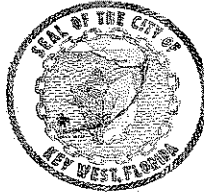


OFFICE OF THE CITY ATTORNEY

SHAWN D. SMITH
LARRY ERSKINE
RON RAMSINGH



PHONE: (305) 809-3770
FAX: (305) 809-3771
POST OFFICE BOX 1409
KEY WEST, FL 33041-1409

Memorandum

TO: Doug Bradshaw, TWAB liaison
FROM: Shawn D. Smith, City Attorney
RE: Draft of Assisted Care Lease agreement
DATE: January 13, 2012

Doug

Enclosed is a copy of the current draft of a proposed lease between the LRA and Family Pride Senior Care of Key West, LLC. Two things are important to keep in mind at the present time. First, I cannot find any entity registered in the state with the name provided by the proposed lessee. Second, and most important, this document is not final and the exhibits are not attached. When I have clean copies of those exhibits I'll pass them along. The revisions contained in this document were completed last night. I have additional clauses that I'm strengthening and will continue to refine certain points until the LRA considers the matter at its special meeting on January 24. It is provided to you now so the TWAB has an opportunity to comment on the document at their upcoming meeting.

I encourage you to contact me with any questions, comments or concerns.

Sincerely

A handwritten signature in black ink, appearing to read "Shawn D. Smith", with a large, stylized flourish extending from the end of the signature.

Shawn D. Smith
City Attorney

This Instrument Prepared By and
After Recording Return to:
Larry R. Erskine
Office of the City Attorney
P.O. Box 1409
Key West, Florida 33041

LEASE AGREEMENT

LANDLORD:

NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY

TENANT:

FAMILY PRIDE SENIOR CARE OF KEY WEST, LLC

PROPERTY:

**APPROXIMATELY 3.32 ACRES LOCATED AT THE
TRUMAN WATERFRONT**

DATE:

_____, 2011

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made and entered into this ____ day of _____, 2011 by and between **NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY**, as Landlord, and **FAMILY PRIDE SENIOR CARE OF KEY WEST, LLC**, a Florida limited liability company, as Tenant. Landlord and Tenant may be referred collectively as the "Parties" or individually as a "Party." The Effective Date of this Lease shall be the date of execution of the last party to sign the Lease for the term specified in Section 3.3.

PREAMBLE

Landlord is the owner in fee simple of real property commonly referred to as the Truman Waterfront, located in Key West, Florida.

Tenant is a for-profit organization which has planned a mixed-income senior citizens living facility located on the Truman Waterfront in Key West, Florida (the "Project").

That portion of the Truman Waterfront property to be leased to Tenant is comprised of a parcel of real property, referred to in this Lease as the "Demised Premises." The said parcel of property is approximately 2.65 acres in size and is more particularly described on Exhibit "A", which is attached hereto and incorporated by reference.

The Project may be constructed in two (2) phases, with Phase I consisting of seventy (70) units for assisted living with a minimum of ten (10) assisted living units exclusively for residents meeting the low income housing standards adopted by the Housing Authority of the City of Key West, a minimum of eighteen (18) assisted living units exclusively for residents meeting the moderate income housing standards adopted by the Housing Authority of the City of Key West. Phase II may contain independent living units. The total number of units to be developed by Tenant as part of Phase II of the Project shall be contingent upon Landlord's approval, which approval shall not be unreasonably withheld. However, no less than 16.67% of the units in Phase II shall be designated for residents meeting the low income housing standards adopted by the Housing Authority of the City of Key West, and no less than 13.3% of the units in Phase II shall be designated for residents meeting the moderate income housing standards adopted by the Housing Authority of the City of Key West.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and the rent reserved by Landlord to be paid by Tenant, Landlord hereby leases and demises unto Tenant, and Tenant hereby does lease from Landlord, the Demised Premises, for the terms, and at the rentals, and upon the terms and conditions, hereinafter set forth:

1 - DEFINITIONS

1.1 Certain Defined Terms. As used herein, the following capitalized terms shall have the following meanings (such meanings to be applicable to both the singular and the plural form of the terms defined):

"Access and Utility Easement Area" shall mean that portion of the Demised Premises more particularly described on Exhibit "C", which is attached hereto and incorporated by reference.

"Attorney's Fees" shall mean reasonable attorney's fees (including fees for paralegals), expenses and costs incurred by a party at any tribunal level including, without limitation, trial, bankruptcy, appellate, post-judgment proceedings, administrative proceedings, and arbitration.

"Assisted Living Facility" shall have the meaning set forth in *Florida Statute* §429.02 (2010).

"Assisted and Independent Living Community" shall mean a mixed-income senior citizens assisted living and independent living facility comprised of an Assisted Living Facility and independent living units.

"Commencement Date" shall have the meaning set forth in Section 3.1.

"Consumer Price Index" shall mean and refer to that table in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, now known as the "Consumer Price Index" for all Urban Consumers (Index 1982-1984 = 100). If such Index referred to above shall be discontinued, then any successor Consumer Price Index of the United States Bureau of Labor Statistics, or successor agency thereto, shall be used, and if there is no successor Consumer Price Index, the parties hereto shall authorize Landlord's attorney to designate a substitute Index or formula.

"Governmental Regulations" shall mean all laws, ordinances, and regulations now or hereafter enacted by the State of Florida, the City of Key West, the United States or any political subdivision or regulatory agency of any of the foregoing.

"Hazardous Substances" shall mean lead based paint, flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic under any Governmental Regulations or by any government agency.

"Indemnify" shall mean to hold harmless from, and defend against, all claims, demands, actions, causes of action, losses, expenses, damages, liabilities, and Attorney's Fees

arising out of or incurred in connection with an identified circumstance, incident, condition, relationship, time period, or other matter.

"Lease Year" shall have the meaning set forth in Section 3.2.

"Landlord" means the Naval Properties Local Redevelopment Authority.

"Main Parcel" shall mean that real property more particularly described in Exhibit "A", which is attached hereto and incorporated by reference.

"Option Parcel" shall mean that real property more particularly described on Exhibit "B", which is attached hereto and incorporated by reference.

"Project" shall mean the development of the Demised Premises into a mixed-income senior citizens assisted living and independent living facility with the mix of units and affordability criteria described in Section 5.1.

"Rent" shall mean any sum of money due to the Landlord under this Lease for any reason.

"Tenant" means the Family Pride Senior Care of Key West, LLC, a Florida limited liability company.

