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Regulatory Agreement Nursing Homes

RETURNED
DEC 22 2003

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

Project Number 105-43044-NP		Mortgagee Reilly Mortgage Group, Inc.	
Amount of Mortgage Note \$4,635,000.00		Date June 12, 2002	
Mortgage Recorded (State) Utah	County Davis	Date June 12, 2002	
Book 3060	Page 436		

This Agreement entered into this **1st** day of **December, 2003**
between **SOUTH DAVIS COMMUNITY HOSPITAL, INC.**, a Utah nonprofit corporation
whose address is **401 South 400 East, Bountiful, UT 84010**

E 1942529 B 3440 P 317
RICHARD T. MAUGHAN, DAVIS CNTY RECORDER
2003 DEC 22 12:20 PM FEE 80.00 DEP MT
REC'D FOR METRO NATIONAL TITLE

(jointly and severally, hereinafter referred to as Lessee) and the undersigned Federal Housing Commissioner, (hereinafter called Commissioner).

In consideration of the consent of the Commissioner to the leasing of the aforesaid project by **Bountiful Retreat, a Utah nonprofit corporation**, Mortgagor,
and in order to comply with the requirements of the National Housing Act and the Regulations adopted by the Commissioner pursuant thereto,
Lessees agree for themselves, their successors, heirs and assigns, that in connection with the mortgaged property and the project operated thereon
and so long as the Contract of Mortgage Insurance continues in effect, and during such further period of time as the Commissioner shall be the
owner, holder or reinsurer of the mortgage, or during any time the Commissioner is obligated to insure a mortgage on the mortgaged property:

- (1) The lease shall be subject and subordinate to the mortgage securing the note or other obligation endorsed for insurance by the commissioner;
- (2) Lessee shall make payments under lease when due;
- (3) Payments by the lessee to the lessor shall be sufficient to pay all mortgage payments including payments to reserves for taxes, insurance, etc., payments to the Reserve for Replacements, and to take care of necessary maintenance. If at the end of any calendar year, or any fiscal year if the project operates on the basis of a fiscal year, payments under the lease have not been sufficient to take care of the above items, the lessor and lessee upon request in writing from the Commissioner shall renegotiate the amounts due under the lease so that such amounts shall be sufficient to take care of such items; the Commissioner shall be furnished by the lessee, within thirty days after being called upon to do so, with a financial report in form satisfactory to the Commissioner covering the operations of the mortgaged property and of the project;
- (4) The lessee shall not sublease the project or any part thereof without the consent of the Commissioner;
- (5) The lessee shall at all times maintain in full force and effect a license from the State or other licensing authority to operate the project as a nursing home, but the owner shall not be required to maintain such a license;
- (6) Lessee shall maintain in good repair and condition any parts of the project for the maintenance of which lessee is responsible under the terms of the lease;
- (7) Lessee shall not remodel, reconstruct, add to, or demolish any part of the mortgaged property or subtract from any real or personal property of the project;
- (8) Lessee shall not use the project for any purpose except the operation of a nursing home;
- (9) If a default is declared by the Commissioner under the provisions of Paragraph 10 of the Regulatory Agreement entered into by the lessor-mortgagor and the Commissioner effective as of the **12th day of June, 2002**, a copy of notice of default having been given to the lessee, the lessee will thereafter make all future payments under the lease to the Commissioner;
- (10) The lease may be cancelled upon thirty days written notice by the Commissioner given to the lessor and the lessee for a violation of any of the above provisions unless the violation is corrected to the satisfaction of the Commissioner within said thirty day period.
- (11) The Commissioner must approve any change in or transfer of ownership of the lessee entity, and any change in or transfer of the management operation, or control of the project.

- (12) The lessee shall not reduce or expand, allow to be reduced or expanded, or cause the expansion or reduction of the bed capacity of the project without the consent of the Commissioner. Any change in the bed capacity shall violate this Regulatory Agreement.
- (13) The lessee shall not enter into any management contract involving the project, unless such shall contain a provision that, in the event of default under the Regulatory Agreement as recited in paragraph 9 (above) of this Agreement, the management agreement shall be subject to termination without penalty upon written request of the Commissioner. Upon such request the lessee shall immediately arrange to terminate the contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Commissioner for continuing proper management of the project.
- (14) The mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by the Commissioner or his duly authorized agents. Lessee shall keep copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by the Commissioner or his/her duly authorized agents.
- (15) There shall be full compliance with the provisions of (1) any State or local laws prohibiting discrimination in housing on the basis of race, color, creed, or national origin; and (2) with the Regulations of the Federal Housing Administration providing for non-discrimination and equal opportunity in housing. It is understood and agreed that failure or refusal to comply with any such provisions shall be a proper basis for the Commissioner to take any corrective action he may deem necessary including, but not limited to, the refusal to consent to a further renewal of the lease between the mortgagor-lessor and the lessee, the rejection of applications for FHA mortgage insurance and the refusal to enter into future contracts of any kind with which the lessee is identified; and further, if the lessee is a corporation or any other type of business association or organization which may fail or refuse to comply with the aforementioned provisions, the Commissioner shall have a similar right of corrective action (1) with respect to any individuals who are officers, directors, trustees, managers, partners, associates or principal stockholders of the lessee; and (2) with respect to any other type of business association, or organization with which the officers, directors, trustees, managers, partners, associates or principal stockholders of the lessee may be identified.
- See Exhibit A attached hereto for a legal description of the Mortgaged Property
- See Agreement of Lease attached hereto as Exhibit B

16. All future lessees must execute a Regulatory Agreement with the Commissioner

17. Lessee is required to submit financial statements to the State and Area Office or its designee within 60 days of the close of the Project's fiscal year.

Remainder of this page intentionally left blank - see signature page attached hereto

Instructions to Closing Attorney
Regulatory Agreement—form HUD-92466-NHL
Nursing Homes—Section 232

This Regulatory Agreement must be executed by the Lessee and the Commissioner and recorded before the Note is endorsed for insurance.

Note that there is space left on the back of the printed form for proper execution of the instrument.

The execution by the Commissioner and by the Lessee must be in accordance with the requirements of the jurisdiction where the project is located and must permit the instrument to be recorded.

The Agreement is to be executed in the name of the Commissioner. It will be signed for the Commissioner by the Field Office Manager or authorized agent who endorses the Note for insurance.

Recording must be at the expense of the mortgagor-owner or lessee.

Sufficient space is left on the back for the insertion of any necessary additional provisions. Any changes in the Agreement and any substantial additions shall receive the prior approval of the Assistant Secretary for Housing.

A copy of the Commissioner-approved lease shall be attached to this Regulatory Agreement. If the lease has already been filed or recorded, re-recording will be unnecessary, and a copy of the recorded lease (with recording data) will be attached following recording of the form HUD-92466-NHL.

The Agreement must be executed by the Lessee prior to execution by the Commissioner.

Signed and sealed the day and year first above written.

SOUTH DAVIS COMMUNITY HOSPITAL, INC., a Utah nonprofit corporation

By: Dr. Lloyd R. Hicken
Name: Dr. Lloyd R. Hicken, M.D.
Title: Chairman

SECRETARY OF HOUSING AND URBAN DEVELOPMENT

By: Federal Housing Commissioner

By: Marie LaPorte
(Authorized Agent)

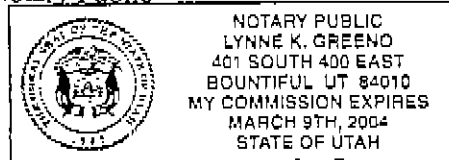
STATE OF UTAH)
) ss
County of Davis)

I, Lynne K. Greeno, a Notary Public do hereby certify that on this 18th day of December, 2003, personally appeared Dr. Lloyd R. Hicken, M.D., the Chairman of South Davis Community Hospital, Inc., a Utah nonprofit corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and swore and acknowledged to me that he executed the same for the purposes and in the capacity therein expressed, and that the statements contained therein are true and correct.

My Commission Expires: 03/09/2004

Lynne K. Greeno
Notary Public

STATE OF COLORADO)
) ss
City & County of Denver)

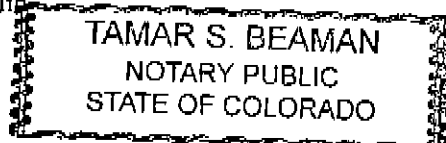


Before me, Tamar S. Beaman, a Notary Public in and for the said State on this 19th day of December, 2003, personally appeared Marie LaPorte, who is well known to me to be the Director, Denver Multifamily Hub, and the person who executed the foregoing instrument by virtue of the authority vested in him by Section 7(d) of the Department of Housing and Urban Development, Act 42 U.S.C.A. §3535(d), as amended, and I having first made known to him the contents thereof, he did acknowledge the signing thereof to be his free and voluntary act and done on behalf of Mel Martinez, as the Secretary of Housing and Urban Development, for the uses, purposes and considerations therein set forth.

Witness my hand and official seal the 19th day of December, 2003.

