

## LEASE

### Lease No. 1265

1. **PARTIES.** This Lease, dated, for references purposes only, July 1, 2003, by and between California Trousdale LLC and 1100 Trousdale LLC, both California limited liability companies (together, "Lessor") and the County of San Mateo, a political subdivision of the State of California ("County" or "Lessee").

2. **PREMISES.** Lessor hereby leases to Lessee and Lessee leases from Lessor for the term, at the Rent, and upon all of the conditions set forth herein, that certain real property situated in the City of Burlingame, State of California, consisting of Assessor's Parcel Number 025-150-080 together with the improvements thereon (collectively the "Property"), commonly known as 1100 Trousdale Drive and particularly described in **Exhibit A** hereto (the "Building" or the "Premises"). As of the Commencement Date as hereinafter set forth, Lessor hereby transfers to Lessee for the sum of One Dollar (\$1.00) all right, title and interest in any and all furniture, fixtures and equipment found on the Premises and used in the operation of the Facility as hereinafter defined. (the "Equipment").

### 3. TERM.

3.1 **Term.** Subject to Section 3.2 below, this lease shall be effective, and the Premises are leased for an initial term (the "Initial Term") commencing on the later of the estimated commencement date of July 1, 2003 (the "Estimated Commencement Date"), or such later date as the Premises have been accepted by Lessee, Lessee's Board of Supervisors has authorized the execution of this Lease, in its sole and absolute discretion, and the Conditions Precedent described in Section 3.2 have occurred (the "Commencement Date"), and ending on June 30, 2008, unless sooner terminated pursuant to the provisions hereof, provided that Lessee shall have the right to extend the Initial Term pursuant to Section 3.3 below. The word "Term" as used herein shall refer to the Initial Term and any extended Term if Lessee exercises the extension option(s) as provided in Section 3.3.

If the Commencement Date occurs on a date other than the Estimated Commencement Date, then promptly thereafter, Lessor shall deliver to Lessee a notice substantially in the form of **Exhibit B** attached hereto, confirming the actual Commencement Date, provided, however, that Lessor's failure to do so shall not affect the commencement of the Term.

3.2 **Conditions Precedent.** Lessor's and Lessee's obligations under this Lease are subject to the occurrence of all of the following conditions precedent before the Commencement Date; provided, however, that if the conditions are not satisfied, or otherwise waived or extended by the mutual agreement of the parties by September 30, 2003, then this Lease and all obligations of the parties hereunder shall be null and void. For those conditions to be met by Lessee providing or securing an item or status, Lessee shall provide to Lessor written notice or evidence of the completion or satisfaction of such condition, immediately upon such completion or satisfaction. Lessor shall be entitled to rely upon such notice.

(a) Approval from the California Department of Health Services ("DHS") for Lessee to operate the Premises as a 281-bed skilled nursing facility under the

existing San Mateo Medical Center license (the "License") as a distinct part of the San Mateo Medical Center ("SMMC") under the Applicable Laws as set forth in Section 6.2 hereof;

(b) Extension of Lessee's Medicare and Medicaid provider agreements ("Provider Agreements") for SMMC to include the skilled nursing facility (the "Facility") located on the Premises;

(c) Lessee's receipt of all other State, local and federal licenses, permits and approvals necessary for Lessee to operate the Facility as a skilled nursing facility (collectively, "Approvals");

(d) Lessee's receipt of a document evidencing agreement by E. Donald Doyle, receiver for DHS (the "Receiver"), to operate the Facility, either directly or through his company, Sycamore Healthcare, Inc. As a condition precedent to the Commencement Date, the Receiver, DHS and Lessee shall agree to a plan for transition of control of the Facility to Lessee in a form and on terms acceptable to Lessee and DHS;

(e) Not more than thirty (30) days prior to the Commencement Date, completion by DHS of an inspection of the Facility and issuance by DHS of a report that indicates that the Facility is in substantial compliance with DHS patient care standards, and that there are no violations of such standards that Lessee, in its sole judgment, is unwilling or unable to correct;

(f) Issuance by the United States Bankruptcy Court of an order terminating, without condition, the leasehold interest of Senior Care, LLC in the Premises, and certification by Lessor to Lessee in writing that Lessor is delivering the Property and the Equipment free of any enforceable claim by any third party; and

(g) Lessee's delivery to Lessor of (1) the first month's Rent in the sum of \$58,000; and (2) proof of insurance as described in Section 9 below.

**3.3 Options to Renew.** So long as Lessee is not in default in the performance of its obligations hereunder on the date the option is exercised, Lessee shall have the right to renew the term of this Lease for three consecutive terms of five (5) years each on the following conditions:

(a) Each option shall be unconditionally and irrevocably exercised by written notice to Lessor delivered not less than six (6) months before the date upon which the Lease would otherwise expire. If the option is not exercised within such time, it shall expire. If the first option is not exercised, the second and third options shall expire. If the second option is not exercised, the third option shall expire. All other terms and conditions of the Lease shall remain in effect except that there shall be no further option to renew the term.

(b) If Lessor or Lessee has exercised a right of early termination as provided in Section 8.12, 12.1, or 12.2 below, any and all unexercised option(s) shall automatically expire upon exercise of such notice of early termination.

(c) Upon the exercise of the option upon the foregoing conditions, the term of the Lease shall be extended without further action by the parties.

**4. RENT: MODIFIED NET LEASE.** Each month during the term of this Lease, on the first (1st) day of the calendar month, Lessee shall pay to Lessor rent as provided in Sections 4.1 through 4.5 below ("Rent").

**4.1 Rent.** Lessee shall pay to Lessor as the Rent for the Premises for the First Lease Year, monthly payments, in advance, without offset, deduction or prior demand, on the first of each month of the term hereof, the sum of \$ 110,000 per month. If this Lease does not commence upon the first day of a calendar month, the Rent for the first month of the term and for the last month of the term shall be prorated based upon the number of days within the month, which are included in the term divided by the number of days in the month.

**4.2 Adjustments to Rent.** The Rent shall be adjusted for the Second Lease Year, and annually each Lease Year thereafter, based on the annual percentage increase, if any, in the Medi-Cal reimbursement rate for skilled nursing facilities located in San Mateo County based on the highest freestanding facility reimbursement rate (currently \$131.08 per bed per day) paid in San Mateo County in June 2003; provided, however, that if the State of California ceases to publish such figures for San Mateo County in the future, the Rent shall be adjusted to reflect the annual percentage increase in the Consumer Price Index ("CPI") for "All Urban Consumers" (base years 1982-1984=100) for San Francisco/Oakland/San Jose CSMA published by the United States Department of Labor, Bureau of Labor Statistics ("Index"); provided further, that in no event shall the adjusted Rent be less than the Rent payable for the preceding Lease Year or more than the initial Rent increased by a cumulative amount equal to five percent (5%) per annum. If the State of California Medi-Cal reimbursement rate for San Mateo County increases or (if and when applicable) the CPI increases above the initial base year so as to cause a cumulative increase exceeding five percent (5%) per annum, such excess shall carry over to future Lease Years. Subject to the maximum increase of five percent (5%) per annum, the CPI increase shall be calculated as follows: The adjusted Rent shall be equal to the initial Rent multiplied by a fraction the numerator of which is the CPI for the month last published prior to commencement of each Lease Year for which Rent is being adjusted and the denominator of which is the CPI published for the same month immediately preceding the commencement date of this Lease. If the CPI is no longer available, the parties shall refer to any successor cost-of-living index prepared and published by any agency of the U.S. Government. If the U.S. Government ceases to publish a cost-of-living index, the parties shall attempt by agreement to apply an appropriate adjustment to give effect to the intention of the parties that the Rent shall be revised in proportion to the changes in the cost of living.

**4.3 Discounted Rent.**

(a) Section 4.1 hereof notwithstanding, starting on the Commencement Date, Lessee shall pay Lessor a discounted Rent ("Discounted Rent") equal to \$58,000 per month until the earliest to occur of: (1) substantial completion of all improvements described in Section 8.12 below; (2) the Facility's achievement of an average census for any calendar month which is equal to ninety percent (90%) of the licensed occupancy of 281 beds; or (3) twelve (12) months after the Commencement Date. If the monthly resident census exceeds an average of 160 patients per day in any calendar month during this initial period, the Discounted Rent for the next calendar month shall be increased by \$434.78 (\$110,000/253 beds (90% occupancy)) for each resident above the 160-patient census. If the census decreases in

subsequent months, the Discounted Rent shall not decrease except as set forth hereafter in Section 4.3(b).

(b) If, twelve (12) months after the Commencement Date, as a result of the capital improvements described in Section 8.12 below, and prior to substantial completion thereof, Lessor is unable to make "available for patient occupancy" at least 253 licensed beds, then, notwithstanding the provisions of Section 4.3(a) above, the Discounted Rent shall be reduced by \$434.78 per day for each licensed bed below 253 beds that was not available for occupancy ("unavailable") at any time during the prior month as a result of the capital improvement work described in Section 8.12 below. Any bed or beds that Lessee voluntarily takes out or maintains out of service during any month shall be deemed occupied when calculating the percentage of beds available for occupancy. Lessee shall advise Lessor in writing within three (3) days of any such unavailable beds or a voluntary reduction in the number of beds in use during any calendar month by identifying: 1) the room and bed number; 2) whether "unavailable" or voluntarily out of use; 3) if reported to be "unavailable," a description of what fact(s) make each bed "unavailable;" and 4) what needs to happen to make the bed "available." In no event shall the Discounted Rent be reduced below \$58,000 per month.

(c) Prior to substantial completion of all Improvements described in Section 8.12 below and the Work Letter described in Section 8.12 below, Lessee shall reasonably and in good faith, based on a medical evaluation of patients' needs and use, assess "availability for patient occupancy" of any bed.

1. Lessee shall report to Lessor, in writing, within 72 hours, its discovery of any physical impediment or physical condition that reasonably impairs access to or use of any bed due to work being performed by Lessor or Lessor's contractor or sub-contractors for the capital improvements described in Section 8.12(a) below.

2. Lessor and Lessee acknowledge that the Property is located near and in the over flight pattern of San Francisco International Airport, adjoins the Caltrain right of way and the BART right of way. Consequently, ambient noise levels in the interior of the Facility can, and commonly do, exceed 70 California Noise Experience Levels ("CNEL's") during the day and night for extended periods of time. No bed shall be considered "unavailable" due to noise generated by such sources or the Improvement Work unless it is necessary during the Improvement Work to remove windows or penetrate the roof or exterior walls of the Premises, thus increasing the interior noise level to which a patient would be exposed above 70 CNEL.

