord's repossession); plus (B) the reasonable costs of recovering possession, and all of the reasonable costs and expenses of such decorations, repairs, changes, alterations, and additions, and the reasonable expense of such reletting and of the collection of the rent accruing therefrom to satisfy the Rent provided for in the Lease to be paid; plus (C) any deficiency in the rentals and other sums actually received by Landlord from any such reletting from the Rent required to be paid under this Lease with respect to the periods the Premises are so relet, and Tenant shall satisfy and pay any such deficiency upon demand therefor from time to time. Neither the repossession of the Property, the failure of Landlord to relet the Property, nor the reletting of all or any portion of the Property, shall relieve Tenant of its

liability and obligation hereunder, all of which shall survive any such repossession or reletting. Tenant agrees that Landlord may file suit to recover any sums falling due under the terms of this subparagraph from time to time; and that no delivery or recovery of any portion due Tenant hereunder shall be a defense in any action to recover any amount not theretofore reduced to judgment in favor of Landlord, nor shall such reletting be construed as an election on the part of Landlord to terminate this Lease unless specifically stated by Landlord in writing from Landlord to Tenant. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach in accordance with the procedure hereinafter provided.

Without limiting the foregoing, whether or not this Lease has been terminated, Landlord shall have the right to offset against any Rent, damages, or other sums of money owed by Tenant any advance Rent applicable to any time period after the occurrence of the Event of Default.

17.3 TERMINATION. Upon the occurrence of any Event of Default, Landlord may terminate this Lease by giving Tenant not less than ten days' Notice of such termination during which time Tenant shall have the opportunity to cure any such Event of Default. Upon the expiration of the time fixed in such Notice, unless such Event of Default is cured, the Term shall terminate and all rights of Tenant under this Lease shall cease. Landlord shall have all rights at law and in equity available to Landlord as a result of Tenant's breach of this Lease. If any litigation is commenced with respect to any alleged default under this Lease whether under this Section 17. 3 or under Section 17. 2, the prevailing party in such litigation shall receive, in addition to its damages incurred, its reasonable attorneys' fees, and all costs and expenses incurred in connection therewith. Neither the termination of this Lease pursuant to this Section 17. 3, the repossession of the Property, the failure of Landlord to relet the Property, nor the reletting of all or any portion of the Property, shall relieve Tenant of its liability and obligations hereunder, all of which shall survive any such termination, repossession or reletting. Upon any such termination, Tenant shall forthwith pay to Landlord as damages a sum of money equal to the total of (A) the costs of recovering the Premises, (B) the unpaid Rent due and payable at the termination, plus interest thereon at the Overdue Rate, (C) the present value of the balance of the Rent for the remainder of the term less the fair market rental value of the Premises for such period, and (D) the present value of any other sum of money rental owed by Tenant to Landlord and the amount of other damages suffered by Landlord as a result of Tenant's default.

Additional Rent, for the purposes of Section 17.2 and this Section 17.3, shall be a sum equal to the average of the amounts of the Additional Rent for the three Calculation Periods immediately preceding the



place, or if three Calculation Periods shall not have elapsed, the average of the Additional Rent during the last Preceding Calculation Periods occurring during the Term.

17.4 APPLICATION OF FUNDS. Any payments normally made to Tenant hereunder which are made to and received by Landlord under any of the provisions of this Lease during the continuance of any Event of Default shall be applied to Tenant's obligations in the order which Landlord may determine or as may be prescribed by applicable laws.

17.5 LANDLORD'S RIGHT TO CURE TENANT'S DEFAULT. If an Event of Default occurs under this Lease and is not cured within the time provided under this Lease with respect to such Event of Default, Landlord, without waiving or releasing any obligation of Tenant, and without waiving any such Event of Default, may (but shall be under no obligation to) at any time thereafter cure such default for the account and at the expense of Tenant, and may, to the extent permitted by law, enter upon the Property for such purpose and take all such action thereon as, in Landlord's sole judgment, may be necessary or appropriate with respect thereto. No such entry by Landlord on the Property shall be deemed an eviction of Tenant. All sums so paid by Landlord and all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) so incurred; together with a late charge thereon computed at the Overdue Rate from the date on which such sums or expenses are paid or incurred by Landlord until the date reimbursed, shall be reimbursed by Tenant to Landlord on demand. The obligations of Tenant and rights of Landlord contained in this Article shall survive the expiration or earlier termination of this Lease.

17.6 WAIVER. If this Lease is terminated pursuant to the provisions of this Article, Tenant waives, to the extent permitted by applicable law, (a) any right of redemption, re-entry or repossession, (b) any right to trial by jury in the event of summary proceedings to enforce the remedies set forth in this Article, and (c) the benefit of any laws now or hereafter enforced exempting Property from liability for rent or for debt.

ARTICLE XVIII  
CURE BY TENANT OF LANDLORD DEFAULTS

Landlord shall be in default of its obligations under this Lease if Landlord shall fail to observe or perform any term, covenant or condition of this Lease on its part to be performed, and such failure shall continue for a period of 30 days after Notice thereof from Tenant (or such shorter time as

may be necessary in order to protect the health or welfare of any patient or other resident of the Property), unless such failure cannot be cured with due diligence within a period of 30 days, in which case such failure shall not be deemed to continue if Landlord, within said 30 day period, proceeds promptly and with due diligence to cure the failure and diligently completes

the curing thereof. The time within which Landlord shall be obligated to cure any such failure shall also be subject to extension of time due to the occurrence of any Unavoidable Delay. If Landlord fails to commence or complete such cure as provided herein, Tenant may cure such default, and for so long as Tenant continues to pay Rent, Tenant shall have the right by separate and independent action to pursue any claim it may have against Landlord for Landlord's failure to cure such default and, in the event Tenant acquires the Property pursuant to the option granted hereunder, offset against the purchase price the amount of any damages owing from Landlord to Tenant.

ARTICLE XIX  
PURCHASE OF PROPERTY BY TENANT

19.1 PURCHASE OF THE PROPERTY. If Tenant purchases the Property from Landlord pursuant to any of the terms of this Lease, Landlord shall, except as otherwise expressly provided, upon receipt from Tenant of the applicable purchase price, together with full payment of any unpaid Rent due and payable with respect to any period ending on or before the date of such purchase, deliver to Tenant an ALTA Owner Policy of Title Insurance or such equivalent policy of title insurance as may be available in the State, together with such endorsements, reinsurance agreements and direct access agreements as Tenant may reasonably request, together with an appropriate special warranty deed or other conveyance conveying marketable fee simple title in and to the Property to Tenant in the condition set forth in Article XXVI, except that the Property shall be free and clear of all mortgages and encumbrances other than (a) those Tenant has agreed hereunder to pay or discharge, (b) those mortgages which Tenant has agreed in writing to accept and to take title subject to on the date the Property was originally conveyed to Landlord and which are not in default, (c) encumbrances required to be imposed on the Property under Section 8.3, and (d) any other encumbrances permitted to be imposed on the Property under the provisions of Article XXVII which are assumable at no cost or expense to Tenant or to which Tenant may take subject without cost or expense to Tenant. The difference between the applicable purchase price and the total amount of the encumbrances assumed or taken subject to, if a positive number, shall be paid in cash to Landlord or as Landlord may direct, in federal or other immediately available funds, unless otherwise mutually agreed by Landlord and Tenant; provided, Landlord shall be obligated to pay to Tenant in cash any negative difference

between the applicable purchase price and the total amount of the encumbrances so assumed or taken subject to by Tenant. All reasonable expenses of conveying the Property to Tenant, including, without limitation, the cost of the aforementioned title insurance and attorneys' fees incurred by Landlord in connection with such conveyance and release, and documentary transfer and similar taxes, recording fees and expenses of Tenant's counsel, shall be paid by Tenant.

19.2 FAILURE TO CLOSE PURCHASE. The closing of any such sale shall be contingent upon and subject to Tenant obtaining all required governmental consents and approvals for such transfer. If such sale shall fail to be consummated by reason of the inability of Tenant to obtain all such approvals and consents, then this Lease shall remain in effect on a month-to-month basis until the consummation of the purchase or until Tenant's inability to obtain the approvals and consents is confirmed, whereupon this Lease will continue in effect in accordance with its terms.

ARTICLE XX  
HOLDING OVER

If Tenant for any reason remains in possession of the Property after the expiration or earlier termination of the Term, such possession shall be a month-to-month tenancy during which time Tenant shall pay to Landlord as rental each month the aggregate of (i) one and one half (1-1/2) times one-twelfth of the aggregate total Base Rent and Additional Rent payable with respect to the last 12-month period of the Term just expired or terminated, (ii) all Additional Charges accruing during the month with respect to which such payment relates, and (iii) all other sums, if any, payable by Tenant pursuant to the provisions of this Lease with respect to the Property. During such period of month-to-month tenancy, Tenant shall be obligated to perform and observe all of the terms, covenants and conditions of this Lease, but shall have no rights hereunder other than the right, to the extent given by law to month-to-month tenancy, to continue its occupancy and use of the Property. Nothing contained herein shall constitute the consent, express or implied, of Landlord to the holding over of Tenant after the expiration or earlier termination of the Term.

ARTICLE XXI  
RISK OF LOSS

During the Term of this Lease, Tenant shall bear the risk of loss or of decrease in the enjoyment and beneficial use of the Property resulting from the damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or any other cause, or resulting from foreclosures, attachments,

levies or executions (other than those caused by Landlord and those claiming from, through or under Landlord) and, in the absence of the gross negligence, willful misconduct or breach of this Lease by Landlord, Landlord shall in no event be responsible therefor nor shall any of the events mentioned in this Section entitle Tenant to any abatement of Rent except as specifically provided in this Lease.

ARTICLE XXII  
LIABILITY OF PARTIES

22.1 INDEMNIFICATION BY TENANT. Notwithstanding the existence of any insurance provided for in Article XIV, and notwithstanding the policy limits of any such insurance, Tenant shall indemnify, defend, save and hold Landlord harmless from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses ("CLAIMS") (including, without limitation, reasonable attorneys' fees and expenses), to the extent permitted by law, imposed upon, incurred by or asserted against Landlord arising out of, connected with or incidental to:

(a) any Hazardous Substance located at, in, on, under or about the Property due to the act or omission of Tenant, including any improvements, repairs, handling, removal or other actions taken by Landlord in order to comply with all rules and regulations promulgated by any applicable federal, state, or local government rule and regulation with respect to any such Hazardous Substance or related problems that Landlord becomes aware of;

(b) any accident, injury to or death of persons, or loss of or damage to Property, occurring on or about the Property or adjoining sidewalks, alleys or roadways, including without limitation any claims of malpractice;

(c) any past, present or future use, misuse, non-use, condition, management, maintenance or repair by Tenant of the Property or Tenant's Personal Property and any litigation, proceeding or claim by governmental entities or other third parties to which Landlord is made a party or other participant related to the Property or Tenant's Personal Property or such use, misuse, non-use, condition, management, maintenance or repair thereof, including but not limited to any failure to perform obligations (other than condemnation proceedings) to which Landlord is made a party;

(d) any Impositions which are the obligations of Tenant to pay pursuant to the applicable provisions of this Lease:

(e) any failure on the part of Tenant to perform or comply with any of the terms of this Lease; and

the non-performance of any of the terms and provisions of any and all existing and future subleases of the Property to be performed by Tenant thereunder.

55

Any amounts payable by Tenant under this Section shall be paid within ten days after Tenant's liability therefor is determined by litigation or otherwise. If such amounts are not timely paid, they shall bear a late charge (to the extent permitted by law) at the Overdue Rate from the date of such determination to the date paid. Tenant, at its expense, shall contest, resist and defend any such claim, action or proceeding asserted or instituted against Landlord, or may compromise or otherwise dispose of the same as Tenant sees fit. Nothing herein shall be construed as requiring Tenant to indemnify, defend or hold Landlord harmless against its own sole or gross negligence or willful misconduct.

22.2 INDEMNIFICATION BY LANDLORD. Landlord shall indemnify, defend, have and hold Tenant harmless from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) imposed upon, incurred by or asserted against Tenant arising out of, connected with or incidental to the sole or gross negligence or willful misconduct of Landlord; provided, however, that Tenant's right to indemnification as provided herein, shall be subject to the limitation set forth in Article XXVIII.

22.3 CONTINUING LIABILITY. Tenant's and Landlord's liability under this Article shall survive any termination of this Lease and shall continue for the term provided herein or as permitted by the laws of the State, whichever is longer.

#### ARTICLE XXIII ASSIGNMENT AND SUBLETTING

23.1 ASSIGNMENT AND SUBLETTING. Subject to the provisions of Section 23.3 below and any other express conditions or limitations set forth in this Lease, Tenant may, without the consent of Landlord, (a) sublet

up to an aggregate of 25% of the rentable square footage of the Facility, to concessionaires or other third party users or operators thereof, provided that (i) any subletting to any party shall not individually as to any one such subletting, or in the aggregate, materially diminish the actual or potential Additional Rent payable under this Lease and (ii) Tenant, at the request of Landlord, executes an Assignment of Subleases and Rents in favor of Landlord in a form reasonably acceptable to Landlord as security for the obligations of Tenant hereunder, or (b) transfer or assign its rights hereunder (iii) to a joint venture, partnership or other entity in which Tenant holds a controlling interest and, in the case of a partnership, Tenant is the general partner, or (iv) in connection with a public offering of equity interests in an Affiliate of Tenant, to such Affiliate, provided that Landlord reasonably determines that such Affiliate has a Tangible Net Worth at least equal to that of Tenant. except as otherwise permitted in the immediately preceding sentence, an assignment or subletting of all or any portion of the Property shall not be permitted unless the consent of Landlord is first obtained. Such consent by Landlord will not be unreasonably withheld if

56

(x) the assignee assumes all obligations of Lessee under the Lease in a writing in form and content reasonably acceptable to Landlord, (y) such assignee meets the financial covenants applicable to Tenant hereunder and demonstrates such fact to Landlord's reasonable satisfaction, and (z) no Event of Default is in effect and continuing hereunder. Landlord shall not unreasonably withhold its consent to any subletting or assignment, provided that the assignee or sublessee has a financial condition comparable to the greater of (i) Tenant's financial condition as of the Commencement Date or (ii) Tenant's financial condition as of the date of the proposed assignment or subletting and (w) in the case of a subletting the sublessee shall comply with the provisions or Section 23.2, (x) in the case of an assignment, (i) the assignee assumes in writing and agrees to keep and perform all of the terms of this Lease on the part of Tenant to be kept and performed, (ii) the assignee complies with the covenants set forth in Section 28 hereof, (iii) the assignment causes no violation of any other covenants under this Lease by Tenant or the assignee, and (iv) the assignee becomes jointly and severally liable with Tenant for the performance thereof, (y) an original counterpart of each such sublease and assignment and assumption, duly executed by Tenant and such sublessee or assignee, as the case may be, in form and substance satisfactory to Landlord, is delivered promptly to Landlord, and (z) in case of either an assignment or subletting, Tenant remains primarily liable, as principal rather than as surety, for the prompt payment of Rent and for the performance and observance of all covenants and agreements to be performed by Tenant hereunder.

23. 2 ATTORNMENT. Tenant shall insert in each sublease permitted under Section 23.1 provisions reasonably satisfactory to Landlord which provide for the benefit of Landlord that (a) such sublease is subject and

subordinate to all of the terms and provisions of this Lease and to the rights of Landlord hereunder, (b) in the event this Lease Shall terminate before the expiration of such sublease, the sublessee thereunder will, at Landlord's option, either attorn to Landlord and waive any right the sublessee may have to terminate the sublease or surrender possession under such sublease, and (c) in the event the sublessee receives Notice from Landlord or Landlord's assignees, if any, stating that Tenant is in default under this Lease, the sublessee shall thereafter be obligated to pay all rentals accruing under said sublease directly to the party giving such Notice, or as such party may otherwise direct. All rentals received from the sublessee by Landlord or Landlord's assignees, if any, as the case may be, shall be credited against the amounts owed to Landlord under this Lease.

23. 3 SUBLEASE LIMITATION. Anything contained in this Lease to the contrary notwithstanding, Tenant shall not sublet the Property on any basis such that the rental to be paid by the sublessee thereunder would be based, in whole or in part, on either (a) the income or profits derived by the business activities of the sublessee, or (b) any other formula such that any portion of the sublease rental would fail to qualify as "rents from real Property" within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto.

ARTICLE XXIV  
INFORMATION FROM TENANT

24.1 OFFICER'S CERTIFICATES. At any time and from time to time, upon not less than 20 days Notice by Landlord, Tenant shall furnish to Landlord an Officer's Certificate certifying that this Lease is unmodified and in full force and effect (or that this Lease is in full force and effect as modified and setting forth the modifications), the date to which the Rent has been paid, whether there exists any Event of Default or any situation which, with the giving of notice, passage of time, or both, would constitute an Event of Default hereunder based upon Tenant's current knowledge, whether Tenant contends that Landlord is in default hereunder, and if Tenant so contends, the basis for such contention, the date upon which the Term terminates, and such other information as Landlord reasonably may request. Any such certificate furnished pursuant to this Section 24.1 may be relied upon by Landlord, any prospective purchaser of the Property, and any Facility Mortgagee or Landlord Lender.

24.2 FINANCIAL INFORMATION. Tenant shall furnish, the following statements to landlord:

(a) within 90 days after the end of each Fiscal Year, preliminary drafts of (i) a balance sheet and statements of revenues and expenses and changes in retained earnings and cash flows for Tenant, all certified by

independent public accountants of recognized standing acceptable to Landlord, such statements to be prepared in accordance with generally accepted accounting principles consistently applied, to be for such Fiscal Year and the immediately preceding Fiscal Year and to be in comparative columnar form and (ii) a schedule of capital expenditures or reserves therefor for such Fiscal Year. Within 120 days after the end of each Fiscal Year, Tenant shall furnish to Landlord final versions of the statements referred to in (i) and (ii) hereof;

(b) within 45 days after the end of each of the first three fiscal quarters of each Fiscal Year, financial statements similar to those referred to in clause (a) above, but only certified by the principal financial or other appropriate officer of Tenant as having been prepared in accordance with generally accepted accounting principles consistently applied (but which may exclude footnote disclosures), such financial statements to be for the period from the beginning of such Fiscal Year (and immediately preceding Fiscal Year) to the end of such quarter (and comparable quarter);

(c) concurrent with the statements furnished pursuant to clauses (a) and (b) above, an Officer's Certificate stating that, after making due inquiry, Tenant is not in default in the performance or observance of any of the terms of this Lease, or if Tenant shall be in default to its knowledge, specifying all such defaults, the nature of such defaults, and the steps being taken to remedy the same;

58

(d) within 30 days after the end of each month, financial statements similar to those referred to in clause (b) together with operating statistics; and

(e) with reasonable promptness, such other information respecting the financial condition and affairs of Tenant as Landlord may reasonably request from time to time.

24. 3 LICENSING INFORMATION. Tenant shall promptly furnish to Landlord complete copies of all surveys, examinations, inspections, compliance certificates and similar reports of any kind issued to Tenant by any governmental agencies or authorities having jurisdiction over the licensing of the operation of the Property which are material to the Property or the Facility, their ownership or operation.

#### ARTICLE XXV APPRAISALS OF THE PROPERTY AND OPTIONS

25.1 APPRAISERS. If at any time it becomes necessary to determine the Fair Market Value, Fair Market Value Purchase Price or Fair Market Rental of the Property for any purpose under this Lease, and the parties are



unable to agree thereupon, the party required or permitted to give Notice of such required determination shall include in the Notice the name of a person selected to act as appraiser on its behalf. Within ten days after such Notice, Landlord or Tenant, as the case may be, shall by Notice to Tenant or Landlord, as the case may be, either agree to the appointment of the appraiser identified in such initial Notice, in which case such appraiser shall be the sole appraiser for purposes of determining the Fair Market Value, Fair Market Value Purchase Price or Fair Market Rental, as the case may be, or shall appoint a second person as an appraiser on its behalf. Any appraiser appointed pursuant to this Section must be a member of the American Institute of Real Estate Appraisers (or any successor organization thereto). The appraiser(s) thus appointed shall, within 45 days after the date of the Notice appointing the first appraiser, proceed to appraise the Property to determine the Fair Market Value, Fair Market Value Purchase Price or Fair Market Rental thereof (as the case may be) as of the relevant date (giving effect to the impact, if any, of inflation from the date of their decision to the relevant date). In the case of two appraisers, except as provided in Section 25.2, the two appraisals shall be averaged to determine the Fair Market Value, Fair Market Value Purchase Price or Fair Market Rental, as the case may be. In any event, the appraised value determined in accordance with this Section shall be final and binding on Landlord and Tenant.

25.2 METHOD OF APPRAISAL. Any appraisal required or permitted by the terms of this Lease shall be conducted in a manner consistent with sound appraisal practice, taking into account market and

cost approaches and shall not include the income approach to valuation or the going concern or business enterprise value attributable to factors other than the highest and best use of the Property. Notwithstanding the provisions of Section 25.1, if the difference between the appraisal amounts determined by the appraisers appointed pursuant to Section 25.1 exceeds ten percent of the lesser of such appraisal amounts, then the two appraisers shall have 20 days to appoint a third appraiser. If no such appraiser is appointed within such 20 days or within 90 days of the original request for a determination of Fair Market Value, Fair Market Value Purchase Price or Fair Market Rental (as the case may be), whichever is earlier, either Landlord or Tenant may apply to any court having jurisdiction to have such appointment made by such court. Any appraiser appointed by the original appraisers or by such court shall be instructed to determine the Fair Market Value, Fair Market Value Purchase Price or Fair Market Rental (as the case may be) within 45 days after the appointment of such appraiser. The determination of the three appraisers which differs most in the terms of dollar amount from the determinations of the other two appraisers shall be excluded, and 50% of the sum of the remaining two determinations shall be the appraised value, which a[ppraised value shall be final and binding upon

Landlord and Tenant as the Fair Market Value, Fair Market Value Purchase Price or Fair Market Rental of the Property, as the case may be. If the lowest and highest appraised values are equidistant in amount from the middle appraised value, then such middle appraised value shall be the Fair Market Value, Fair Market Value Purchase Price or Fair Market Rental (as the case may be). The provisions of this Article shall be specifically enforceable to the extent such remedy is available under applicable law, and any determination hereunder shall be final and binding upon the parties except as otherwise provided by applicable law. Landlord and Tenant each shall pay the fees and expenses of the appraiser appointed by it, and each shall pay one-half of the fees and expenses of the third appraiser and one-half of all other costs and expenses incurred in connection with each appraisal.

ARTICLE XXVI  
OPTIONS TO PURCHASE

26.1 LANDLORD'S OPTION TO PURCHASE TENANT'S PERSONAL PROPERTY; TRANSFER OF LICENSES. Provided Tenant has not exercised its option pursuant to Section 26.2 hereof, effective upon not less than ninety (90) days prior notice given at any time within one hundred eighty (180) days prior to the expiration of the Term of this Lease, or upon such shorter Notice as shall be reasonable if this Lease is terminated prior to its expiration date, Landlord shall have the option to purchase all (but not less than all) of Tenant's Personal Property, if any, at the expiration or termination of this Lease, for an amount equal to the then fair market value thereof, taking into account and with appropriate price adjustments for, all equipment leases, conditional sale contracts, UCC-1 financing statements and other encumbrances to which such Tenant's

60

Personal Property is subject. Upon the expiration or termination of the Lease and such purchase by Landlord, Tenant shall use good faith efforts, at Landlord's sole cost and expense, to transfer and assign to Landlord or its designee, or assist Landlord or its designee in obtaining, any contracts, licenses, and certificates required for the then operation of the Facility.

26.2 TENANT'S OPTION TO PURCHASE THE PROPERTY. Provided no Event of Default specified in Sections 17.1 (a), (e), (f) or (g) hereof has occurred and is continuing, Tenant shall have the option, exercisable on not less than one hundred eighty (180) days nor more than three hundred sixty (360) days' prior Notice, to purchase the Property at the expiration of the Fixed Term, or at the expiration of any Extended Term, at the greater of (y) the Shared Appreciation Purchase Price as of the date of expiration of the then current Term, less the Fair Market Value at the time of exercise of the option of any improvements to

the Property made and funded by Tenant pursuant to Sections 9.1 and 11, or (z) the Landlord's Total Investment. Tenant shall also have the right, during any Extended Term, to exercise such option in the event that, during any Extended Term, (a) Landlord defaults with respect to its agreements, covenants, obligations, representations or warranties under this Lease and such default is not cured within any applicable cure period or (b) Landlord or its Affiliates default under one or more Additional Leases and such default is not cured within any applicable cure period. Tenant's rights to exercise the purchase option is further conditioned upon a concurrent exercise by the Tenant under each Additional Lease of any Tenant's option to purchase the leased Property provided for therein. Upon exercise by Tenant of its option to purchase the Property, Landlord shall, at the election of Tenant, either convey the Property as a sale of assets or as a sale of the stock of a corporation whose sole assets consist of the Property. The foregoing option to purchase the Property shall be secured by the Deed of Trust.

If Tenant shall timely and properly exercise the foregoing option, the sale of the Property shall be consummated through an escrow to be opened with a mutually acceptable title or escrow company and shall close within ten Business Days following the expiration of the Fixed Term or Extended Term in connection with which Tenant exercised such purchase option. The purchase price of the Property (net of the principal balance of any Facility Mortgages placed on the Property by Landlord and expressly assumed by Tenant and the amount of any damages owing by Landlord to Tenant) shall be deposited into escrow by wire transfer of Federal Funds at least two business days prior to close of escrow and shall be paid to Landlord at close of escrow by wire transfer of Federal Funds to such account as Landlord shall designate. Tenant acknowledges and agrees that it shall purchase the Property from Landlord "AS IS" and subject to all faults, defects in title and other matters whatsoever, including, but not limited to, all matters of record, other than (a) Facility Mortgages not expressly assumed by Tenant

61

and (b) any other liens, encumbrances, attachments, levies or claims encumbering, at the instance of Landlord, the Property., all of which shall be removed of record prior to purchase. Landlord shall make no warranty or representation regarding the title, condition or other status of the Property whatsoever, except that it has removed all liens and encumbrances referenced in clauses (a) and (b) in the preceding sentence. All title insurance premiums and other closing costs associated with the purchase of the Property by Tenant pursuant to this Section shall be paid by Tenant.

ARTICLE XXVII  
FACILITY MORTGAGES

Without the consent of Tenant, Landlord may, subject to the terms

and conditions set forth below in this Section, from time to time, directly or indirectly, create or otherwise cause to exist any lien, encumbrance, security interest or title retention agreement ("ENCUMBRANCE") upon the Property, or any portion thereof or interest therein, whether to secure any borrowing or other means of financing or refinancing provided that the principal amount of such borrowing, financing or refinancing does not exceed 80% of the then Fair Market Value of the Property. Any such Encumbrance (I) shall contain the right to prepay (whether or not subject to a prepayment penalty, which penalty shall be paid by Landlord), (ii) shall provide that it is subject to the rights of Tenant under this Lease, including the rights of Tenant to acquire the Property pursuant to the applicable provisions of this Lease; provided, however, that Tenant agrees that it will not unreasonably withhold its consent to any request by Landlord that Tenant subordinate this Lease to any mortgage or deed of trust that may hereafter from time to time be recorded on the Property, and to any and all advances made or to be made thereunder, and to renewals, replacements and extensions thereof and (iii) shall be paid in full and released and reconveyed in the event Tenant purchases the Property pursuant to this Lease, unless Tenant elects to assume such Encumbrance. Any such subordination, however, shall be subject to the condition precedent that the mortgagee under such mortgage or the beneficiary under such deed of trust enter into a written non-disturbance and attornment agreement with Tenant, in form and content satisfactory to Tenant, whereunder it is agreed that in the event of a sale or foreclosure under such mortgage or deed of trust, the purchaser of the Property (including the mortgagee or beneficiary under such mortgage or deed of trust), shall acquire or hold the Property subject to this Lease so long as Tenant is not in default hereunder, and so long as Tenant recognizes such purchaser as the Landlord under this Lease and agrees, if requested to do so, to attorn to such purchaser and, if instructed to do so by such purchaser, to make rental payments directly to it.

ARTICLE XXVIII  
LIMITATION OF LIABILITY

Tenant specifically agrees that neither AHP nor Landlord nor any officer, shareholder, employee or agent of AHP or Landlord (each of which shall, for purposes of this Article XXVII, be considered an Affiliate of Landlord) shall be held to any personal liability, jointly or severally, for any obligation of, or claims against Landlord, Tenant agreeing to look solely to

Landlord's equity interest in the Property or to Landlord's interests or interests of subsidiaries of Landlord in other properties leased to Tenant or Affiliates of Tenant for recovery of any judgment from Landlord, except that Landlord's obligations under Section 19.1 and Article XXVII, clause (iii) shall be a general and unlimited liability of Landlord. The provisions contained in the foregoing sentence are not intended to, and shall not, limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord or Landlord's successors in interest, or any action not involving the personal liability of Landlord (original or successor). In no event shall Landlord (original or successor) or any Affiliate of Landlord be required to respond in monetary damages from Landlord's assets other than Landlord's equity interest in the Property. Furthermore, except as otherwise expressly provided herein, in no event shall Landlord or any Affiliate of Landlord (original or successor) ever be liable to Tenant for any indirect or consequential damages suffered by Tenant from whatever cause.

ARTICLE XXIX  
ADDITIONAL COVENANTS OF TENANT

29.1 ADDITIONAL NEGATIVE COVENANTS. Tenant covenants and agrees with Landlord that, during the Term hereof, Tenant shall not, either directly or indirectly:

(a) LIENS. Incur, create, assume or permit to exist any mortgage pledge, lien, charge or other encumbrance of any nature whatsoever (including conditional sales or other title retention agreements) on Tenant's leasehold interest under this Lease and Tenant's Personal Property, other than:

(i) deposits or pledges to secure payment of workmen's compensation, unemployment insurance, old age pensions or other social security;

(ii) liens for taxes or assessments or other governmental charges or levies if not yet due and payable, or if in good faith being contested or litigated, provided that a reserve against such taxes,

63

assessments, charges and levies deemed adequate by Landlord shall be maintained and Tenant shall furnish security reasonably satisfactory to Landlord for the payment of such taxes, assessments, charges and levies;

(iii) liens in favor of Landlord;

(iv) purchase money security interests securing the payment of not more than 75% of the purchase price of any item of personal property;

(v) security interests in accounts receivable under working capital lines of credit securing indebtedness not exceeding 80% of the net book value of such accounts receivable;

(vi) judgments and other similar liens, provided that the execution or other enforcement of such liens is effectively stayed and the claims secured thereby are being actively contested in good faith and by appropriate proceedings in accordance with the requirements of this Lease;

(vii) liens constituting renewals, extensions or replacements of liens described in the foregoing clauses, but only, in the case of each such renewal, extension or replacement lien, to the extent of the principal amount of the obligation so secured at the time of the extension, renewal or replacement, and to the extent that such renewal, extension or replacement lien is limited to all or part of the Property that secured the lien extended, renewed or replaced;

(viii) liens being contested in accordance with the provisions of Article XIII; and

(ix) the Acquisition Lien and the Sanyo Lien, as such terms are defined in the Loan Agreement.

(b) FIXED CHARGE COVERAGE RATIO. Commencing on the first day of the month which is at least six full months after the effective date hereof, permit the ratio of: (i) (a) Tenant's Cash Flow to (b) the sum of Total Rent payable hereunder and principal and interest payments payable by Tenant for any calendar quarter to be less than 2.5 to 1.0 nor (ii) (a) Tenant's Cash Flow to (b) Base Rent payable by Tenant hereunder for any calendar quarter to be less than 1.4 to 1.0; provided, however, that the failure of Tenant to comply with either of the foregoing ratios shall not constitute an Event of Default if a Security Letter of Credit in the amount of six monthly installments of Base Rent is in effect or is obtained within ten days after such failure.

(c) SALE OF ASSETS. Sell, lease, transfer or otherwise dispose of all or any substantial part of its properties or assets, except for (x) equipment which is worn or no longer useful in its business and (y) during any 12-month period, equipment with an aggregate market value exceeding

\$1,000,000.

(d) CONSOLIDATION OR MERGER. Consolidate with or merge into any other entity or permit any other corporation to merge into it unless, after giving pro forma effect to the merger, based on its financial statements and the financial statements of the other entity or entities participating in the merger, for, in each case, its most recently completed fiscal year or quarter; there is no violation of any of the covenants of this Lease to be observed or performed by Tenant.

(e) GUARANTEES. Except for guaranties of obligations of Affiliates and endorsement of negotiable instruments for deposit or collection, guarantee or otherwise incur liability for the obligations of others.

(f) MINIMUM NET WORTH. Fail to maintain, as of the end of each calendar quarter, Tangible Net Worth of at least \$10 million; provided, however, that the failure of Tenant to comply with such minimum Tangible Net Worth Requirement shall not constitute an Event of Default if a Security Letter of Credit in the amount of six monthly installments of Base Rent is in effect or obtained within ten days after such failure. For purposes of such calculation, the amount of the Security Letter of Credit shall be considered tangible assets.

(g) DIVIDENDS. Declare or pay any dividend or make any distribution or make any redemption with respect to any capital stock of Tenant unless (i) Tenant is not in default under the Lease and (ii) after giving effect thereto, Tenant shall have a Tangible Net Worth of not less than \$5.0 million and (iii) Tenant has been in compliance with the financial ratio in Section 29.1(b) (ii) above for at least four consecutive fiscal quarters; provided, however, that Tenant may make distributions due and payable with respect to 1,080,000 currently outstanding shares of Tenant's outstanding Series A Convertible Preferred Stock insofar as any payments are due pursuant to the currently-existing terms of such stock.

(h) MANAGEMENT FEE. Agree to pay any person or entity a management fee in connection with the management and operation of the Facility unless payment of any such management fee is subordinated to the Tenant's payment obligations under the Lease on terms acceptable to Landlord.

29.2 ADDITIONAL AFFIRMATIVE COVENANTS. Tenant covenants and agrees with Landlord that, during the Term hereof, Tenant shall:

(a) MAINTENANCE OF PROPERTIES AND INTANGIBLE

ASSETS.

(i) Maintain its corporate existence in good standing.

(ii) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence and, with such exceptions, if any, as are not material in the aggregate, to obtain and, having obtained, preserve, renew and keep in full force and effect all customary accreditation, rights, licenses and permits and, with such exceptions, if any, as are not material in the aggregate, comply with all laws and regulations applicable to it and conduct and operate the Facility in substantially the manner, with such changes as may from time to time be considered by management as necessary or appropriate, in which it is presently conducted and operated, and at all times, with such exceptions as are not material in the aggregate, to obtain, maintain, preserve and protect all necessary franchises, provide agreements, contract rights, trademarks and trade names used or useful in its operations and preserve all its assets which are used or useful in the conduct of its operations, and keep the same in working order and condition, and, with such exceptions as are not material in the aggregate, from time to time to make, or cause to be made, all necessary repairs, renewals, replacements, betterments and improvements thereto, so that the operation of the Facility may be properly and advantageously conducted at all times. Without limiting the generality of the foregoing, Tenant shall use or cause the Property to be used for the Primary Intended Use and only for such other uses as may be necessary in connection with or incidental to said use or as may be agreed to by Landlord in its sole and absolute determination. with such exceptions as are not material in the aggregate, no use shall be made or permitted to be made of the Property and no acts shall be done which violate any Legal Requirements or Insurance Requirements or which will cause the cancellation of any insurance policy covering the Property or any part thereof or any provider agreements. Tenant shall comply in all material respects with all Legal Requirements and all of the requirements pertaining to the Property of any insurance board, association, organization or company necessary for the maintenance of the insurance required pursuant to this Lease.

(iii) Without limiting the provisions of Section 10.1, expend or reserve for expenditure not less than \$250 per unit in capital expenditures per Fiscal Year.

(iv) Tenant, immediately upon obtaining knowledge of facts which are reasonably likely to result in an action by any Federal, state or local agency (or the staff thereof) to revoke, withdraw or suspend any permit, license, conditional use permit, variance certificate, certificate of need, letter of nonreviewability, provider agreement or other governmental approval, or an action of any other type, which would have a material



adverse effect on the Tenant or the operations of the Facility, shall notify the Landlord thereof immediately.

(b) OBLIGATIONS AND TAXES. With such exceptions as are not material individually or in the aggregate, none of which exceptions results in the creation of a lien prohibited by this Lease on any Property of Tenant, pay all indebtedness and obligations in accordance with customary trade practices and pay and discharge promptly shall taxes, assessments and governmental charges or levies imposed on it or upon its income and profit, or upon any of its Property, real, personal or mixed, or upon any part thereof, before the same shall become in default, as well as pay before they shall become in default all lawful claims for labor, material and supplies or otherwise which, if unpaid, might become a lien or charge upon such Property or any part thereof.

(c) PENSION PLANS. Tenant shall notify Landlord within ten business days of the occurrence of any of the following events ("Notification Events") with respect to Tenant's Plans (as defined in ERISA) and within ten days of obtaining knowledge of any Notification Event with respect to Plans of its Affiliates: (i) the termination of a Plan, unless such Plan can be terminated without material adverse effect on the business, properties or condition (financial or otherwise) of Tenant; (ii) the failure to make contributions to any of Tenant's Plans (including any Multiemployer Plans) in timely manner and in sufficient amount to comply with the requirements of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"); (iii) the failure to comply with all material requirements of ERISA and the Code which relate to such Plans and Multiemployer Plans (as defined by ERISA), where such failure to comply would have a material adverse effect on the business, properties or condition (financial or otherwise) of Tenant; (iv) receipt by Tenant of any notice of the institution of any proceeding or other action which may directly result in the termination of any Plans or Multiemployer Plans; (v) a Termination Event or Reportable Event (as defined by ERISA) with respect to a Plan; and (vi) any event or condition which would cause the lien provided for under Section 4068 of ERISA to attach to the assets of Tenant. Tenant shall not fail to make any payments to any Multiemployer Plan that Tenant may be required to make under any agreement relating to any Multiemployer Plan, ERISA or any other law pertaining thereto, except for any payments being contested in good faith in accordance with Article XIII with respect to which Tenant has established adequate reserves or which, if not made, would not have a material adverse effect on the business, properties or condition (financial or otherwise) of Tenant.

### 29. 3 SECURITY FOR THE LEASE.

(a) SECURITY AGREEMENT. On or before the Commencement Date Tenant shall execute and deliver to Landlord the Security Agreement.

(b) ABSOLUTE ASSIGNMENT. Tenant shall, at Landlord's request, on or before the Commencement Date, or thereafter, execute and deliver to Landlord an absolute assignment of subleases and rents pursuant to which Tenant shall assign to Landlord, subject to a license to Tenant to retain so long as no Event of Default is permitted under this Lease and the proceeds thereof.

(c) SECURITY LETTER OF CREDIT. As security for the timely and faithful performance by Tenant of each and every one of Tenant's obligations under this Lease, Tenant shall, on the Commencement Date and thereafter as provided herein, deliver and maintain a letter of credit which (A) is issued or confirmed by a bank having capital or surplus of at least \$1 billion and whose senior unsecured debt securities are rated "A2" or better by Moody's or "A" or better by S&P, provided none of such securities is subject to a "credit watch with negative implications", (B) is payable, in whole or in part, "at sight" upon Landlord's presentation to the issuing or confirming bank of a draft or other document in the amount therein stated to be due and (C) is otherwise in form and substance reasonably satisfactory to Landlord (such security letter of credit, as the same may be augmented, increased, renewed or replaced as hereinafter provided, is referred to herein as the "Security Letter of Credit"), and which contains the undertaking of such bank in the amount of the sum of six monthly installments of Base Rent. If Landlord shall draw any amount, representing an amount equal to the obligation or obligations of Tenant hereunder, against the Security Letter of Credit, which it shall be entitled to do if an Event of Default has occurred and is continuing, and apply the proceeds of such drawing against any obligation or obligations of Tenant hereunder in such amount or amounts as Landlord, in its sole discretion, shall decide, Tenant shall cause either (i) an additional Security Letter of Credit to be issued or (ii) the bank's undertaking under the original Security Letter of Credit to be increased, in either case in an amount equal to the amount of such drawing within five Business Days following Tenant's receipt of notice of such drawing. Tenant shall (x) renew the Security Letter of Credit at least annually and shall deliver to Landlord such renewal Security Letter of Credit at least 30 days prior to the expiration of the previous Security Letter of Credit and (y) replace the Security Letter of Credit with a new Security Letter of Credit in favor of any permitted assignee of Landlord's interest under this Lease (provided Tenant shall have received 30 days' prior notice of such assignment) and shall deliver to Landlord's assignee such replacement Security Letter of Credit in time for the scheduled closing of Landlord's assignment of its interest under this Lease. After the Security Letter of Credit is established, Tenant may reduce the amount of the Security Letter of Credit to three monthly installments of Base Rent if, for the period of four consecutive calendar quarters most recently completed as of the date of determination, Tenant is in compliance with Sections 29.1 (b) and 29.1 (f) hereof, as reflected in financial statements prepared in accordance with generally accepted accounting principals as set forth in an

such most recent quarter. Such Officer's Certificate shall be accompanied by an appropriate cash flow statement and a compilation report thereon, without material qualification, of Tenant's independent public accountants. If and after Tenant's obligation to maintain the Security Letter of Credit has been so reduced, Tenant will be obligated to increase such letter to six monthly installments of Base Rent within ten (10) business days after each time it delivers financial information to Landlord pursuant to Section 24. 2 hereof which indicates that Tenant has failed to comply with any requirement of Sections 29.1(b) or 29.1(f) for the most recent period of four consecutive calendar quarters and such obligation will remain in effect until Tenant has subsequently satisfied the cash flow ratio condition described above for another period of four consecutive calendar quarters.

Tenant's failure to timely deliver or maintain any Security Letter of Credit in accordance with this Section 29.3(b) shall constitute an immediate Event of Default (which shall not require the giving of Notice) and, in such event, Landlord shall have the right to draw the entire balance of the Security Letter of Credit, as the case may be, and apply the proceeds against any obligation or obligations of Tenant hereunder in such amount or amounts as Landlord, in its sole discretion, shall decide and exercise any other remedies permitted Landlord hereunder, at law or in equity. Landlord shall not be deemed to hold any funds drawn under the Security Letter of Credit in trust but shall not commingle such funds with other assets of landlord. Tenant shall not be entitled to any interest with respect to any such funds held by Landlord.