My Commission Expires: 10-28-06

Tamar S. Beaman
Notary Public



My Commission Expires 10/28/2006

EXHIBIT A

E 1942529 B 3440 P 320

Order Number: 01029316-AA

Beginning at a point on the North boundary of 500 South Street (a 66 foot wide right of way) which point is North 89 deg. 38'33" East 67.96 feet along the section line and South 0 deg. 11'23" East 516.71 feet along the centerline of 400 East Street (a 66 foot wide right of way) to an existing brass monument and North 89 deg. 44'04" East 486.42 feet along said centerline of said 500 South Street and North 0 deg. 11'23" West 33.00 feet from the relocated Northwest corner of Section 29, Township 2 North, Range 1 East, Salt Lake Base and Meridian; and running thence South 89 deg. 44'04" West 194.50 feet along said North boundary of 500 South Street; thence North 0 deg. 11'23" West 236.50 feet; thence North 89 deg. 44'04" East 26.08 feet; thence North 0 deg. 11'23" West 71.60 feet; thence North 89 deg. 44'04" East 147.05 feet; thence Southeasterly 8.84 feet along the arc of a 330.00 foot radius curve to the left through a central angle of 1 deg. 32'03" (radius point bears North 71 deg. 02'03" East from the beginning of the curve); thence South 20 deg. 30'00" East 53.05 feet; thence South 00 deg. 11'23" East 249.99 feet to the point of beginning.

04-069 - 0101 - 1st
0003

nw 29 2n-1E

E 1942529 B 3440 P 321

AGREEMENT OF LEASE

by and between

**BOUNTIFUL RETREAT,
a Utah Nonprofit Corporation**

as Lessor

and

**SOUTH DAVIS COMMUNITY HOSPITAL, INC.,
a Utah Nonprofit corporation**

as Lessee

Dated effective as of June 1, 2003

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AGREEMENT OF LEASE

AGREEMENT OF LEASE made effective as of this 1st day of June, 2003, by and between **BOUNTIFUL RETREAT**, a Utah nonprofit corporation (hereinafter called "*Landlord*"), and **SOUTH DAVIS COMMUNITY HOSPITAL, INC.**, a Utah nonprofit corporation (hereinafter called "*Tenant*").

WITNESSETH:

WHEREAS, Landlord has heretofore been the sponsor of and owns and operates a 36-unit assisted living facility at the premises described on Exhibit A hereto known as the Bountiful Retreat, Bountiful, Davis County, Utah (FHA Project No. 105-43044-NP) (the "*Project*"); and

WHEREAS, the construction and equipping of the Building (as hereinafter defined) was financed through a mortgage insured by the Federal Housing Administration of the U.S. Department of Housing and Urban Development ("FHA ") under Section 232 of the National Housing Act; and

WHEREAS, Landlord desires to lease the Premises to Tenant under the terms of this Lease, *provided* that the FHA shall approve this Lease;

WHEREAS, reference is made to Section 37.1 of this Lease for the definitions of some of the terms used herein.

NOW, THEREFORE, in consideration of the mutual promises herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I

DEMISED PREMISES

Section 1.1. Landlord hereby leases to Tenant all that certain parcel of land situate in Bountiful, Utah, as described in the legal description attached hereto as *Exhibit A* (hereinafter called the "*Land*"), together with (a) the assisted living facility and supporting facilities and all improvements now or hereafter erected on the Land, and including all easements, tenements, appurtenances, hereditaments, fixtures, rights and privileges belonging or in any way appertaining or beneficial thereto, and (b) all personal property (hereinafter called "*Personal Property*") owned by Landlord and used in connection with such building, and such additions or replacements thereto as may be made from time to time (herein collectively called the "*Building*"). All of the foregoing are hereinafter sometimes collectively called the "*Premises*."

ARTICLE II

TERM

Section 2.1. The term of this Lease shall commence on the date first written above (the "*Commencement Date*") and shall have a term extending to June 1, 2013.

Section 2.2. Notwithstanding any other provisions of this Lease to the contrary, as required by: (a) Section 10 of the Regulatory Agreement (HUD-92466-NHL) dated as of December 1, 2003, and recorded December 22, 2003 as Entry No. 1942529 in the Office of the County Recorder of Davis County, Utah ("*Recorder's Office*") in Book 3440, Page 317, between the Secretary of Housing and Urban Development ("*Secretary*") and Tenant (the "*Tenant Regulatory Agreement*"); and (b) Section 9(b) of the Regulatory Agreement (HUD-92466-E) dated as of June 12, 2002, and recorded June 7, 2002 as Entry No. 176239, in the Office of the County Recorder of Davis County, Utah ("*Recorder's Office*") in Book 3060, Page 442, between the Secretary and Landlord (the "*Landlord Regulatory Agreement*"), this Lease may be canceled upon thirty (30) days prior written notice by the Secretary to Landlord and Tenant, because of a violation of any of the provisions of the Tenant Regulatory Agreement, unless such violation is corrected to the satisfaction of the Secretary within such thirty (30) day period.

ARTICLE III

RENT

Section 3.1. Tenant agrees to pay and the Landlord agrees to accept as basic rent for the Premises the following amounts:

Tenant shall pay to Landlord, without deduction, counterclaim or set-off, an annual minimum rent, which shall be payable in advance, in the monthly installments set forth on *Exhibit B* hereto, on the first day of each calendar month during the term of the Lease, plus all amounts delineated as additional rent in this Lease. If the Commencement Date of the term shall fall on a day other than the first day of a calendar month, the minimum rent shall be apportioned pro rata on a per diem basis for the period between such Commencement Date and the first day of the following calendar month and such apportioned sum shall be paid on such Commencement Date. Notwithstanding anything herein to the contrary, payments by Tenant to or on behalf of Landlord shall at all times be sufficient to enable Landlord to make all payments on the Mortgage (although Landlord shall remain solely liable for the payments required pursuant to the Mortgage and for the performance and observance of the other agreements on its part contained in the Mortgage), including, but not limited to, principal, interest, payment to reserve for taxes, insurance and similar impositions, payments to the Reserve for Replacements and payments to take care of necessary maintenance, pursuant to the requirements of the Landlord Regulatory Agreement and the Tenant Regulatory Agreement for the Premises and all other amounts delineated as additional rent in this Lease.

ARTICLE IV

IMPROVEMENTS

Section 4.1. The Building erected and installed on the Land by either Landlord or Tenant, and any other or subsequent alterations, decorations, or additions thereto and/or improvements thereof whether erected or installed by Landlord or Tenant shall, become the property of Landlord upon such erection or installation.

Section 4.2. During the initial term of this Lease, and any renewal or extension thereof, Tenant shall have the right, at its own expense, with the prior written approval of the Mortgagee and FHA, if required, to make alterations and improvements to the Premises which may be necessary for carrying on its business; *provided, however,* that Tenant shall not, without the prior written consent of Landlord, make any additions, alterations or improvements to the Premises which would substantially alter or change the architectural or structural character of the Building or would cause a default under the Mortgage and/or the Regulatory Agreement.

Section 4.3. Notwithstanding the provisions of Section 4.1, Tenant shall, at its sole cost, establish, fund and maintain the Reserve for Replacements Account if, when and to the extent that such reserves are required by FHA. Any amounts in such Reserve for Replacements Account or amounts received in respect of such reserves upon a disposition of the Premises shall belong to Tenant.

Section 4.4. Tenant shall fund and maintain any reserves or escrows not heretofore fully funded by Landlord, whether or not specifically identified in this Lease, that Landlord would otherwise be required to fund and maintain, pursuant to the Tenant Regulatory Agreement, the Landlord Regulatory Agreement or the Mortgage. If and to the extent that Tenant does fund and maintain any such reserve or escrow, the monies remaining therein when such reserve or escrow is released or terminated shall belong to Tenant and shall be returned to Tenant by Landlord immediately after Landlord receives such monies or a credit in the amount of such monies.

ARTICLE V

HEAT, VENTILATION, AIR CONDITIONING AND ELECTRICITY

Section 5.1. Tenant shall be solely responsible for and shall promptly pay, as additional rent, all charges for water and sewer services, heat, ventilation, air conditioning and electricity used or consumed in the Premises and all other costs and expenses involved in the maintenance, care and use of the heat, ventilation, air conditioning and electrical facilities and equipment within the Premises.

ARTICLE VI**INDEMNIFICATION OF LANDLORD**

Section 6.1. Subject to the provisions of Section 33.2 herein, Tenant shall defend, indemnify and save harmless Landlord against and from all loss, liabilities, penalties, damages, expenses and judgments, including attorneys' fees, which may be imposed upon or incurred by or asserted against Landlord or Landlord's fee or reversionary interest in the Premises by reason of any injury or claim of injury to persons or property of any nature and howsoever caused, arising out of the use, occupancy and control of the Premises at any time during the term, or any renewal or extension thereof, including those resulting from any work in connection with any alterations, changes, new construction or demolition, unless caused by the negligence of Landlord. Tenant is hereby subrogated to any rights of Landlord against any other parties whomsoever in connection therewith.