**4.4 Modified Net Lease.** This Lease is a "Modified Net Lease." Lessor shall pay all real property taxes and assessments with respect to the Premises and all fire, hazard, and other property insurance premiums with respect to the Premises as set forth in Section 9.2 hereof. All of the charges, costs and expenses which are the responsibility of Lessee related to its operation of the Premises hereunder shall constitute additional Rent or additional Discounted Rent, and upon the failure of Lessee to pay any such costs, charges or expenses, Lessor shall have the same rights and remedies as otherwise provided in this Lease for the failure of Lessee to pay Rent or Discounted Rent. It is the intention of the parties hereto that this Lease shall not be terminated for any reason by Lessee except as provided herein, and that Lessee 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.

**4.5 Mode of Payment.** Until Lessee is otherwise notified, all payments due under this Lease shall be paid by direct deposit to Peninsula Bank of Commerce (the "Bank") at 1001 Broadway, Millbrae, California 94030 in equal portions to the accounts of California Trousdale LLC (#01152491) and 1100 Trousdale LLC (#01152505).

**5. SECURITY DEPOSIT.** Lessee shall not be required to pay Lessor a security deposit to secure the performance of Lessee's obligations hereunder.

**6. USE.**

**6.1 Use.** The Premises shall be used for the operation of the Facility as a skilled nursing facility, including the provision of sub-acute medical care and such other ancillary services as are licensed or permitted under the License, and for such other purposes as Lessee shall determine are necessary in support of such primary use, provided that such ancillary use does not result in a permanent reduction in the 281 beds that are licensed by DHS at the Facility.

**6.2 Compliance with Law.** Lessee shall, at Lessee's expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants, conditions and restrictions of record, and requirements in effect during the term or any part of the term hereof, regulating the use by Lessee of the Premises, and operation of the Facility therein, including but not limited to, California licensing laws, regulations and policies and Medicare and Medi-Cal laws, regulations and policies ("Applicable Laws"). Lessee shall not use or permit the use of the Premises in any manner that creates waste or a nuisance.

**6.3 Condition of Premises.** Lessee has conducted its own inspection and due diligence of the Premises and accepts the Premises "AS IS" as of the Commencement Date. Without limiting the foregoing, Lessee accepts the Premises subject to all applicable zoning, municipal, county and State laws, ordinances and regulations governing and regulating the use of the Premises, and all covenants, conditions and restrictions of record as disclosed in the title insurance policy provided by Lessor and issued by Old Republic National Title Insurance Company, Policy Number SV 3595909, dated September 26, and accepts this Lease subject thereto and subject to all matters disclosed thereby and by any exhibits attached thereto, but excepting exclusion 6 of Schedule B thereof. If, during the term of this Lease, it is necessary to cure or correct the conditions that result in the encroachments identified in such exclusion 6 of Schedule B, Lessor shall, at its cost, take any necessary corrective action. Lessee acknowledges that neither Lessor nor Lessor's agent has made any representation or warranty as to the present or future suitability of the Premises for the conduct of Lessee's business.

**7. HAZARDOUS MATERIALS.**

**7.1 Definitions.** As used in this Lease, the following terms shall have the meanings hereinafter set forth:

(a) "Environmental Laws" shall mean any federal, state, local or administrative law, rule, regulation, order or requirement relating to industrial hygiene, environmental conditions or Hazardous Material, whether now in effect or hereafter adopted.

(b) "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 *et seq.*), or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the Building or are naturally occurring substances on or about the Property; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

(c) "Release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Building, or in, on, under or about the Property.

**7.2 Lessor's Representations and Covenants.** Lessor represents and warrants to Lessee that, to the best of Lessor's actual knowledge, the following statements are true and correct and will be true and correct as of the Commencement Date, except any and all information disclosed in the: 1) Ninyo and Moore "LIMITED ASBESTOS AND LEAD-BASED PAINT SURVEY SUNBRIDGE CONVALESCENT HOSPITAL 1100 TROUSDALE DRIVE, BURLINGAME, CALIFORNIA (Sic)" dated January 31, 2001; and 2) Basics Environmental PHASE I ENVIRONMENTAL SITE ASSESSMENT, 1100 TROUSDALE DRIVE, BURLINGAME, CALIFORNIA FOR CERTOSA, INC. BURLINGAME, CALIFORNIA, dated January 5, 2001: (a) the Property is not in material violation of any Environmental Laws; (b) the Property is not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material, except for the use of such substances in such limited quantities as are customarily used in a skilled nursing facility, which limited use has been and is in compliance with Environmental Laws; (c) the Property does not consist of any landfill or contain any underground storage tanks; (d) the Building does not consist of any asbestos-containing materials or building materials that contain any other Hazardous Material, nor do the Premises or the common areas of the Building contain any lead-based paints; (e) there has been and is no Release of any Hazardous Material in the Building or in, on, under or about the Property; and (f) the Property is not subject to any claim by any governmental regulatory agency or third party related to the Release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in the Building or in, on, under or about the Property, or the migration of Hazardous Material from or to other real property. Subject to Lessee's obligations under this Section below, Lessor shall maintain the Property throughout the Term in material compliance with all Environmental Laws that could adversely affect the health, safety and welfare of residents of the Building, Lessee's employees, invitees,

agents or guests, or Lessee's use, occupancy or enjoyment of the Premises for their intended purposes.

**7.3 Lessor's Environmental Indemnity.** Lessor shall Indemnify Lessee and its agents against any and all Claims arising during or after the Term of this Lease (a) as a result of a material breach of any of Lessor's representations, warranties or covenants in Section 7.2, or (b) in connection with any presence or Release of Hazardous Material in the Building or on, under or about the Property, unless Lessee or its agents caused such Release.

**7.4 Lessee's Covenants.** Neither Lessee nor its agents shall cause any Hazardous Material to be brought upon, kept, used, stored, generated, produced, treated, or disposed of in, on or about the Premises or the Property, or transported to or from the Premises or the Property, in material violation of any Environmental Laws, provided that Lessee may use such substances in such limited amounts as are customarily used in a skilled nursing facility so long as such use is in material compliance with all applicable Environmental Laws. Any Hazardous Material to be brought upon, kept, used, stored, generated, produced, treated, or disposed of in, on or about the Premises or the Property, or transported to or from the Premises or the Property which is not a substance in such limited amounts as are customarily used in a skilled nursing facility shall be disclosed within ninety (90) days in writing to Lessor.

**7.5 Lessee's Environmental Indemnity.** If Lessee materially breaches its obligations contained in the preceding Section 7.4, or if Lessee or its agents causes the Release of Hazardous Material from, in, on or about the Premises or the Property, then Lessee shall Indemnify Lessor against any and all Claims arising during or after the Term of this Lease as a result of such Release, except to the extent Lessor or its agents is responsible for the Release. The foregoing Indemnity shall not include any Claims resulting from the non-negligent aggravation by Lessee, its agents or Invitees of physical conditions of the Premises, or other parts of the Property, existing prior to the Commencement Date.

## **8. MAINTENANCE, REPAIRS, AND ALTERATIONS.**

**8.1 Lessor's Obligations.** Lessor shall repair and maintain, at its cost, the exterior and structural portions of the Building (excluding painting of the Building, the routine maintenance of the stairs, and the maintenance, repair, and replacement of window systems, awnings, signage, and lighting), including, without limitation, the roof, foundation, bearing and exterior walls and, to the extent that it is a part of the integrity of the structure, the post-tension system of the Building (collectively, the "Building Structure"). Nothing contained herein shall be interpreted as requiring Lessor to perform any work required pursuant to Title 24 of the California Building Code or any additional structural seismic upgrades.

**8.2 Lessee's Obligations.** Except as provided in Sections 8.1, 8.4, 8.5, 8.6, 8.7 and 8.12, Lessee shall keep in good order, condition and repair, at its sole expense, the Premises and every nonstructural part and system thereof (whether reasonably accessible or not) including, without limiting the generality of the foregoing, all landscaping, driveways, parking lots, fences and signs located on the Premises and sidewalk and parkways adjacent to the Premises. Lessee shall indemnify Lessor and hold Lessor harmless for any cost or liability for any damage to the Building Structure caused by Lessee or its agents, licensees, residents or invitees.

**8.3 Special Systems.** Lessee shall maintain, repair, and replace, at its sole cost, any and all low-voltage electrical systems such as patient call systems, communications systems, entertainment systems, patient wander protection systems, any and all kitchen and laundry equipment and appliances, patient lift systems, and any other digital, electric, or mechanical appliances or systems. Lessee shall keep in place, at its sole cost, an elevator service contract, and shall pay the cost of all customary routine maintenance of the elevator and controls, including, without limitation, trouble calls, and the repair or replacement of lights, buttons, and door systems including, but not limited to: door guides, door interlocks, door operators, door protection devices, door guides, door tracks, door track rollers, bearings, and similar minor components. Lessor shall reimburse Lessee for the reasonable and documented costs for Lessee's repair or replacement (once only), of each of the two (2) existing elevators or (one time only) Lessee's reasonable and documented costs for the repair and replacement of any significant elevator components including, without limitation, the pumping plant, valves, piston and/or hydraulic jack unit ("Major Elevator Component") that fails or otherwise requires replacing. Provided Lessee has maintained the elevator system in a manner that is consistent with practices generally accepted in the industry, and as required by this Section, Lessor shall, at its sole cost, complete the cleanup of any Release of hydraulic fluid that is necessary as the result of the failure of a Major Elevator Component.

**8.4 Utility Services.** Lessee shall, at its sole cost, pay any and all utility charges, including installation, service and taxes, if any, related to utility services to the Building, including but not limited to: electricity, natural gas, security, fire alarm, telecommunications (including dish and/or cable entertainment), landscape and domestic water and sewer charges, waste and bio-hazardous waste disposal costs, and/or similar types of services as the same may come due for those services provided to the Premises during the term of the Lease.

**8.5 Fire Alarm System.** Lessor will reimburse Lessee for any reasonable, documented out-of-pocket costs for repairs to the existing fire alarm system until it is replaced by Lessor with a new OSHPD-approved system. Following completion of installation of the new system, Lessee shall thereafter maintain in good order and repair, at its sole cost, the new fire alarm system and any upgrades and replacements required by any agency with jurisdiction over the Premises. Lessee shall be responsible for any and all system failures caused by improper use or maintenance of such system or systems.