ARTICLE XXX  
MISCELLANEOUS

30.1 TRANSFERS BY TENANT. Except as permitted by Article XXIII, Tenant shall not transfer or assign its rights or obligations hereunder without the prior written consent of Landlord, which shall not be withheld unreasonably if (a) the transferee or assignee executes an instrument in form reasonably acceptable to Landlord assuming and agreeing to perform all obligations of Tenant under the Lease; (b) the transferee or assignee demonstrates to Landlord's reasonable satisfaction that the transferee or assignee complies with all covenants, including financial covenants, applicable to the Tenant hereunder;. (c).such assignment or transfer will not cause an Event of Default under this Lease; (d) no default exists by Tenant under the Lease; and (e) Tenant meets the requirements of Section 29.1(g), clause (ii) immediately after the proposed transfer. Unless Tenant is in compliance with Section 29.1(g) above, and subject to the foregoing requirements, Tenant shall not assign or transfer any interest herein to any

Affiliate of Tenant, and will not enter into any contract, agreement, understanding, loan, advance or guaranty with, or for the benefit of, any Affiliate of Tenant relating to Tenant's rights and obligations hereunder, except (d) in the ordinary course of business, (e) on terms no less favorable than those that could have been obtained by Tenant in an arms'-

69

length transaction with a Person not an Affiliate of Tenant, and (f) involving an aggregate value of interests of Tenant herein not exceeding \$1,000,000 in any twelve-month period. Any transfer, assignment or sublease requiring Landlord's prior written consent which is attempted to be made by Tenant without such prior written consent of Landlord shall be void and ineffective.

30.2 LANDLORD'S RIGHT TO INSPECT. Landlord and its authorized representatives may, at any time and from time to time, upon reasonable notice to Tenant, inspect the Property during usual business hours subject to any security, health, safety or patient business confidentiality requirements of Tenant or any governmental agency, or created by any Insurance Requirement or Legal Requirement relating to the Property.

30.3 NO WAIVER. No failure by Landlord or Tenant to insist upon the strict performance of any term hereof or to exercise any right, power or remedy provided hereunder, and no acceptance of full or partial payment of Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term. To the extent permitted by applicable law, no waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

30.4 REMEDIES CUMULATIVE. To the extent permitted by law, each legal, equitable or contractual right, power and remedy of Landlord or Tenant now or hereafter provided either in this Lease or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power and remedy the exercise or beginning of the exercise by Landlord or Tenant of any one or more of such rights, powers and remedies shall not preclude the simultaneous or subsequent exercise by Landlord or Tenant of any or all of such other rights, powers and remedies.

30.5 ACCEPTANCE OF SURRENDER. No surrender to Landlord of this Lease or of all or any portion of or interest in the Property shall be valid or effective unless agreed to and accepted in writing by Landlord, and no act by Landlord or any representative or agent of Landlord, other than such a written acceptance by Landlord, shall constitute an acceptance of any such surrender by Tenant.

30.6 NO MERGER OF TITLE. There shall be no merger of this Lease

or of the leasehold estate created hereby if the same person, firm, corporation or other entity acquires, owns or holds, directly or indirectly, this Lease or the leasehold estate created hereby or any interest in this Lease or such leasehold estate, and the fee estate in the Property.

30.7 CONVEYANCE BY LANDLORD. Simultaneously with any transfer of interest in the Property (except pursuant to Article XXVII), Landlord shall cause to be transferred to the same transferee a similar

70

interest in all properties owned by Landlord or its Affiliates and leased to Tenant or its Affiliates. If Landlord or any successor owner of the Property conveys the Property in accordance with the terms hereof (other than as security for a debt), and the grantee or transferee of the Property expressly assumes all obligations of Landlord hereunder arising or accruing from and after the date of such conveyance or transfer, Landlord or such successor owner, as the case may be, thereupon shall be released from all liabilities and obligations of Landlord under this Lease.

30.8 QUIET ENJOYMENT. So long as Tenant pays all Rent as the same becomes due and fully complies with all of the terms of this Lease and fully performs its obligations hereunder, Landlord warrants, represents and covenants that Tenant shall peaceably and quietly have, hold and enjoy the Property for the Term hereof, free of any claim or other action by landlord or anyone claiming by, through or under Landlord, but subject to all liens and encumbrances of record as of the date hereof or hereafter consented to by Tenant. Except as otherwise provided in this Lease, no failure by Landlord to comply with the foregoing covenant shall give Tenant any right to cancel or terminate this Lease or abate, reduce or make a deduction from or offset against the Rent or any other sum payable under this Lease, or to fail or refuse to perform any other obligation of Tenant hereunder. Notwithstanding the foregoing, Tenant shall have the right, by separate and independent action, to pursue any claim it may have against Landlord as a result of a breach by Landlord of the covenant of quiet enjoyment contained in this Section and, in the event Tenant acquires the Property pursuant to the option granted hereunder, offset against the purchase price the amount of any damages owing from Landlord to Tenant.

30.9 NOTICES. All notices, demands, requests, consents, approvals and other Communications ("Notice" or "Notices") hereunder shall be in writing and delivered by personal delivery, courier or messenger service, express or overnight mail, or by registered or certified mail, return receipt requested and postage prepaid, or by facsimile, addressed to the respective parties as follows: .

If to Tenant: Emeritus Corporation  
3131 Elliott Avenue  
Suite 500

Seattle, Washington 98121  
Attention: Raymond Brandstrom  
FAX: (206) 443-5432

If to Landlord: AHP of Texas, Inc.

c/o American Health Properties, Inc.  
6400 South Fiddler's Green Circle  
Suite 1800  
Englewood, Colorado 80111  
Attention: Chief Investment Officer  
FAX: (303) 796-9708

71

or to such other address as either party may hereafter designate. Personally delivered Notices sent by courier or messenger service or by express or overnight mail or by facsimile shall be effective upon receipt, and Notices given by mail shall be complete at the time of deposit in the U. S. mail system, but any prescribed period of Notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after the service of such Notice given by mail shall be extended five (5) days.

30.10 SURVIVAL OF TERMS; APPLICABLE LAW. Anything contained in this Lease to the contrary notwithstanding, all claims against, and liabilities of, Tenant or Landlord arising prior to any date of termination of this Lease shall survive such termination for two years, except for third party claims based on alleged tortious actions. and omissions of Tenant during the term of this Lease, which third party claims shall survive the term of this Lease. If any term or provision of this Lease or any application thereof shall be invalid or unenforceable for any reason whatsoever, the remainder of this Lease and any other application of such term or provisions shall not be affected thereby. If any late charge or any interest rate provided for in any provision of this Lease based upon a rate in excess of the maximum rate permitted by applicable law, such charges shall be fixed at the maximum permissible rate. Neither this Lease nor any provision hereof may be changed, waived, discharged, modified or terminated except by an instrument in writing and in recordable form, signed by Landlord and Tenant. Subject to any limitations on assignment contained in this Lease, all the terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The headings in this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, BUT NOT INCLUDING ITS CONFLICTS OF LAWS RULES.

30.11 EXCULPATION OF LANDLORD'S AND TENANT'S OFFICERS AND AGENTS. This Lease is made on behalf of Landlord and Tenant by an officer thereof, not individually, but solely in such officer's capacity in such office as authorized by the directors of Landlord or Tenant. The obligations of this Lease are not binding upon, nor shall resort be had to, the private Property of any of the directors, shareholders, members, officers, employees or agents of Landlord or Tenant personally, but bind only Landlord's and Tenant's property. The provision contained in the foregoing sentence is not intended to, and shall not, limit any right that Landlord or Tenant might otherwise have to obtain injunctive relief against the other party or its successors in interest, or any action not involving the personal liability of the directors, shareholders, members, officers, employees or agents of Landlord or Tenant. Except as otherwise expressly

72

provided herein, in no event shall either party ever be liable to the other party for any indirect or consequential damages suffered by a party from whatever cause.

30.12 TRANSFERS FOLLOWING TERMINATION. Upon the expiration or earlier termination of the Term, Tenant shall use good faith efforts to transfer to Landlord or Landlord's nominee, or to cooperate with Landlord or Landlord's nominee in connection with the processing by Landlord or Landlord's nominee of any applications for, all licenses, operating permits and other governmental authorizations and all contracts (including contracts with governmental or quasi-governmental entities) which may be necessary for the operation of the Facility; provided, however, that the costs and expenses of any such transfer or the processing of any such application shall be paid by Landlord or Landlord's nominee.

30.13 TENANT'S WAIVERS. Tenant waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor; and notices of acceptance and waives all notices of the existence, creation, or incurring of new or additional obligations, except as expressly granted herein.

30.14 MEMORANDUM OF LEASE. Landlord and Tenant shall, promptly upon the request of either party, enter into a short form memorandum of this Lease and all options contained herein, in form suitable for recording under the laws of the State in which the Property is located. Tenant shall pay all costs and expenses of recording such memorandum of this Lease,

30.15 ARBITRATION. Any controversy involving \$1,000,000 or less exclusive of interest and costs) arising out of, connected with or incidental to this Agreement (except disputes concerning determinations of Fair Market Value which shall be resolved exclusively as provided in Article

XXI shall be decided by binding arbitration in Seattle, Washington under the expedited procedures of the American Arbitration Association, provided that claim is made within the applicable period of limitation. Depositions to obtain discovery may be taken upon good cause, upon leave to do so granted by the arbitrator. If either party hereto alleges in a court action that such controversy exceeds \$1,000,000, such party shall be deemed to have waived the right to interest and costs in any award obtained therein if such award does not exceed \$1,000,000.

30.16 MODIFICATIONS. No provision of this Lease may be amended, supplemented or otherwise modified except by an agreement in writing signed by the parties hereto or their respective successors in interest.

30.17 ATTORNEYS' FEES. If either party commences an action against the other to interpret or enforce any of the terms of this Lease or because of the breach by the other party of any of the terms hereof, the

73

losing or defaulting party shall pay to the prevailing party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action.

30.18 COUNTERPARTS. This Lease may be executed in counterparts, and when a copy hereof has been executed by Landlord and Tenant, each such counterpart shall constitute an original copy hereof.

IN WITNESS WHEREOF, Tenant and Landlord have executed this Lease as of the date first above written.

EMERITUS

By: /s/ Raymond R. Brandstrom

-----  
Raymond R. Brandstrom,  
President

AHP OF TEXAS, INC.

By: /s/ Thomas T. Schleck,



-----  
Thomas T. Schleck,  
Vice President

STATE OF WASHINGTON                    )  
  )  ss.  
COUNTY OF KING                        )

On this \_\_\_ day of \_\_\_\_\_, 1996, before me, a Notary Public in and for the State of Washington duly commissioned and sworn, personally appeared /s/ Raymond R. Brandstom, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who signed the instrument; on oath stated that he was authorized to execute this instrument as the President of EMERITUS CORPORATION, the corporation that executed the instrument; acknowledged it as the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned; and on oath stated that he was duly elected, qualified and acting as said officer of Emeritus Corporation.

74

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

[SEAL]

/s/ Catherine L. Pasquan  
NOTARY PUBLIC in and for the State of  
Washington, residing at Seattle  
My appointment expires 3-30-99  
Print Name: Catherine L. Pasquan

STATE OF COLORADO                    )  
  )  ss.  
COUNTY OF ARAPAHOE                 )

This instrument was acknowledged before me on this 21st day of August, 1996, by Thomas T. Schleck, a Vice President of AHP of Texas, Inc., a Texas corporation.

My commission expires: Aug. 9, 1999

Witness my hand and official seal.

[SEAL]

/s/ Ruth Anne Moorehouse

-----  
NOTARY PUBLIC

THE FOLLOWING AGREEMENT IS SUBSTANTIALLY THE SAME  
EXCEPT FOR THE FOLLOWING:

COMMUNITY	ANNUAL BASE RENT	RENT INCREASE
West Side Manor - Liverpool	\$439,500	\$ 9,800
Bassett Manor	\$730,500	\$16,200
Woodland Manor	\$390,700	\$ 8,700
Ease Side Manor	\$461,300	\$10,300
Bassett Park Manor	\$637,300	\$14,200
Bellevue Manor	\$458,800	\$10,200
Colonie Manor	\$842,600	\$18,600
West Side Manor - Rochester	\$539,300	\$12,000
Perinton Park Manor	BASE RENT: \$450,000 first year; payable \$25,000 per month for the first six months and \$50,000 for the second six months. \$600,000 second year through the remaining lease term; payable \$50,000 per month.	
	RENT INCREASE:	\$13,200

ALL RENT INCREASES COMMENCE ON THE EXPIRATION OF THE  
FIFTH LEASE YEAR AND CONTINUE ANNUALLY THEREAFTER.

ALL LEASES ARE FOR AN INITIAL 15 YEAR TERM WITH TWO  
FIVE-YEAR RENEWAL OPTIONS.

LEASE AGREEMENT

By and Between

PHILIP R. WEGMAN ("Landlord")

and

PAINTED POST PARTNERS ("Tenant").

[FACILITY]

Dated as of September 1,1996

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made and entered into this 1st day of September, 1996 by and between PHILIP R. WEGMAN ("Landlord"), and PAINTED POST PARTNERS, a Washington general partnership ("Tenant").

In consideration of the mutual undertakings and covenants hereinafter contained and the acts to be performed hereunder, Landlord and Tenant hereby agree to the within Lease for that certain \_\_ unit proprietary adult home located in \_\_\_\_\_, New York, commonly known and described as \_\_\_\_\_ and hereinafter more particularly described (the "Facility"). The parties hereby agree as follows:

PART I

SECTION 1. THE PREMISES.

SECTION 1.1. REAL PROPERTY. Landlord hereby demises and leases to Tenant and Tenant hereby leases and takes from Landlord, the real estate (the "Real Property") and the improvements thereon which comprise the Facility as more particularly described in Exhibit A attached hereto and by this reference made a part hereof.

SECTION 1.2. PERSONAL PROPERTY. Landlord hereby demises and leases to Tenant, and Tenant hereby leases and takes from Landlord, the equipment, furniture, furnishings, and fixtures listed on Exhibit B, attached hereto and by this reference made a part hereof and any additional items added thereto from time to time by written agreement between Landlord and Tenant (such equipment, furniture, furnishings, vehicles and fixtures, together with all additions thereto or replacements thereof will hereinafter be referred to as the "Personal Property"). If any equipment, in addition to the Personal Property is "necessary" (as that term is defined below) to operate the Facility, Tenant shall so advise Landlord and all such additional equipment shall be acquired by and at the cost of Tenant and at the expiration or earlier termination of this Lease shall become the property of Landlord and shall remain upon and be surrendered with the Premises as a part thereof at the end of the Lease Term unless (i) where the Lease is terminated as a result of the purchase of the Premises by Tenant in accordance with the terms of Section 21 hereof, (ii) an agreement reached between Landlord and Tenant to the contrary is reached at the time of the installation or acquisition of said additional equipment, or (iii) a contrary election by Landlord is made in writing to Tenant delivered within thirty (30) days prior to the expiration or earlier termination of this Lease. If any equipment, in addition to the Personal Property is deemed by Tenant to be convenient to operate the Facility, Tenant shall be entitled to

1

acquire the same at its sole cost and expense and the same shall be and remain the property of Tenant in accordance with the terms of SECTION 1.2.1 below. The term "necessary" as used in this Section 1.2 above shall mean and refer to the procurement of any such equipment, furnishings and other personal property as shall be required pursuant to the requirements of any applicable ordinances, rules, laws, regulations and/or statutes which govern or control the operation and/or ownership of the Facility.

SECTION 1.2.1. MAINTENANCE OF PERSONAL PROPERTY:

TENANT'S EQUIPMENT. Tenant shall keep all of the Personal Property in good working order and condition at Tenant's sole cost and expense and at the expiration or termination of the Lease Term (as defined below) shall return and deliver all of such property to Landlord in as good order and condition as when received hereunder, reasonable wear and tear excepted. If necessary for the proper operation of the Facility, Tenant shall during the Lease Term replace part or all of the items of Personal Property which have been damaged or destroyed or become worn out or obsolete, and such replacement shall be at the sole cost of Tenant, but any such replaced equipment shall be and remain the property of Landlord. Tenant may place additional property on the Premises (not required for replacement of property covered in this Lease), including furniture, fixtures, equipment and computer hardware and software and the same shall be and remain the property of Tenant ("Tenant's Equipment"). Notwithstanding anything herein contained to the contrary, all fixtures, including trade fixtures, attached to the Premises and which Tenant does not elect to remove at the expiration or earlier termination of the Lease Term shall become Landlord's property at the end of the Lease Term and shall be surrendered to Landlord in good condition, reasonable wear and tear excepted; provided, however, that in connection with any such removal, Tenant shall be required to repair any damage to the Premises caused by such removal; and provided, further, that this provision shall not apply in the event of the termination of the Lease due to the Tenant's purchase of the Premises.

SECTION 1.3. PREMISES. Throughout this Lease Agreement, the Real Property, the Facility and the Personal Property will collectively be referred to as the "Premises". The Premises shall in no event include Tenant's Equipment as defined in SECTION 1.2.1. Subject to the satisfaction or waiver by Tenant of the condition to the effectiveness of this Lease set forth in Part II, Section 5.7 and to the representations and warranties of Landlord set forth in Part II, Section 1.2, all of which the representations and warranties shall survive the commencement of the

Lease Term, Tenant accepts the Premises in its existing condition and state of repair and without any representation by or on behalf of Landlord, except those representations specifically set forth herein, and Tenant agrees that Landlord shall not be liable for any latent, patent or other defects in the Premises unless Tenant is able to demonstrate that Landlord had knowledge of and failed to disclose the same to Tenant prior to the commencement of the Lease Term.

2

SECTION 1.4. FACILITY NAME. Throughout the term of this Lease Agreement, Landlord hereby consents to the Tenant's use of the tradenames set forth in Exhibit C.

SECTION 2. TERM.

SECTION 2.1. INITIAL LEASE TERM. The Term of this Lease shall commence as of the first day of the next calendar following the date Tenant is issued all approvals and licenses as may be required in order to fully operate the Facility for the permitted use as set forth in SECTION 1.4 below, provided that all of the conditions set forth in Part II, Sections 5 and 6 have been satisfied (or waived in writing by Tenant or Landlord, respectively) (the "Commencement Date") and shall extend for a period of fifteen ( 15) years thereafter, unless extended or earlier terminated as provided herein (the "Initial Lease Term"). Landlord and Tenant agree to attach as Exhibit D hereto a written confirmation of the Commencement Date. Landlord and Tenant further agree that in the event all of the conditions set forth in Part II, Sections 5 and 6 have been satisfied or waived other than the financing conditions set forth in Sections 5.11 and 6.5, Landlord may, but shall not be obligated to, upon Tenant's request, waive such condition and the term thereof shall commence notwithstanding that the same have not yet been satisfied.

SECTION 2.2. RENEWAL. Tenant shall have the right to renew this Lease beyond the Initial Lease Term for two (2) successive five (5) year renewal terms (the "Renewal Terms" and together with the Initial Lease Term, the "Lease Term") by giving notice of the exercise of its renewal option at least one hundred and eighty days prior to the expiration of the Initial Lease Term and each Renewal Term, as applicable. In the event Tenant is in default on the date of the giving of notice of its intent to renew the Lease, the notice shall be ineffective; in the event Tenant is in default on the date the applicable Renewal Term is to commence, then the Renewal Term shall not commence and this Lease shall expire as of the end of the Initial Lease Term or the applicable Renewal Term. Tenant shall have no right to renew this Lease beyond the expiration of the final Renewal Term.

SECTION 2.2.1. TERMINATION OF LEASE. Upon the termination of this Lease, whether by forfeiture, lapse of time or otherwise, or upon termination of Tenant's right to possession of the Premises, Tenant will at once surrender and deliver the Premises, together with all improvements thereof, to Landlord, (but specifically excluding Tenant's Equipment) in good condition and repair, reasonable wear and tear excepted. At the time of surrender, Tenant shall remove Tenant's Equipment; provided, however, that Tenant shall repair any injury or damage done to the Premises which may result from such removal and shall restore the Premises to the same condition as existed prior to the installation thereof; provided, further, that the provisions of this SECTION 2. 1. 2 shall not apply in the event of the termination of this Lease as a result of Tenant's purchase of the Premises pursuant to SECTION 21.

3

SECTION 3. RENT.

SECTION 3.1. BASIC RENT: INITIAL TERM AND RENEWAL TERMS. During the Initial Lease Term, the annual rent due hereunder (the "Basic Rent") shall be equal to \_\_\_\_\_ Dollars (\$\_\_\_\_\_) subject to increases as provided for in SECTION 3.4 below, and shall be payable at the times and in manner provided for in SECTION 3.2 below. The Basic Rent shall be allocated between the Real Property and the Personal Property in the manner set forth in Exhibit E attached hereto and by this reference made a part hereof.

SECTION 3.2. LEASE YEAR DEFINED. For purposes of this SECTION 3, a Lease Year shall be the twelve ( 12) month period commencing on the Commencement Date. In the event the Commencement Date shall be other than the first day of the month, Tenant shall pay to Landlord a pro rata portion of rent for the month. All annual rental payments shall be made in advance in equal monthly installments in the amounts specified and shall be paid on the tenth day of each month; provided, however, that the first monthly payment shall be due on the tenth day after the Commencement Date.

SECTION 3.3. PAYMENT OF BASIC RENT. Except as specifically provided for herein, the Basic Rent shall be payable without offset, abatement or other deduction (including offsets resulting from any defaults by Landlord under any other agreement to which he or his affiliates and Tenant or its affiliates may be a party, unless expressly set forth herein) to Landlord at the address set forth in Part III, SECTION 1. 6, or to such other person, firm or corporation at such other address as Landlord may designate by notice in writing to Tenant.

SECTION 3.3.1. NET LEASE. This Lease is intended to be triple net to Landlord, and Tenant shall pay to Landlord, net throughout the Initial Lease Term and any Renewal Term, the Basic Rent described by SECTION 3. 1. , free of any offset, abatement, or other deduction, except as may be expressly set forth herein. Tenant is hereby obligated to make all rental payments set forth herein to Landlord. Landlord shall not be required to make any payment of any kind with respect to the Premises, except as may otherwise be expressly set forth herein. Accordingly, Tenant agrees to pay all additional rent payments described in SECTION 3. 5. and all charges described in SECTION 6 as they become due and payable. Notwithstanding the foregoing, Landlord shall be responsible for making all payments due with respect to any mortgage or deed of trust secured by the Premises (the "Facility Mortgage").

SECTION 3.3.2. NO RELEASE. This Lease shall continue in full force and effect, and the obligations of Tenant hereunder shall not be released, discharged or otherwise affected, by reason of: (i) except as otherwise provided for in SECTION 10, any damage to or destruction of the Premises

4

or any part thereof or, except as otherwise provided for in SECTION 11, the taking of the Premises or any part thereof by condemnation, requisition or otherwise for any reason, (ii) except as otherwise provided for in SECTION 17. 2, any claim which Tenant has or might have against Landlord, or (iii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing. Notwithstanding the foregoing, Landlord acknowledges and agrees that in the event Tenant's right to quiet enjoyment of Premises as set forth in Part I, Section 14 is disturbed as a result of a title defect created by Landlord (including title exceptions related to defects shown by a survey of the Premises) and Landlord fails or is unable within thirty (30) days thereafter to take corrective action to reinstate Tenant's undisturbed right of occupancy, Tenant shall have the right to terminate this Lease as a result thereof upon written notice to Landlord delivered no less than ten (10) days prior to the effective date of said termination.

SECTION 3.3.3. LATE CHARGES. If any payment of any sums required to be paid by Tenant to Landlord under this Lease and payments

made by Landlord under any provision hereof for which Landlord is entitled to reimbursement by Tenant is not paid when due or within ten (10) days after written notice of nonpayment from Landlord, a late charge of one percent (1%) per month on the sums so overdue shall become immediately due and payable to Landlord. No failure by Landlord to insist upon the strict performance by Tenant of Tenant's obligation to pay late charges shall constitute a waiver by Landlord of his rights to enforce the provisions of this Section in any instance thereafter occurring.

SECTION 3.4 RENT INCREASES. The Basic Rent shall be increased commencing on the expiration of the fifth Lease Year and continuing annually thereafter during the Lease Term by an amount equal to \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

SECTION 3.5. ADDITIONAL RENT.

SECTION 3.5.1. TAXES AND OTHER CHARGES. The additional rent shall consist of all real estate taxes, general and special assessments, personal property taxes, and other public charges which are assessed, levied, confirmed, or imposed upon the Premises during the Lease Term, and all sales taxes and other taxes that are now or hereafter may be payable in connection with the Basic Rent payable hereunder during the Initial Lease Term and any Renewal Term (other than income taxes owing by Landlord as a result of Tenant's payment of Basic Rent hereunder and principal and interest payments owing under the Facility Mortgage) and all costs of complying with or payments due as a result of the existence of any covenants, conditions and restrictions of record which affect the Premises (the "CCRs"). Any such taxes, assessments or CCR payments which can lawfully be paid in installments may be so paid by Tenant using the longest payment period permitted by the applicable taxing authority.

5

SECTION 3.5.2. PRORATION. Any taxes and assessments relating to a fiscal period of any authority, a part of which is already included within the Initial Lease Term or any Renewal Term and a part of which is included in a period of time before or after the Initial Lease Term or any Renewal Term, shall be adjusted pro rata between Landlord and Tenant and each party shall be responsible for his or its pro rata share of any such taxes and assessments.

SECTION 3.5.3. INCOME TAXES. Nothing herein shall require Tenant to pay income taxes assessed against Landlord, or estate, succession or inheritance taxes of Landlord.

SECTION 3.5.4. Due Contest. Tenant may contest, in its own name or in the name of Landlord, with Landlord's cooperation, which Landlord agrees to give, the legality or validity of any such tax or assessment or of any law under which the same shall be imposed. This must be done in good faith, with due diligence, and at Tenant's own expense. If Tenant does so contest such tax or assessment beyond the time limit for payment thereof by Tenant, Tenant shall either pay such amount under protest or procure and maintain a stay of all proceedings with adequate bond to enforce collection of such tax or assessment. Once such action is taken by Tenant, Tenant shall not be considered to be in default hereunder with respect thereto. Notwithstanding anything to the contrary, Tenant shall not exercise its contest rights in contravention of any of the terms and conditions of any Facility Mortgage.

SECTION 3.5.5. REFUND CLAIMS. Tenant shall have, and Landlord hereby irrevocably grants to Tenant, the power and authority, at Tenant's cost to make and file and prosecute any statement or report or claim for refund which may be required or permitted by law, as the basis of or in connection with the assessment, determination, equalization, reduction or payment of any and every tax or assessment or license or charge which Tenant is required to pay or discharge hereunder. Landlord agrees that



Tenant shall thereafter be entitled retain for its own account all or any portion of such refunds, rebates or reduction in assessed value which relate to tax periods on and after the Commencement Date.

SECTION 3.5.6. LANDLORD'S PARTICIPATION. Landlord shall not be required to join in any proceedings referred to in this Section, unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by and/or in the name of Landlord, in which event Landlord shall join in such proceedings or permit the same to be brought in his name. Landlord shall not ultimately be subjected to any liability for the payment of any costs or expenses in connection with any such proceedings, and Tenant will indemnify, defend and save harmless Landlord from any such costs and expenses. Tenant shall be entitled to any refund of any Taxes and Assessments and penalties or interest thereon received by Landlord but previously paid or reimbursed in full by Tenant.

6

SECTION 3.5.7. FINAL PAYMENT. Upon the termination of any such proceeding, Tenant shall pay the amount of such taxes and assessments or part thereof as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees, interest, penalties or other liabilities in connection therewith.

SECTION 3.5.8. TIME OF PAYMENT. Tenant shall pay before delinquency any and all real and personal property taxes and assessments, payable hereunder by Tenant. In the event of a late payment, Tenant shall pay all interest and penalties plus the amount due. Tenant shall further provide Landlord with evidence of payment as soon as practicable after Landlord's written request therefor, but in no event beyond thirty (30) days.

SECTION 4. USE OF THE PREMISES/COMPLIANCE WITH LAWS.

SECTION 4.1. NECESSARY APPROVALS. Tenant covenants upon execution of this Lease to proceed with all due diligence to obtain prior to the Commencement Date all approvals and licensing needed to operate the Facility under applicable state and federal law as a \_\_ unit proprietary home for adults or under such designation as may be adopted by the State of New York during the Term hereof and certified to participate in Medicare and/or Medicaid to the extent such participation is available and Tenant elects to participate in either or both of such programs, it being understood and agreed that Tenant shall have no obligation hereunder to seek certification at anytime during the Term under either Medicare or Medicaid even if such certification is available to the Facility. Tenant further covenants and agrees to maintain such licensure and, if applicable, certification in full force and effect throughout the Lease Term. Landlord agrees to assist Tenant, at Tenant's sole cost and expense, as reasonably necessary to obtain such approvals. Tenant may not at anytime reduce the licensed capacity of the Facility or change the licensed category of the units at the Facility without the prior written consent of Landlord, which consent shall not be unreasonably withheld.

SECTION 4.2. GENERAL INSURANCE REQUIREMENTS. After the Commencement Date, Tenant shall neither use nor permit to be used the Premises, or any part thereof, for any purpose which will cause the cancellation of any insurance policy covering the Premises or any part thereof, nor shall Tenant sell or permit to be kept, used or sold in or about the Premises any article which may be prohibited by the standard form of fire insurance policies. Tenant shall, at its sole cost, comply with all of the requirements pertaining to the Premises of any insurance organization or company necessary for the maintenance of insurance, as herein provided, covering the Premises.

SECTION 4.3. UNLAWFUL PURPOSES PROHIBITED. Tenant covenants and agrees that the Premises shall not be used for any unlawful purpose. Tenant shall not commit or suffer to be committed any waste on the Premises, nor shall Tenant cause or permit any nuisance thereon. Tenant further covenants and agrees to comply with the CCRs and that Tenant's use of the Premises and maintenance, alteration, and operation thereof shall at all times conform to all applicable and lawful local, state, and federal laws. Tenant may, however, contest the legality or applicability thereof. This must be done in good faith, with due diligence, without prejudice to Landlord's rights hereunder, and at Tenant's own expense. While such a contest is pending Tenant shall not be considered in default under this SECTION 4.3. Notwithstanding anything to the contrary, Tenant shall not exercise its rights to contest under this section in contravention of the terms and conditions of any Facility Mortgage.

SECTION 4.4. NO ADVERSE CLAIMS. Tenant shall neither suffer nor permit the Premises or the Facility or any portion thereof to be used in such a manner as (i) might reasonably tend to impair Landlord's interest in the Premises or any portion thereof or (ii) may reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

SECTION 4.5. SURVEYS, INVESTIGATIONS AND INSPECTIONS. Upon request, Tenant shall deliver to Landlord a copy of the results of all surveys, investigations and inspections of the Facility and its operation performed by state or federal authorities.

SECTION 4.6. ENVIRONMENTAL LAWS. Tenant shall use the Premises in compliance with all applicable Environmental Laws (as defined below). Tenant shall, at its sole cost and expense, promptly remove or clean up any hazardous substances introduced onto the Premises by Tenant or with its permission or at its sufferance in excess of those substances on the Premises as of the Commencement Date. Tenant may elect to procure at any time during the Lease Term, at Tenant's expense, a Phase I environmental assessment ("Phase I Report") for the Premises. If any such Phase I Report is obtained by Tenant at any time during the first six (6) months of the Initial Lease Term then, for purposes of the first sentence of this Section 4.6, the information provided for in the Phase I Report regarding the type, nature and level of any hazardous substances existing at the Premises shall be prima facie evidence of the substances present at the Premises as of the Commencement Date. Any such removal or cleanup required of Tenant hereunder shall be in compliance with all applicable Environmental Laws. Tenant hereby agrees to indemnify and hold Landlord harmless and agrees to defend Landlord from all losses, damages, claims and liabilities and fines, including costs and reasonable attorneys' fees, of any nature whatsoever in connection with the actual presence upon the Premises of any hazardous substance introduced by Tenant. For purposes hereof, the term Environmental Laws shall mean any and all applicable governmental laws, regulations and requirements relating

to environmental and occupational health and safety matters and hazardous materials, substances or wastes (as defined from time to time under any applicable federal, state or local laws, regulations or ordinances).

SECTION 5. TENANT'S COMPLIANCE WITH MORTGAGE.

SECTION 5.1. FACILITY MORTGAGE. Anything in this Lease contained to the contrary notwithstanding, with respect to any mortgage or mortgages encumbering all or any part of the Premises (each a "Facility

Mortgage"), and provided that Landlord has notified Tenant in writing with respect to the existence and substance thereof, Tenant shall at all times and in all respects fully, timely and faithfully comply with and observe each and all of the conditions, covenants, and provisions required on the part of the Landlord and of which Tenant has received notice under any Facility Mortgage (and to any renewals, modifications, extensions, replacements and/or consolidations thereof of which Tenant has received notice) to which this Lease is subordinate or to which it later may become subordinate, including, without limitation, such conditions, covenants and provisions thereof as relate to the care, maintenance, repair, insurance, restoration, preservation and condemnation of the Premises, provided such conditions, covenants and provisions do not require compliance and observance to a standard or degree in excess of that required by the provisions of this Lease or require performance not required by the provisions of this Lease.

SECTION 5.2. COMPLIANCE WITH FACILITY MORTGAGE.

Subject to the foregoing limitations on Tenant's obligations hereunder, Tenant shall not do or permit to be done anything which would constitute a breach of or default under any obligation of the Landlord under any Facility Mortgage, it being the intention hereof that Tenant shall so comply with and observe each and all of such covenants, conditions and provisions of any such Facility Mortgage so that it will at all times be in good standing and there will not be any default on the part of the Landlord thereunder. However, nothing in this Section contained shall be construed to obligate Tenant to pay any part of the principal or interest secured by any Facility Mortgage or to perform any obligations in excess of those imposed on its under this Agreement.

SECTION 5.3. MORTGAGE RESERVES. Any tax, insurance or replacement reserve required by the holder of any Facility Mortgage during the Term of this Lease, and not otherwise paid by Tenant pursuant to SECTION 3.4, shall be paid by the Tenant to or as directed by Landlord.

SECTION 6. MAINTENANCE, REPAIR, ALTERATIONS AND UTILITIES.

SECTION 6. 1. MAINTENANCE AND REPAIR. Except as otherwise provided herein, Tenant shall, at its own cost, and without expense to the

Landlord, keep and maintain the Premises, including but not by way of limitation, all sidewalks, buildings, roof, walls, mechanical systems, surface parking lots and improvements of any kind which may be a part thereof in good, sanitary and neat order, condition and repair, ordinary wear and tear and obsolescence in spite of repair and acts of God excepted, and, except as specifically provided in SECTION 10, below, restore and rehabilitate any of the Premises which may be destroyed or damaged by fire, casualty or any other cause whatsoever and in such a manner as may be necessary to operate the Facility in accordance with applicable state and/or federal laws or regulations. Tenant shall perform all interior and exterior painting, and maintain the grounds of the Facility in a good and sightly appearance.

SECTION 6.2. ALTERATIONS. Tenant will not remove or demolish any improvement or building which is part of the Premises or any portion thereof or allow it to be removed or demolished, without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion other than where such removal is required to comply with law or in the event of an emergency, in which case said consent shall not be unreasonably withheld. Tenant further agrees that it will not make, authorize or permit to be made any changes or alterations in or to the Premises without first obtaining the Landlord's written consent thereto, which consent shall not be unreasonably withheld if Landlord is satisfied that (i) Tenant has the financial resources to undertake such changes or

alterations and (ii) such changes or alterations will not adversely affect the licensure, certification, if applicable, or value of the Premises. All alterations, improvements and additions to the Premises shall be in quality and class at least equal to the original work and shall become the property of the Landlord and shall meet all building and fire codes, and all other applicable codes, rules, regulations, laws and ordinances. Nothing herein shall be deemed or construed to require Tenant to obtain Landlord's consent to non-structural changes or alterations such as painting, the replacement of wall coverings or the replacement of floor coverings; provided, however, that all such work shall also be in quality and class at least equal to the original work and shall become the property of the Landlord and shall meet all building and fire codes, and all other applicable codes, rules, regulations, laws and ordinances.

SECTION 6.3. UTILITIES. Tenant shall pay all charges for water, electricity, gas, sewage, waste, trash and garbage disposal, telephone, cable television, and other services furnished to the Premises from and after the Commencement Date.

10

SECTION 7. LIENS AGAINST THE PREMISES.

SECTION 7.1. NO LIENS BY TENANT. Tenant will not permit the Premises or Tenant's leasehold estate hereunder to become subject to any lien, charge, or encumbrance. Tenant shall maintain the Premises free from all orders, notices, and violations filed or entered by any public or quasi-public authorities. Notwithstanding the foregoing, in the event any such lien, charge, or encumbrance is imposed, Tenant may contest any such lien, charge, encumbrance, order, notice or violation. This must be done in good faith, with due diligence and at Tenant's own expense and Tenant shall not be considered in default of the provisions of this SECTION 7.1. as a result of such contest.

SECTION 7.2. DISCHARGE BY LANDLORD. Should a judgment on any lien, charge, encumbrance, order, notice or violation be rendered against the Premises and should Tenant fail to discharge such judgment or take action to protest such judgment, Landlord shall have the right, but not the obligation, to discharge said judgment. If Landlord exercises that option, any amounts paid by Landlord shall be due from Tenant as additional rent. Such additional rent shall be due and payable on the next date after the expense is incurred that Basic Rent is otherwise due.

SECTION 7.3. MECHANICS LIENS. Tenant shall take all reasonable steps necessary to ensure that no lien arising under New York law as a result of construction done at the Premises at Tenant's request shall extend to the interest of Landlord in the Premises. Tenant shall pay all costs incurred by Tenant in connection with the construction, alteration, demolition, maintenance and repair of any and all improvements on the Premises. Should a lien or claim of lien be filed against the Landlord's interest in the Premises by any contractor, subcontractor, mechanic, laborer, materialman or any other person whomsoever retained by Tenant, Tenant shall, within sixty (60) days after the filing thereof, cause the same to be discharged of record.

SECTION 8. NON-LIABILITY AND INDEMNIFICATION. During the Term, Tenant agrees to protect, indemnify and save harmless Landlord from and against all claims arising out of or connected with Tenant's use and occupancy of the Premises and shall pay all costs and expenses incurred by Landlord in connection with such claims, including without

limitation, court costs and reasonable attorney's fees for trial and appellate proceedings. Landlord shall be protected hereby from all claims arising during the Term from loss of or damage to property, or death or injury to persons unless such loss, damage, death or injury is caused solely by the negligence or willful actions of Landlord.

SECTION 9. INSURANCE.

SECTION 9.1. LANDLORD'S INTEREST. During the term of this Lease, Tenant shall at all times keep the Premises insured with the kinds and amounts of insurance described below through an insurance carrier qualified to do business in the State of New York. The policies must name Landlord as an additional insured or loss payee (other than with respect to the loss of rental insurance described in Section 9.1.4 the proceeds of which shall be payable solely to Tenant). In addition, the policies shall name as an additional named insured and loss payee any mortgagee under any Facility Mortgage by way of a standard form of mortgagee's loss payable endorsement if required by the terms of any Facility Mortgage. Any loss adjustment shall require the written consent of Landlord and Tenant and shall be in accordance with the terms of any Facility Mortgage. Evidence of insurance shall be deposited with Landlord and, if requested, with Landlord's Mortgagee. The policies on the Premises shall insure against the following risks:

SECTION 9.1.1. CASUALTY. Loss or damage by fire and such other risks as may be included in the broadest form of extended coverage insurance from time to time available, including but not limited to, flood insurance if the Premises are located in a designated flood zone, and earthquake insurance (provided that such flood and earthquake insurance are reasonably available at commercially reasonable rates), in amounts sufficient to prevent Landlord or Tenant from becoming a coinsurer within the terms of the applicable policies and in any event in an amount not less than one hundred percent (100%) of the then full replacement value thereof (as defined below in SECTION 9.2.1);

SECTION 9.1.2. SPRINKLER. Loss or damage from leakage of any sprinkler system now or hereafter installed on the Premises to the extent it is included in Tenant's applicable insurance policy as a covered peril;

SECTION 9.1.3. BOILER COVERAGE. Loss or damage by explosion of steam boilers, pressure vessels or similar apparatus, now or hereafter installed in the Facility, in such limits with respect to any one accident as may be reasonably requested by Landlord from time to time; provided, however, in no event shall such coverage be in an amount greater than that required by the terms of any Facility mortgage;

SECTION 9.1.4. RENT LOSS. Loss of rental under a rental value insurance policy covering risk of loss during the reconstruction resulting from the occurrence of any of the hazards described in SECTIONS 9.1.1., 9.1.2. or 9.1.3. in an amount sufficient to pay the rental required under this Lease for a period of at least 6 months;

SECTION 9.1.5. LIABILITY. Claims for personal injury or property damage under a policy of general public liability insurance with amounts of not less than One Million Dollars (\$ 1,000,000) (combined single limit for

personal injury, including bodily injury or death, property damage) together with an excess "umbrella" liability policy providing liability insurance in excess of the comprehensive general liability coverage with a limit of not less than Five Million Dollars (\$5,000,000). If obtainable at a reasonable cost, the public liability insurance shall be on an occurrence basis as opposed to a claims made basis. If Tenant is unable to obtain such an occurrence basis policy, then Tenant shall obtain a claims made policy but shall also obtain, if obtainable at a reasonable cost, an owner's protective policy on an occurrence basis with the limits as set forth above;

SECTION 9.1.6. PROFESSIONAL LIABILITY. Claims arising out of professional liability in an amount not less than One Million Dollars (\$1,000,000) for each occurrence and Three Million Dollars (\$3,000,000) in the aggregate. If obtainable at a reasonable cost, the professional liability insurance shall be on an occurrence basis as opposed to a claims made basis. If Tenant is unable to obtain such an occurrence basis policy, then Tenant shall obtain a claims made policy but shall also obtain, if obtainable at a reasonable cost, an owner's protective policy on an occurrence basis with the limits as set forth above; and

SECTION 9.1.7. WORKERS COMPENSATION. Claims for employee injuries covered by worker's compensation in accordance with the requirements of New York law.

SECTION 9.2. FULL REPLACEMENT VALUE DEFINED. The term "full replacement value" as used herein, shall mean the actual replacement cost thereof from time to time, less exclusions provided in the normal fire insurance policy. At the commencement of this Lease, the parties agree that the full replacement value is as set forth in Exhibit F.

SECTION 9.3. ADDITIONAL INSURANCE. In addition to the insurance described above, Tenant shall maintain such additional insurance as may be reasonably required from time to time by any mortgagee under the terms of any Facility Mortgage.

SECTION 9.4. RATING. All insurance policies carried by either party covering the Premises including without limitation contents, fire and casualty insurance, shall expressly waive any right of subrogation on the part of the insurer against the other party. The insurance company or companies issuing the above referenced policies shall have a financial strength rating (Best's rate) of at least an A and a financial size of at least Class X, as reported in the most recent edition of Best's Key Rating Guide Property/Casualty.