ARTICLE VII**CONSTRUCTION WARRANTIES; MAINTENANCE,
REPAIRS AND OTHER SERVICES**

Section 7.1. (a) From and after the commencement of the term of this Lease, Tenant shall be responsible for the repair and replacement of any portion of the Building which shall be found to be defective or not in accordance with any and all plans approved by Mortgagee and FHA, including the making of and payment for major and minor structural and non-structural repairs to the Building, including (without limitation) repairs to the roof, the interior and exterior walls and the plumbing, heating and electrical systems, and whether ordinary or extraordinary, foreseen or unforeseen. The costs or charges for structural repairs and replacements shall be paid out of the Reserve for Replacement to the extent permitted by FHA. Furthermore, during the term of this Lease, Tenant shall at its sole cost and expense be solely responsible for normal recurring and routine maintenance of the Premises, including painting (both exterior and interior), as and when required.

(b) Landlord shall, if and to the extent permitted by the Mortgagee and FHA, make available to Tenant, to the extent of Tenant's actual expenditures therefor, any net monies received by Landlord in reimbursement of or in compensation for damage or loss to the Premises under any insurance policy on the Premises, but only in the event that Tenant and Landlord agree that Tenant shall fully repair the damage or restore the loss regardless of whether such insurance proceeds are adequate to pay the full cost of such repair or restoration. Landlord shall, to the extent permitted by FHA and the Mortgagee, and to the extent not required to be retained by Landlord, assign to Tenant, and Tenant shall have the benefit of, all rights, including any warranties, arising under all contracts for the reconstruction, rebuilding and re-equipping of the Building and improvements on the Land or the supply of materials therein and shall assign the roofing bond, if any, with surety to Tenant.

(c) Tenant shall use all portions of the Premises (including without limitation, all parking areas, sidewalk, curbs and access ways) in a manner which shall keep them in a clean and orderly condition, free of dirt, rubbish, snow, ice and unlawful obstruction and shall not permit or cause any damage, waste or injury to the Premises and in addition thereto Tenant shall make all repairs as needed to the driveways, parking areas, access ways, common areas, sidewalks, crossovers and curbs and shall be responsible for and pay all charges for exterminating service and trash and garbage removal services. In addition, Tenant shall be solely responsible for and shall promptly pay all charges for landscaping, gardening and snow removal.

ARTICLE VIII

LANDLORD'S COVENANT OF QUIET ENJOYMENT

Section 8.1. Landlord covenants and agrees that upon Tenant's paying the rent and observing and performing all of the terms, provisions and conditions on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the Premises for the initial term of this Lease, and any renewal or extension thereof, without hindrance or interruption by Landlord or any other person or persons lawfully claiming by, through or under Landlord, subject, nevertheless, to the terms and conditions of this Lease.

ARTICLE IX

COMPLIANCE WITH LAWS; ENVIRONMENTAL MATTERS

Section 9.1. Tenant shall, throughout the term of this Lease, at Tenant's sole cost and expense, promptly comply with all laws and ordinances and notices, orders, rules, regulations and requirements of all federal, state and municipal governments and appropriate departments, commissions, boards, agencies and officers thereof, and notices, orders, rules and regulations of the National Board of Fire Underwriters, or any other body now or hereafter constituted exercising similar functions, relating to all or any part of the Premises, exterior as well as interior, foreseen or unforeseen, ordinary as well as extraordinary, structural as well as non-structural, or to the use or manner of use of the Premises or to the sidewalks, parking areas, curbs and access ways, if any, adjoining the Premises. Without limiting the generality of the foregoing, Tenant shall keep in force at all times all licenses, consents and permits necessary for the lawful use of the Premises for the purposes herein provided and Tenant shall pay all personal property taxes, income taxes, license fees, and other taxes which are or may be assessed, levied or imposed upon Tenant in connection with Tenant's operation of its business upon the Premises. Tenant shall likewise observe and comply with the requirements of all policies of public liability, fire and other policies of insurance at any time in force with respect to the Premises.

Section 9.2. Without limiting the generality of Section 9.1, Tenant shall conduct, and cause to be conducted, all operations and activity at the Premises in compliance with, and shall in all other respects applicable to the Premises comply with, all applicable present and future federal, state, municipal and other governmental statutes, ordinances, regulations, orders, directives, guidelines and other requirements, and all present and future requirements of common

law, concerning the environment (hereinafter called "*Environmental Statutes*") including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 *et seq.*, the Clean Air Act, 42 U.S.C. §§7401 *et seq.*, and the Toxic Substances Control Act, 15 U.S.C. §§2601 *et seq.*, all as amended, and (i) those relating to the generation, use, handling, treatment, storage, transportation, release, emission, disposal, remediation or presence of any material, substance, liquid, effluent or product, including, without limitation, hazardous substances, hazardous waste or hazardous materials, (ii) those concerning conditions at, above or below the surface of the ground and (iii) those concerning conditions in, at or outside of buildings.

Section 9.3. Permits. Tenant, in a timely manner, shall obtain and maintain in full force and effect all permits, licenses and approvals, and shall make and file all notifications and registrations, as required by Environmental Statutes. Tenant shall at all times comply with the terms and conditions of any such permits, licenses, approvals, notifications and registrations.

Section 9.4. Documents. Tenant shall Provide to Landlord copies of the following, forthwith after each shall have been submitted, prepared or received by Tenant or any occupant of the Premises: (i) all applications and associated materials submitted to any governmental agency relating to any Environmental Statute; (ii) all notifications, registrations, reports and other documents, and supporting information, prepared, submitted or maintained in connection with any Environmental Statute; (iii) all permits, licenses, approvals, and amendments or modifications thereof, obtained under any Environmental Statute; and (iv) any correspondence, notice of violation, summons, order, complaint, or other document received by Tenant or any occupant of the Premises to compliance with any Environmental Statute.

Section 9.5. Tanks. Tenant, without the prior written consent of Landlord, shall not install or cause, suffer or permit the installation of, any above or underground storage tank, at the Premises. If Tenant does install or cause, suffer or permit the installation of any such tank, Tenant shall comply with all applicable laws as to its installation, maintenance, operation and closure, including any requirement for the maintenance of liability insurance with respect to risks associated with any such tank. If such liability insurance is required to be maintained, Landlord shall be named as an additional insured thereunder and the provisions of Section 10 hereof shall apply thereto. Upon termination of this Lease, Landlord shall have the option of requiring that Tenant, at Tenant's sole cost and expense, remove any tank installed by Tenant and any associated contaminated material and other contamination and perform all tests required by Landlord and any required by Environmental Statutes and any other applicable governmental requirements and provide Landlord and all required government agencies with the results of such tests in such form as reasonably required by Landlord or as required by law.

Section 9.6. Operations. Tenant shall not cause or suffer or permit to occur at, in, on or under the Premises any generation, use, manufacturing, refining, transportation, emission, release, treatment, storage, disposal, presence or handling of hazardous substances, hazardous wastes or hazardous materials (as such terms are now or hereafter defined under any Environmental Statute) (herein called "*Hazardous Substances*") or any other material, substance,

liquid, effluent or product now or hereafter regulated by any Environmental Statute (also called "Hazardous Substances"), except that construction materials (other than asbestos or polychlorinated biphenyls), office equipment, fuel and similar products (if contained in vehicles) and cleaning solutions, and other maintenance materials that are or contain Hazardous Substances may be used, generated, handled or stored on the Premises, *provided* such is incident to and reasonably necessary for the operation and maintenance of the Premises as an assisted living facility and is in compliance with all Environmental Statutes and all other applicable governmental requirements. Tenant shall not cause or allow the generation, use, manufacturing, refining, transportation, emission, release, treatment, storage, disposal, presence or handling of Hazardous Substances at, in, on or under the Premises, except as provided in the previous sentence or, as specifically provided for in and performed in compliance with a permit, license or approval obtained from a governmental agency having jurisdiction and in compliance with all Environmental Statutes and all other applicable governmental requirements. Should any release of any Hazardous Substances occur at the Premises, Tenant shall immediately contain, remove and dispose of off the Premises, such Hazardous Substances, and any material that was contaminated by the release and remedy and mitigate all threats to human health or the environment relating to such release. When conducting any such measures, Tenant shall comply with Environmental Statutes.