1.2 **Other Terms.** All capitalized terms used in this Lease that are not defined in this Article 1 shall have the meanings set forth elsewhere in this Lease.

2 - DEMISED PREMISES

2.1 **Landlord's Demise.** Upon the terms and conditions hereinafter set forth, and in consideration of the payment of the rents and the prompt performance by the Tenant of the covenants and agreements, to be kept and performed by the Tenant, the Landlord does lease, let, and demise to the Tenant and the Tenant hereby leases from the Landlord, the described premises (the "Demised Premises"), situate, lying, and being in Monroe County, Florida, and more particularly described on Exhibit "A".

2.2 **Conditions.** The demise is made subject to the following:

(a) Conditions, easement, encumbrances, restrictions, limitations and any other matter of title, if any, now appearing of record;

(b) Zoning and regulatory ordinances of the City of Key West, the County of Monroe, State of Florida, and any other applicable governmental body now existing or which may hereafter exist by reason of any legal authority during the Term of this Lease;

(c) Any questions of survey, the Tenant having satisfied itself as to the boundary lines and contents of the Demised Premises and likewise having satisfied itself with the sufficiency of the present title of Landlord to the Demised Premises;

(d) The proper performance by the Tenant of all of the terms and conditions contained in this Lease.

(e) The right to bicycle, vehicle and pedestrian ingress and egress over and the property described in Exhibit C reserved to the public and the right of the landlord to place utilities in the property described in Exhibit C.

3 - TERM

3.1 **Commencement Date.** As used herein, the "Commencement Date" shall mean the date of the closing of a loan for construction financing of the Project from an institutional lender authorized to do business in Florida, for a construction loan an amount not less than _____, a term of not less than ____ years and with terms and conditions approved by Landlord in its reasonable discretion. This Lease may be executed prior to the Commencement Date and will be effective upon execution by all Parties, but prior to the Commencement Date Tenant shall have no right to occupy the Demised Premises and Tenant's rights to the Demised Premises shall be strictly limited to due diligence investigation at times convenient to Landlord and with Landlord's prior consent. Prior to the Commencement Date, Landlord may accompany Tenant, or its contractors or agents, whenever Tenant seeks to gain access to the Demised Premises. In the event that such loan closing has not occurred within 24 months of the Effective Date of this Lease, this Lease shall automatically terminate without notice, shall thereafter be a nullity, and shall be of no further force or effect. Neither this Lease nor any evidence thereof shall be recorded in the public records until the Commencement Date, but this Lease will be recorded in the Public Records of Monroe County on the Commencement Date prior to the recording of any leasehold mortgage or similar security document executed in connection with the construction loan.

3.2 **Lease Year.** As used herein, the term "Lease Year" shall have the following meaning: The first Lease Year shall be the period beginning on the Commencement Date and ending on the last day of the same calendar month one year later, and successive Lease Years shall be the twelve (12) month periods immediately succeeding the end of the first Lease Year.

3.3 **Term.** The initial term (the "Initial Term") of this Lease shall begin upon the Commencement Date as referred to in paragraph 3.1 of this Lease and shall terminate on the last day of the forty-ninth (49th) Lease Year; provided, however, that this Lease may be terminated as provided herein. The Initial Term along with any extension of the Initial Term pursuant to the Option To Extend Term described below may be referred to in this Lease as the "Term."

3.4 **Option to Extend Term.** Provided Tenant is not in default hereunder, and provided that Tenant has received fewer than 5 notices of violation within the 36 months preceding Tenant's written Notice of Exercise, after notice and expiration of any applicable cure period, Landlord hereby grants to the Tenant the right and option to extend the Initial Term of this Lease for five

(5) successive separate consecutive terms of ten (10) years each (hereinafter referred to as the "Renewal" or "Option Periods"), the Renewal or Option Periods to begin upon the expiration of the Initial Term. Tenant shall have no right or option to extend the Term of this Lease if Tenant is in default at the time Tenant seeks to extend the Term. Furthermore, in the event this Lease is terminated or expires, or if the Term of this Lease expires or is terminated, then the options to extend described in this Section 3.4 will all automatically terminate. Rent for each successive Option Period shall be determined as set forth in Article 4 of this Lease, and all other terms, covenants, and provisions of this Lease shall apply to the Renewal or Option Periods. If Tenant seeks to exercise its Option to extend the Term, it shall give Landlord written notice thereof (a "Notice of Exercise") no sooner than 18 months nor later than 12 months prior to the expiration of the Initial Term, or the end of the then existing Option Period, as applicable. After receipt by Landlord of Tenant's Notice of Exercise, Landlord and Tenant shall commence the procedure for determining the Rent applicable to such Option Period. Tenant may withdraw its Notice of Exercise by written notice to Landlord, provided such withdrawal is made no later than six (6) months prior to the expiration of the Initial Term, or the end of the then existing Option Period, as applicable. Furthermore, Tenant's Notice of Exercise shall be deemed withdrawn unless within six (6) months prior to the expiration of the Initial Term, or the end of the then existing Option Period, as applicable, Tenant executes and delivers to Landlord an agreement in form and substance acceptable to Landlord acknowledging and agreeing to the amount of Rent due during such Option Period.

3.5 **Holding Over.** Any holding over after the expiration of the term of this Lease, with consent of Landlord, shall be construed to be a tenancy from month to month, at twice the monthly rent as required to be paid by Tenant for the period immediately prior to the expiration of the term hereof, and shall otherwise be on the terms and conditions herein specified, so far as applicable.

4 – RENT

4.1 Base Ground **Rent During Term.** During the term of this Lease,, Tenant shall pay to Landlord, without demand, setoff, or deduction, except as expressly provided herein, annual rent equal to One Dollar (\$1.00); payable no later than the sixtieth day of each Lease Year. Tenant may prepay the Rent.

4.2 Additional Base Ground **Rent During Lease Years 11 through 49.** During Lease Years Eleven through Forty-nine, inclusive, of the Term of this Lease, Tenant shall pay to Landlord, Additional Base Ground Rent in an amount equal to one hundred percent (100%) of a stipulated \$15,000.00 land value per market rate unit with an eight percent (8%) rent multiplier, calculated at a total of \$50,400.00 per year for the 42 market rate units irrespective of the actual number of market rate units existing at the Project. In the event the total number of market rate units should increase for any reason, there shall be a corresponding increase in the Additional Ground Rent due and payable. The Additional Ground Rent for the period specified herein, Lease Years 11 through 49, shall be adjusted by a factor of 100% of the increase or decrease in the Consumer Price Index at five year intervals in the period specified herein, Lease Years 11 through 49. Specifically, additional ground rent will be adjusted by the change in the Consumer Price Index for the preceding five year period from the first month of Lease Year 16, the first month of Lease

Year 21, the first month of Lease Year 26 and every five year interval thereafter with the last adjustment for Lease Years 11 through 49 occurring on the first month of Lease Year 46, using the CPI formula as set out herein.