**8.6 HVAC System.** Lessor will reimburse Lessee for any reasonable, documented out-of-pocket costs for repairs to the existing heating and ventilation systems until they are replaced by Lessor with new OSHPD-approved heating, ventilation and air conditioning ("HVAC") systems. Following completion of installation of the new HVAC systems, Lessee shall thereafter maintain in good order and repair, at its sole cost, the new HVAC systems and any upgrades and replacements required by any agency with jurisdiction over the Premises. Lessee shall be responsible for any and all system failures caused by improper use or maintenance of such system or systems.

**8.7 Standby Emergency Generator.** Lessor will reimburse Lessee for any reasonable, documented out-of-pocket costs for repairs to the existing standby emergency generator and related electrical system components until it is replaced by Lessor with a new OSHPD-approved system. Following completion of installation of the new system, Lessee shall



thereafter maintain in good order and repair, at its sole cost, the new system and any required upgrades and replacements. Lessee shall be responsible for any and all system failures caused by improper use or maintenance of such system or systems.

**8.8 Furniture, Fixtures and Equipment.**

(a) Lessee accepts the Equipment on the Premises "AS IS" and without any warranty of any kind, except for warranty of title.

(b) Lessee may, at its sole cost, remove and dispose of the Equipment, and any portion thereof, from the Premises and provide all necessary substitute furniture, fixtures and equipment, including necessary trade fixtures (the "FF&E"), all of which shall remain Lessee's sole property.

(c) Lessee shall maintain the FF&E and Equipment (so long as used or kept on Premises) in good condition and repair subject to reasonable and ordinary wear and use.

(d) Upon expiration or earlier termination of this Lease, Lessor reserves the right to require Lessee (1) to remove all of Lessee's FF&E; or (2) at Lessor's option, to sell to Lessor any or all of Lessee's FF&E on the Premises at fair market value in accordance with Section 26.6 below. Lessee shall repair any damage caused to the Premises by the removal of any FF&E that is not purchased by Lessor. Nothing contained in this Section shall require Lessee to undertake any legal proceeding to establish its right to remove any existing FF&E, or to store or preserve such existing FF&E.

(e) Lessor's purchase of any Lessee-acquired FF&E shall include an assignment to Lessor in a bill of sale of any remaining contracts, service agreements, warranties, operating or use manuals, instructions, drawings, or designated spare parts then available to Lessee.

(f) Lessee shall maintain sufficient FF&E or Equipment on site or in an agreed upon location off-site to operate the Facility as a 281-bed licensed skilled nursing facility at all times.

**8.9 Surrender.** Upon the expiration or sooner termination of this Lease, Lessee shall surrender the Premises to Lessor in good order and condition, reasonable use and wear and damage by fire or other casualty excepted.

**8.10 Lessor's Obligations.** Except for the obligations of Lessor set forth in this Section 8 (relating to Building Structure and Improvements) in Section 13 (relating to eminent domain) and in Section 14 (relating to damage and destruction of the Premises), the parties intend that Lessor have no obligation, in any manner whatsoever, to repair or maintain the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect which would otherwise afford Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the Premises in good order, condition and repair.

### 8.11 Alterations and Additions.

Lessee shall not make or permit any alterations, installations, additions, or improvements (collectively, "Alterations") to the Premises without first obtaining Lessor's written consent, which Lessor shall not unreasonably withhold or delay. However, the installation of furnishings, fixtures, equipment, or decorative improvements, none of which affect the building systems or Building Structure (as defined in Section 8.1), and the repainting and recarpeting of the Premises shall not constitute Alterations requiring Lessor's consent. Further, Lessee may make, without Lessor's prior written consent, interior design changes or other alterations that do not have a cumulative cost in any calendar year in excess of twenty five thousand dollars (\$25,000.00) and that do not affect the building systems or Building Structure, or the use of the Premises under any license, certificate or permit. Any Alterations permitted hereunder shall be made at Lessee's cost in compliance with all applicable laws and shall not trigger any structural repairs or upgrades or Title 24 improvements. Lessor shall cooperate with Lessee in securing building and other permits and authorizations needed in connection with any permitted Alterations. Upon completion of such Alterations, Lessee shall provide to Lessor a signed copy of any required permit, which signature indicates that the work has been completed and approved by the issuing authority. If no permit is required, Lessee shall provide Lessor with written notice that the Alterations have been completed. Lessor shall be entitled to reimbursement of reasonable documented out-of-pocket costs that Lessor incurs in connection with any Alteration.

Lessee shall keep the Premises free from all liens arising out of any work performed, material furnished or obligations incurred by Lessee during the Term. Lessor shall have the right to post on the Premises any notices permitted or required by law or that are needed for the protection of Lessor, the Premises, or the ~~LESSOR, THE MORTGAGEE~~ and material suppliers' liens. Lessee shall give Lessor at least ten (10) days' prior written notice of commencement of any Alterations by Lessee on the Premises.

### 8.12 Major Capital Improvements.

(a) **Nature of Improvements.** Lessor agrees to make the following major capital improvements to the Property. Nothing contained herein shall be interpreted as requiring Lessor to perform any work required pursuant to Title 24 of the California Building Code or any additional structural seismic upgrades. Lessor shall perform the work and make the installations in the Premises pursuant to the work letter attached hereto as **Exhibit D** (the "Work Letter"). All work and installations performed pursuant to the Work Letter are referred to as "the Improvement Work" and "Improvements."

1. Replace the existing heating and ventilation system with a new HVAC system including any related electrical work and air ducting to increase the current number of air exchanges in accordance with OSHPD requirements;
2. Replace two existing hot water boilers and two existing water storage tanks on the roof in accordance with OSHPD requirements;
3. Replace the existing roof in accordance with OSHPD requirements;

4. Replace the existing standby electric emergency generator with a new standby electric emergency generator at grade and perform any related electrical work in accordance with OSHPD requirements;

5. Replace the existing fire alarm and life safety system in accordance with OSHPD requirements;

6. Pay for any and all architectural, engineering and contractor services, OSHPD fees and permits previously incurred or to be incurred to make such improvements;

7. Replace or repair the existing main sewer line from the street, as necessary to resolve the current documented and recurring failure of such line. Lessor's delivery to Lessee of a video taped examination made by Don Lindstrom, Inc prepared after June 1, 2003 showing the entire main sewer line from the street to be properly installed, unbroken and clear of any permanent obstruction shall be evidence that the current problem is resolved and that, subject to discovery of clear evidence to the contrary provided by Lessee within six (6) months of the Commencement Date, Lessor shall have no further obligation to maintain, repair or replace such line; and

8. Correct or have redirected rainwater leaders that now extend from the roof to the courtyard and balcony surfaces of the Building to avoid the collection of excess water during rainstorms.

(b) **Cost of Improvements.** Lessor shall pay up to the \$2,000,000 currently budgeted by Lessor's construction manager (which already includes a 10% contingency) for all the above referenced improvements. However, if (i) the actual qualified construction contractor's bid after OSHPD has given its final approval to the working drawings and specifications exceeds \$2,000,000; or (ii) change orders created by requirements imposed by OSHPD during the course of the work cause the construction contract costs to exceed \$2,500,000, Lessor may elect to terminate this Lease by giving Lessee twelve (12) months' notice of early termination. In such event, Lessee shall pay Discounted Rent based on the average monthly census as calculated under Section 4.3(a) above for up to twelve (12) months of actual occupancy following receipt of Lessor's notice of early termination.

## **9. INSURANCE.**

### **9.1 Lessee's Insurance:**

Prior to the Commencement Date, Lessee shall:

(a) Procure liability insurance with excess or umbrella insurance as needed for coverage with respect to premises liability exposure, including personal injury, bodily injury, and property damage. Coverage shall be in an amount of no less than \$2 million per occurrence with an annual aggregate of no less than \$10 million; or

(b) Maintain a program of self-insurance with excess insurance to meet the terms of provision 9.1(a), above. Should Lessee choose to self-insure, Lessee hereby agrees to defend and indemnify Lessor to the same extent as if Lessor were an additional insured

under said program of self-insurance. Lessor shall be named as an additional insured under any excess and/or umbrella policy that is part of said self-insurance program.

(c) Whichever insurance option(s) Lessee chooses (as detailed above in Paragraph 9.1 (a)-(b)):

1. Lessee shall have such insurance or self-insurance in place at all times during the Term.

2. Lessor shall be named as an additional insured under all such policies, including any excess and/or umbrella policy that is part of a self-insurance program.

3. Such insurance shall provide for the acts and/or omissions of the Lessee, its officers, agents, contractors and employees while on the Premises.

(d) Furnish Lessor with a Certificate of Insurance showing that the coverage required hereunder is in place. Lessor shall receive thirty (30) days prior written notice before any cancellation, change in scope, or modification of coverage. Should Lessee decide to self-insure for all or part of the above insurance requirements, Lessee shall provide Lessor with written notice before any cancellation, change in scope, or modification of the self-insurance program under these same time constraints.

(e) Lessee coverages as set forth hereinabove shall be primary and noncontributing with any other insurance carried by Lessor.

(f) Other than as detailed above, nothing herein shall be interpreted to require Lessee or its insurer to provide a defense for, to provide insurance for, or to indemnify Lessor except as may be otherwise required by law.

(g) Due to Lessee's unique status as a County of the State of California which may self-insure, professional errors and omissions (malpractice) insurance terms are not dictated by this lease. However, it is expressly understood that, should the lease be assigned, Lessor (pursuant to Lessor's consent provision) reserves the right to insist on reasonable terms for such insurance.

**9.2 Lessor's Insurance.** At all times during the Term, Lessor shall keep the Building (excluding the land upon which it is located) insured against damage and destruction by fire, vandalism, malicious mischief, sprinkler damage and other perils customarily covered under an ISO "Causes of Loss-Special Form" property insurance policy in an amount equal to one hundred percent of the full insurance replacement value thereof (replacement cost new, including debris removal.) Lessor shall, within ten (10) days of the Commencement Date, provide to Lessee a certificate of insurance issued by the insurance carrier, evidencing the insurance required above. The certificate shall expressly provide that the policy is not cancelable or subject to reduction of coverage or otherwise subject to modification except upon thirty (30) days' prior written notice to Lessee. Lessor hereby waives any rights against Lessee for loss or damage to the Premises or any other part of the Property, to the extent covered by Lessor's property insurance.

