

**GROUND LEASE**

**between**

\_\_\_\_\_,

**a** \_\_\_\_\_

**of the State of** \_\_\_\_\_,

**and**

\_\_\_\_\_,

**a** \_\_\_\_\_

**Dated as of** \_\_\_\_\_, 20\_\_\_\_

## TABLE OF CONTENTS

	<u>Page</u>
<b>ARTICLE 1 - GROUND LEASED PREMISES.....</b>	<b>1</b>
Section 1.1    Ground Leased Premises.....	1
Section 1.2    Title.....	2
Section 1.3    Quiet Enjoyment .....	2
Section 1.4    Easements .....	2
Section 1.5    Easements Expire.....	2
Section 1.6    Construction of Improvements .....	2
<b>ARTICLE 2 - LEASE TERM.....</b>	<b>4</b>
Section 2.1    Lease Commencement .....	4
Section 2.2    Lease Term.....	5
Section 2.3    Rent Commencement.....	5
Section 2.4    Options to Extend .....	5
Section 2.5    Reversion .....	5
Section 2.6    Termination of Lease .....	6
Section 2.7    Option to Purchase.....	6
<b>ARTICLE 3 - RENT, TAXES AND LIABILITIES .....</b>	<b>8</b>
Section 3.1    Monthly Rent .....	8
Section 3.2    Rent Increases .....	8
Section 3.3    Real and Personal Property Taxes .....	9
Section 3.4    Real Estate Taxes.....	10
Section 3.5    Proof of Compliance .....	10
Section 3.6    Contesting Taxes.....	10
Section 3.7    Utilities.....	10
Section 3.8    Security Deposit.....	10
Section 3.9    Development Fees.....	10
Section 3.10    Triple Net Rent .....	11
Section 3.11    Additional Rent.....	11
<b>ARTICLE 4 - USE OF PREMISES .....</b>	<b>11</b>
Section 4.1    Primary Use .....	11
Section 4.2    Use Solely for _____ Building; No Competing Services .....	11
Section 4.3    Building Leases.....	11
Section 4.4    Hazardous Materials .....	13
Section 4.5    Lessor's Right to Lease.....	18
<b>ARTICLE 5 - ENCUMBRANCE OF LEASEHOLD ESTATE.....</b>	<b>18</b>
Section 5.1    Encumbrance of Lessee's Estate.....	18
Section 5.2    Leasehold Mortgage Protections.....	19
<b>ARTICLE 6 - MAINTENANCE .....</b>	<b>24</b>
Section 6.1    Maintenance of Ground Leased Premises and Common Area .....	24
<b>ARTICLE 7 - MECHANICS' LIEN.....</b>	<b>24</b>
Section 7.1    Prohibition of Liens on Fee or Leasehold Interest.....	24
Section 7.2    Removal of Liens by Lessee .....	25

<b>ARTICLE 8 - CONDEMNATION.....</b>	<b>25</b>
Section 8.1    Interests of Parties on Condemnation .....	25
Section 8.2    Total Taking — Termination .....	25
Section 8.3    Partial Taking — Termination .....	25
Section 8.4    Partial Taking — Continuation with Rent Abatement.....	25
Section 8.5    Allocation of Award — Total Taking.....	26
Section 8.6    Allocation of Award — Partial Taking.....	27
Section 8.7    Voluntary Conveyance.....	27
<b>ARTICLE 9 - ASSIGNMENT AND SUBLEASE.....</b>	<b>27</b>
Section 9.1    Assignment and Subletting .....	27
Section 9.2    Lessor’s Right of First Refusal .....	28
<b>ARTICLE 10 - INSURANCE AND INDEMNIFICATION .....</b>	<b>28</b>
Section 10.1    Comprehensive Liability Insurance .....	28
Section 10.2    Fire and Extended Coverage Property Insurance.....	29
Section 10.3    Public Liability and Workmen’s Compensation Insurance .....	30
Section 10.4    Waiver of Subrogation.....	30
Section 10.5    Indemnification .....	30
<b>ARTICLE 11 - DAMAGE AND DESTRUCTION.....</b>	<b>31</b>
Section 11.1    Lessee’s Duty to Restore Premises .....	31
Section 11.2    Option to Terminate Lease for Destruction .....	31
Section 11.3    Application of Insurance Proceeds .....	31
<b>ARTICLE 12 - DEFAULTS AND REMEDIES.....</b>	<b>32</b>
Section 12.1    Defaults .....	32
Section 12.2    Notice and Right to Cure .....	33
Section 12.3    Remedies.....	33
Section 12.4    Lessor’s Right to Cure Defaults.....	35
Section 12.5    Remedies Cumulative .....	35
Section 12.6    Lessee’s Liability After Default.....	35
Section 12.7    Holdover .....	36
Section 12.8    Past Due Obligations.....	36
<b>ARTICLE 13 - SURRENDER AND REMOVAL.....</b>	<b>36</b>
Section 13.1    Surrender of Possession .....	36
Section 13.2    Lessee’s Quitclaim.....	37
<b>ARTICLE 14 - GENERAL PROVISIONS .....</b>	<b>37</b>
Section 14.1    Conditions and Covenants .....	37
Section 14.2    Survival of Indemnities.....	37
Section 14.3    No Waiver of Breach .....	37
Section 14.4    Unavoidable Delay — Force Majeure .....	37
Section 14.5    Notices .....	37
Section 14.6    Gender.....	38
Section 14.7    Captions .....	38
Section 14.8    Entire Agreement .....	38
Section 14.9    Waiver; Amendment.....	38
Section 14.10    Attorney’s Fees .....	39

Section 14.11 Time .....	39
Section 14.12 Governing Law .....	39
Section 14.13 Binding Effect .....	39
Section 14.14 Execution of Other Instruments .....	39
Section 14.15 Severability .....	39
Section 14.16 Counterparts .....	39
Section 14.17 Estoppel Certificate .....	39
Section 14.18 Memorandum of Lease .....	39
Section 14.19 Waiver of Trial by Jury .....	39
Section 14.20 Signs .....	40
<b>ARTICLE 15 - LEASE CONTINGENCIES .....</b>	<b>40</b>
Section 15.1 Lessee Contingency .....	40
Section 15.2 Lessor Consents .....	40

## **LIST OF EXHIBITS**

### **Exhibits**

Exhibit A	Legal Description of Property
Exhibit B	Site Plan
Exhibit C	Permitted Encumbrances
Exhibit D	Construction Schedule
Exhibit E	Memorandum of Lease
Exhibit F	Purchase and Sale Agreement and Joint Escrow Instructions

## GROUND LEASE

THIS GROUND LEASE (“**Lease**”), dated as of \_\_\_\_\_, 20\_\_\_\_ (the “**Effective Date**”), is made and entered into by and between \_\_\_\_\_, a \_\_\_\_\_ (“**Lessor**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Lessee**”). Lessor and Lessee are collectively referred to herein as the “**Parties**.”

### RECITALS:

This Lease is entered into upon the basis of the following facts, understandings and intentions of the parties:

A. Lessor is the fee owner of certain parcels of real property located in the City of \_\_\_\_\_, \_\_\_\_\_ County of \_\_\_\_\_, State of \_\_\_\_\_, consisting of approximately \_\_\_\_\_ acres as legally described in **Exhibit A** attached hereto and incorporated herein by this reference (the “**Real Property**”).

B. Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the Real Property (the “**Ground Leased Premises**”), which will be used for purposes of constructing, owning and operating thereon an approximately \_\_\_\_\_ building (“**Building**”) to be used solely for \_\_\_\_\_ (“**Permitted Use**”). The remainder of the Ground Leased Premises will be used for purposes of \_\_\_\_\_ (the foregoing are hereinafter collectively referred to as the “**Common Area Improvements**”) for the use and benefit of the Building, all on the terms and conditions set forth in this Lease. The Building and the Common Area Improvements are hereinafter collectively referred to as the “**Improvements**.” The Ground Leased Premises, together with the Common Area Improvements, are more particularly depicted on the site plan (the “**Site Plan**”) attached hereto as **Exhibit B** and incorporated by reference herein.

C. The Parties desire to establish the terms and conditions of this Lease to fulfill the foregoing objectives.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the Parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree that the foregoing recitals are true and correct and incorporated herein by this reference, and further agree as follows:

### ARTICLE 1 - GROUND LEASED PREMISES

**Section 1.1 Ground Leased Premises.** Lessor, for and in consideration of the rents, covenants and conditions herein set forth, does hereby lease to Lessee, and Lessee does hereby lease from Lessor, the Ground Leased Premises, subject to the terms, conditions and provisions hereof.

**Section 1.2 Title.** Lessor shall deliver the Leased Premises free and clear of all liens, mortgages or other encumbrances other than those existing as of the date of this Agreement and approved by Lessee as set forth in **Exhibit C** attached hereto and incorporated by reference herein (the “**Permitted Encumbrances**”).

**Section 1.3 Quiet Enjoyment.** Lessor covenants and agrees that Lessee, upon paying the rent and other charges herein provided and observing and keeping the covenants, conditions, and terms of this Lease on Lessee’s part to be kept or performed, shall lawfully hold, occupy and enjoy the Ground Leased Premises during the Initial Term (as defined in Section 2.2 hereof) and any Extended Term (as defined in Section 2.4 hereof) of this Lease, without hindrance of Lessor or any person claiming by, through or under Lessor.

**Section 1.4 Easements.** Lessor and Lessee each agree to grant such other easements as may be necessary or required to own, develop, operate, or maintain the Ground Leased Premises and the Improvements in a commercially reasonable manner, on terms and conditions acceptable to Lessor and Lessee.

**Section 1.5 Easements Expire.** The grant of any easements pursuant to Section 1.4 (but not any existing easements or other Permitted Encumbrances (defined in Section 1.2 above) shall automatically expire upon termination of this Lease, unless this Lease is terminated pursuant to Section 2.7(j) below, in which case such easements shall not expire, and shall become Permitted Sales Exceptions (as defined in Section 2.7(f)). Any one of said easements shall be subject to abandonment and shall expire upon abandonment by Lessee.

**Section 1.6 Construction of Improvements.** With respect to construction of the Improvements on the Ground Leased Premises by Lessee, Lessor and Lessee agree as follows:

(a) **Lessee’s Obligation to Construct Improvements.** Lessee shall, at Lessee’s sole cost and expense, construct upon the Ground Leased Premises a \_\_\_\_\_ building of not less than \_\_\_\_\_ square feet and related Improvements, including, but not limited to, the Common Area Improvements in accordance with the terms of this Lease. Lessee’s construction requirements and fees shall include any and all fees required to obtain construction entitlements, all Improvements to the Ground Leased Premises, including grading the pad, driveways, paved areas, landscaping, signs, utility connections at the Ground Leased Premises property lines, and the cost of bringing utility connections from the Ground Leased Premises property lines to the Building. Lessor shall not be responsible for any costs associated with Lessee’s construction of the Improvements. All work performed on the Ground Leased Premises and Common Area, including any site preparation work, landscaping work, utility installation work, as well as actual construction work on the Building, shall be (i) performed only by competent contractors duly licensed as such under the laws of the State of California, (ii) in accordance with all laws, ordinances, regulations and orders of all federal, state, county or local governmental agencies or entities having jurisdiction over the Ground Leased Premises, and (iii) done in a good, workmanlike and lien-free manner and only with new materials of good quality and standards.

(b) **Lessor Approval.** Lessor shall have the right to review and approve the exterior appearance and location of the Improvements. Lessor shall also have the right to review

and make recommendations regarding the size of the Improvements to be constructed. However, Lessee shall have the right to make the final determination as to the appropriate size of the Improvements based on market conditions, such as estimated demand for \_\_\_\_\_ space (as may be learned through physician interviews, initial leasing efforts, and/or other sources), the development of new or unanticipated competing projects, and any other factors that may affect the development and leasing of space in the Building, provided that in no event shall the Building be less than \_\_\_\_\_ rentable square feet.

(c) Schedule. A schedule for the commencement of such construction, the completion of various stages of construction and the completion of all construction of the Improvements is attached hereto as **Exhibit D**. The completion dates set forth in **Exhibit D** attached hereto are measured from the Commencement Date hereunder. Lessee shall cause Substantial Completion of the Improvements by the Substantial Completion Outside Date. If Substantial Completion does not occur by the Substantial Completion Outside Date, then Lessor may exercise its rights and remedies under this Lease, including, without limitation, termination of this Lease and Lessee's right to possession of the Ground Leased Premises. The term "**Substantial Completion**" means the point in time when Lessor shall have reasonably determined that construction of the Improvements have been completed in accordance with the approved plans and specifications, and all applicable laws, rules and regulations, free and clear of all material defects and liens, and when a final certificate of occupancy (or the functional equivalent) is issued and a valid notice of completion is recorded. The term "**Substantial Completion Outside Date**" means the date which is eighteen (18) months following the date a building permit to commence construction is available for issuance. In the event the construction of the Improvements is delayed due to a Force Majeure Event (as defined in Section 14.4 below), corresponding adjustments will be made to the Substantial Completion Outside Date stages of construction and the completion dates set forth in **Exhibit D** attached hereto equal to the duration of the act, occurrence, delay or omission that constitutes the Force Majeure Event, or, if longer, the period of delay caused by such Force Majeure Event, not to exceed in each instance an additional sixty (60) day period beyond the duration of the act, occurrence, delay or omission that constitutes the Force Majeure Event. If construction of the Improvements is delayed due to Force Majeure Event, Lessee will use commercially reasonable efforts to resume construction as promptly as practicable following such delay.

(d) Construction. Lessee and its General Contractor and any subcontractors shall construct the Improvements on the Ground Leased Premises in compliance with all applicable federal, state and local laws, insurance requirements, rules and regulations and conforming in all respects with local building code requirements, zoning requirements, stormwater pollution prevention requirements, and this Lease. Lessee shall additionally require that the general contractor selected by Lessee for construction of the Improvements provide one hundred percent (100%) payment and performance bonds naming Lessee and Lessor as co-obligees. During such construction, Lessor and any architect, engineer or other representative it may select, may inspect (but shall have no duty or obligation to inspect) the work being performed upon the Ground Leased Premises and the materials being used in, or to be used in, the performance of such work. If during construction of the Improvements, Lessor, its architect, engineer or other representative shall determine that the Improvements are not being constructed in accordance with such laws or requirements, Lessor may, but shall not be obligated, to give Lessee notice specifying the nature of the deficiency or defect or omission. Upon the receipt of



any such notice, Lessee shall promptly take such steps, at its cost, as may reasonably be necessary to correct such defect, deficiency or omission. During the Contingency Period, and in order to ensure that Lessee has sufficient funds to complete the Improvements, Lessee shall furnish Lessor with a project budget (the “**Project Budget**”) showing an itemization by category of all costs, expenses and fees which Lessee reasonably expects to pay or reasonably anticipates becoming obligated to pay to complete construction of the Improvements (the “**Construction Costs**”). Lessee shall maintain separate and complete books and records accurately reflecting the Construction Costs incurred by Lessee and shall submit to Lessor progress reports including information on Construction Costs incurred to date and any variances between such actual Construction Costs and the Project Budget, within thirty (30) days of request by Lessor, not more than once every six (6) months. In addition, as long as this Lease is in place, Lessor shall have the right at any time during the construction of the Improvements or within a two (2) year period after Substantial Completion of the Improvements to conduct inspections and audits of the Lessee’s books and records relating to construction of the Improvements, but not more than once every six (6) months.