SECTION 9.5. CLAIMS. To the extent that either Landlord or Tenant may have claims against the other for fire or casualty damage to the Premises or any portion thereof (including business interruption caused thereby), which claims are covered by insurance payable to and protecting the claiming party, the claiming party hereby agrees to exhaust all claims under such insurance before asserting any claims against the other party. The foregoing shall apply to claims for damage whether such damage is caused, wholly or partially, by the negligence or other fault of the other party or his or its agent, employees, subtenants, licensees, or assignees.

SECTION 9.6. PAYMENT AND CERTIFICATES. Tenant shall pay all of the insurance premiums, and deliver certificates evidencing such coverage to Landlord prior to their effective date (and, with respect to any

renewal policy ten (10) days prior to the expiration of the existing policy), and in the event of the failure of Tenant either to effect such insurance in the names herein called for or to pay the premiums therefor, or to deliver such certificates to Landlord at the times required, Landlord shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums therefor, which premiums shall be repayable to Landlord upon written demand therefor.

SECTION 9. 7. BLANKET POLICIES. Notwithstanding anything to the contrary contained in this Section, Tenant's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant; provided, however, that the coverage afforded Landlord will not be reduced or diminished or otherwise be different from that which would exist under a separate policy meeting all other requirements of this Lease by reason of the use of such blanket policy of insurance, and provided further that the requirements of this SECTION 9 are otherwise satisfied.

#### SECTION 10. DAMAGE AND DESTRUCTION.

SECTION 10.1. REPAIR BY TENANT. In the event that any part of the improvements located on the Premises or the Personal Property shall be damaged or destroyed by fire or other casualty whether or not the same is insured by the insurance required by the terms hereof (any such event being called a "Casualty"), Tenant shall promptly replace, repair and restore the same as nearly as possible to its condition immediately prior to such Casualty, in accordance with all of the terms, covenants and conditions and other requirements of this Lease and any mortgage applicable in the event of such Casualty; provided, however, that in the event of a Casualty occurring during the last six months of the Initial Term or any Extended Term or in the event as a result of said Casualty, the Premises have been rendered Unsuitable for their Primary Intended Use (as defined below), then Tenant shall have the right to terminate this Lease upon forty-five (45) days written notice to Landlord and, in such event, all insurance proceeds shall be payable to Landlord. The Premises and the Personal Property shall

14

be so replaced, repaired and restored as to be of at least equal value and substantially the same character as prior to such Casualty. If the estimated cost of any such restoring, replacing or repairing is Ten Thousand Dollars (\$ 10,000) or more, the plans and specifications for same shall be first submitted to and approved in writing by Landlord, which approval shall not be unreasonably withheld but which approval may be conditioned on the receipt by Landlord of the approval of the holder of any Facility Mortgage, and, if reasonably required by Landlord or by the holder of any Facility Mortgage, Tenant shall immediately select an independent architect, approved by Landlord, who shall be in charge of such repairing, restoring or replacing. Tenant covenants that it will give to Landlord prompt written notice of any Casualty affecting the Premises or any portion thereof.

SECTION 10.2. COMMENCEMENT AND COMPLETION OF REPAIR. Within thirty (30) days after a Casualty or within fifteen ( 15) days after approval of the plans and specifications, whichever is later, Tenant shall commence to restore the affected portion of the Premises and Tenant shall complete the same within 180 days thereafter, provided, however, that in the case of damage resulting from a Casualty which cannot with due diligence be restored within said 180 day period, Tenant shall have an additional period of time to complete the repair or reconstruction, provided Tenant is proceeding promptly and with due diligence to complete the repair or restoration. Tenant may utilize all insurance proceeds available for any such repair or restoration, which Landlord covenants and agrees to make available to Tenant subject to the terms of SECTIONS 6 and 10.3 hereof and any required approval of any mortgagee. Tenant's obligation to make Rent payments and to pay all other charges required by this Lease shall not be abated during the period of the repair or restoration.

SECTION 10.3. CONDITIONS OF RELEASE OF INSURANCE PROCEEDS. No sums shall be disbursed by Landlord toward such repairing, rebuilding, restoring or replacing unless Tenant shall not be in default hereunder and it shall be first made to appear to the reasonable satisfaction of Landlord that either (i) the amount received from such insurance proceeds is sufficient to complete such work or (ii) if there is an amount required in excess of the amount received from such insurance proceeds, either said excess amount has been expended by Tenant or that Tenant has deposited such excess funds with Landlord so that, in either case, the total amount available will be sufficient to complete such repairing, rebuilding, restoring or replacing in accordance with the provisions of any mortgage and any plans and specifications submitted in connection herewith or in the event there is no mortgage to Landlord's reasonable satisfaction, free from any liens or encumbrances of any kind whatsoever and the funds held by Landlord shall be disbursed only upon the presentment of architect's or general contractor's certificates, waivers of lien, contractor's sworn statements, and other evidence of cost and payments as may be reasonably required by Landlord or the holder of any Facility Mortgage.

15

SECTION 10.4. IMPOSSIBILITY OF REPAIR. Notwithstanding anything to the contrary contained in this SECTION 10, Tenant shall not be obligated to rebuild if the repairs or reconstruction of the damage cannot be made under existing laws, ordinances, statutes or regulations of any governmental authority applicable thereto or in the event the holder of the Facility Mortgage fails or refuses to make the insurance proceeds available to the Landlord or Tenant. In the event Tenant is unable to rebuild in accordance with the provisions hereof, this Lease shall terminate effective thirty (30) days after the damage occurs and Tenant shall remit or Landlord shall be entitled to retain all insurance proceeds to Landlord within ten (10) days of said Lease termination date free and clear of all liens or claims and shall promptly, at its own expense, remove from the Premises any of Tenant's Equipment not so damaged or destroyed.

SECTION 10.5. PRIMARY INTENDED USE DEFINED. For the purposes of this SECTION 10 and SECTION 11, the Premises shall be deemed to have been rendered unsuitable for its primary intended use if, in the good faith judgment of Tenant reasonably exercised, the Facility cannot after any such loss be operated on a commercially practicable basis as an proprietary home for adults of the type and quality existing and licensed immediately prior to such loss, taking into account, among other relevant factors, the number of licensed and operational units affected by such loss.

SECTION 10.6. NO ABATEMENT. This Lease shall remain in full force and effect and Tenant's obligation to make rental payments and to pay all other charges required by this Lease shall remain unabated during any period of repair or reconstruction.

SECTION 11. CONDEMNATION.

SECTION 11.1. TAKING OF WHOLE. If, during the Lease Term, so much of the Premises are taken or condemned in fee for a public or quasi-public use that the Premises are rendered Unsuitable For Its Primary Intended Use, this Lease shall terminate. Termination will be effective without entry or notice. Termination shall occur as of the day when possession is required to be surrendered to the taking or condemning authority.

SECTION 11.2. TAKING OF A PORTION. If, during the Lease Term, a portion of the Premises and/or the Facility is taken or condemned in fee for a public or quasi-public use such that the Premises is not rendered Unsuitable For Its Primary Intended Use, this Lease shall not terminate. If, however, as a result of the taking, the number of units available for



operation of the Facility in existence immediately prior to the taking has been or must be reduced, Tenant shall be entitled to an abatement of rent. The rent abatement shall be to the extent that is fair, just and equitable to both Tenant and Landlord, taking into consideration, among other relevant factors, the number of licensed units or suites and/or parking lots, driveways or walkways affected by such loss.

16

SECTION 11.3. DAMAGES FOR TAKING. All damages awarded in connection with the taking of the Premises shall vest in Landlord; provided, however, that Landlord shall make the same available to Tenant for the repair or reconstruction of the Premises. All damages awarded in connection with the taking of the leasehold estate and Tenant's Equipment shall vest in Tenant.

SECTION 12. DEFAULT.

SECTION 12.1. EVENTS OF DEFAULT. The occurrence of any of the events, acts or circumstances described in this SECTION 12.1 shall constitute an Event of Default under this Lease.

SECTION 12.1.1. FAILURE IN PAYMENT. Failure by Tenant to pay in full any rent payable under this Lease when due and the continuance of such failure for ten ( 10) days after Landlord has given Tenant written notice of such failure.

SECTION 12.1.2. FAILURE IN OTHER PERFORMANCE. Failure by Tenant to observe, perform or comply with any of the terms, covenants, agreements or conditions contained in this Lease (other than as specified in SECTION 12.1.1), and the continuance of such failure for thirty (30) days after Landlord has given Tenant notice of such failure. If Tenant has promptly commenced and diligently pursued remedial action within said thirty (30) day period but has been unable to cure its default (except for any default that can be reasonably cured by the payment of money) prior to the expiration thereof, said thirty (30) day period shall be extended for the minimum time reasonably required for the completion of Tenant's remedial action.

SECTION 12.1.3. BANKRUPTCY/INSOLVENCY. The making by Tenant of an assignment for the benefit of its creditors or the commencement of proceedings in a court of competent jurisdiction for reorganization, liquidation or involuntary dissolution of Tenant or for the adjudication of Tenant as a bankrupt or insolvent or for the appointment of a receiver of the property of Tenant, which proceedings are not dismissed and any receiver, trustee or liquidator appointed therein is not discharged, within ninety (90) days after the institution thereof.

SECTION 12.1.4. ABANDONMENT. The abandonment of the Premises by Tenant other than as a result of the damage, destruction or taking thereof.

SECTION 12.1.5. REVOCATION OR TERMINATION OF LICENSE. The final, non-appealable revocation or termination by any governmental agency having jurisdiction over the Facility of Tenant's license to operate the Facility.

17

SECTION 12.1.6. OTHER AGREEMENTS. Failure by Tenant or any affiliate of Tenant to observe, perform or comply with any of the terms, covenants, agreements or conditions of any other lease or agreement with Landlord, which failure continues beyond any grace period specified therein.

SECTION 12.1.7. DISSOLUTION. The failure by Tenant to maintain its existence as a partnership, dissolves or disposes of all or substantially all of its assets, other than in conjunction with an assignment of the Lease to Emeritus Corporation ("Emeritus") or a wholly owned subsidiary thereof if and to the extent Emeritus or said subsidiary is at anytime permitted under New York law to be the licensed operator of the Facility.

SECTION 12.1.8. JUDGMENTS. The entry of a final, non-appealable judgment or series of judgments, which is or are not covered by insurance, in an amount individually or in the aggregate exceeding \$500,000, which judgments remain unsatisfied for a period of 60 days.

SECTION 12.1.9. REMOVAL OF GENERAL PARTNERS. If any of the general partnership interests of Tenant are sold, assigned, conveyed, transferred or changed at any time when Tenant is the tenant hereunder and such sale, assignment, conveyance, transfer or change results in the withdrawal or removal of both of the persons who were general partners of Tenant on the Commencement Date unless said replacement general partners are approved by Landlord, which approval shall not be unreasonably withheld if he is satisfied as to (A) their operational expertise or the operational expertise of any manager retained by them and (B) their ability to meet the financial obligations imposed on Tenant hereunder and which approval shall be granted in the event Emeritus continues to operate the Facility under the Administrative Services Agreement (as defined below).

## SECTION 12.2. REMEDIES.

SECTION 12.2.1. RIGHT OF RE-ENTRY. Upon the occurrence of any Event of Default, Landlord, in addition to the other rights or remedies he may have, shall have the immediate right of re-entry without any additional notice to Tenant.

SECTION 12.2.2. RIGHT OF TERMINATION. Should Landlord elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Landlord may either terminate this Lease or it may from time to time, without terminating this Lease, relet the Premises or any part thereof for the account of Tenant for such term or terms, which may be for a term shorter than or for a term extending beyond the Lease Term, and at such rental or rentals and on such other terms and conditions as Landlord, in his reasonable discretion, may deem advisable. Should Landlord at any time terminate this Lease as a

18

result of any Event of Default, in addition to any other remedy he may have, Landlord may recover from Tenant all damages incurred by reason of such Event of Default, including the cost of recovering the Premises.

SECTION 12.2.3. RIGHT TO TERMINATE POSSESSION. Notwithstanding the foregoing, should Landlord terminate this Lease, Tenant shall have the right to re-enter the Premises within ten (10) days of the termination of Tenant's possession of the Premises for the sole purpose of removing any of Tenant's Equipment located thereon or therein. Whether or not Landlord elects to terminate this Lease, Landlord may terminate Tenant's right to possession of the Premises by any lawful means, in which case all of Tenant's rights in this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. Possession of the Premises includes possession of all Personal Property, residents, resident records, Campus business records, general intangibles and proceeds but specifically excludes possession of Tenant's Equipment.

SECTION 12.2.4. DAMAGES. Any termination of this Lease by Landlord shall not in any event terminate Tenant's obligation to pay Basic

Rent, additional rent and other amounts owed by Tenant pursuant to this Lease for the full Lease term (collectively for purposes of this paragraph the "Rent"). Landlord shall have the right to recover from Tenant (a) the worth, at the time of the award, of the unpaid Rent that had been earned at the termination of this Lease, and (b) the worth, at the time of the award, of the amount by which the unpaid Rent that would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably or has actually been avoided by Landlord, and (c) the present value, at the time of the award, of the amount by which the unpaid Rent for the balance of the Lease Term after the time of the award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably or actually has been avoided by Landlord, and (d) any other amount, and court costs and reasonable attorneys' fees, necessary to compensate Landlord for all detriment and damage proximately caused by Tenant's default. The worth at the time of the award as used in (a) and (b) of the preceding sentence is to be computed by allowing interest at an annual rate of interest of two percent (2%) above the prime rate of interest published in The Wall Street Journal, but in no event at a rate which would be deemed to be usurious under New York law (the "Prime Rate"). In the event that The Wall Street Journal ceases or fails to publish or announce a prime rate, the amounts due hereunder shall bear interest at the Prime Rate announced by the bank designated by Landlord, provided such a bank is among the top twenty-five (25) banks in the United States in terms of deposits. The present value at the time of the award as referred to in (c) above is to be computed by discounting the amount at the annual discount rate of the Federal Reserve Bank of New York at the time of the award, plus 1%; provided, however, notwithstanding any provision herein to the

19

contrary, Landlord shall be entitled to a minimum recovery equal to the amount actually paid by Landlord in whole or in partial satisfaction of any Facility Mortgage if and to the extent the same as a result of the Tenant's default hereunder.

SECTION 12.3. NO REMEDY EXCLUSIVE. No remedy herein conferred upon or reserved to Landlord or Tenant is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right, remedy, or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof unless and until such Event of Default has been cured.

SECTION 13. LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS.

SECTION 13.1. LANDLORD'S OPTION TO PERFORM. If Tenant defaults in the making of any of the payments, or the performance of any of the obligations provided for in this Lease, Landlord may, at his option and on behalf of Tenant, make any such payments or perform any such obligations.

SECTION 13.2. NOTICE TO TENANT. Before exercising that option, however, Landlord must give Tenant written notice of Tenant's default and of Landlord's intention to correct that default. If thirty (30) days after such notice, or such shorter time period as Landlord may specify in the notice if further delay would impair materially any substantial right, property, or benefit of Landlord, Tenant has not corrected such default, Landlord may exercise his rights under this SECTION 13.

SECTION 13.3. REIMBURSEMENT TO LANDLORD. In the event

Landlord performs any obligation on Tenant's behalf, Tenant shall reimburse Landlord for any amounts reasonably paid or expended. This reimbursement shall be due and payable on the next rent payment date after the expense is incurred that rent is otherwise due. Landlord shall not be held liable or in any way responsible for any loss, inconvenience, annoyance or damage resulting to Tenant on account of such performance by Landlord, unless Landlord is found to have been negligent or engaged in willful misconduct in his performance. All amounts payable by Tenant to Landlord under any of the provisions of this Lease, if not paid when the same become due as in this Lease provided or within ten ( 10) days after written demand therefor from Landlord, shall bear interest from the date they become due until paid, at the Prime Rate.

20

SECTION 14. QUIET ENJOYMENT. Landlord covenants and agrees that, so long as Tenant observes and performs all of the covenants, conditions, and stipulations of this Lease, Tenant may lawfully and quietly hold, occupy and enjoy the Premises during the Lease Term subject to the terms of any Facility Mortgage and any Subordination, Non-Disturbance and Attornment Agreement executed in conjunction therewith.

SECTION 15. ASSIGNMENT AND SUBLETTING.

SECTION 15.1. AFFILIATE ASSIGNMENTS. Tenant may, without prior approval from Landlord, sublease the Premises or assign its rights and obligations under this Lease to Emeritus or any sister or subsidiary corporation of Emeritus or a limited liability company or other legal entity owned at least 50% by Tenant, Emeritus or a sister or subsidiary corporation of Emeritus (an "Affiliate"). Tenant shall give Landlord thirty (30) days prior written notice of any such assignment or subletting, and shall give to Landlord, concurrently with such assignment, an executed original assignment agreement wherein such assignee agrees to be bound by the terms and conditions of this Lease. No such assignment shall serve to relieve Tenant (or to the extent they may be severally liable for the obligations of Tenant, its general partners) of liability hereunder unless such a release is specifically approved by Landlord based in his satisfaction with the credit worthiness and operational expertise of the assignee, in which case Landlord shall execute a full release of Tenant and its general partners from any further liability hereunder other than liability, if any, for the acts or omissions of Tenant prior to the date of such assignment. The sale or transfer of the capital stock of Emeritus on a national stock exchange and the issuance of additional shares of stock in Emeritus in an underwritten public offering or a qualified private placement transaction shall not constitute an assignment of this Lease for purposes hereof.

SECTION 15.2. OTHER SUBLEASES AND ASSIGNMENTS.

Tenant may sublease the Premises or assign its rights and obligations under this Lease to a person or entity that is not an Affiliate with the prior written consent of Landlord, which consent shall not be unreasonably withheld. For purposes hereof, Tenant shall be deemed to have assigned its rights hereunder in the event of a voluntary or involuntary sale or assignment of the stock or other ownership interest in Tenant and Landlord shall not be deemed to have unreasonably withheld his consent if he is not reasonably satisfied with the ability of the proposed assignee or sublessee to fulfill the operational and financial obligations imposed on Tenant hereunder or in the event any Facility Mortgage fails or refuses to consent thereto to the extent such consent is required by the terms of any Facility Mortgage. No such sublease or assignment shall serve to relieve Tenant (or to the extent they may be severally liable for the obligations of Tenant, its general partners) of liability hereunder unless such a release is specifically approved by Landlord based in his satisfaction with the credit worthiness and operational expertise of the assignee or sublessee, in which case

Landlord shall executed a full release of Tenant and its general partners from any further liability hereunder other than liability, if any, for the acts or omissions of Tenant prior to the date of such assignment.

SECTION 15.3. LANDLORD ASSIGNMENT RIGHTS. Landlord may at any time assign his rights and obligations under this Lease, provided, however, that Landlord shall furnish to Tenant a written statement from Landlord's assignee that such assignee recognizes all of Tenant's rights under this Lease. Notwithstanding the failure of Landlord to obtain said recognition from Landlord's assignee, any assignment of Landlord's rights and obligations shall be subject to Tenant's rights under this Lease.

SECTION 15.4. SUBSEQUENT ASSIGNMENTS AND SUBLEASES. No assignment or subletting that is approved pursuant to this SECTION 15 shall be deemed to remove any subsequent assignment or subletting from the provisions of this SECTION 15, it being the intent hereof that every assignment and subletting, whenever occurring, shall require the same approval as is set forth herein for an original assignment or subletting.

SECTION 16. ADMINISTRATIVE SERVICES AGREEMENT. Landlord acknowledges and agrees that Tenant shall be permitted, without the consent of Landlord, to enter into an Agreement to Provide Administrative Services (the "Administrative Services Agreement") with Emeritus or any Affiliate, pursuant to which Emeritus or such Affiliate shall provide to Tenant administrative and consulting services in connection with the operation of the Facility. The Administrative Services Agreement shall be substantially in the form of Exhibit G attached hereto and incorporated herein by this reference, subject to amendment.

SECTION 17. ATTORNMENT; RIGHT TO CURE LANDLORD'S DEFAULT.

SECTION 17.1. ATTORNMENT. Tenant covenants and agrees that, if by reason of a default upon the part of the Landlord herein in the performance of any of the terms and conditions of any Facility Mortgage, the estate of Landlord thereunder is terminated by summary disposition proceedings or otherwise, Tenant will attorn to the then holder of such Facility Mortgage or the purchaser in such foreclosure proceedings, as the case may be, and will recognize such holder of the Facility Mortgage or such purchaser as the Landlord under this Lease; provided, however, that the holder of such Facility Mortgage or the purchaser in foreclosure proceedings agrees in writing not to disturb Tenant's quiet enjoyment of the Premises so long as Tenant is not in default hereunder. Tenant covenants and agrees to execute and deliver, at any time and from time to time, upon reasonable request of Landlord or the holder of such Facility Mortgage or the purchaser in foreclosure, any instrument which may be necessary to evidence such attornment.

SECTION 17.2. TENANT'S CURE RIGHT. Tenant shall have the right to cure any default by Landlord in the payment of any amounts due under any Facility Mortgage secured by the Premises and to offset any such sums against its rent next coming due under the terms of this Lease.

SECTION 18. LANDLORD INSPECTION. Landlord may enter upon the Premises during normal business hours and upon prior notice for the purpose of inspecting the same provided that such inspection shall not disrupt or materially interfere with Tenant's operations at the Premises and

provided further that Landlord shall have the right to enter with or without notice in the event of an emergency or to conduct visual inspections of the Premises only.

SECTION 19. ESTOPPEL STATEMENTS. The parties hereto shall, at any time and from time to time upon not less than ten (10) days prior written notice from the other party, execute, acknowledge and deliver to such other party, in form reasonably satisfactory to such other party or to such other party's mortgagee, a written statement certifying (if true) that this Lease is unmodified and in full force and effect (or if there have been modifications stating the nature thereof, that such other party is not in default hereunder (or specifying the nature of any default), the date to which rental and other charges have been paid and such other information as may be reasonably required by such other party. It is intended that any such statement delivered pursuant to this subsection may be relied upon by any prospective purchaser or mortgagee of the Premises and their respective successors and assigns.

SECTION 20. SUBORDINATION. This Lease is and shall be subject and subordinate to the lien of any Facility Mortgage which may now or hereafter affect the Premises and to all renewal, modifications, consolidations, replacements and extensions thereof. Tenant agrees to execute and deliver upon demand such further instruments subordinating this Lease to any such liens or encumbrances as shall be reasonably requested by Landlord.

SECTION 21. RIGHT OF FIRST REFUSAL. During the Lease Term, Landlord shall not sell the Premises to a third party ("Third Party") at any time when this Lease is not in default unless and until (i) Landlord has received and, subject to Tenant's right of first refusal, accepted a bona fide written offer ("Offer") from Third Party containing the sales price and all of the terms and conditions upon which Landlord is willing to sell the Premises to Third Party, and (ii) Landlord has provided Tenant with a copy of the Offer and twenty (20) days in which to advise Landlord that it will acquire the Premises on the same terms and conditions as reflected in the Offer or that it will waive its right of first refusal with respect to the Offer. In the event Tenant elects to purchase the Premises on the terms reflected in the Offer, the closing of the sale of the Premises shall occur in accordance with the Offer. In the event Tenant elects to waive its right to purchase the Premises on the terms reflected in the Offer, said

23

waiver shall not affect Tenant's right of first refusal with respect to any future offers. Further, in the event Tenant elects to waive its right to purchase the Premises on the terms reflected in said Offer and the closing of the transaction provided for therein fails to close within ninety (90) days after said waiver or the terms of the sale are revised to be more favorable to the purchaser than those reflected in the Offer, Landlord shall not be permitted to sell the Premises without first offering Tenant the right to purchase the same on the terms reflected in the Offer or in the revised Offer, as applicable, all in accordance with the terms hereof.

SECTION 22. TRANSFER OF OPERATIONS.

SECTION 22.1. GENERAL OBLIGATIONS. The date on which this Lease either terminates pursuant to its terms or is terminated by either party whether pursuant to a right granted to it hereunder or otherwise other than as a result of the exercise by Tenant purchase of the Premises pursuant to Section 21 shall be referred to as the "Transfer Date" in this Section. On the Transfer Date, this Lease shall be deemed and construed as an absolute assignment for purposes of vesting in Landlord all of Tenant's right, title and interest in and to the following intangible property which is now or hereafter used in connection with the operation of the Premises (the "Intangibles") and an assumption by Landlord of Tenant's obligations under the Intangibles:

(a) service contracts for the benefit of the Premises to which Tenant is a party, and which can be terminated without penalty by Tenant or within thirty (30) or fewer days' notice;

(b) any provider agreements with Medicare, Medicaid or any other third-party payor programs (excluding the right to any reimbursement for periods on or prior to the Transfer Date) entered in connection with the Premises to the extent assignable by Tenant;

(c) all licenses, permits, accreditations, and certificates of occupancy issued by any federal, state, municipal or quasi-governmental authority for the use, maintenance or operation of the Premises, running to or in favor of Tenant, to the extent assignable by Tenant;

(d) all documents, charts, personnel records, property manuals, resident records and lists maintained with respect to the Premises (subject to the resident's rights to access to his/her medical records as provided by law and confidentiality requirements), books, records, files and other business records attributable to the business or operations of the Premises except to the extent included within Tenant's Equipment as defined in Section 1.2.1, in which case the same shall be and remain the property of Tenant;

(e) all existing agreements with residents and any guarantors thereof of the Premises, to the extent assignable by Tenant (excluding the right to any payments for periods prior to the Transfer Date);

24

(f) all assignable guaranties and warranties in favor of Tenant with respect to the Premises and/or the Personal Property;

(g) all other assignable intangible property not enumerated herein which is now or hereafter used in connection with the operation of the Premises as an assisted living facility except to the extent such intangible property is included in Tenant's Equipment, in which case the same shall be and remain the property of Tenant; and

(h) the business of the Tenant as conducted at the Premises as a going concern, including but not limited to the names of the business conducted thereon and all telephone numbers presently in use therein but specifically excluding the name "Emeritus" and any variations thereof and any proprietary materials developed by Tenant and used in connection with its operations at locations other than the Facility.

SECTION 22.2. REVENUES AND EXPENSES. Tenant shall be responsible for and pay all accrued expenses with respect to the Premises and Personal Property accruing on or before 12:00 am on the Transfer Date and shall be entitled to receive all revenues from the Premises for the period through 12:00 am on the Transfer Date. Landlord shall be responsible for and pay all accrued expenses with respect to the Premises and the Personal Property accruing on or after 12:01 a.m. on the day after the Transfer Date and shall be entitled to receive and retain all revenues from the Premises accruing on or after 12:01 a.m. on the day after the Transfer Date. Within fifteen (15) business days after the Transfer Date, the following adjustments and prorations shall be determined as of the Transfer Date and the party to whom payment is owed shall receive said payment within said fifteen (15) day period:

(a) Real estate taxes, ad valorem taxes, school taxes, assessments and personal property, intangible and use taxes, if any. If the actual ad valorem taxes are not available on the Transfer Date for the tax year in which the Transfer Date occurs, the proration of such taxes shall be estimated at the Transfer Date based upon reasonable information available to the parties, including information disclosed by the local tax office or other public information, and an adjustment shall be made when actual figures are published or otherwise become available.

(b) Tenant will terminate the employment of all employees on the Transfer Date. The obligation for wages and the obligation, if any, to pay to employees of the Premises accrued vacation and sick leave pay or employee severance pay or other accrued benefits which may be payable as the result of any termination of any employee on or prior to the Transfer Date for the period prior to the Transfer Date shall remain the Tenant's obligation after the Transfer Date.

(c) Landlord shall receive a credit equal to any advance payments by residents of the Premises to the extent attributable to periods following the Transfer Date.

25

(d) The present insurance coverage on the Premises shall be terminated as of the day next following the Transfer Date.

(e) All other income from, and expenses of, the Premises (other than mortgage interest, principal and trustee fees), including but not limited to public utility charges and deposits, maintenance charges and service charges shall be prorated between Tenant and Landlord as of the Transfer Date. Tenant shall, if possible, obtain final utility meter readings as of the Transfer Date. To the extent that information for any such proration is not available on the Transfer Date, Tenant and Landlord shall effect such proration within ninety (90) days after the Transfer Date.

(f) Tenant shall receive a credit equal to (i) any sums held in escrow by Landlord or the holder of any mortgage for taxes or insurance premiums and paid by Tenant; and (ii) any other sums paid by Tenant and being held by Landlord for the benefit of Tenant provided that any such sums are not needed to pay costs and expenses which relate to the period prior to the Transfer Date, in accordance with the applicable provisions of this Lease.

(g) Landlord shall receive a credit for any amounts due by Tenant pursuant to the terms of this Lease, including payments due to third party vendors, which are paid by Landlord on behalf of Tenant.

SECTION 22.3. POSSESSION. All necessary arrangements shall be made to provide possession of the Premises to Landlord on the Transfer Date, at which time of possession Tenant shall deliver to Landlord all medical records, resident records and other personal information concerning all residents residing at the Premises as of the Transfer Date and other relevant records used or developed in connection with the business conducted at the Premises other than Tenant's corporate business records, manuals, forms and systems documentation except to the extent specifically excluded under Section 22.1. Such transfer and delivery shall be in accordance with all applicable laws, rules and regulations concerning the transfer of medical records and other types of resident records.

SECTION 22.4. RESIDENT FUNDS. Within fifteen ( 15) days following the Transfer Date, Tenant shall provide Landlord with an accounting of all funds belonging to residents at the Premises which are held by Tenant in a custodial capacity, if any. Such accounting shall set forth the names of the residents for whom such funds are held, the amounts held on behalf of each such resident and the Tenant's warranty that, to the actual current knowledge of Tenant, the accounting is true, correct and complete. Additionally, Tenant, in accordance with all applicable rules and regulations, shall make all necessary arrangements to transfer such funds to a bank account designated by Landlord, and Landlord shall in writing acknowledge receipt of and expressly assume all the Tenant's financial and

26



custodial obligations with respect thereto, it being the intent and purpose of this provision that, on the Transfer Date, Tenant will be relieved of all fiduciary and custodial obligations, and that Landlord will assume all such obligations and be directly accountable to the residents, with respect thereto. Notwithstanding the foregoing, Tenant will indemnify and hold Landlord harmless from all liabilities, claims and demands, including reasonable attorney's fees, in the event the amount of funds, if any, transferred to Landlord's bank account as provided above, did not represent the full amount of the funds then or thereafter shown to have been delivered to Tenant as custodian that remain undisbursed for the benefit of the resident for whom such funds were deposited, or with respect to any matters relating to resident funds which accrue during the Term of this Lease.

SECTION 22.5. Accounts Receivable. All cash, checks and cash equivalents at the Premises and deposits in bank accounts (other than resident trust accounts) relating to the Premises on the Transfer Date shall remain Tenant's property after the Transfer Date. All accounts receivable, loans receivable and other receivables of Tenant, whether derived from operation of the Premises or otherwise, shall remain the property of Tenant after the Transfer Date. Tenant shall retain full responsibility for the collection thereof. Landlord shall assume responsibility for the billing and collection of payment on account of services rendered by it on and after the Transfer Date. In order to facilitate Tenant's collection efforts, Tenant agrees to deliver to Landlord, within a reasonable time after the Transfer Date, a schedule identifying all of those balances owing for the month prior to the Transfer Date and Landlord agrees to apply any payments received which are specifically designated as being applicable to services rendered in the case of the Facility prior to the Transfer Date to reduce the pre-Closing balances of said residents by promptly remitting said payments to Tenant. In the event payments specifically indicate that they relate to services rendered or rental periods post-Transfer, such payments shall be retained by Landlord. In the event no designation is made, such payments shall be applied first to Tenant's accounts receivable, with the balance, if any, applied to Landlord's accounts receivable. Landlord shall cooperate with Tenant in Tenant's collection of its pre-Transfer Date accounts receivable. Subject to the provisions of Section 22.6, Landlord shall have no liability for uncollectible receivables and shall not be obligated to bear any expense as a result of such activities on behalf of Tenant. Subject to the provisions of Section 22.6, Landlord shall remit to Tenant or its assignee those portions of any payments received by Landlord which are specifically designated as repayment or reimbursement received by Landlord arising out of cost reports filed for the cost reporting periods ending on or prior to the Transfer Date.

SECTION 22. 6. THIRD PARTY PAYOR PAYMENTS. With respect to residents in the Premises on the Transfer Date receiving payments from Medicare, Medicaid or any other third party payor, Landlord and Tenant agree as follows:

27

(a) With respect to Medicare and Medicaid residents, if any, Landlord and Tenant agree that payment for in-house residents covered by Medicare or Medicaid on the Transfer Date will, under current regulations, be paid by Medicare or Medicaid directly to Tenant for services rendered at the Premises prior to the Transfer Date allocated on the per diem basis. Said payments shall be the sole responsibility of Tenant and, except as provided in SECTION 22. 6(b), Landlord shall in no way be liable therefor. After the Transfer Date, Landlord and Tenant shall each have the right to review supporting books, records and documentation that are in the possession of the other relating to Medicare or Medicaid payments.

(b) If, following the Transfer Date, Landlord receives payment from any state or federal agency or third-party payor which represents reimbursement with respect to services provided at the Premises prior to the

Transfer Date, including payments arising from rate adjustments occurring after the Transfer Date, Landlord agrees that it shall remit such payments to Tenant. Payments by Landlord to Tenant shall be accompanied by a copy of the appropriate remittance advices.

SECTION 22.7. FURTHER ASSURANCES. In addition to the obligations required to be performed hereunder by Tenant and Landlord at the Transfer Date, Tenant and Landlord agree to perform such other acts, and to execute, acknowledge, and/or deliver subsequent to the Transfer Date such other instruments, documents and materials, as the other may reasonably request in order to effectuate the consummation of the transaction contemplated herein. The obligations hereunder shall survive termination or expiration of the Lease.

SECTION 22.8. INDEMNIFICATION. Tenant and Landlord each, for himself, itself, and his and its successors and assigns hereby indemnifies and agrees to defend and hold the other and his and its successors and assigns harmless from any and all claims, demands, obligations, losses, liabilities, damages, recoveries and deficiencies (including interest, penalties and reasonable attorney's fees, costs and expenses) (hereinafter collectively "the Claims") which either of them may suffer as a result of the breach by the other party in the performance of any of his or its commitments, covenants, or obligations under this SECTION 22. Tenant does further agree to indemnify, defend and hold harmless Landlord from any such Claims or with respect to any suits, arbitration proceedings, administrative actions or investigations which relate to the use by Tenant of the Premises prior to the Transfer Date or any liability which may arise from operation of the Premises as an assisted living facility prior to the Transfer Date. Landlord does further agree to indemnify, defend and hold harmless Tenant from any such Claims or with respect to any suits, arbitration proceedings, administrative actions or investigations which relate to the ownership of the Premises by Landlord or the use of the Premises by Landlord or the operation thereon of the Facility after the Transfer Date. The rights of Landlord under this paragraph are without

28

prejudice to any other remedies not inconsistent herewith which Landlord may have against Tenant pursuant to the terms of this Lease and the rights of Tenant hereunder are subject to SECTION 8.3. hereof.

SECTION 22.9. EFFECT OF DEFAULT. Anything to the contrary contained in this SECTION 22 notwithstanding, in the event the termination of this Lease is due to a default by Tenant, none of the provisions of this SECTION 22 shall in any way limit, reduce, restrict or modify the rights granted to Landlord pursuant to SECTIONS 12.2 AND 12.3 of this Lease. If the termination of this Lease is a result of an Event of Default, then to the extent any monies are due to Tenant pursuant to this SECTION 22, such sums shall first be applied by Landlord to any damages suffered by Landlord as a result of Tenant's Event of Default, with any excess remitted to Tenant subject to the terms of this SECTION 22.

## PART II

Landlord and Tenant hereby enter into this Lease in reliance on the following representations and warranties and covenants and subject to the following conditions:

### SECTION 1. REPRESENTATIONS AND WARRANTIES.

SECTION 1.1. TENANT'S REPRESENTATIONS. Tenant represents, warrants and covenants to Landlord as follows:

SECTION 1.1.1. Tenant is a general partnership duly organized and

validly existing under the laws of the state of Washington and is duly qualified to do business in the State of New York.

SECTION 1.1.2. This Agreement is valid, binding and enforceable against Tenant in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, or other similar laws relating to the enforcement of creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). The execution of this Agreement and the consummation of the transactions contemplated herein do not and will not result in a breach of the terms and conditions of nor constitute a default under or violation of Tenant's partnership agreement or any law, regulation, court order, mortgage, note, bond, indenture, agreement, license or other instrument or obligation to which Tenant is now a party or by which any of its assets may be bound or affected, subject, however, to Tenant obtaining those third party consents and regulatory approvals for which it is responsible under the terms hereof.

29

SECTION 1.1.3. Subject to obtaining the third party consents and regulatory approvals which it and/or Landlord are required to use their best efforts to secure, Tenant has full power and authority to execute and to deliver this Agreement and all related documents, and to carry out the transactions contemplated herein and therein.

SECTION 1.1.4. Tenant has duly and properly taken or obtained or caused to be taken or obtained, or prior to the Commencement Date will have duly and properly taken or obtained or caused to be taken or obtained, all action necessary for Tenant (i) to enter into and to deliver this Agreement and any and all documents and agreements executed by Tenant in connection herewith or in furtherance hereof and (ii) to carry out the terms hereof and thereof and the transactions contemplated herein and therein, which action shall include, but not be limited to, using its best efforts to obtain the third party consents and regulatory approvals for which it is responsible under the terms hereof. No other action by or on behalf of Tenant is or will be necessary to authorize the execution, delivery and performance of this Agreement and any documents and agreements executed by Tenant in connection herewith or consummation of the transactions contemplated herein, other than securing those third party consents and regulatory approvals for which Tenant is responsible under the terms hereof. Nothing herein shall be construed as a guarantee by Tenant that it will be able to secure the third party consents or regulatory approvals for which it is responsible, but rather this paragraph shall be limited to Tenant's representation and warranty that it will use its best efforts to secure such third party consents and regulatory approvals.

SECTION 1.1.5. There is no, nor has Tenant received written or verbal notice of any, litigation, administrative investigation or other proceeding pending or, to the best of Landlord's knowledge based on written notice with respect thereto, threatened by any governmental authority having jurisdiction over Tenant or by any other party against or relating to Tenant where the amount claimed exceeds \$1,000,000 in any single action or \$10,000,000 in the aggregate. Tenant is not a party to or bound by any orders, judgments, injunctions, decrees or settlement agreements under which it may have continuing obligations as of the date hereof or as of the Commencement Date and which are likely to materially restrict or affect the present business operations of Tenant taken as a whole. The right or ability of Tenant to consummate the transaction contemplated herein has not been challenged by any governmental agency or any other person and Tenant has no knowledge of the occurrence of any event which would provide a reasonable basis for any such litigation, investigation or other proceeding.

SECTION 1.1.6. Tenant has not (i) made any contributions, payments or gifts to or for the private use of any governmental official, employee or agent where either the payment or the purpose of such contribution, payment or gift is illegal under the laws of the United States or the jurisdiction in which made, (ii) established or maintained any unrecorded

30

fund or asset for any purpose or made any false or artificial entries on its books, (iii) given or received any payments or other forms of remuneration in connection with the referral of residents which would violate the Medicare/Medicaid Anti-kickback Law, Section 1128(b) of the Social Security Act, 42 USC Section 1320a-7b(b) or any analogous state statute or (iv) made any payments to any person with the intention or understanding that any part of such payment was to be used for any purpose other than that described in the documents supporting the payment.

SECTION 1.1.7. No representation or warranty by or on behalf of Tenant contained in this Agreement, as those representations have been modified by the terms of any written disclosure to Landlord and no statement contained in any certificate, list, exhibit, or other instrument furnished or to be furnished to Landlord pursuant hereto contains or will contain any untrue statement of a material fact, or omits or will omit to state any material facts which are necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading.

SECTION 1.2. LANDLORD REPRESENTATIONS. Landlord represents, warrants and covenants to Tenant as follows:

SECTION 1.2.1. This Agreement is valid, binding and enforceable against Landlord in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws relating to the enforcement of creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). Except to the extent consent may be required under the Facility Mortgage if the same is encumbering the Premises on the Commencement Date or under any written financing commitment issued to Landlord as of the Commencement Date, the execution of this Agreement and the consummation of the transactions contemplated herein in accordance with the terms hereof do not and will not result in a breach of the terms and conditions of nor constitute a default under or violation of any law, regulation, court order, mortgage, note, bond, indenture, agreement, license or other instrument or obligation to which Landlord is now a party or by which any of Landlord's assets may be bound or affected.

SECTION 1.2.2. Landlord has authority to execute and to deliver this Agreement and all related documents, and to carry out the transactions contemplated herein and therein and (i) to own the Premises as the same is presently owned and (ii) to conduct his business as the same is now being conducted.

31

SECTION 1.2.3. True and correct copies of the financial statements requested by Tenant relating to the operations of Landlord at the Facility for the fiscal year ended December 31, 1995 are attached hereto as Exhibit H. Except as otherwise noted therein, all such financial statements have been prepared in accordance with generally accepted accounting principles

("GAAP") consistently applied, fairly represent the financial condition, and accurately set forth in all material respects as and to the extent required by GAAP the results of the operations of Landlord at the Facility for the periods covered thereby subject to customary year end adjustments (the "Landlord Financials"). Any financial statements prepared by Landlord subsequent to the date of the Landlord Financials or the date hereof will fairly represent the financial condition, and will accurately set forth in all material respects the results of the operations, of Landlord for the periods covered thereby and will be provided to Tenant within ten (10) days after the completion thereof.

SECTION 1.2.4. Since the date of the Landlord Financials there has not been any material adverse change in the financial condition (including, but not limited to, the working capital), business, assets, liabilities or results of operations of the Facility, whether in the ordinary course of business or otherwise.

SECTION 1.2.5. Landlord has all material licenses, permits and authorizations necessary for the lawful ownership and operation of the Facility ( the "Landlord Licenses"). True and correct copies of the licenses issued most recently by the applicable health care authority with respect to the operation of the Facility are attached hereto as Exhibit I. Landlord has not received written or verbal notice of any action or proceeding which has been initiated or is proposed to be initiated by the appropriate state or federal agency having jurisdiction thereof, to either revoke, withdraw or suspend any of the Landlord Licenses [or to terminate the participation of the Facility in either the Medicare or Medicaid Programs (to the extent it participates therein)] or any judicial or administrative agency judgment or decision not to renew any of the Landlord Licenses or any licensure or certification action of any other type, which would have a material adverse effect on the business, assets or financial condition of the Facility.