The following example illustrates the computation of percent change:

CPI for current period	220.2
Less CPI for previous period	198.3
Equals index point change	21.9
Divided by previous period CPI	198.3
Equals	0.1104
Result multiplied by 100	0.1104 x 100
Equals percent change	11.04

In the example above "CPI for current period" would be the first month of Year 16 and the "CPI for previous period" would be the first month of Year 11. In the example above the adjustment in additional ground base rent due for Lease Years 16 through 20 would be an 11.04 percent increase to the stipulated \$15,000.00 land value per market rate unit or a resulting adjusted land value per market rate unit of \$16,656.

The rent for each five year adjustment period shall be the calculated increase in the Consumer Price Index, but shall not be less than 10.0 percent for any five year adjustment period.

Both Landlord and Tenant agree that if the CPI calculated adjustment has not been determined by the date such adjustment is effective, Tenant will continue to pay the previous period's Additional Ground Rent until such time the CPI adjustment has been determined, and then Tenant shall pay over any difference to Landlord upon demand and thereafter, pay the newly determined rent.

4.3 Additional Ground Rent During Option Term(s). Rent due to Landlord during any Option Period shall be determined as follows:

Within sixty (60) days after receipt of a Notice of Exercise from Tenant, Landlord shall engage a duly licensed appraiser to determine the fair rental value per market rate unit based on existing use of the Demised Premises. Tenant shall make its financial records, and the financial records of any operator of the Project, available for review by the appraiser. The fair rental value per market rate unit based on existing use as determined by the appraiser shall be the Rent for the Option Period and Tenant shall pay the Rent to Landlord in monthly installments without deduction or offset to the address for Landlord set forth above or such other address as Landlord may direct. In the event Tenant builds less than 42 market rate units, the total fair rental value shall be calculated based on 42 market rate units irrespective of the actual number of market rate units existing at the Project.

Tenant agrees that under no event shall Additional Ground Rent due during any Option Period be less than Additional Ground Rent being paid at the conclusion of Lease year 49 or at the conclusion of the previous Option Period, if exercised. Provided, however, in no event shall the resulting increase exceed ____% of the Additional Ground Rent paid during Lease year 49 or at the conclusion of the previous Option Period, if exercised.

The parties agree that during each exercised Option Period, at the midpoint of the 10 Year Option Period, Additional Ground Rent shall be adjusted by a factor of 100% of the increase in the Consumer Price Index, but shall not be less than 10.0 percent for any adjustment period, as specified in Section 4.2 above.

Landlord shall bear the cost of the appraiser unless Tenant elects to withdraw its Notice of Exercise or Tenant's Notice of Exercise is automatically withdrawn pursuant to this Lease and in either of such events, Tenant shall reimburse Landlord for the entire cost of the appraisal on demand.

4.4 Manner of payment. All amounts payable to Landlord pursuant to this Lease under this Section 4.2, Section 4.3, and Section 4.4, as well as all other amounts payable by Tenant to Landlord under the terms of this Lease, shall constitute additional rent, be payable monthly, in advance, on the first day of each month in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, each payment to be paid to Landlord at the address set forth herein or at such other place as Landlord shall from time to time designate. Except for any income tax payable by the Landlord, Tenant shall pay any and all taxes, including sales tax any local surcharge or other tax, on the Rent payable pursuant to this Lease in addition to the sums otherwise set forth herein.

4.5 Net Lease. It is intended that the Rent provided for in this Lease shall be absolutely net to Landlord throughout the Term, free of any taxes, costs, utilities, insurance expenses, liabilities, charges or other deductions whatsoever, with respect to the Demised Premises and/or the ownership, leasing, operation, maintenance, repair, remediation, rebuilding, use or occupation thereof.

4.6 Late Payments. All amounts payable by Tenant to Landlord under any of the provisions of this Lease, if not paid when due as provided for in this Lease shall bear interest at the highest rate allowable under Florida law from the time they become due until paid in full by Tenant. In addition, Tenant shall pay a late fee in the amount of ten (10%) percent of any amount due from Tenant to Landlord, which is not paid within ten (10) days of the due date for such payment as to any sums due for Rent and within thirty (30) days for any other sums due from Tenant pursuant to this Lease; provided, however, such payment shall not excuse or cure any default by Tenant under this Lease. It is agreed by the Parties hereto that said late fee should be for reimbursement to Landlord for collection charges incurred as a result of the overdue rent. Such late fee shall be in addition to any interest payable by Tenant as set herein from Tenant's failure to pay any Rent due hereunder. In the event that any check, bank draft, order for payment or negotiable instrument given to Landlord for any payment under this Lease shall be dishonored for any

reason whatsoever not attributable to Landlord, Landlord shall be entitled to charge Tenant an administrative charge of Fifty Dollars (\$50.00) during the first ten (10) years of the Initial Term with the amount of the administrative fee increasing by One Dollar for each Lease Year thereafter. In addition, Landlord shall be reimbursed by Tenant for any costs incurred by Landlord as a result of said instrument being dishonored. Landlord's acceptance of late or partial payments shall not be construed to constitute a waiver of the remedies provided to Landlord herein pertaining to Tenant's breach.

4.7 **Non-Subordination.** Notwithstanding anything to the contrary contained in this Lease, the fee simple interest in the Demised Property shall not be subordinated to any leasehold mortgage, lien or encumbrance of any nature whatsoever. Furthermore, the Landlord's right to receive payment under this Lease shall not be subordinated to any debt or equity financing, leasehold mortgage, lien, encumbrance or obligation of any nature whatsoever.