(e) Failure to Complete Improvements. SUBJECT TO EXTENSION DUE TO FORCE MAJEURE EVENTS, IN THE EVENT LESSEE FAILS TO SUBSTANTIALLY COMPLETE THE IMPROVEMENTS BY THE SUBSTANTIAL COMPLETION OUTSIDE DATE, LESSEE SHALL NONETHELESS BE ENTITLED TO COMPLETE THE IMPROVEMENTS. UPON SUCH ELECTION, LESSEE SHALL PAY TO LESSOR LIQUIDATED DAMAGES IN THE AMOUNT OF \$\_\_\_\_\_.00 PER CALENDAR DAY FROM THE SUBSTANTIAL COMPLETION OUTSIDE DATE UNTIL SUCH TIME AS THE IMPROVEMENTS HAVE BEEN SUBSTANTIALLY COMPLETED IN A GOOD AND WORKMANLIKE MANNER. THIS AMOUNT WILL, HOWEVER, BE CONDITIONALLY ABATED IN THE SAME MANNER AS BASE RENT PURSUANT TO SECTION 2.3.1 BELOW AND SHALL BECOME DUE AND PAYABLE ONLY UPON LESSEE’S FAILURE TO TIMELY EXERCISE THE PURCHASE OPTION SET FORTH IN SECTION 2.7 BELOW. SUCH REMEDY SHALL BE LESSOR’S SOLE REMEDY FOR LESSEE’S FAILURE TO TIMELY COMPLETE THE IMPROVEMENTS, AND LESSOR SHALL NOT HAVE THE RIGHT TO ADDITIONAL DAMAGES, OR THE RIGHT OR OBLIGATION TO TAKE OVER THE CONSTRUCTION OF THE IMPROVEMENTS OR TO ANY OTHER REMEDIES, UNTIL SUCH TIME AS LESSOR NOTIFIES LESSEE IN WRITING THAT LESSOR IS ELECTING ANOTHER REMEDY AVAILABLE TO LESSOR UNDER THIS LEASE, AT WHICH TIME (I.E., DELIVERY OF SUCH NOTICE TO LESSEE) LESSEE’S OBLIGATION TO PAY THE CONDITIONALLY ABATED LIQUIDATED DAMAGES AMOUNT UNDER THIS SUBSECTION SHALL TERMINATE.

## **ARTICLE 2 - LEASE TERM**

**Section 2.1 Lease Commencement**The commencement date (“**Commencement Date**”) of this Lease shall be on or before \_\_\_\_\_, 20\_\_\_\_. Lessor shall deliver possession of the Ground Leased Premises to Lessee on the Commencement Date.

**Section 2.2 Lease Term.** The initial term of this Lease (the “**Initial Term**”) shall commence on the Commencement Date and expire \_\_\_\_\_ (\_\_\_) years after the Commencement Date (the “**Expiration Date**”), unless sooner terminated or extended as herein provided.

**Section 2.3 Rent Commencement**Notwithstanding the provisions of Section 2.2 herein, payments of Base Monthly Rent (as defined in Section 3.1 below) shall commence upon the earlier to occur of: (a) Substantial Completion of the Improvements to be constructed by Lessee on the Ground Leased Premises; or (b) \_\_\_\_\_ (\_\_\_) months after the Commencement Date (the “**Rent Commencement Date**”). When the Rent Commencement Date is determined, Lessee agrees, within ten (10) days thereafter, to execute and deliver to Lessor a written declaration, in form reasonably satisfactory to Lessor, confirming the Rent Commencement Date. Lessor shall acknowledge its receipt of Lessee’s declaration by signing a copy of such declaration and returning such acknowledgment to Lessee.

**2.3.1 Conditional Rent Abatement.** For a period of \_\_\_\_\_ (\_\_\_) months commencing on the Rent Commencement Date, no rent shall be due from Lessee, including Base Rent. However, if the Lessee does not timely exercise its option to purchase the Premises, pursuant to Section 2.7, then all rent and other amounts abated under this Lease shall become due, in full, within \_\_\_\_\_ (\_\_\_) days following the expiration of the Option Period without exercising the Option, or failure to close escrow after the exercise of the Option, and the failure to close is not due to the fault of Lessor, as the seller.

**Section 2.4 Options to Extend.** Lessee may, at its option and subject to the conditions herein stated, extend the Initial Term of this Lease for \_\_\_\_ (\_\_\_) additional periods of \_\_\_\_\_ (\_\_\_) years each, subject to all the provisions of this Lease. Each additional ten (10) year period in effect hereunder shall be referred to as an “**Extended Term.**” The Expiration Date, as used herein, shall be deemed extended, to the extent applicable, to the last date of each Extended Term of this Lease. Lessee’s right to exercise each option is subject to the following conditions precedent:

(a) The Lease shall be in effect at the time notice of exercise is given and on the last day of the Initial Term, or such Extended Term, as may be applicable.

(b) Without limiting Lessee’s cure rights hereunder, to the extent applicable, no Event of Default shall exist under any provision of this Lease at the time notice is given.

(c) Without limiting Lessee’s cure rights hereunder, each and every one of Lessee’s material representations and warranties provided in this Lease shall be true and correct as of the time notice is given.

(d) Lessee shall give written notice to Lessor irrevocably exercising the option to extend not later than six (6) months prior to expiration of the Initial Term, and each Extended Term, as may be applicable.

**Section 2.5 Reversion**At the Expiration Date of this Lease, the Ground Leased Premises, the Improvements and all other improvements upon the Ground Leased Premises shall, without compensation to Lessee or any other party, then become the sole property of Lessor or

Lessor's designee, subject to any leases then in effect, but free and clear of all other claims to or against the Ground Leased Premises by Lessee or any third person, and free and clear of all liens, security interests and encumbrances other than the Permitted Encumbrances and any other encumbrances or liens expressly joined in or approved by Lessor. All alterations, improvements, additions and utility installations (whether or not such utility installation constitutes trade fixtures of Lessee) which may be made on the Ground Leased Premises including, without limitation, the Improvements, shall be the property of Lessor and shall remain upon and be surrendered with the Ground Leased Premises at the Expiration Date of this Lease. Notwithstanding the provisions of this Section, the machinery and equipment of Lessee or any tenant of the Building, other than that which is affixed to the Ground Leased Premises so that it cannot be removed without damage to the Ground Leased Premises, shall remain the property of Lessee or such tenant, as may be applicable, and may be removed; provided, however, that Lessee removes or causes its removal by the Expiration Date.

**Section 2.6 Termination of Lease** Lessee shall surrender and vacate the Ground Leased Premises no later than the Termination Date.

(b) At the Termination Date, the Ground Leased Premises, the Improvements and all other improvements upon the Ground Leased Premises shall, without further compensation to Lessee or any other party, then become the sole property of Lessor or Lessor's designee, free and clear of all other claims to or against the Ground Leased Premises by Lessee or any third person, and free and clear of all liens, security interests and encumbrances other than the Permitted Encumbrances and any other encumbrances or liens expressly joined in or approved by Lessor. All alterations, improvements, additions and utility installations (whether or not such utility installation constitutes trade fixtures of Lessee) which may be made on the Ground Leased Premises including, without limitation, the Improvements, shall be the property of Lessor and shall remain upon and be surrendered with the Ground Leased Premises at the Termination Date of this Lease. Lessee shall execute and deliver to Lessor all deeds, assignments and other documents which may be required to give effect to the disposition and transfer of the Ground Leased Premises, the Improvements and all other improvements upon the Ground Leased Premises to Lessor, in each case free and clear of all liens, claims, and encumbrances, except for Permitted Sales Exceptions, defined in Section 2.7(f), or exceptions approved or created by Lessor.

**Section 2.7 Option to Purchase**. Lessor hereby grants to Lessee the option to purchase the Ground Leased Premises ("**Purchase Option**") on the following terms and conditions:

(a) **Option Period**. Lessee has the right to exercise the Purchase Option at any time beginning on the Rent Commencement Date and ending \_\_\_\_\_ (\_\_\_\_) months thereafter (the "**Option Period**").

(b) **Method of Exercise**. Lessee shall exercise the Purchase Option by delivery of written notice of such exercise ("**Exercise Notice**") to Lessor within the Option Period. The Purchase Option shall not be deemed to be properly exercised if, as of the date of the Exercise Notice, Lessee is in default of any obligation under this Lease beyond any applicable notice and cure period. Lessor and Lessee shall promptly execute a Purchase and Sale

Agreement and Joint Escrow Instructions (“**Purchase Agreement**”) which reflects the Purchase Price (as defined below) in the form attached hereto as **Exhibit F** and made a part hereof.

(c) Purchase Price Determination. The purchase price to be paid for the Ground Leased Premises by Lessee shall be \$\_\_\_\_\_ (“**Purchase Price**”).

(d) Deposit. If Lessee has properly exercised the Purchase Option, then within five (5) days of the Exercise Notice, Lessee shall deliver to Lessor the amount of \_\_\_\_\_ and \_\_\_\_/100 Dollars (\$\_\_\_\_\_) (hereinafter the “**Purchase Price Deposit**”), which amount shall be non-refundable to Lessee, except in the event of Lessor’s default under of the Purchase Agreement beyond any applicable notice and cure periods, but shall be applied to the Purchase Price upon the Close of the Purchase Escrow (as defined below). The failure of Lessee to timely make the Purchase Price Deposit as required herein shall constitute a forfeiture of the Purchase Option.

(e) Escrow. Promptly following the execution of the Purchase Agreement by Lessor and Lessee, the sale of the Premises shall be consummated through an escrow with \_\_\_\_\_ Title Insurance Company or such other title company mutually acceptable to Lessor and Lessee (“**Escrow Holder**”). Escrow shall be deemed to be opened under this Section 2.7(e) on the date Lessor and Lessee have executed the Purchase Agreement and delivered the same to Escrow Holder (“**Purchase Escrow**”). The parties shall execute all supplemental documents required by Escrow Holder so long as they are consistent with the provisions of the Purchase Agreement. The closing (“**Purchase Closing**”) shall occur no later than \_\_\_\_\_ (\_\_\_\_) days after the opening of the Purchase Escrow.

(f) Title to the Ground Leased Premises. Lessor shall deliver to Lessee an executed grant deed in recordable form conveying the Ground Leased Premises to Lessee. Title to the Ground Leased Premises shall be conveyed by Lessor to Lessee free and clear of all liens, encumbrances, except current taxes, a lien not yet delinquent, those portions of current assessments not yet due and payable, any easements created pursuant to Section 1.4 above, the use restrictions set forth in Section 2.4 above, anything of record or not of record that in any way affects title to the Ground Leased Premises resulting from the acts or omissions of Lessee, and the Permitted Encumbrances (as defined in Section 1.2 above), except monetary liens and encumbrances not caused or created by Lessee (collectively, “**Permitted Sales Exceptions**”). At Purchase Closing, Escrow Holder must be prepared to issue a CLTA Policy of Title Insurance in the amount of the Purchase Price insuring title to the Ground Leased Premises vested in Lessee subject only to the Permitted Sales Exceptions.

(g) Prorations. Rent only shall be prorated at the Purchase Closing.

(h) Closing Costs. Transfer taxes and recording fees on the deed shall be paid by Lessee. That portion of the premium for title policy attributable to a CLTA Standard Coverage Policy of Title Insurance shall be paid by Lessor and any additional premium required for an ALTA Extended Coverage Policy of Title Insurance and the cost for the survey (if required) shall be paid for by Lessee. Charges of escrow and all other closing costs shall be paid equally between Lessor and Lessee.

(i) Environmental Indemnity. The Purchase Agreement shall provide that Lessee shall indemnify, defend and hold harmless Lessor from any then existing environmental conditions on the Ground Leased Premises, except conditions existing prior to the Commencement Date of the Lease.

(j) Termination of Lease. Upon the close of the Purchase Escrow, Lessor and Lessee shall each be released from their respective obligations under this Lease and in connection therewith, Lessor and Lessee shall execute a Lease termination agreement in a form and substance mutually approved by the parties.

### **ARTICLE 3 - RENT, TAXES AND LIABILITIES**

**Section 3.1 Monthly Rent.** Lessee shall pay Lessor, for the use and occupancy of the Ground Leased Premises, annual rent in the amount of \_\_\_\_\_ and \_\_\_\_/100 Dollars (\$\_\_\_\_\_) (“**Base Annual Rent**”). Base Annual Rent shall be payable in monthly installments, in advance on the \_\_\_\_\_ day of each and every calendar month during the Term, in the amount of \_\_\_\_\_ and \_\_\_\_/100 Dollars (\$\_\_\_\_\_) (“**Base Monthly Rent**”). The term “**Rent**,” as used herein, shall mean Base Annual Rent and any additional rent due and payable hereunder. No Base Monthly Rent shall accrue or become due and payable until the Rent Commencement Date as provided in Section 2.3 hereof. In the event the Rent Commencement Date is a date other than the first day of a calendar month, then the Base Monthly Rent shall be due and payable on a pro rata basis for the number of days between the Rent Commencement Date and the next monthly Rent payment date as set forth herein. Thereafter, the Base Monthly Rent shall be due and payable on or before the first day of each month during the Term. There shall be no increases in the Base Monthly Rent other than as set forth in this Article 3. Provisions regarding interest on past due Rent are set forth in Section 12.8 below.

**Section 3.2 Rent Increases.** Base Monthly Rent shall be subject to the following adjustments:

(a) **CPI Adjustments.** Thirty (30) days prior to the expiration of the fifth (5<sup>th</sup>) year after the Commencement Date (the “**Initial Adjustment Date**”) and each fifth (5<sup>th</sup>) anniversary thereof, the Base Monthly Rent shall be adjusted to be the greater of: (i) the Base Monthly Rent for the immediately preceding month or (ii) the Base Monthly Rent for the immediately preceding month x  $[(CPI_2/CPI_1)]$ . In applying this formula for the adjustment of Base Monthly Rent, the following definitions and terms shall govern:

(1) “**CPI**” shall mean the Consumer Price Index All Urban Consumers, Base 1982-84 = 100 for \_\_\_\_\_, published by the United States Department of Labor, Bureau of Labor Statistics or any successor agency (the “**Bureau**”) that shall issue the indexes;

(2) “**CPI<sub>1</sub>**” shall mean, with respect to the Initial Adjustment Date, the CPI for the month which is two (2) months prior to the Rent Commencement Date, and thereafter the CPI for the month that is sixty (60) months prior to CPI; and

(3) “CPI<sub>2</sub>” shall mean the CPI two (2) months prior to the month of the adjustment.

In the event that (1) the Bureau ceases to use the 1982-84 average of 100 as the basis of calculation, (2) a substantial change is made in the number or characters of “market basket” items used in determining the CPI or (3) the CPI shall be discontinued for any reason, the parties shall thereafter agree to use such other index or comparable statistics concerning the cost of living for the region in which the Ground Leased Premises are located, as shall be computed and published by an agency of the United States or by a financial periodical of recognized authority then to be selected by Lessor. In no event shall the Base Monthly Rent as adjusted according to the terms of this Lease ever be less than the Base Monthly Rent in the month immediately preceding the adjustment.