SECTION 1.2.6. With respect to the compliance of the Facility with law:

(a) Set forth in Exhibit J is a list of the most recent licensure or certification surveys for the Facility, copies of which have been made available to Tenant as of the date hereof. The Facility and its current operation and use is in substantial compliance with all applicable municipal, county, state and federal laws, regulations, ordinances, standards and orders and with all municipal health, building and zoning by-laws and regulations (including, without limitation, the building, zoning and life

safety codes) where the failure to comply therewith would have a material adverse effect on the business, property, condition (financial or otherwise) or operation thereof;

(b) Except as set forth in Exhibit K, there are no outstanding cited deficiencies or written work orders of any authority having jurisdiction over the Facility requiring conformity to any applicable statute, regulation, ordinance or bylaw, which have not been corrected as of the date hereof and all such outstanding deficiencies and work orders will be satisfied by Landlord prior to the Commencement Date; provided, however, that in the event said deficiencies or work orders are of a nature that they cannot be completed prior to the Commencement Date, Tenant shall permit Landlord such reasonable access to the Facility as he may need to complete the same and Landlord shall proceed with all due diligence to complete the same as soon as practicable after the Commencement Date;

(c) Landlord has not received written or, to the best of Landlord's knowledge, verbal notice from any licensing or certifying agency supervising or having authority over the Facility requiring it to be reworked or redesigned or additional furniture, fixtures, equipment or inventory to be

provided thereat so as to conform to or comply with any existing law, code or standard except where the requirement either (i) has been fully satisfied prior to the date hereof, (ii) will be satisfied by Landlord prior to the Commencement Date, (iii) will be in the process of being satisfied in the ordinary course of Landlord's business pursuant to the terms of a Plan of Correction or other documentation submitted to and approved by the appropriate authority or (iv) will be the subject of a valid written waiver issued by the applicable licensing or certifying agency; and

(d) If and to the extent applicable, Landlord has no knowledge based on the results of facility surveys or complaint investigations provided verbally or in writing to the Facility by the applicable supervising agency or authority that the Facility participating in the Medicare or Medicaid Programs is not in substantial compliance with all Conditions and Standards of Participation in the Medicare and Medicaid Programs.

(e) There is no action pending or threatened against the Facility to revoke or suspend its license or to ban or limit admissions thereto or, to the extent applicable, to terminate or not renew its participation in the Medicare or Medicaid Programs.

SECTION 1.2.7. There are no agreements not terminable at will with residents of the Facility which provide for the provision of the care routinely provided at said facility for the duration of the resident's stay at the Facility for no consideration nor will Landlord enter into any such agreements between the date hereof and the Commencement Date.

33

SECTION 1.2.8. All of the books and records of the Facility, including resident records and patient trust fund records, are true and correct in all material respects.

SECTION 1.2.9. Landlord has fee title to the Premises free and clear of all liens, charges and encumbrances other than the liens provided for in Part II, Section 5.4.

SECTION 1.2.10. There are no union contracts in effect between Landlord, on the one hand, and the employees of the Facility, on the other hand. To the best of Landlord's knowledge, none of his employees who are not currently members of a labor union are actively seeking the formation of a labor union at the Facility. Landlord is not a party to any labor dispute, it being agreed that a claim for wrongful termination shall not, for purposes of this Section 1.2.11 be deemed to be a labor dispute. Landlord is not a party to any union contracts with respect to the Facility.

SECTION 1.2.11. All tax and other returns, reports and filings of any kind or nature, required to be filed by Landlord with respect to his ownership of and operations at the Facility prior to date of execution of this Agreement have been properly completed and timely filed, or extensions for the filing thereof have been timely secured, with all such filings being in material compliance with all applicable requirements and all taxes due with respect to Landlord have been timely paid, except to the extent that the same are being duly contested in good faith in accordance with applicable law and adequate reserves therefor are reflected on the Landlord Financials or will be reflected in any subsequent financials prepared in accordance with the representations and warranties contained in this Agreement.

SECTION 1.2.12. Except in accordance, and in compliance, with any and all applicable local, state and federal governmental laws, regulations and requirements (collectively, the "Environmental Laws") relating to environmental and occupational health and safety matters, and hazardous materials, substances or wastes (as defined from time to time under any applicable Environmental Laws), Landlord has not released into the

environment or discharged, placed or disposed of any such hazardous materials, substances or wastes or caused the same to be so released into the environment or discharged, placed or disposed of at, on or under the Facility other than to the extent the same will not have a material adverse affect on the condition, financial or otherwise, of the Premises. With respect to the Premises to the Landlord's actual knowledge, (i) except to the extent permitted by applicable Environmental Laws, no hazardous materials, substances or wastes are located on or at the Premises have been released into the environment or discharged, placed or disposed of in, on or under the Premises, (ii) except to the extent permitted by applicable Environmental Laws, no underground storage tanks are or have been located at the Premises, (iii) the Premises are not located on property which was used as a dump for waste material, and (iv) the Premises comply with,

34

and at all times during the period of their ownership by Landlord have complied with, all Environmental Laws, except to the extent in each of the foregoing clauses (i) through (iv) that any such non-compliance would not have a material adverse effect on the Facility. Landlord has not received any written notice from any governmental authority or any written complaint from any third party with respect to his alleged noncompliance with, or potential liability under, any Environmental Laws at the Premises which remains unresolved as of the date hereof. All written environmental assessments prepared by or on behalf of Landlord regarding hazardous waste conditions at the Premises which are in the possession of Landlord have been made available to Tenant.

SECTION 1.2.13. Landlord has duly and properly taken or obtained or caused to be taken or obtained, or prior to Closing will have duly and properly taken or obtained or caused to be taken or obtained, all action necessary for Landlord (i) to enter into and to deliver this Agreement and any and all documents and agreements executed by Landlord in connection herewith or in furtherance hereof and (ii) to carry out the terms hereof and thereof and the transaction contemplated herein and therein. No other action by or on behalf of Landlord is or will be necessary to authorize the execution, delivery and performance of this Agreement and any documents and agreements executed by Landlord in connection herewith or the transactions contemplated herein. No other action by or on behalf of Landlord is or will be necessary to authorize the execution, delivery and performance of this Agreement and any documents and agreements executed by Landlord in connection herewith or consummation of the transactions contemplated herein, other than securing those third party consents and regulatory approvals for which Landlord is responsible under the terms hereof. Nothing herein shall be construed as a guarantee by Landlord that it will be able to secure the third party consents or regulatory approvals for which it is responsible, but rather this paragraph shall be limited to Landlord's representation and warranty that it will use his best efforts to secure such third party consents and regulatory approvals.

SECTION 1.2.14. Except as set forth in Exhibit L there is no, nor has Landlord received written or verbal notice of any, litigation, administrative investigation or other proceeding pending or, to the best of Landlord's knowledge based on written notice with respect thereto, threatened by any governmental authority having jurisdiction over Landlord or the Premises or by any other party where the amount claimed exceeds \$50,000 in any single action or \$100,000 in the aggregate. Landlord is not a party to nor is Landlord or the Premises bound by any orders, judgments, injunctions, decrees or settlement agreements under which it may have continuing obligations as of the date hereof or as of the Commencement Date and which are likely to materially restrict or affect the present business operations of the Facility. The right or ability of Landlord to consummate the transaction contemplated herein has not been challenged by any governmental agency or any other person and Landlord has no knowledge of the occurrence of any event which would provide a reasonable basis for any such litigation, investigation or other proceeding.

SECTION 1.2.15. Landlord has not (i) made any contributions, payments or gifts to or for the private use of any governmental official, employee or agent where either the payment or the purpose of such contribution, payment or gift is illegal under the laws of the United States or the jurisdiction in which made, (ii) established or maintained any unrecorded fund or asset for any purpose or made any false or artificial entries on his books, [(iii) given or received any payments or other forms of remuneration in connection with the referral of residents which would violate the Medicare/Medicaid Anti-kickback Law, Section 1128(b) of the Social Security Act, 42 USC Section 1320a-7b(b) or any analogous state statute) or (iv) made any payments to any person with the intention or understanding that any part of such payment was to be used for any purpose other than that described in the documents supporting the payment.

SECTION 1.2.16. The Facility is duly licensed as an adult proprietary home to operate \_\_\_ units and , to the extent applicable, is duly certified to participate in Medicare and Medicaid. The Facility is in good condition and repair and all of the Personal Property and major mechanical systems located at or used in connection with the operation of the Facility are in good working order, condition and repair ordinary wear and tear and damage due to casualty excepted. The roof of the Facility does not as of the date hereof leak in any material respect. The Personal Property is all of the property necessary for the operation of the Facility at its current occupancy level. There is no action pending, or to the best knowledge of Landlord, recommended by the appropriate state or federal agencies having jurisdiction thereof which, if decided adversely to Landlord, would have a material adverse effect on the Facility, its operations or business.

SECTION 1.2.17. On the Commencement Date, the Facility shall have an inventory of non-perishable food, central supplies, linens, housekeeping supplies, kitchen supplies, nursing supplies and other supplies, which will be sufficient in condition and quantity to operate the Facility at its normal capacity for a period of two weeks and an inventory of perishable food at the levels normally maintained by Landlord.

SECTION 1.2.18. Set forth in Exhibit C is a true and complete list of the trade names under which Landlord is doing business in connection with his operations at the Facility. Landlord has not sought protection for such names under state or federal trademark or tradename laws. Landlord has not received any notice from any person challenging or questioning the right of Landlord to use any such trade names.

SECTION 1.2.19. Attached hereto as Exhibit M is a true and correct copy of an exemplar of the forms of rental or admission agreement entered into by Landlord with each of the current residents of the Facility and each of the rental or admission agreements entered into by Landlord is in substantially the form as the exhibit attached hereto. Each of the rental or admission agreements executed by Landlord with the residents of the

Facility (the "Leases") is in full force and effect and none of the Leases has been modified or amended except as set forth in Exhibit M. Landlord is not in default of any of his obligations under the Leases nor is Landlord aware of any default or any action which, with the passage of time or the giving of notice or both would constitute a default under the Leases by any of the tenants who are parties thereto. On the Commencement Date Landlord shall deliver to Tenant duly executed assignments of the Leases.

SECTION 1.2.20. Attached hereto as Exhibit N is a true and correct rent roll as of August 1, 1996 which identifies each of the residents of the Facility, the monthly rent currently being paid by each such resident or



tenant and the date to which said rent has been paid and, in the event of any rent delinquencies, an explanation of the reasons therefor and the efforts being undertaken by Landlord to collect said rent. Landlord shall update the rent roll on the Commencement Date.

SECTION 1.2.21. Set forth in Exhibit O is a true and correct list of the operating contracts to which Landlord is a party in connection with his operations at the Facility (the "Operating Contracts"). Each of the Operating Contracts is in full force and effect and none of the Operating Contracts has been modified or amended except as set forth in Exhibit O Landlord is not in default of any of his obligations under the Operating Contracts nor is Landlord aware of any default or any action or omission which, with the passage of time or the giving of notice or both, would constitute a default under the Operating Contracts by any other party thereto. On the Commencement Date, Landlord shall deliver to Tenant a duly executed assignment of any of the Operating Contracts which Tenant elects to assume pursuant to Part II, Section 3.1.2.

SECTION 1.2.22. No representation or warranty by or on behalf of Landlord contained in this Agreement, as those representations have been modified by any written exceptions thereto delivered by Landlord to Tenant and no statement contained in any certificate, list, exhibit, or other instrument furnished or to be furnished to Tenant pursuant hereto contains or will contain any untrue statement material fact, or omits or will omit to state any material facts which are necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading.

SECTION 1.3. Each party hereby represents, covenants, and warrants to the other that it has employed no broker or finder in connection with the transaction contemplated herein. Each party agrees to pay any commission or finder's fee which may be due on account of the transaction contemplated herein to any other broker or finder employed by it, and to indemnify the other party hereto against any claim for any commission or finder's fee made by any other broker allegedly employed by it and from and against any and all costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorneys fees and costs.

37

SECTION 2 COVENANTS OF LANDLORD. Landlord covenants and agrees for the benefit of Tenant as follows:

SECTION 2.1. Between the date hereof and the Commencement Date, except as contemplated by this Agreement or with the consent of Tenant, which consent shall not be unreasonably withheld, conditioned or delayed:

SECTION 2.1.1. Landlord will operate the Facility only in the ordinary course and with due regard to the proper maintenance and repair of the Real Property and the Personal Property;

SECTION 2.1.2. Landlord will take all reasonable action to preserve the goodwill and the present occupancy level of the Facility;

SECTION 2.1.3. Except in the ordinary course of business, Landlord will not make any material change in the operation of the Facility nor sell or agree to sell any items of machinery, equipment or other fixed assets of the Facility nor otherwise enter into any agreements materially affecting the Facility or the operation thereof;

SECTION 2.1.4. Landlord will use his reasonable efforts to retain the goodwill of the employees of Landlord located at or connected with the operation of the Facility and will provide Tenant with notice in the event of any union organizing activities or contract negotiations are commenced after the date hereof;

SECTION 2.1.5 Except in the ordinary course of business, Landlord will not increase the compensation or bonuses payable or to become payable to any of his employees located at or connected with the operation of the Facility or the Landlord corporate or regional offices or grant any severance benefits to any such employees other than to the extent such bonuses or severance payments impose no obligation on Tenant after the Commencement Date;

SECTION 2.1.6. Landlord will not enter into any written employment agreements in connection with the operation of the Facility;

SECTION 2.1.7. Landlord will not, except in the ordinary course of business, enter into any contract or commitment affecting the Premises or incur any additional indebtedness or amend, extend or renew any current debt instruments, whether in the ordinary course of business or otherwise, nor will Landlord declare or pay any dividend or other distribution with respect to any of the Landlord's assets used in connection with the operation of the Facility;

SECTION 2.1.8. During normal business hours, Landlord will provide Tenant and its agents and employees with access on twenty-four (24) hours notice to the books and records of Landlord and the Facility provided they do not interfere with the operation thereof;

38

SECTION 2.1.9. Landlord will operate the Facility in substantial compliance with all applicable municipal, county, state and federal laws, regulations, ordinances, standards and orders as now in effect (including, without limitation, the building, zoning and life safety codes as currently applied with respect thereto) where the failure to comply therewith could have a material adverse effect on the business, property, condition (financial or otherwise) or operation thereof;

SECTION 2.1.10. Landlord will take all reasonable action to achieve substantial compliance with any laws, regulations, ordinances, standards and orders applicable to the Facility which are enacted or issued after execution of this Agreement and prior to the Commencement Date where the failure to comply therewith could have a material adverse effect on the business, property, condition (financial or otherwise) or operation thereof;

SECTION 2.1.11. Landlord will maintain the Premises in substantially the same condition as they were in at the date hereof, ordinary wear and tear, insured casualty loss and taking by eminent domain excepted;

SECTION 2.1.12. Landlord will provide Tenant with copies of monthly financial statements prepared in the ordinary course of business;

SECTION 2.1.13. Landlord will provide Tenant with copies of all licensure or certification surveys received by Landlord and the related Plans of Correction prepared by Landlord;

SECTION 2.1.14. Landlord will pay as and when due the accounts payable which arise in the ordinary course of business, except to the extent that the amount owing is being duly contested by Landlord and such contest does not materially affect Landlord or the Facility;

SECTION 2.1.15. As soon as practicable after the date hereof but in no event later than October 1, 1996, Landlord will deliver to Tenant (i) a UCC-1 search report in the name of Landlord and the Facility conducted at the state and county level, (ii) at Tenant's expense, a title insurance commitment for the Premises with a value equal to the present value of the aggregate rent due hereunder during the Initial Term and each Renewal Term (the "Title Commitment") and (iii) copies of any existing survey maps for the Premises (the "Survey");

SECTION 2.1.16. Within five (5) days after Landlord's receipt of

Tenant's title, UCC search and survey objections pursuant to Part II, Section 3.1.1, Landlord shall advise Tenant whether it intends to correct the defects to which Tenant has objected.

SECTION 2.1.17. Landlord will maintain in force the existing insurance coverage with respect to the Facility;

39

SECTION 2.1.18. Landlord will file all returns, reports and filings of any kind or nature, or to secure timely extensions for the filing thereof, required to be filed by Landlord [including, but not limited to, state and federal tax returns and Medicare and Medicaid cost reports with respect to the Facility] and will timely pay all taxes or other obligations which are due and payable with respect thereto, except to the extent that the same are being duly contested in good faith in accordance with applicable law and such contest does not materially affect Landlord or the Premises;

SECTION 2.1.19. Landlord will use reasonable efforts to cause all of the conditions set forth in Part II, Sections 5 and 6 which are within Landlord's control to be satisfied and Landlord will not take any action inconsistent with its obligations under this Agreement or which could hinder or delay the consummation of the transaction contemplated by this Agreement or which is intended to cause any representation, warranty or covenant made by Landlord in this Agreement or in any certificate, list, exhibit, or other instrument furnished or to be furnished pursuant hereto, or in connection with the transaction contemplated hereby, to be untrue in any material respect as of the Commencement Date;

SECTION 2.1.20. Neither Landlord nor any of his advisors or others authorized to act on his behalf shall directly initiate or solicit discussions relating to any alternative acquisition proposal or similar transaction including, without limitation, a merger or other business combination involving Landlord or the Premises or any part thereof, or offer to acquire or convey in any manner, directly or indirectly, all or substantially all of the equity interests in Landlord or the Premises; provided, however, that public announcements of the transaction contemplated by this Agreement shall not be prohibited hereby;

SECTION 2.1.21. Landlord will provide to Tenant copies of all material documents which relate to, and, upon request, with verbal or written updates concerning the status of, any litigation filed as of the date hereof or filed from and after the date hereof by or against Landlord after the date of this Agreement but prior to the Commencement Date where the amount claimed or assessed by management of Landlord as likely to be claimed exceeds \$500,000;

SECTION 2.1.22. Landlord will not agree to do or to cause to be done any of the acts which it has covenanted not to do under this Part II, Section 2.1 ; and

SECTION 2.1.23. Landlord will proceed with all due diligence to secure the regulatory approvals and third party consents for which it is responsible under the terms hereof.

40

SECTION 2.2. On the Commencement Date, Landlord will deliver to Tenant the following:

SECTION 2.2.1. The Resident Deposits (as defined in Part II, Section 7.2);

SECTION 2.2.2. The Benefits Schedule (as defined in Part II, Section 7.1 );

SECTION 2.2.3. The Premises in good condition and repair, ordinary wear and tear excepted;

SECTION 2.2.4. The Vacation Pay to Tenant in accordance with the provisions of Part II, Section 7.1;

SECTION 2.2.5. A certificate of Landlord dated as of the Commencement Date, certifying in such detail as Tenant may reasonably specify the fulfillment of the conditions set forth in Part II, Section 5.2;

SECTION 2.2.6. A duly executed Assignment of the Operating Contracts described in Part II, Section 1.2.22 to the extent Tenant elects to assume the same in accordance with the provisions of Part II, Section 3.1.2, which shall be in substantially the form attached hereto as Exhibit P (the "Operating Contract Assignment Agreement");

SECTION 2.2.7. A duly executed Assignment of the Leases, which Assignment shall include an assignment of all of Landlord's right, title and interest in and to any resident deposits or security deposits being held by Landlord under the terms thereof and shall be in substantially the form attached hereto as Exhibit Q (the "Lease Assignment Agreement"); and

SECTION 2.2.8. The Title Insurance Policy (as defined in Part II, Section 5.4).

SECTION 2.3. From and after the Commencement Date, Landlord shall:

SECTION 2.3.1. Cooperate with Tenant in the event it is required to include audited financial statements with respect to the Facility in its filings with the United States Securities and Exchange Commission; and

SECTION 2.3.2. Take such actions and properly execute and delivery to Tenant such further instruments of assignment, conveyance and transfer as, in the reasonable opinion of counsel for Tenant and Landlord, may be reasonably necessary to assure, complete an evidence the transaction provided for herein.

SECTION 3. TENANT'S COVENANTS. Tenant covenants and agrees with Landlord as follows:

SECTION 3.1. Between the date hereof and the Commencement Date, except as contemplated by this Agreement or with the consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed:

SECTION 3.1.1. Within ten ( 10) days after its receipt of the Title Commitment and the Survey and within ten (10) days after its receipt of the UCC search report, Tenant shall advise Landlord in writing of its objections, if any, to the Title Commitment and Survey and the UCC search report, respectively. If Landlord refuses to correct some or all of the title, survey or lien defects objected to by Tenant or to give Tenant reasonable assurances that the same will be corrected as of the Commencement Date, Tenant shall have ten ( 10) days to advise Landlord of its decision to close, notwithstanding the defects, or of its election to terminate this Agreement, in which case neither party shall have any further rights or obligations

hereunder. Any matter reflected on the Title Commitment or Survey and not objected to by Tenant in accordance with the terms hereof, shall be deemed accepted by Tenant;

SECTION 3.1.2. Within fifteen (15) days after the date hereof, Tenant will advise Landlord in writing which, if any of the Operating Contracts it elects to assume as of the Commencement Date;

SECTION 3.1.3. Tenant will proceed with all due diligence to obtain any third party consents and regulatory approvals for which it is responsible under the terms hereof and/or which it is otherwise required to obtain for its operation of the Premises as a proprietary home for adults.

SECTION 3.1.4. Unless specifically prohibited by law, Tenant will use its best efforts to cause all of the conditions set forth in Part II, Sections 5 and 6 which are within its control to be satisfied and Tenant will not take any action inconsistent with its obligations under this Agreement or which could hinder or delay the consummation of the transaction contemplated by this Agreement or which is intended to cause any representation, warranty or covenant made by Tenant in this Agreement or in any certificate, list, exhibit, or other instrument furnished or to be furnished pursuant hereto, or in connection with the transaction contemplated hereby, to be untrue in any material respect as of the Commencement Date; and

SECTION 3.1.5. Tenant will not agree to do or to cause to be done any of the acts which it has covenanted not to do under this Part II, Section 3.

SECTION 3.2. On the Commencement Date, Tenant will deliver to Landlord the following documents:

42

SECTION 3.2.1. A certificate of a responsible partner of Tenant dated as of the Commencement Date certifying on behalf of Tenant in such detail as Landlord may reasonably specify the fulfillment of the condition set forth in Part II, Section 6.2;

SECTION 3.2.2. The executed Operating Contract Assignment Agreement.

SECTION 3.2.3. The executed Lease Assignment Agreement.

SECTION 3.2.4. The executed Guaranty (as hereinafter defined).

SECTION 3.3. After the Commencement Date, Tenant will:

SECTION 3.3.1. Provide Landlord with access during normal business hours to any books or records which Landlord may need to file or to defend tax returns or other filings filed prior to or subsequent to the Commencement Date which relate to the period prior to the Commencement Date; and

SECTION 3.3.2 Take such actions and properly execute and delivery such further instruments as Landlord may reasonably request to assure, complete and evidence the transaction provided for in this Agreement.

SECTION 4. MUTUAL COVENANTS. Following the execution of this Agreement, Landlord and Tenant agree:

SECTION 4.1. If any event should occur, either within or without the knowledge or control of any party, which would prevent fulfillment of the conditions to the obligations of any party hereto to consummate the transactions contemplated by this Agreement, to use his, its or their reasonable efforts to cure the same as expeditiously as possible;

SECTION 4.2. To cooperate fully with each other in preparing, filing, prosecuting, and taking any other actions which are or may be reasonable and necessary to obtain the consent of any governmental instrumentality or any third party, to accomplish the transactions contemplated by this Agreement;

SECTION 4.3. To deliver such other instruments of title, certificates, consents, endorsements, assignments, assumptions and other documents or instruments, in form reasonably acceptable to the party requesting the same and his/its counsel, as may be reasonably necessary to carry out and/or to comply with the terms of this Agreement and the transactions contemplated herein;

43

SECTION 4.4. To confer on a regular basis with the other, report on material operational matters and promptly advise the other orally and in writing of any change or event having, or which, insofar as can reasonably be foreseen could have, a material adverse effect on such party or which would cause or constitute a material breach of any of the representations, warranties or covenants of such party contained herein;

SECTION 4.5. To promptly provide the other (or his/its counsel) with copies of all other filings made by such party with any state or federal governmental entity in connection with this Agreement or the transactions contemplated hereby;

SECTION 4.6. Each of Tenant and Landlord will use his/its best efforts to obtain prior to the Commencement Date all consents, approvals and licenses necessary to permit the consummation of the transactions contemplated by this Agreement, including, but not limited to, such licensure and certification approval as may be necessary to enable Tenant to lawfully own and/or operate the Facility from and after the Commencement Date and the consent of his/its lenders, lessors and other third parties to the extent required under any loan documents, lease agreements, management agreements or other instruments to which it is a party.

SECTION 4.7. The parties shall consult with each other prior to the issuance by either party of any press release or any written statement with respect to this Agreement or the transactions contemplated hereby.

SECTION 5. TENANT'S CONDITIONS TO EFFECTIVENESS OF LEASE. The commencement of the term of this Lease on the Commencement Date shall be subject to the satisfaction, by said Commencement Date, of the following conditions to the reasonable satisfaction of Tenant, any or all of which may be waived by Tenant in writing:

SECTION 5.1. Tenant shall have received all third party consents and regulatory approvals, including but not limited to, all licenses necessary to operate the Facility subject to no conditions not acceptable to Tenant, and shall have satisfied any and all conditions to the effectiveness thereof.

SECTION 5.2. All of the representations and warranties of Landlord set forth herein shall be true and correct as of the Commencement Date in all material respects and Landlord shall have performed as of the Commencement Date all of his obligations hereunder which it is required to perform as of said date.

SECTION 5.3. Tenant shall be satisfied that the zoning of the Facility permits it to be operated as currently operated and imposes no conditions which would limit the right or ability of Tenant to rebuild or repair the same

in the event of any damage or destruction thereto.

44

SECTION 5.4. A title insurance policy providing for extended leasehold coverage shall have been issued to Tenant with respect to the Premises subject only to the following exceptions: (i) the lien for taxes which are not yet due and payable and (ii) covenants, easements and restrictions of record, provided the improvements do not encroach upon any easement or such covenants, easements and restrictions of record do not adversely affect Tenant's ability to operate the Facility as a proprietary home for adults, (iii) liens and encumbrances created by the Facility Mortgage, and (iv) such other liens and encumbrances of record as may be reasonably approved by Tenant, it being understood and agreed that the parties in possession and mechanics lien exceptions shall not be approved by Tenant (the "Title Policy").

SECTION 5.5. Tenant shall be satisfied with the Survey of the Premises.

SECTION 5.6. Tenant shall be satisfied with the results of the UCC Search.

SECTION 5.7. Tenant shall be satisfied with the results of its due diligence investigation of Landlord and the Premises, which investigation shall include, but not be limited to, a review of (I) the books and records of Landlord related to the Facility, (ii) the books and records of the Facility, including records relating to escrow accounts, accounts payable, leases or occupancy agreements in effect with the residents of the Facility, operating statements for the prior three (3) years, rent rolls for the prior three (3) years, operating contracts with vendors and other third parties providing goods and services to the Facility, (iii) any MAI appraisals of the Premises in the possession of Landlord, (iv) a structural inspection of the Premises conducted by an engineer retained by Tenant and (v) any seismic assessments, wetlands and soils reports in Landlord's possession and delivered to Tenant or otherwise acquired by Tenant at its own cost and expense.

SECTION 5.8. Tenant shall be satisfied with the results of any Phase I Report which Tenant elects to obtain prior to the Commencement Date.

SECTION 5.9. Landlord shall not be in default with respect to the Leases or any of the Operating Contracts assumed by Tenant.

SECTION 5.10. The Premises shall not have been damaged or destroyed nor taken by condemnation or eminent domain proceeds nor subject to any pending condemnation action or eminent domain proceeding.

SECTION 5.11. The refinancing of the Facility debt shall have been completed on terms acceptable to Landlord and its lender.

45

SECTION 5.12. Landlord and Tenant shall have entered into Lease Agreements in substantially the same form as this Lease Agreement with respect to those proprietary homes for adults listed in Exhibit R (the "Related Facilities") and the term of each of such leases shall have commenced, except in the case of the Perinton Park facility, where the term may commence after the Commencement Date hereof if the construction of such facility has not been completed as of the Commencement Date hereof.

SECTION 6. LANDLORD'S CONDITIONS TO EFFECTIVENESS.

The commencement of the term of this Lease on the Commencement Date shall be subject to the satisfaction of the following conditions to the reasonable satisfaction of Landlord, any or all of which may be waived by Landlord in writing:

SECTION 6.1. Landlord shall have received all third party consents and regulatory approvals necessary for Landlord to lawfully lease the Premises to Tenant.

SECTION 6.2. All of the representations and warranties of Tenant set forth herein shall be true and correct as of the Commencement Date in all material respects and Tenant shall have performed as of the Commencement Date all of its obligations hereunder which it is required to perform as of said date.

SECTION 6.3. Tenant shall have received all third party consents and regulatory approvals, including, but not limited to, all licenses necessary to operate the Facility and shall have satisfied any and all conditions to the effectiveness thereof.

SECTION 6.4. Landlord shall have received from Emeritus a duly executed Guaranty in substantially the same form as that attached hereto as Exhibit S (the "Guaranty").

SECTION 6.5. The refinancing of the Facility debt shall have been completed on terms acceptable to Landlord.

SECTION 6.6. Landlord and Tenant shall have entered into Lease Agreements in substantially the same form as this Lease Agreement with respect to the Related Facilities and the term of each of such leases shall have commenced.

SECTION 7. TRANSITIONAL ISSUES.

SECTION 7.1. On the Commencement Date, Landlord shall deliver to Tenant a schedule which reflects all earned and accrued vacation, holiday and sick pay and retirement and severance benefits and earned bonuses due to and/or coming due to the employees of the Facility as of or subsequent to the Closing Date (the "Benefits Schedule"): On the Commencement

46

Date, Landlord shall deliver to Tenant the amount reflected on the Benefits Schedule (the "Vacation Pay") and Tenant shall agree from and after the Commencement Date, to pay said benefits to the employees of the Facility as and when due in accordance with Landlord's personnel policies prior to the Commencement Date and Tenant's personnel policies from and after the Commencement Date.

SECTION 7.2. On the Commencement Date Landlord shall provide Tenant with an accounting of all Facility resident deposits or prepayments (the "Resident Deposits") and resident trust funds (the "Resident Trust Funds") being held by Landlord as of the Commencement Date. Such accounting shall set forth the names of the residents or prospective residents and tenants or prospective tenants for whom such funds are held, the amounts held on behalf of each such resident or prospective resident or tenant or prospective tenant and the Landlord's warranty that the accounting is true, correct and complete.

SECTION 7.3. Notwithstanding the foregoing, Landlord will indemnify and hold Tenant harmless from all liabilities, claims and demands in the event the amount of the Resident Deposits and Resident Trust Funds transferred to the Tenant's bank account as provided in Section 7.2 did not represent the full amount of such Resident Deposits and Resident Trust Funds then or thereafter shown to have been delivered to



Landlord by the current residents or prospective residents of the

SECTION 7.4. Accounts Receivable related to services rendered at the Facility shall be handled as follows:

SECTION 7.4.1. All cash, checks and cash equivalents at the Premises and deposits in bank accounts (other than Resident Deposits and Resident Trust Funds) relating to the Premises on the Commencement Date shall remain Landlord's property after the Commencement Date. All accounts receivable, loans receivable and other receivables of Landlord, whether derived from operation of the Premises or otherwise, shall remain the property of Landlord after the Commencement Date. Landlord shall retain full responsibility for the collection thereof.

SECTION 7.4.2. Tenant shall assume responsibility for the billing and collection of payment on account of services rendered by it on and after the Commencement Date.

SECTION 7.4.3. In order to facilitate Landlord's collection efforts, Landlord agrees to deliver to Tenant, within a reasonable time after the Commencement Date, a schedule identifying all of those balances owing from the residents of the Facility for the month prior to the Commencement Date and Tenant agrees to apply any payments received which are specifically designated as being applicable to services rendered prior to the Commencement Date to reduce the pre-Commencement Date balances of said residents and tenants by promptly remitting said payments to Landlord.

47

In the even payments specifically indicate that they relate to services rendered after the Commencement Date in the case of the Facility, such payments shall be retained by Tenant. In the event no designation is made, such payments shall first be applied to Tenant's current accounts receivable with the balance applied to Landlord's accounts receivable.

SECTION 7.4.4. Tenant shall cooperate with Landlord in Landlord's collection of his pre-Commencement Date accounts receivable. Tenant shall have no liability for uncollectible receivables and shall not be obligated to bear any expense as a result of such activities on behalf of Landlord. If and to the extent applicable, Tenant shall remit to Landlord those portions of any payments received by Tenant which are specifically designated as repayment or reimbursement received by Landlord arising out of cost reports filed for the cost reporting periods ending on or prior to the Commencement Date.

SECTION 7.4.5. With respect to residents in the Premises on the Commencement Date receiving payments from Medicare, Medicaid or any other third party payor, Landlord and Tenant agrees as follows:

(a) With respect to Medicare and Medicaid residents, If any, Landlord and Tenant agree that payment for in-house residents covered by Medicare or Medicaid on the Commencement Date will, under current regulations, be paid by Medicare or Medicaid directly to Landlord for services rendered at the Premises prior to the Commencement Date allocated on the per diem basis. Said payments shall be the sole responsibility of Landlord and, except as provided in Section 7. 5(b), Tenant shall in no way be liable therefor. After the Commencement Date, Landlord and Tenant shall each have the right to review supporting books, records and documentation that are in the possession of the other relating to Medicare or Medicaid payments.

(b) If, following the Commencement Date, Tenant receives payment from any state or federal agency or third-party payor which represents reimbursement with respect to services provided at the Premises prior to the Commencement Date, including payments arising from rate adjustments occurring after the Commencement Date, Tenant agrees that it shall remit such payments to Landlord. Payments by Tenant to Landlord shall be

accompanied by a copy of the appropriate remittance advices.

(c) If, following the Commencement Date, Landlord receives payment from any state or federal agency or third-party payor which represents reimbursement with respect to services provided at the Premises after the Commencement Date, including payments arising from rate adjustments occurring after the Commencement Date, Landlord agrees that it shall remit such payments to Tenant. Payments by Landlord to Tenant shall be accompanied by a copy of the appropriate remittance advices.

48

#### SECTION 8. TERMINATION.

SECTION 8.1. This Agreement may be terminated by Tenant or Landlord prior to the Commencement Date upon the following conditions:

(a) By mutual consent of the parties;

(b) By Tenant if the conditions set forth in Part II, Section 5 have not been satisfied or waived by the Outside Commencement Date;

(c) By Landlord if the conditions set forth in Part II, Section 6 have not been satisfied or waived by the Outside Commencement Date; and

(d) By either party if the Lease Term has not commenced by December 1, 1996 (the "Outside Commencement Date"); provided, however, that in the event all of the conditions to the effectiveness of this Lease have been satisfied or waived by the Outside Commencement Date, other than the receipt by Tenant of a license and such other regulatory approvals as it may need to operate the Facility under New York law, provided, Tenant is diligently pursuing the issuance of such licensure and related approvals, the Outside Commencement Date shall automatically be extended for up to an additional sixty (60) days in order to permit Tenant additional time to secure the same.

SECTION 8.2. Neither party to this Agreement may claim termination or pursue any other remedy referred to in Section 8.1 on account of a breach of a condition, covenant or warranty by the other, without first given such other party written notice of such breach and not less than ten ( 10) days within which to cure such breach. The Commencement Date shall be postponed if necessary to afford such opportunity to cure provided, however, in no event shall it be postponed beyond the Outside Commencement Date.

SECTION 8.3. In the event of the termination of this Agreement by Landlord under either Section 8.1 (c) or Section 8.1 (d) where, in either case the term has failed to commence as a result of a material breach by Tenant of its obligations hereunder, Landlord shall be entitled to terminate this Agreement and sue to recover any damages suffered by it as a result of said breach.

SECTION 8.4. In the event of the termination of this Agreement by Tenant under either Section 8.1 (b) or Section 8.1 (d) where, in either case the term has failed to commence as a result of a material breach by Landlord of his obligations hereunder, Tenant shall have the right either (A) to seek specific performance of Landlord's obligations hereunder or (B) to terminate this Agreement and sue to recover any damages suffered by it as a result of said breach.

49

SECTION 8.5. In the event of the termination of this Agreement pursuant to Section 8.1 (a) neither party shall have any further rights or obligations hereunder.

SECTION 9. INDEMNIFICATION

SECTION 9.1. Landlord shall indemnify and hold Tenant harmless from and against:

SECTION 9.1.1. Except as otherwise provided in this Agreement, any and all obligations relating to the ownership and the operation of the Premises which exist at the Commencement Date, including, but not limited to, any obligations under the Operating Contracts which Tenant elects to assume as of the Commencement Date;

SECTION 9.1.2. Any and all damage, loss or liability arising from and after the Commencement Date under any of the Operating Contracts which Tenant does not elect to assume as of the Commencement Date;

SECTION 9.1.3. Any and all damage, loss or liability resulting from any misrepresentation of a material fact, breach of warranty or nonfulfillment of any agreement on the part of Landlord under this Agreement or from any misrepresentations in any certificate furnished or to be furnished to Tenant hereunder;

SECTION 9.1.4. Any and all liability or loss arising out of or relating to any failure in connection with the transaction contemplated herein to comply with the requirements of any laws or regulations relating to bulk sales or transfers;

SECTION 9.1.5. Any and all liability or loss resulting from the bankruptcy of Landlord or the foreclosure of any liens related to the Premises prior to the Commencement Date; and

SECTION 9.1.6. Any and all actions, suits, proceedings, demands, assessments, judgments, reasonable costs and other reasonable expenses, including, but not limited to, reasonable attorney's fees, incident to the foregoing.

SECTION 9.1.7. Notwithstanding the foregoing, Landlord shall have no obligation to provide indemnification pursuant to this Section 9, except to the extent the aggregate amount of indemnification to which Tenant, but for this Section 9.1.7, otherwise shall have become entitled shall exceed \$10,000, at which time Landlord shall be obligated to indemnify Tenant for any and all amounts to which it is entitled under the terms hereof and not merely for those amounts in excess of \$10,000.

For purposes of Section 9.1.1, an obligation shall be deemed to "exist" as of the Commencement Date if it relates to events which occurred prior to the Commencement Date even if it is not asserted until after the Commencement Date.

SECTION 9.2. Tenant shall indemnify and hold Landlord harmless from and against:

SECTION 9.2.1. Except as otherwise provided in this Agreement, any and all obligations relating to the leasing of the Premises and the operation of the Facility from and after the Commencement Date, including, but not limited to, any obligations under the Operating Contracts which Tenant elects to assume as of the Commencement Date;

SECTION 9.2.2. Any and all damage, loss or liability resulting from any misrepresentation of a material fact, breach of warranty or nonfulfillment of any agreement on the part of Tenant under this Agreement or from any misrepresentations in any certificate furnished or to be furnished to Landlord hereunder;

SECTION 9.2.3. Any and all actions, suits, proceedings, demands, assessments, judgments, reasonable costs and other reasonable expenses, including, but not limited to, reasonable attorney's fees, incident to the foregoing.

SECTION 9.2.4. Notwithstanding the foregoing, Tenant shall have no obligation to provide indemnification pursuant to this Section 9, except to the extent the aggregate amount of indemnification to which Landlord. but for this Section 92.4. otherwise shall have become entitled shall exceed \$10,000, at which time Tenant shall be obligated to indemnify Landlord for any and all amounts to which it is entitled under the terms hereof and not merely for those amounts in excess of \$10,000.

### PART III

#### SECTION 1. MISCELLANEOUS.

SECTION 1.1. The captions in this Lease are for convenience of reference only. In no way do those captions define, limit or describe the scope or intent of this Lease.

SECTION 1.2. Words showing number shall be taken to include both the singular and the plural forms. Words showing gender shall be taken to include masculine, feminine and neuter.

51

SECTION 1.3. Subject to the restrictions on transfers set forth herein, this Lease shall inure to the benefit of and be binding upon Landlord and Tenant and their respective successors and assigns. The definition of "Landlord" and "Tenant" herein refer to the Landlord and Tenant at the time in question.

SECTION 1.4. This Lease shall be governed, construed, and enforced in accordance with the laws of the State of New York.

SECTION 1.5. This Lease represents the entirety of the agreement among the parties hereto shall be deemed to supersede any prior discussions or agreements among the parties hereto. This Lease may not be amended or modified except by written instrument signed by the parties hereto. Each of Landlord and Tenant agree to enter into such amendments to this Lease as may be requested by Fleet Bank in connection with the financing referenced in Part II, Section 6.5.

SECTION 1.6. The failure of either party to insist upon strict performance of any of the covenants, agreements, terms and conditions of this Lease in any one or more instances shall not be construed as a waiver or relinquishment of any such covenant, agreement, terms, or condition and the same shall remain in full force and effect.

SECTION 1.7. In the event either party brings an action to enforce any of the terms hereof or in connection herewith, the prevailing party in such action shall be entitled to and the losing party agrees to pay the reasonable attorneys' fees and expenses, including attorneys' fees and expenses of appellate proceedings, of the prevailing party.

SECTION 1.8. Landlord and Tenant shall execute a Memorandum of this Lease in a form acceptable to Landlord and Tenant. The Memorandum shall be recorded in the public records of Monroe County, New York. Landlord and Tenant shall share the cost of recording.

SECTION 1.9. Each term and provision of this Lease shall be enforced to the fullest extent permitted by law. Should any term or provision of this Lease, or the application thereof, prove illegal or unenforceable, the remainder of this Lease shall still be valid and enforced.

SECTION 1.10. Landlord and Tenant each represent to the other that there are no claims for brokerage or other commissions or finder's or other similar fees in connection with the transactions contemplated by this Lease insofar as such claims shall be based on arrangements or agreements made by or on behalf of the party so representing.

52

SECTION 1.11. Neither this Lease nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the parties hereto and approved in writing by Landlord's Mortgagee if required under the terms of the Facility mortgage.

SECTION 1.12. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

SECTION 1.13. No provision of this Lease shall be construed against or interpreted to the disadvantage of either Landlord or Tenant by any court or other governmental or judicial authority by reason of such party's having or being deemed to have structured, written, drafted or dictated such provisions.

SECTION 1.14. Time is of the essence of this Lease.

SECTION 1.15. Nothing in this Lease shall be construed to render or constitute Landlord in any way or for any purpose a partner, joint venturer or associate in any relationship with Tenant other than that as Landlord and Tenant, nor shall this Lease be construed to authorize either party to act as agent for the other party except as expressly provided to the contrary in this Lease.

SECTION 1.16. All notices provided for in this Lease or related to this Lease shall be in writing and shall be delivered to the parties at the addresses set forth below. All such notices or other papers or instruments related to this Lease shall be deemed sufficiently served or delivered on the date of receipt or refusal of delivery, provided that they are sent by United States Registered or Certified Mail, postage prepaid return receipt requested, by hand delivery, by overnight courier or by facsimile transmission:

To Landlord: Philip R. Wegman  
550 Latona Road, Building A  
Rochester, New York 14626-2730  
Telephone: 716-225-7370  
Facsimile: 716-225-0887

To Tenant: Painted Post Partners  
3131 Elliott Avenue  
Suite 500  
Seattle, WA 98121  
Attention: Mr. Raymond Brandstrom  
Telephone: 206-298-2909  
Facsimile: 206-301-4500

Both Landlord and Tenant may change the address or the name of the addressee applicable to subsequent notices by giving notice as provided above.