5 - USE

5.1 **Use of Main Parcel.** The Demised Premises shall be used as an Assisted and Independent Living Community, including uses incidental or accessory thereto (which uses may include, without limitation, food service, recreation, health care, and senior adult living services to benefit residents of the Project only). The units in the project shall be rental units, and no units shall be sold or conveyed separately. The Project may be constructed in two (2) phases. Phase I of the Project shall have seventy (70) units for assisted living with a minimum of ten (10) assisted living units exclusively for residents meeting the low income housing standards adopted by the Housing Authority of the City of Key West, a minimum of eighteen (18) assisted living units exclusively for residents meeting the moderate income housing standards adopted by the Housing Authority of the City of Key West. The improvements for Phase I, including living units and accessory uses thereto, shall be constructed on that portion of the Demises Premises referred to as the Main Parcel, identified on Exhibit "A", which is attached hereto. Phase II may contain independent living units. However, no less than 16.67% of the units in Phase II shall be designated for residents meeting the low income housing standards adopted by the Housing Authority of the City of Key West, and no less than 13.3% of the units in Phase II shall be designated for residents meeting the moderate income housing standards adopted by the Housing Authority of the City of Key West.

No particular physical residential units within the Project will be set aside for low or moderate income residents, nor will any residential units in the Project be constructed to a lesser or higher standard based on the income level of the occupants. The units occupied by the low and moderate income residents will not be separated from the units occupied by the higher income residents. Any change in the use of the Project described herein without the prior written consent of the Landlord shall be deemed a default in this Lease. Strict priority for residence within the Project shall be given to citizens of the City of Key West in accordance with policies of the Housing Authority of the City of Key West to the extent permitted by law. Landlord shall have the right to audit or otherwise monitor compliance with this requirement.

5.2 **Compliance with Laws and Governmental Regulations.** Tenant shall comply with all Governmental Regulations pertaining to the Demised Premises and its operations thereon. Tenant shall immediately provide Landlord with any and all notices or allegations of noncompliance received from any governmental entity. Tenant's opportunity to cure pursuant to section 20.2 below shall commence upon the date Tenant receives any such notification.

5.3 **Nuisances.** Tenant and its subtenant shall not make, suffer, or permit any unlawful, improper, or offensive use of the Demised Premises, or any part thereof, or permit any nuisance thereon. Tenant shall not permit rubbish, refuse, or garbage to accumulate, or any fire or health hazard to exist, upon or about the Demised Premises. Tenant shall not suffer or permit any waste or mistreatment of the Demised Premises.

5.4 **Utility Lines.** In the event there exist City sewer or Navy water lines running through the Demised Premises, Tenant shall conduct construction activities such to avoid damaging the said lines. In the event damage results to the said lines resulting from construction activities on, or use of, the Demised Premises, Tenant shall promptly repair such damage at its expense.

5.5 **Abandonment.** If at any time during the term of this Lease, Tenant abandons the Leased Premises or any part thereof, such abandonment shall be deemed a default under this Lease. In addition to the other remedies provided within this Lease, if Tenant abandons the Leased Premises, Landlord may, at its option, enter the Leased Premises or any part thereof, without being liable for any prosecution therefor, and without becoming liable to Tenant for damages or for the payment of any kind whatsoever, and may, at its discretion, as agent for Tenant, relet the Demised Premises, or any part thereof, for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such reletting, and, at Landlord's option, hold Tenant liable for any difference between the rent that would have been payable under this Lease during the balance of the unexpired term, if this Lease had continued in force, and the net rent for such period realized by Landlord by means of such reletting. If Landlord's right of re-entry is exercised following abandonment of the Demised Premises by Tenant, then Landlord may consider any personal property belonging to Tenant and left on or around the Demised Premises to also have been abandoned, in which case Landlord may dispose of all such personal property in any manner Landlord shall deem proper and is hereby relieved of all liability for doing so. For the purposes of this Lease, the Demised Premises shall be deemed to have been abandoned if Tenant is absent from the Leased Premises for five (5) consecutive business days.

6 - SURRENDER OF DEMISED PROPERTY

6.1 Tenant shall, upon expiration or termination of the Term hereof, or any earlier termination of this Lease for any cause, surrender to Landlord the Demised Premises, including, without limitation, all alterations, improvements, and other additions thereto that have been made or installed by either Party in or upon the Demised Premises, in good and clean condition and repair, ordinary wear and tear excepted. Unless Landlord requests in writing no less than 6 months prior to the expiration or termination of the Term that all improvements located on the Demised premises be demolished and removed at Tenant's sole expense, all buildings, alterations, improvements and additions made to the Demised Premises by or for Tenant shall remain upon the Leased Premises at the expiration or earlier termination of this Lease and shall

be the property of Landlord. Upon request, Tenant will execute and deliver to Landlord a document in recordable form acknowledging the term of the Lease has ended.

7 - QUIET ENJOYMENT

7.1 Subject to the conditions and limitations of this Lease and other rights of Landlord described in this Lease, Landlord covenants that so long as Tenant pays the Rent reserved in this Lease and performs its agreements hereunder, Tenant shall have the right to quietly enjoy and use the Demised Premises for the term of this Lease.

8 - ASSIGNMENT AND SUBLEASING

8.1 Except as provided in this Article 8 and subject to the provisions contained in Article 19 pertaining to leasehold mortgage financing, Tenant shall not assign this Lease or any right hereunder, or change management of the Project, without first obtaining the express prior written consent of Landlord, which may be withheld for any reason or for no reason. Landlord's consent to subleasing may be conditioned on (a) Landlord's approval of the form of sublease, (b) Landlord's reasonable approval of the subtenant's proposed plan for construction and operation of a Senior Adult Living Community on the Demised Premises, (c) subtenant's experience in the operation of communities similar to the Project, and (d) proposed subtenant's financial condition and ability. No such sublease or assignment shall become effective until the Commencement Date of this Lease. Furthermore, any sublease shall provide that it is subject to all the terms and conditions of this Lease and that the subtenant shall become directly liable to Landlord for payment of all sums due to Landlord pursuant to this Lease and performance of all Tenant's obligations pursuant to this Lease.

Notwithstanding the foregoing provisions of this Article 8, Landlord may not withhold approval of an assignment of this Lease to another entity controlled by, controlling, or under common control with Tenant, including without limitation, a successor by way of merger, acquisition, corporate reorganization, or similar transaction.

{SDS to insert language regarding change in makeup of LLC constituting an assignment}

The consent by Landlord to any assignment or sublease shall not constitute a waiver of the necessity for such consent to any subsequent assignment or sublease.

Landlord acknowledges and agrees that the Project is to be used as residential units and the units may be occupied without Tenant obtaining consent from Landlord for such occupancy provided that Landlord utilizes an Assisted Living Establishment Contract which substantially conforms with Exhibit "D", which is attached hereto and incorporated by reference.