**9.3 Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, each party hereto waives its entire right of recovery against the other party for any loss or damage sustained by the waiving party with respect to the Building or the Premises or any portion thereof, or the contents of the same or any operation therein, whether or not such loss is caused by the negligence of the other party, as long as such loss or damage is covered by the insurance or self-insurance of the waiving party. Each party's insurer(s) waives any subrogation rights against either party. Each party shall, in the process of obtaining the policies of insurance required herein, give notice to all insurance carriers, insurance pools, self-insurance funds, and/or excess insurers of this mutual subrogation waiver provision.

(a) It is expressly understood that in consideration for Lessor not requiring Lessee to insure for business personal property and business interruption (and thus effectively self-insuring), that Lessee intends to waive its entire right of recovery against Lessor for such coverages as detailed under Paragraph 9.3 above.

**9.4 Insurance Policies.** Any commercially obtained insurance required under this Lease shall be purchased from insurers holding, at a minimum, an A rating from Best's Insurance Guide.

## **10. PROPERTY TAXES.**

**10.1 Real Property Taxes.** Lessor shall pay all real property taxes and assessments imposed on the Premises by the County of San Mateo.

**10.2 Premises.** "Real Property Taxes" means all taxes, assessments and charges levied upon or with respect to the portion of the Building owned by Lessor or Lessor's interest in the Building. Real Property Taxes shall include, without limitation, all general real property taxes and general and special assessments, and assessments for transit, housing, police, fire, or other governmental services thereof.

### **10.3 Personal Property and/or Business Taxes.**

(a) Lessor and Lessee acknowledge that the personal property of Lessee is not currently subject to personal property or business taxes.

(b) Lessor shall not pay any tax of any kind for any personal property owned or business operated by Lessee.

## **11. ASSIGNMENT AND SUBLETTING.**

**11.1 Lessor's Consent Required.** Lessee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber (collectively, "Transfer") more than fifty-percent (50%) of Lessee's interest in this Lease or in the Premises, without Lessor's prior written consent, which consent may be withheld by Lessor without any cause whatsoever. Lessee may Transfer less than 50% of Lessee's interest in this Lease or the Premises with Lessor's prior written consent, which consent shall not unreasonably be withheld. For purposes of this Section 11.1, the Transfer of more than a fifty percent (50%) ownership, controlling interest, profits, or beneficial interest in Lessee shall be deemed an assignment of Lessee's interest in this Lease or the Premises.

If any Transfer of all or any portion of Lessee's interest in this Lease, the Premises, or the Facility would result in a change in the identity of the holder of the License, Medicare or Medicaid provider number ("Provider Number"), or any other Approval, such Transfer shall require the prior written approval of Lessor, which approval may be withheld by Lessor without cause, and Lessee shall assure that the transferee, assignee, mortgagee, or sublessee (collectively, "Transferee") has, prior to the effective date of the Transfer, secured all necessary Approvals to enable the Transferee to operate the Facility as described in Section 6.1 hereof, including, without limitation, meeting the conditions listed in Sections 3.2(a)(b), (c) and (d) hereof. Lessee further agrees that Lessee or the Transferee shall promptly provide copies of all new Approvals to Lessor. If the Transferee cannot reasonably secure all such Approvals prior to the effective date of the Transfer, Lessee agrees that it shall enter into appropriate interim arrangements with the Transferee whereby Lessee continues to operate the Facility as licensee for so long as it takes the Transferee to secure a new License, new Provider Agreements and other necessary Approvals, provided that Lessee may delegate to the Transferee, as manager of the Facility, any and all functions that it is permitted to delegate under the Applicable Laws.

Any request for consent hereunder shall include a complete written description of the transfer, and a copy of all documents evidencing the transfer. Lessor shall respond to each such request in a timely manner, but in no event shall Lessor be required to respond in less than fourteen (14) days. Any attempted Transfer without such consent shall be void and shall constitute a material breach of this Lease. In no event shall Lessee be entitled to make any assignment or sublease which is not approved in advance in writing by all licensing authorities having jurisdiction over the Premises and the Facility; provided, however, that subject to the consent of such licensing authorities, Lessee may assign this Lease without Lessor's consent, to an entity that is at least fifty percent (50%) owned or controlled by or under common control with Lessee, as long as Lessee remains primarily responsible under the terms of this Lease.

Lessee agrees that every sublease regarding any portion of the Premises executed during the term of this Lease shall include the following provisions:

(a) "This Lease is a 'Sublease.' The owner ('Owner') of the Premises, as Lessor and the County of San Mateo, as Lessee, have entered into a master lease ('Master Lease') for the real property of which the Premises are a part. Sublessee agrees that its interest in the Sublease is subordinate to this Master Lease and the obligations thereunder.

(b) In the event that the Master Lease is terminated, at Owner's option, and upon delivery of written notice to Sublessee, Sublessee shall attorn to Owner as its Lessor, which attornment shall be self-operative without any need to execute additional documents, and the Sublease shall continue between Owner as "Lessor" and Sublessee as "Lessee."

(c) Sublessee agrees to name Owner as additional insured under all insurance policies required pursuant to this Sublease."

**11.2 No Release of Lessee.** Regardless of Lessor's consent, no subletting or assignment shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the Rent and to perform all other obligations to be performed by Lessee hereunder. The acceptance of Rent by Lessor from any other person shall not be deemed to be a waiver by Lessor of any provision hereof. Consent to one assignment or subletting shall not be deemed

consent to any subsequent assignment or subletting. In the event of default by any assignee of Lessee or any successor of Lessee, in the performance of any of the terms hereof, Lessor may proceed directly against Lessee without the necessity of exhausting remedies against such sublessee or assignee. Lessor may consent to subsequent assignments or subletting of this Lease or amendments or modifications to this Lease with assignees of Lessee, but Lessor need not obtain the consent of Lessee or its successor, provided that Lessor notifies Lessee of the assignment, subletting, amendment, or modification. Such action shall not relieve Lessee of liability under this Lease.

**11.3 Attorneys' Fees.** In the event Lessee shall assign or sublet the Premises or request the consent of Lessor to any assignment or subletting or if Lessee shall request the consent of Lessor for any act Lessee proposes to do then Lessee shall pay Lessor's reasonable attorneys' fees incurred in connection therewith, such attorneys' fees not to exceed \$5,000 for each such request.

## **12. EARLY TERMINATION; DEFAULTS; REMEDIES.**

### **12.1 Early Termination by Lessee.**

Lessee may terminate this Lease at any time after the end of the initial twelve months of the Term ("First Lease Year"), upon twelve (12) months' written notice to Lessor, if (1) for two or more consecutive quarters in any twelve (12)-month period commencing in or after the commencement of the thirteenth month of the Term, or for any fiscal year of Lessee after Lessee's 2003/2004 fiscal year, the Facility does not operate at a surplus of at least one dollar (\$1); or (2) Lessee determines that it is economically infeasible to undertake the projected costs of any OSHPD-required upgrade, repair, or improvement to the systems of the Premises that Lessee is obligated to maintain or repair under Section 8 above. If OSHPD requires such work to be performed in a shorter time period, Lessee may give Lessor written notice of termination effective on the day before the last day that OSHPD requires the work to be performed. This right to early termination shall not be exercisable if this Lease is assigned or subleased or if more than a 50% interest in this Lease is transferred to an entity that is not under the direct control of Lessee.

### **12.2 Early Termination by Lessor.**

(a) Lessor may, upon twelve (12) months' written notice to Lessee, terminate the Lease if Lessor reasonably determines that it is economically infeasible for Lessor to undertake the projected cost of any upgrade, repair, or improvement to the roof, exterior walls, and/or structural integrity of the Premises above the \$2,000,000 payment for capital improvements described in Section 8.12 above. If OSHPD requires such work to be performed prior to the expiration of such twelve (12) months' notice period, Lessor may give Lessee written notice of termination effective on the day before the last day that OSHPD requires the work to be performed. Other provisions of this Section notwithstanding, any such early termination shall allow adequate time for the safe and orderly relocation of patients and termination of operations.

(b) After the initial five (5) year term of this Lease, Lessor may, upon twelve (12) months' written notice to Lessee, terminate this Lease with or without cause.

**12.3 Default by Lessee.** The occurrence of one or more of the following events shall constitute a material default and breach of this Lease by Lessee:

(a) The vacating or abandonment of the Premises by Lessee.

(b) The failure by Lessee to make any payment of Rent or any other payment required to be made by Lessee hereunder, as and when due, where such failure continues for a period of five (5) business days after delivery of written notice thereof from Lessor to Lessee. In the event that Lessor serves Lessee with a notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, such Notice to Pay Rent or Quit shall also constitute the notice required by this Section.

(c) Subject to Section 12.3(d) below, the failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than as described in this Section, where such failure continues for a period of thirty (30) days after delivery of written notice thereof from Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(d) The failure by Lessee to correct any deficiency or violation of any licensing, Medicare, Medi-Cal, or other law, regulation, policy, or requirement related to operation of the Premises as a 281-bed skilled nursing facility within the time period, as may be extended from time to time, prescribed by DHS, the United States Centers for Medicare and Medicaid Services ("CMS"), or any other agency with applicable jurisdiction. In the event that Lessee pursues administrative or civil remedies regarding a deficiency or violation, and Lessee's License remains valid, Lessor shall not take possession of the Premises until the final resolution of the matter; provided that within ten (10) days after such default but in any event before final resolution of the matter, Lessee shall have entered into agreements with Lessor and/or Lessor's designee documenting the interim arrangements described in Section 26, which arrangements shall take effect immediately upon the final adverse action(s) by the court and/or administrative agency with respect to the matter. Any failure by Lessee to enter into such arrangements promptly and in good faith shall entitle Lessor to pursue all remedies described under Section 12.4 below before resolution of Lessee's appeal(s).

(e) (i) The making by Lessee of any general arrangement or assignment for the benefit of creditors; (ii) Lessee becoming a "debtor" as defined in 11 U.S.C. sec. 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days. Provided, however, in the event that any provision of this Section 12.3(e) is contrary to any applicable law, such provision shall be of no force or effect.



(f) The discovery by Lessor that any financial statement given to Lessor by or on behalf of Lessee, and materially relied upon by Lessor, was materially false.