The adjusted Base Monthly Rent shall become effective and shall constitute the Base Monthly Rent beginning on the first day of the month immediately following the expiration of the preceding five (5) year period, continuing through and including the following five (5) years, until the same is again adjusted thirty (30) days prior to the expiration of such five (5) year period, as set forth above, which adjustments shall continue in such fashion throughout the Initial Term and any Extended Term of this Lease.

**Section 3.3 Real and Personal Property Taxes.** From and after the Rent Commencement Date of this Lease and throughout the Initial Term and any Extended Term (unless this Lease is sooner cancelled or terminated), Lessee shall pay or cause to be paid, without abatement, deduction or offset, the following items: all real and personal property taxes, general and special assessments, and all other charges, assessments and taxes of every description, levied on or assessed against the Ground Leased Premises, the Improvements and any other improvements located on the Ground Leased Premises; all taxes on the personal property located on or in the Ground Leased Premises, the Improvements or any other improvements located on the Ground Leased Premises; and all taxes on the leasehold estate, or any subleasehold estate, to the full extent of installments assessed during the Initial Term and any Extended Term. Notwithstanding anything herein to the contrary, Lessee shall be obligated to pay for all development and impact fees related to the Improvements, and all related construction and development expenses for the Improvements, from and after the Effective Date. Lessee shall make all such payments directly to the appropriate charging or taxing authority before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment. If, however, the law expressly permits the payment of any or all of the above items in installments (whether or not interest accrues on the unpaid balance), Lessee may, at Lessee’s election, utilize the permitted installment method, but shall pay each installment with any interest before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment. All payments of taxes or assessments or both, including permitted installment payments, shall be prorated for the initial Lease year and for the year in which the Lease terminates. Lessee hereby agrees and acknowledges that the terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest. Lessee agrees to include the above statement in all Lessee’s leases with tenants. The foregoing excludes any Lessor income tax, franchise tax, estate or gift tax.

**Section 3.4 Real Estate Taxes.** Lessor and Lessee agree that Lessee shall be responsible for all real estate taxes attributable to the Ground Leased Premises as improved with the Improvements.

**Section 3.5 Proof of Compliance.** Lessee shall furnish to Lessor, within five (5) days after receipt of Lessor's written request, receipts or other appropriate evidence establishing payment thereof. Lessee may, at its expense, retain a tax service to notify Lessor whether the taxes have been paid, and notice from said tax service shall satisfy this provision.

**Section 3.6 Contesting Taxes.** Lessee shall have the right to contest or review by legal proceedings, as permitted under applicable law, any assessed valuation, real estate tax, or assessment; provided that, unless Lessee has paid such tax or assessment under protest, Lessee shall furnish to Lessor: (i) proof reasonably satisfactory to Lessor that such protest or contest may be maintained without payment under protest; and (ii) a surety bond or other security reasonably satisfactory to Lessor securing the payment of such contested item or items and all interest, penalty and cost in connection therewith upon the final determination of such contest or review. Lessor shall, if it determines it is reasonable to do so, and if so requested by Lessee, join in any proceeding for contest or review of such taxes or assessments, but the entire cost of such joinder in the proceedings (including all costs, expenses, and attorneys' fees reasonably sustained by Lessor in connection therewith) shall be borne by Lessee. Any amount already paid by Lessee and subsequently recovered as the result of such contest or review shall be for the account of Lessee.

**Section 3.7 Utilities.** From and after the Commencement Date, Lessee shall pay or cause to be paid all charges for water, heat, gas, electricity, cable, trash disposal, sewers and any and all other utilities used upon the Ground Leased Premises throughout the Initial Term and any Extended Term including, without limitation, any connection and servicing fees, permit fees, inspection fees, and fees to reserve utilities capacity. All utilities serving the Building and the Improvements will be separately metered.

**Section 3.8 Security Deposit.** Lessee shall deposit with Lessor, as security for Lessee's performance of Lessee's Rent obligations under this Lease, an amount equal to \_\_\_\_\_ (\_\_\_\_) months of Base Monthly Rent due under this Lease (the "**Deposit**"). Lessor may commingle the Deposit with Lessor's other funds, unless otherwise required by law. The Deposit shall be returned to Lessee after the expiration of this Lease, provided that Lessee has fulfilled its Rent obligations hereunder. Upon the occurrence of an event of default by Lessee, Lessor may, from time to time, without prejudice to any other remedy provided herein or provided by law, use such funds to the extent necessary to make good any arrears of Rent or other payments due Lessor hereunder, or any other damage, injury, expense or liability caused by an event of Lessee's default; and Lessee shall pay to Lessor, on demand, the amount so applied in order to restore the Deposit to its original amount.

**Section 3.9 Development Fees.** Lessor shall not have any liability or responsibility for development fees, impact fees or other similar fees or charges pertaining to or arising out of development of the Improvements. Lessee shall pay all such fees or otherwise cause payment by the proper party responsible for payment.

**Section 3.10 Triple Net Rent.** All Base Annual Rent payable hereunder shall be paid as “triple net” Rent without deduction or offset. It is the intent of the parties, except as is otherwise provided in this Lease, that Base Annual Rent provided to Lessor shall be absolutely net to Lessor, and Lessee shall pay all costs, charges, insurance premiums, taxes, utilities, expenses and assessments of every kind and nature incurred for, against, or in connection with the Ground Leased Premises including, without limitation, all assessments, both regular and special, which may be due to any property associations by virtue of recorded declarations, covenants and restrictions affecting the Ground Leased Premises, as the same may be amended from time to time, from and after the Rent Commencement Date, except as expressly stated herein. All such costs, charges, insurance premiums, taxes, utilities, expenses and assessments covering the Ground Leased Premises shall be prorated as of the Effective Date and upon the expiration of this Lease, except for any expenses such as insurance premiums which are not being assumed by or transferred for the benefit of Lessor.

**Section 3.11 Additional Rent.** All costs, charges, insurance premiums, taxes, utilities, expenses, assessments and monetary obligations of Lessee hereunder shall constitute additional rent.

#### **ARTICLE 4 - USE OF PREMISES**

**Section 4.1 Primary Use.** Subject to the requirements of this Article 4, Lessee shall use or cause the use of the Ground Leased Premises solely for the operation of the Building for the Permitted Use and such related and incidental uses thereto as permitted hereunder and for no other uses.

**Section 4.2 Use Solely for Building; No Competing Services.**  
The Ground Leased Premises and the Improvements shall be used by Lessee only and solely for the purpose of the erection, maintenance and operation of the Building for the Permitted Use and the provision of other health care items and services approved by Lessor in its sole discretion. The Ground Leased Premises and the Improvements shall not be used (other than by Lessor or any party, person or entity that directly or indirectly controls, is controlled by, or is under common control with Lessor (each, an “Affiliate”)) for the provision of any of the following services (each such service, a “Prohibited Service”):

---

Any change in the use of the Ground Leased Premises described in this Article 4 shall require Lessor’s prior written consent, which consent Lessor may grant, condition or withhold in its sole but reasonable discretion.

**Section 4.3 Building Leases.** If space in the Building will be leased by Lessee to tenants by such leasing shall be subject to Lessor’s prior written consent pursuant to tenant leases reasonably acceptable to Lessor and Lessee. Any changes to such tenant leases, including changes to the Permitted Use, Prohibited Services and use restrictions contained therein, and all changes which affect or may affect Lessor’s rights in the Ground Leased Premises or hereunder, shall require the prior written consent of Lessor, which consent may be withheld or conditioned in Lessor’s sole but reasonable discretion. In addition to other requirements of Lessor, the tenant leases will be subject to the following:



(a) Building Occupancy.

---

---

---

(b) Compliance with Terms of Lease. Each tenant lease shall provide that such tenant shall, at all times during the term of such lease, maintain its status as a \_\_\_\_\_ and comply with all terms and conditions of this Lease including, without limitation, the Prohibited Service restrictions, and Lessee will have the right and responsibility of enforcing the terms and conditions of this Lease and of making all assessments necessary to make any and all payments to Lessor or to third parties as required by this Lease. Each tenant lease shall further provide that: (i) the provisions of this Lease are imposed on tenants of the Building explicitly for the benefit of Lessor, as a third party beneficiary; (ii) Lessor may enforce the terms of this Lease directly against a tenant of the Building; (iii) Lessor's rights in the event of a breach of the terms of this Lease by such tenant will include the right to terminate such tenant's lease, to seek preliminary, temporary and permanent injunctive relief and to pursue other legal and/or equitable remedies as a result of such breach; and (iv) the tenant will attorn to Lessor, as the Lessor under the tenant lease, if this Lease is terminated; provided, however, that Lessor shall, at all times, be required to comply with the terms and conditions of such tenant's lease in the exercise of Lessor's rights hereunder.

(c) Lessee Violations of Ground Lease Provisions. Subject to **Error! Reference source not found.** of this Lease, in the event that a tenant violates or defaults in its obligations with respect to the provisions of this Lease, including, without limitation, a violation of the Prohibited Service restrictions, or otherwise renders services which are not authorized under this Lease, Lessor shall deliver to Lessee notice of such violation or default and Lessee shall proceed diligently to notify the tenant of its default and to enforce the provisions of the applicable tenant lease to require the tenant to cease and desist in its violation or to vacate the Building, or, at the option of Lessor, defer to Lessor's rights hereunder and the third party beneficiary rights of Lessor under the tenant leases to enforce Lessee's rights directly against any such tenant. In the event that Lessor is required to enforce its third party beneficial), rights due to Lessee's failure to enforce compliance with the provisions of this Lease, Lessee shall be required to reimburse Lessor for all costs incurred by Lessor in connection with enforcing such rights. If Lessee is otherwise in compliance with the provisions of this Subsection, a violation or default by a tenant shall not constitute a default by Lessee under this Lease.

(d) Sublease or Assignment. No tenant of the Building shall be entitled to sublease or assign its interest in a tenant lease to any party (including, without limitation, a Qualified Medical Tenant) without the prior written consent of Lessor and Lessee, which consent may be withheld in the reasonable discretion of Lessor or Lessee.

(e) Notice of Tenant Default. Any default notices sent by Lessee under any tenant lease must be simultaneously sent to Lessor.

(f) Termination. Each tenant lease shall provide that it will automatically terminate upon a termination of this Lease; provided, however, that Lessor agrees not to

terminate any lease where a written subordination, non-disturbance and attornment agreement is entered into between Lessor and a tenant, in form acceptable to Lessor.

(g) Prohibitions Not Applicable to Lessor. The provisions of this Section 4.3 shall not be applicable to Lessor or its Affiliates, or their respective successors and assigns, in the event any of the foregoing enter into leases for space in the Building.

(h) Term of Building Leases. Lessee shall not enter into any lease for space in the Building for a period that extends beyond the expiration of the Initial Term of this Lease without Lessor's prior written consent, which consent shall not be unreasonably withheld.

#### **Section 4.4 Hazardous Materials.**

(a) Definitions.

(1) **"Hazardous Materials"** shall mean any substance which is or contains: (1) any "hazardous substance" as defined in Section 101(14) of CERCLA (as defined below) or any regulations promulgated thereunder; (2) any "hazardous waste" as defined in RCRA (as defined below) or any regulations promulgated thereunder; (3) any substance regulated by the Toxic Substances Control Act (as defined below) or any regulations promulgated thereunder; (4) gasoline, diesel fuel or other petroleum hydrocarbons; (5) asbestos and asbestos containing materials, in any form, whether friable or nonfriable; (6) polychlorinated biphenyls; (7) radon gas; (8) infectious waste, medical waste and potentially infectious biomedical waste which are or later become regulated by any local governmental authority, the State of California, or the United States Government; and (9) any other substances or materials which are currently or later become regulated as hazardous or toxic under any local, State or Federal Environmental Laws (as hereinafter defined). Hazardous Materials shall include, without limitation, any substance, the presence of which on any real property requires reporting, investigation or remediation under any Environmental Laws.

(2) As used herein, the term **"Environmental Laws"** shall mean any and all Federal, State or local laws, statutes, rules, regulations, ordinances, interstate compacts, or judicial or administrative decrees, orders, decisions or permits relating to emissions, discharges, releases or threatened releases of pollutants, contaminants or Hazardous Materials into the environment. The term Environmental Laws shall include, but not be limited to, the following State and Federal laws and regulations: the Clean Water Act (33 U.S.C. §1251 et seq.); the Clean Air Act (42 U.S.C. §7401 et seq.); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, et seq.) (**"CERCLA"**); the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.) (**"RCRA"**); the Toxic Substances Control Act (15 U.S.C. § 2601, et seq.) (the **"Toxic Substances Control Act"**); the Safe Drinking Water Act (42 U.S.C. §300f, et seq.); the National Environmental Policy Act (42 U.S.C. §4321, et seq.); the California Hazardous Waste Control Law (Cal. Health and Safety Code §25100, et seq.); the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code §25300, et seq.); the California Environmental Quality Act (Cal. Public Resources Code §21000, et seq.); and the California Underground Storage Tank Act (Cal. Health and Safety Code §25280, et seq.), each as amended and as may be amended or renumbered from

time to time, and their respective state and local counterparts and all regulations promulgated pursuant to any of the foregoing.

(b) Warranties and Representations. Lessee warrants, represents, covenants and agrees that it shall not cause or permit its agents, employees, invitees, contractors or any sublessee or occupant of the Ground Leased Premises to violate any Environmental Laws on, under or about the Ground Leased Premises or Common Areas or violate any Environmental Laws in transporting materials to or from the Ground Leased Premises or Common Areas. Lessor warrants, represents, covenants and agrees that, as of the Effective Date and to the best of its current actual knowledge: (i) the Ground Leased Premises is in compliance with all Environmental Laws; (ii) the Ground Leased Premises is not subject to any judgment, decree, order or citation relating to or arising out of any Environmental Laws, and neither Lessor nor any affiliate thereof has been named or listed as a potentially responsible party by any governmental body or agency in a matter relating to the Ground Leased Premises and arising under Environmental Laws; and (iii) there are not now and, to the best of Lessor's knowledge have there ever been, Hazardous Materials stored, deposited, treated, recycled or disposed of on, under or at the Ground Leased Premises which, if known to be present at the Ground Leased Premises or present in soils or ground water, would require clean up, removal, remediation or other action under Environmental Laws.

(c) Environmental Audit. Prior to commencement of construction of the Improvements, Lessee shall obtain, at its sole cost and expense, a Phase I environmental audit (and, if deemed reasonably necessary by Lessee and Lessee's environmental consultant based on the results of the Phase I environmental report, a Phase II environmental audit at Lessee's expense) of the Ground Leased Premises (collectively, the "**Environmental Audit**") which shall be acceptable to Lessor and Lessee. In the event that the Environmental Audit is unacceptable to either party, in its reasonable judgment, such party shall have the right to terminate this Lease upon written notice to the other no later than thirty (30) days after receipt of the Environmental Audit. If Lessee delivers written notice to Lessor of its intent to terminate this Lease, Lessor shall have the option, at its sole cost and expense, to remediate the Ground Leased Premises, in which case Lessor shall be obligated to repair, clean up, decontaminate or otherwise remedy the condition. Lessor shall provide written notice of its election to remediate the Ground Leased Premises within thirty (30) days after receipt of the Lessee's written notice to terminate this Lease, the failure of which shall be deemed an election by Lessor not to remediate the Ground Leased Premises and to accept Lessee's termination of this Lease. If Lessor has elected to remediate the Ground Leased Premises, Lessor shall promptly commence such work and diligently and continuously prosecute the same to completion. The Environmental Audit shall be addressed to Lessor and Lessee and shall contain no limitations of liability by the Environmental Audit provider, except as otherwise approved by Lessor and Lessee. In addition, the Environmental Audit provider shall be required to provide Lessor and Lessee with evidence of insurance acceptable to Lessor and Lessee prior to commencement of the Environmental Audit.