Section 9.7. Required Governmental Approval of Property Transfers. If the use of the Premises by Tenant, or any operation or activity conducted at the Premises during the term of this Lease, shall be such as requires, under any present or future Environmental Statute, the obtaining of an approval (herein called an "*Environmental Approval of Transfer or Change*") by any governmental agency, or an acknowledgment by such agency that such approval is not required, (i) in order to change or transfer ownership of the Premises or any interest in Landlord or in any entity which directly or indirectly controls Landlord, (ii) in order to change or transfer Tenant's interest in this Lease or any interest in Tenant or in any entity which directly or indirectly controls Tenant or (iii) in connection with: (A) cessation of all or any operations or activity at the Premises for any reason or (B) a change in or transfer of any operations or activity at the Premises or (C) the expiration or termination of this Lease (each of the transactions and occurrences referred to in the foregoing clauses (i), (ii) or (iii) being hereinafter called a "*Change*"), Tenant, at Tenant's sole cost and expense, shall, in compliance with all Environmental Statutes, apply for, and prior to the Change deliver to Landlord, a copy of the required approval or acknowledgment and Tenant shall perform all remedial actions required, by such governmental agency for the issuance of the approval, in whole or in part by reason of Tenant's use of the Premises or operations or activities at the Premises during the term of this Lease; *provided* that as to any Change which is a change or transfer of ownership of the Premises or of an interest in Landlord or in any entity which directly or indirectly controls Landlord, Tenant shall instead (x) promptly comply with any request of Landlord to provide such information, statements or affidavits as to operations and activities at the Premises during the term of this Lease, and as to the use of the Premises by Tenant, as may be determined by Landlord to be necessary, (y) either promptly perform or, at the option of Landlord, reimburse Landlord within fifteen (15) days after demand for Landlord's costs of, all remedial actions required by any governmental agency for issuance of the Environmental Approval of Transfer or Change and (z) pay, or reimburse Landlord for, all other costs and expenses which are

attributable to the existence of Tenant's tenancy or to Tenant's use of the Premises or to any operation or activity at the Premises during the term of this Lease and were incurred to obtain such required approval or acknowledgment. Any such payment or reimbursement shall be subject to the provisions of Section 33.2. Tenant covenants, represents and warrants that any Approval of Transfer or Change, but such requirement shall not have been made applicable by Tenant's use of the Premises or operations or activities conducted at the Premises during the term of this Lease, and if an official statement of such non-applicability shall be obtainable from the applicable governmental agency, then, whether or not the obtaining of such statement is required by law, Tenant, at Tenant's sole cost and expense, shall obtain and deliver such statement to Landlord before the change occurs (in the case of a change described in clause (ii) or clause (iii) above) or promptly upon request of Landlord (in the case of a change described in clause (i) above).

Section 9.8. Activities of Others. Tenant agrees that any contracts or agreements of any kind entered into or renewed by Tenant, for the occupancy of or the performance of activities on the Premises will contain the same limitations on the activities of the other contracting party as are placed on Tenant by the foregoing subsections of this Section 9.

Section 9.9. Inspection. Tenant agrees to permit Landlord and its authorized representatives to enter, inspect and assess the Premises at reasonable times for the purpose of determining Tenant's compliance with the provisions of this Section 9. Such inspections and assessments may include obtaining samples and performing tests of soil, surface water, groundwater or other media.

Section 9.10. Indemnification. Subject to the provisions of Section 33.2 herein, Tenant hereby agrees to indemnify and to hold harmless Landlord of, from and against any and all expense, loss or liability suffered by Landlord by reason of Tenant's breach of any of the provisions of this Section 9, including, but not limited to, (i) any and all expenses that Landlord may incur in complying with any Environmental Statutes, (ii) any and all costs that Landlord may incur in studying, assessing, containing, removing, remedying, mitigating, or otherwise responding to, the release of any Hazardous Substance or waste at or from the Premises, (iii) any and all costs for which Landlord may be liable to any governmental agency for studying, assessing, containing, removing, remedying, mitigating, or otherwise responding to, the release of a Hazardous Substance or waste at or from the Premises, (iv) any and all fines or penalties assessed, or threatened to be assessed, upon Landlord by reason of a failure of Tenant to comply with any obligations, covenants or conditions set forth in this Section 9, and (v) any and all legal fees and costs incurred by Landlord in connection with any of the foregoing.

Section 9.11. Modifications. No subsequent modification or termination of this Lease by agreement of the parties, or otherwise shall be construed to waive, or to modify, any provisions of this Section 9, unless the termination or modification agreement or other document so states in writing and makes specific reference to this Section 9.

ARTICLE X

INSURANCE

Section 10.1. During the term of this Lease, and any renewal or extension thereof, and subject to the requirements of the Mortgagee and FHA, Tenant, at its expense, shall maintain in effect:

(a) plate glass and boiler, pressure vessels or similar apparatus insurance in such amount as Landlord may reasonably require;

(b) insurance on an occurrence basis against claims for personal injury (including death) and property damage arising from occurrences on, in or about the Premises, with broad form contractual liability coverage, under a policy or policies of comprehensive general liability insurance or commercial general liability insurance, with such limits as may be reasonably requested by Landlord from time to time, but not less than \$1,000,000 per person and \$2,000,000 per occurrence and \$5,000,000 annual aggregate for the Premises and, without limitation of the foregoing, within thirty (30) days after Landlord's request, Tenant shall have such annual aggregate increased (by the same or different policies) to such amount as Landlord may reasonably request by reason of occurrences during any policy year; and

(c) a fidelity bond or employee dishonesty insurance coverage in an amount equal to at least \$100,000, covering all persons who participate, directly or indirectly in the management and maintenance of the Premises and its assets, accounts and records.

Section 10.2. During the term of this Lease, and any renewal or extension thereof, and subject to the requirements of FHA and the Mortgagee, Tenant at its expense shall maintain in effect fire insurance (with broadest available form of extended coverage endorsement, including vandalism and malicious mischief) on the Building and all improvements and equipment therein in an amount equal to at least one hundred percent (100%) of the replacement cost thereof without deduction for depreciation.

Section 10.3. All insurance by Tenant pursuant to Sections 10.1 and 10.2 hereof shall be carried in favor of Landlord and Tenant as their respective interests may appear and shall contain a loss payable clause in favor of the Mortgagee and FHA. Any such insurance policy shall expressly provide that any loss is to be adjusted with and payable solely to Landlord or the assignee of Landlord, FHA and the Mortgagee.

Section 10.4. All such insurance shall be in such form and with such responsible companies as Landlord shall approve, which approval shall not be unreasonably withheld, and as FHA or the Mortgagee shall approve. Each policy shall contain a provision that no act or omission of Tenant shall affect or limit the obligation of the insurance company to pay Landlord or the Mortgagee or FHA the amount of the loss sustained. All policies shall provide for at least thirty (30) days written notice to the Landlord, FHA and the Mortgagee before cancellation or modification. Tenant may carry any insurance required by this Section under a blanket policy,

applicable to the Premises for the risks and in the amounts required pursuant to this Section, provided that all requirements of this Section shall be complied with in respect of such policy and that such policy shall provide that the coverage thereunder for the Premises and occurrences in, on or about the Premises shall not be diminished by occurrences elsewhere.

Section 10.5. If either Landlord or Tenant shall procure any insurance covering damage to the Premises, and if such insurance shall be in addition to similar policies required to be maintained pursuant to the provisions of this Lease, such additional policies shall expressly provide that the proceeds thereof shall be received, held and applied by the insured pursuant to the provisions hereof relating to insurance of the type in question.

Section 10.6. Each party mutually releases the other, to the extent of each party's insurance coverage, from any and all liability for any loss or damage which may be inflicted upon the person or property of such party even if such loss or damage shall be brought about by the fault or negligence of the other party, its agents or employees. Each of the parties hereto hereby agrees that all insurance policies maintained by each party shall contain a clause providing in substance that this release shall not affect such policies or the right of the insured to recover thereunder.

ARTICLE XI

DAMAGE BY FIRE

Section 11.1. If the Building and/or other improvements on the Premises shall be damaged or destroyed by fire or other casualty, Tenant, at Tenant's sole cost and expense, shall promptly and diligently proceed to repair, rebuild or replace such Building and other improvements, so as to restore the Premises to the condition in which they were immediately prior to such damage or destruction. Subject to the right of the Mortgagee to apply such funds in such manner as it determines with the consent of FHA, the net proceeds of any insurance recovered by reason of such damage or destruction in excess of the cost of adjusting the insurance claim and collecting the insurance proceeds (such excess being hereinafter called the "*net insurance proceeds*") shall be held in trust by Landlord or the Mortgagee of the Premises and released for the purposes of paying the fair and reasonable cost of restoring such Building and other improvements. Such net insurance proceeds shall be released from time to time as the work progresses to Tenant or to Tenant's contractors. Prior to the commencement of the work, Tenant shall deliver to Landlord reasonable proof that such net insurance proceeds are adequate to pay the cost of such restoration. If such net insurance proceeds are not adequate, Tenant shall pay, out of funds other than such net proceeds, the amount by which such cost will exceed such net insurance proceeds and shall furnish proof to Landlord of the payment of such excess for work performed before Landlord or the Mortgagee shall release any part of such net insurance proceeds. If such net insurance proceeds are more than adequate, the amount by which such net insurance proceeds exceed the cost of restoration will be retained by Landlord or applied to repayment of the Mortgage at Landlord's election.

SIGNS

Section 12.1. Landlord hereby gives to Tenant the right to erect and maintain signs in or about the Premises, *provided* that they are lawfully and properly constructed and lawfully maintained. All such signs which are installed or placed upon the Premises by Tenant shall become the property of Landlord upon the installation and, at the election of Landlord, upon termination of this line shall be removed by Tenant, at Tenant's own cost and expense, and Tenant shall repair any damage to the Premises incurred by the installation or removal of such signs.