(g) An assignment or sublease to an entity that is not under the direct control of Lessee, or to an entity in which Lessee has less than a 50% interest, without the prior written consent of Lessor as set forth in Section 11 hereof.

(h) Any of the following actions by DHS: revocation of the License; suspension of the License; appointment of a temporary manager; or appointment of a receiver. In the event that Lessee pursues administrative or civil remedies regarding any of the foregoing actions by DHS, and Lessee's License remains valid, Lessor shall not take possession of the Premises until the final resolution of the matter; provided that within ten (10) days after such default but in any event before the final resolution of the matter, Lessee shall have entered into agreements with Lessor and/or Lessor's designee documenting the interim arrangements described in Section 26, which arrangements shall take effect immediately upon the final adverse action(s) by the court and/or administrative agency with respect to the matter. Any failure by Lessee to enter into such arrangements promptly and in good faith shall entitle Lessor to pursue all remedies described under Section 12.4 below before resolution of Lessee's appeal(s).

(i) Any of the following actions by CMS or DHS in connection with either or both Provider Agreements: termination of the Provider Agreement unless it results in reinstatement within ninety (90) days; appointment of a temporary manager or receiver; denial of payment for new admissions or for all otherwise eligible residents unless such denial is reversed within thirty (30) days; or a ban on admissions of any type. In the event that Lessee pursues civil or administrative remedies regarding any of the foregoing actions by CMS or DHS, and Lessee's License remains valid, Lessor shall not take possession of the Premises until the final resolution of the matter; provided that within ten (10) days after such default but in any event before the final resolution of the matter, Lessee shall have entered into agreements with Lessor and/or Lessor's designee documenting the interim arrangements described in Section 26, which arrangements shall take effect immediately upon the final adverse action(s) by the court and/or administrative agency with respect to the matter. Any failure by Lessee to enter into such arrangements promptly and in good faith shall entitle Lessor to pursue all remedies described under Section 12.4 below before resolution of Lessee's appeal(s) and/or request(s) for reinstatement, reversal, or review.

In the event of any default under this Section 12.3, Lessee shall cooperate fully with Lessor in making the interim arrangements described in Section 26 in order to preserve the continuity of the License and Provider Agreements for the Facility, to avoid transfers of residents, and to prevent appointment of a temporary manager or receiver.

**12.4 Remedies Against Lessee.** In the event of any such material default or breach of Lessee, Lessor may at any time thereafter, upon ten (10) days' prior written notice or demand upon Lessee (or, in the event of a breach described in Section 12.3(d), (g) or (h), upon three (3) days' prior written notice or demand upon Lessee), and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such default or in breach, take any of the following actions:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event, and subject to Lessor's obligation to mitigate such damages, Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of Lessee's default including, but not limited to, the cost of recovering possession of the Premises; all expenses of re-letting, including reasonable attorneys' fees, and the amount, at the time of award by a court having jurisdiction, by which the unpaid Rent for the balance of the term after such award exceeds the amount of such Rental loss for the same period that Lessee proves could be reasonably avoided.

(b) Maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In such event Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease, including the right to recover the Rent as it becomes due hereunder.

(c) Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the State of California. Unpaid installments of Rent and other unpaid monetary obligations of Lessee under the terms of this Lease shall bear interest from the date due until paid at the lesser of nine percent (9%) per annum or the maximum rate then allowable by law.

The ten (10)-day or three (3)-day notice provided to Lessee pursuant to this Section 12.4 shall serve as the notice to quit the premises required by California law.

**12.5 Default by Lessor.** Lessor shall not be in default unless Lessor fails to perform obligations required of Lessor within thirty (30) days after a written notice has been delivered by Lessee to Lessor and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Lessee in writing, specifying wherein Lessor has failed to perform such obligation; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are required for performance then Lessor shall not be in default if Lessor commences performance within such thirty (30)-day period and thereafter diligently prosecutes the same to completion. If Lessor's default is due to an occurrence or event covered by either party's insurance, then Lessee's recourse will be limited as detailed in paragraph 9.3. In the event any other type of default by Lessor, Lessee's sole recourse against Lessor shall be to Lessor's interest in the Premises. Lessee shall have no right to satisfy any judgment which it may have against Lessor from any other asset of Lessor. In no event shall any personal judgment lie against Lessor or any trustor, trustee, partner, joint venture, agent, officer, director or employee of Lessor.

**12.6 Late Charges.** Lessee hereby acknowledges that late payment by Lessee to Lessor of Rent and other sums due hereunder shall cause Lessor to incur costs not contemplated by this Lease, the exact amount of which shall be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Lessor by the terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of Rent or any other sum due from Lessee shall not be received by Lessor or Lessor's designee within ten (10) days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall pay to Lessor a late charge equal to six percent (6%) of such overdue amount. The parties hereby agree that such late charge

represents a fair and reasonable estimate of the costs Lessor shall incur by reason of late payment by Lessee. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of Rent, then Rent shall automatically become due and payable quarterly in advance, rather than monthly, notwithstanding Section 4 or any other provision of this Lease to the contrary.

### **13. EMINENT DOMAIN**

#### **13.1 Definitions**

(a) "Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

(b) "Date of Taking" means the earlier of (i) the date upon which title to the portion of the Property taken passes to and vests in the condemnor; or (ii) the date on which Lessee is dispossessed.

(c) "Award" means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement, or otherwise.

**13.2 General.** If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Premises or any interest in this Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section. Lessee and Lessor intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.10, 1265.40, 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

**13.3 Total Taking; Automatic Termination.** If there is a total Taking of the Premises, then this Lease shall terminate as of the Date of Taking.

**13.4 Partial Taking; Election to Terminate.** If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety if all of the following exist: (A) the partial Taking, in Lessee's reasonable judgment, renders the remaining portion of the Premises untenable or unsuitable for continued use by Lessee for its intended purposes or otherwise materially adversely affects Lessee's normal operations in the Premises; (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but Lessor is unwilling or unable to cure such condition; and (C) Lessee elects to terminate.

In the case of a partial taking of a substantial portion of the Building, and if subsection (a) above does not apply, Lessee and Lessor shall each have the right to terminate this Lease by written notice to the other within thirty (30) days after the Date of Taking, provided that, as a

condition to Lessee's right to terminate, the portion of the Building taken shall, in Lessee's reasonable judgment, render the Premises unsuitable for continued use by Lessee for its intended purposes or otherwise materially adversely affect Lessee's normal operations in the Premises.

Either party electing to terminate under the provisions of this Section 13.4 shall do so by giving written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30<sup>th</sup>) day after such written notice is given or the Date of Taking.

**13.5 Rent; Award.** Upon termination of this Lease pursuant to an election under Section 13.4 above, then: (i) Lessee's obligation to pay Rent (including Discounted Rent, if applicable) shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in Section 13.6 below for any period during which this Lease continues in effect after the Date of Taking; and (ii) Lessor shall be entitled to the entire Award in connection therewith, except that Lessee shall receive any Award made specifically for Lessee's relocation expenses, the interruption of or damage to Lessee's business, Lessee's improvements pertaining to realty, or damage to Lessee's Personal Property.

**13.6 Partial Taking; Continuation of Lease.** If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 13.4 above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) Rent shall be reduced by an amount that is in the same ratio to the Rent as the number of licensed beds of the Facility taken bears to the number of such licensed beds prior to the Date of Taking, and (b) Lessor shall be entitled to the entire Award in connection therewith, provided that Lessee shall receive any Award made specifically for Lessee's relocation expenses or the interruption of or damage to Lessee's business, Lessee's improvements pertaining to realty or damage to Lessee's Personal Property.

**13.7 Temporary Taking.** Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and Lessee shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Lessee shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Lessee for the period of the Taking.

## **14. DAMAGE AND DESTRUCTION**

**14.1** If the Premises or the Building are damaged by fire or other casualty, Lessor shall repair the same without unreasonable delay (and if Lessor is then carrying insurance on the Alterations or if Lessee at its sole option makes funds available to Lessor, Lessor shall also repair the Alterations), provided that such repairs can be made under applicable laws within sixty (60) days after Lessor obtains all necessary permits for such repairs but not later than two hundred ten (210) days after the date of such damage (the "Repair Period"). In such event, this Lease shall remain in full force and effect, except that Lessee shall be entitled to an abatement of Rent while such repairs are being made. Such abatement in Rent shall be based upon the extent to which such damage and the making of such repairs interfere with Lessee's business in the

Premises based on the number of skilled nursing beds available for Lessee's use as calculated pursuant to Section 4.3(b) above. Lessor's repairs shall not include, and the Rent shall not be abated as a result of, any damage by fire or other cause to Lessee's Personal Property or any damage caused by the negligence or willful misconduct of Lessee or its agents, residents, licensees, or invitees.

**14.2** Within thirty (30) days after the date of such damage, Lessor shall notify Lessee whether or not, in Lessor's reasonable judgment made in good faith, such repairs can be made within the Repair Period. If such repairs cannot be made within the Repair Period, then either party hereto may, by written notice to the other given within thirty (30) days after the date of such damage, terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Lessor. In case of termination, the Rent shall be reduced by a proportionate amount based upon the extent to which such damage interferes with the conduct of Lessee's business in the Premises, and Lessee shall pay such reduced Rent up to the date of termination. Lessor shall refund to Lessee any Rent previously paid for any period of time subsequent to such date of termination.

**14.3** Notwithstanding the foregoing, in the event the Premises are damaged or destroyed by reason of flood or earthquake, and such damage or destruction is not fully covered by insurance proceeds payable under the insurance policies Lessor is required to carry hereunder (excluding any deductible, for which Lessor shall be responsible), Lessor may terminate this Lease by written notice to Lessee within thirty (30) days of the date Lessor receives written notice that such damage is not covered by insurance. Such notice from Lessor shall include adequate written evidence of any significant and material denial of insurance coverage. If Lessor does not elect to terminate this Lease as provided above, the Lease shall remain in full force and effect, and Lessor shall repair and restore the Premises as provided above.

**14.4** If at any time during the last eighteen (18) months of the Term of this Lease there is substantial damage that Lessor would be required to repair hereunder, Lessor or Lessee may, at the respective option of each, terminate this Lease as of the date such damage occurred by giving written notice to the other party of its election to do so within thirty (30) days after the date of such damage; provided, however, Lessor may terminate this Lease only if it would take more than thirty (30) days to repair such damage; and provided, further, that Lessee may terminate this Lease only if it notifies Lessor of the necessary repair and Lessor fails to take reasonable steps to commence the repair within thirty (30) days.