(d) Use. Lessee hereby agrees that Lessee and Lessee's officers, directors, employees, representatives, agents, contractors, subcontractors, lessees, sublessees, concessionaires, invitees and any other occupants of the Ground Leased Premises (referred to collectively herein as "**Lessee's Representatives**") shall not use, generate, manufacture, refine, produce, process, store or dispose of, on, under or about the Ground Leased Premises or

Common Areas or transport to or from the Ground Leased Premises or Common Areas in the future for the purpose of generating, manufacturing, refining, producing, processing, storing, disposing of or transporting Hazardous Materials relating to the sole purpose of constructing and operating a Building for the Permitted Use, except in compliance with all applicable Environmental Laws. The use, generation, manufacturing, refining, production, processing, storage or disposal of Hazardous Materials other than those ordinarily found in a Building shall require Lessor's prior written consent. Furthermore, Lessee shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for the storage or use by Lessee or any of Lessee's Representatives of Hazardous Materials on the Ground Leased Premises, including without limitation, discharge of appropriately treated materials or wastes into or through any sanitary sewer serving the Ground Leased Premises. All leases of the Building entered into by Lessee will contain use restrictions and limitations conforming to the terms of this Section 4.4, as provided in a form reasonably acceptable to Lessor. At such time as Lessor may reasonably request, Lessee shall provide a written list identifying any Hazardous Material then used, stored or maintained upon the Ground Leased Premises. Lessor hereby reserves the right to exclude any Hazardous Material from Lessee as a permitted use, except for such Hazardous Materials ordinarily found in a Building or used in the ordinary course of business for those uses permitted under Section 4.2 above,

(e) Monitoring, Reporting and Inspections. Lessee, at its sole cost and expense, shall regularly monitor the Ground Leased Premises for: (i) the presence of Hazardous Materials at the Ground Leased Premises in violation of Environmental Laws; (ii) any conditions that reasonably can be expected to give rise to violations of Environmental Laws by Lessee's employees or any other occupants of the Building; or (iii) conditions contained in any notice from a governmental agency of complaints regarding the presence of Hazardous Materials at the Ground Leased Premises. At such time as Lessor may reasonably request based upon Lessor's reasonable belief of potential violations of Environmental Laws at the Ground Leased Premises (such request to specify the basis for Lessor's belief of such potential violations), Lessee, at its sole cost and expense, shall promptly cause a physical inspection (including such testing as may be reasonably necessary under the circumstances) of the Ground Leased Premises. Such inspection shall be conducted during such time period as Lessor may reasonably designate provided such time period does not unreasonably interfere with Lessee's operation of the Building, to determine if Hazardous Materials are present at the Ground Leased Premises in violation of Environmental Laws or in violation of the provisions of this Lease. Lessee shall: (x) notify Lessor, in writing, at least ten (10) days prior to the inspection, of the date on which the inspection shall occur, and which portion of the Ground Leased Premises shall be subject to the inspection; (y) retain a qualified consultant to conduct the inspection; and (z) prepare an inspection report and promptly provide a copy to Lessor. Lessee shall keep the results of the inspection report confidential except as required by applicable laws, rules or regulations. In the event an inspection requested by Lessor determines that there is no violation of Environmental Laws or the provisions of this Lease, then the Lessor shall reimburse Lessee for all reasonable third-party costs solely in connection with such inspection upon receipt of such supporting documentation as reasonably requested by Lessor.

(f) Remediation. If, at any time during the Initial Term or any Extended Term, any contamination of the Ground Leased Premises or Common Areas by Hazardous

Materials shall occur where such contamination is caused by the act or omission of Lessee or Lessee's Representatives ("**Lessee Contamination**"), then Lessee, at its sole cost and expense, shall promptly and diligently remediate such Hazardous Materials from the Ground Leased Premises or Common Areas, or the groundwater underlying the Ground Leased Premises or Common Areas, in accordance with the requirements of all applicable Environmental Laws and industry standards then prevailing in the Hazardous Materials management and remediation industry in Oceanside, California. However, Lessee shall not take any required remedial action in response to any Lessee Contamination in, on or about the Ground Leased Premises or Common Areas or enter into any settlement agreement, consent, decree or other compromise in respect to any claims relating to any Lessee Contamination without first notifying Lessor of Lessee's intention to do so and affording Lessor the opportunity to appear, intervene or otherwise appropriately assert and protect Lessor's interest with respect thereto. Lessee shall, within sixty (60) days after receiving notice of, or determining the existence of, Lessee Contamination of the Ground Leased Premises or Common Areas, prepare a remediation plan to the reasonable satisfaction of Lessor. In addition to all other rights and remedies of the Lessor hereunder, if Lessee does not promptly and diligently take all steps to prepare and obtain all necessary approvals of a remediation plan for any Lessee Contamination, and thereafter commence the required remediation of any Hazardous Materials released or discharged in connection with Lessee Contamination within thirty (30) days after Lessor has reasonably approved Lessee's remediation plan and all necessary approvals and consents have been obtained, and thereafter continue to prosecute said remediation to completion in accordance with the approved remediation plan, then Lessor, at its sole discretion, shall have the right, but not the obligation, to cause said remediation to be accomplished, and Lessee shall reimburse Lessor, within fifteen (15) business days of Lessor's demand for reimbursement of all amounts actually paid by Lessor (together with interest from the date of expenditure at the maximum rate permitted by law until paid), when said demand is accompanied by proof of payment by Lessor of the amounts demanded. Lessee shall promptly deliver to Lessor copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Ground Leased Premises or Common Areas as part of Lessee's remediation of any Lessee Contamination.

(g) Timeframe for Remediation.

(1) Lessee shall send Lessor notice, in writing, with a copy of the remediation plan, at least ten (10) days prior to the remediation commencing, stating: (a) the date upon which the remediation will start; (b) which portion of the Ground Leased Premises or Common Areas will be subject to the remediation; (c) the name, address and telephone number of the remediation contractor(s) performing the remediation; (d) the remediation procedures and standards to be used at the Ground Leased Premises or Common Areas; (e) the clearance criteria to be employed at the conclusion of the remediation; and (f) the date the remediation is anticipated to conclude.

(2) Lessee shall notify, in accordance with and as required by Environmental Laws, its employees, occupants and visitors of the Ground Leased Premises or Common Areas of the nature, location and schedule for the planned remediation.

(3) Lessee shall provide Lessor with a draft of the remediation report and give Lessor a reasonable opportunity to review and comment thereon, and when such report is finalized, promptly provide Lessor with a copy of the final report.

(h) Post-Remediation Requirements. Lessee acknowledges and agrees that Lessor shall have a reasonable opportunity to inspect the remediated portion of the Ground Leased Premises or Common Areas after the conclusion of the remediation. If the results of Lessor's inspection confirm that the remediation does not comply with the final remediation report or applicable Environmental Laws then Lessee, at its sole cost and expense, shall immediately take further actions as necessary to ensure such compliance.

(i) Disposition of Hazardous Materials. Except as to discharge into the sanitary sewer or as otherwise removed from the Ground Leased Premises or Common Areas in strict accordance and conformity with all applicable Environmental Laws, Lessee shall, at its sole cost and expense, cause any and all Hazardous Materials removed from the Ground Leased Premises or Common Areas as part of the required remediation of Lessee Contamination to be removed and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such Hazardous Materials.

(j) Notice of Hazardous Materials Matters. Each party hereto (for purposes of this Section, the "**Notifying Party**") shall immediately notify the other party (the "**Notice Recipient**") in writing of: (a) any enforcement, clean-up, removal or other governmental or regulatory action instituted, contemplated or threatened concerning the Ground Leased Premises or Common Areas pursuant to any Environmental Laws; (b) any claim made or threatened by any person against the Notifying Party or the Ground Leased Premises or Common Areas relating to damage contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Materials on or about the Ground Leased Premises or Common Areas; (c) any reports made to any environmental agency arising out of or in connection with any Hazardous Materials in or removed from the Ground Leased Premises or Common Areas including any complaints, notices, warnings or asserted violations in connection therewith, all upon receipt by the Notifying Party of actual knowledge of any of the foregoing matters; and (d) any discovery of Hazardous Materials being placed on, in, around or under the Ground Leased Premises and/or the Common Areas in violation of Environmental Laws. Notifying Party shall also supply to Notice Recipient as promptly as possible, and in any event within five (5) business days after Notifying Party first receives or sends the same, with copies of all claims, reports, complaints, notices, warnings or asserted violations of Environmental Laws relating in any way to the Ground Leased Premises, Common Areas or Lessee's use thereof. Upon notice by the Notifying Party to the Notice Recipient that Hazardous Materials have been placed on, in, around or under the Ground Leased Premises and/or the Common Areas in violation of Environmental Laws and a determination by Lessor and Lessee that the resulting contamination from such Hazardous Materials was caused by a party other than Lessee, Lessee's Representatives, Lessor or Lessor's Representatives (such party being hereinafter referred to as an "**Unrelated Third Party**"), then Lessor and Lessee shall work together to determine the manner in which the Unrelated Third Party responsible for such contamination will be held liable and the process by which the Ground Leased Premises and/or Common Areas will be remediated. Lessee shall be primarily responsible for enforcement of any actions to remediate the property and make claims for damages against the Unrelated Third Party pertaining to the

Ground Leased Premises, and Lessor shall be primarily responsible for enforcement of any actions to remediate the property and make claims for damages against the Unrelated Third Party pertaining to the Common Areas (but not the Ground Leased Premises). Lessor and Lessee hereby agree to work together and cooperate in any enforcement actions that involve both the Ground Leased Premises and the Common Areas. Lessor and Lessee hereby agree to diligently commence and pursue to completion their obligations under this Section 4.4(j) with respect to contamination caused by or attributable to Unrelated Third Parties. Lessor and Lessee further agree to cooperate with and assist each other in their pursuit of such enforcement actions and claims against Unrelated Third Parties. Neither Lessee nor Lessor shall bring against the other any claim for damages arising from contamination caused by or attributable to Unrelated Third Parties, unless such claim or claims are necessary or required by law to fully and finally compensate both Lessor and Lessee for their losses and damages caused by or attributable to any Unrelated Third Party contamination.

(k) Indemnification by Lessee. Except to the extent caused by the gross negligence or willful misconduct of Lessor or Lessor's officers, directors, employees, representatives, agents, contractors, subcontractors, lessees (other than Lessee), sublessees (other than sublessees of Lessee), concessionaires, invitees and any other occupants of the land (other than Lessee and its occupants of the Ground Leased Premises) (collectively, the "**Lessor's Representatives**"), Lessee shall indemnify, defend, protect, and hold Lessor, and each of Lessor's partners (if applicable), members, employees, shareholders and officers, harmless from and against any and all claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses or expenses (including, without limitation, attorneys' fees and costs of litigation and all appeals) resulting from the death of or injury to any person, damage to any property whatsoever or violation of any federal, state or local law or regulation, arising from or caused in whole or in part, directly or indirectly, by: (1) any Lessee Contamination; (2) Lessee's failure to comply with any Environmental Laws with respect to the Ground Leased Premises or Common Areas; (3) a breach of any covenant, warranty or representation of Lessee under this Section 4.4; or (4) any and all other acts or omissions of Lessee in failing to comply with any Environmental Laws or in breaching any of Lessee's representations, warranties, duties or obligations under this Section 4.4, and such indemnity shall survive the expiration or sooner termination of this Lease. Lessee's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, clean-up or detoxification or decontamination of the Ground Leased Premises and the Common Areas, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith. For purposes of the indemnity provisions hereof, any acts or omissions of Lessee or Lessee's Representatives (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Lessee.

**Section 4.5** Lessor's Right to Lease. Lessor and its successors or assigns shall have the right to lease \_\_\_\_\_ square feet of space within the Building upon terms and conditions consistent with those offered or applicable to other prospective tenants.

## **ARTICLE 5 - ENCUMBRANCE OF LEASEHOLD ESTATE**

**Section 5.1** Encumbrance of Lessee's Estate. Lessee shall have the right to encumber Lessee's interest in this Lease and the leasehold estate ("**Lessee's Estate**") or any

portion thereof or any sublease pursuant to one or more mortgages (hereinafter referred to individually as the "Leasehold Mortgage" and collectively as "**Leasehold Mortgages**"), provided Lessee shall refrain from encumbering or purporting to encumber, by means of a Leasehold Mortgage or otherwise: (1) any portion of the Common Areas other than Lessee's interest in easements and covenants; or (2) the Lessor's reversionary interest in the Ground Leased Premises. Lessee shall, promptly following its receipt of any notice of default or other notice of the acceleration of the maturity of a Leasehold Mortgage from the holder of a Leasehold Mortgage (a "**Leasehold Mortgagee**"), deliver a true and correct copy thereof to Lessor.

Notwithstanding anything to the contrary in this Lease or any other document or instrument related to a Leasehold Mortgage, Lessee acknowledges and agrees that Lessor is a \_\_\_\_\_ of the State of California and a material consideration for and condition to Lessor entering into this Lease is the condition that any successor to the rights and interests of Lessee under this Lease agrees to continue with the Permitted Use of the Building, provide radiation oncology and related health care services to the community.

Lessor shall not be required to pledge its fee interest in the Ground Leased Premises or the Real Property to secure any Leasehold Mortgage or to subordinate such fee interest to the rights of the holder of any Leasehold Mortgage, and Lessor shall not be required to execute any promissory note or to assume in any manner any liability on any Leasehold Mortgage.

Lessor shall have the right to mortgage its fee simple title to the Ground Leased Premises, provided that any such mortgage shall be expressly subordinate to all of the rights and interests of Lessee under this Lease and to the rights of any Leasehold Mortgagee. Prior to the execution of any such fee mortgage, Lessor shall submit the same to Lessee and the most senior Leasehold Mortgagee for their review.