ARTICLE XIII

CONDEMNATION

Section 13.1. If all of the Premises is taken or condemned for a public or quasi-public use, this Lease shall terminate as of the date title to the condemned real estate vests in the condemnor and the rent herein reserved shall be apportioned and paid in full by Tenant to Landlord to that date and all rent prepaid for periods beyond that date shall forthwith be repaid by Landlord to Tenant and neither party shall thereafter have any liability hereunder.

Section 13.2. If only part of the Premises is taken or condemned for a public or quasi-public use, Tenant shall restore the Building and other improvements upon the Premises to a condition and to a size as nearly comparable as reasonably possible to the condition and size thereof immediately prior to the taking, and there shall be an equitable abatement of the minimum rent according to the value of the Premises before and after the taking. In the event that the parties are unable to agree upon the amount of such abatement, either party may submit the issue for arbitration pursuant to the rules then obtaining of the American Arbitration Association and the determination or award rendered by the arbitrator(s) shall be final, conclusive and binding upon the parties and not subject to appeal, and judgment thereon may be entered in any court of competent jurisdiction.

Section 13.3. Tenant hereby waives all claims against Landlord and all claims against the condemnor, and Tenant hereby assigns to Landlord all claims against the condemnor, including (without limitation) all claims for leasehold damages and diminution in the value of Tenant's leasehold interest. If only part of the Premises is taken or condemned for a public or quasi-public use, subject to the right of the Mortgagee to apply such funds in such manner as it determines, the net proceeds of any condemnation award recovered by reason of any taking or condemnation of the Premises in excess of the cost of collecting the award and in excess of any portion thereof attributable to the then current market value of the land taken or condemned (such excess being hereinafter called the "*net condemnation proceeds*") shall be held in trust by Landlord or the Mortgagee of the Premises and released for the purpose of paying the fair and reasonable cost of restoring the Building and other improvements damaged by reason of the taking or condemnation. Such net condemnation proceeds shall be released from time to time as the work

progresses to Tenant or to Tenant's contractors. Prior to the commencement of the work, Tenant shall deliver to Landlord reasonable proof that such net condemnation proceeds are adequate to pay the cost of such restoration. If such net condemnation proceeds are not adequate, Tenant shall pay, out of funds other than such net condemnation proceeds, the amount by which such cost will exceed such net condemnation proceeds and shall furnish proof to Landlord of the payment of such excess for work performed before Landlord or any such mortgagee shall release any part of such net condemnation proceeds. If such net condemnation proceeds are more than adequate, the amount by which such net condemnation proceeds exceed the cost of restoration will be retained by Landlord or applied to repayment of any mortgage secured by the Premises at Landlord's election. In the event that the parties are unable to agree upon the portion of the award attributable to the then current market value of the land taken or condemned, either party may submit the issue for arbitration pursuant to the rules then obtaining of the American Arbitration Association and the determination or award rendered by the arbitrator(s) shall be final, conclusive and binding upon the parties and not subject to appeal, and judgment thereon may be entered in any court of competent jurisdiction.

Section 13.4. If the condemnor should take only the right to possession for a fixed period of time or for the duration of an emergency or other temporary condition, then, notwithstanding as hereinabove provided, this Lease shall continue in full force and effect without any abatement of rent, but the amounts payable by the condemnor with respect to any period of time prior to the expiration or sooner termination of this Lease shall be paid by the condemnor to Landlord and the condemnor shall be considered a subtenant of Tenant. If the amounts payable hereunder by the condemnor are paid in monthly installments, Landlord shall apply the amount of such installments, or as much thereof as may be necessary for the purpose, toward the amount of rent due from Tenant as rent for that period, and Tenant shall pay to Landlord any deficiency between the monthly amount thus paid by the condemnor and the amount of the rent, while Landlord shall pay over to Tenant any excess of the amount of the award over the amount of the rent.

ARTICLE XIV

IMPOSITIONS

Section 14.1. Tenant shall pay as additional rent during the initial term of this Lease, and any renewal or extension thereof, before any fines, penalties, interest or costs may be added thereto for non-payment thereof, all charges, payments and assessments, real estate taxes, water and sewer rental charges, excise, license and permit fees, franchise charges and other government charges, overpayment or otherwise, general and special, ordinary and extraordinary, unforeseen and foreseen of any kind and nature whatsoever which at any time prior to or during the term of the Lease may be assessed, levied, confirmed, imposed or become a lien upon (i) the Premises or any appurtenances thereto, (ii) such franchises as may be appurtenant to the use of the Premises, (iii) this transaction, or any document to which Tenant is a party, creating or transferring an interest or estate in the Premises (all such charges, payments and assessments, franchise charges, rates and charges, excise levies, license and permit fees and other governmental charges being herein referred to as "*Imposition*" and any one of the same being hereinafter referred to as an

"Imposition"), and Tenant shall present receipts evidencing such payment to Landlord at least thirty (30) days before the last day when the same may be paid without interest or penalty.

Section 14.2. If Landlord is required to make deposits for one (1) or more Impositions with the Mortgagee or FHA, then Tenant shall deposit with Landlord fifteen (15) days before the payment is due to the Mortgagee or FHA a sum as estimated by the Mortgagee or FHA equal to one-twelfth (1/12) of the amount of such annual estimated Impositions. Such amounts so deposited are to be retained by Landlord or the Mortgagee without interest and are to be used to pay such Impositions as the same become due. To the extent Tenant makes such deposits, Tenant shall be relieved and released from the requirement of paying such Impositions to the governmental agency assessing the same. If such deposits shall not be sufficient to pay the Impositions intended to be covered thereby, Tenant shall, forthwith upon demand, deposit such deficiency with Landlord so that such Impositions may be paid without interest or penalty. If Landlord shall fail to pay such Impositions as provided herein, and provided Landlord has received sufficient monies from Tenant for the purpose of paying the same, Tenant may, at its option, pay such Impositions and deduct the amount so paid from the next ensuing rental installment or installments payable hereunder.

Section 14.3. If at any time during the term of this Lease, the State of Utah or any political subdivision thereof shall levy, assess or impose an Imposition on or measured by the rents or income received by Landlord from the Premises, or if any additional or substitute Federal, state or local corporation tax, income tax or franchise tax shall be substituted in lieu of one or more Impositions, the same shall be deemed to be included within the term "Impositions" for the purpose of this Lease, to the extent that such Impositions would be payable if the Premises were the only property of the Landlord subject to such Impositions, taking account of all deductions, exemptions and exclusions authorized or permitted by law, and Tenant shall pay and discharge the same as herein provided with respect to the payment of Impositions. Nothing herein contained, however, shall require Tenant to pay Federal, state or local income taxes assessed against Landlord, or municipal, state or Federal capital stock, estate, succession or inheritance taxes of Landlord.

Section 14.4. Tenant shall have the right, after prior written notice to Landlord, either in its name or in that of Landlord, to contest the amount or validity, in whole or in part, of any such Impositions by appropriate proceedings, conducted in good faith and with due diligence, and to request the postponement or deferment of the payment of such Impositions if and so long as such postponement or deferment shall not constitute a default under the terms of any mortgage or lien on the Premises and all of the following (a) - (c) are true:

(a) Such proceeding shall operate to suspend the collection of such Impositions from Landlord and out of the Premises;

(b) The Premises would not be in immediate danger of being forfeited or lost by reason of such proceeding, postponement or deferment; and

(c) In the case of any such Imposition which might be or become a lien, encumbrance or charge upon and which shall result in the threat of immediate forfeiture of the Premises or Tenant's leasehold estate, then prior to the date upon which such Imposition would become delinquent Tenant shall have furnished, either in the proceedings in question or, at Tenant's option, to Landlord, such security as may be required in such proceedings, or as may reasonably be requested by Landlord, to insure payment of such Imposition and prevent any forfeiture or loss as aforesaid, not to exceed in aggregate value or principal amount (as the case may be) one hundred ten percent (110%) of the amount of such Imposition and any interest, penalties, costs and other similar charges in connection therewith, and in such event Landlord shall not have the right during such period to pay, remove or discharge such Imposition pursuant to the provisions of Section 17 hereof; and upon the termination of such proceedings, Tenant shall pay the amount of such Imposition, or any part thereof, as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of the proceedings together with any costs, fees, interest, penalties or other liabilities in connection therewith, and upon such payment Landlord shall return any amount deposited with it with respect to such Imposition as aforesaid, plus interest earned on such deposit, if any. If, at any time during the course of the proceedings, Landlord shall deem the amount of deposit to be insufficient to pay the Imposition, Landlord may request Tenant to make an additional deposit with Landlord for the payment and discharge of the Imposition.

Tenant, if not otherwise in default, shall be entitled promptly to any refund received by Landlord of any Imposition which shall have been paid by Tenant, or which shall have been paid by Landlord and previously reimbursed in full by Tenant to Landlord.