IN WITNESS WHEREOF, the parties hereby execute this Lease Agreement on the day and first written above.

LANDLORD : PHILIP R. WEGMAN

/s/ Philip R. Wegman

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TENANT: PAINTED POST PARTNERS,  
a Washington general partnership

By: -----  
Raymond Brandstrom, Partner

By: -----  
Daniel R. Baty, Partner

To Tenant: Painted Post Partners  
3131 Elliott Avenue  
Suite 500  
Seattle, WA 98121  
Attention: Mr. Raymond Brandstrom



AGREEMENT TO PROVIDE ADMINISTRATIVE SERVICES  
TO ADULT HOMES



AGREEMENT TO PROVIDE ADMINISTRATIVE  
SERVICES TO ADULT HOMES

This Agreement made this 2nd day of Sept., 1996, between Emeritus Corporation, a Washington corporation (hereinafter referred to as "Emeritus"), and Painted Post Partners, a Washington general partnership (hereinafter collectively referred to as "Operator").

WHEREAS, Operator has agreed to lease those assisted living facilities located in the State of New York and more fully described in Exhibit A (the "Facilities");

WHEREAS, Operator wants someone to assist it with the day to day operation of the Facilities once its lease of the Facilities is effective;

WHEREAS, Emeritus is experienced and qualified in the field of operating assisted living

WHEREAS, Operator has determined that Emeritus's price is economical in light of the range of services which it provides; and

WHEREAS, Emeritus is willing to assist Operator with its day to day operation of the Facilities, pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants herein contained, IT IS AGREED AS FOLLOWS:

I. RESPONSIBILITIES OF EMERITUS: Operator hereby engages Emeritus and Emeritus hereby accepts such engagement and agrees to provide administrative and consulting services to Operator in connection with the operation of the Facilities, upon the terms and conditions set forth in this Agreement. By entering into this Agreement, Operator does not delegate to Emeritus any powers, duties or responsibilities which it is prohibited by law from delegating. Operator also retains such other authority as shall not have been expressly delegated to Emeritus pursuant to this Agreement. Subject to the foregoing, Emeritus shall provide the following services all of which shall be subject to the review and approval of Operator:

A. OPERATIONAL POLICIES AND FORMS: Emeritus shall implement operational policies and procedures and develop such new policies and procedures as it deems necessary to insure the establishment and maintenance of operational standards appropriate for the nature of the Facilities.

B. CHARGES: Emeritus shall establish the schedules of recommended charges, including any and all special charges for services rendered to the patients at the Facilities.

1

C. INFORMATION: Emeritus shall develop any informational material, mass media releases, and other related publicity materials, which it deems necessary for the operation of the Facilities.

D. REGULATORY COMPLIANCE: Emeritus, with the assistance of Operator if requested by Emeritus, shall use its best efforts to assist Operator to maintain all licenses, permits, qualifications and approvals from any applicable governmental or regulatory authority for the operation of the Facilities, shall assist Operator with respect to the operation of the Facilities in full compliance with all applicable laws and regulations and shall comply with all such laws and regulations in performing its obligations under this Agreement; provided, however, that nothing herein shall be construed as relieving Operator, as the licensed operator of the Facilities, from liability in the event that the operations at the Facilities fail to comply with applicable law.

E. EQUIPMENT AND IMPROVEMENTS: Emeritus shall advise Operator as to equipment and improvements which are needed to maintain or upgrade the quality of the Facilities and said equipment, to replace obsolete or run-down equipment or to correct any other survey deficiencies which may be cited during the term of this Agreement. Operator shall review and act upon Emeritus's recommendations as expeditiously as reasonably possible. Emeritus shall not be liable for any cost or liability which Operator may incur in the event Operator disregards Emeritus's recommendations. Emeritus shall make all necessary and approved repairs, replacements and maintenance and shall acquire all necessary equipment, including replacement equipment; provided, however, that the same shall be within the budgetary limits set forth in the annual capital budget prepared by Emeritus pursuant to Paragraph L and, in the case of repairs and maintenance, shall be undertaken in a workmanlike and lien free manner.

F. ACCOUNTING: Emeritus shall provide home office and accounting support to the Facilities. All accounting procedures and systems utilized in providing said support shall be in accordance with the operating capital and cash programs developed by Emeritus, which programs shall conform to generally accepted accounting principles and shall not materially distort income or loss. In addition, Emeritus shall prepare or cause to be prepared all tax returns, including payroll tax returns and shall cause all local, state and federal taxes to be timely paid or contested, as appropriate. Any out of pocket costs incurred by Emeritus in preparing such returns shall not be included in Emeritus's fee, but shall be separately

reimbursed from the revenues of the Facilities. The taxes shall be deemed to be operating expenses of the Facilities and shall be paid out of the revenues of the Facilities. Nothing herein shall preclude Emeritus from delegating to a third party a portion of the accounting duties provided for in this section; provided, that such delegation shall not relieve Emeritus from ultimate liability for the timely and complete performance of the obligations

2

provided for herein. Nothing herein shall be construed as delegating to Emeritus responsibility for the maintenance of the books and records of the Facilities which is and shall remain the obligation of Operator.

G. REPORTS: Emeritus shall prepare and provide to the Operator any reasonable operational information which may from time to time be specifically requested by Operator, including any information needed to assist Operator in completing its tax returns and in complying with any reporting obligations imposed by any mortgagees or lessors. In addition, (i) within thirty (30) days after the end of each calendar month, Emeritus shall provide Operator with an unaudited balance sheet of each of the Facilities, dated the last day of such month, and an unaudited statement of income and expenses for such month relating to the operation of each of the Facilities and (ii) within ninety (90) days after the end of the fiscal year of the Facilities, Emeritus shall provide Operator with unaudited financial statements including a balance sheet of each of the Facilities, dated the last day of said fiscal year, and a statement of income and expense for the year then ended relating to the operation of each of the Facilities.

H. BANK ACCOUNTS: Emeritus shall establish a new checking account in the name of each of the Facilities and shall deposit therein all money received during the term of this Agreement in the course of the operation of each such Facility. Withdrawals and payments from this account shall be made only on checks signed by a person or persons designated by Emeritus. Operator shall be given notice as to the identity of said authorized signatories. All expenses incurred in the operation of the Facilities in accordance with the terms of the Budgets submitted to Operator under Paragraph I(L), including, but not limited to, Facilities' lease payments for which Operator is responsible under the terms of the Facilities Leases, payroll and employee benefits and payment of Emeritus' fee, shall be paid by check drawn on these accounts. Withdrawals from these accounts shall be made first to pay any debt service or rent due with respect to the Facilities, next to pay the operating expenses of the Facilities in such order of priority as Emeritus deems appropriate to the operation of the Facilities (other than Emeritus's fee) and thereafter to pay Emeritus's fee. Any fee due to Emeritus which is not paid when due as a result of an insufficiency of revenues to cover the same shall accrue and shall be due and payable at such time as there are sufficient revenues to pay

the same; provided, however, that all such accrued and unpaid fees shall be due and payable in full upon termination of this Agreement unless otherwise agreed by Operator and Emeritus or unless this Agreement is terminated by Operator, as a result of an Event of Default, by Emeritus, in which case the fees due shall be offset against any damages due to Operator as a result of said Event of Default.

I. PERSONNEL: Except as otherwise provided herein, Emeritus shall recruit, train, promote, direct and discipline personnel of the Facilities; establish salary levels, personnel policies and employee benefits; and establish employee performance standards, all as needed during the term

3

of this Agreement to ensure the efficient operation of all departments within and services offered by the Facilities. All of the foregoing obligations shall be undertaken in accordance with the operating budgets of the Facilities, the policies and procedures of the Facilities and all applicable state and federal laws. All of the personnel at the Facilities shall be the employees of Operator. Accordingly, Operator shall retain full power and authority to hire and fire the personnel at the Facilities.

J. SUPPLIES AND EQUIPMENT: Emeritus shall purchase supplies and non-capital equipment needed to operate the Facilities within the budgetary limits set forth in the annual operating budget prepared by Emeritus pursuant to Paragraph I(L) and subject to the availability of operating revenues from the Facilities. In purchasing said supplies and equipment, if possible, Emeritus shall take advantage of any national or group purchasing agreements to which Emeritus may be a party.

K. LEGAL PROCEEDINGS: Emeritus shall, through its legal counsel, coordinate all legal matters and proceedings with Operator's counsel.

L. BUDGETS: The Facilities shall be operated on a fiscal year of January 1 through December 31. Within forty-five (45) days prior to the start of each fiscal year, Emeritus shall prepare and submit to Operator for its review and approval, which approval shall not be unreasonably withheld, an annual operating budget, an annual capital expenditure budget, and an annual cash flow projection for each of the Facilities. In the event a budget has not been agreed upon by the beginning of the fiscal year, the budget in effect for the prior fiscal year shall continue in effect until the new budget is agreed upon. Any expenditures made during the year pursuant to an approved budget or the prior fiscal year's budget, as applicable, and/or any expenditures on an item-by-item basis exceeding by no more than 10% the amounts set forth therein for the applicable expense item (the "Budget Threshold") may be made without Operator's prior approval. Any budgeted expenditures and/or any expenditures in excess of the Budget Threshold shall be subject to Operator's prior approval, which approval

shall not be unreasonably withheld. Furthermore, all such expenditures such be subject to the availability of the Facilities' revenues.

M. COLLECTION OF ACCOUNTS: Emeritus shall issue bills and collect accounts and monies owed for goods and services furnished by the Facilities, including, but not limited to, enforcing the rights of Operator and the Facilities as creditor under any contract or in connection with the rendering of any services; provided, however, that any expenses incurred by Emeritus in so doing shall be treated as operating expenses of the Facilities, which shall be payable out of Facilities' funds deposited in the bank account described in Section I(H). Any actions taken by Emeritus to collect said accounts receivable shall be in accordance with the applicable laws, rules and regulations governing the collection of accounts receivable.

4

N. COMPLIANCE WITH FACILITIES LEASES. Emeritus shall take such other actions as may be reasonably requested by Operator to enable Operator to comply with its obligations under the Lease Agreements of even date herewith between Phillip Wegman, as lessor, and Operator, as lessee (the "Facilities Leases").

II. INSURANCE: Emeritus shall arrange for and maintain all necessary and proper hazard insurance covering the Facilities, the furniture, fixtures, and equipment situated thereon, and all necessary and proper malpractice and public liability insurance for Operator's protection and for the protection of Operator's officers, partners, agents and employees. Operator shall provide all employee health and worker's compensation insurance for its employees, which insurance shall be administered by Emeritus. Emeritus shall arrange for and maintain all necessary and proper malpractice and public liability insurance for the protection of itself, its officers, agents and employees. Any insurance provided pursuant to this paragraph shall comply with the requirements of any applicable Facilities mortgage or lease and, with the exception of the insurance maintained by Emeritus for its own protection, shall be paid from the revenues of the Facilities.

III. PROPRIETARY INTEREST: The systems, methods, procedures and controls employed by Emeritus and any written materials or brochures developed by Emeritus to document the same are to remain the property of Emeritus and are not, at any time during or after the term of this Agreement, to be utilized, distributed, copied or otherwise employed or acquired by Operator, except as authorized by Emeritus.

IV. TERM OF AGREEMENT: The initial term of this Agreement shall commence as to each of the Facilities on the applicable Commencement Date (as defined in the applicable Facilities Lease) (the "Commencement Date") and shall terminate as to each of the Facilities at the end of the second year after the first Commencement Date hereunder (the "Initial Term") unless sooner terminated upon the

occurrence of an Event of Default or unless extended by mutual agreement of Operator and Emeritus. Operator and Emeritus acknowledge and agree that it is the intent of the parties that the Commencement Date shall be the same as to all of the Facilities other than Perinton Park Manor, which is under construction and the term of which Lease may accordingly commence later than the term of the other Facilities Leases commences but that the Termination Date shall be the same as to all of the Facilities.

V. DEFAULT: Either party may terminate this Agreement, as specified in this Section V, in the event of a default ("Event of Default") by the other party.

(a) With respect to Emeritus, it shall be an "Event of Default" hereunder:

5

(i) If Emeritus shall fail to keep, observe or perform any material agreement, term or provision of this Agreement, and such default shall continue for a period of thirty (30) days after notice thereof shall have been given to Emeritus by Operator, which notice shall specify the event or events constituting the default; or

(ii) If Emeritus shall apply for or consent to the appointment of a receiver, trustee or liquidator of Emeritus of all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or taking advantage of any insolvency law, or if an order judgment or decree shall be entered by a court of competent jurisdiction, on the application of a creditor, adjudicating Emeritus, a bankrupt or insolvent or approving a petition seeking reorganization of Emeritus, or appointing a receiver, trustee or liquidator of Emeritus, of all or a substantial part of its assets.

(b) With respect to Operator, it shall be an Event of Default hereunder:

(i) If Operator shall take any action in exercising the rights granted to it or performing the obligations imposed on it hereunder and, as a result thereof, Emeritus incurs any liabilities, losses, damages, expenses, costs, suits, legal or administrative proceedings in connection with its provision of the services provided for herein or the operation of the Facilities unless (i) such action was recommended, suggested or approved by Emeritus, (ii) Emeritus, fails within ten ( 10) days after receiving written notice of Operator's intention to take any such action, to notify Operator in writing of Emeritus' objections thereto or (iii) Operator takes such action

as a result of Emeritus' failure to perform one or more of its obligations under this Agreement as and when the same are to be performed pursuant hereto or within any cure period provided herein; or

(ii) If Operator shall at anytime be a corporation or other legal entity and shall be dissolved (other than as a result of a transfer of ownership of the Facilities to a limited partnership in which Operator's partners are general and/or limited partners) or shall apply for or consent to the appointment of a receiver, trustee or liquidator of Operator or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or taking advantage of any insolvency law, or if an order, judgment or decree shall be entered by a court of competent jurisdiction, on the application of a creditor, adjudicating Operator a bankrupt or insolvent or approving a petition seeking reorganization of Operator or appointing a receiver, trustee or liquidator of Operator of all or a substantial part of its assets.

#### VI. REMEDIES UPON DEFAULT:

(a) If any Event of Default by Operator shall occur, Emeritus may, in addition to any other remedy available to it in law or equity on account of such Event of Default, forthwith terminate this Agreement, and neither party shall have any further obligations whatsoever under this Agreement, but Emeritus shall immediately be entitled to receive payment of all amounts theretofore unpaid but earned to the date of termination.

(b) If any Event of Default by Emeritus shall occur, Operator may, in addition to any other remedy available to it in law or equity on account of such Event of Default, forthwith terminate this Agreement, and neither party shall have any further obligation whatsoever under this Agreement; provided, however, that Emeritus' right to receive payment of all amounts theretofore unpaid but earned to date of termination shall be subject to Operator's right to receive payment of damages from Emeritus.

#### VII. FACILITIES OPERATIONS:

A. NO GUARANTEE OF PROFITABILITY: Emeritus does not guarantee that operation of the Facilities will be profitable, but Emeritus shall use its best efforts to operate the Facilities in as cost efficient and profitable a manner as possible.

B. STANDARD OF PERFORMANCE: In performing its obligations under this Agreement, Emeritus shall use its best efforts and act in good faith and with professionalism in accordance with acceptable and

prevailing standards of health care and the policies adopted by, and resources available to, the Facilities.

C. FORCE MAJEURE: Neither party will be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder for any reason beyond its control, including, without limitation, strikes, shortages, war, acts of God, or any statute, regulation or rule of federal, state or local government or agency thereof.

#### VIII. WITHDRAWAL OF FUNDS BY OPERATOR:

Operator and Emeritus acknowledge and agree that the efficient operation of the Facilities requires that Emeritus have ready access to the capital required therefore. Accordingly, unless otherwise agreed by Operator and Emeritus, Operator agrees not to withdraw any excess funds from the Facilities' bank account.

IX. FEE: During the Initial Term of this Agreement, Emeritus shall receive a monthly fee equal to \$58,333.00; provided, however, that from and after the date on which Emeritus begins to provide administrative services to the Perinton Park Facility, the monthly fee hereunder shall be equal to \$60,000.00. In the event this Agreement is extended beyond the

7

expiration of the Initial Term, the fee shall be such amount as may be agreed upon by Operator and Emeritus in conjunction with said extension, and failing that shall be the fee payable during the Initial Term of this Agreement increased, but not decreased, on each anniversary of the Commencement Date (the "Adjustment Date") by the percentage change in the Consumer Price Index All Cities (1984=100) (the "CPI") from the Commencement Date to the Adjustment Date. In the event of a decrease in the CPI from the Commencement Date to the Adjustment Date, the fee shall remain fixed at the amount in effect on the Adjustment Date until the next Adjustment Date on which an increase in the CPI occurs.

A. PRORATION OF FEE. If the services of Emeritus commence or terminate (for any reason, including those set forth in Paragraph V) other than on the first day of the month, the fee shall be prorated in proportion to the number of days for which services are actually rendered.

B. PAYMENT OF FEE. The fee provided for herein shall be disbursed by Emeritus to itself out of the applicable Facilities' bank account and shall be subject to the accrual provisions of Section I(H) to the extent there are not sufficient funds available to pay the fee in any month(s).

X. ASSIGNMENT: This Agreement shall not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that nothing herein





except by written instrument signed by both of the parties hereto.

XV. CAPTIONS: The captions used herein are for convenience of reference only and shall not be construed in any manner to limit or modify any of the terms hereof.

XVI. ATTORNEY'S FEES: In the event either party brings an action to enforce this Agreement, the prevailing party in such action shall be entitled to recover from the other all costs incurred in connection therewith, including reasonable attorney's fees.

XVII. SEVERABILITY: In the event one or more of the provisions contained in this Agreement is deemed to be invalid, illegal or unenforceable in any respect under applicable law, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be impaired thereby.

XVIII. CUMULATIVE; NO WAIVER: No right or remedy herein conferred upon or reserved to either of the parties hereto is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of an Event of Default hereunder. The failure of either party hereto to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof with respect to subsequent defaults.

Every right and remedy given by this Agreement to the parties hereof may be exercised from time to time and as often as may be deemed expedient by the parties thereto, as the case may be.

XIX. AUTHORIZATION FOR AGREEMENT: The execution and performance of this Agreement by Operator and Emeritus have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of Operator and Emeritus in accordance with its terms.

XX. COUNTERPARTS: This Agreement may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF, the parties have hereto caused this Agreement to be duly executed, as of the day and year first above written.

OPERATOR: PAINTED POST PARTNERS

By: /s/ Raymond R. Brandstrom

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Its: Partner

By: /s/ Daniel R. Baty

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Its: Partner

EMERITUS :

EMERITUS CORPORATION

By: /s/ Daniel R. Baty

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Its: Chairman

AGREEMENT TO PROVIDE MANAGEMENT SERVICES  
TO A LONG TERM CARE FACILITY

AGREEMENT TO PROVIDE MANAGEMENT  
SERVICES TO A LONG TERM CARE FACILITY

This Agreement made as of this 27th day of June, 1996, between SERVICEMASTER DIVERSIFIED HEALTH SERVICES, L.P., a Tennessee limited partnership (hereinafter referred to as "Manager"), and EMERITUS CORPORATION, a Washington corporation (hereinafter referred to as "Owner").

WHEREAS, Owner is the lessee of a long term care facility located at 200 Heritage Way Hendersonville, NC 28791 (the "Facility"); and

WHEREAS, Owner wants someone to manage the Facility on its behalf;

WHEREAS, Manager is experienced and qualified in the field of health care management

WHEREAS, Owner has determined that Manager's price is economical in light of the range of services which it provides; and

WHEREAS, Manager is willing to operate the Facility on Owner's behalf, pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenant; herein contained, IT IS AGREED AS FOLLOWS:

I. Management and Consulting Responsibilities of Manager: Owner hereby engages Manager and Manager hereby accepts such engagement and agrees to provide management consulting and advisory services to Owner in connection with the operation of the Facility, upon the terms and conditions set forth in this Agreement. By entering into this Agreement, Owner does not delegate to Manager any powers, duties or responsibilities which it is prohibited by law from delegating. Owner also retains such other authority as shall not have been expressly delegated to Manager pursuant to this Agreement. Subject to the foregoing, Manager shall provide the following services:

A. Operational Policies and Forms: Manager shall implement operational policies and procedures and develop such new policies and procedures as it deems necessary to insure the establishment and maintenance of operational standards appropriate for the nature of the

Facility.

B. Charges: Consistent with the operating budget developed by Manager and approved by Owner pursuant to Paragraph I(L), Manager shall establish the schedules of recommended charges including any and all special charges for services rendered to the patients at the Facility. Owner shall have the right to review the charge schedules established by Manager.

1

C. Information: Manager shall develop any informational material, mass media releases, and other related publicity materials, which it deems necessary for the operation of the Facility. Owner shall have the right to review and approve all such materials.

D. Regulatory Compliance: Manger, with the assistance of Owner if requested by Manager, shall use its best efforts to maintain all licenses, permits, qualifications and approvals from any applicable governmental or regulatory authority for the operation of the Facility, including without limitation certification of the Facility as a provider of services under Titles XVIII (Medicare) and XIX (Medicaid) of the Social Security Act, and to manage the operations of the Facility in full compliance with all applicable laws and regulations.

E. Equipment and Improvements: Manager shall advise Owner as to equipment and improvements which are needed to maintain or upgrade the quality of the Facility and said equipment, to replace obsolete or run-down equipment or to correct any other survey deficiencies which may be cited during the term of this Agreement. Owner shall review and act upon Manger's recommendations as expeditiously as possible. Manager shall not be liable for any cost or liability which Owner may incur in the event Owner disregards Manger's recommendations. Manager shall make all necessary and approved repairs, replacements and maintenance within the budgetary limits set forth I the annual capita budget prepared by Manager pursuant to Paragraph I(L) and in a workmanlike and lien free manner.

F: Accounting: Manager shall provide home office and accounting support to the Facility. All accounting procedures and systems utilized in providing said support shall be in accordance with the operating capital and cash programs developed by Manager, which programs shall conform to generally accepted accounting principles and shall not materially distort income or loss. In addition, Manger shall maintain all of the Facility books and records in such manner as may be required to ensure that Owner is able to prepare or cause to be prepared its applicable local, state, and federal tax returns in accordance with the requirements of law, it being understood and agreed that Owner, and not Manger, shall be obligated to prepare or cause to be prepared all such tax returns. Manager shall also prepare and timely file all necessary cost reports for the Facility in order to seek the maximum amount of Medicare and Medicaid reimbursement available to it at law.

The taxes and any reimbursement obligations due to Medicare and/or Medicaid shall be deemed to be Facility operating expenses and shall be paid out of the revenues of the Facility or the working capital provided by Owner.

G: Reports: Manager shall prepare and provide to the Owner any reasonable operational information which may from time to time be specifically requested by Owner, including any information needed to assist Owner in completing its tax returns and in complying with any reporting obligations imposed by any mortgagees. In addition, (i) within twenty-

2

eight (28) days after the end of each calendar month, Manager shall provide Owner with an unaudited balance sheet of the Facility, dated the last day of such month, and an unaudited statement of income and expenses for such month relating to the operation of the Facility and (ii) within forty-five (45) days after the end of the fiscal year of the Facility, Manager shall provide Owner with unaudited financial statements including a balance sheet of the Facility, dated the last day of said fiscal year, and a statement of income and expense for the year then ended relating to the operation of the Facility. Manager will cooperate with Owner in cross-referencing Owner's chart of accounts.

H. Bank Accounts: Manager shall, on behalf of Owner, establish and maintain a checking account in the name of Owner doing business under the name of the Facility and shall deposit therein all money received during the term of this Agreement in the course of the operation of the Facility; provided, however, that during the term hereof, withdrawals and payments from this account shall be made only on checks signed by a person or persons designated by Manager and Owner. Owner shall be given notice as to the identity of said authorized signatories. Withdrawals from this account shall be made in the order of priority set forth in Section X.(B) below. In the event the revenues generated by the Facility are at any time insufficient to pay all of the expenses associated with its operation and to pay Manager's "Base Fee" (as that term is defined below), Owner shall, within five (5) days of its receipt of a written demand by Manager, deposit in the Facility bank account sufficient funds to satisfy the then working capital needs of the Facility. The amounts so advanced shall be deemed to be loans by Owner (the "Owner Loans") to the Facility and shall be repaid by Manager from future Facility revenues in accordance with the provisions of Section IX hereof.

I. Personnel: Manager shall recruit, employ, train, promote, direct, discipline, suspend and discharge Facility personnel; establish salary levels consistent with the amounts reflected in the operating budget prepared by Manager and approved by Owner pursuant to Paragraph (L); and establish

employee performance standards, all as needed during the term of this Agreement to ensure the efficient operation of all departments within and services offered by the Facility. Excluding the Facility administrator, all of the Facility personnel, including the Facility Medical Director, shall be the employees of Owner and, accordingly, shall be subject to Owner's employee benefit plans and personnel policies and procedures; provided, however, that Manager may be responsible for all payroll related services, including the issuance of payroll checks and assisting Owner with the filing of payroll tax returns. The Facility administrator, the Facility Medical Director and all department heads shall be subject to the prior written approval of Owner. Owner is responsible for all compensation and other employee benefits, of any nature, associated with Manager's employment of the administrator, to the extent such amounts have been approved by Owner as part of the annual operating budget, and shall promptly reimburse Manager therefor.

3

J. Supplies and Equipment: Manager shall have the authority to purchase, on behalf of Owner, supplies and non-capital equipment needed to operate the Facility within the budgetary limits set forth in the annual operating budget prepared by Manager and approved by Owner pursuant to Paragraph I(L). To the extent available, and subject to applicable law, Manager will offer Owner participation in Manager's national purchasing contracts. Owner consents to and authorizes Manager's purchase of required supplies and equipment from Manger's affiliates, provided that the prices to be paid to any such affiliate are comparable to the prices which would be available to Owner from non-affiliate suppliers in the marketplace. Any purchasing agreement or lease of capital equipment that will obligate Owner beyond the Term, shall be subject to approval of Owner.

K. Legal Proceedings: Manager shall coordinate all legal matters and proceedings with Owner's counsel.

L. Budgets: The Facility shall be operated on a fiscal year of January 1 through December 31. Within forty-five (45) days after the commencement of the term of the Agreement and within forty-five (45) days prior to the start of each fiscal year commencing with fiscal 1997 (if applicable), Manager shall prepare and submit to Owner for its review and approval, which approval shall not be unreasonably withheld, an annual operating budget, an annual capital expenditure budget, and an annual cash flow projection. In the event a budget has not been agreed upon by the beginning of the fiscal year, the budget in effect for the prior fiscal year shall continue in effect until the new budget is agreed upon. Thereafter, any expenditures made during the year pursuant to said budgets and/or any expenditures on an item-by-item basis exceeding by no more than 10% the amounts set forth therein for the applicable expense item (the "Budget Threshold") may be made without Owner's prior approval. Any



unbudgeted expenditures and/or any expenditures in excess of the Budget Threshold shall be subject to Owner's prior approval, which approval shall not be unreasonably withheld. Manager shall be allowed to make emergency expenditure or expend money for matters outside the budget plus ten percent (10%) to preserve licensure and/or certification of the facility and the health and safety of patients so long as said expenditures are promptly explained in writing to Owner, to Owner's reasonable satisfaction, fifteen (15) days following the date said expenditure is made.

M. Collection of Accounts: Manager shall issue bills and collect accounts and monies owed for goods and services furnished by the Facility, including, but not limited to, enforcing the rights of Owner and the Facility as creditor under any contract or in connection with the rendering of any services; provided, however, that any expenses incurred by Manager in so doing shall be treated as Facility operating expenses, which shall be payable out of Facility funds deposited in the bank account described in Section I(H).

4

N. Ancillary Services: Manager shall provide ancillary and Medicare Part B type services and products at Manager's option with all said products and services being billable to Medicare or third parties. No such products or services shall be billable to the Facility except as billable to (and collectible from) Medicare or other third parties by the Facility.

II. Insurance: Owner shall maintain insurance covering all risks normally insured by nursing homes, including (i) comprehensive general liability in adequate amounts as determined by Owner but no less than the amount of One Million Dollars (\$ 1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate, (ii) professional liability coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate, and (iii) statutorily required coverage, including workers' compensation, as provided below, with respect to employees of the Facility other than Manger's employees. All liability policies shall name Manager as a co-insured and ServiceMaster Diversified Health Services, Inc. And the ServiceMaster Company, Limited Partnership, as additional insureds and shall not be cancelable except on thirty (30) days prior notice to Manager. Owner shall also maintain casualty insurance covering normal hazards to the Facility at not less than eighty percent (80%) replacement value of all permanent structures. Manager shall obtain, at its expense, workers' compensation and other statutorily required coverage with respect to its own employees. Owner shall provide workers' compensation and other statutorily required coverage for its employees. Manager and Owner may agree that some or all of the foregoing insurance may be obtained through policies obtained by Manager, in which event Owner shall be

named as a co-insured.

III. Proprietary Interest: The systems, methods, procedures and controls employed by Manager and any written materials or brochures developed by Manager to document the same are to remain the property of Manager and are not, at any time during or after the term of this Agreement, to be utilized, distributed, copied or otherwise employed or acquired by Owner, except as authorized by Manager.

IV. Term of Agreement: The term of this Agreement shall commence on July 1, 1996 (the "Commencement Date"), and shall continue for a period of three (3) years thereafter, unless sooner terminated (i) due to the fact that 50% or more of the Facility is damaged or destroyed or taken by condemnation proceedings or otherwise, whether Owner elects to rebuild or repair or (ii) upon the occurrence of an Event of Default or (iii) by Health Care Property Investors, Inc. ("HCPI"), as the owner of the Facility, in the event of the termination of the lease under which Owner operates the Facility upon the occurrence of an event of default thereunder. Owner shall have the option to extend the term of this Agreement for five (5) successive one (1) year periods, which extension right shall be exercisable by written notice delivered to Manager not later than ninety (90) days prior

5

to the commencement of each such one (1) year extension. Any such option to extend shall be subject to the consent of Manager which shall be given or denied within ten (10) days following receipt of Owner's written notice. If Manager fails to notify Owner within said ten (10) day period, Manager shall be deemed to have given its consent to said extension.

V. Default: Either party may terminate this Agreement, as specified in this Section V, in the event of a default ("Event of Default") by the other party.

(a) With respect to Manager, it shall be an "Event of Default" hereunder:

(i) If Manager shall fail to keep, observe or perform any material agreement, term or provision of this Agreement, and such default shall continue for a period of thirty (30) days after notice thereof shall have been given to Manager by Owner, which notice shall specify the event or events constituting the default; provided, however, that if any such failure by Manager has caused or threatens to cause any injury to the life or safety of any of the patients and/or employees of the Facility which may result in the revocation of the Facility's operating license, there shall be no cure period provided to Manager hereunder and Owner shall have the right to immediately terminate this Agreement upon written notice to Manager; or

(ii) If Manager shall apply for or consent to the appointment of a receiver, trustee or liquidator of Manager of all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or taking advantage of any insolvency law, or if an order judgment or decree shall be entered by a court of competent jurisdiction, on the application of a creditor, adjudicating Manager, a bankrupt or insolvent or approving a petition seeking reorganization of Manager, or appointing a receiver, trustee or liquidator of Manager, of all or a substantial part of its assets.

(b) With respect to Owner, it shall be an Event of Default hereunder:

(i) If Owner shall fail to make or cause to be made any payment to Manager required to be made hereunder (other than its working capital obligation), and such failure shall continue for a period of thirty (30) days;

(ii) If Owner shall fail to keep, observe or perform any material agreement, term or provision of this Agreement and such default shall continue for a period of thirty (30) days after notice, which notice shall specify an event or events constituting the default thereof by Manager to Owner; provided, however, that in the case of Owner's failure to provide necessary working capital upon demand by Manager, it shall be deemed to

6

be an Event of Default hereunder if the same is not paid within ten ( 10) days of Manager's initial demand therefor without any further notice from Manager being required;

(iii) If Owner shall fail to make payments, or keep any covenants, owing to any third party which are beyond the control of Manager to make or keep, and which would cause Owner to lose possession of the Facility or any personal property which would be required to operate the Facility in the normal course; or

(iv) If Owner shall be dissolved (other than as a result of a transfer of the ownership of the Facility to a limited partnership in which Owner's shareholders are general and/or limited partners) or shall apply for or consent to the appointment of a receiver, trustee or liquidator of Owner or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit or creditors, file a petition or an answer seeking reorganization or arrangement with creditors or taking advantage of any insolvency law, or if an order, judgment or decree

shall be entered by a court of competent jurisdiction, on the application of a creditor, adjudicating Owner a bankrupt or insolvent or approving a petition seeking reorganization of Owner or appointing a receiver, trustee or liquidator of Owner of all or a substantial part of its assets.

#### VI. Remedies Upon Default:

(a) If any Event of Default by Owner shall occur, Manager may, in addition to any other remedy available to it in law or equity on account of such Event of Default, forthwith terminate this Agreement, and neither party shall have any further obligations whatsoever under this Agreement, but Manager shall immediately be entitled to receive payment of all amounts theretofore unpaid but earned to the date of termination.

(b) If any Event of Default by Manager shall occur, Owner may, in addition to any other remedy available to it in law or equity on account of such Event of Default, forthwith terminate this Agreement, and neither party shall have any further obligation whatsoever under this Agreement; provided, however, that Manager shall immediately be entitled to receive payment of all amounts theretofore unpaid but earned to date of termination, subject to Owner's right to receive payment of damages from Manager, the amount of which damages shall not exceed the aggregate amount of all "Management Fees" (as that term is defined below) paid to Manager through the date of the occurrence of the Event of Default; provided, however, said limitation on damages shall not apply as a limitation on the indemnity obligations of Manager as set forth in Section XXII below.

VII. Owner's Inspection: During the term hereof, Owner shall have the right, upon request and at reasonable times, to inspect the Facility and to inspect and/or audit all books and records pertaining to the operation thereof.

#### VIII. Facility Operations:

A. No Guarantee of Profitability: Manager does not guarantee that operation of the Facility will be profitable, but Manager shall use its best efforts to operate the Facility in as cost efficient and profitable a manner as possible.

B. Standard of Performance: In performing its obligations under this Agreement, Manager shall use its best efforts and act in good faith and with professionalism in accordance with acceptable and prevailing standards of

health care and the policies adopted by, and resources available to, the Facility.

C. Force Majeure: Manager will not be deemed to be in violation of this Management Agreement if it is prevented from performing any of its obligations hereunder for any reason beyond its control, including, without limitation, strikes, shortages, war, acts of God, lack of the Owner's financial resources, or any statute, regulation or rule of federal, state or local government or agency thereof.

IX. Withdrawal of Funds by Owner; Minimum Bank Balance:

Owner may withdraw the then accumulated operating cash surplus (as determined by Owner and Manager) from the Facility bank account in excess of Five Thousand Dollars (\$5,000.00). Owner shall maintain such minimum balance in the bank account, if any, as Owner and Manager deem to be appropriate to effectively and efficiently operate the Facility, which minimum balance may be zero if Owner and Manager agree to sweep said account on a daily basis, Manager shall advise Owner within ten ( 10) days in the event there is a surplus cash balance in the Facility bank account.

X. Distribution of Facility Revenues: Management Fee:

A. Management Fee. In consideration for the services provided hereunder, Manager shall receive, on a monthly basis, the amounts identified in Section X. (B) below to be distributed to Manager in accordance with the priority of distribution set forth therein (collectively, the "Management Fees").

B. Distribution of Facility Revenues. The "gross revenues" (as defined below) generated each month by the Facility shall be computed and distributed monthly commencing one (1) month following the Commencement Date in the following order of priority:

8

(i) First, to pay to Manager an amount equal to three percent (3%) of all such gross revenues (the "Base Fee");

(ii) Second, to pay all costs and expenses incurred said month with respect to the ownership and operation of the Facility, including without limitation, all rent and additional rent due under the Lease with HCPI, but excluding all federal, state and local taxes which are assessed based on the revenues derived from the operations at the Facility;

(iii) Third, to pay to Owner a twelve percent ( 12%) per annum cumulative return on Owner's initial investment in the Facility, which

investment is equal to Four Hundred Ninety-Six Thousand Five Hundred Eighty-Three Dollars (\$496,583.00);

(iv) Fourth, to pay to Manager an amount equal to fifty percent (50%) of all "net income" (as that term is defined below), after payment of the foregoing distributions (the "Additional Fee"); provided, however, the total of the Base Fee and the Additional Fee shall not exceed five percent (5%) of the total gross revenues generated by the Facility for said month; and

(v) Fifth, all remaining net income following the distributions of the foregoing sums, shall be distributed twenty percent (20%) to Manager (the "Residual Fee") and eighty percent (80%) to Owner.

For purposes hereof, (a) the term "gross revenues" shall mean all revenues received each month from the operations at the Facility, but shall specifically excluding the proceeds from the sale of any Facility equipment and any insurance and condemnation proceeds and (b) the term "net income" shall mean all gross revenues less those amounts paid each month which are referred to in subparagraphs "(i)", "(ii)" and "(iii)" of Section X. (B) above.

C. Proration of Fee. If the services of Manager commence or terminate (for any reason, including those set forth in Paragraph V) other than on the first day of the month, the Base Fee and the Additional Fee reflected above shall be prorated in proportion to the number of days for which services are actually rendered. The Residual Fee shall not be subject to proration but shall only be due and payable if this Agreement has been in effect for the full month to which said Residual Fee relates.

E. Payment of Fee. The Base Fee and the Additional Fee provided for herein shall be disbursed by Manager to itself out of the Facility bank account in the order of priority reflected in Section I(H). The Residual Fee shall be payable by Owner to Manager monthly within fifteen (15) days following Owner's receipt of Manager's monthly financial report as provided for in Section I. (G) above, it being understood and agreed that

9

Manager shall have no right to pay the same to itself from the Facility bank account unless specifically authorized to do so in writing by Owner.

F. Distributions to Owner. Owner shall be permitted to withdraw from the Facility operating account any amounts owed to it in accordance with the foregoing priority of distributions.

XI. Manager's Designated Representative. In any situation in which, pursuant to the terms of this Agreement, Manager shall be required or permitted to take any action with respect to Owner, give any report or make any request to or of Owner, Manager shall act by and through "Manager's Representative" (as defined below) and Owner shall be permitted to rely on any such approval or action so taken by the Manager's Representative as an approval or action taken by the Manager hereunder. The "Manager's Representative" shall mean and refer to Judy Ullery or such other individual as shall be designated by Manager and approved by Owner as provided below. In the event Manager at any time wishes to replace the then current Manager's Representative which has been approved by Owner, Manager shall notify Owner in writing of the proposed replacement and provide such information as Owner shall reasonably request regarding the qualifications and experience of said replacement. In the event Owner disapproves of Manager's designated replacement and Owner and Manager are unable to agree on an alternative replacement, Owner shall have the right to terminate this Agreement by written notice to Manager.

XII. Assignment: This Agreement shall not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that Owner shall have the right to assign this Agreement without Manager's consent to a limited partnership in which the shareholders of Owner are general or limited partners and to which ownership of the Facility is transferred.

XIII. Notices: All notices required or permitted hereunder shall be given in writing by hand delivery, by registered or certified mail, postage prepaid, by overnight delivery or by facsimile transmission (with receipt confirmed with the recipient). Notice shall be delivered or mailed to the parties at the following addresses or at such other places as either party shall designate in writing.

To Manager: ServiceMaster Diversified Health Services, L.P.  
5050 Poplar Avenue, I 8th Floor  
Memphis, Tennessee 38157  
Attn. : President  
Telephone: (901) 821-5533  
Facsimile: (901) 761-5576

10

To Owner: Emeritus Corporation  
3131 Elliott Avenue  
Seattle, WA 98121

XIV. Relationship of the Parties: The relationship of the parties shall be that of Owner and Independent Contractor and all acts performed by Manager during the term hereof as Manager of the Facility shall be deemed to be performed in its capacity as an independent contractor. Nothing contained in this Agreement is intended to or shall be construed to give rise to or create a partnership or joint venture or lease between Owner, its successors and assigns on the one hand, and Manager, its successors and assigns on the other hand.

XV. Entire Agreement: This Agreement contains the entire agreement between the parties and shall be binding upon and inure to the benefit of their successors and assigns, and shall be construed in accordance with the laws of the State of Washington. This Agreement may not be modified or amended except by written instrument signed by both of the parties hereto.

XVI. Captions: The captions used herein are for convenience of reference only and shall not be construed in any manner to limit or modify any of the terms hereof.

XVII. Attorney's Fees: In the event either party brings an action to enforce this Agreement, the prevailing party in such action shall be entitled to recover from the other all costs incurred in connection therewith, including reasonable attorney's fees.

XVIII. Severability: In the event one or more of the provisions contained in this Agreement is deemed to be invalid, illegal or unenforceable in any respect under applicable law, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be impaired thereby.

XIX. Cumulative; No Waiver: A right or remedy herein conferred upon or reserved to either of the parties hereto is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of an Event of Default hereunder. The failure of either party hereto to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof with respect to subsequent defaults. Every right and remedy given by this Agreement to the parties hereof may be exercised from time to time and as often as may be deemed expedient by the parties thereto, as the case may be.



XX. Authorization for Agreement: The execution and performance of this Agreement by Owner and Manager have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of Owner and Manager in accordance with its terms.

XXI. Disclaimer of Employment of Facility Employees: No person employed by the Facility will be an employee of Manager, and Manager shall have no liability for payment of their wages, payroll taxes, and other expenses of employment, except that Manager shall have the obligation to exercise reasonable care in its management of the Facility and to apply available funds to the payment of such wage and payroll taxes. All such persons will be employees of the Facility or independent contractors or the employees of independent contractors, as appropriate under the terms of this Agreement.

XXII. Indemnification: Except as provided in this Section XXII. below, Manager will have no liability whatsoever for damages suffered on account of and Owner agrees to indemnify and hold Manager entirely harmless from, the willful misconduct or negligence of any employee of Owner. Manager hereby agrees to indemnify and hold Owner harmless from and against, any and all liability, loss, cost and/or expense which is determined by a court of competent jurisdiction to have arisen as a result of the active negligence or willful misconduct of Manager or any of its employees or agents. Notwithstanding the foregoing, each of the parties agree that prior to making a claim under the foregoing indemnity, the indemnified party agrees to first make a claim against any applicable insurance policy which is required to be maintain hereunder for the loss or damage incurred by the indemnified party. Based on said prior insurance claim, the foregoing indemnity shall apply only to the extent the indemnified party did not receive reimbursement from any available insurance proceeds.

XXIII. Access of the Government to Books and Records: In the event the services provided hereunder have a 12-month cost or value of \$10,000 or more (or such other amount as may hereafter be established by law):

(a) Until the expiration of four years after the furnishing of services pursuant to this Agreement, Manager shall make available upon written request to the Secretary of the United States Department of Health and Human Services, or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement, and books, documents and records that are necessary to certify the nature and extent of such costs.