**Section 5.2 Leasehold Mortgage Protections.** Provided that any Leasehold Mortgagee provides Lessor with a conformed copy of the Leasehold Mortgage (or a separate written notice) which contains the name and address of such Leasehold Mortgagee, and provided such Leasehold Mortgage was executed in compliance with the terms hereof, Lessor and Lessee hereby covenant and agree to faithfully perform and comply with the following provisions with respect to such Leasehold Mortgage:

(a) Notices. If Lessor shall deliver to Lessee any notice, demand, election or other communication which may adversely affect the security for a Leasehold Mortgage including, without limitation, a notice of an Event of Default (as defined in Section 12.1 below) hereunder (collectively, "**Notices**"), Lessor shall simultaneously give a copy of each such Notice to the Leasehold Mortgagee at the address theretofore designated by it. Such copies of Notices shall be sent by Lessor and deemed received as described in Section 14.5 below. No Notice given by Lessor to Lessee shall be binding upon or affect said Leasehold Mortgagee unless a copy of said Notice shall be given to Leasehold Mortgagee pursuant to this Section. In the case of an assignment of such Leasehold Mortgage or change in address of such Leasehold Mortgagee, said assignee or Leasehold Mortgagee, by written notice to Lessor, may change the address to which such copies of Notices are to be sent. Lessor shall not be bound to recognize any assignment of such Leasehold Mortgage unless and until Lessor shall be given written notice



thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, such assignee shall be deemed to be the Leasehold Mortgagee hereunder with respect to the Leasehold Mortgage being assigned. If such Leasehold Mortgage is held by more than one person, corporation or other entity, no provision of this Lease requiring Lessor to give Notices or copies thereof to said Leasehold Mortgagee shall be binding upon Lessor unless and until all of said holders shall designate in writing one of their number to receive all such Notices and Lessor shall have received an original executed counterpart of such designation.

(b) Performance of Covenants. A Leasehold Mortgagee shall have the right to perform any term, covenant or condition and to remedy any default by Lessee hereunder within the time periods specified herein, and Lessor shall accept such performance with the same force and effect as if furnished by Lessee; provided, however, that said Leasehold Mortgagee shall not thereby or hereby be subrogated to the rights of Lessor.

(c) Delegation to Mortgagee. Lessee may delegate irrevocably to the Leasehold Mortgagee the non-exclusive authority to exercise any or all of Lessee's rights hereunder, but no such delegation shall be binding upon Lessor unless and until either Lessee or the Leasehold Mortgagee shall give to Lessor a true copy of a written instrument effecting such delegation and Leasehold Mortgagee therein agrees to comply with all of the terms and conditions of this Lease, including but not limited to, the Permitted Use. Such delegation of authority may be effected by the terms of the Leasehold Mortgage itself, in which case service upon Lessor of an executed counterpart or conformed copy of said Leasehold Mortgage in accordance with this Article 5, together with written notice specifying the provisions therein which delegate such authority to said Leasehold Mortgagee, shall be sufficient to give Lessor notice of such delegation.

(d) Default by Lessee. In the event of an Event of Default by Lessee in the payment of any monetary obligation hereunder, Lessor agrees not to terminate this Lease unless and until Lessor provides written notice of such Event of Default to any Leasehold Mortgagee and such Leasehold Mortgagee shall have failed to cure such Event of Default within the time prescribed in such notice, which time shall not be less than fifteen (15) business days. In the event of an Event of Default by Lessee in the performance or observance of any non-monetary term, covenant, or condition to be performed by it hereunder, or for any other reason at all, Lessor agrees not to terminate this Lease unless and until Lessor provides written notice of such Event of Default or such reason for termination to any Leasehold Mortgagee and such Leasehold Mortgagee shall have failed to cure the same within the time prescribed in such notice, which time shall not be less than thirty (30) days; provided, however, if such Event of Default or such reason for termination cannot practicably be cured by the Leasehold Mortgagee without taking possession of the Ground Leased Premises and the Building, or if such Event of Default is not susceptible of being cured by the Leasehold Mortgagee, then Lessor shall not terminate this Lease if and as long as:

(1) the Leasehold Mortgagee has delivered to Lessor, prior to the date on which Lessor shall be entitled to give notice of lease termination, a written undertaking wherein the Leasehold Mortgagee tenders payment of all money due Lessor, together with interest thereon at the maximum rate allowable by law, and agrees that it will cure such Event of Default within the time prescribed in Lessor's written notice to the Leasehold Mortgagee;

(2) said Leasehold Mortgagee shall proceed diligently to obtain possession of the Ground Leased Premises (including possession by receiver), and, upon obtaining such possession, shall proceed diligently to cure such Event of Default in accordance with the undertaking, delivered pursuant to Subsection (1) above but in no event later than ninety (90) days after obtaining possession; and

(3) in the case of an Event of Default which is not susceptible to being cured by the Leasehold Mortgagee (for example, the insolvency of Lessee), the Leasehold Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire Lessee's Estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure) and, upon such completion of foreclosure or acquisition, such Event of Default shall be deemed to have been cured.

The Leasehold Mortgagee shall not be required to obtain possession or to continue in possession as Leasehold Mortgagee of the Ground Leased Premises pursuant to Subsection (2) above, or to continue to prosecute foreclosure proceedings pursuant to Subsection (3) above, if and when such Event of Default shall be cured. Nothing herein shall preclude Lessor from exercising any of its rights or remedies with respect to any other Event of Default by Lessee during any period of such forbearance, but in such event the Leasehold Mortgagee shall have all of its rights provided for herein.

(e) Foreclosure. Foreclosure of any Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the leasehold estate hereunder from Lessee to any Leasehold Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Lessor or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance Lessor shall recognize the Leasehold Mortgagee or such designee as the Lessee hereunder. If any Leasehold Mortgagee or other third party shall acquire Lessee's Estate as a result of a judicial or non judicial foreclosure under any Mortgage, or by means of a deed in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, such Leasehold Mortgagee or such other third party purchaser shall thereafter have the right to further assign or transfer Lessee's Estate to an assignee upon obtaining Lessor's consent with respect thereto, which consent shall not be unreasonably withheld or delayed, and subject to all of the other provisions of Article 9 below. Upon such acquisition of Lessee's Estate as described in the preceding sentence by Leasehold Mortgagee or its designee, Lessor shall immediately execute and deliver a new ground lease of the Ground Leased Premises to such Leasehold Mortgagee, upon the written request therefore by such Leasehold Mortgagee given not later than one hundred twenty (120) days after such party's acquisition of the Lessee's Estate. Such new ground lease shall be identical in form and content to the provisions of this Lease, except with respect to the parties thereto, the term thereof (which shall be co-extensive with the remaining term hereof), and the elimination of any requirements which have been fulfilled by Lessee prior thereto, and such new ground lease shall have priority equal to the priority of this Lease. Upon execution and delivery of such new ground lease, Lessor shall cooperate with the new Lessee, at the sole expense of said new Lessee, in taking such action as may be necessary to cancel and discharge this Lease and to remove Lessee named herein from the Common Areas and the Building.

(f) Mortgagee Loss Payable. Lessor agrees that the names of each Leasehold Mortgagee shall be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Lessee under this Lease on condition that the insurance proceeds are to be applied in the manner specified herein.

(g) New Lease. Lessor agrees that in the event of termination of this Lease by reason of any Event of Default by Lessee, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for Lessee or its property, or for any other reason, Lessor will enter into a new lease of the Ground Leased Premises with the most Senior Leasehold Mortgagee requesting a new lease for the remainder of the Lease Term, effective as of the date of such termination, at the Rent, and upon the terms, provisions, covenants and agreements as herein contained, including but not limited to the Permitted Use and subject to the rights, if any, of any parties then in possession of any part of the Ground Leased Premises, provided:

(1) The senior Leasehold Mortgagee shall make written request to Lessor for the new lease within ninety (90) days after the date of termination;

(2) The senior Leasehold Mortgagee shall pay all amounts due Lessor, including all costs and expenses incurred by Lessor, with interest thereon at the maximum rate allowable by applicable law, and shall perform and observe all covenants herein contained on Lessee's part to be performed which are susceptible to being performed by the senior Leasehold Mortgagee, and shall further remedy any other conditions which Lessee under the terminated Lease was obligated to perform under its terms, to the extent the same are curable or may be performed by the senior Leasehold Mortgagee;

(3) The lessee under the new lease shall have the same right, title and interest in and to all improvements located on the Ground Leased Premises as Lessee had under the terminated Lease immediately prior to its termination; and

(4) Notwithstanding anything to the contrary expressed or implied elsewhere in this Lease, any new lease made pursuant to this Section 5.2(g), shall be prior to any Leasehold Mortgage, fee mortgage or other lien, charge or encumbrance on the Ground Leased Premises, to the same extent as the terminated Lease, and shall be accompanied by a conveyance of title to the existing improvements (free of any mortgage, deed of trust, lien, charge, or encumbrance created by Lessor) for a term of years equal to the term of the new lease, subject to the reversion in favor of Lessor upon expiration or sooner termination of the new lease. The rights granted any Leasehold Mortgagee to a new lease shall survive any termination of this Lease.

(h) No Obligation to Cure. Nothing herein contained shall require any Leasehold Mortgagee to enter into a new lease pursuant to Section 5.2(g) above, or to cure any default of Lessee referred to above unless the Leasehold Mortgagee elects in writing to assume the position of the Lessee under this Lease within the time prescribed therefore by Lessor in its written notice to the Leasehold Mortgagee.

(i) Personal Liability. In the event any Leasehold Mortgagee or its designee becomes the Lessee under this Lease or under any new lease obtained pursuant to either

Section 5.2(e) or 5.2(g) above, such Leasehold Mortgagee or its designee shall be personally liable for the obligations of Lessee under this Lease or a new lease only for the period of time that the Leasehold Mortgagee or its designee remains the actual beneficial holder of the Lessee's Estate, and only to the extent provided in this Lease or such new lease. No Leasehold Mortgagee shall have any personal liability beyond its interest in the Ground Leased Premises for the performance or payment of any covenant, liability, warranty or obligation hereunder or under any new lease, new agreement or other agreement entered into in connection herewith, and the Lessor agrees that it shall look solely to the interests of such Leasehold Mortgagee in the Ground Leased Premises for payment or discharge of any such covenant, liability, warranty or obligation.

(j) Insurance Proceeds. The proceeds from any insurance policies carried by Lessee for its benefit or arising from a condemnation for Lessee's interest in this Lease, the Ground Leased Premises and the Building shall be paid jointly to Lessee and the senior Leasehold Mortgagee and distributed pursuant to the provisions of this Lease and the loan documents.

(k) Material Notices. The parties hereto shall give all Leasehold Mortgagees notice of any arbitration, litigation, or condemnation proceedings, or of any pending adjustment of insurance claims as each may relate to the Ground Leased Premises, and any Leasehold Mortgagee shall have the right to intervene therein and shall be made a party to such proceedings. The parties hereto do hereby consent to such intervention. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to the proceedings, such Leasehold Mortgagee shall receive notice and a copy of any award or decision made in connection therewith.

(l) Separate Agreement. Lessor shall, upon request, execute, acknowledge and deliver to each Leasehold Mortgagee, a commercially reasonable agreement prepared at the sole cost and expense of Lessee, in form satisfactory to each Leasehold Mortgagee and Lessor, between Lessor, Lessee and the Leasehold Mortgagees, agreeing to all of the provisions hereof, including but not limited to the requirement to provide radiation oncology and related health care services to the community. Lessor shall not be required to agree to or sign any such separate agreement containing terms or provisions that do not contain the Permitted Use or otherwise are materially different from those set forth herein, as determined by Lessor in its reasonable discretion.

(m) Further Amendments. Lessor and Lessee hereby agree to cooperate in including in this Lease by suitable amendment from time to time any provision which may reasonably be requested by any proposed Leasehold Mortgagee and reasonably approved by Lessor, for the purpose of implementing the Leasehold Mortgagee protection provisions contained in this Lease and allowing such Leasehold Mortgagee reasonable means to protect or preserve the lien of the Leasehold Mortgage, as well as such other documents containing terms and provisions customarily required by Leasehold Mortgagees (taking into account the customary requirements of their participants, syndication partners or ratings agencies but also taking into account the fact that Lessor is a California Local Healthcare District and Political Subdivision of the State of California) in connection with any such financing. Lessor and Lessee each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any commercially reasonable agreement necessary to effectuate any such amendment as well as such

other documents containing terms and provisions customarily required by Lenders in connection with any such financing given Lessor is a California Local Healthcare District and Political Subdivision of the State of California; provided, however, that any such amendment shall not in any way affect the Permitted Use, term or Rent under this Lease, nor otherwise in any material respect adversely affect any rights of Lessor under this Lease, at law or in equity.

## **ARTICLE 6 - MAINTENANCE**

**Section 6.1 Maintenance of Ground Leased Premises and Common Area.** Lessee, at its own cost and expense, shall be responsible for and shall maintain the Ground Leased Premises, the Improvements and any other improvements that may hereafter be constructed on the Ground Leased Premises in good, sanitary, and neat order, condition and repair, to a standard and in a manner consistent with the standards for class A \_\_\_\_\_ space located in the \_\_\_\_\_ metropolitan area. Such maintenance and repairs shall be performed promptly and in a good and workmanlike manner. Lessee shall undertake any maintenance and repairs of the Ground Leased Premises and the Improvements for which Lessee is responsible under this Section 6.1 upon the written request of Lessor. Lessee shall not make any changes to the exterior of the Building, which would materially alter the aesthetic appearance of the exterior of the Building without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. Lessee shall comply with and abide by all federal, state, county, municipal, and other governmental statutes, ordinance, laws, and regulations affecting the Ground Leased Premises, the Improvements and any other improvements thereon or any activity or condition on or in Ground Leased Premises or Common Area. If Lessee does not promptly and properly perform any needed maintenance or repair within thirty (30) days after written demand from Lessor, or if the nature of such maintenance or repair is such that they cannot be repaired within such 30-day period, commence to do such work within thirty (30) days and diligently pursue the work to its completion if the work takes more than thirty (30) days to complete, Lessor shall have the right, but not the obligation, to perform such maintenance or repair, and the cost thereof shall be immediately due and payable by Lessee to Lessor as additional Rent hereunder.

## **ARTICLE 7 - MECHANICS' LIEN**

**Section 7.1 Prohibition of Liens on Fee or Leasehold Interest.** Subject to Section 5.1 hereof, and unless removed as set forth in Section 7.2 below, Lessee shall not suffer, create or permit any mechanic's liens or other liens to be filed against the fee interest in the Ground Leased Premises, Lessee's Leasehold Interest, the Improvements or any other improvements on the Ground Leased Premises, by reason of any work, labor, services or materials supplied or claimed to have been supplied to Lessee or anyone holding the Ground Leased Premises or any part thereof through or under Lessee, To the fullest extent permitted by law, Lessor's interest as herein described shall not be subject to liens for improvements made by Lessee or any sublessee, including, without limitation, the Improvements, and Lessee will defend, indemnify and hold Lessor and the Ground Leased Premises free and harmless from and against any and all claims, damages and liabilities with respect to such liens. The Memorandum

of Lease to be executed pursuant to Section 14.18 hereof shall contain a reference to this provision.

**Section 7.2    Removal of Liens by Lessee.** If any such mechanic's or laborer's liens or materialman's lien shall be recorded against the Ground Leased Premises, the Improvements or any other improvements thereof, within thirty (30) days after notice of the filing thereof, or fifteen (15) days after Lessee is served with a complaint to foreclose said lien or Lessor advises Lessee in writing that Lessor has been served with such a complaint, whichever is earlier, Lessee shall cause such lien to be removed, or will transfer the lien to bond pursuant to applicable law, If Lessee in good faith desires to contest the lien, Lessee shall be privileged to do so, but in such case Lessee hereby agrees to indemnify and save Lessor harmless from all liability for damages, including reasonable attorneys' fees and costs, occasioned thereby and shall, in the event of a judgment of foreclosure upon any mechanic's lien, cause the same to be discharged and removed prior to the execution of such judgment. Lessor may, in its sole discretion, require that the lien be transferred to bond as a condition precedent to Lessee's privilege to contest any lien.