Landlord shall not be required to join in any proceedings referred to in this Section 14.4 hereof, unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of Landlord, in which event Landlord shall join in such proceedings or permit the same to be brought in its name. Landlord shall not ultimately be subjected to any liability for the payment of any costs or expenses in connection with any such proceedings and Tenant shall defend, indemnify and save harmless Landlord from any and all costs, expenses, damages, fees or interest including reasonable counsel fees, arising out of or in connection with any such contest.

Section 14.5. Any Impositions levied or imposed for the tax year in which this Lease shall commence or end, or any renewal or extension thereof shall end, shall be apportioned so that Tenant shall pay only that portion thereof which corresponds with the portion of such year as is within the term of this Lease or any renewal or extension thereof and in the event of any termination of this Lease for reasons beyond Tenant's control, not involving a default by Tenant, such Imposition shall likewise be so apportioned to the date of termination.

Section 14.6. It is the intention of the parties hereto that this Lease is a "net lease" and that Landlord shall receive the annual minimum rent hereinabove provided as net income from the Premises, not diminished by (a) any Imposition of any public authority of any nature whatsoever during the entire term of this Lease notwithstanding any changes in the method of taxation or raising, levying or assessing any such imposition, or any changes in the name of any Imposition,

or (b) any expenses or charges required to be paid to maintain and carry the Premises or to continue the ownership of Landlord, other than payments under any mortgage now existing or hereafter created by Landlord.

ARTICLE XV

MECHANICS' LIENS

Section 15.1. Tenant shall promptly pay all contractors and materialmen for work ordered by Tenant or required for Tenant's account, so as to minimize the possibility of a lien attaching to the Premises, and should any such lien be made or filed, Tenant shall bond against or discharge the same within ten (10) days after written request by Landlord. Nothing herein contained shall be construed as a consent on the part of Landlord to subject the fee or the estate of Landlord to liability for work ordered other than by Landlord, it being expressly understood that Landlord has not consented to any such work and Landlord's estate shall be subject to no such liability.

ARTICLE XVI

SURRENDER OF PREMISES

Section 16.1. At the expiration or earlier termination of this Lease, Tenant shall surrender all keys for the Premises to Landlord and shall inform Landlord of all combinations on locks, safes and vaults, if any, in the Premises. The condition of the Premises shall be in such order and condition as Tenant is required to keep the Premises during the term of the Lease, except for conditions caused by reasonable wear and tear, and fire or other insured casualties. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this Lease.

ARTICLE XVII

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 17.1. If Tenant shall at any time fail to pay any charge or Imposition or perform any other act on its part to be performed, then Landlord, after ten (10) days written notice to Tenant and without waiving or releasing Tenant from any obligation hereunder, may pay such charge or sum of money or make any other payment or perform any other act on Tenant's part to be made or performed, and may enter upon the Premises for any such purpose, and take all such action thereon as may be necessary therefor. All sums so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such act together with interest thereon at a rate of twelve percent (12%) per annum from the respective dates of Landlord's making of each such payment or incurring of each such cost and expense, shall constitute additional rent payable by Tenant under this Lease and Landlord shall have the same remedies for the collection thereof or otherwise as in the case of default in the payment of monthly rent reserved in this Lease. Tenant shall have the same rights as are provided to Landlord under this

Section 17.1, in the event Landlord fails to make a payment or perform a duty required of it under this Lease. ' 1

ARTICLE XVIII

INSPECTION BY LANDLORD

Section 18.1. Landlord and his agents shall have the right to enter into and upon the Premises or any part thereof at all reasonable hours for the purpose of examining the same and making such repairs or alterations therein as may be necessary for the safety and preservation thereof, if Tenant shall be in default in that regard; but nothing herein contained shall be construed to impose any duty upon Landlord to make such repairs or alterations, except as otherwise specifically provided herein.

Section 18.2. As required by Section 9 of the Landlord Regulatory Agreement and Section 14 of the Tenant Regulatory Agreement, (a) Tenant shall cause the Land, Building, and Personal Property included in the Premises, and all plans, offices, apparatus, devices, books, contracts, records, documents and other papers relating thereto, to be maintained at all times in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by the Secretary or his duly authorized agents; and (b) Tenant shall keep copies of all written contracts or other instruments which affect the Premises for such time periods as FHA may from time to time specify, all or any of which may be subject to inspection and examination by the Secretary or his duly authorized agents at any reasonable time.

Section 18.3. Tenant shall provide Landlord, on a timely basis, with all information in Tenant's control regarding the Premises and its operation that is needed in order to enable Landlord and its accountants to prepare the annual financial report that Landlord is required to submit to FHA and the Mortgage pursuant to Section 9 of the Landlord Regulatory Agreement, and Tenant shall otherwise cooperate with Landlord and its accountants in the preparation of all financial reports required to be submitted to FHA.

ARTICLE XIX

TENANT'S CERTIFICATE

Section 19.1. Tenant agrees at any time and from time to time, within ten (10) days after Landlord's written request, to execute, acknowledge and deliver to Landlord a written instrument in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that it is in full force and effect as modified and stating the modifications), and the dates to which minimum rent, additional rent and other charges have been paid in advance, if any, and stating whether or not, to the best knowledge of Tenant, Landlord is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Tenant may have knowledge, and such other matters as Landlord may reasonably request, it being intended that any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser of the fee or

Landlord's estate or any mortgagee or prospective mortgagee, any assignee of Landlord's interest in this Lease or of any mortgage or any purchaser of an interest in Landlord or by any other person.

ARTICLE XX

DEFAULTS BY TENANT

Section 20.1. Any one (1) or more of the following shall constitute a default by Tenant hereunder:

If Tenant, during the term of this Lease, or any renewal or extension thereof:

(a) Does not pay in full when due and payable any and all rents, Impositions or any other amounts herein agreed to be paid by Tenant; or

(b) Violates or fails to perform or otherwise breaches any covenant or provision of this Lease or the Tenant Regulatory Agreement; or

(c) Permits the leasehold estate or any property of Tenant to be exposed for sale on judgment or execution process by any Sheriff, Marshall, or Constable; or

(d) Makes an assignment for the benefit of creditors or is adjudicated a bankrupt or files a bill in equity or otherwise initiates proceedings for the appointment of a receiver of its assets, or files a petition or otherwise initiates any proceeding in any court for a composition with its creditors or relief in any manner from the payment of its debts when due under any State or Federal law, or any proceedings under the Federal bankruptcy law or for the appointment of a receiver shall be instituted by Tenant or any creditor of Tenant under any State or Federal law and shall not be withdrawn or dismissed within sixty (60) days.

ARTICLE XXI

REMEDIES OF LANDLORD

Section 21.1. This Lease and the term of the estate hereby granted are subject to the conditional limitation that in the event of a default by Tenant, as provided in Section 20.1 hereof, then, at the sole option of Landlord:

(a) *Acceleration of Rent.* The rent for the entire balance of the term hereof and any expenses and charges payable under sections (c), (d) and (e) hereof together with all costs and officers' commissions (including watchmen's wages and constables' commissions) shall be taken to be due and payable and in arrears as if by the terms and provisions of this Lease said balance of rent and every part thereof were on that date payable in advance; and

(b) *Termination.* Landlord may serve upon Tenant a written notice that this Lease, and the term hereby created, will terminate on a date to be specified in such notice. Thereafter, Tenant shall have no right to avoid such termination by payment of any sum due or by the performance of any condition, term, covenant, or provision of this Lease. Upon the date specified in the aforesaid notice of termination, this Lease and the term shall terminate and come to an end as fully and completely as if such date were the day herein definitely fixed for the end and expiration of this Lease and term, and Tenant shall immediately quit and surrender the Premises to Landlord; and

(c) *Lease.* Landlord may lease the Premises, or any part or parts thereof, to such person or persons as may, in Landlord's discretion, seem best and on such terms and conditions as Landlord may elect in its sole discretion, and Tenant shall be liable for any loss of rent, as well as any additional sums payable by Tenant, plus the costs and expenses of reletting (including brokers' commissions, attorneys, fees and court costs) for the balance of the then current term; and

(d) *Surrender of Possession.* Tenant's right of possession of the Premises shall thereupon cease and determine and the Landlord shall be entitled to possession of the Premises and to re-enter and forthwith proceed to recover possession of the Premises, all without demand of rent or demand of possession of the Premises by process of law; any notice to quit, or of intention to re-enter the Premises being hereby expressly waived by Tenant.

Section 21.2. Tenant hereby expressly grants to Landlord a security interest and lien upon all the Personal Property of Tenant, except for Tenant's files and other work product, as and for security for the rent hereinbefore provided to be paid. In order to perfect and enforce such lien, Landlord may at any time after default in the payment of rent by Tenant, seize and take possession of any and all Personal Property, except for Tenant's files and other work product, which may be found in and upon the Premises, and should Tenant fail to redeem any or all of the Personal Property seized by payment of whatever sum may be due Landlord under and by virtue of the provisions of this Lease, then and in that event Landlord shall have the right and power to sell such Personal Property at private sale, after five (5) days' written notice to Tenant of such private sale, and upon such terms and conditions as to Landlord may appear advantageous. After the payment of all proper charges incidental to such proceeding and sale, Landlord shall have the right and power to apply the proceeds thereof to the payment of any balance due on account of rent as aforesaid. In the event that, after applying the proceeds of such sale as provided in the immediately preceding sentence, there shall remain in the hands of Landlord a balance realized by Landlord from such sale, such balance shall be paid over to Tenant.