(b) If Manager or its affiliates carries out any of the duties of this Agreement through a subcontract, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of

four years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary of the United States Department of Health and Human Services, or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to certify the nature and extent of such costs.

(c) The parties agree that any applicable attorney-client or other legal privileges shall not be deemed waived by virtue of this Agreement.

XXIV. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same Agreement.

XXV. Non-Solicitation/No-Hire: Manager acknowledges and agrees that for a period of one hundred and twenty days ( 120) after the termination or expiration of the term of this Agreement, it will not, without Owner's prior written consent, directly or indirectly solicit the employment of or hire any of the employees of Owner associated with the operation of the Facility at anytime during the term hereof. Manager further acknowledges and agrees that in the event of a breach by Manager of its obligations hereunder, the damages suffered by Owner may be difficult to ascertain and accordingly Owner shall have the right to seek an injunction barring Manager from any such violation or from any future violations of the terms of this Section XXV.

IN WITNESS WHEREOF, the parties have hereto caused this Agreement to be duly executed, as of the day and year first above written.

[Signatures of the parties on following page]

OWNER:

EMERITUS CORPORATION

By: /s/ Raymond R. Brandstrom  
-----

Its: President

MANAGER:

SERVICEMASTER DIVERSIFIED  
HEALTH SERVICES, L.P.

By: /s/ Joseph K. Piper  
-----

Its: Pres. Capital Serv.

CAMLU RETIREMENT APARTMENTS

COEUR D'ALENE, IDAHO

AGREEMENT TO PROVIDE MANAGEMENT SERVICES

TO AN INDEPENDENT LIVING FACILITY

This Agreement made this 1st day of November, 1996 by and between Emeritus Corporation, a Washington corporation (hereinafter referred to as "Manager"), and Columbia House, LLC, a Washington limited liability company (hereinafter referred to as "Lessee").

WHEREAS, Lessee is the lessee of property located at 606 Best Avenue in Coeur d'Alene Idaho ("the Property") including an independent living facility (the "Facility"), pursuant to the terms of that certain Commercial Lease Agreement dated October 11, 1996 between Donald E. Morris and Jeanne Morris, husband and wife, as Lessor, and Lessee, as lessee (the "Facility Lease");

WHEREAS, Lessee wants someone to manage the Facility on its behalf and to provide certain consulting and construction supervisory services;

WHEREAS, Manager is experienced and qualified in the field of independent living facility development and management;

WHEREAS, Lessee has determined that Manager's price is economical in light of the range of services which it provides; and

WHEREAS, Manager is willing to operate the Facility on Lessee's behalf and provide consulting and, under certain circumstances, construction supervision services, pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants herein contained, IT IS AGREED AS FOLLOWS:

I. MANAGEMENT AND CONSULTING RESPONSIBILITIES OF MANAGER: Lessee hereby engages Manager and Manager hereby accepts such engagement and agrees to provide management, consulting, advisory and supervisory services to Lessee in connection with the operation of the Facility, upon the terms and conditions set forth in this Agreement. By entering into this Agreement, Lessee does not delegate to Manager any powers, duties or responsibilities which it is prohibited by law from delegating. Lessee also retains such other authority as shall not have been expressly delegated to Manager pursuant to this Agreement. Subject to the foregoing, Manager shall provide the following services:

A. OPERATIONAL POLICIES AND FORMS: Manager shall implement operational policies and procedures and develop such new policies and procedures as it deems necessary to insure the establishment and maintenance of operational standards appropriate for the nature of the

Facility.

B. CHARGES: Manager shall establish the schedules of recommended charges, including any and all special charges for services rendered to the patients at the Facility. Lessee shall have the right to review the charge schedules established by Manager.

C. INFORMATION: Manager shall develop any informational material, mass media releases, and other related publicity materials, which it deems necessary for the operation of the Facility.

D. REGULATORY COMPLIANCE: Manager, with the assistance of Lessee if requested by Manager, shall use its best efforts to maintain all licenses, permits, qualifications and approvals from any applicable governmental or regulatory authority for the operation of the Facility and to manage the operations of the Facility in full compliance with all applicable laws and regulations.

E. EQUIPMENT AND IMPROVEMENTS: Manager shall advise Lessee as to equipment and improvements which are needed to maintain or upgrade the quality of the Facility, to replace obsolete or run-down equipment or to correct any other survey deficiencies which may be cited during the term of this Agreement. Lessee shall review and act upon Manager's recommendations as expeditiously as possible. Manager shall not be liable for any cost or liability which Lessee may incur in the event Lessee disregards Manager's recommendations. Manager shall make all necessary and approved repairs, replacements and maintenance within the budgetary limits set forth in the annual capital budget prepared by Manager pursuant to Paragraph I.L. hereof and in a workmanlike and lien free manner.

F. ACCOUNTING: Manager shall provide home office and accounting support to the Facility. All accounting procedures and systems utilized in providing said support shall be in accordance with the operating capital and cash programs developed by Manager, which programs shall conform to generally accepted accounting principles and shall not materially distort income or loss. In addition, if Lessee so elects by notice to Manager, Manager shall prepare or cause to be prepared all tax returns required in connection with operation of the Facility, including payroll tax returns (but excluding Lessee's income tax returns), and Manager at Lessee's sole cost and expense shall cause all local, state and federal taxes to be timely paid or contested, as appropriate. If Lessee elects to have Manager prepare such returns, the costs incurred by Manager in preparing such returns shall not be included in Manager's management fee, but shall be separately reimbursed by Lessee. The taxes shall be deemed to be Facility operating expenses and shall be paid out of the revenues of the Facility or the working capital provided by Lessee. Nothing herein shall preclude Manager from delegating to a third party a portion of the

accounting duties provided for in this section; provided, that such delegation shall not relieve Manager from ultimate liability for the timely and complete performance of the obligations provided for herein.

2

G. REPORTS: Manager shall prepare and provide to the Lessee any reasonable operational information which may from time to time be specifically requested by Lessee, including any information needed to assist Lessee in completing its tax returns and in complying with any reporting obligations imposed by the owner or any mortgagees of the Facility. In addition, (i) within thirty (30) days after the end of each calendar month, Manager shall provide Lessee with an unaudited balance sheet of the Facility, dated the last day of such month, and an unaudited statement of income and expenses for such month relating to the operation of the Facility and (ii) within ninety (90) days after the end of the fiscal year of the Facility, Manager shall provide Lessee with unaudited financial statements including a balance sheet of the Facility, dated the last day of said fiscal year, and a statement of income and expense for the year then ended relating to the operation of the Facility.

H. BANK ACCOUNTS: Manager shall open a new checking account in the name of the Facility and shall deposit therein all money received during the term of this Agreement in the course of the operation of the Facility; provided, however, that during the term hereof, withdrawals and payments from this account shall be made only on checks signed by a person or persons designated by Manager. Lessee shall be given notice as to the identity of said authorized signatories. All expenses incurred in the operation of the Facility in accordance with the terms of the Budgets submitted to Lessee under Paragraph I.L. hereof, including, but not limited to, Facility mortgage or lease payments, payroll and employee benefits and payment of Manager's fees, shall be paid by check drawn on this account. Withdrawals from this account shall be made first to pay Manager's fees and thereafter to pay Facility expenses in such order of priority as Manager deems appropriate to the operation of the Facility. In the event the revenues generated by the Facility are at any time insufficient to pay all of the expenses associated with its operation, including, but not limited to, Manager's fees, Lessee shall, within five (5) days of its receipt of a written demand by Manager, deposit in the Facility bank account sufficient funds to satisfy the then working capital needs of the Facility.

I. PERSONNEL: Manager shall recruit, employ, train, promote, direct, discipline, suspend and discharge Facility personnel; establish salary levels, personnel policies and employee benefits; and establish employee

performance standards, all as needed during the term of this Agreement to ensure the efficient operation of all departments within and services offered by the Facility. All of the Facility personnel shall be the employees of Manager and all salaries, benefits, payroll taxes and other costs related to the Facility personnel shall not be included in Manager's management fee but shall be Facility operating expenses and paid out of the revenues of the Facility or the working capital provided by Lessee.

J. SUPPLIES AND EQUIPMENT: Manager shall purchase supplies and non-capital equipment needed to operate the Facility within the budgetary limits set forth in the annual operating budget prepared by Manager pursuant to Paragraph I.L hereof. In purchasing said supplies and equipment, if possible, Manager shall take advantage of any national or group purchasing agreements to which Manager may be a party.

K. LEGAL PROCEEDINGS: Manager shall, through its legal counsel, coordinate all legal matters and proceedings with Lessee's counsel.

L. BUDGETS: The Facility shall be operated on a fiscal year of January I through December 31. Within forty-five (45) days prior to the start of each fiscal year, Manager shall prepare and submit to Lessee for its review and approval, which approval shall not be unreasonably withheld, an annual operating budget, an annual capital expenditure budget, and an annual cash flow projection. In the event a budget has not been agreed upon by the beginning of the fiscal year beginning in fiscal year 1997, the budget in effect for the prior fiscal year shall continue in effect until the new budget is agreed upon. Thereafter, any expenditures made during the year pursuant to said budgets and/or any expenditures on an item-by-item basis exceeding by no more than 10% the amounts set forth therein for the applicable expense item (the "Budget Threshold") may be made without Lessee's prior approval. Any unbudgeted expenditures and/or any expenditures in excess of the Budget Threshold shall be subject to Lessee's prior approval, which approval shall not be unreasonably withheld.

M. COLLECTION OF ACCOUNTS: Manager shall issue bills and collect accounts and monies owed for goods and services furnished by the Facility, including, but not limited to, enforcing the rights of Lessee and the Facility as creditor under any contract or in connection with the rendering of any services; provided, however, that any expenses incurred by Manager in so doing shall be treated as Facility operating expenses, which shall be payable out of Facility funds deposited in the bank account described in Section I.H. hereof.



N. CONSTRUCTION SUPERVISION. Lessee and Manager may agree that Manager shall act as construction supervisor with respect to any construction work for the Facility or on the Property after the Commencement Date (as hereinafter defined), in which event Manager will supervise, oversee and administer each and every aspect of any such improvements and construction work. "Construction work" is defined as any construction, reconstruction or alteration of any improvements constituting part of the Property, but does not include usual maintenance and repairs made to the Property. Without limitation of the foregoing, if Lessee and Manager agree that Manager shall act as construction supervisor, and subject to Lessee's approval in each instance, Manager will (a) negotiate contracts for architectural, design, engineering and

4

construction services, (b) secure any and all necessary approvals, (c) oversee the administration of construction contracts, and (d) act as project manager with respect to the construction work.

II. INSURANCE: Upon request, Manager, at Lessee's sole cost and expense, shall arrange for and maintain all necessary and proper hazard insurance covering the Facility, the furniture, fixtures, and equipment situated thereon, and all necessary and proper malpractice and public liability insurance for Lessee's protection and for the protection of Lessee's officers, agents and employees. Until such a request is made and/or in the event Manager is unable to secure insurance coverage for the Facility for any reason whatsoever, Lessee shall be responsible for obtaining and maintaining said insurance. In addition, Manager shall provide employee health and worker's compensation insurance for its employees at the Facility in accordance with Manager's policies therefor, and the costs thereof shall be Facility operating expenses. Manager shall arrange for and maintain all necessary and proper malpractice and public liability insurance for the protection of itself, its officers, agents and employees. Any insurance provided by Lessee pursuant to this paragraph shall comply with the requirements of any applicable lease of or mortgage or deed of trust encumbering the Facility, and any insurance provided by Manager pursuant to this paragraph shall comply with such requirements provided that Lessee shall have provided Manager with a copy of such lease, mortgage or deed of trust.

III. PROPRIETARY INTEREST: The systems, methods, procedures and controls employed by Manger and any written materials or brochures developed by Manager to document the same are to remain the property of Manger and are not, at any time during or after the term of this Agreement, to be utilized, distributed, copied or otherwise employed or acquired by Lessee, except, as authorized by Manager.

IV. TERM OF AGREEMENT: The Term of this Agreement shall be the period commencing on November 1,1996 (the "Commencement Date") and ending on October 31,1999, and the Term automatically shall be extended for successive two year terms thereafter unless terminated prior to such date (as the same may be extended) upon the occurrence of any of the following events:

(a) either party giving the other party notice of termination not later than thirty (30) days prior to the end of the initial term or any extended term, in which event the Term will end on the last day of the initial term or then current extended term, as applicable;

(b) due to the fact that 50% or more of the Facility is damaged or destroyed or taken by condemnation proceedings or otherwise, whether or not Lessee elects to rebuild or repair;

5

(c) upon the occurrence of an Event of Default (as defined in Section V);

(d) at the option of either Lessee or Manager in the event of termination or Lessee's assignment of the Facility Lease; provided, however, that said option must be exercised in writing within ten ( 10) days after Lessee accepts a bona fide offer for the purchase of Lessee' s interest in the Facility (the "Offer"), in the case of a termination by Lessee, or within ten (10) days after Lessee provides Manager with a copy of the Offer, in the case of a termination by Manager, or each party shall be deemed to have waived its right to so terminate this Agreement; or

(e) at any time by Manager or Lessee with or without cause on no less than thirty (30) days prior written notice to the other party.

V. DEFAULT: Either party may terminate this Agreement, as specified in this Section in the event of a default by the other party that is an "Event of Default" as provided below.

(a) With respect to Manager, it shall be an "Event of Default" hereunder:

(i) If Manager shall fail to keep, observe or perform any material agreement, term or provision of this Agreement, and such default shall continue for a period of thirty (30) days after notice thereof shall have been given to Manager by Lessee, which notice shall specify the event or events constituting the default; or

(ii) If Manager shall apply for or consent to the appointment of a receiver; trustee or liquidator of Manager of all or a substantial part of its

assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or taking advantage of any insolvency law, or if an order, judgment or decree shall be entered by a court of competent jurisdiction, on the application or a creditor, adjudicating Manger, a bankrupt or insolvent or approving a petition seeking reorganization of manger or appointing a receiver, trustee or liquidator of Manager or of all or a substantial part of its assets.

(b) With respect to Lessee, it shall be an Event of Default hereunder:

(i) If Lessee shall fail to make or cause to be made any payment to Manager required to be made hereunder (other than its working capital obligation), and such failure shall continue for a period of thirty (30) days;

6

(ii) If Lessee shall fail to keep, observe or perform any material agreement, term or provision of this Agreement and such default shall continue for a period of thirty (30) days after notice, which notice shall specify an event or events constituting the default thereof by Manager to Lessee; provided, however, that in the case of Lessee's failure to provide necessary working capital upon demand by Manager, it shall be deemed to be an Event of Default hereunder if the same is not paid within ten ( 10) days of Manager's initial demand therefor without any further notice from Manager being required;

(iii) If Lessee shall fail to make payments, or keep any covenants, owing to any third party which are beyond the control of Manager to make or keep, and which would cause Lessee to lose possession of the Facility or any personal property which would be required to operate the Facility in the normal course; or

(iv) If Lessee shall be dissolved or shall apply for or consent to the appointment of a receiver, trustee or liquidator of Lessee or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit or creditors, file a petition or an answer seeking reorganization or arrangement with creditors or taking advantage of any insolvency law, or if an order, judgment or decree shall be entered by a court of competent jurisdiction, on the application of a creditor, adjudicating Lessee a bankrupt or insolvent or approving a petition seeking reorganization of Lessee or appointing a receiver, trustee or liquidator of

Lessee or of all or a substantial part of its assets.

VI. REMEDIES UPON DEFAULT:

(a) If any Event of Default by Lessee shall occur, Manager may, in addition to any other remedy available to it in law or equity on account of such Event of Default, forthwith terminate this Agreement, and neither party shall have any further obligations whatsoever under this Agreement, but Manager shall immediately be entitled to receive payment of all amounts theretofore unpaid but earned to the date of termination.

(b) If any Event of Default by Manger shall occur, Lessee may, in addition to any other remedy available to it in law or equity on account of such Event of Default, forthwith terminate this Agreement, and neither party shall have any further obligation whatsoever under this Agreement; provided, however, that Manger shall immediately be entitled to receive payment of all amounts theretofore unpaid but earned to date of termination, subject to Lessee's right to receive payment of damages from Manager.

VII. LESSEE'S INSPECTION: During the term hereof, Lessee shall have the right, upon request and at reasonable times, to inspect the Facility and to inspect and/or audit all books and records pertaining to the operation thereof.

7

VIII. FACILITY OPERATIONS :

A. NO GUARANTEE OF PROFITABILITY: Manager does not guarantee that operation of the Facility will be profitable, but Manager shall use its commercially reasonable, diligent good faith efforts to operate the Facility in as cost efficient and profitable a manner as possible.

B. STANDARD OF PERFORMANCE: In performing its obligations under this Agreement, Manager shall use its commercially reasonable, diligent efforts and act in good faith and with professionalism in accordance with acceptable and prevailing standards of health care and the policies adopted by, and resources available to, the Facility.

C. FORCE MAJEURE: Manager will not be deemed to be in violation of this Management Agreement if it is prevented from performing any of its obligations hereunder for any reason beyond its control, including, without limitation, strikes, shortages, war, acts of God, Lessee's failure to perform its obligations hereunder, or any statute, regulation or rule of federal, state or local government or agency thereof.

IX. WITHDRAWAL OF FUNDS BY LESSEE; MINIMUM BANK BALANCE:

A. From time to time Lessee may withdraw the then accumulated operating cash surplus (as determined by Manager) from the Facility bank account subject to the right of Manager to restrict withdrawal by Lessee of any Facility funds in accordance with the provisions of subparagraph B, below.

B. At all times Manager shall maintain a minimum cash balance in the checking account established for the Facility equal to the sum of:

(i) All current and unpaid invoices (both those received and those pending), any mortgage or lease payments, note or installment payments, payrolls, rents, expenses management fees and other charges incident to the operation of the Facility which will become due and payable within the ensuing forty-five (45) days; plus

(ii) An amount deemed necessary by Manger to be adequate for unanticipated contingencies, which amount initially shall be \$5,000 and which amount shall be adjusted as reasonable determined by Manager.

#### X. MANAGEMENT FEES:

A. PRE-COMMENCEMENT SERVICES FEE. Manager shall be reimbursed for all of Manager's out of pocket expenses incurred in connection with pre-commencement services rendered by Manager with respect to the Facility, and in addition Manager shall receive a fee in the amount of \$2,000.00 with respect to such pre-commencement services. Such reimbursement and fee shall be paid to Manager at the same time as the first management fee payment as provided herein.

B. MANAGEMENT FEE. Throughout the term of this Agreement, Manager shall receive a monthly fee equal to six percent (6%) of the gross revenues generated each month by the Facility, payable on or before the 10th day of each month with respect to the gross revenues for the prior month. For purposes hereof, "gross revenues" shall mean all revenues generated by the Facility, but shall specifically exclude the proceeds from the sale of any Facility equipment and any insurance and condemnation proceeds. If the services of Manager commence or terminate (for any reason, including those set forth in Paragraph V hereof other than on the first day of the month, the fee shall be prorated in proportion to the number of days for which services are actually rendered.

C. CONSTRUCTION SUPERVISION FEE. For its services performed pursuant to Paragraph I.N. above, Manager shall receive a construction supervision fee equal to five percent (5%) times the total amount of construction costs approved by Lessee, payable concurrently with the applicable payments to the contractor(s).

D. PAYMENT OF FEES. The Manager's fee provided for herein shall be disbursed by Manager to itself out of the Facility bank account on a priority basis prior to the payment of any other Facility expenses and prior to the repayment of any working capital loans made by Lessee pursuant to the terms hereof.

XI. ASSIGNMENT: Except as otherwise provided in Section I.F. hereof, this Agreement shall not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld.

XII. NOTICES: All notices required or permitted hereunder shall be given in writing by hand delivery, by registered or certified mail, postage prepaid, by overnight delivery or by facsimile transmission (with receipt confirmed with the recipient). Notice shall be delivered or mailed to the parties at the following addresses or at such other places as either party shall designate in writing.

9

To Manager: Emeritus Corporation  
3131 Elliott Avenue  
Suite 500  
Seattle, WA 98121  
Phone: 206-301-4495  
Fax: 206-301-4500  
Attn: Jeff Mikus

To Lessee: Columbia House, LLC  
3131 Elliott Avenue  
Seattle, WA 98121  
Phone: 206-301-4546  
Fax: 206-301-4500  
Attn: Dick Sontgerath

XIII. RELATIONSHIP OF THE PARTIES: The relationship of the

parties shall be that of Lessee and independent contractor and all acts performed by Manager during the term hereof as Manager of the Facility shall be deemed to be performed in its capacity as an independent contractor. Nothing contained in this Agreement is intended to or shall be construed to give rise to or create a partnership or joint venture or lease between Lessee, its successors and assigns on the one hand, and Manager, its successors and assigns on the other hand.

XIV. INDEMNIFICATION: Manager shall indemnify, defend and hold Lessee harmless from any loss incurred by or damage to Lessee where such loss or damage results from the negligence or willful misconduct of Manager in performing its obligations under this Agreement. Lessee shall indemnify, defend and hold Manager harmless from any loss incurred by or damage to Manager where such loss or damage result from the negligence or willful misconduct of Lessee in performing its obligations under the Agreement.

XV. ENTIRE AGREEMENT: This Agreement contains the entire agreement between the parties and shall be binding upon and inure to the benefit of their successors and assigns, and shall be construed in accordance with the laws of the State of Washington. This Agreement may not be modified or amended except by written instrument signed by both of the parties hereto.

XVI. CAPTIONS: The captions used herein are for convenience of reference only and shall not be construed in any manner to limit or modify any of the terms hereof.

10

XVII. ATTORNEY'S FEES: In the event either party brings an action to enforce this Agreement, the prevailing party in such action shall be entitled to recover from the other all costs incurred in connection therewith, including reasonable attorney's fees.

XVIII. SEVERABILITY: In the event one or more of the provisions contained in this Agreement is deemed to be invalid, illegal or unenforceable in any respect under applicable law, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be impaired thereby.

XIX. CUMULATIVE; NO WAIVER: A right or remedy herein conferred upon or reserved to either of the parties hereto is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy

given hereunder, or now or hereafter legally existing upon the occurrence of an Event of Default hereunder. The failure of either party hereto to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof with respect to subsequent defaults. Every right and remedy given by this Agreement to the parties hereof may be exercised from time to time and as often as may be deemed expedient by the parties thereto, as the case may be.

XX. AUTHORIZATION FOR AGREEMENT: The execution and performance of this Agreement by Lessee and Manager have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of Lessee and Manager in accordance with its terms.

XXI. COUNTERPARTS: This Agreement may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF, the parties have hereto caused this Agreement to be duly executed, as of the day and year first above written.

COLUMBIA HOUSE, LLC

By: /s/ Richard K. Sontgerath

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Its :



EMERITUS CORPORATION

By: /s/ Raymond R. Brandstrom

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Its: President

## PURCHASE AND SALE AGREEMENT

This Agreement is made and entered into this 20 day of August 1996, by and between HEARTHSTONE-5K FAMILY LIMITED PARTNERSHIP, a Washington limited partnership ("Seller"), and EMERITUS CORPORATION, a Washington corporation ("Purchaser").

### PURCHASE AND SALE

1. On the terms and conditions set forth herein, Seller shall sell to Purchaser and Purchaser shall purchase from Seller the following:

a. The real property situated in the state of Washington, which is more particularly described in Exhibit A attached hereto (the "Real Property") and the improvements on the Real Property that constitute the 42 unit congregate care and 42-unit assisted living facility commonly known as Hearthstone Retirement Inn and located in Moses Lake, Washington (the "Facility").

b. All equipment, furniture, fixtures, inventory (including linens, dietary supplies and housekeeping supplies but specifically excluding food and other consumable inventories) and other tangible and intangible personal property owned by Seller and located on the Real Property or used in connection with the operation of the Facility, including but not limited to, entitlements, telephone numbers, any right, title or interest which Seller may have in and to any service marks, trademarks or trade names owned or employed by Seller in conjunction with the operation of the Facility specifically including the name "Hearthstone Retirement Inn" and any trade names and trade marks related thereto and goodwill associated therewith, and all motor vehicles owned or leased by Seller and used in conjunction with the operation of the business conducted at the Facility, but specifically excluding cash, cash equivalents and accounts receivable for the period prior to the Closing Date (as defined below) (the "Personal Property"), which Personal Property is more particularly described in Exhibit B.

c. The food and other consumable inventories located at, and usable in the operation of, the Facility on the Closing Date (the "Consumables").

Hereinafter the foregoing shall sometimes be collectively referred to as "Seller's Assets."

### PURCHASE PRICE

The purchase price payable by Purchaser to Seller for Seller's Assets shall be Five Million Two Hundred Thousand and no/100 Dollars (\$5,200,000) and shall be payable as follows:

a. Fifty Thousand and no/100 Dollars (\$50,000) on execution of this Agreement (the "Earnest Money") shall be delivered by Purchaser to Chicago Title Insurance Company, Commercial Escrow, 2601 S. 35th Street, Tacoma, WA 98409 (the "Escrow Agent"). In the event the purchase and sale contemplated by this Agreement is consummated, then the Earnest Money will be credited against the Purchase Price at Closing. In the event the purchase and sale contemplated by this Agreement fails to occur, the Earnest Money shall be remitted to Seller or Purchaser, as appropriate, in accordance with the provisions of Paragraph 17 hereof. The Escrow Agent shall be authorized, at Purchaser's option, to invest the Earnest Money in such manner as Purchaser may direct with Seller's reasonable written approval; provided, however, that the Escrow Agent shall invest the Earnest Money only in such manner as will allow Escrow Agent to disburse the Earnest Money on two (2) days' notice. All interest or other earnings on the Earnest Money shall become part of the Earnest Money and shall be disbursed to the party who becomes entitled to the Earnest Money pursuant to the provisions of this Agreement.

b. The balance, as reduced by the Earnest Money and any accrued interest thereon and as adjusted by the costs and prorations provided for in Paragraph 5, shall be due and payable by wire transfer of immediately available funds at Closing (as defined below); provided, however, that One Hundred Twenty Five Thousand and no/100 Dollars (\$125,000) of said proceeds shall be held in escrow by Escrow Agent (the "Escrowed Funds") for the period specified in Paragraph 26 as security for Seller's indemnity obligations under Paragraph 15(c) with respect to Seller's representations and warranties in Paragraphs 7(c) and 7(d), subject to the following terms and conditions:

(i) The Escrowed Funds shall be deposited in an interest bearing account with interest accruing to the benefit of Seller, except as otherwise ordered by a court of law pursuant to clause (iv). The cost of such escrow shall be shared by Seller and Purchaser on a 50-50 basis.

(ii) Subject to clauses (iii) and (iv), Purchaser shall be entitled to obtain the release of any or all of the Escrowed Funds upon the delivery to Seller and to Escrow Agent of a written demand therefor setting forth the nature of Seller's breach of said representations and warranties and accompanied by an invoice or bid showing the amount which Purchaser has expended or proposes to expend to undertake the repair required as a result thereof.

(iii) Seller shall have a period of ten (10) days after its receipt of Purchaser's demand for the release of any or all of the Escrowed Funds, to advise Purchaser and the Escrow Agent if Seller objects to Purchaser's

demand and the basis therefor, which basis shall be limited to those set forth in Paragraph 15(c).

2

(iv) Seller and Purchaser shall have a period of fifteen ( 15) days after the delivery of Seller's objection pursuant to clause (iii) to negotiate in good faith respect to the release of the Escrowed Funds requested by Purchaser and in the event they are unable to resolve their dispute with respect thereto within said period, the Escrow Agent shall be required to retain the funds which are the subject of said dispute pending a resolution of said dispute by an arbitrator selected by mutual agreement of Seller and Purchase, or, if Purchaser and Seller cannot agree on an arbitrator within twenty (20) days, by a panel of three arbitrators selected within twenty (20) days after the end of such initial twenty (20) day period, comprised of one arbitrator selected by Seller, one arbitrator selected by Purchaser and a third arbitrator selected by the first two arbitrators, and to release said funds, along with the accrued interest thereon, pursuant to the order of said arbitrator.

(v) Any of the Escrowed Funds which remain in escrow at the expiration of the two year period provided for in Paragraph 26, along with the accrued interest thereon, shall be released by Escrow Agent after its receipt of written notice delivered by Seller to Escrow Agent and Purchaser, which notice shall be delivered by Seller within ten ( 10) days following the expiration of the two year period, subject to the following: If Purchaser, within such ten (10) day period, provides to Seller and the Escrow Agent written notice (the "Objection Notice") that the two (2) year period provided for in Paragraph 26 has been extended by the filing of one or more claims within said two year period which then remains unresolved and identifies the amount requested in such claim(s), the amount so requested in such claim(s) shall be retained by the Escrow Agent pending the final resolution of such claim(s) and the remaining balance of the Escrowed Funds, if any, along with the accrued interest thereon, shall be disbursed to Seller; provided that if Seller provides the Escrow Agent and Purchaser with a written notice that it disputes the claim(s) (to the extent it has not already disputed the claim(s)) or the Objection Notice, then such dispute, and the release of the funds which are the subject of such claim(s) and Objection Notice, shall be resolved in accordance with clauses (iii) and (iv) of this Paragraph 2(b).

c. The purchase price shall be allocated among Seller's Assets in the manner set forth in Exhibit C.

Except as specifically provided in this Agreement, Purchaser does not hereby or in connection herewith assume any liability of Seller whatsoever in relation to Seller's Assets, the Real Property, the Personal Property or the

Facility which relates to the period prior to Closing.

#### CLOSING

3. The Closing of the purchase and sale under this Agreement (the "Closing") shall take place on or before October 1, 1996 (provided all of the conditions to closing set forth in Paragraphs 13 and 14 have been satisfied

3

or waived) (the "Closing Date"); provided, however, that Purchaser shall have the right on written notice to Seller delivered on or prior to the Closing Date to extend the Closing Date for a period of up to thirty (30) days. Closing shall occur at the offices of Escrow Agent or at such other place as Purchaser and Seller may mutually agree. Time is of the essence hereto.

#### CONVEYANCE

4. Conveyance of the Seller's Assets to Purchaser shall be effected by a Warranty Deed, Bill of Sale and Assignment of Contracts in form and substance substantially the same as those attached hereto as Exhibits D, E and F; provided, however, that Purchaser acknowledges and agrees that title to the Real Property may be conveyed by Webko Partnership on behalf of Seller and Seller acknowledges and agrees that such conveyance shall not affect Seller's responsibility for the representations and warranties set forth in this Purchase Agreement with respect to title to the Real Property. Fee simple insurable title to the Real Property and indefeasible title to the Personal Property shall be conveyed from Seller to Purchaser free and clear of all liens, charges, easements and encumbrances of any kind, other than the following:

- a. Liens for real estate taxes not yet due and payable;
- b. Such items of record as described in the Title Report (as defined below) which are Permitted Exceptions (as defined in Paragraph 1 I(a)(ii));
- c. All laws, ordinances and governmental regulations, including, but not limited to, all applicable building, zoning, land use and environmental ordinances and regulations; provided, however, that the provisions of this clause (c) shall be subject to Purchaser's right to object thereto and Seller's agreement to take corrective action in response to said objections all as specified more fully in Paragraph 11(a)(ii); and
- d. The rights of the residents of the Facility under written rental agreements.
- e. The terms of any leases or contracts assumed by Purchaser at Closing pursuant to the terms of this Agreement to the extent the same create any

liens, charges, easements or encumbrances on Seller's Assets.

#### COSTS, PRORATIONS AND ADJUSTMENTS

5. The costs of the transaction and the expenses related to the ownership and operation of the Seller's Assets shall be allocated among Seller and Purchaser as follows:

a. Seller shall pay any transfer or documentary stamp or excise tax due on the recording of the Deed.

4

b. Seller shall pay any sales tax due on the sale of the Personal Property.

c. Seller and Purchaser shall share on a 50-50 basis the cost of the Title Report and title insurance policy issued pursuant thereto and Purchaser shall pay the cost of any title endorsements requested by Purchaser. Seller shall pay the cost of the ALTA survey required to deliver the title insurance policy.

d. Seller shall pay for the cost of the environmental assessments of the Seller's Assets which the Purchaser elects to secure prior to Closing, it being understood and agreed that such assessment shall be limited to a Phase I Assessment unless the Phase I Assessment by its terms recommends that a further assessment or investigation be conducted, in which case such assessment shall include such further assessment or investigation as may be recommended in the Phase I Assessment; provided, however, that Seller shall in no event be obligated to pay more than \$5,000 pursuant to this Paragraph 5(d) and accordingly any amount owed in excess of \$5,000 shall be paid by Purchaser.

e. All revenues (including but not limited to rent due from the residents of the Facility) and expenses (including but not limited to payroll and employee benefits) related to the ownership or operation of the Seller's Assets shall be prorated as of the Closing Date, with Seller responsible therefor for the period prior to the Closing Date and with Purchaser responsible therefor for the period from and after the Closing Date.

f. Real and Personal Property taxes shall be prorated as of the Closing Date, with Seller responsible therefor for the period prior to the Closing Date and with Purchaser responsible therefor for the period from and after the Closing Date.

g. Seller shall arrange for a final statement with respect to all utilities serving the Real Property and the Facility as of the Closing Date and shall pay all fees identified thereon and Purchaser shall arrange for all such utilities to be billed in its name from and after the Closing Date and shall

pay all fees due therefor as of the Closing Date.

h. Purchaser and Seller shall each pay their own attorney's fees incurred in connection with the negotiation, preparation and execution of this Agreement and the consummation of the transaction provided for herein.

i. Purchaser and Seller shall share recording fees related to the recording of the Deed and any escrow fees on a 50-50 basis.

j. In the event Seller elects to cure any objections Purchaser makes to the items described in the Title Report or the UCC-1 search report, then Seller shall pay the cost of obtaining and recording any releases necessary to deliver title to the Seller's Assets in accordance with the terms of this Agreement. Seller shall have the right to use the proceeds from the

5

transaction contemplated by this Agreement to discharge all such liens and to pay all costs and prorations for which it is responsible hereunder.

#### POSSESSION

6. At Closing, Purchaser shall be entitled to possession of the Seller's Assets, subject only to the rights of the residents of the Facility under the Facility Leases (as defined below) and the rights of any parties to the Operating Contracts (as defined below) but only to the extent such Operating Contracts grant such parties any possessory rights with respect to the Seller's Assets.

#### REPRESENTATIONS AND WARRANTIES

7. Seller hereby warrants and represents to Purchaser that:

a. Status of Seller. Seller is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Washington.

b. Seller's Authority. Seller has full power and authority to execute and to deliver this Agreement and all related documents, and to carry out the transaction contemplated herein. This Agreement is valid, binding and enforceable against Seller in accordance with its terms, except as such enforceability may be limited by creditors' rights laws and applicable principles of equity. The execution of this Agreement and the consummation of the transaction contemplated herein do not result in a breach of the terms and conditions of nor constitute a default under or violation of Seller's Partnership Agreement or any law, regulation, court order, mortgage, note, bond, indenture, agreement, license or other instrument or obligation to which Seller is now a party or by which Seller or any of the assets of Seller may be bound or affected.

c. Title. Seller has good and insurable fee simple title to the Real Property, and the Facility, which at Closing will be subject only to the easements, reservations and encumbrances, if any, permitted under Paragraph 4, and good and indefeasible title to the Personal Property free and clear of all leases, liens and encumbrances other than any leases, liens and encumbrances evidenced by any of the Operating Contracts assumed by Purchaser at Closing. The Personal Property is, and at Closing will be, in good operating condition and repair and accordingly in the same or better condition and repair, and in sufficient quantity and quality to meet all governmental requirements applicable to the Facility, as on the date of Purchaser's inspection thereof pursuant to Paragraph 11 (a) (iv).

d. The Real Property. The Facility is located on that certain parcel of land more particularly described in Exhibit A attached hereto. The Facility and the roof and all major mechanical systems at the Facility, including, but not limited to, the Air Conditioning, Electrical and Heating and Ventilating Systems, are, and at Closing shall be, in the good operating condition and

6

repair and accordingly in the same or better condition and repair as on the date of Purchaser's inspection thereof pursuant to Paragraph 11 (a) (iv) and have a remaining useful life of no less than two (2) years with nothing more than ordinary maintenance and repair thereof being required to be undertaken by Purchaser with respect thereto.

e. Necessary Action. Seller will proceed with all due diligence to take all action and obtain all consents prior to Closing necessary for it to lawfully enter into and carry out the terms of this Agreement.

f. Taxes and Tax Returns. All tax returns, reports and filings of any kind or nature required to be filed by Seller prior to Closing with respect to its ownership and operation of the Facility and its ownership of the Real Property and the Personal Property have been properly completed and timely filed in material compliance with all applicable requirements and all taxes or other obligations which are due and payable by Seller have been timely paid.

g. Litigation. There is no litigation, investigation, or other proceeding pending or, to the best of Seller's knowledge, threatened against or relating to Seller, its properties or business, which is material to Seller's Assets, the Facility, the Real Property or the Personal Property or to this Agreement, or which would prevent Seller from performing its obligations hereunder, and the transaction contemplated herein has not been challenged by any governmental agency or any other person, nor does Seller know or have reasonable grounds to know, of any basis for any such litigation, investigation or other proceeding. For purposes hereof, litigation, an investigation or other proceeding shall be deemed to be pending if the same has been served on Seller or Seller has otherwise been advised either



orally or in writing of the pendency thereof.

h. Books and Records. All of the books and records maintained by Seller with respect to its ownership and/or operation of the Seller's Assets are true and correct in all material respects.

i. The Facility Leases. Attached hereto as Exhibit G is a true and correct copy of an exemplar of the forms of rental or admission agreement entered into by Seller with each of the current residents of the Facility and each of the rental or admission agreements entered into by Seller is in substantially the form as the exhibit attached hereto (the "Facility Leases"), modified only by ordinary rent increases. A true and correct copy of each of the Facility Leases entered into by Seller with each of the current residents of the Facility has been provided by Seller to Purchaser. Each of the Facility Leases executed by Seller with the residents of the Facility is in full force and effect and none of the Facility Leases has been modified or amended except as set forth in Exhibit G. Seller has no knowledge or notice that it is in default of any of its obligations under the Facility Leases nor is Seller aware of any default or any action which, With the passage of time or the giving of notice or both would constitute a default, under the Facility

7

Leases by any of the residents who are parties thereto. At Closing Seller shall deliver to Purchaser duly executed assignments of the Facility Leases.

j. Rent Roll. Attached hereto as Exhibit H is a true and correct rent roll as of July 1, 1996, which identifies each of the residents of the Facility, the monthly rent currently being paid by each such tenant and the date to which said rent has been paid and, in the event of any rent delinquencies, an explanation of the reason therefor and the efforts being undertaken by Seller to collect said rent. Seller shall update the rent roll on a monthly basis between the date hereof and the Closing Date. Seller further represents and warrants that it has the right under the Facility Leases to increase the rents and related fees and charges paid by the residents of the Facility on no more than sixty (60) days notice and that it has not agreed orally or in writing to provide room, board or other services to any resident or prospective resident for a reduced or nominal fee or without charge.

k. Liens. There are no mechanics', materialmen's or similar liens presently claimed or, to the best of Seller's knowledge, which will be claimed against the Seller's Assets for work, performed or commenced prior to the date hereof at the request of Seller or of which Seller has knowledge, Seller having made or caused to be made arrangements for payment of all those improvements now under construction or development.

l. Environmental Matters. Except in accordance with, and in full compliance with, any and all applicable governmental laws, regulations and requirements (collectively, the "Environmental Laws") relating to

environmental and occupational health and safety matters and hazardous materials, substances or wastes (as defined from time to time under any applicable federal, state or local laws, regulations or ordinances), Seller has not released into the environment, or discharged, placed or disposed of any such hazardous materials, substances or wastes or caused the same to be so released into the environment or discharged, placed or disposed of at, on or under the Seller's Assets. Seller has not installed any underground storage tanks on the Real Property and Seller has not used the Real Property as a dump for hazardous waste material. To the actual knowledge of Seller's general partner based on a review of any Phase I or other environmental assessments which may be in Seller's possession or under Seller's control as of the date hereof and on any other information actually known by Seller's general partner, (i) no hazardous materials, substances or wastes are located on the Real Property or the Facility or have been released into the environment or discharged, placed or disposed of in, on or under the Real Property or the Facility except in accordance with applicable laws and regulations; (ii) no underground storage tanks are located on the Real Property; (iii) the Real Property has not been used by Seller as a dump for waste material; and (iv) the Facility and the prior uses of the Real Property and the Facility by Seller at all times complied with all Environmental Law.

8

m. Employees. Unions. None of the employees of the Facility are members of a labor union or subject to collective bargaining agreement with respect to their employment at the Facility. There are no labor disputes or grievances pending with respect to the operations at the Facility, except as otherwise provided in Exhibit I. For purposes hereof, a labor dispute or grievance shall be deemed to be pending if the same has been served on Seller or Seller has otherwise been advised either orally or in writing of the pendency thereof.

n. Compliance with Law

(i) To the best knowledge of the Seller's general partner, the Seller's Assets are in compliance with all currently applicable municipal, county, state and federal laws, regulations, ordinances, standards and orders and with all municipal, health, building and zoning by-laws and regulations (including, without limitation, the building and zoning codes) where the failure to comply therewith or to obtain a waiver therefrom could have a material adverse effect on the business, property, condition (financial or otherwise) or operation of the Seller's Assets;

(ii) There are no outstanding deficiencies or work orders of any authority having jurisdiction over the Seller's Assets requiring conformity to any applicable statute, regulation, ordinance or by-law pertaining thereto;

and

(iii) Seller is not aware of any claim, requirement or demand of any agency supervising or having authority over the Facility to rework or redesign it or to provide additional furniture, fixtures or equipment so as to conform to or comply with any existing law, code or standard which has not been fully satisfied prior to the date hereof or which will not be satisfied prior to the Closing Date.

o. Operating Contracts. Set forth in Exhibit J are true and correct copies of all operating contracts (including personal property leases) to which Seller or the Facility is a party in connection with the operation of the Facility (the "Operating Contracts"). Each of the Operating Contracts is in full force and effect and none of the Operating Contracts has been modified or amended except as set forth in Exhibit J. Seller has no notice or knowledge that it or the Facility, as applicable, is in default of any obligations under the Operating Contracts nor is Seller aware of any default or any action which, with the passage of time or the giving of notice or both would constitute a default, under the Operating Contracts by any other party thereto. At Closing Seller shall deliver, or cause to be delivered, to Purchaser duly executed assignments of any of the Operating Contracts which Purchaser elects to assume pursuant to Paragraph II (a) (v).