## **ARTICLE 8 - CONDEMNATION**

**Section 8.1    Interests of Parties on Condemnation.** If the Ground Leased Premises or any part thereof shall be taken for public purpose by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, the interests of Lessor and Lessee in the award or consideration for such transfer, and the allocation of the award and the other effect of the taking or transfer upon this Lease, shall be as provided by this Article 8.

**Section 8.2    Total Taking — Termination.** If the entire Ground Leased Premises and/or Common Area is taken or so transferred, this Lease and all of the right, title and interest thereunder shall cease, terminate and be of no further force or effect on the date title to such land so taken or transferred vests in the condemning authority, unless otherwise mutually agreed by Lessor and Lessee.

**Section 8.3    Partial Taking — Termination.** In the event of the taking or transfer of only a part of the Ground Leased Premises and/or the Common Area, leaving the remainder of the Ground Leased Premises and the Common Area in such location, or in such form, shape or reduced size as to not be effectively and practicably usable in the good faith opinion of Lessee for the operation thereon of Lessee's business, taking into consideration the effect, if any, of such taking on the availability of parking and/or access proximately located to the Building, and if Lessor agrees with Lessee's determination, which consent will not be unreasonably withheld, this Lease and all right, title and interest thereunder may be terminated by Lessee delivering to Lessor, within sixty (60) days of the occurrence of such event, written notice of termination. In such case, this Lease shall terminate thirty (30) days after Lessor's receipt of such notice.

**Section 8.4    Partial Taking — Continuation with Rent Abatement.** In the event of such taking or transfer of only a part of the Ground Leased Premises and/or Common Area wherein this Lease is not terminated as provided in Section 8.3 above: (a) this Lease shall terminate only as to the portion of the Ground Leased Premises, if any, so taken or transferred as of the date title to such portion vests in the condemning authority, and shall continue in full force

and effect as to the portion of the Ground Leased Premises not so taken or transferred; and (b) the Rent to be paid by Lessee shall be equitably adjusted by Lessor and Lessee, taking into consideration decreases in Lessee revenues and increases in Lessee costs (but only to the extent such increased costs are not passed through to tenants) resulting from such taking.

**Section 8.5 Allocation of Award — Total Taking.**Determination of Value. If this Lease shall have terminated as a result of a taking of the entire Ground Leased Premises and/or Common Area as described in Section 8.2 above, any compensation award attributable to the taking shall be awarded in accordance with the values of the respective interests of Lessor and Lessee in the Ground Leased Premises and the Improvements immediately prior to the taking. The value of Lessor's interest in the Ground Leased Premises and the Improvements immediately prior to the taking shall include the then current value of its interest in the Ground Leased Premises and Improvements prior to the Expiration Date of this Lease, together with the value of its reversionary interest in the Improvements after the Expiration Date (including all Extended Terms under Section 2.4 hereof, provided that Lessee has exercised its right to such Extended Terms). The value of Lessee's interest in the Ground Leased Premises and Improvements immediately prior to the taking shall include the then current value of its interest in the Ground Leased Premises and Improvements for the remainder of the Term of this Lease (including all Extended Terms under Section 2.4 hereof, provided that Lessee shall have exercised its right to such Extended Terms). Such values shall be those determined by agreement between Lessor and Lessee. If such agreement cannot be reached, such values shall be determined in accordance with the appraisal process described in Section 8.5(b) below. Lessor shall be entitled to any award of consequential damages to and diminution of the assemblage or plottage value of the Ground Leased Premises and Improvements not so taken. Lessee shall be entitled to claim and recover from the condemning authority, but not from Lessor or out of any award to which Lessor is entitled hereunder, any award related to relocation of Lessee's business, furniture, fixtures and equipment.

(b) Appraisal. In the event an appraisal is required, Lessor and Lessee shall each designate one (1) appraiser to determine the value of the respective interests of Lessor and Lessee in the Ground Leased Premises and the Improvements in accordance with Section 8.5(a) above. The two (2) appraisers selected shall attempt to agree upon the value of the each party's respective interest; provided, that in the event the two (2) appraisers fail to agree within twenty (20) days after their selection, the two (2) appraisers shall meet and select a third (3<sup>rd</sup>) appraiser within five (5) days after the expiration of such twenty (20) day period. In the event the two (2) appraisers fail to select a third (3<sup>rd</sup>) appraiser, either party may obtain appointment of such third (3<sup>rd</sup>) appraiser by the American Institute of Appraisers. As expeditiously as possible after appointment of the third (3<sup>rd</sup>) appraiser, the panel of appraisers will determine the value of each party's respective interest. The determination of appraisers or, if the appraisers cannot agree, the determination of the majority of the appraisers will be deemed to be the value of each party's respective interest in the Ground Leased Premises and the Improvements. If the determinations of all three (3) appraisers differ in amount, the value of each party's respective interest will be deemed to be: (i) the average of the three (3) appraisals if neither the highest nor the lowest differs from the middle appraisal by more than ten percent (10%); (ii) the average of the middle appraisal and the appraisal nearest in amount to the middle appraisal if either the highest or the lowest appraisal, but not both, differs from the middle appraisal by more than ten percent (10%); or (iii) determined by a new appraisal panel appointed and functioning in the same manner if

both the highest and lowest appraisals differ from the middle appraisal by more than ten percent (10%). All appraisers shall be members in good standing of the American Institute of Appraisers or any organization succeeding thereto and have had not less than ten (10) years of experience with commercial real estate of the type of the Ground Leased Premises in the area where the Ground Leased Premises is located. All costs and expenses incurred in connection with the determination of value for purposes of this Section 8.5 shall be divided equally between Lessor and Lessee.

**Section 8.6 Allocation of Award — Partial Taking.** In the event of a partial taking of the Ground Leased Premises:Determination of Value. If this Lease is terminated in accordance with Section 8.3 above, any compensation award attributable to the taking shall be awarded in accordance with the values of the respective interests of Lessor and Lessee in the Ground Leased Premises, the Improvements and all other improvements thereon immediately prior to the taking, as determined in accordance with Section 8.5(a). Lessor shall be entitled to any award of consequential damages to and diminution of the assemblage or plottage value of the Ground Leased Premises, the Improvements, or any part thereof, and any other improvements thereon not so taken. Lessee shall be entitled to claim and recover from the condemning authority, but not from Lessor or out of any award to which Lessor is entitled hereunder, any award related to relocation of Lessee's business, furniture, fixtures and equipment.

(b) Continuance of Lease. If this Lease continues in accordance with Section 8.4 above, any compensation award attributable to the taking shall be awarded in accordance with the values of the respective interests of Lessor and Lessee in the Ground Leased Premises, the Improvements and all other improvements thereon immediately prior to the taking, as determined in accordance with Section 8.5(a); provided, that any such compensation awarded or payable to Lessee shall be used by Lessee to complete restoration of any improvements so taken with improvements of the same type as the remaining portion of the Ground Leased Premises; provided, that in the event the cost of restoration exceeds the compensation awarded or payable to Lessee, Lessee shall be responsible for payment of such deficiency at its sole cost and expense. All plans and specifications for such replacement and improvements shall be subject to Lessor's reasonable prior approval and all such repairs shall be in compliance with all then existing codes, zoning ordinances, rules and regulations governing the Ground Leased Premises. Lessor shall be entitled to any award of consequential damages to and diminution of the assemblage or plottage value of the Ground Leased Premises, the Improvements, or any part thereof, and any improvements other improvements thereon not so taken.

**Section 8.7 Voluntary Conveyance.** A voluntary conveyance by Lessor to a public utility, agency or authority under threat of a taking under the power of eminent domain in lieu of formal proceedings shall be deemed a taking within the meaning of this Article 8.

## **ARTICLE 9 - ASSIGNMENT AND SUBLEASE**

**Section 9.1 Assignment and Subletting.** Lessee's right to assign, sublease, transfer or sell its interest hereunder, or in the Ground Leased Premises or Improvements shall be subject to the following:Affiliates. Lessee may assign, sublease, transfer, or sell: (a) its rights and obligations as tenant under this Lease; (b) Lessee's leasehold interest in this Lease; or (c) any interest hereunder in the Improvements (including any assignment by operation of law) to any



Affiliate (as hereinafter defined) of Lessee without the prior consent of Lessor. The term “**Affiliate**” shall mean any entity in which Lessee owns more than 50% of the economic interest, and has the power to manage or direct the actions of such entity.

(b) Third Parties. Following the date which is three (3) years after the Rent Commencement Date, and subject to the requirements of Section 9.2 below, Lessee may assign, sublease, transfer, or sell: (a) its rights and obligations under this Lease; (b) Lessee’s Leasehold Interest; or (c) any interest hereunder in the Improvements (including any assignment by operation of law) with the prior written consent of Lessor, which consent shall not be unreasonably withheld. For purposes of this Section 9.1(b), it shall be reasonable for Lessor to refuse to consent to any assignment, sublease, transfer or sale to any Competitor (as hereinafter defined) of Lessor, in Lessor’s reasonable determination. Lessor’s “**Competitors**” shall mean any person, group or entity (including a hospital or healthcare system or network) or their affiliates, officers, directors, executives, service or support organizations or insurers, whether public or private, which offers or which may offer health care services competitive to those then offered or reasonably contemplated to be offered by Lessor or its affiliates (including the Prohibited Services set forth in this Lease). Notwithstanding anything in this Lease to the contrary, Lessee acknowledges and agrees that, other than as permitted under Section 9.1(a) above, no assignment, subletting, sale or other transfer of Lessee’s leasehold interest in this Lease will be permitted within the first three (3) years following the Rent Commencement Date.

**Section 9.2 Lessor’s Right of First Refusal**. With respect to a permitted transfer by Lessee of any of its interest in the Ground Leased Premises (other than to an Affiliate of Lessee), if Lessee enters into an agreement to assign, sell or transfer any of its interest in the Ground Leased Premises to a party other than an Affiliate of Lessee, Lessee must first provide a copy of such agreement to Lessor in accordance with the following provisions. Lessor shall have fifteen (15) days from receipt of such agreement to provide notice to Lessee as to whether Lessor will meet the terms set forth in such agreement; to acquire Lessee’s interest in the Ground Leased Premises or the Improvements. In the event Lessor does not respond within said fifteen (15)-day period, Lessor shall be deemed to have rejected such particular terms, and Lessee shall be free to proceed with the transaction as set forth in such agreement. If Lessee is unable to consummate such transaction within six (6) months following expiration of such fifteen (15)-day period, Lessor’s right of first refusal shall be reinstated with regards to any future proposed assignment or sale of Lessee’s rights under this Ground Lease. The rights of Lessor contained in this Section 9.2 shall be binding on Lessee and all successors in interest to Lessee under this Ground Lease, and shall apply to any subsequent sale or transfer occurring while this Lease is in effect.

## **ARTICLE 10 - INSURANCE AND INDEMNIFICATION**

**Section 10.1 Comprehensive Liability Insurance** Lessee shall, at its cost and expense, at all times during the Term, maintain in force, for the joint benefit of Lessor and Lessee, and any holder of a mortgage on the Ground Leased Premises, a broad form comprehensive coverage policy of public liability insurance issued by a carrier reasonably satisfactory to Lessor and licensed to do business in the State of California, by the terms of which Lessor and Lessee, and any holder of a mortgage on the Ground Leased Premises, are named as insureds and are indemnified against liability for damage or injury to the property or person (including death) of Lessee, its invitees or any other person entering upon or using the Ground Leased Premises, or

any structure thereon or any part thereof. Such insurance policy or policies shall be maintained on the minimum basis of \_\_\_\_\_ and No/100ths Dollars (\$\_\_\_\_\_) for damage to property and for bodily injury or death as to any person, and \_\_\_\_\_ and No/100ths Dollars (\$\_\_\_\_\_) as to any one accident, with a deductible not exceeding \_\_\_\_\_ and No/100ths Dollars (\$\_\_\_\_\_). Lessor reserves the right to require reasonable increases in the limits of coverage from time to time during the Initial Term and all Extended Terms; and the requested increase will be deemed reasonable if consistent with commercially reasonable practices for similar projects in the same geographic area. Such insurance policy or policies shall be stated to be primary and noncontributing with any insurance which may be carried by Lessor. A certificate of said insurance, together with proof of payment of the premium thereof shall be delivered to Lessor on the Effective Date, and renewal certificates and proof of payment of premiums therefore shall be delivered to Lessor not less than fifteen (15) days prior to the renewal date of any such insurance policies during the Initial Term and any Extended Term. Such insurance shall be cancelable only after thirty (30) days' prior written notice to Lessor and Lessee, and any holder of a mortgage on the Ground Leased Premises. In the event Lessee fails to timely pay any premium when due, Lessor shall be authorized to do so, and may charge all costs and expenses thereof, including the premium and interest at the maximum rate permitted by law, to Lessee, to be paid by Lessee as additional Rent hereunder.

**Section 10.2 Fire and Extended Coverage Property Insurance.** Lessee shall, at its cost and expense and at all times during the Initial Term and any Extended Term, maintain in force, for the joint benefit of Lessor and Lessee, and any holder of a mortgage on the Ground Leased Premises, a policy of insurance against loss or damage by fire and lightning, and such other perils as are covered under the broadest form of the "extended coverage" or "all risk" endorsements available in California including, but not limited to, damage by wind, storm, hurricane, explosion, smoke, sprinkler leakage, vandalism, malicious mischief and such other risks as are normally covered by such endorsements. Lessor shall be named as an additional insured on such policy of insurance, and the Leasehold Mortgagee shall be named as required by its loan documents. Subject to terms of the loan documents, any insurance proceeds shall be applied in the manner as set forth in this Lease. The insurance shall be carried and maintained to the extent of the full (actual) replacement cost of the Improvements, in such amounts as may be reasonably acceptable to Lessor from time to time during the Initial Term of this Lease and any Extended Term; provided however, that during the period of construction, Lessee shall provide or cause to be provided in lieu thereof builders' risk or similar type of insurance in the full replacement cost thereof. Such insurance policy or policies shall be stated to be primary and noncontributing with any insurance which may be carried by Lessor. In addition, the deductible for such insurance shall not exceed \_\_\_\_\_ and No/100ths Dollars (\$\_\_\_\_\_). A certificate of said insurance, together with proof of payment of the premium thereof, shall be delivered to Lessor on the Effective Date. Any renewal certificates and proof of payment of premiums therefore shall be delivered to Lessor not less than fifteen (15) days prior to the renewal date of any such insurance policies during the Initial Term and any Extended Term. Such insurance shall be cancelable only after thirty (30) days' prior written notice to Lessor, Lessee, and any holder of a mortgage on the Ground Leased Premises. In the event Lessee fails to timely pay any premium when due, Lessor shall be authorized, but not obligated, to do so, and may charge all costs and expenses thereof, including the premium and

interest at the maximum rate permitted by law, to Lessee, to be paid by Lessee as additional Rent hereunder. Lessor shall have no obligation to obtain insurance for the benefit of Lessee.

**Section 10.3 Public Liability and Workmen's Compensation Insurance.** During the construction of the Improvements and any other building or improvement to be located on the Ground Leased Premises, Lessee or its contractor shall carry such public liability and workmen's compensation insurance as shall be required by the laws of the State of California.