Section 21.3. The setting forth of remedies herein shall in no way limit the access and use by Landlord of all remedies available at law or in equity. All of the remedies hereinbefore given to Landlord and all rights and remedies given to it by law and equity shall be at Landlord's option cumulative and concurrent and the exercise of any one (1) or more of such remedies shall not preclude the exercise of any other. No determination of this Lease or the taking or recovering of the Premises shall deprive Landlord of any of its remedies or actions against Tenant for rent due

at the time or which, under the terms hereof, would in the future become due as if there had been no determination, nor shall the bringing of any action for rent or breach of covenant, or resort to any other remedy herein provided for the recovery of rent be construed as a waiver of the right to obtain possession of the Premises.

Section 21.4. In the event of Tenant's default in the payment of rent, Impositions or any other amounts herein agreed to be paid by Tenant when due, Landlord shall have the right to exercise any of the remedies provided in this Article 21 if such default has not been cured within a time period of twenty (20) days following the date of written notice of such default from Landlord. There shall be no grace period in the event of a default under subsection 20.1 (d) hereof. In the case of other defaults, Landlord shall have the right to exercise any of the remedies in this Article 21 if such default has not been cured within a time period of thirty (30) days following the date of written notice from Landlord specifying the nature of the default; *provided, however,* that if the default so specified shall be of such a nature that the same cannot be reasonably cured or remedied within said thirty-day period, Landlord shall have the right to exercise its remedies under Article 21 at any time after the expiration of such thirty-day period unless Tenant shall in good faith commence the curing or remedying of such default during such thirty-day period and thereafter shall diligently complete such cure or remedy.

ARTICLE XXII

HOLDING OVER

Section 22.1. Should Tenant hold over in possession with the consent of Landlord after the expiration of the term of this Lease or of any extended term, such holding over shall not be deemed to extend the term or renew the Lease, but the tenancy thereafter shall be from month-to-month only, at the rental in effect during the last month of the immediately preceding term, subject to being terminated by either party at the end of any month upon thirty (30) days prior written notice and subject to all of the other terms and conditions of this Lease.

ARTICLE XXIII

ASSIGNMENT OR SUBLETTING BY TENANT

Section 23.1. Tenant shall not have the right to assign this Lease or to sublet all or any part of the Premises, except in the ordinary course of business of providing services to patients of the assisted living facility, without the prior written consent of (a) Landlord, and (b) the Mortgagee, or FHA, if Tenant may not take such action without the consent of any such entity pursuant to law, the Tenant Regulatory Agreement or any other document or agreement to which Tenant is a party or by which Tenant is bound. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law. If Tenant is a corporation or other entity, any transfer, sale, pledge or other disposition, in any single transaction or cumulatively prior to the expiration of the term of this Lease, of fifty percent or more of the stock of, or interest in, Tenant, unless Tenant is a company listed on any

securities exchange, shall be deemed an assignment of this Lease and, therefore, prohibited without the prior written consent of Landlord.

Section 23.2. At least sixty (60) days prior to any proposed subletting or assignment, Tenant shall submit to Landlord a statement seeking Landlord's consent and containing the name and address of the proposed subtenant or assignee and financial information showing its creditworthiness, the terms of the proposed sublease or assignment including the proposed date for possession for such subtenant or assignee.

Section 23.3. In the event of any assignment of this Lease made with Landlord's consent, Tenant shall, nevertheless, remain liable for the performance of all of the terms, conditions and covenants of this Lease and will cause the assignee to execute and deliver to Landlord an assumption of liability agreement in form satisfactory to Landlord, including an assumption by the assignee of all of the obligations of Tenant and the assignee's ratification of and agreement to be bound by all of the provisions of this Lease.

ARTICLE XXIV

SUCCESSORS

Section 24.1. Except as herein otherwise provided, all rights and liabilities herein given or imposed upon the respective parties hereto shall extend to and be binding upon the several heirs, legal representatives, successors and assigns of said parties.

ARTICLE XXV

WAIVER

Section 25.1. No waiver by Landlord of any breach by Tenant of any of its obligations, agreements or covenants hereunder shall be a waiver of any subsequent breach of any obligation, agreement or covenant, nor shall any forbearance by Landlord to seek a remedy for any breach by Tenant be a waiver by Landlord of its rights and remedies with respect to such or any subsequent breach.

ARTICLE XXVI

ENTIRE AGREEMENT

Section 26.1. This Lease and the Exhibits attached hereto and forming a part hereof set forth all covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than those that are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to This Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by them.

ARTICLE XXVII

NOTICES

Section 27.1. All rent checks payable hereunder, and all notices to Landlord shall be delivered or mailed to it at Paragon Assisted Living, Inc., c/o South Davis Community Hospital, Inc., 401 South 400 East, Bountiful, Utah 84010, or such other address of which Landlord shall give Tenant notice. All notices to Tenant shall be delivered or mailed to it at South Davis Community Hospital, Inc., 401 South 400 East, Bountiful, Utah 84010, or such other address of which Tenant shall give Landlord notice. All notices hereunder shall be in writing, and, if mailed, shall be registered or certified mail, return receipt requested.

ARTICLE XXVIII

CAPTIONS AND SECTION NUMBERS

Section 28.1. The captions and sections numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Lease or affect this Lease.

ARTICLE XXIX

RECORDING

Section 29.1. If requested by Landlord or Tenant, the parties shall thereupon execute and acknowledge a memorandum or short form of lease for recording purposes which shall be recorded at the expense of the requesting party.

ARTICLE XXX

GOVERNING LAW

Section 30.1. This Lease shall be governed by the Laws of the State of Utah.

ARTICLE XXXI

USE

Section 31.1. Tenant covenants to use the Building as an assisted living facility and to so occupy it throughout the term of this Lease and any renewals or extensions thereof. Prior to the commencement of the initial term of this Lease, Tenant shall obtain all licenses and permits needed to operate the Premises as an assisted living facility; and throughout the term of this Lease, shall maintain in full force and effect all licenses and permits required from time to time to so operate the Premises. Tenant or any subtenant or assignee may, with the prior written consent of Landlord, Mortgagee and FHA, change the use of the Building at any time provided that at all times the entire Premises shall be used only for such purpose as is permitted by FHA.

Section 31.2. Tenant covenants and agrees that it will establish rates and charges for residents at the assisted living facility that are at or below standard charges for comparable facilities in the metropolitan Salt Lake City region. Tenant further covenants and agrees that it will establish a program for funding charitable discounts for residents that exhaust their personal resources. Such program will be funded from the excess of revenues over expenses of the assisted living facility and such other sources as may be determined by Tenant.

Section 31.3. Tenant and Landlord agree that there will be no voluntary reduction of bed capacity without the consent of FHA.

ARTICLE XXXII

SUBORDINATION; LANDLORD'S MORTGAGE OBLIGATIONS

Section 32.1. This Lease shall be subject and subordinate at all times to the lien of the Mortgage, the Landlord Regulatory Agreement and the Tenant Regulatory Agreement, without the necessity of any further instrument or act on the part of Tenant to effectuate such subordination. This Lease shall also be subject and subordinate at all times to the lien of any mortgages and/or other encumbrances hereafter placed upon the Premises without the necessity of any further instrument or act on the part of Tenant to effectuate such subordination, provided that the holder of any such mortgage or other encumbrance gives Tenant a written instrument in recordable form agreeing to the non-disturbance of Tenant for the term of this Lease, and any renewals or extensions thereof, so long as Tenant is not in default hereunder. In the event of the foreclosure of the Mortgage, this Lease shall continue in full force and effect and Tenant agrees,

at the election of the holder of the Mortgage (exercised by written notice thereof to Tenant), to which this Lease is subordinate, to attorn to such mortgage holder. Tenant further agrees to execute and deliver upon demand such further instrument or instruments evidencing such subordination of this Lease to the lien of any such mortgage and/or other encumbrance and such further instrument or instruments or attornment as shall be desired by any mortgagee or proposed mortgagee or by any other person. Tenant hereby irrevocably appoints Landlord the attorney-in-fact of Tenant (such power of attorney being coupled with an interest) to execute and deliver any such instrument or instruments for and in the name of Tenant. Notwithstanding the foregoing, any holder of any mortgage may at any time subordinate its mortgage to this Lease, without Tenant's consent, by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such mortgage without regard to their respective dates of execution and delivery and in that event such mortgagee shall have the same rights with respect to this Lease as though it had been executed prior to the execution and delivery of the mortgage and had been assigned to such mortgagee.