This Lease is freely assignable by the Landlord, and upon such assignment the Landlord's liability shall cease. The liability of the original Tenant executing this Lease shall

continue after any assignment of this Lease or sublease. Any assignment or sublease in contravention hereof is void and shall be considered a default of this Lease.

9 - MAINTENANCE AND REPAIR

9.1 **Tenant shall Maintain the Demised Premises.** Tenant shall be responsible, at Tenant's sole expense, to maintain the Demised Premises in good order and to keep all buildings constructed on the Demised Premises during the Term of the Lease in good repair. Further, Tenant will keep in good state of repair and in current condition, the Demises Premises and all furnishings brought or placed upon the Demised Premises by the Tenant. The Tenant will not suffer or permit any strip, waste, or neglect of any such personal property to be committed, and the Tenant will repair, replace, and renovate the premises and the personal property as often as it maybe necessary in order to keep the premises and personal property in good repair and condition.

9.2 Demolition.

9.2.1 Although it is the Tenant's duty under the terms hereof to keep and maintain any buildings and improvements on the Demised Premises in good repair, this shall not be construed as empowering the Tenant to demolish any buildings on the Demised Premises or any substantial part thereof or to cause any item of major repair and construction to be made unless and until the Tenant:

(a) Causes plans for the new buildings or the new construction to be prepared in full accordance with the applicable laws, building codes, zoning ordinances, and all applicable statutes and ordinances, and deliver the plans to the Landlord for its approval (which approval shall not be unreasonably withheld) at least forty-five (45) days before the work proposed to be done pursuant thereto is actually commenced; and

(b) Furnishes the Landlord with a performance and payment bond with corporate surety, guaranteeing the doing and completion of the work.

9.2.2 The work of reconstruction, repair, and replacement must have a value of not less than the value of the building or buildings or the portion thereof then being demolished and replaced and repaired.

9.2.3 For the purposes of this Article, no work will be deemed a "demolition" or a major repair so as to bring it within the terms of this Section of the Lease unless it constitutes either the actual destruction of a building or a substantial part thereof or unless it constitutes a remodeling which, in substance, requires the tearing down of a substantial part of a building. The changing of openings or the removal and/or relocating of partition walls, or other work inside the building designed to accommodate itself to better occupancy, shall not be deemed major repair and construction within the meaning of this Article. The provisions of this Article

shall not be applicable to the removal of any building or structure on the Demised Premises at the time of the execution of this Lease.

10 - SIGNAGE

10.1 Tenant shall be entitled to place signage on the Demised Premises in connection with, and appropriate to, the permitted use of the Project. All signage shall comply with the regulatory requirements of all applicable governmental authorities, including the City of Key West, and including without limitation HARC regulations. Tenant shall keep any sign on the Demised Premises in excellent condition at all times and any such sign will be repainted or refurbished no less than annually unless otherwise agreed by Landlord.

11 - NO CONSTRUCTION LIENS

11.1 Tenant shall make full and prompt payment of all sums necessary to pay for the cost of all improvements or other work done by Tenant or any other person, firm or entity in connection with the Project. Tenant shall Indemnify Landlord against all such costs and liabilities incurred by Tenant or any other person, firm or entity, and against all construction liens arising out of any such work, which may be asserted, claimed, or charged against Landlord, the Demised Premises, or the Building. Notwithstanding anything to the contrary in this Lease, the interest of Landlord in the Demised Premises shall not be subject to liens for improvements made by or for Tenant, whether or not the same shall be made or done in accordance with this Lease, a sublease, or other agreement between Landlord and Tenant or its subtenant. In no event shall Landlord or the interest of Landlord in the Demised Premises be liable for, or subjected to, any liens under the Florida Construction Lien Law for improvements or work made by or for Tenant or its subtenant. In the event any notice or claim of lien shall be asserted of record against the interest of Landlord in the Demised Premises on account of any improvement or work done by or for Tenant or any person claiming by, through, or under Tenant or any subtenant, or the cost of which is the responsibility of Tenant, Tenant shall have such notice or claim of lien canceled and discharged of record as a claim against the interest of Landlord in the Demised Premises (either by payment and satisfaction or by removal by transfer to bond or deposit as permitted by law) within ninety (90) days after notice to Tenant by Landlord.

Tenant shall cause any and all construction contracts, including any contracts with general contractors, subcontractors, subsubcontractors and all material suppliers, relating to any improvements on any part of the Demised Premises to contain a provision whereby the contractor, subcontractor, subsubcontractor or material supplier acknowledges that it has no construction lien rights against Landlord's interest in the Demised Premises and waives of any such rights.

If the Tenant shall fail, refuse, or neglect to perform its obligations as required in this Article, then the Landlord may pay any sums required to cause the Demised Premises and the Landlord's interest therein to be released from the legal effect of such claim and the amount or amounts of money so paid, including reasonable attorneys' fees and expenses which might have

been reasonably incurred because of or in connection with such payments, together with interest on all such amounts at the highest rate allowed by law shall be repaid by the Tenant to the Landlord, upon the demand of the Landlord, and the payment thereof may be collected or enforced by the Landlord in the same manner as though such amount were an installment of Rent specifically required by the terms of this Lease to be paid by the Tenant to the Landlord, upon the day when the Landlord demands repayment thereof or reimbursement therefor of and from the Tenant; but the election of the Landlord to pay such amount shall not waive the default thus committed by the Tenant.