**Section 10.4 Waiver of Subrogation.** Lessor and Lessee and all parties claiming under them mutually release and discharge each other from all claims and liabilities arising from or caused by any casualty or hazard covered or required hereunder to be covered in whole or in part by the casualty and liability insurance to be carried on the Improvements and the Ground Leased Premises, or in connection with any other improvements on or activities conducted on the Ground Leased Premises or the Improvements, and waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof, and evidence such waiver by endorsement to the required insurance policies, provided that such release shall not operate in any case where the effect is to invalidate or increase the cost of such insurance coverage (provided that in the case of increased cost, the other party shall have the right, within thirty (30) days following written notice, to pay such increased cost, thereby keeping such release and waiver in full force and effect).

**Section 10.5 Indemnification** Indemnification by Lessee. Lessee hereby agrees to indemnify, protect, defend and save Lessor, its agents, officers, shareholders, employees and directors harmless from and against any and all losses, damages, actions, fines, penalties, demands, damages, liability and expense, including attorneys' and experts' fees and costs of litigation and all appeals, in connection with the loss of life, personal injury, damage to property or violation of law arising from or out of: (1) any occurrence in, upon, at or about the Ground Leased Premises, Common Areas or easement areas caused by Lessee and its lessees, sublessees, guests and invitees, and any party acting by, through or under any of them; (2) the occupancy, use, construction upon and maintenance of the Ground Leased Premises, Common Areas or easement areas by Lessee and its contractors, contractors' subcontractors, employees, lessees, sublessees, guests and invitees, and any party acting by, through or under any of them; (3) the operation of the business of Lessee thereon; and (4) any act or failure to act, occasioned wholly or in part by Lessee and its agents, contractors, employees, invitees or any other party acting by, through or under any of them. Nothing contained herein shall be construed to make Lessee liable for any injury or loss caused by the gross negligence or willful misconduct of Lessor or any agent or employee of Lessor, Lessor agreeing to indemnify and hold Lessee harmless therefrom.

(b) **Indemnification by Lessor.** Lessor hereby agrees to indemnify, protect, defend and save Lessee, its agents, officers, shareholders, employees and directors harmless from and against any and all losses, damages, actions, fines, penalties, demands, damages, liability and expense, including attorneys' fees and costs of litigation and all appeals, in connection with the loss of life, personal injury and damage to property arising from or out of (1) any occurrence in, upon, at or about the Real Property (other than the Ground Leased Premises and Common Areas) caused by Lessor or its lessees, sublessees, guests and invitees, and any party acting by, through or under any of them; (2) the occupancy, use, construction upon and maintenance of the Real Property (other than the Ground Leased Premises and Common Areas) by Lessor or its lessees,

sublessees, guests and invitees, and any party acting by, through or under any of them; (3) the operation of the business of Lessor thereon; and (4) any act or failure to act, occasioned wholly or in part by Lessor and its agents, contractors, employees, invitees or any other party acting by, through or under any of them. Nothing contained herein shall be construed to make Lessor liable for any injury or loss caused by the gross negligence or willful misconduct of Lessee or any agent or employee of Lessee, Lessee agreeing to indemnify and hold Lessor harmless therefrom.

## **ARTICLE 11 - DAMAGE AND DESTRUCTION**

**Section 11.1 Lessee's Duty to Restore Premises.** At any time during the Initial Term or Extended Term(s) of this Lease, and so long as no Event of Default has occurred, if the Improvements, or any part thereof, are damaged and/or destroyed in whole or in part by fire, theft, the elements, or any other cause, this Lease shall continue in full force and effect, and Lessee, at its sole cost and expense, shall repair and restore the damaged or destroyed Improvements according to the original plan hereof (but subject to then current building code requirements), or according to such modified plans as shall be reasonably approved in writing by Lessor, whether or not there are sufficient insurance proceeds to cover the repair and restoration expenses. The work of repair and restoration shall be commenced by Lessee as soon as possible but in no event later than one hundred twenty (120) days after the receipt of insurance proceeds, subject to delays caused by any Force Majeure Event (as defined in Section 14.4 below), and shall be completed with due diligence within eleven (11) months after the work is commenced, unless otherwise agreed to in writing by Lessor. In all other respects, the work of repair and restoration shall be done in accordance with the requirements for original construction work on the Ground Leased Premises set forth in Article 15 of this Lease.

**Section 11.2 Option to Terminate Lease for Destruction.** Notwithstanding Section 11.1 above, in the event that during the last three (3) years of the Initial Term or any Extended Term, the Improvements are damaged or destroyed by fire, theft or any other casualty through no fault of Lessee, such that they cannot be repaired and restored as required by Section 11.1 of this Lease at a cost not more than \_\_\_\_\_ percent (\_\_\_%) of the replacement cost of the Improvements, then Lessee shall have the option of terminating this Lease on the last calendar day of the month during which the casualty occurs. Such option to terminate shall be exercised by Lessee delivering to Lessor written notice of Lessee's intent to terminate this Lease, in which case this Lease shall terminate on the sixtieth (60th) day after Lessor receives such notice; provided, however, that in such event, Lessee shall be responsible, at its sole cost and expense, for the prompt removal of all debris from the Ground Leased Premises; and provided, further, that this option shall not be available to Lessee if Lessee has failed to maintain all insurance required in accordance with Article 10 hereof, or if the damage or destruction is not fully covered by insurance for any reason.

**Section 11.3 Application of Insurance Proceeds.** Any and all fire or other insurance proceeds that become payable at any time during the Initial Term or any Extended Term because of damage to or destruction of the Improvements, as long as Lessee is not in default, shall be paid jointly to Lessee and Lessor and, subject to the terms of any Mortgage, shall be applied toward the cost of repairing and restoring the damaged or destroyed Improvements in the manner required by Section 11.1 of this Lease. Notwithstanding the foregoing, in the event that Lessee exercises its option to terminate this Lease under Section 11.2 above because of damage to or

destruction of the Improvements, then, in that event, any and all fire or other insurance proceeds that become payable because of such damage or destruction and any deductible associated therewith shall, subject to the terms of any Mortgage, be paid to Lessor.

## **ARTICLE 12 - DEFAULTS AND REMEDIES**

**Section 12.1 Defaults.** Each of the following events shall be a default by Lessee and a breach of this Lease, and shall constitute an “**Event of Default**” hereunder:

(a) Abandonment. Abandonment of the Ground Leased Premises, the Improvements or any other improvements hereafter constructed thereon, where such abandonment continues for a period of twenty (20) consecutive days after notice thereof by Lessor to Lessee.

(b) Attachment or Other Levy. The subjection of any right or interest of Lessee in the Ground Leased Premises to attachment, execution or other levy, or to seizure under legal process, if not released within ninety (90) days.

(c) Appointment of Receiver. The appointment of a receiver to take possession of the Ground Leased Premises or the Improvements, or of Lessee’s interest in the leasehold estate, or of Lessee’s operations on the Ground Leased Premises, for any reason including, but not limited to, assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings, but not including receivership: (1) pursuant to administration of the estate of any deceased or incompetent individual member of any Lessee; or (2) pursuant to any mortgage permitted by the provisions of this Lease relating to the purchase or construction of the Improvements; or (3) instituted by Lessor, the event of default being not the appointment of a receiver at Lessor’s instance, but the event justifying the receivership, if any.

(d) Insolvency; Bankruptcy. An assignment by Lessee for the benefit of creditors, or the filing of a voluntary or involuntary petition by or against Lessee under any law for the purpose of adjudicating Lessee a bankrupt; or for extending time for payment, adjustment or satisfaction of Lessee’s liabilities; or reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency; unless, in case of such that are involuntary on Lessee’s part, the assignment, proceedings, and all consequent orders, adjudications, custodies and supervisions are dismissed, vacated or terminated within sixty (60) days after the assignment, filing or other initial event.

(e) Violation of Use Restrictions. Lessee’s: (1) violation of the use restrictions set forth herein, including, without limitation, the Prohibited Service restrictions set forth in Section 4.2 of this Lease; or (2) failure to (i) include the Prohibited Service restrictions in any tenant lease or sublease of the Building, or (ii) agree with any tenant or subtenant in the Building under a lease or otherwise in writing that Lessor will have third party beneficiary rights to enforce the Prohibited Service restrictions directly against such subtenant, after the application of the notice and cure provisions in Section 12.2 below.

(f) Default in Payment or Performance Under this Lease. Failure of Lessee to pay any installment of Base Monthly Rent, additional Rent, or any impositions or other monetary obligations of any nature whatsoever required to be paid by Lessee under this Lease when due

and payable; or failure of Lessee to observe or perform any of its other covenants, conditions or agreements under this Lease or under the terms of any Mortgage encumbering the Leasehold Interest, the Improvements or any part thereof or interest therein; or the breach of any material warranties or representations of Lessee under this Lease. For purposes of this Article 12, all monetary payments required to be made under this Lease, including, but not limited to, taxes, insurance premiums, utility payments, and association assessments, together with all other sums Lessee is obligated to pay under this Lease (other than Rent), shall be deemed additional Rent hereunder.

(g) Other Events of Default. Such other events of default as set forth under the terms this Lease.

**Section 12.2 Notice and Right to Cure.** If the alleged default is monetary in nature such as (but not limited to) nonpayment of Rent, taxes or any other sums required to be paid by Lessee, Lessor shall deliver written notice to Lessee of the default and Lessee will have ten (10) days after the receipt of such written notice to cure the default. As to any Event of Default occurring under Section 12.1(e) of this Lease, Lessee shall cure such default within ten (10) days after receipt of written notice from Lessor specifying the requirement Lessee has failed to satisfy. As to any other non-monetary defaults, except as otherwise provided herein, Lessee shall have thirty (30) days after written notice is given by Lessor specifying the nature of the default to cure the default; provided, however, that if after exercise of due diligence and its best efforts to cure such non-monetary default Lessee is unable to do so within the thirty (30) day period, then the curing period shall be extended for such reasonable time as may be necessary for curing such default, so long as Lessee continues to diligently prosecute to completion the curing of the default. As used herein, non-monetary defaults shall include, without limitation, a breach of any covenant of Lessee hereunder, Lessee's failure to perform as required hereunder, and a breach of any warranty, representation or other agreement of Lessee under this Lease. In the event that as a result of Lessee defaults, Lessor provides written notice to Lessee of a default more than two (2) times during any twelve (12) month period, Lessor may require that Lessee deposit with Lessor a Deposit (as defined in Section 3.8 above), which shall be held and applied pursuant to the provisions of Section 3.8 above.

**Section 12.3 Remedies.** If any Event of Default by Lessee shall continue uncured upon expiration of the applicable curing period, Lessor may exercise any one or all of the following remedies, which shall be in addition to all other rights and remedies available to Lessor under law or equity, from time to time:

(a) Termination. Lessor may, at Lessor's election, and without notice (but subject to any Leasehold Mortgagee's rights under this Lease), terminate this Lease. All of Lessee's rights in the Ground Leased Premises, the Improvements and all other improvements thereon shall terminate upon termination of this Lease. Promptly after any such termination, Lessee shall surrender and vacate the Ground Leased Premises, the Improvements and all other improvements thereon in broom-clean condition, and Lessor may re-enter and take possession of the Ground Leased Premises and all such improvements. On termination, Lessor has the right, in addition to any and all other rights of Lessor hereunder, in equity, or at law (but subject to the limitations on Lessee's liability set forth in this Lease), to recover from Lessee the following:

(1) The worth, at the time of the award, of the unpaid Rent that had been earned at the time of termination of this Lease;

(2) The worth, at the time of the award, of the amount by which the unpaid Rent that would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of Rent that Lessee proves could have been reasonably avoided;

(3) The worth, at the time of the award, of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Lessee proves could be reasonably avoided; and

(4) Any other amount, and court costs, necessary to compensate Lessor for all detriment proximately caused by Lessee's default.

"The worth, at the time of the award," as used in (a) and (b) of this Section 13.4, is to be computed by allowing interest at the Interest Rate. "The worth at the time of the award," as referred to in (c) of this Section 13.4, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of \_\_\_\_\_ at the time of the award plus one percent (1%).

(b) Re-entry Without Termination. Upon the occurrence of an Event of Default, Lessor shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover Rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). Lessor can continue this Lease in full force and effect, and the Lease will continue in effect as long as Lessor does not terminate Lessee's right to possession by written notice thereof to Lessee, and Lessor shall have the right to enforce Lessee's obligations hereunder and to collect Rent and all other amounts hereunder when due. During the existence of an Event of Default, Lessor can, to the extent provided by applicable law, enter the Premises and re-let them, or any part of them, to third parties for Lessee's account. In such event and to the extent provided by applicable law, Lessee shall be liable immediately to Lessor for all costs Lessor incurs in re-letting the Premises, including, without limitation, broker's commissions and like costs. Re-letting can be for a period shorter or longer than the remaining Term of this Lease, but Lessee shall only be responsible for broker's commissions attributable to the remaining Term of this Lease. No act by Lessor allowed by this Section shall terminate this Lease unless Lessor notifies Lessee in writing that Lessor elects to terminate this Lease. If Lessor elects to re-let the Premises as provided in this Section, the Rent that Lessor receives from re-letting shall be applied to the payment of: first, any indebtedness or other costs and expenses hereunder owing from Lessee to Lessor other than Rent due from Lessee; second, all costs, including for maintenance, incurred by Lessor in re-letting, and third, Rent due and unpaid under this Lease. After deducting the payments referred to in this Section, any sum remaining from the Rent Lessor receives from re-letting shall be held by Lessor (without interest thereon or liability therefor) and applied in payment of future Rent as Rent becomes due under this Lease. In no event shall Lessee be entitled to any excess Rent received by Lessor. If, on the date Rent is due under the Lease, the Rent received from the re-letting is less than the Rent due on that date, Lessee shall pay to Lessor, in addition to the remaining Rent due, all costs, including for maintenance, incurred by

Lessor in re-letting that remain after applying the Rent received from the re-letting as provided in this Section.

(c) Lessee's Personal Property. Lessor may, at Lessor's election, store Lessee's personal property and trade fixtures or any of such property and fixtures without liability for damage for the account and at the cost of Lessee. The election of one remedy for any one item shall not foreclose an election of any other remedy for another item, or for the same item at a later time.

(d) Appointment of Receiver. Lessor may, if Lessor elects to file suit to enforce this Lease and/or protect its rights hereunder, in addition to the other remedies provided in this Lease and by law, have a receiver appointed for the Ground Leased Premises and the Improvements.

**Section 12.4 Lessor's Right to Cure Defaults.** Any Mortgage encumbering Lessee's Leasehold Interest shall contain provisions that all notices of default under the note and Mortgage must be sent to Lessor and Lessee simultaneously and that Lessor shall have the curing rights described under Article 5 above. Neither Lessor's right to cure any default nor any exercise of such right shall constitute an assumption of liability under the note, Mortgage, or any other loan documents.

**Section 12.5 Remedies Cumulative.** Suit or suits for the recovery of such damages, or any installments thereof, may be brought by Lessor from time to time at its election, and nothing contained herein shall be deemed to require Lessor to postpone suit until the date when the term of this Lease would have expired nor limit or preclude recovery by Lessor against Lessee of any sums or damages which, in addition to the damages particularly provided above, Lessor may lawfully be entitled by reason of any default hereunder on the part of Lessee. All the remedies granted herein to Lessor, and all rights and remedies given to it at law and in equity, shall be cumulative and concurrent.