Section 32.2. Landlord agrees to pay in a timely manner all sums due by the terms of the loan secured by the Mortgage, except such monies as Tenant is obligated by the Lease to pay directly to the Mortgagee (if any), and otherwise to perform fully and punctually all of its obligations under any document relating to the loan secured by the Mortgage, including (without limitation) the Landlord Regulatory Agreement. In the event that Landlord fails to make any of the payments, or to perform any of its other obligations, described in the immediately preceding sentence, Tenant may (but need not) make such payment or perform such other obligation on behalf of Landlord, but without thereby waiving any rights against Landlord or releasing Landlord from any liability to Tenant hereunder. In such event, in addition to the remedies available to Tenant under Section 17.1 hereof, Tenant shall have the right to offset against the installments of annual minimum rent next falling due the amount of money needed to reimburse Tenant for its out-of-pocket costs and expenses so incurred. Landlord further agrees that if Landlord should receive a notice that it is (or may be) in default under any document relating to the loan secured by the Mortgage, including (without limitation) the Landlord Regulatory Agreement, Landlord will immediately provide Tenant with a copy of such notice, together with a written statement as to the action Landlord intends to take to cure such default or contest the assertion of such default, or both.

ARTICLE XXXIII

LIMITATION OF LIABILITY

Section 33.1. Notwithstanding anything to the contrary herein contained, Tenant agrees that Landlord shall have no personal liability with respect to any of the provisions of this Lease and Tenant shall look solely to the estate and property of Landlord in the land and buildings comprising the Premises for the satisfaction of Tenant's remedies, including without limitation the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms and provisions of this Lease to be observed and/or performed by Landlord, subject, however, to the prior rights of the Mortgagee, and no other assets of Landlord or of any partner or principal of

Landlord shall be subject to levy, execution, or other judicial process for the satisfaction of Tenant's claim and in the event Tenant obtains a judgment against Landlord, the judgment docket shall be so noted. It is expressly understood and agreed that Landlord's liability under the terms, covenants, conditions, warranties and obligations of this Lease shall in no event exceed the loss of Landlord's equity interest in the Premises. This Section shall inure to the benefit of Landlord and its successors and assigns and its and their respective principals.

Section 33.2. Notwithstanding anything to the contrary herein contained, Landlord agrees that Tenant shall have no personal liability with respect to any of the provisions of this Lease and Landlord shall look solely to (a) the estate and property of Tenant, if any, in the land and buildings comprising the Premises, and (b) the revenues of Tenant from the Premises, for the satisfaction of Landlord's remedies and rights to indemnification and reimbursement, including without limitation the indemnification and reimbursement provided for under Section 6.1 and Article IX hereof and the collection of any judgment (or other judicial process) requiring the payment of money by Tenant in the event of any default or breach by Tenant with respect to any of the terms and provisions of this Lease to be observed and/or performed by Tenant, subject, however, to the prior rights of the Mortgagee, and no other assets or revenues of Tenant or of any partner or principal of Tenant shall be subject to levy, execution, or other judicial process for the satisfaction of Landlord's claim and in the event Landlord obtains a judgment against Tenant, the judgment docket shall be so noted. It is expressly understood and agreed that Tenant's liability under the terms, covenants, conditions, warranties and obligations of this Lease shall in no event exceed the loss of Tenant's future revenues from, and equity interest, if any, in the Premises. This Section shall inure to the benefit of Tenant and its successors and assigns and its and their respective principals.

ARTICLE XXXIV

TRADE FIXTURES

Section 34.1. Tenant may install trade fixtures and personal property in the Premises from time to time and any such property shall be and remain the property of Tenant which Tenant may remove at the termination of this Lease provided that at the time of such removal Tenant shall repair any damage occasioned to the Premises by such removal.

Section 34.2. Tenant shall be solely responsible for the payment of the cost of the replacement of major non-realty movable equipment. The cost of such replacement shall be paid out of the Reserve for Replacement if and to the extent permitted by FHA.

ARTICLE XXXV

USE OF "LANDLORD"

Section 35.1. The word "Landlord" is used herein to include the Landlord named above and any subsequent owner of the Premises, as well as their respective heirs, personal representatives, successors and assigns, each of whom shall have the same rights, remedies, powers, authorities

and privileges as he would have had he originally signed this Lease as Landlord, but any owner of the Premises, whether or not named herein, shall have no liability hereunder after he ceases to hold title to the Premises, except for obligations which may have theretofore accrued.

ARTICLE XXXVI

USE OF "TENANT"

Section 36.1. The word "Tenant" is used herein to include the Tenant named above as well as its successors and assigns, each of which shall be under the same obligations, liabilities and disabilities and have only such rights, privileges and powers as it would have possessed had it originally signed this Lease as Tenant.

ARTICLE XXXVII

DEFINITIONS

Section 37.1. As used in this Lease, the following terms have the following meanings:

(a) "*Mortgage*" means the mortgage dated as of June 12, 2002 and recorded on June 7, 2003, as Entry No. 1760238 in the Recorder's Office in Book 3060, Page 436, held by Mortgagee in the original principal sum of Four Million Six Hundred Thirty-Fifty Thousand and No/100 Dollars (\$4,635,000.00), as such mortgage may be amended, modified or replaced from time to time.

(b) "*Mortgagee*" means Reilly Mortgage Group, Inc. if at the time in question it is the holder of the Mortgage, or the holder of the Mortgage if at the time in question Reilly Mortgage Group, Inc. is not then the holder of the Mortgage.

(c) "*Reserve for Replacements*" means the fund required by the FHA under the Landlord Regulatory Agreement to provide for the replacement of realty and non-realty items.

IN WITNESS WHEREOF, Landlord and Tenant have signed this Lease as of the day and year first above written.

BOUNTIFUL RETREAT
a Utah non-profit corporation, as Landlord

By: *L. Kathleen Greeno*
Name: L. Kathleen Greeno
Title: Secretary

SOUTH DAVIS COMMUNITY HOSPITAL, INC.,
a Utah non-profit corporation, as Tenant

By: *Dr. Lloyd R. Hicken*
Name: Dr. Lloyd R. Hicken, M.D.
Title: Chairman

LEGAL DESCRIPTION

The land herein referred to is situated in the County of Davis, State of Utah and is described as follows:

Beginning at a point on the North boundary of 500 South Street (a 66 foot wide right-of-way) which point is North $89^{\circ}38'33''$ East 67.96 feet along the Section Line and South $0^{\circ}11'23''$ East 516.71 feet along the Centerline of 400 East Street (a 66 foot wide right-of-way) to an existing brass monument and North $89^{\circ}44'04''$ East 486.42 feet along the Centerline of said 500 South Street and North $0^{\circ}11'23''$ West 33.00 feet from the relocated Northwest Corner of Section 29, Township 2 North, Range 1 East, Salt Lake Base and Meridian and running thence North $0^{\circ}11'23''$ West 236.50 feet; thence North $89^{\circ}44'04''$ East 4.99 feet to a point on the Westerly fence line of Barton Creek (a concrete lined drainage canal); thence along said Westerly fence line in the following five courses: North $20^{\circ}30'00''$ West 67.43 feet, Northwesterly 82.07 feet along the arc of a 330.00 foot radius curve to the right through a central angle of $14^{\circ}15'00''$ (radius point bears North $69^{\circ}30'00''$ East from the beginning of the curve), North $6^{\circ}15'00''$ West 28.99 feet, North $14^{\circ}30'00''$ West 79.17 feet, North $20^{\circ}19'46''$ West 23.83 feet; thence South $89^{\circ}40'49''$ East 346.12 feet; thence South $24^{\circ}20'40''$ West 110.21 feet; thence Southwesterly 43.09 feet along the arc of a 100.00 foot radius curve to the left through a central angle of $24^{\circ}41'15''$ (radius point bears South $65^{\circ}39'20''$ East from the beginning of the curve); thence South $0^{\circ}20'35''$ East 71.50 feet; thence Southwesterly 95.86 feet along the arc of a 125.00 foot radius curve to the right through a central angle of $43^{\circ}56'26''$ (radius point bears South $89^{\circ}39'25''$ West from the beginning of the curve) to a point of reverse curvature; thence Southerly 57.32 feet along the arc of a 75.00 foot radius curve to the left through a central angle of $43^{\circ}47'14''$ (radius point bears South $46^{\circ}24'09''$ East from the beginning of the curve); thence South $0^{\circ}11'23''$ East 151.78 feet; thence South $89^{\circ}44'04''$ West 168.00 feet along the North side of said 500 South Street to the Point of Beginning.

04-069-0091

EXHIBIT B

MONTHLY RENTAL INSTALLMENTS

From and after HUD final endorsement of the Mortgage Note on the Premises, rent payments under the Lease shall be sufficient to pay all of the mortgage payments, including payments to reserves for taxes, insurance, etc.; payments to the Reserve for Replacement account; and to take care of necessary maintenance. If, at the end of any calendar year or any fiscal year during which the Premises operates, payments under the Lease have not been sufficient to take care of the above items, the Landlord and Tenant, upon request in writing from the Commissioner of HUD, shall renegotiate the amounts due under the Lease so that such amounts shall be sufficient to take care of such items.