12 - INSURANCE

12.1 **Insurance.** From and after the Commencement Date, the Tenant will keep insured any and all buildings and improvements upon the Demised Premises against all loss or damage by fire, flood and windstorm, together with "all risks" "extended coverage," which said insurance will be maintained in an amount which will be sufficient to prevent any party in interest from being or becoming a co-insurer on any part of the risk, which amount shall not be less than full Replacement Cost value of the Demised Premises and all improvements thereon, and all of such policies of insurance shall include the name of the Landlord as an additional insured and loss payee and shall fully protect both the Landlord and the Tenant as their respective interests may appear. In the event of destruction of the said buildings or improvements by fire, flood, windstorm, or other casualty for which insurance shall be payable and as often as such insurance money shall have been paid to the Landlord and the Tenant, said sums so paid shall be deposited in a joint account of the Landlord and the Tenant, requiring signatures of both Tenant and Landlord for withdrawal, in a bank located in Monroe County, Florida designated by the Tenant, and shall be made available to the Tenant for the construction or repair, (including any modification to the improvements sought by the Tenant and approved in writing by the Landlord with Landlord's approval not unreasonably withheld) as the case may be, of any building or buildings damaged or destroyed by fire, flood, windstorm, or other casualty for which insurance money shall be payable and shall be paid out by the Landlord and the Tenant from said joint account from time to time on the estimate of any reliable architect licensed in the State of Florida having jurisdiction of such reconstruction and repair, certifying that the amount of such estimate is being applied to the payment of the reconstruction or repair and at a reasonable cost therefor; provided, however, that the total amount of money necessary for the reconstruction or repair of any building or buildings destroyed or injured has been provided by the Tenant for such purpose and its application for such purpose assured. In the event of the destruction or damage of the buildings and improvements or any part thereof, and as often as any building or improvement on said Demised Premises shall be destroyed or damaged by fire, flood, windstorm, or other casualty, the Tenant shall rebuild and repair the same in such manner that the building or improvement so rebuilt and repaired, and the personal property so replaced or repaired, shall be of the same or higher value as the said building or improvement and the personal property upon the Demised Premises prior to such damage or destruction, and shall diligently prosecute the reconstruction or repairs without delay and have the same rebuilt and ready for occupancy as soon as reasonably possible from the time when the loss or destruction occurred.

While the Project, or any replacement thereof, is in the course of construction, and whenever appropriate while any alterations or renovations are in the course of being made, the

aforesaid fire and extended coverage insurance shall be carried by Tenant in builder's risk form written on a completed value basis.

12.2 **Commercial General Liability Insurance.** Tenant shall maintain Commercial General Liability Insurance beginning on the Commencement Date and continuing during the entire Term of this Lease. The Commercial General Liability shall cover those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form [ISO Form CG 00-01] as filed for use in Florida without the attachment of restrictive endorsements other than the elimination of medical payments and fire damage legal liability. Such insurance shall have the following minimum limits:

General Aggregate	\$3,000,000
Products/Completed Operations	\$5,000,000
Personal & Advertising Liability	\$500,000
Each Occurrence	\$1,000,000
Contractual Liability	\$5,000,000

The Landlord shall be included as an additional insured for Commercial General Liability.

The policy limits for the comprehensive liability insurance shall be reviewed by Landlord every five (5) years and adjusted upward, if, in the reasonable discretion of Landlord, such increase in coverage is prudent or if similar projects have begun to require greater insurance coverage.

12.3 **Other Insurance.** Tenant shall maintain workers compensation insurance and any insurance required by law. In addition, Tenant shall maintain such other insurance and in such amounts as may from time to time be reasonably required by the Landlord against other insurable hazards which at the time are commonly insured against in the case of demolition and construction of buildings and/or in the case of premises similarly situated, due regard being or to be given to the height or type of building, its location, construction, use and occupancy. In the event the Tenant believes the Landlord's requirement for such additional insurance is unreasonable the reasonableness of Landlord's request shall be determined in accordance with the rules of the American Arbitration Association. Such determination as to the requirement of coverage and the proper and reasonable limits for such insurance then to be carried shall be binding on the parties and such insurance shall be carried with the limits as thus determined until such limits shall again be changed pursuant to the provisions of this Section. The expenses of such determination shall be borne equally by the parties. This procedure may only be requested on each five (5) year anniversary date of the lease.

12.4 **Delivery of Policies.** On or before the Commencement Date and thereafter not less than fifteen (15) days prior to the expiration dates of the expiring policies theretofore furnished pursuant to this section, the certificates of all such policies of insurance shall be delivered to the Landlord by the Tenant along with the receipted bills evidencing the fact that the premiums therefore are paid; but nothing herein contained shall be construed as prohibiting the Tenant from financing the premiums. Where, however, there is a mortgage on the Demised Premises created

pursuant to the provisions of this Lease captioned "Mortgage Financing," and if, under the terms of such mortgage, it is obligatory upon the Tenant to cause the originals of the policies to be delivered to the mortgagee, then the Tenant shall deliver to the Landlord duplicate certificates of such policies. The policies or duplicate certificates thereof, as the case may be, shall be delivered by the Tenant to the Landlord at least ten days prior to the effective date of the policies.

12.5 Proceeds Payable to Mortgagee. If any mortgagee holding a mortgage created pursuant to the provisions of this Lease elects, in accordance with the terms of such mortgage, to require that the proceeds of the insurance be paid to the mortgagee, then such payment shall be made, but in such event, it shall still be obligatory upon the Tenant to create the complete fund with the leasehold mortgagee in the manner set forth in this Article to assure and complete the payment for the work of reconstruction and repair.

12.6 Direct Repayment. The foregoing notwithstanding, in the event the insurance proceeds are the sum of One Hundred Thousand and 00/100 Dollars (\$100,000) or less, then such proceeds shall be paid directly to the Tenant without the necessity of creating the joint bank account, and Tenant shall use such funds to make the replacements or repairs.

12.7 General Requirements. All insurance to be provided by Tenant under this Lease shall be effected under valid and enforceable policies in such forms, issued by insurers of recognized financial responsibility qualified to do business in Florida which have an A.M rating of "A" or better. All policies of insurance provided for in this Article shall, to the extent obtainable, contain clauses or endorsements to the effect that (a) no act or negligence of Tenant or anyone acting for Tenant or for any subtenant or occupant of the Demised Premises which might otherwise result in a forfeiture of such insurance or any part thereof shall in any way affect the validity or enforceability of such insurance insofar as Landlord, and that (b) such policy of insurance shall not be changed or cancelled without at least thirty (30) days written notice to the Landlord, and that (c) the Landlord shall not be liable for any premiums thereon or subject to any assessments thereunder. The requirement of obtaining insurance as provided herein, shall not be deemed a waiver of sovereign immunity of or by the Landlord.

12.8 Insurance Premiums. The Tenant shall pay premiums for all of the insurance policies which the Tenant is obligated to carry under the terms of this Lease, and will deliver to the Landlord evidence of such payment before the payment of any such premiums become in default, and the Tenant will cause renewals of expiring policies to be written and the policies or copies thereof, as the Lease may require, to be delivered to Landlord at least ten days before the expiration date of such expiring policies.

13 - CASUALTY

13.1 If any building or other improvement located on the Demised Premises is damaged by fire or other casualty, then not later than ninety (90) days after the casualty occurs, Tenant shall commence the repair and restoration of the building or improvement to substantially the condition thereof immediately prior to such damage, and shall thereafter use reasonably diligent

efforts to complete such repair and restoration, in no event later than twelve months after the casualty event, subject to extension for Force Majeure events.