**14.5** The parties intend that the provisions of this Section govern fully their rights and obligations in the event of damage or destruction, and Lessor and Lessee each hereby waives and releases any right to terminate this Lease in whole or in part under Section 1932, subdivision 2, Section 1933, subdivision 4, and Sections 1941 and 1942 of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

**15. ESTOPPEL CERTIFICATE, FINANCIAL STATEMENTS, AND COST REPORTS.**

(a) Lessee or Lessor shall at any time, not less than twenty (20) days after receipt of prior written notice from the other party, execute, acknowledge and deliver to the

requesting party a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to the certifying party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any prospective purchaser or encumbrancer of the Premises may conclusively rely upon any such statement. The estoppel certificate shall be limited to factual matters and shall not obligate either party to modify its rights under this Lease.

(b) Lessee's failure to deliver such statement within such time shall be conclusive upon Lessee (i) that this Lease is in full force and effect, without modification except as may be represented by Lessor; (ii) that there are no uncured defaults in Lessor's performance; and (iii) that not more than one month's Rent has been paid in advance.

(c) Lessor's failure to deliver such statement within such time shall be conclusive upon Lessor (i) that this Lease is in full force and effect, without modification except as may be represented by Lessee, and (ii) that there are no uncured defaults in Lessee's performance.

(d) Subject to all applicable laws concerning transfer of records and privacy rights, Lessee shall provide Lessor with copies of Lessee's routinely prepared or amended Medi-Cal and Medicare cost reports for the Facility and, within sixty (60) days of the end of each month, provide Lessor with routinely prepared monthly income and expense statements, prepared in accordance with generally accepted accounting principles, which account solely for the operations conducted at the Facility.

(e) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee agrees to deliver to any lender or purchaser designated by Lessor such existing financial records of Lessee for the Facility as may be public records and reasonably requested by such lender or purchaser, including, without limitation (to the extent that such records are maintained by Lessee for the Facility), pro forma balance sheets, annual budgets projecting estimated monthly income and expense until break-even and full occupancy are achieved, and the past three years' financial statements of Lessee. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

## **16. LESSOR'S LIABILITY.**

The term "Lessor" as used herein shall mean only the owner or owners at the time in question of the fee title or a Lessee's interest in a ground lease of the Premises. In the event of any transfer of such title or interest, Lessor herein named (and in case of any subsequent transfers, then the grantor) shall be relieved from and after the date of such transfer of all liability as respect to Lessor's obligations thereafter to be performed, provided that any funds in the hands of Lessor or the then grantor at the time of such transfer, if Lessee has an interest therein, shall be delivered to the grantee. The obligations contained in this Lease to be performed by Lessor shall, subject as aforesaid, be binding on Lessor's successors and assignees, only during their respective periods of ownership.

**17. SEVERABILITY.**

The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

**18. INTEREST ON PAST-DUE OBLIGATIONS.**

Except as expressly herein provided, an amount due to Lessor not paid when due shall bear interest at the lesser of nine percent (9%) per annum or the maximum rate then allowable by law from the date due until paid. Payment of such interest shall not excuse or cure any default by Lessee under this Lease; provided, however, that interest shall not be payable on late charges incurred by Lessee if all amounts due are paid within thirty (30) days after the levy of any late charge.

**19. TIME IS OF THE ESSENCE.**

Time is of the essence for the performance of all obligations of the parties hereunder. Unless otherwise specifically provided in this Lease, all periods specified by a number of days shall refer to calendar days.

**20. ADDITIONAL RENT.**

Any monetary obligations of Lessee to Lessor under this Lease shall be deemed Rent.

**21. INCORPORATION OF PRIOR AGREEMENTS; AMENDMENTS.**

This Lease contains all agreements of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification.

**22. NOTICES.**

**22.1 Notices to Lessor.** Lessee agrees to give Lessor written notice of any of the following events: (i) any "A" or "AA" or equivalent State citation or any federal deficiency with a scope and severity of "D" or higher (or any equivalent deficiency) issued with respect to the Premises; (ii) any unusual occurrence on the Premises or any incident of alleged or suspected abuse on the Premises that requires a report to DHS; (iii) any action taken or proposed by DHS to revoke, suspend, restrict, or impose a condition on the License or to appoint a temporary manager or receiver; (iv) any action taken or proposed by CMS or DHS to terminate any Provider Agreement, to impose a temporary manager, to deny payments for new admissions or for all eligible admissions, or to ban any admission; (v) any other violation or threatened revocation, termination, or suspension of any other federal, State, or local permit, approval, or certification in connection with the Premises or its business; or (vi) any termination, amendment, or assignment of any management agreement between Lessee and any third party for management of the Premises. The written notice shall be provided within five (5) business days after occurrence of the event described in Section 22.1(i) and within ten (10) business days after occurrence of any event described in Sections 22.1(ii) through (vi). Any such notice shall include all related correspondence, including, without limitation, licensing surveys, complaint

investigation reports, citation or deficiency reports, termination, suspension or revocation letters and other agency findings.

**22.2 Form of Notice.** Except as otherwise provided in this Agreement, any notice, tender or delivery required or permitted to be given hereunder shall be in writing and may be given by personal delivery, by certified mail, return receipt requested, by facsimile transmission, or by overnight courier and shall be deemed sufficiently given if addressed to Lessee or to Lessor at the addresses specified below. Either party may by written notice to the other specify a different address for notice purposes. A notice by facsimile shall be deemed to be given upon receipt if followed by a copy sent by certified mail or overnight courier. A notice given by certified mail shall be deemed to have been delivered two days after the postmark on the envelope. A notice, which is personally delivered or delivered by overnight courier, shall be deemed to be delivered upon receipt. A copy of all notices required or permitted to be given to Lessor or Lessee hereunder shall be concurrently transmitted to such party at such addresses as Lessor or Lessee may from time to time hereafter designate by notice to the other party.

Lessor: California Trousdale LLC and 1100 Trousdale LLC  
1818 Gilbreth Road, Suite 200  
Burlingame, CA 94010  
Attn: Vincent A. Muzzi  
Facsimile: (650) 697-4177

Lessee: County of San Mateo  
400 County Center  
Redwood City, California 94063  
Attn: Assistant County Manager  
Facsimile: (650) 363-4832

With a copy to: Chief Executive Officer  
San Mateo Medical Center  
222 West 39<sup>th</sup> Avenue  
San Mateo, CA 94403  
Attn: Nancy Steiger  
Fax No.: (650) 573-2950

**23. WAIVERS.**

No waiver by Lessor or Lessee of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by the other party of the same or any other provision. Lessor's consent to, or approval of, any act shall not be deemed to make unnecessary Lessor's consent to or approval of any subsequent act by Lessee. Lessor's acceptance of Rent hereunder shall not be a waiver of any preceding breach by Lessee of any provision hereof, other than the failure of Lessee to pay the particular sum of Rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such Rent.

**24. RECORDING.**

Either Lessor or Lessee shall, upon request of the other, execute, acknowledge and deliver to the other a "short form" memorandum of this Lease for recording purposes.



## **25. HOLDING OVER.**

If Lessee, with Lessor's consent, remains in possession of the Premises or any part thereof after the expiration of the term hereof, such occupancy shall be a tenancy from month to month upon all the provisions of this Lease pertaining to the obligations of Lessee.

## **26. LEASE TERMINATION.**

**26.1 Irrevocable Assignment and Assumption.** The date on which this Lease terminates pursuant to its terms or is terminated by either party, whether pursuant to a right granted to it hereunder or otherwise, shall be referred to as the "Termination Date." On the Termination Date, and upon delivery of Lessor's signed acceptance of such assignment, this Lease shall be deemed an absolute, irrevocable assignment without any condition precedent for purposes of vesting in Lessor or Lessor's designee (if any) all of Lessee'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 Lessor or Lessor's designee (if any) of Lessee's obligations under the Intangibles from and after the Termination Date: service contracts for the benefit of the Premises to which Lessee is a party and which can be terminated without penalty by Lessee within thirty (30) or fewer days' notice; and all existing agreements with residents and any guarantors thereof of the Facility, to the extent assignable by Lessee (excluding the right to any payments for periods prior to the Termination Date).

**26.2 Responsibility for Revenues and Expenses.** Upon delivery of Lessor's signed acceptance, Lessor's designee shall be responsible for and shall pay all accrued expenses with respect to the Premises accruing on or after the Termination Date and shall be entitled to receive and retain all revenues from the Facility accruing on or after the Termination Date.

**26.3 Delivery of Records.** Upon delivery of Lessor's signed acceptance, all necessary arrangements shall be made to provide possession of the Premises to Lessor on the Termination Date, at which time of possession Lessee shall deliver to Lessor or its designee all resident records and other personal information concerning all residents residing at the Premises as of the Termination Date, all financial statements, and other relevant records used or developed in connection with the Facility or business conducted at the Premises. Such transfer and delivery shall be subject to and in accordance with all Applicable Laws concerning the transfer of such records, including, without limitation, all laws governing the privacy of confidential health information.

**26.4 Accounting of Residents' Funds.** On the Termination Date, Lessee shall provide Lessor or its designee with an accounting of all funds belonging to residents at the Premises that are held by Lessee in a custodial capacity. Such accounting shall set forth the names of the residents for whom such funds are held and the amounts held on behalf of each such resident. Additionally, Lessee shall make or assist with all necessary arrangements to transfer such funds to a bank account designated by Lessor, and Lessor or its designee shall in writing acknowledge receipt of and expressly assume all Lessee's financial and custodial obligations with respect thereto.

**26.5 Accounts Payable; Billing and Collections.** 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 Termination Date shall remain Lessee's property after the Termination Date. Lessee shall remain responsible for the payment of its liabilities, including accounts payable. Lessor or its designee shall assume responsibility for the billing and collection of payments on account of services rendered by it on and after the Termination Date. Lessor or its designee shall retain all payments applicable to services rendered after the Termination Date. Lessor or its designee shall cooperate with Lessee in Lessee's collection of its pre-Termination accounts receivable. Neither Lessor nor Lessor's designee shall have any liability for uncollectible receivables and neither shall be obligated to bear any expense as a result of such activities on behalf of Lessee.