**Section 12.6 Lessee's Liability After Default.** If Lessee shall default in the performance of any of its obligations under this Lease, Lessor, without thereby waiving such default, may (but shall not be obligated to) perform the same for the account and at the expense of Lessee, without notice in a case of emergency, and in any other case only if such default continues after the expiration of the applicable cure period, if any, under Section 12.2 of this Lease. Any reasonable expenses incurred by Lessor in connection with any such performance, and all costs, expenses, and disbursements of every kind and nature whatsoever, including reasonable attorneys' fees including appellate, bankruptcy and post-judgment proceedings involved in collecting or endeavoring to collect the Base Annual Rent or any additional Rent or any part thereof, or enforcing or endeavoring to enforce any rights against Lessee or Lessee's obligations hereunder, shall be due and payable upon Lessor's submission of an invoice therefore. All sums advanced by Lessor on account of Lessee under this Section, or pursuant to any other provision of this Lease, and all Rent, if delinquent or not paid by Lessee and received by Lessor when due hereunder, shall bear interest at the maximum rate permitted by law, from the due date thereof (except as provided in Section 12.8) until paid and the same shall be and constitute additional Rent and be due and payable upon Lessor's demand therefore.



**Section 12.7 Holdover.** If Lessee remains in possession of the Ground Leased Premises or any part thereof after the expiration or sooner termination of the initial Term or any Extended Term, Lessee shall become a tenant at will and shall pay the Lessor Base Annual Rent equal to one hundred fifty percent (150%) of the Base Annual Rent paid by Lessee in the last month prior to the expiration or termination of the Lease, which shall be payable on a per diem basis, not to exceed the amount permitted to be charged by a lessor under applicable law. Notwithstanding that Lessor may allow Lessee to continue in possession after the expiration or sooner termination of this Lease, neither that nor the provisions of this Section shall constitute a waiver of any of Lessor's rights under this Section or this Lease. Further, notwithstanding the payment of Rent by Lessee and acceptance thereof by Lessor as provided in this Section, Lessee shall be in continuing breach of this Lease as a month-to-month tenant at will at any time or during any period in which Lessee is a holdover tenant.

**Section 12.8 Past Due Obligations.** Except as provided below, if Lessee shall fail to pay Lessor, within ten (10) days after the date the same is due and payable, any monthly installment of Rent or other amount required to be paid by Lessee to Lessor under this Lease, Lessee promises to pay to Lessor, in addition to such unpaid amounts, interest upon such unpaid amounts from the date immediately following such ten (10) day period until the date Lessor receives payment at the lesser of (i) the maximum lawful rate, or (ii) the prime rate announced by Bank of America (or its successor) from time to time plus four (4) percentage points (the "**Interest Rate**"). In addition to such interest, Lessee acknowledges that late payment by Lessee of any monthly installment of Rent or other amount due Lessor hereunder will cause Lessor to incur certain costs and expenses not contemplated under this Lease. The exact amount of such costs and expenses is hereby acknowledged to be difficult and impractical to set. Such costs and expenses include, without limitation, administrative and collection costs, and processing and accounting expenses and other costs and expenses necessary and incidental thereto. Therefore, if any such installment or payment is not received by Lessor from Lessee within ten (10) days after the date that such installment or payment is due, Lessee shall immediately pay to Lessor a late charge equal to ten percent (10%) of such amount. Lessor and Lessee agree that this late charge represents a reasonable estimate of such costs and expenses to be incurred by Lessor in the event of Lessee's failure to timely pay Rent or other amounts due hereunder, and is fair compensation to Lessor for its loss suffered by such nonpayment by Lessee. The interest and late charges contained in this Section 12.8 are in addition to, and in no way represent a diminution of or substitution for any or all of Lessor's other rights or remedies contained in this Lease or at law or in equity.

## **ARTICLE 13 - SURRENDER AND REMOVAL**

**Section 13.1 Surrender of Possession.** Upon the expiration of the Initial Term or the Extended Term(s), as applicable, or any earlier termination thereof, Lessee shall surrender to Lessor possession of the Ground Leased Premises, the Improvements and all other improvements constructed and installed thereon. If an Event of Default beyond any applicable cure period is not then continuing, Lessee may remove, or cause to be removed, all personal property, trade fixtures and equipment of Lessee, other than permanent fixtures, from the Ground Leased Premises within twenty (20) days after the date of any termination of this Lease. Thereafter all such personal property and equipment not removed shall belong to Lessor without the payment of any consideration.

**Section 13.2 Lessee's Quitclaim.** Upon the expiration of the Initial Term or any Extended Term, or any sooner termination of this Lease, Lessee agrees to execute, acknowledge and deliver to Lessor a proper instrument in writing, releasing and quitclaiming to Lessor all right, title and interest of Lessee in and to the Ground Leased Premises, the Improvements and all other improvements thereon.

## **ARTICLE 14 - GENERAL PROVISIONS**

**Section 14.1 Conditions and Covenants.** All of the provisions of this Lease shall be covenants running with the land, and construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

**Section 14.2 Survival of Indemnities.** All indemnities of Lessor and Lessee under this Lease shall survive the expiration or earlier termination of this Lease for a period of one (1) year.

**Section 14.3 No Waiver of Breach.** No failure by Lessor to insist upon the strict performance by Lessee of any covenant, agreement, term or condition of this Lease, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Lease, but each and every covenant, condition, agreement and term of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

**Section 14.4 Unavoidable Delay — Force Majeure.** If either Party shall be delayed or prevented from the performance of any act required by this Lease by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations or other cause, without fault and beyond the reasonable control of the Party obligated (financial inability excepted) (collectively, "Force Majeure Events"), performance of such act shall be excused for the period of the delay; and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing in this Section shall excuse Lessee from the prompt payment of any Rent or other charge required of Lessee except as may be expressly provided elsewhere in this Lease.

**Section 14.5 Notices.** All notices, requests, demands and other communications hereunder shall be given in writing and shall be: (a) personally delivered; (b) sent by telecopier, facsimile transmission or other electronic means of transmitting written documents; or (c) sent to the Parties at their respective addresses indicated herein by registered or certified U.S. mail, return receipt requested and postage prepaid, or by a nationally recognized private overnight mail courier service (such as Federal Express). The respective addresses to be used for all such notices, demands or requests are as follows:

If to Lessor:

\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_



**Section 14.10 Attorney's Fees.** If either party retains an attorney to enforce or interpret this Lease, the prevailing party shall be entitled to recover, in addition to all other items of recovery permitted by law, reasonable attorneys' fees and costs incurred through litigation, bankruptcy proceedings and all appeals.

**Section 14.11 Time.** Time is of the essence of each obligation of each Party hereunder.

**Section 14.12 Governing Law.** This Lease shall be construed and enforced in accordance with the laws of the State of California. Lessor and Lessee hereby consent to the jurisdiction of any California or federal court sitting in the County of \_\_\_\_\_, California over any suit, action or proceeding arising out of or relating to this Lease.

**Section 14.13 Binding Effect.** Subject to any provision of this Lease that may prohibit or curtail assignment of any rights hereunder, this Lease shall bind and inure to the benefit of the respective heirs, assigns, personal representatives, and successors of the parties hereto.

**Section 14.14 Execution of Other Instruments.** Each Party agrees that it shall, upon the other's request, take any and all steps, and execute, acknowledge and deliver to the other Party all further instruments necessary or expedient to effectuate the purpose of this Lease.

**Section 14.15 Severability.** If any term, provision, covenant or condition of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**Section 14.16 Counterparts.** This Lease may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one instrument.

**Section 14.17 Estoppel Certificate.** Either Party shall execute, acknowledge and deliver to the other Party, within fifteen (15) days after written request from the other Party, a statement in writing certifying, if such is the case, that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified); the date of commencement of this Lease; the dates through which the Rent and other charges have been paid; any alleged defaults and claims against the other Party; and such other information as shall be reasonably requested.

**Section 14.18 Memorandum of Lease.** As of the Effective Date, Lessor and Lessee shall execute and acknowledge a Memorandum of this Lease for the purpose of recordation immediately following the Effective Date. This Memorandum shall be in the form attached hereto as **Exhibit E** and incorporated herein by reference.

**Section 14.19 Waiver of Trial by Jury.** LESSOR AND LESSEE MUTUALLY, EXPRESSLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY FOR ANY PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, OR ANY CONDUCT OR COURSE OF DEALING OF THE PARTIES, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PERSONS. THIS WAIVER IS A MATERIAL INDUCEMENT TO LESSOR AND LESSEE TO ENTER INTO THIS LEASE.

**Section 14.20 Signs.** Subject to Lessor's prior written consent, which consent shall not be unreasonably withheld, Lessee shall have the right to install, maintain and replace in, on, over or in front of the Building or in any part thereof such signs and advertising matter as Lessee may desire. In no event shall temporary signage be used by Lessee for a period in excess of thirty (30) days; provided, that temporary signage shall be allowed during construction of the Building as is customary in a project of this nature; and provided, further, that Lessee shall be allowed to display customary signage for purposes of subleasing space within the Building. All signage and advertising in connection with the Ground Leased Premises and the Improvements shall be consistent with Lessor's policies and procedures. Lessee shall comply with any applicable requirements of governmental authorities having jurisdiction and shall obtain any necessary permits for such purposes. As used in this Section, the word "sign" shall be construed to include any placard, light or other advertising symbol or object, irrespective of whether the same be temporary or permanent.

## **ARTICLE 15 - LEASE CONTINGENCIES**

Except as expressly set forth in this Lease, neither Lessor nor Lessee shall be obligated to perform any of the promises, covenants or conditions of this Lease, and this Lease shall not be effective, until and unless the following occurs:

**Section 15.1 Lessee Contingency.** At Lessee's sole cost and expense, Lessee shall obtain all required governmental permits, approvals and entitlements for the development, construction and operation of the Improvements and operation of same for the Permitted Use in the manner intended by Lessee, including, without limitation, all zoning, permitting, land use and design approvals and all approvals required under the California Environmental Quality Act ("CEQA") (collectively, the "**Governmental Approvals**"), keep Lessor informed of the status of such matters, and notify Lessor at such times as Lessee obtains (or is denied) such Governmental Approvals. Lessor hereby agrees, at no cost or expense to Lessor, to reasonably cooperate with Lessee in its efforts to obtain the Governmental Approvals and to execute such documents and other matters as may be reasonably required to obtain the Governmental Approvals. In the event that the Governmental Approvals have not been obtained by Lessee on or before \_\_\_\_\_, 20\_\_ ("**Contingency Period**"), then the same will constitute the failure of this contingency, and Lessee may elect (in its sole and absolute discretion) to either waive the same or terminate this Lease, in which event the Parties will have no further obligations to one another under this Lease except for those obligations under this Lease which survive the termination of this Lease.

**Section 15.2 Lessor Consents.** Notwithstanding any provision of this Lease to the contrary, Lessor has the right in its reasonable discretion to approve and/or condition this Lease upon the following:

(a) **Governmental Approvals.** In the event that the Governmental Approvals, including, without limitation, all required approvals under CEQA, have not been obtained on or before the expiration of the Contingency Period, and Lessee has not waived its contingencies, as described in Section 15.1, then Lessor may elect to terminate this Lease upon written notice to Lessee.

(b) Proof of Insurance. As soon as practicable after the Effective Date, and in no event later than fifteen (15) days after the Effective Date, Lessee shall furnish to Lessor proof of insurance as required under this Lease. Lessor shall have until the expiration of the Contingency Period to approve such insurance, in its reasonable discretion.

(c) Construction Contracts; Project Budget. As soon as practicable after the Effective Date, and in no event later than fifteen (15) days prior to the expiration of the Contingency Period, Lessee shall furnish to Lessor (i) a copy of a valid and binding contract(s) between Lessee and a licensed general contractor for construction of the Improvements, and (ii) the Project Budget. Lessor shall advise Lessee within ten (10) days of receipt of its objections, if any, and Lessee shall endeavor to satisfy Lessor and provide revised documents for Lessor's review and approval, as provided herein.

(d) Acceptance of Plans and Specifications. As soon as practicable after the Effective Date, and in no event later than fifteen (15) days prior to the expiration of the Contingency Period, Lessee shall furnish to Lessor plans and specifications for the Improvements, including drawings, site plans and landscape plans. Lessor shall have fifteen (15) days to accept such plans and specifications, in its reasonable discretion, and if it does not accept them, provide Lessee with its reasons for objection, which Lessee shall endeavor to alleviate and resubmit the plans and specifications for further review and approval within fifteen (15) days, as provided herein. Notwithstanding the foregoing or any else to the contrary set forth herein, it is understood and agreed that Lessor's approval of or consent concerning any matter shall not impose any liability upon Lessor nor shall such approval or consent infer or impute to Lessor that Lessor has expressed any opinion or made any warranty regarding the legal/technical adequacy, legal/technical sufficiency or legality of any such matters or improvements (provided, however, the foregoing shall not operate to relieve Lessee of its financial obligations hereunder). Lessee assumes sole responsibility and liability for (i) any and all injuries to or the death of any persons, including Lessee's contractors and subcontractors and their respective employees, (ii) for any and all damages to property caused by, resulting from or arising out of any act or omission on the part of Lessee, Lessee's contractors or subcontractors, or their respective employees, and (iii) any and all violations of any federal, state or local laws or regulations, including but not limited to those governing the management of stormwater arising from or related in any way to the prosecution of the Improvements. Lessee agrees to indemnify, defend, protect and save free and harmless Lessor and Lessor's affiliates, agents and employees from and against all losses, expenses and penalties, including reasonable attorneys' and experts' fees and expenses, that Lessor may incur as the result of claims, lawsuits or administrative or civil actions due to, because of, or arising out of any and all such injuries, death or damage, or violations, whether real or alleged, and Lessee and Lessee's contractors and subcontractors shall assume and defend at their sole cost and expense all such claims, lawsuits or administrative actions.

(e) Lessee's Financial Condition. This Lease is subject to financial review and approval by Lessor, in its sole discretion, through the date of full execution and delivery of this Lease. In addition, Lessor may terminate this Lease at any time prior to the expiration of the Contingency Period if there is an adverse change in Lessee's financial condition or its arrangements to obtain financing or additional and continued funding of it the Improvements. Lessee agrees that it shall provide Lessor with all financial statements and other information necessary to Lessee's review both before the Commencement Date and after lease execution and

understands that a guaranty from \_\_\_\_\_ and/or other security may be required.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, this Lease has been executed by the Parties hereto as of the Effective Date first set forth above.

LESSOR:

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LESSEE:

\_\_\_\_\_, a  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## **EXHIBIT A**

### **Legal Description of Real Property**

**EXHIBIT B**

**Site Plan**

**[see attached]**

## **EXHIBIT C**

### **Permitted Encumbrances**

## **EXHIBIT D**

### **Construction Schedule**

**EXHIBIT E**

**Memorandum of Lease**

**[see attached]**

## **EXHIBIT F**

### **Purchase and Sale Agreement and Joint Escrow Instructions**