14 - CONDEMNATION

14.1 **Eminent Domain; Cancellation.** If, at any time during the Term of this Lease, the Demised Premises or the improvement or building or buildings located thereon, or any portion thereof is taken or appropriated or condemned by reason of eminent domain, there shall be such division of the proceeds and awards in such condemnation proceedings and such abatement of the rent and other adjustments made as shall be just and equitable under the circumstances. If the Landlord and the Tenant are unable to agree upon what division, annual abatement of rent or other adjustments as are just and equitable, within thirty (30) days after such award has been made, then the matters in dispute shall, be determined in accordance with the rules of the American Arbitration Association. Such determination made by the arbitration shall be binding on the parties. If the legal title to the entire Demised Premises be wholly taken by condemnation, the Lease shall be cancelled.

15 - INDEMNIFICATION

15.1 **Indemnification by Tenant.** Tenant agrees to protect, defend, indemnify, save and hold harmless the Landlord, the City of Key West, all of its Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, demands, expense and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur or in any way grow out of any act or omission of the Tenant, its agents, servants, and employees, or any and all costs, expense and/or attorney fees incurred by the Landlord as a result of any claim, demands, and/or causes of action associated therewith except of those claims, demands, and/or causes of action arising out of the negligence of the Landlord, the City of Key West, all its Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees. The Tenant agrees to investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent. Nothing in this indemnification is intended to act as a waiver of the City's sovereign immunity rights, including those provided under section 768.28, Florida Statutes. This indemnification shall survive the expiration or termination of this Agreement. In the event that any action or proceeding is brought against the Landlord by reason of such claim or demand, Tenant shall, upon written notice from the Landlord, resist and defend such action or proceeding by counsel satisfactory to the Landlord. The Tenant shall defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the Landlord's option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the Landlord whether performed by Tenant, or by persons employed or used by Tenant.

15.1.1 Except of loss or damage arising out of Landlord's grossly negligent or intentional acts, Landlord shall not be liable to Tenant, or to Tenant's assignees or subtenants or the employees,

agents, contractors, or invites of any such person, firm or entity, for any injury or damage to person or property in or about the Demised Premises.

15.2 **Insurance.** On the Commencement Date, the Tenant shall cause to be written and in full force and effect a policy or policies of insurance as described in this Lease, insuring the Tenant against any and all claims and demands made by any person or persons whatsoever for injuries received in connection with the operation and maintenance of the Project, improvements, and buildings located on the Demised Premises. Any loss adjustment shall require the written consent of both the Landlord and Tenant.

16 - ENVIRONMENTAL MATTERS

16.1 **No Warranties.** Tenant shall be responsible for any Hazardous Substances identification, removal or remediation that may be required by any Governmental Regulation or Agency. Landlord makes no representations or warranties of any kind whatsoever regarding the Demised Premises or the environmental condition of the Demised Premises or any improvement thereon.

16.2 **Investigation and Remediation.** The Tenant will be responsible to obtain its own environmental reports or studies as it deems prudent at its own expense. Tenant shall provide a copy of any such reports to Landlord. Tenant shall perform any environmental remediation, mitigation or other action regarding the Demised Premises at its sole expense. Tenant shall notify Landlord immediately of any discharge or discovery of any hazardous waste at, upon, under, or within the Demised Premises. As a part of the Project, Tenant shall, at its sole cost and expense, comply with all remedial measures required by any Governmental agency having jurisdiction, including remediation or mitigation of any Hazardous Substances existing on, in or under the Demised Premises, or any improvement thereon on the Commencement Date regardless of the source of such Hazardous Substances and including, without limitation, any Hazardous Substances or lead based paint, generated, stored or existing on the Demised Premises due to or arising from Landlord's operations on or use of the Demised Premises. Tenant shall remediate any such Hazardous Substances to the applicable standard for occupancy of the Demised Premises for residential use and will indemnify and protect Landlord from any claim or demand to remediate or clean up all or any portion of the Demised Premises from any person, firm, entity or governmental agency. Tenant shall submit any remedial action plan or similar plan for remediation or mitigation of Hazardous Substances to Landlord for advance review and approval, but Landlord will not unreasonably withhold its approval. Tenant shall promptly forward to Landlord copies of all orders, notices, permits, applications, or other communications under reports received by Tenant in connection with any discharge or the presence of any Hazardous Substances on or affecting the Demised Premises. Landlord shall provide Tenant with all environmental reports or studies in Landlord's possession.

16.3 **Preservation or Restoration.** Tenant acknowledges that the Demised Premises is, or may be, subject to Federal, State and local laws and regulations enacted for the purpose of protecting, preserving or restoring the environment. The Tenant shall, at the sole cost of the Tenant, be responsible for full compliance with any such laws or regulations.

The Tenant's performance under Lease shall include the following:

- A. Performance in a manner to minimize disturbance of or damage to the environment.
- B. To the extent, caused by the performance of this Lease by or on behalf of the Tenant or contractors working in connection with the Project, the clean-up, repair or restoration of the environment to the extent required by any Federal, State or local laws or regulations.
- C. The Tenant shall be responsible for any fines, penalties, damages or assessments made against the Tenant or its Contractors or the Landlord resulting from the performance of this Lease by or on behalf of the Tenant.

16.4 **Survival.** The Tenant's obligation under this Article 16 shall survive the termination of this Lease, and shall not be limited in any manner by acceptance or final payment under the Lease terms.

16.5 **Tenant's Compliance.** Tenant shall not cause or permit to occur any of the following:

Any violation of Governmental Regulations related to environmental conditions on, under, or about the Demised Premises or arising from Tenant's use or occupancy of the Demised Premises, including, but not limited to, soil and ground water conditions, or

The use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under, or about the Demised Premises or the transportation to or from the Demised Premises of any Hazardous Substances.

17 – ADDITIONAL COVENANTS

17.1 **Nondiscrimination.** No person or firm shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in conjunction with the awarding and performance by Tenant or its subtenant of any procurement, nor in the provision of housing on the Demised Premises, on the basis of race, color, religion, national origin, age, sex, disability, sexual orientation, or marital status.

17.2 **Public entity conviction.** No person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may, for a period of thirty-six (36) months from the date of being placed on the convicted vendor list, submit a bid on, or be awarded a contract to perform, any of the following: provision of any goods or services to Tenant or its subtenant, the construction or repair of a building or work on the Demised Premises, or work on the Demised Premises as a contractor, supplier, subcontractor, or consultant in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO. Should the statutory bar against convicted vendors be amended during the term of this Lease, this paragraph shall be deemed amended to be consistent therewith, as of the effective date of such statutory amendment.