#### **26.6 Option to Purchase Equipment.**

(a) Lessor or its designee shall have an option to purchase any or all of Lessee's FF&E for a price equal to the then-current fair market value thereof. The fair market value of the FF&E shall be established by appraisal as set forth hereinafter. Lessor or its designee may exercise its option not more than thirty (30) days after the receipt of an itemized appraisal of inventoried, tagged and numbered items, provided that the date of valuation of such appraisal is not more than sixty (60) days prior to the Termination Date. The exercise of such option shall be in writing and shall be unconditional and irrevocable.

(b) Not less than one hundred eighty (180) days nor more than two hundred seventy (270) days before the Termination Date, Lessee shall furnish Lessor or its designee with a list of three (3) qualified appraisers who are not affiliated with Lessee, who have never worked as employees of Lessee, and have not provided services to or received services from Lessee within the 2 years preceding the Termination Date. Lessor or its designee shall, within thirty (30) days of receipt thereof, select one appraiser from such list. Lessee shall hire the appraiser so selected, who shall appraise the FF&E, and the parties shall be bound by the value conclusions contained in such appraisal. Lessee shall pay the cost of the appraisal, and Lessor shall pay to Lessee upon demand an amount that is one-half of such cost.

(c) Lessor's purchase of any of the FF&E pursuant to this option shall be paid in cash or, at Lessor's option, cash in an amount equal to not less than ten percent (10%) and a promissory note secured by a deed of trust on the Property in an amount equal to not more than ninety percent (90%) of the purchase price and in the form attached hereto as **Exhibit C**. Monthly payments shall be due and payable in an amount equal to the interest only at the then current prime rate as published by Bank of America in San Francisco, California up to a maximum of nine percent (9%) per annum simple interest adjustable semi-annually following the date of termination on any outstanding balance, and the entire principal balance outstanding shall be due on the date which is four (4) years from the date of execution of such note. Lessor shall be entitled to payoff said note at any time. This right to compensate Lessee by delivery of a promissory note is specific to the purchase of the FF&E pursuant to this option.

(d) Lessor shall be entitled to purchase, for the sum of One Dollar (\$1.00), any and all FF&E and/or Equipment that, without Lessor's consent, is left on the Premises for more than thirty (30) days after the Termination Date.

**26.7 Right to Purchase Supplies.** Lessor or its designee shall also have the right to purchase all, some, or none of Lessee's supplies on hand upon the Termination Date for

a price equal to their cost to Lessee. Such option may be exercised at any time prior to the Termination Date.

**26.8 Use of Computer Programs.** Subject to all applicable laws concerning transfer of records and privacy rights, Lessor or its designee shall have the right to download, copy, or otherwise use any computer programs used in the operation of the Premises, without charge by Lessee, for a period of six (6) months following the Termination Date. Such use shall be subject to any applicable software licensing agreements, provided Lessor may agree at its option to pay any licensing fee and Lessee shall not incur any increase in licensing fees as a result of compliance with this provision. Subject to all applicable laws concerning transfer of records and privacy rights, Lessee agrees not to erase or delete any data available upon its computer system, which relates to the operation of the Premises.

**26.9 Interim Arrangements.** The parties acknowledge that in the event this Agreement is terminated, it may take several months for Lessor or its designee to obtain a License and new Provider Agreements. In light of the foregoing, Lessee agrees that in the event of termination of this Agreement, Lessee shall, at Lessor's option but at no cost to Lessee, and subject to all applicable laws, enter into appropriate interim arrangements with Lessor or Lessor's designee, effective as of the Termination Date, whereby Lessee shall continue to operate the Facility as licensee for so long as it takes Lessor or Lessor's designee to obtain a new License and new Provider Agreements, provided that Lessee may (1) delegate to Lessor (or Lessor's designee), as manager of the Facility, any and all functions that it is permitted to delegate under the Applicable Laws; and/or (2) allow Lessor (or Lessor's designee) to use Lessee's Medicare and Medicaid provider numbers ("Provider Numbers") until it obtains new Provider Numbers. Any designee of Lessor that operates the Facility under Lessee's License or Provider Number shall not be the subject of a current license revocation by DHS or a current termination of a Medicare or Medicaid provider agreement by CMS or DHS.

**26.10 Business as Usual.** Lessee further agrees to take any action reasonably necessary to prevent a lapse in or limitation on the License or the Facility's eligibility for Medicare or Medi-Cal reimbursement; transfers of residents from the Facility; and/or appointment of a temporary manager or receiver.

Without limiting the foregoing, Lessee agrees, promptly upon any default described in Section 12.3 (h) or (i), to enter into written arrangements with Lessor and/or its designee(s) whereby Lessee agrees to take the following steps effective immediately upon the later to occur of the default, or, if Lessee timely and diligently pursues its appeal or other review rights with respect to any such default, the adverse resolution of the appeal or other request for review: (1) sublease the Premises to Lessor's designee; (2) cease providing licensed care or services at the Facility; (3) cease representing itself to the public as having a License or providing licensed care or services at the Facility; (4) provide for the management of the Premises by Lessor or its designee; and (5) provide for any other transfers or arrangements that Lessor deems necessary to effectuate the purposes of this provision.

## **27. CUMULATIVE REMEDIES.**

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

**28. BINDING EFFECT.**

Subject to any provision hereof restricting assignment or subletting by Lessee and subject to the provisions of Section 11, this Lease shall bind the parties, their personal representatives, successors and assigns.

**29. SUBORDINATION.**

(a) This Lease, at Lessor's option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Lessee's right to quiet possession of the Premises shall not be disturbed if Lessee is not in default and so long as Lessee shall pay the Rent and observe and perform all of its obligations under this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee, or ground lessor shall elect to have this Lease deemed prior to the lien of its mortgage, deed of trust, or ground lease, and shall give written notice thereof to Lessee, this Lease shall be deemed prior to such mortgage, deed of trust, or ground lease, whether this Lease is dated prior or subsequent to the date of said mortgage, deed of trust, or ground lease or the date of recording thereof.

(b) Within twenty (20) days after receipt of written request, Lessee agrees to execute any documents required to effectuate an attornment or subordination or to make this Lease prior to the lien of any mortgage, deed of trust, or ground lease, as the case may be, Lessee's failure to execute such documents within ten (10) days after receipt of written demand therefor shall constitute a material default by Lessee hereunder.

**30. LESSOR'S ACCESS.**

Lessor and Lessor's agents shall have the right to enter the Premises at reasonable times for the purpose of inspecting the same, showing the same to prospective purchasers, lenders, or Lessees, and making such alterations, repairs, improvements or additions to the Building. Lessor shall give Lessee forty-eight (48) hours' written or oral notice of such entry except in cases of emergency (in which event Lessor shall give Lessee any reasonable notice Lessor has or receives).

**31. AUCTIONS.**

Except for the sale of Lessee's FF&E upon the expiration or other termination of the Lease, Lessee shall not conduct or permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises without first having obtained Lessor's prior written consent, which consent shall not be unreasonably withheld.

**32. MERGERS.**

The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, or a termination by Lessor, shall, at the option of Lessor, terminate all or any existing sub-tenancies or may, at the option of Lessor, operate as an assignment to Lessor of any or all of such sub-tenancies.

**33. CONSENTS.**

Wherever in this Lease the consent of one party is required to an act of the other party such consent shall not be unreasonably delayed or withheld, except as otherwise so noted.

**34. QUIET POSSESSION.**

Upon Lessee paying the Rent for the Premises and observing and performing all of the covenants, conditions, and provisions on Lessee's part to be observed and performed hereunder, Lessee shall have quiet possession of the Premises for the entire term hereof subject to all of the provisions of this Lease. The individuals executing this Lease on behalf of Lessor represent and warrant to Lessee that they are fully authorized and legally capable of executing this Lease on behalf of Lessor and that such execution is binding upon all parties holding an ownership interest in the Premises. Lessor represents and warrants that as of the effective date of this Lease, Lessor will be the owner of the Premises subject to no lien, mortgage, deed of trust, or restriction that would adversely affect Lessee's right to full use and enjoyment of the Premises under the Lease.

**35. EASEMENTS.**

Lessor reserves to itself the right, from time to time, to grant such easements and rights that Lessor deems necessary or desirable, and to cause the recording of Parcel Maps and restrictions, so long as such easements, rights, Maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee shall sign any of the aforementioned documents within twenty (20) days following request of Lessor and failure to do so shall constitute a material breach of this Lease.

**36. NO LIABILITY OF LESSEE OFFICIALS, EMPLOYEES , OR AGENTS**

Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of Lessee shall be personally liable to Lessor, its successors and assigns, in the event of any default or breach by Lessee or for any amount which may become due to Lessor, its successors, and assigns, or for any obligation of Lessee under this Lease.

**37. AUTHORITY.**

Each individual executing this Lease on behalf of Lessee represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Lessee. Lessee shall, within thirty (30) days after execution of this Lease, but prior to occupancy, deliver to Lessor evidence of such authority satisfactory to Lessor. Failure to deliver any of the above items shall constitute a material breach of this Lease.

**38. NO REAL ESTATE BROKERS.**

Each party represents that it has not had any dealings with any real estate broker, finder, or other person with respect to this Lease. Each party shall hold the other party harmless from all liability and damages resulting from any claims that may be asserted against the other party by any broker, finder, or other person with whom the other party has purportedly dealt.

**39. NO JOINT VENTURE, AGENCY, OR EMPLOYMENT.**

The parties to this Lease are acting strictly as Lessee and Lessor and independent contractors. This Lease creates absolutely no joint venture, agency, or employment relationship.

**40. NO THIRD-PARTY BENEFICIARIES.**

There are no third-party beneficiaries of this Lease.

**41. APPLICABLE LAW; VENUE.**

This Lease shall be governed by and construed under California law. Any action brought under or arising from this Lease shall be brought in the Superior Court of the State of California in and for the County of San Mateo and may not be removed to federal court.

**42. NO WAIVER.**

Lessor's failure to enforce any provision of this Lease on any occasion shall not be deemed a waiver of that or any other breach on that or any other occasion.

**43. COUNTERPARTS.**

This Lease may be executed in multiple counterparts and by counterpart signature pages each of which shall be deemed an original thereof.

**44. CAVEAT.**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LESSOR ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF LESSEE HAS AUTHORITY TO COMMIT LESSEE HERETO UNLESS AND UNTIL LESSEE'S BOARD OF SUPERVISORS HAS DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF LESSEE HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID UNLESS LESSEE'S BOARD OF SUPERVISORS AUTHORIZES EXECUTION OF THIS LEASE, IN ITS SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION, OR AGENCY OF LESSEE SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED OR THAT ANY SUCH APPROVAL CREATES ANY BINDING OBLIGATION ON LESSEE.