9

p. The Facility The Facility is a congregate care and assisted living facility licensed, with respect to the assisted living unit included therein, by the State of Washington as a boarding home with a total of 42 licensed units and 42 unlicensed congregate care units. The Facility is certified to participate in Medicaid. There is no action pending or, to the best knowledge of Seller, recommended by the appropriate state agency having jurisdiction thereof, to terminate the Facility's license or to take any action of any other type which would have a material adverse effect on the Facility, its operations or business.

q. Inventory. All inventories of non-perishable food; central supplies, linen, housekeeping and other supplies located at the Facility are in sufficient condition and quantity to operate the Facility at normal capacity for two weeks. All inventories of perishable food are at the level normally maintained at the Facility.

r. Disclosure. No representation or warranty by Seller contained in this Agreement and no statement contained in any certificate, list, exhibit, or other instrument furnished or to be furnished to Purchaser pursuant hereto, or in connection with the transaction contemplated hereby, contains or will

contain any untrue statement of a material fact, or omits or will omit to state any material facts which are necessary in order to make the statements contained herein or therein not misleading.

The representations and warranties of Seller in this Paragraph 7 shall be true and correct in all respects, are made by Seller both as of the date hereof and as of the date of Closing.

8. Purchaser hereby warrants and represents to Seller that:

a. Status of Purchaser. Purchaser is a corporation duly organized and validly existing under the laws of the state of Washington and is in good standing under the laws thereof.

b. Authority. Subject to Purchaser obtaining the approval of its Board of Directors on or before September 1, 1996, Purchaser has full power and authority to execute and to deliver this Agreement and all related documents, and to carry out the transactions contemplated herein. This Agreement is valid, binding and enforceable as against Purchaser in accordance with its terms, except as such enforceability may be limited by creditors' rights laws and applicable principles of equity. The execution of this Agreement and the consummation of the transaction contemplated herein do not result in a breach of the terms and conditions of nor constitute a default under or violation of Purchaser's Articles of Incorporation or By-laws or any law, regulations, court order, mortgage, note, bond, indenture, agreement, license or other instrument or obligation to which Purchaser is a party or by which Purchaser or any of the assets or Purchaser may be bound or affected.

10

c. Litigation. There is no litigation, investigation or other proceeding pending or, to the best of Purchaser's knowledge, threatened against or relating to Purchaser, its properties or business which is material to this Agreement, or which would prevent Purchaser from performing its obligations hereunder, nor does Purchaser know or have reasonable grounds to know of any basis for any such action. For purposes hereof, litigation, an investigation or a proceeding shall be deemed to be pending if the same has been served on Purchaser or Purchaser has been advised either orally or in writing of the pendency thereof.

d. Necessary Action. Purchaser will proceed with all due diligence to take all action and obtain all consents prior to Closing necessary for it to lawfully enter into and carry out the terms of this Agreement, including, but not limited to, using its best efforts to obtain the consent of its Board of Directors.

e. Disclosure. No representation or warranty by Purchaser contained in this

Agreement and no statement contained in any certificate, list, exhibit, or other instrument furnished or to be furnished to Seller pursuant hereto, or in connection with the transaction contemplated hereby, contains or will contain any untrue statement of a material fact, or omits or will omit to state any material facts which are necessary in order to make the statements contained herein or therein not misleading.

The representations and warranties of Purchaser in this Paragraph 8 shall be true and correct in all respects, are made by Purchaser both as of the date hereof and as of the date of Closing.

#### 9. BROKER

Each party hereby represents and warrants to the other party that it has not contacted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with this transaction and that it has not taken any action which would result in any real estate broker's, finder or other fees or commissions being due and payable to any other party with respect to the transaction contemplated by this Agreement, other than Carey Dean Erwin, who has been retained and shall be compensated by Seller. Each party hereby indemnifies and agrees to hold the other party harmless from any loss, liability, damage, cost, or expense (including reasonable attorney's fees) resulting to the other party by reason of a breach of the representation and warranty made by the indemnifying party in this paragraph. Notwithstanding anything to the contrary contained in this Agreement, the indemnity set forth in this paragraph and any sums due pursuant to such indemnity shall constitute separate agreements in causes of action in addition to any liquidated damages provided for in this Agreement.

#### COVENANTS

#### 10. Seller

a. Pre-Closing. Between the date hereof and the Closing Date, except as contemplated by this Agreement or with the consent of Purchaser:

i. Seller will file all tax returns, reports and filings of any kind or nature required to be filed by Seller and will timely pay all taxes or other obligations which are due and payable with respect to Seller's Assets;

ii. Seller will not take any action inconsistent with its obligations under this Agreement or which could hinder or delay the consummation of the transactions contemplated by this Agreement, and Seller will continue until

the Closing to fulfill any obligations which it may have under the Facility Leases;

iii. Seller will operate the Facility only in the ordinary course and will continue to maintain and repair the Facility and the Personal Property in the same manner as previously done by Seller;

iv. Seller will take all reasonable action to preserve the goodwill of the residents of the Facility;

v. Seller will not make any material change in the operation of the Facility nor sell or agree to sell any of the items which comprise the Personal Property nor otherwise enter into an agreement materially affecting any of the Seller's Assets;

vi. Seller will use its reasonable efforts to retain the services and goodwill of the employees located at or connected with the operation of the Facility;

vii. Seller will maintain in force the existing hazard and liability insurance policies, or comparable coverage, for the Seller's Assets as now in effect;

viii. Seller will not increase the compensation or other benefits or bonuses payable or to become payable to any of the Seller's employees connected with the operation of the Facility, except for increases, if any, substantially in accordance with existing employment practices disclosed to Purchaser, if any or except for increases which will not affect Purchaser's operations at the Facility after closing;

ix. Seller will not enter into any contract or commitment affecting the Seller's Assets except in the ordinary course of business and Seller will advise Purchaser of any contracts or commitments which it enters, whether in the ordinary course of business or otherwise;

12

x. During normal business hours, Seller will provide Purchaser and its agents with access (in the company of a representative of Seller) on 24 hours notice to the Real Property and the Facility, provided Purchaser does not interfere with the operation of the Facility and provided Purchaser uses its best efforts not to disturb any residents of the Facility during the course of such inspections and at such times Seller shall permit Purchaser to inspect the books and records and the physical and structural condition of the Facility, the Real Property and the Personal Property, which inspection shall be completed by Purchaser prior to September 7, 1996;

xi. Seller will timely pay all obligations which are due and payable with respect to the Seller's Assets;

xii. Seller will operate the Facility in substantial compliance with all applicable municipal, county, state and federal laws, regulations, ordinances, standards and orders as now in effect (including without limitation, the building and zoning codes as currently applied with respect thereto) and with the Environmental Laws, where the failure to comply therewith could have a material adverse effect on the business, property, condition (financial or otherwise) or operation of the Facility or on the Seller's Assets;

xiii. Seller will take all reasonable action to achieve substantial compliance with any laws, regulations, ordinances, standards and orders applicable to the Seller's Assets which are enacted after execution of this Agreement and prior to Closing and which require compliance prior to Closing;

xiv. Seller will proceed with all due diligence to secure any consents which may be necessary for the assignment of the Facility Leases and Operating Contracts;

xv. As soon as practicable after the date hereof but in no event later than twenty (20) days following full execution of this Agreement, Seller will (a) deliver to Purchaser a UCC-1 search report (herein so called), (b) shall cause Chicago Title Insurance Company to furnish to Purchaser a current title commitment (the "Title Report") for the issuance to Purchaser of an extended coverage Owner's title insurance policy with a value equal to the purchase price (the "Title Policy"), insuring Purchaser's interest in the Real Property and the Facility, subject to no exceptions other than those of the usual printed exceptions, which are acceptable to Purchaser and the Permitted Exceptions (hereafter defined) and (c) arrange with a survey firm acceptable to Purchaser for the preparation and delivery of an ALTA Survey of the Real Property and the Facility (the "Survey");

xvi. Seller will provide Purchaser within ten (10) days after execution of this Agreement with copies of any environmental reports, structural report or geological reports which may be in Seller's possession with respect to the Facility and the Real Property, it being understood and agreed, however, that Seller makes no representation or warranty as to the accuracy of any such reports; and

xvii. Seller will cooperate with Purchaser in any efforts which Purchaser

may undertake to audit Seller's financial statements with respect to the Facility for the periods prior to the Closing if and to the extent such an audit is required for Purchaser's compliance with applicable securities laws provided that Purchaser shall pay all costs thereof.

b. Closing. On the Closing Date, if Purchaser has fully performed its obligations pursuant to the terms of this Agreement, Seller agrees that it will:

i. Execute and deliver to Purchaser a good and sufficient Warranty Deed to the Real Property (including the Facility), Bill of Sale with respect to the Personal Property and such endorsements, assignments and other instruments of transfer and conveyance as shall be necessary to transfer and assign Seller's Assets to Purchaser as herein provided;

ii. Deliver to Purchaser a certificate dated as of the Closing Date, certifying in such detail as Purchaser may reasonably specify the fulfillment of the conditions set forth in Paragraph(s) 13(a) and (b) subject to the limitations set forth in Paragraph 26 and setting forth the incumbency of the partners executing documents on behalf of Seller, a copy of the resolutions adopted by Seller's partners authorizing the transaction provided for herein and the execution of this Purchase Agreement and the other documents contemplated herein;

iii. Deliver the tangible property included in the Seller's Assets to Purchaser in the condition and repair required by the terms of this Agreement;

iv. Execute and deliver to Purchaser an assignment and assumption agreement with respect to the Facility Leases (the "Facility Leases Assignment Agreement");

v. Pay its share of the Closing costs, including, but not limited to, the Title Report, Title Policy and Survey described in Paragraph 10(a)(xv);

vi. Execute and deliver to Purchaser an Assignment and Assumption Agreement with respect to any of the Operating Contracts which Purchaser elects to assume at Closing pursuant to Paragraph 11(a)(v) (the "Operating Contract Assumption Agreement");

14

vii. Deliver to Purchaser the Resident Deposits (as defined in Paragraph 19);

viii. Deliver to Purchaser the Benefits Schedule (as defined in Paragraph 18) and pay the Vacation Pay to the employees in accordance with the



provisions of Paragraph 18; and

ix. Deliver to Purchaser evidence of the designation of a duly authorized representative to act with full power and authority on behalf of Seller with respect to any post-closing obligations imposed on Seller hereunder.

c. Post-Closing. After the Closing of this Agreement, Seller agrees that, at Purchaser's sole cost and expense, it will take such actions and properly execute and deliver to Purchaser such further instruments of assignment, conveyance and transfer as, in the reasonable opinion of counsel for Purchaser and Seller, may be reasonably necessary to assure, complete and evidence the full and effective transfer and conveyance of Seller's Assets and cooperate with Purchaser in any efforts which it may undertake to audit Seller's financial statements with respect to the Facility for the periods prior to the Closing if and to the extent such an audit is required for Purchaser's compliance with applicable securities laws.

11. Purchaser

a. Pre-Closing. Between the date hereof and the Closing Date, except as contemplated by this Agreement or with the consent of Seller, Purchaser agrees that:

i. Purchaser will not take any action inconsistent with its obligations under this agreement or which could hinder or delay the consummation of the transaction contemplated by this Agreement;

ii. Within ten ( 10) days after its receipt of the UCC-1 Search Report, the Title Report and the Survey, Purchaser shall advise Seller in writing of its objections, if any, to each of the UCC-1 Search Report, the Title Report and the Survey. In the event Purchaser fails to notify Seller in writing of Purchaser's objections within said ten ( 10) day period, Purchaser shall be deemed to have waived its right to object. Within five (5) days of Seller's receipt of Purchaser's objections, Seller shall advise Purchaser whether it intends to correct the defects to which Purchaser has objected. Seller shall be obligated to act in good faith in responding to Purchaser's title objections; provided, however, that if Seller fails to respond to Purchaser's objections within the five day period provided for herein, Seller shall be deemed to have elected not to take any corrective action with respect to the matters which are the subject thereof. For purposes hereof, Seller shall be deemed to have failed to act in good faith if, and only if, its refuses to correct any matter which is the subject of such title objections where the only costs to it in doing are normal filing or recording fees or delivery

charges and where the objections relate to liens which appear of record but relate to previously discharged debt. If Seller refuses to correct some or all

of such defects, Purchaser shall have five (5) days to advise Seller of its decision to close, notwithstanding the defects, in which case Purchaser shall waive any and all claims against Seller relating to such defects, or to terminate this Agreement, in which case neither party shall have any further rights or obligations hereunder, other than Seller's obligation to return or to direct the return of Purchaser's Earnest Money. Any matter reflected in the UCC-1 Search Report, the Title Report or the Survey not objected to in accordance with the terms hereof or any objection raised by Purchaser and thereafter waived by Purchaser in accordance with the terms hereof shall be deemed accepted by Purchaser and to be "Permitted Exceptions" (herein so called). Notwithstanding anything contained herein to the contrary, in the event Seller requires additional time to prepare either the Survey or the title Report, then Seller shall have such additional time to deliver the same to Purchaser, however, in no event shall such extension be longer than fifteen (15) additional days;

iii. Purchaser will proceed with all due diligence to obtain all consents and approvals necessary to permit the consummation of the transaction contemplated by this Agreement and/or necessary to permit Purchaser to own and to operate the Facility, including, but not limited to, a license from the Washington Department of Health;

iv. Purchaser will proceed with all due diligence and at its sole cost and expense and without interference with any of the residents of the Facility to conduct such investigations with respect to Seller's Assets as it deems to be reasonably necessary in connection with its purchase thereof, including, but not limited to, zoning investigations, soil studies, environmental assessments, seismic assessments, wetlands reports and investigations of Seller's and the Facility's books and records and operations, including a review of the licensure files maintained by the State of Washington with respect to the Facility to the extent the same are publicly available, and structural inspections and to complete the same by (A) in the case of any physical inspections of the Seller's Assets included in Purchaser's Due Diligence Review (as defined below), September 7, 1996 and (B) with respect to any other aspects of Purchaser's Due Diligence Review the earlier to occur, (i) forty five (45) days after the date of this Agreement or (ii) the Closing Date, provided no investigations will be physically intrusive on the Real Property or the Facility unless Seller consents thereto, which consent shall not be unreasonably withheld (the "Due Diligence Review"); provided, however, nothing herein shall be construed as amending or modifying in any manner the representations or warranties of Seller set forth in this Agreement or relieving Seller from its obligation to ensure that said representations and warranties are true and correct at Closing, which representations and warranties shall be separate from and unaffected by Purchaser's Due Diligence Review except to the extent that Seller is able to demonstrate that Purchaser acquired actual knowledge prior to Closing of any facts or circumstances inconsistent with any of Seller's representations

and warranties, Seller failed to take any corrective action with respect to said inconsistency and Purchaser nonetheless elected to close the transaction provided for herein; and provided, further, that Purchaser shall maintain the confidentiality of any documents or information obtained by it during the course of its Due Diligence Review and shall return the same to Seller in the event the transaction provided for herein fails close for any reason whatsoever. Purchaser shall indemnify, defend and hold Seller and the Seller's Assets harmless of and from any and all losses, liabilities, costs, expenses (including without limitation, reasonable attorney's fees and costs of court at trial and on appeal), damages, liens, claims (including, without limitation mechanics' or materialmans' liens or claims of liens), actions and causes of action arising from or relating to Purchaser's (or Purchaser's Agents, employees, or representatives) entering on the Real Property and/or the Facility to test, study, investigate or inspect the same or any part thereof, whether pursuant to this paragraph or otherwise. The foregoing indemnity shall expressly survive the Closing or the earlier termination of this Agreement; and

v. Within fifteen ( 15) days after the later of the date hereof or the date of their delivery to Purchaser, Purchaser will advise Seller in writing which, if any of the Operating Contracts it elects to assume as of the Closing Date.

b. Closing. On the Closing Date, if Seller has fully performed its obligations pursuant to this Agreement, Purchaser agrees that it will:

i. Pay the balance of the Purchase Price due at Closing;

ii. Pay its share of the Closing costs as herein provided;

iii. Deliver to Seller a certificate of a responsible officer dated as of the Closing Date, certifying in such detail as Seller may reasonably specify the fulfillment of the conditions set forth in Paragraph(s) 14(a) and (b) subject to the limitations set forth in Paragraph 26 and setting forth the incumbency of the officers executing documents on behalf of Purchaser, a copy of the resolutions adopted by Purchaser's Board of Directors authorizing the transaction provided for herein and the execution of this Purchase Agreement and the other documents contemplated herein and attaching a certificate of good standing issued by the Washington Secretary of State within no more than thirty (30) days prior to Closing;

iv. Execute and deliver to Seller the Operating Contract Assumption Agreement, if applicable; and

v. Execute and deliver to Seller the Facility Leases Assignment Agreement.

c. Post-Closing. After the Closing of this Agreement, Purchaser agrees that it will:

i. Provide Seller with access during normal business hours to any books or records which Seller may need to file or to defend tax returns or other filings filed prior or subsequent to the Closing Date which relate to periods prior to the Closing Date; and

ii. Take such actions and properly execute and deliver such further instruments as Seller may reasonably request to assure, complete and evidence the transaction provided for in this Agreement.

## 12. Mutual

Following the execution of this Agreement, Purchaser and Seller agree:

a. If any event should occur, either within or without the knowledge or control of Purchaser or Seller, which would prevent fulfillment of the conditions to the obligations of any party hereto to consummate the transaction contemplated by this Agreement, to use its or their reasonable efforts to cure the same as expeditiously as possible; and

b. To cooperate fully with each other in preparing, filing, prosecuting, and taking any other actions which are or may be reasonable and necessary to obtain the consent of any governmental instrumentality or any third party or to accomplish the transaction contemplated by this Agreement.

## CONDITIONS

13. All obligations of Purchaser under this Agreement are subject to fulfillment, prior to or at Closing, of each of the following conditions, any one or all of which may be waived in writing by Purchaser:

a. Seller's Representations and Warranties True at Closing. Seller's representations and warranties contained in this Agreement or in any certificate delivered in connection with this Agreement or the transactions contemplated herein shall be true in all material respects at and as of the date of Closing as though such representations and warranties were then again made.

b. Seller's Performance. Seller shall have performed all of its obligations under this Agreement that are to be performed prior to or at Closing to the extent the same have not been waived by Purchaser in accordance with the terms hereof.

c. No Defaults. Seller shall not be in default, where said default cannot be cured by Closing, under any mortgage, contract, lease or other agreement to which Seller is a party or by which Seller is bound and which affects or relates to the Real Property, the Personal Property or the Facility, including, but not limited to, the Facility Leases.

d. Due Diligence Review. Purchaser shall be satisfied with the results of its Due Diligence Review, including, but not limited to the results of an EPA Phase I Assessment of the Real Property and the Facility within the period specified in Paragraph I 1(a) (iv); provided, however, nothing herein shall be construed as amending or modifying in any manner the representations or warranties of Seller set forth in this Agreement or relieving Seller from its obligation to ensure that said representations and warranties are true and correct at Closing, which representations and warranties shall be separate from and unaffected by Purchaser's Due Diligence Review except to the extent that Seller is able to demonstrate that Purchaser acquired actual knowledge prior to Closing of any facts or circumstances inconsistent with any of Seller's representations and warranties, Seller failed to take any corrective action with respect to said inconsistency and Purchaser nonetheless elected to close the transaction provided for herein. In the event Purchaser elects to terminate this Agreement within the period specified in Paragraph 11 (a) (iv) and this Paragraph 13(d), the parties shall have no further rights or obligations hereunder, other than Purchaser's right to the return of its Earnest Money and Seller's obligation to pay any title cancellation and UCC search fees incurred as a result of such termination.

e. Title. The Title Insurer shall issue to Purchaser as of the date of Closing, an Owner's extended coverage policy of title insurance for the Real Property and the Facility in accordance with the requirements of Paragraph 4.

f. Survey. Purchaser shall be satisfied as to the results of the ALTA Survey in accordance with the provisions of Paragraph 11 (a) (ii).

g. UCC Search. Purchaser shall be satisfied with the results of the UCC search conducted by Seller pursuant to Paragraph 10(a) (xv) in accordance with the provisions of Paragraph 11 (a) (ii).

i. Approvals. Purchaser shall have received all consents and approvals as may be necessary for it to own and to operate the Facility, including, but not limited to, the issuance by the Washington Department of Health to Purchaser of a license to operate the Facility and the approval of Purchaser's Board of Directors; provided, however, Purchaser shall be deemed to have waived the condition with respect to the approval of its Board of Directors unless Purchaser has advised Seller on or before September 1, 1996 that its Board of Directors has refused to approve the transaction.

j. Financing Commitment. Purchaser shall have secured a written commitment from an institutional lender to finance the transaction provided for herein on terms acceptable to Purchaser [and all of the documents

necessary to implement said financing commitment shall have been executed by Purchaser and said lender and delivered into escrow].

Subject to the limitations set forth in the foregoing Paragraph 13, in the event any of the foregoing conditions is not satisfied by Seller or Purchaser, as appropriate, or waived by Purchaser prior to Closing, Purchaser shall have the right to terminate this Agreement in accordance with the provisions of Paragraph 17.

#### 14. CONDITIONS TO SELLER'S OBLIGATIONS

All obligations of Seller under this Agreement are subject to the fulfillment, prior to or at Closing, of each of the following conditions, any one or all of which may be waived by Seller in writing:

a. Purchaser's Representations and Warranties True at Closing. Purchaser's representations and warranties contained in this Agreement or in any certificate or document delivered in connection with this Agreement or the transactions contemplated herein shall be true in all material respects at and as of the date of Closing as though such representations and warranties were then again made.

b. Purchaser's Performance. Purchaser shall have performed its obligations under this Agreement that are to be performed prior to or at Closing to the extent the same have not been waived by Seller in accordance with the terms hereof.

#### INDEMNIFICATION

15. Seller shall indemnify and hold Purchaser harmless from and against:

a. Except as otherwise provided in this Agreement, any and all obligations relating to the ownership of Seller's Assets and the operation of the Facility which exist at the Closing Date, including, but not limited to (i) any obligations of Seller which are to be paid or performed prior to the Closing Date under the Facility Leases or the Operating Contracts which Purchaser elects to assume at Closing, (ii) any obligations of Seller which are to be paid or performed prior to the Closing Date with respect to the Resident Deposits and (iii) any matters related to or arising from any prior bankruptcy or foreclosure proceedings related to the Seller's Assets;

b. Any and all damage, loss or liability arising either before or after the Closing Date under any of the Operating Contracts which Purchaser does

not elect to assume at Closing;

c. Subject to the limitations set forth in Paragraph 26, any and all damage, loss, or liability resulting from any misrepresentation of a material fact, breach of warranty or nonfulfillment of any agreement on the part of Seller under this Agreement or from any misrepresentation in any certificate furnished or to be furnished to Purchaser hereunder; provided, however, that Seller's liability for breach of the representations and warranties set

20

forth in Paragraphs 7(c) and 7(d) shall be limited to the amount of the Escrowed Funds and to repairs necessitated by a defect in workmanship or materials or by Seller's deferred maintenance and shall not, in any event, apply, to (i) repairs required due to fire or other casualty, (ii) repairs required due to actual wear and tear to, Purchaser's misuse of, or Purchaser's failure to maintain with ordinary maintenance, the Seller's Assets, (iii) the cost of any repairs which are covered by insurance proceeds or manufacturer's, suppliers or contractor's warranties which are made available to Purchaser or (iii) repairs required due to the acts of any third party, other than Seller or Purchaser, or any Act of God.

d. Any and all liability or loss arising out of or relating to any failure in connection with the transaction contemplated herein to comply with the requirements of any laws or regulations relating to bulk sales or transfers; and

e. Any and all actions, suits, proceedings, demands, assessments, judgments, reasonable costs, and other reasonable expenses, including, but not limited to, reasonable attorney's fees, incident to any of the foregoing.

For purposes of Paragraph 15(a), an obligation shall be deemed to "exist" as of the Closing Date if it relates to events which occurred prior to the Closing Date even if it is not asserted until after the Closing Date.

16. Purchaser shall indemnify and hold Seller harmless from and against:

a. Except as otherwise provided in this Agreement, any and all obligations relating to the ownership of the Seller's Assets and the operation of the Facility from and after the Closing Date, including, but not limited to any obligations under any of the Facility Leases or Operating Contracts which Purchaser elects to assume at Closing and any obligations with respect to the Resident Deposits;

b. Subject to the limitations set forth in Paragraph 26, any and all damage, loss or liability resulting from any misrepresentation of a material fact, breach of warranty or nonfulfillment of any agreement on the part of Purchaser under this agreement or from any misrepresentation in any certificate furnished or to be furnished to Seller hereunder;

c. Any and all damage, loss or liability resulting from the conduct by or the negligence or willful misconduct of Purchaser in performing its Due Diligence Review; and

d. Any and all actions, suits, proceedings, demands, assessments, judgments, reasonable costs and other reasonable expenses, including, but not limited to, reasonable attorney's fees, incident to any of the foregoing.

#### TERMINATION

17. a. This Agreement may be terminated and the transaction contemplated herein abandoned at any time prior to Closing:

i. By mutual agreement of the parties;

ii. By Seller, if any of the conditions set forth in Paragraph 14 shall have become incapable of fulfillment prior to the Closing Date or such earlier date as may be specifically provided for the performance thereof (as the same may be extended) through no fault of Seller and the same shall not have been waived by Seller;

iii. By Purchaser, if any of the conditions set forth in Paragraph 13 shall have become incapable of fulfillment prior to the Closing Date or such earlier date as may be specifically provided for the performance thereof (as the same may be extended) through no fault of Purchaser and the same shall not have been waived by Purchaser;

iv. By either Seller or Purchaser in the event of a material breach by the other party of its obligations hereunder;

v. If the Closing has not occurred by October 1, 1996 (the "Outside Closing Date"), unless extended by mutual agreement of the parties; provided, however, that in the event all of the conditions to Closing provided for in Paragraph 13 have been satisfied or waived by the Outside Closing Date other than the Purchaser's receipt of the License pursuant to Paragraph 13(i), provided Purchaser is diligently pursuing the issuance of the License by the Washington Department of Health, the Outside Closing Date shall automatically be extended for such additional period of time as may be necessary to permit Purchaser to secure the License; provided, further that in the event Purchaser has not secured the License by December 1, 1996, this Agreement shall thereafter terminate in accordance with the terms hereof and the parties shall have no further rights or obligations hereunder other than Purchaser's right to the return of its



Earnest Money.

b. In the event that prior to the Closing Date, a material portion of the Real Property, the Facility or the Personal Property shall have been damaged or destroyed by fire or other casualty, or shall have been taken or condemned by any public or quasi-public authority under the power of eminent domain, Purchaser shall have the right to terminate this Agreement on written notice to Seller which notice must be delivered within ten (10) days after Purchaser receives notice of such damage, destruction or condemnation. In the event Purchaser fails to exercise its termination rights hereunder, then it shall be conclusively deemed to have waived said right and all claims against Seller relating to such damage or destruction, in which case Seller shall assign to Purchaser all of its rights to any insurance proceeds or

22

condemnation award and all claims in the connection therewith. In the event Purchaser exercises its termination rights hereunder, the parties shall have no further rights or obligations hereunder other than Purchaser's right to the return of its Earnest Money.

c. Neither party to this Agreement may claim termination or pursue any other remedy referred to in Paragraph 17(a) on account of a breach of a condition, covenant or warranty by the other, without first giving such other party written notice of such breach and not less than ten (10) days within which to cure such breach; provided, however, in no event shall the Closing Date be postponed beyond the Outside Closing Date.

d. In the event of the termination of this Agreement by Seller under Paragraphs 17(a)(ii) or (iv) or under Paragraph 17(a)(v) in the event the Closing has failed to occur as a result of a material breach by Purchaser of its obligations hereunder, Seller's sole remedy shall be to terminate this Agreement and to retain Purchaser's Earnest Money as full and complete liquidated damages, the parties acknowledge and agreeing that the amount of damages which Seller may incur as a result of such termination may be difficult to ascertain and that the amount of the Earnest Money is a reasonable and fair estimate thereof, after which the parties shall have no further rights or obligations hereunder.

e. In the event of the termination of this Agreement by Purchaser under Paragraphs 17(a)(iii) or (iv) or under Paragraph 17(a)(v) in the event the Closing has failed to occur as of a material breach by Seller of its obligations hereunder, Purchaser shall have the right as Purchaser's sole and exclusive remedies either to (i) terminate this Agreement and demand the return of its Earnest Money after which neither party shall have any further rights or obligations hereunder or (ii) seek specific performance of Seller's obligations hereunder.

f. In the event of the termination of this Agreement by Purchaser under Paragraph 17(a)(iii) as a result of the failure of the conditions to Closing set forth in Paragraphs 13 (i) and (j), \$10,000 of the Earnest Money and 1/5 of the interest accrued on the Earnest Money shall be remitted to Seller in full and complete settlement of any obligations of Purchaser hereunder and the balance of the Earnest Money along with the balance of the accrued interest thereon shall be remitted to Purchaser, after which neither Purchaser nor Seller shall have any further rights or obligations hereunder.

#### EMPLOYEE BENEFITS

18. At Closing, Seller shall terminate all of the Facility employees and pay to the employees of the Facility, all wages, earned and accrued vacation pay, sick pay, holiday pay and other benefits due to such employees as of the Closing Date, but only in the case of those employees hired by Purchaser effective as of the day after the Closing Date.

23

#### RESIDENT SECURITY DEPOSITS

19. At Closing, Seller shall provide Purchaser with an accounting of all resident security deposits being held by Seller as of the Closing Date (the "Resident Deposits"). Such accounting shall set forth the names of the residents or prospective residents for whom such funds are held, the amounts held on behalf of each resident or prospective resident and the Seller's warranty that the accounting is true, correct and complete.

20. On the Closing Date, Seller shall transfer the Resident Deposits to the bank account designated by the Purchaser and Purchaser shall in writing acknowledge to Seller receipt of and expressly assume all Seller's financial and custodial obligations with respect thereto, it being the intent and purpose of this provision that, at Closing, Seller will be relieved of all fiduciary and custodial obligations, and that Purchaser will assume all such obligations and be directly accountable to the residents and prospective residents of the Facility, with respect thereto.

21. Notwithstanding the foregoing, Seller will indemnify and hold Purchaser harmless from all liabilities, claims and demands in the event the amount of the Resident Deposits transferred to the Purchaser's bank account as provided in Paragraph 21 did not represent the full amount of such Resident Deposits then or thereafter shown to have been delivered to Seller by the current residents or prospective residents of the Facility.

#### NOTICES

22. Any notice, request or other communication to be given by any party hereunder shall be in writing and shall be sent by registered or certified



documents and deliveries contemplated by this Agreement which are to run in favor of the REIT rather than Purchaser and those documents and deliveries contemplated by this Agreement which will be delivered by the REIT rather than Purchaser, if any, it being understood and agreed that in the event of such an assignment, the only right which the REIT will assume is Purchaser's right to take title to the Seller's Assets and the only obligation which the REIT will assume is Purchaser's obligation to pay the purchase price in accordance with the terms hereof and that, in any event, Purchaser shall not be relieved of any of its obligations hereunder in the event of such an assignment. In addition, in the event of an assignment of this Agreement, Purchaser shall not be able to assign its rights under Paragraph 15(c) with respect to the breach of Seller's representations and warranties set forth in Paragraphs 7(c) and (d), it being understood and agreed that said representations and warranties are personal to Purchaser and shall be retained by Purchaser in the event of any such assignment.

#### CAPTIONS

25. The captions of this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

25

#### SURVIVAL/LIMITATION OF ACTION,

26. All covenants, warranties and representations of Purchaser and Seller herein other than Seller's representation and warranty in Paragraph 7(1), which shall survive for the applicable statute of limitations period, shall survive for two years after Closing after which they shall automatically expire; provided, however, that in the event notice of a claim is delivered by Seller or Purchaser prior to expiration of said two year period or applicable statute of limitation period in the case of a claim brought under Paragraph 7(1), the representation, warranty or covenant which is the subject of said claim shall survive until the final, non-appealable resolution thereof.

#### GOVERNING LAW

27. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

#### SEVERABILITY

28. Should any one or more of the provisions of this Agreement be determined to be invalid, unlawful or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall

not in any way be affected or impaired thereby.

#### COUNTERPARTS

29. This Agreement may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument. This Agreement may be executed (i) on an original, (ii) a copy of an original, or (iii) by a facsimile transmission copy of an original followed within five (5) calendar days with execution of an original.

#### THIRD PARTY BENEFICIARY

30. The provisions of this Agreement are not intended to confer any benefits upon any person or entity not a party to this Agreement.

#### ACCOUNTS RECEIVABLE

31. Within ten days prior to the Closing Date, Seller shall provide Purchaser with a detailed listing of Seller's accounts receivable which are anticipated to be outstanding on the Closing Date.

32. From and after the Closing Date, Purchaser shall assume responsibility for the billing for and collection of payments on account of services rendered or goods sold by it on and after the Closing Date and Seller shall retain all right, title and interest in and to and all responsibility for the collection of its accounts receivable for services rendered or goods sold prior to the Closing Date.

33. Any payments received by Purchaser after the Closing Date from residents with balances due for the periods prior to and after the Closing Date which designate the period to which they relate shall be applied in accordance with said designation; any payments received by Purchaser after the Closing Date from residents with balances due for the period prior to and after the Closing Date which do not designated the period to which they relate, shall for the first thirty days after Closing, be remitted by Purchaser to Seller, to the extent necessary to reduce any pre-Closing Date balances from the resident(s) making said payment(s), with the excess, if any, retained by Purchaser to reduce post-Closing Date balances due from said resident(s) and thereafter such payments shall first be applied by Purchaser to reduce any post-Closing Date balances due from said resident(s) with the excess, if any, remitted to Seller to reduce pre-Closing Date balances due

from said resident(s).

34. Seller shall have the right during normal business hours and on reasonable notice to Purchaser to inspect Purchaser's books and records with respect to the accounts receivable received by it after the Closing Date from residents with balances due as of the Closing Date.

ATTORNEYS FEES

35. In the event of a dispute between the parties hereto with respect to the interpretation or enforcement of the terms hereof, the prevailing party shall be entitled to collect from the other its reasonable costs and attorneys fees, including its costs and fees on appeal.

CONSTRUCTION

36. Both parties acknowledge and agree that they have participated in the negotiation and drafting of this Agreement and accordingly that no provision hereof shall be construed so as to favor or disfavor either party hereto.

IN WITNESS WHEREOF, the parties hereby execute this Agreement as of the day and year first set forth above.

SELLER: HEARTHSTONE FIVE Ks FAMILY LIMITED  
PARTNERSHIP.

By: /s/ William Wagner  
-----  
Managing Partner

PURCHASER: EMERITUS CORPORATION

By: /s/ Raymond R. Brandstrom  
-----  
President



[Loan No. 04-751-610092-9]

PROMISSORY NOTE

\$4,160,000 (U.S.)

Seattle, Washington

October 30, 1996

FOR VALUE RECEIVED, the undersigned (individually and collectively, "Borrower"), jointly and severally, promise to pay to the order of WASHINGTON MUTUAL BANK, a Washington corporation, at its office at 1201 Third Avenue, Seattle, Washington 98101, or at such other place as the holder of this Note (hereinafter, "holder") may from time to time designate in writing, the sum of FOUR MILLION ONE HUNDRED SIXTY THOUSAND DOLLARS (\$4,160, 000) in lawful money of the United States, with interest thereon from the date of this Note until paid at the rates set forth below, computed on monthly balances. Interest for each full calendar month during the term of this Note shall be calculated on the basis of a 360-day year and twelve 30-day months. Interest for any partial calendar month at the beginning or end of the term of this Note shall be calculated on the basis of a 365 or 366-day year and the actual number of days in that month.

SECTION 1. INITIAL INTEREST RATE.

The per annum interest rate hereunder (the "Note Rate") shall initially be eight and three-eighths percent (8.375%) (the "Initial Rate"). The Note Rate is subject to adjustment as provided below.

SECTION 2. INTEREST RATE ADJUSTMENTS.

Beginning on May 1, 1997 (the "Initial Interest Adjustment Date") the Note Rate shall be adjusted every six (6) months to a rate that is three percent (3.00%) per annum above the then-applicable "Adjustable Index Rate" (as hereinafter defined) rounded upward to the nearest one-eighth of one percent (.125%). Any date on which the Note Rate is to be adjusted as provided in this Note is referred to herein as the "Interest Adjustment Date".

For purposes of this Note, the "Adjustable Index Rate" shall be based on the weekly average constant maturity yields reported in Federal Reserve Statistical Release H.15 (519), Selected Interest Rates ("Publication H.15"). The figures in the most recent edition of Publication H.15 available as of the Interest Adjustment Date that appear in the column for the week ending immediately preceding the date of such edition shall be used for purposes of the Adjustable Index Rate calculation. The Adjustable Index Rate shall be the yield adjusted to constant maturities stated in Publication



Holder may, in its reasonable discretion, select an alternative source of the Adjustable Index Rate if Publication H.15 ceases to be available, or if the method of calculating treasury constant maturity yield figures set forth therein changes so as to substantially impact the calculation of the Adjustable Index Rate.

### SECTION 3. MONTHLY PAYMENTS.

Beginning on December 1, 1996 and on the same day of each and every calendar month thereafter throughout the term of this Note (the "Monthly Payment Dates"), Borrower shall make monthly payments to holder (the "Monthly Payment Amounts") of accrued interest only.

### SECTION 4. MATURITY.

Unless sooner repaid by Borrower, the entire unpaid principal balance of this Note, plus all accrued but unpaid interest, and all other amounts owing hereunder or under the Security Documents (as defined in Section 8) shall be due and payable in full on November 1, 1999 (the "Maturity Date").

### SECTION 5. APPLICATION OF PAYMENTS.

Payments shall be applied: (i) first, to the payment of accrued interest; (ii) second, at the option of holder, to the payment of any other amounts owing under this Note or secured by the Security Documents, other than accrued interest and principal, including, but not limited to advances holder may have made for attorneys' fees or for taxes, assessments, insurance premiums or other charges on any property given as security for this Note and late charges due hereunder; and (iii) third, to the reduction of principal of this Note.

### SECTION 6. PREPAYMENT.

Borrower may, upon thirty (30) days, prior written notice to holder, prepay its obligation under this Note in full or in part on any Monthly Payment Date without premium or penalty.

### SECTION 7. LATE CHARGE.

If any amount payable hereunder is paid more than ten (10) days after the due date thereof, Borrower promises to pay a late charge of five percent (5%) of the delinquent amount as liquidated damages for the extra expense in handling past due payments.

## SECTION 8. SECURITY.

This Note is secured by a deed of trust, security agreement, assignment of leases and rents and fixture filing (the "Deed of Trust" ) of even date herewith and executed by Borrower, encumbering real property located in Grant County, Washington. The Deed of Trust and any and all other documents securing this Note are collectively referred to as the "Security Documents"; provided, however, that "Security Documents" specifically shall not mean and shall not include the certificate and indemnity agreement regarding hazardous substances being delivered concurrently herewith to holder by Borrower (the "Indemnity Agreement"). The real property and the other collateral provided for in the Security Documents are collectively referred to as the "Property".

## SECTION 9. DEFAULT; REMEDIES.

If default is made in the payment of any amount payable hereunder when due or in the keeping of any covenant of the Security Documents, then, at the option of holder, the entire indebtedness evidenced hereby shall become immediately due and payable. Upon default, and without notice or demand, all amounts owed under this Note, including all accrued but unpaid interest, shall thereafter bear interest at a variable rate, adjusted at the times at which the Note Rate would otherwise have been adjusted pursuant to Section 2, of five percent (5%) per annum above the Note Rate which would have been applicable from time to time had there been no default (the "Default Rate") until such default is cured. Failure to exercise any option granted to holder hereunder shall not waive the right to exercise the same in the event of any subsequent default. Interest at the Default Rate shall commence to accrue upon default under this Note, including the failure to pay this Note at maturity.

## SECTION 10. ATTORNEYS' FEES.

In the event of any default under this Note, or in the event that any dispute arises relating to the interpretation, enforcement or performance of this Note, holder shall be entitled to collect from Borrower on demand all reasonable fees and expenses incurred in connection therewith, including but not limited to fees of attorneys, accountants, appraisers, environmental inspectors,

consultants, expert witnesses, arbitrators, mediators and court reporters. Without limiting the generality of the foregoing, Borrower shall pay all such costs and expenses incurred in connection with: (a) arbitration or other alternative dispute resolution proceedings, trial court actions and appeals; (b) bankruptcy or other insolvency proceedings of Borrower, any

guarantor or other party liable for any of the obligations of this Note or any party having any interest in any security for any of those obligations; (c) judicial or nonjudicial foreclosure on, or appointment of a receiver for, any property securing this Note; (d) post-judgment collection proceedings; (e) all claims, counterclaims, cross-claims and defenses asserted in any of the foregoing whether or not they arise out of or are related to this Note or any security for this Note; (f) all preparation for any of the foregoing; and (g) all settlement negotiations with respect to any of the foregoing.

#### SECTION 11. MISCELLANEOUS.

(a) Every person or entity at any time liable for the payment of the indebtedness evidenced hereby waives presentment for payment, demand and notice of nonpayment of this Note. Every such person or entity further hereby consents to any extension of the time of payment hereof or other modification of the terms of payment of this Note, the release of all or any part of the security herefor or the release of any party liable for the payment of the indebtedness evidenced hereby at any time and from time to time at the request of anyone now or hereafter liable therefor. Any such extension or release may be made without notice to any of such persons or entities and without discharging their liability.

(b) Each person or entity who signs this Note is jointly and severally liable for the full repayment of the entire indebtedness evidenced hereby and the full performance of each and every obligation contained in the Security Documents.

(c) The headings to the various sections have been inserted for convenience of reference only and do not define, limit, modify, or expand the express provisions of this Note.

(d) Time is of the essence under this Note and in the performance of every term, covenant and obligation contained herein.

(e) This Note is made with reference to and is to be

construed in accordance with the laws of the state of Washington.

(f) Each married person who executes this Note as a Borrower agrees that recourse hereunder can be had to his or her separate property as well as the assets of his or her marital community.

DATED as of the day and year first above written.

4

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LEND MONEY  
EXTEND CREDIT OR TO FORBEAR FROM ENFORCING  
REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER  
WASHINGTON LAW.

EMERITUS CORPORATION, a Washington  
corporation

By /s/ Kelly J. Price

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Its Secretary



[Loan No. 04-751-610092-9]

AFTER RECORDING RETURN TO:

Washington Mutual Bank  
1201 Third Avenue, WMT1013  
Seattle, Washington 98101

Attention: Commercial Real Estate  
Department

BE ADVISED THAT THE PROMISSORY NOTE SECURED BY THIS  
DEED OF TRUST PROVIDES FOR A VARIABLE RATE OF  
INTEREST.