The parties hereto have executed this Lease at the place on the dates specified immediately above their respective signatures

**LESSEE:**

**LESSOR:**

**THE COUNTY OF SAN MATEO,  
a political subdivision of the  
State of California**

**CALIFORNIA TROUSDALE LLC**

DATE: \_\_\_\_\_

DATE: 6/19/03

By: \_\_\_\_\_  
Its: President, Board of Supervisors

By: *V. J. Maggi*  
Its: Member

ATTESTED:

**1100 TROUSDALE LLC**

\_\_\_\_\_  
Clerk of the Board

DATE: 6/19/03

RESOLUTION NO. \_\_\_\_\_

By: *Man Maggi*  
Its: Member

**EXHIBIT A**

**PROPERTY DESCRIPTION**



**EXHIBIT B**

**Notice of Commencement**

[Date]

Mr. Paul Scannell  
Assistant County Manager  
County of San Mateo  
400 County Center  
Redwood City, CA 94063

RE: Acknowledgement of Commencement Date, Lease Between  
(Lessor),  
and the COUNTY OF SAN MATEO (Lessee), for premises known as

Dear Mr. Scannell:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as defined in Section 3.1 of the Lease) is \_\_\_\_\_, 2003.

Please acknowledge your acceptance of this letter by signing and returning a copy of this letter.

Very truly yours,

\_\_\_\_\_  
By \_\_\_\_\_  
Title \_\_\_\_\_

Accepted and Agreed:

By \_\_\_\_\_  
Assistant County Manager

**EXHIBIT C**  
**FORM OF PROMISSORY NOTE**

## EXHIBIT D

### WORK LETTER

1100 Trousdale Drive  
Burlingame, California

This Work Letter is part of the Lease dated for reference purposes only as of July 1, 2003 (the "Lease") by and between 1100 Trousdale LLC and California Trousdale LLC, as Lessor, and the County of San Mateo, as Lessee, covering the Property described in the Lease. All terms that are capitalized but not defined herein shall have the same meanings given to them in the Lease.

Lessor, at its sole cost and expense (except as otherwise specifically set forth herein), and through a bondable, California-licensed general contractor with experience in performing work subject to OSHPD approval (the "Contractor"), shall furnish and install within the Building the improvements shown on the Construction Documents finally approved by Lessee pursuant to paragraph 1 below (the "Improvements"), in accordance with the provisions of this Work Letter. At any time during the term of this Lease, Lessor shall have the absolute right, subject only to Lessee's prior approval which shall not be unreasonably withheld, conditioned, or delayed, to replace or supplement the selected Contractor with another similarly qualified general contractor.

1. Plans and Specifications.

a. Construction Documents Based on the Design Development Documents dated August 30, 2002, submitted and preliminarily approved by OSHPD on April 24, 2003, and which have been reviewed by Lessee. Lessor shall cause its architect, Robert C. Gooyer, AIA (the "Architect"); and its qualified and licensed engineers i.e., The Crosby Group ("Structural Engineers"), D.Y.M.E., Inc. ("Mechanical and Plumbing Engineers"), and W.H.M., Inc., ("Electrical Engineers")(collectively, the "Engineers") all of whom have been approved by Lessee to prepare and submit to Lessee for its reasonable review and approval plans and specifications fixing and describing the size and character of the Improvements, setting forth in detail all aspects of the design, equipment specifications, function and construction of the Improvements, in form sufficient for bidding of all elements of construction, and in conformity with all of the requirements of OSHPD and this Work Letter (collectively, the "Construction Documents"). At any time during the term of this Lease, Lessor shall have the absolute right, subject only to Lessee's prior approval which shall not be unreasonably withheld, conditioned, or delayed, to replace or supplement the above named Architect and/or Engineers with other similarly qualified architects and/or engineers.

The Construction Documents shall be subject to the reasonable approval of Lessee in accordance with Paragraph 1(b) below.

b. Lessee's Approval of Plans. The Construction Documents (and any Lessor Change Orders thereto, as described below) shall be subject to approval by Lessee, which approval shall not be unreasonably withheld, conditioned, or delayed, in accordance with the following procedure. After submission of the Construction Documents or any proposed Change Order by Lessor to Lessee, Lessee shall have five (5) days to disapprove any element thereof. If Lessee does so, then Lessee shall notify Lessor within such period of its disapproval and of the

Lessor: Representative – Sal Ariganello

Alternate – Mario B. Muzzi

Each party may at any time and from time to time change its Representative or Alternate by written notice to the other party. Each party's Representative or Alternate shall be available during ordinary business hours so that questions and problems may be quickly resolved and so that the Improvements may be completed economically and in accordance with the Construction Schedule. All approvals made by Lessee's Representative or Alternate shall be made in writing.

2. Permits

a. Responsibility for Obtaining Permits. Lessor shall have the responsibility for obtaining all governmental permits and approvals required to commence and complete the Improvement Work, and promptly upon receipt thereof shall deliver copies of all of such permits and approvals to Lessee. Lessor shall use its best efforts to obtain all such approvals and permits on or before November 1, 2003. Lessor shall have the responsibility of calling for all required inspections.

3. Construction

a. Construction of Improvements. Lessor shall cause the Improvements to be constructed and installed in a good and professional manner in accordance with sound building practice and in conformity with the OSHPD requirements and the Construction Documents, as revised by any Change Orders, and the terms of this Work Letter. Lessee shall not have any obligation with respect to any such work other than as provided herein.

b. Construction Schedule. Lessor shall commence construction of the Improvements within ten (10) days after approval of all required permits for construction in accordance with the approved Construction Documents, and shall diligently pursue construction to completion, all in accordance with the construction schedule, which shall be submitted together with and approved as a part of the Construction Documents, and shall thereafter be attached hereto and made a part hereof as **Schedule 1** (the "Construction Schedule").

c. Status Reports; Inspections. Lessor shall keep Lessee apprised of the status of permit approval and the progress of construction.

d. General Conditions. The performance of all Improvement Work by Lessor shall be subject to the following terms and conditions:

i. All of the Improvement Work shall be performed in compliance with all laws, codes, regulations and building requirements (collectively, "Laws") bearing on construction of the Improvements; and

ii. Lessor and its Contractor shall be responsible for all required insurance.

e. Cooperation. Lessor and Lessee shall cooperate at all times in bringing about the timely completion of the Improvements. Lessor shall resolve any and all disputes

arising out of the construction of the Improvements in a manner which shall allow work to proceed expeditiously.

4. Substantial Completion

a. Construction Schedule. Lessor shall use its best efforts to complete the Improvement Work on or before the date that is three hundred sixty-five (365) days after the Effective Date. However, in no event shall construction of the Improvements be Substantially Completed later than twelve months after the Effective Date except as extended by Unavoidable Delays (as such terms are defined in Paragraph 6 below). Lessor shall notify Lessee when the Improvement Work is in fact Substantially Completed.

b. Substantial Completion. The Leasehold Improvements shall be deemed to be "Substantially Completed" for purposes hereof when all necessary inspections required have been completed and signed off as approved by the appropriate governmental authorities. Lessee or the Architect may, at either one's option, approve the Improvements even though there remain minor details that would not interfere with Lessee's use. Lessor shall diligently pursue to completion all such details. Notwithstanding the foregoing, Lessee shall have the right to present to Lessor within thirty (30) days after acceptance of the Improvements, or as soon thereafter as practicable, a written "punchlist" consisting of any items that have not been finished in accordance with the Construction Documents and the terms of this Work Letter. Lessor shall promptly complete all defective or incomplete items identified in such punchlist, and in any event within thirty (30) days after the delivery of such list. Lessee's failure to include any item on such list shall not alter Lessor's responsibility hereunder to complete all Improvement Work in accordance with the Construction Documents and the provisions hereof, nor constitute a waiver of any latent defects.

5. Delays in Construction

a. Unavoidable Delays. For purposes hereof, "Unavoidable Delays" shall mean any delays by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, inability to obtain labor or materials after using diligent and timely efforts, enemy action, civil commotion, protests, riots, demonstrations, required OSHPD review and approval, or by any other reason without fault and beyond the reasonable control of the party obligated to perform. In the event of any such delay, the party affected by such delay shall give prompt written notice to the other of the occurrence of such event and the projected delay in performance, and thereafter shall keep the other party regularly informed of the status of such Unavoidable Delay. Under no circumstances shall the number of days of Unavoidable Delays exceed a total of sixty (60) days, with the sole exception of Unavoidable Delays caused by required OSHPD review and approval. There shall be no limit on the number of days of Unavoidable Delays resulting from the review and approval requirements of OSHPD; however, in order for such days to qualify as Unavoidable Delays, Lessor shall provide evidence acceptable to Lessee, in its reasonable judgment, showing that such delay was caused solely by the OSHPD review and approval process.

6. General Provisions.

a. Lessor's Duty to Notify Lessee. Lessor shall promptly notify Lessee in writing of (i) any written communication that Lessor may receive from any governmental, judicial or legal authority, giving notice of any claim or assertion that the Property, Building, or Improvements fail in any respect to comply with applicable laws, rules and regulations; (b) any known material adverse change in the physical condition of the Property, including, without limitation, any damage suffered as a result of earthquakes; and (c) any known default by the Contractor or any subcontractor or material supplier, or any known material adverse change in the financial condition or business operations of any of them.

b. Days. Unless otherwise provided herein, all periods specified by a number of days shall refer to business days. Saturdays, Sundays and recognized County holidays shall not constitute business days.

c. Approvals. Lessor understands and agrees that Lessee is entering into this Work Letter in its proprietary capacity and not as a regulatory agency. Notwithstanding anything to the contrary herein, no approval by Lessee of the plans for the Improvements (including the Design Development Documents or Construction Documents), completion of the Improvement Work nor any other approvals by Lessee hereunder shall be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises. All approvals or other determinations of County as Lessee hereunder may be made by Lessee's Assistant County Manager unless otherwise specified herein.

d. There are no third-party beneficiaries of this Work Letter.

7. Time of the Essence. Time is of the essence with respect to all provisions of this Work Letter in which a definite time for performance is specified, including, without limitation, the date for Substantial Completion.