DEED OF TRUST, SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES AND RENTS  
AND FIXTURE FILING

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT  
OF LEASES AND RENTS AND FIXTURE FILING ( "Deed of Trust" ), is  
made this 30th day of October, 1996 among EMERITUS CORPORATION,  
a Washington corporation, the address of which is 3131 Elliott Avenue,  
Suite 500, Seattle, Washington 98121 ("Grantor") ; CHICAGO TITLE  
INSURANCE COMPANY, a Missouri corporation, the address of which is  
P.O. Box 1090, Ephrata, Washington 98823, and its successors in  
trust and assigns ("Trustee"), and WASHINGTON MUTUAL BANK, a  
Washington corporation, the address of which is 1201 Third Avenue,  
Seattle, Washington 98101 ( "Beneficiary" ).

1. GRANTING CLAUSE. Grantor, in consideration of the  
acceptance by Trustee of the trust hereunder, and of other good and  
valuable consideration, the receipt and sufficiency of which are  
hereby acknowledged, and in order to secure the obligations  
described in Section 3 below, grants, bargains, sells, and conveys  
to Trustee and its successors in trust and assigns, forever, in  
trust, with power of sale, all of Grantor's estate, right, title,  
interest, claim and demand in and to the property in the county of  
Grant, state of Washington, described as follows, whether now  
existing or hereafter acquired (all of the property described in  
all parts of this Section 1 and all additional property, if any,  
described in Section 2 is herein called the "Property"):

1.1 LAND AND APPURTENANCES. The land described on  
Exhibit A hereto, and all tenements, hereditaments, rights-of-way,  
easements, appendages and appurtenances thereto belonging or in any  
way appertaining, including without limitation all of the right,

title and interest of Grantor in and to any avenues, streets, ways,

alleys, vaults, strips or gores of land adjoining that property, and all claims or demands of Grantor either in law or in equity in possession or expectancy of, in and to that property; and

1.2 IMPROVEMENTS AND FIXTURES. All buildings, structures and other improvements now or hereafter erected on the property described in 1.1 above, and all facilities, fixtures, machinery, apparatus, installations, goods, equipment, inventory, furniture and other properties of whatsoever nature (including without limitation all heating, ventilating, air conditioning, plumbing and electrical equipment, all elevators and escalators, all sprinkler systems, all engines and motors, all lighting, laundry, cleaning, fire prevention and fire extinguishing equipment, all ducts and compressors, all refrigerators, stoves and other appliances, attached cabinets, partitions, rugs, carpets and draperies, all building materials and supplies, and all construction forms, tools and equipment), now or hereafter located in or used or procured for use in connection with that property, it being the intention of the parties that all property of the character hereinabove described which is now owned or hereafter acquired by Grantor and which is affixed or attached to, stored upon or used in connection with the property described in 1.1 above shall be, remain or become a portion of that property and shall be covered by and subject to the lien of this Deed of Trust, together with all contracts, agreements, permits, plans, specifications, drawings, surveys, engineering reports and other work products relating to the construction of the existing or any future improvements on the Property, any and all rights of Grantor in, to or under any architect's contracts or construction contracts relating to the construction of the existing or any future improvements on the Property, and any performance and/or payment bonds issued in connection therewith, together with all trademarks, trade names, copyrights, computer software and other intellectual property used by Grantor in connection with the Property; and

1.3 ENFORCEMENT AND COLLECTION. Any and all rights of Grantor, including, without limitation, to make claim for, collect, receive and receipt for any and all rents, income, revenues, issues, royalties, and profits, including mineral, oil and gas rights and profits, insurance proceeds, condemnation awards and other moneys, payable or receivable from or on account of any of the Property, including interest thereon, or to enforce all other provisions of any other agreement (including those described in Section 1.2 above) affecting or relating to any of the Property, to bring any suit in equity, action at law or other proceeding for the

collection of such moneys or for the specific or other enforcement of any such agreement, award or judgment, in the name of Grantor or otherwise, and to do any and all things which Grantor is or may be or become entitled to do with respect thereto, provided, however,

2

that no obligation of Grantor under the provisions of any such agreements, awards or judgments shall be impaired or diminished by virtue hereof, nor shall any such obligation be imposed upon Trustee or Beneficiary; and

1. 4 ACCOUNTS AND INCOME. Any and all rights of Grantor in any and all accounts, rights to payment, contract rights, chattel paper, documents, instruments, licenses, contracts, agreements and general intangibles relating to any of the Property, including, without limitation, income and profits derived from the operation of any business on the Property or attributable to services that occur or are provided on the Property or generated from the use and operation of the Property; and

1. 5 LEASES. All of Grantor ' s rights as landlord in and to all existing and future leases and tenancies, whether written or oral and whether for a definite term or month to month or otherwise, now or hereafter demising all or any portion of the property described in 1.1 and 1. 2 above, including all renewals and extensions thereof and all rents, deposits and other amounts received or receivable thereunder. In accepting this Deed of Trust neither Beneficiary nor Trustee assumes any liability for the performance of any such lease.

1. 6 BOOKS AND RECORDS. All books and records of Grantor relating to the foregoing in any form and all computer software necessary or useful to reading such books and records.

2. SECURITY AGREEMENT. To the extent any of the property described in Section 1 is personal property, Grantor, as debtor, grants to Beneficiary, as secured party, a security interest therein together with a security interest in all other personal property of whatsoever nature which is located on or used or to be used in connection with any of the property described in Section 1, and any products or proceeds of any thereof, pursuant to the Uniform Commercial Code of the state of Washington (the "UCC"), on the terms and conditions contained herein. Beneficiary hereby assigns such security interest to Trustee, in trust, for the benefit of Beneficiary to be dealt with as a portion of the "Property" except as otherwise specified herein.

3. OBLIGATIONS SECURED. This Deed of Trust is given for the



purpose of securing:

3.1 PERFORMANCE AND PAYMENT. The performance of the obligations contained herein and the payment of FOUR MILLION ONE HUNDRED SIXTY THOUSAND DOLLARS (\$4,160,000) with interest thereon and all other amounts payable according to the terms of a promissory note of even date herewith made by Grantor, payable to

3

Beneficiary or order, and any and all extensions, renewals, modifications or replacements thereof, whether the same be in greater or lesser amounts (the "Note"), which Note contains provision for a variable rate of interest; and

3.2 FUTURE ADVANCES. The repayment of any and all sums advanced or expenditures made by Beneficiary subsequent to the execution of this Deed of Trust for the maintenance or preservation of the Property or advanced or expended by Beneficiary pursuant to any provision of this Deed of Trust subsequent to its execution, together with interest thereon.

4. WARRANTIES AND COVENANTS OF GRANTOR. Grantor warrants, covenants, and agrees:

4.1 WARRANTIES.

(a) Grantor has full power and authority to grant the Property to Trustee and warrants the Property to be free and clear of all liens, charges, and other encumbrances except those, if any, noted on Exhibit B hereto.

(b) None of the Property is used principally or at all for agricultural or farming purposes.

(c) The Property is free from damage and no matter has come to Grantor's attention (including, but not limited to, knowledge of any construction defects or nonconforming work) that would materially impair the value of the Property as security.

(d) The loan evidenced by the Note and secured by this Deed of Trust is primarily for commercial, industrial or business purposes and is not primarily for personal, family or household purposes.

(e) Grantor has obtained all federal, state and local licenses, permits, approvals, franchises, authorizations and certifications required to operate the Property and the improvements thereon as a boarding home or as a skilled nursing

facility; all such licenses, permits, approvals, franchises, authorizations and certifications are current and in good standing; the Property and the improvements thereon are in compliance with all applicable statutes, rules and regulations; and none of Grantor or any manager or operator of the Property on behalf of Grantor has received any notice of the failure of the Property or the improvements thereon, or of Grantor or any manager or operator of the Property on behalf of Grantor, to comply with the requirements of such licenses, permits, approvals, franchises, authorizations and certifications or applicable statutes, rules and regulations.

4

4.2 PRESERVATION OF LIEN. Grantor will preserve and protect the priority of this Deed of Trust as a first lien on the Property.

4.3 REPAIR AND MAINTENANCE OF PROPERTY. Grantor will keep the Property in good condition and repair, which duty shall include but is not limited to continual cleaning, painting, landscaping, repairing and refurbishing of the Property without the express written consent of Beneficiary; will underpin and support when necessary any such building or other improvement and protect and preserve the same; will complete or restore promptly and in good and workmanlike manner any such building or other improvement which may be damaged or destroyed and pay when due all claims for labor performed and materials furnished therefor; will not commit, suffer or permit any act upon the Property in violation of law; and will do all other acts which from the character or use of the Property may be reasonably necessary for the continued operation of the Property in a safe and legal manner, the specific enumerations herein not excluding the general.

#### 4.4 INSURANCE.

4.4.1 HAZARD. Grantor will provide, maintain and deliver to Beneficiary, as further security for the faithful performance of this Deed of Trust, insurance covering fire, casualty and such other hazards as may be specified by Beneficiary (including insurance against flood, if the Property is situated in a designated flood zone) in an amount equal to one hundred percent (100%) of the replacement cost of the Property and naming Beneficiary as first loss payee pursuant to a standard first-mortgage endorsement on Form 438BFU or on a loss-payee form substantially equivalent to the New York standard mortgage endorsement, with such deductibles as approved by Beneficiary but that are, in any event, not more than \$10,000. Grantor shall be responsible for any uninsured losses and any deductibles. All

existing and future policies for such insurance, and the proceeds thereof, are hereby assigned to Beneficiary, but no such assignment shall be effective to invalidate or impair any insurance policy. Should the Property or any part thereof be damaged by reason of any cause covered by insurance, Beneficiary may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any reasonable compromise or settlement in connection with such damage, and obtain all proceeds, or other relief therefor, and Grantor agrees to pay Beneficiary's costs and reasonable attorneys' fees in connection therewith. No insurance proceeds at any time assigned to or held by Beneficiary shall be deemed to be held in trust, and Beneficiary may commingle such proceeds with its general assets and shall not be liable for the

5

payment of any interest thereon. The amount collected under any insurance policies required to be maintained by Grantor pursuant to this Section 4.4.1 may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary, the entire amount so collected or any part thereof may be released to Grantor. Beneficiary shall in no case be obligated to see to the proper application of any amount paid over to Grantor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

4.4.2 LIABILITY. Grantor will maintain comprehensive general liability insurance covering the legal liability of Grantor against claims for bodily injury, death, or property damage occurring on, in, or about the Property with coverage of One Million Dollars (\$1,000,000) combined single limit, and naming Beneficiary an additional insured.

4.4.3 RENTAL INTERRUPTION. Grantor will maintain rental or business interruption insurance in an amount equal to at least twelve (12) months' gross rental income from the Property, and naming Beneficiary as first loss payee, provided that Grantor may collect and retain any payments under said policies so long as it is not in default hereunder; provided, however, Grantor will not be required to maintain rental or business interruption insurance if the Property is used exclusively as a mobile home park.

4.4.4 INSURANCE SURVEY. During the last thirty (30) days of every third year computed from the date hereof, Grantor will have an insurance survey of the Property made. Grantor shall at these times obtain such additional coverages or make such increases in the amounts of existing coverage as may be requested by Beneficiary on the basis of such survey.

4.4.5 GENERAL PROVISIONS. All policies of insurance required to be maintained by Grantor pursuant to this Section 4.4 shall be in form and substance and with companies acceptable to Beneficiary and which have a current rating of A-/10 or better from the current Best Key Rating Guide, and contain waiver of any co-insurance clauses. Beneficiary reserves the right, in its reasonable discretion, to increase the amount of the required coverages, require insurance against additional risks, or withdraw approval of any insurance company at any time. Grantor shall deliver to Beneficiary an original of all policies of insurance and shall obtain renewals of any policies which expire and deliver evidence of such renewals to Beneficiary no later than ten (10) days prior to the expiration date of the policy being replaced. All policies and renewals thereof shall contain provision for thirty (30) days' notice to Beneficiary prior to any cancellation

6

thereof. Notwithstanding any of the foregoing, neither Trustee nor Beneficiary shall be responsible for any such insurance or for the collection of any insurance moneys, or for any insolvency of any insurer or insurance underwriter. Any and all unexpired insurance shall inure to the benefit of and pass to the purchaser of the Property at any trustee's or sheriff's sale held hereunder.

4.5 RIGHT OF INSPECTION. Grantor shall permit Beneficiary or its agents, at all reasonable times with reasonable notice, to enter upon and inspect the Property.

4.6 PRESERVATION OF LICENSES ETC. Grantor shall observe and comply with all requirements necessary to the continued existence and validity of all rights, licenses, permits, privileges, franchises and concessions relating to any existing or presently contemplated use of the Property, including but not limited to any zoning variances, special exceptions and nonconforming use permits.

4.7 FURTHER ASSURANCES. Grantor will, at its expense, from time to time execute and deliver any and all such instruments of further assurance and other instruments and do any and all such acts, or cause the same to be done, as Trustee or Beneficiary deems necessary or advisable to grant to Trustee the Property or to carry out more effectively the purposes of this Deed of Trust.

4.8 LEGAL ACTIONS. Grantor will appear in and defend any action or proceeding before any court or administrative body purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and will pay all reasonable costs and

expenses, including cost of evidence of title, title insurance premiums and any fees of attorneys, appraisers, environmental inspectors and others, incurred by Beneficiary or Trustee, in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary or Trustee to foreclose this Deed of Trust and in any non-judicial foreclosure of this Deed of Trust.

4.9 TAXES, ASSESSMENTS AND OTHER LIENS. Grantor will pay not later than when due all taxes, assessments, encumbrances, charges, and liens with interest, on the Property or any part thereof, which at any time appear to be or are alleged to be prior and superior hereto, including but not limited to any tax on or measured by rents of the Property, the Note, this Deed of Trust, or any obligation or part thereof secured hereby.

Notwithstanding the above, Grantor shall have the right to contest diligently and in good faith the validity or amount of any tax, assessment, encumbrance, charge or lien affecting the Property

7

or any part thereof and so long as the validity or amount thereof is being contested diligently and in good faith, Grantor may, to the extent permitted by law, defer payment of such tax, assessment, encumbrance, charge or lien, provided that Grantor protects the Property against any lien arising out of the failure to pay such amount when due by obtaining a surety bond in form and substance satisfactory to Beneficiary, in its reasonable discretion, and issued by a corporate surety satisfactory to Beneficiary, in its reasonable discretion.

4.10 EXPENSES. Grantor will pay all costs, fees and expenses reasonably incurred by Beneficiary or Trustee in connection with this Deed of Trust.

4.11 REPAYMENT OF EXPENDITURES. Grantor will pay immediately and without demand all amounts secured by this Deed of Trust, other than principal of and interest on the Note, with interest from date of expenditure at the default rate of interest specified in the Note (the "Default Rate") and the repayment thereof shall be secured hereby.

4.12 FINANCIAL & OPERATING INFORMATION. Grantor will, within sixty (60) days of the close of Grantor's fiscal year, furnish to Beneficiary in such form as it may request, financial statements and balance sheets of Grantor and the entities and individuals who are liable for repayment of the Note, and itemized annual statements of income and expense in connection with the

operation of the Property, including but not limited to utilization and property inspection reports, and such other financial and operating statements of Grantor as Beneficiary may from time to time require and such operating statements, occupancy reports, variance reports and financial information for the Property as Beneficiary may from time to time require.

If Grantor defaults in its obligation to provide Beneficiary with any of the financial and operating information required to be provided under this subsection 4.12 within the time periods required under this subsection 4.12 and such default continues after Beneficiary has provided Grantor with thirty (30) days' notice and opportunity to cure such default, Grantor shall pay to Beneficiary, as liquidated damages for the extra expense in servicing the loan secured hereby, Five Hundred Dollars (\$500) on the first day of the month following the expiration of such thirty (30) day period and One Hundred Dollars (\$100) on the first day of each month thereafter until such default is cured. All such amounts shall be secured by this Deed of Trust.

#### 4.13 SALE TRANSFER OR ENCUMBRANCE OF PROPERTY.

Grantor shall not sell, transfer or otherwise convey the Property or any interest therein, further encumber the Property or any interest therein, cause or permit any change in the entity or control of Grantor or agree to do any of the foregoing without first repaying in full the Note and all other sums secured hereby.

4.14 INFORMATION FOR PARTICIPANTS. Grantor agrees to furnish such information and confirmation as may be required from time to time by Beneficiary on request of potential loan participants and agrees to make reasonable adjustments in this Deed of Trust, the Note, and the other documents evidencing or securing the loan secured hereby to accommodate such participant's requirements, provided that such requirements do not vary the economic terms of the loan secured hereby and are otherwise reasonably acceptable to Grantor.

4.15 GRANTOR EXISTENCE. Except as otherwise provided in Section 4.13:

(a) If Grantor is a corporation, Beneficiary is making this loan in reliance on Grantor's continued existence ownership and control in its present corporate form. Grantor will

not alter such corporate structure (in any significant way) or control without the prior written consent of Beneficiary, and will do all things necessary to preserve and maintain said corporate existence and to insure its continuous right to carry on its business, including but not limited to, filing within the prescribed time all corporate tax returns and reports, and paying when due all such taxes.

(b) If Grantor is a partnership, Beneficiary is making this loan in reliance on the continued existence of Grantor partnership and upon the business and financial reputation of Grantor partnership as a business entity and each of the general partners thereof. Therefore, the general partners of Grantor hereby agree that they will take no action to dissolve Grantor partnership and will do all things within their power to prevent the dissolution and winding up of Grantor partnership, notwithstanding the death, withdrawal or expulsion of any general partner. They further agree that without the prior written consent of Beneficiary, none of the general partners of Grantor will withdraw or be removed as a general partner of Grantor. The withdrawal or expulsion of any general partner from Grantor partnership shall not in any way affect the liability of the withdrawing or expelled general partner hereunder or on the Note.

(c) If Grantor is a limited liability company, Beneficiary is making this loan in reliance on Grantor's continued existence, ownership and control in its present limited liability company form. Grantor will not alter such limited liability company structure, ownership or control without the prior written consent of Beneficiary and will do all things necessary to preserve and maintain said limited liability company existence and to insure its continuous right to carry on its business.

4.16 TAG AND INSURANCE RESERVES. In addition to the payments required by the Note, Grantor agrees to pay Beneficiary, at Beneficiary's request, such sums as Beneficiary may from time to time estimate will be required to pay, at least 30 days before due, the next due taxes, assessments, insurance premiums, and similar charges affecting the Property, less all sums already paid therefor divided by the number of months to elapse before one month prior to the date when such taxes, assessments and premiums will become delinquent, such sums to be held by Beneficiary without interest or other income to the Grantor to pay such taxes, assessments and premiums. Should this estimate as to taxes, assessments and

premiums prove insufficient, the Grantor upon demand agrees to pay Beneficiary such additional sums as may be required to pay them before delinquent.

If the total of the above-described payments in any one year shall exceed the amounts actually paid by Beneficiary for taxes, assessments and premiums, such excess may be credited by Beneficiary on subsequent payments under this section. If there shall be a default hereunder for which Beneficiary elects to realize upon this Deed of Trust, then at any time after default and prior to the trustee's sale or sheriff's sale, Beneficiary may apply any balance of funds it may hold pursuant to this Section 4.16 to any amount secured by this Deed of Trust and in such order as Beneficiary may elect. If Beneficiary does not so apply such funds at or prior to the trustee's sale or sheriff's sale, the purchaser at such sale shall be entitled to all such funds. If Beneficiary acquires the Property in lieu of realizing on this Deed of Trust, the balance of funds it holds shall become the property of Beneficiary.

Any transfer in fee of all or a part of the Property shall automatically transfer to the grantee all or a proportionate part of Grantor, s rights and interest in the fund accumulated hereunder.

#### 4.17 LEASES.

(a) Grantor will in all respects promptly and faithfully keep, perform and comply with all of the terms, provisions, covenants, conditions and agreements in each of the agreements pursuant to which any tenant of any part of the Property is occupying the Property (the "Leases") to be kept, performed and complied with by the lessor therein, and will require, demand and strictly enforce, by all available means, the prompt and faithful performance of and compliance with all of the terms, provisions, covenants, conditions and agreements in the Leases to be performed and complied with by the lessees therein.

(b) Grantor shall not receive or collect any rents from any present or future tenant of the Property or any part thereof in advance in excess of five percent (5.00%) of gross annual rental income from the Property or collect a security



deposit in excess of two (2) months, rent.

(c) Grantor shall promptly deposit and maintain all security deposits received by Grantor from tenants in a segregated trust account in a federally insured bank or savings and loan association and shall notify and direct in writing each and every present or future tenant or occupant of the Property or any part thereof that any security deposit or other deposit heretofore delivered to Grantor has been retained by Grantor or assigned and delivered to Beneficiary as the case may be.

(d) In the event any lessee under the Leases should be the subject of any proceeding under the United States Bankruptcy Code or any other type of insolvency proceeding, Grantor covenants and agrees that in the event Grantor has a claim in such proceeding in respect of any of the Leases, no settlement thereof shall be made without the prior written consent of Beneficiary; and further that any check in payment of damages for rejection of any such Lease shall be made payable both to Grantor and Beneficiary; and Grantor hereby assigns any such payment to Beneficiary and further covenants and agrees that upon request of Beneficiary it will duly endorse to the order of Beneficiary any such check, the proceeds of which will be applied to any portion of the indebtedness secured by this Deed of Trust as Beneficiary may elect. In addition, after the occurrence of and during the continuance of any Event of Default, Beneficiary shall be entitled to assert, in its own name or in the name of Grantor, any claim in respect of the Leases in any such proceeding.

#### 4.18 HAZARDOUS WASTE.

(a) For purposes of this Deed of Trust, "hazardous substance" means any hazardous or toxic substances, materials or wastes, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) defined as a "hazardous waste" "extremely hazardous waste"; "restricted hazardous waste" or "hazardous substance" under RCW Chapter 70.105 (Hazardous Waste

Management) or RCW Chapter 70.105D (Hazardous-Waste Cleanup-- Model Toxics Control Act), (v) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. 1251 et seq. (33 U.S.C. 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. 1317), (vi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. 6903), or (vii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601, et seq. (42 U.S.C. 9601), all as amended, replaced or succeeded, and any other substance or matter defined as a toxic or hazardous substance or material or pollutant or contaminant under any other federal, state or local laws, ordinances or regulations or under any reported decision of a state or federal court, or any substance or matter imposing liability for clean-up costs or expenses on any person or entity under any statutory or common law theory.

(b) To Grantor's best knowledge and after due and diligent inquiry based on the Phase I Environmental Site Assessment dated October 18, 1996 prepared by Atec Associates, Inc. as Job No. 42-07-96-00331, Grantor represents and warrants that neither Grantor nor any previous owner or user of the Property has used, generated, stored or disposed of above, in, on, under or around the Property any hazardous substance and that there is not now, nor have there ever been tanks or facilities on, under or at the Property which contained materials which, if known to be present in soils or ground water, would require cleanup, removal or some other remedial action under any federal, state or local law or regulation. Except as otherwise permitted by law, Grantor hereby covenants and agrees that Grantor will not conduct, permit or authorize the generation, transportation, storage, treatment or disposal at the Property of any hazardous substance, and neither Grantor or any agent, servant or employee shall generate, store,

12

bury or dispose of any hazardous substance on or in a location that will adversely affect the Property. Grantor shall promptly and diligently comply with all requirements of federal, state or local laws, statutes, ordinances or regulations, or court or administrative orders or decrees, or private agreements pertaining to hazardous substances.

(c) If the presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment or disposal at the Property of any hazardous substance: (i) gives rise to liability (including but not limited to, a response action, remedial action or removal action) under

RCRA, CERCLA, state toxic waste laws, or otherwise, or (ii) causes a significant public health effect, or (iii) pollutes or threatens to pollute the environment, Grantor shall, at its sole expense, promptly take any and all remedial and removal action necessary to clean up the Property and mitigate exposure to liability arising from the hazardous substance, whether or not-required by law. Any provision of this Deed of Trust to the contrary notwithstanding, if Grantor fails to perform its obligations under this subsection 4.18(c), any funds advanced by Beneficiary to pay for any and all remedial and removal action to clean up the Property and mitigate exposure to liability from the hazardous substance shall not be secured by the lien of this Deed of Trust but rather shall be covered by the separate Certificate and Indemnity Agreement Regarding Hazardous Substances executed concurrently herewith.

(d) Grantor shall promptly give Beneficiary:

(i) written notice and a copy of any notice or correspondence it receives from any federal, state or other government authority regarding hazardous substances on the Property or hazardous substances which affect or will affect the Property, (ii) written notice of any knowledge or information Grantor obtains regarding hazardous substances on the Property or hazardous substances which will affect the Property or expenses or losses incurred or expected to be incurred by Grantor or any government agency to study, assess, contain or remove any hazardous substances on or near the Property, and (iii) written notice of any knowledge or information Grantor obtains regarding the release or discovery of hazardous substances on the Property or on other property owned by Grantor or for which Grantor is or may be responsible.

(e) In the event Beneficiary requires, from time to time, Grantor to implement an operations and maintenance plan because of the presence or potential presence of asbestos, or lead containing paint or other hazardous substances on the Property, Grantor shall implement and follow the requirements of any such operations and maintenance plan, maintain records of such compliance at the Property and make such records immediately

13

available to Beneficiary upon request by Beneficiary. If Grantor defaults in its obligation to provide Beneficiary with any information or reports required to be provided under the operations and maintenance plan or this subsection 4.18(e) and such default continues after Beneficiary has provided Grantor with thirty (30) days, notice and opportunity to cure such default, Grantor shall pay to Beneficiary, as liquidated damages for the extra expense in servicing the loan secured hereby, Five Hundred Dollars (\$500) on the first day of the month following the expiration of such thirty

(30) day period and One Hundred Dollars (\$100) on the first day of each month thereafter until such default is cured. All such amounts shall be secured by this Deed of Trust.

4.19 MANAGEMENT OF THE PROPERTY. Beneficiary is making this loan in reliance on the business experience and financial reputation of Grantor as an experienced operator and owner of assisted living facilities. Therefore, Grantor agrees that it will not appoint or hire any management company to operate the Property or make any material change in the type of business conducted by Grantor on the Property.

4.20 LICENSES AND PERMITS. Grantor shall maintain and furnish or cause to be maintained and furnished to Beneficiary upon request, all federal, state and local licenses, permits, approvals, franchises, authorizations and certifications required to operate the Property and the improvements thereon as a boarding home or as a skilled nursing facility, including, but not limited to, administrator licenses, qualifications and certificates necessary to receive Medicare and Medicaid reimbursements or entitlements, income or revenues from any governmental agency or other source. Grantor agrees that it shall not take any action or allow any event to occur that would jeopardize such licenses, permits, approvals, franchises, authorizations or certificates or its right to receive Medicare or Medicaid reimbursements or entitlements, income or revenues from any governmental entity or agency or other source. Grantor shall, immediately upon receipt by Grantor, furnish to Beneficiary copies of all inspection reports on the Property from any governmental agency or other source, copies of renewals of all licenses, permits, approvals, franchises, authorizations and certifications and copies of all notices of the failure of the Property, Grantor or any manager or operator of the Property to comply with the requirements of any licenses, permits, approvals, franchises, authorizations and certifications or with any applicable statutes, rules and regulations and notices of any and all enforcement or remedial actions taken by any governmental agency.

4.21 LIFE CARE CONTRACTS. Grantor agrees that it shall not enter into nor allow any lessee of the Property or the improvements thereon to enter into any life care contracts or other agreements pursuant to which Grantor or its lessee agrees to provide housing, nursing or other services that are of a duration measured by the life of the other party entering into such

agreements.

## 5. DEFAULT.

5.1 DEFINITION. Any of the following shall constitute an "Event of Default" as that term is hereinafter used:

(a) Any representation or warranty made by or for the benefit of Grantor herein or elsewhere in connection with the loan secured hereby, including but not limited to any representations in connection with the security therefor, shall prove to have been incorrect or misleading in any material respect;

(b) Grantor or any other person or entity liable therefor shall fail to pay when due any indebtedness secured hereby;

(c) Grantor or any other signatory thereto shall default in the performance of any covenant or agreement contained in this Deed of Trust, the Note, or any other agreement securing the indebtedness secured hereby;

(d) Grantor or any other person or entity liable for the repayment of the indebtedness secured hereby shall become unable or admit in writing its inability to pay its debts as they mature, or file, or have filed against it, a voluntary or involuntary petition in bankruptcy, or make a general assignment for the benefit of creditors, or become the subject of any other receivership or insolvency proceeding;

(e) Grantor or any other signatory thereto shall default in the performance of any covenant or agreement contained in any mortgage or deed of trust encumbering the Property, or the note or any other agreement evidencing or securing the indebtedness evidenced thereby;

(f) A tax, charge or lien shall be placed upon or measured by the Note, this Deed of Trust, or any obligation secured hereby which Grantor does not or may not legally pay in addition to the payment of all principal and interest as provided in the Note; or

(g) The failure of the Property or the improvements thereon or Grantor or any manager or operator of the Property to comply with any and all applicable statutes, rules and regulations,

the failure to renew or the revocation of any license, permit, approval, franchise, authorization or certification required to operate the Property and the improvements thereon as a boarding home or as a skilled nursing facility or any qualification or certification necessary to receive Medicare and Medicaid reimbursements or entitlements, income or revenues from any governmental agency or other source or the commencement of any enforcement or remedial action by any governmental agency, including, without limitation, the appointment of a receiver or manager of the Property.

#### 5. 2 BENEFICIARY'S AND TRUSTEE'S RIGHT TO PERFORM.

Upon the occurrence of any Event of Default, Beneficiary or Trustee, but without the obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligations hereunder, may: make any payments or do any acts required of Grantor hereunder in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien in accordance with the following paragraph; and in exercising any such powers, pay necessary expenses, employ counsel and pay a reasonable fee therefor. All sums so expended shall be payable on demand by Grantor, be secured hereby (except as otherwise provided in Section 4.18) and bear interest at the Default Rate from the date advanced or expended until repaid.

Beneficiary or Trustee in making any payment approved in this Section 5.2 and hereby authorized, in the place and stead of the Grantor, in the case of a payment of taxes, assessments, water rates, sewer rentals and other governmental or municipal charges, fines, impositions or liens asserted against the Property, may make such payment in reliance on any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; in the case of any apparent or threatened adverse claim of title, lien, statement of lien, encumbrance, deed of trust, claim or charge Beneficiary or Trustee, as the case may be, shall be the sole judge of the legality or validity of same; and in the case of a payment for any other purpose herein and hereby authorized, but not enumerated in this paragraph, such payment may be made whenever, in the sole judgment and discretion

of Trustee or Beneficiary, as the case may be, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this instrument, provided further, that in connection with any such advance, Beneficiary at its option may and is hereby authorized to obtain a continuation report of title prepared by a title insurance company, the cost and expenses of which shall be repayable by the Grantor without demand and shall be secured hereby.

5.3 REMEDIES ON DEFAULT. Upon the occurrence of any Event of Default all sums secured hereby shall become immediately due and payable, without notice or demand, at the option of Beneficiary and Beneficiary may:

(a) Have a receiver appointed as a matter of right, without regard to the sufficiency of the Property or any other security for the indebtedness secured hereby and, without the necessity of posting any bond or other security, such receiver shall take possession and control of the Property and shall collect and receive all of the rents, issues and profits thereof;

(b) Foreclose this Deed of Trust as a mortgage or otherwise realize upon the Property;

(c) Cause Trustee to exercise its power of sale; or

(d) Sue on the Note according to law.

5. 4 NO WAIVER. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare an Event of Default for failure to do so.

6. CONDEMNATION. Any award of damages, whether paid as a result of judgment or prior settlement, in connection with any condemnation or other taking of any portion of the Property, for public or private use, or for injury to any portion of the Property is hereby assigned and shall be paid to Beneficiary which may apply such moneys received by it in the same manner and with the same effect as provided in Section 4.4.1 above for disposition of proceeds of hazard insurance. Should the Property or any part or appurtenance thereof or right or interest therein be taken or threatened to be taken by reason of any public or private improvement, condemnation proceeding (including change of grade), or in any other manner, Beneficiary may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any reasonable compromise or settlement in connection with such taking or damage, and obtain all compensation, awards or other relief therefor, and Grantor agrees to pay Beneficiary's costs and

reasonable attorneys' fees incurred in connection therewith. No condemnation award at any time assigned to or held by Beneficiary shall be deemed to be held in trust, and Beneficiary may commingle such award with its general assets and shall not be liable for the payment of any interest thereon.

7. TRUSTEE.

7.1 GENERAL POWERS AND DUTIES OF TRUSTEE. At any time or from time to time, without liability therefor and without notice and without affecting the liability of any person for the payment of the indebtedness secured hereby, upon written request of Beneficiary, payment of its own fees and presentation of this Deed of Trust and the Note for endorsement (in case of full reconveyance, for cancellation or retention), Trustee may:

(a) Consent to the making of any map or plat of the Property;

(b) Join in granting any easement or creating any restriction thereon;

(c) Join in any subordination or other agreement affecting this Deed of Trust or the lien or charge thereof; or

(d) Reconvey, without warranty, all or any part of the Property.

7.2 RECONVEYANCE. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in any reconveyance executed under this Deed of Trust of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto".

7. 3 POWERS AND DUTIES ON DEFAULT. Upon written request therefor by Beneficiary specifying the nature of the default, or the nature of the several defaults, and the amount or amounts due and owing, Trustee shall execute a written notice of default and of its election to cause the Property to be sold to satisfy the obligation secured hereby, and shall cause such notice to be recorded and otherwise given according to law.



Notice of sale having been given as then required by law and not less than the time then required by law having elapsed after recordation of such notice of breach, Trustee, without demand on Grantor, shall sell the Property at the time and place of sale specified in the notice, as provided by statute, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest and best bidder for cash in lawful money of the United States, payable at time of sale. Grantor agrees that such a sale (or a sheriff's sale pursuant to judicial foreclosure) of all the Property as real estate constitutes a commercially reasonable disposition thereof, but that with respect to all or any part of the Property which may be personal property Trustee shall have and exercise, at Beneficiary's sole election, all the rights and remedies of a secured party under the UCC. Whenever notice is permitted or required hereunder or under the UCC, ten (10) days shall be deemed reasonable. Trustee may postpone sale of all or any portion of the Property, and from time to time thereafter may postpone such sale, as provided by statute. Trustee shall deliver to the purchaser its deed and bill of sale conveying the Property so sold, but without any covenant or warranty, express or implied. The recital in such deed and bill of sale of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person other than Trustee, including Grantor or Beneficiary, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this trust, including the cost of evidence of title search and title insurance and reasonable counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums secured hereby in such order as Beneficiary may determine; and the remainder, if any, to the clerk of the superior court of the county in which the sale took place, as provided in RCW 61.24.080.

7.4 REASSIGNMENT OF SECURITY INTEREST. At the request of Beneficiary, Trustee shall reassign to Beneficiary the security interest created hereby and after such reassignment Beneficiary shall have the right, upon the occurrence or continuance of any Event of Default, to realize upon the personal property subject to this Deed of Trust, independent of any action of Trustee, pursuant to the UCC.

7.5 ACCEPTANCE OF TRUST. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to

notify any party hereto except Beneficiary of pending sale under any other deed of trust or of any action or proceeding in which Grantor, Beneficiary or Trustee shall be a party unless brought by Trustee.

7.6 RELIANCE. Trustee, upon presentation to it of an affidavit signed by Beneficiary setting forth facts showing a default by Grantor under this Deed of Trust, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

7.7 REPLACEMENT OF TRUSTEE. Beneficiary may, from time to time, as provided by statute, appoint another trustee in place and stead of Trustee herein named, and thereupon Trustee herein named shall be discharged and the trustee so appointed shall be substituted as Trustee hereunder, with the same effect as if originally named Trustee herein.

8. APPLICATION OF RENTS. Grantor hereby gives to and confers upon Beneficiary the right, power and authority during the continuance of this Deed of Trust to collect the rents, issues and profits of the Property, reserving unto Grantor the right, prior to any Event of Default in payment of any indebtedness secured hereby or hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such Event of Default, Grantor's right to spend or retain any rents, issues or profits of the Property shall cease immediately and without notice or demand and Beneficiary may at any time and without notice, either in person, by agent, or by a receiver to be appointed by a court, without regard to the adequacy of any security for the indebtedness hereby secured and without the necessity for posting any bond or other security, enter upon and take possession of the Property or any part thereof, or in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys, fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

9. NOTICES.

9.1 TRUSTEE. Any notice or demand upon Trustee may be

given or made at:

Chicago Title Insurance Company  
P.O. Box 1090  
Ephrata, Washington 98823

20

9.2 GRANTOR AND BENEFICIARY. Any notice to or demand upon Grantor (including any notice of default or notice of sale) or notice to or demand upon Beneficiary shall be deemed to have been sufficiently made for all purposes when deposited in the United States mails, postage prepaid, registered or certified, return receipt requested, addressed as follows:

Grantor: Emeritus Corporation  
3131 Elliott Avenue, Suite 500  
Seattle, Washington 98121  
Attention: Ray Brandstrom

Beneficiary: Washington Mutual Bank  
1201 Third Avenue, WMT1013  
Seattle, Washington 98101  
Attention: Commercial Real Estate  
Department

or to such other address as may be filed in writing by Grantor or Beneficiary with Trustee.

9.3 WAIVER OF NOTICE. The giving of notice may be waived in writing by the person or persons entitled to receive such notice, either before or after the time established for the giving of such notice.

10. MODIFICATIONS. Upon written request of any party then liable for any sum secured hereby, Beneficiary reserves the right to extend the term, or otherwise modify the terms, hereof or of the Note as Beneficiary and such person may from time to time deem appropriate and any such change shall not operate to release, in any manner, the liability of the original Grantor or Grantor's successors in interest.

11. SUCCESSORS AND ASSIGNS. All provisions herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

12. GOVERNING LAW; SEVERABILITY. This Deed of Trust shall be governed by the law of the state of Washington. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, the conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision and to this end the provisions of this Deed of Trust and the Note are declared to be severable.

13. GRANTOR'S RIGHT TO POSSESSION. Grantor may be and remain in possession of the Property for so long as it is not in default hereunder or under the terms of the Note and Grantor may, while it is entitled to possession of the Property, use the same.

21

14. MAXIMUM INTEREST. No provision of this Deed of Trust or of the Note shall require the payment or permit the collection of interest in excess of the maximum permitted by law. If any excess of interest in such respect is herein or in the Note provided for, neither Grantor nor its successors or assigns shall be obligated to pay that portion of such interest which is in excess of the maximum permitted by law, and the right to demand the payment of any such excess shall be and is hereby waived and this Section 14 shall control any provision of this Deed of Trust or the Note which is inconsistent herewith.

15. ATTORNEYS, FEES AND LEGAL EXPENSES. In the event of any default under this Deed of Trust, or in the event that any dispute arises relating to the interpretation, enforcement or performance of any obligation secured by this Deed of Trust, Beneficiary shall be entitled to collect from Grantor on demand all reasonable fees and expenses incurred in connection therewith, including but not limited to fees of attorneys, accountants, appraisers, environmental inspectors, consultants, expert witnesses, arbitrators, mediators and court reporters. Without limiting the generality of the foregoing, Grantor shall pay all such costs and expenses incurred in connection with: (a) arbitration or other alternative dispute resolution proceedings, trial court actions and appeals; (b) bankruptcy or other insolvency proceedings of Grantor, any guarantor or other party liable for any of the obligations secured by this Deed of Trust or any party having any interest in any security for any of those obligations; (c) judicial or nonjudicial foreclosure on, or appointment of a receiver for, any of the Property; (d) post-judgment collection proceedings; (e) all claims, counterclaims, cross-claims and defenses asserted in any of the foregoing whether or not they arise out of or are related to this Deed of Trust; (f) all preparation for any of the foregoing; and (g) all settlement negotiations with respect to any of the foregoing.

16. TIME OF ESSENCE. Time is of the essence under this Deed of Trust and in the performance of every term, covenant and obligation contained herein.

17. MISCELLANEOUS.

17.1 Whenever the context so requires the singular number includes the plural herein, and the impersonal includes the personal.

17.2 The headings to the various sections have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Deed of Trust.

22

17.3 This Deed of Trust, the Note and the other documents, instruments and agreements entered into by Grantor and Beneficiary in connection therewith (collectively, the "Loan Documents") constitute the final expression of the entire agreement of the parties with respect to the transactions set forth therein. No party is relying upon any oral agreement or other understanding not expressly set forth in the Loan Documents. The Loan Documents may not be amended or modified except by means of a written document executed by the party sought to be charged with such amendment or modification.

Dated as of the day and year first above written.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LEND  
MONEY EXTEND CREDIT OR TO FORBEAR FROM ENFORCING  
REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER  
WASHINGTON LAW

GRANTOR:

EMERITUS CORPORATION, a Washington  
corporation

By /s/ Kelly J. Price

Its \_\_\_\_\_  
Secretary





## Statement Re: Computation of Pro Forma Per Share Loss (1)

<TABLE>  
<CAPTION>

	Three months ended September 30,		Nine months ended September 30,	
	1995	1996	1995	1996
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FOR PRIMARY LOSS PER SHARE (2)				
Shares outstanding at beginning of period	100	100	100	100
Adjustment for 9200-for-1 stock split in April 1995	919,900	919,900	919,900	919,900
Adjustment for 3.85-for-1 stock split in September 1995	2,622,000	2,622,000	2,622,000	2,622,000
Shares issued upon conversion of Preferred Stock (3)	4,158,000	4,158,000	4,158,000	4,158,000
Shares issued in the initial public offering	3,300,000	3,300,000	3,300,000	3,300,000
Weighted average number of common and common equivalent shares outstanding	11,000,000	11,000,000	11,000,000	11,000,000
Pro forma net loss	(3,103,801)	(2,641,546)	(7,624,825)	(4,706,271)
Pro forma primary loss per common share	(0.28)	(0.24)	(0.69)	(0.43)

</TABLE>

- Pursuant to the rules of the Securities and Exchange Commission, only pro forma net loss per common share has been included above as historical net loss per common share is not considered relevant due to significant changes in the Company's operations. Pro forma net loss per common share combines the results of operations of the Company with facilities acquired or leased as if they had been consummated as of January 1, 1995. Additionally, common and common equivalent shares issued, represented by the convertible preferred stock, during the 12 months immediately preceding the Company's initial public offering have been included in the calculation of common and common equivalent shares as if they were outstanding for all periods presented, including loss years where the impact of the incremental shares is antidilutive, using the treasury stock method and the initial public offering price of \$15 per share.
- No calculation of fully diluted loss per share has been provided as fully diluted loss per share is equal to primary loss per share.
- Preferred shares have been adjusted for the effect of a 3.85-for-1 stock split effective September 28, 1995.



<TABLE> <S> <C>

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THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM THE CONSOLIDATED BALANCE SHEETS AND CONSOLIDATED STATEMENTS OF OPERATIONS FOUND ON PAGES 1 AND 2 OF THE COMPANY'S FORM 10-Q FOR THE YEAR-TO-DATE, AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS.

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