17.3 **Taxes, Insurance and Utilities.**

17.3.1 Tenant will pay all Taxes and all hazard insurance premiums due and payable during any calendar year of the term. Landlord will prorate Tenant's share of any Taxes and Insurance due and payable during the calendar year in which the Lease commences or terminates on a per diem basis based on the number of days of the term within such calendar year. Buildings constructed on the Demised Premises shall be insured against damage by fire, windstorm, flood, and other hazards.

17.3.2 Tenant will be responsible for payment of all Utilities consumed on or charged to the Demised Premises during the term of this Lease. The term "Utilities" shall include electricity, water, sewer, solid waste, telephone and other utility charges.

17.3.3 The term "Taxes" shall mean any real estate taxes or assessments attributable to the Demised Premises. Landlord shall deliver to Tenant any real estate tax bill or assessment upon receipt thereof. Taxes shall be paid by Tenant on or prior to due date.

17.3.4 If the Tenant shall fail, refuse, or neglect to make any of the payments required in this Article, then the Landlord may pay the same, and the amount or amounts of money so paid, including reasonable attorneys' fees and expenses which might have been reasonably incurred because of or in connection with such payments, together with interest on all such amounts, at the highest rate allowed by law shall be repaid by the Tenant to the Landlord, upon the demand of the Landlord, and the payment thereof may be collected or enforced by the Landlord in the same manner as though such amount were an installment of rent specifically required by the terms of this Lease to be paid by the Tenant to the Landlord, upon the day when the Landlord demands repayment thereof or reimbursement therefor of and from the Tenant; but the election of the Landlord to pay such taxes shall not waive the default thus committed by the Tenant.

17.4 **Title.** Tenant acknowledges that Title to the leasehold estate created by this Lease is subject to all exceptions, conditions, restrictions, limitations, easements, rights, rights-of-way, and other matters of record set forth on the Quitclaim Deed recorded in Official Records Book 1839, Page 410, of the Public Records of Monroe County, the Memorandum of Agreement recorded in Official Records Book 1839, Page 481, of the Public Records of Monroe County, and the Memorandum of Understanding dated October 23, 2002,, copies of which are attached hereto as Composite Exhibit "E". Landlord makes no representations regarding title and the Landlord represents that this Lease does not conflict with any other agreement to which Landlord is bound.

17.5 **Legal Use.** The Tenant covenants and agrees with the Landlord that the Demised Premises will be used for purposes permitted by applicable law at all times and specifically operated in accordance with the referendum authorized pursuant to Ordinance No. 07-09 and approved by majority vote of the electors on October 2, 2007. A copy of Ordinance No. 07-09 is attached hereto, incorporated by reference, and more particularly described as Exhibit "F".

17.6 **Recovery of Litigation Expense.** In the event of any suit, action or proceedings at law or in equity, by either of the Parties hereto against the other by reason of any matter or thing arising out of this Lease, including any eviction proceedings, the prevailing party shall recover not only its legal costs, but reasonable attorneys' fees including appellate, bankruptcy and post-judgment collection proceedings for the maintenance or defense of said action or suit, as the case may be. Any judgment rendered in connection with any litigation arising out of this Lease shall bear interest at the highest rate allowed by law.

17.7 **Condition of the Demised Premises.** Tenant agrees to accept the Demised Premises in its presently existing condition "as is" and with all faults. Tenant acknowledges and agrees that it has determined that the Demised Premises is acceptable for its purposes and hereby certifies same to Landlord. Landlord shall have no responsibility for utilities for the Demised Premises. Tenant, at its sole cost and expense, shall bring or cause to be brought to the Demised Premises adequate connections for water, electrical power, telephone, stormwater and sewage and shall arrange with the appropriate utility companies for furnishing such services with no obligation therefore on the part of Landlord. Tenant acknowledges that the Landlord, and any agent, has made no representations or promises in regard to the Demised Premises except as set forth in this Lease with specificity. Tenant has examined the Demised Premises, the sidewalks and structures adjoining the same, any subsurface conditions, and the present uses and non-uses thereof. The Landlord makes no express warranties and disclaims all implied warranties, including, without limitation, those relating to the environmental condition of the Demised Premises. Tenant accepts the same in the condition in which they now are, without representation or warranty, express or implied, in fact or by law, by the Landlord, and without recourse to the Landlord as to the nature, condition, or usability of the Demised Premises, or the uses to which the Demised Premises may be put. The Landlord shall not be responsible for any latent defect or change of condition in the Demised Premises, and personalty, or of title, and the Rent hereunder shall not be withheld or diminished on account of any defect in such title or property, any change in the condition thereof, any damage occurring thereto, or the existence with respect thereto of any violations of the laws or regulations of any governmental authority. Tenant acknowledges that it shall be responsible for removal or and disposal of any equipment on the Demised Premises on the Commencement Date.

17.8 **Estoppel Certificates.** Either Party shall, without charge, at any time and from time to time hereafter, within ten (10) days after written request of the other, certify by written instrument duly executed and acknowledged to any mortgagee or purchaser or proposed mortgagee or proposed purchaser, or any other person, firm, or corporation specified in such request:

(a) As to whether this Lease has been supplemented or amended, and, if so, the substance and manner of such supplement or amendment;

(b) As to the validity and force and effect of this Lease, in accordance with its tenor as then constituted;

- (c) As to the existence and particulars of any default thereunder;
- (d) As to the existence of any offsets, counterclaims, or defenses thereto on the part of such other party;
- (e) As to the commencement and expiration dates of the term of this Lease; and
- (f) As to any other matters as may reasonably be so requested.

In addition, Tenant will, within fifteen (15) days after written request from Landlord, provide Landlord with financial statements, including, at a minimum, an income statement and a balance sheet for the current and prior year, and other financial information reasonably requested by Landlord.

Any such certificate may be relied upon by the party who requested it and any other person, firm, or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing the same.

17.9 Right of Entry. The Landlord and his agents shall have the right to enter upon the Demised Premises at all reasonable times to examine the condition and use thereof, provided only that Landlord shall provide Tenant with five (5) days notice, and such right shall be exercised in such manner as not to interfere with the Tenant or any in the use of the Demised Premises. If the Demised Premises are damaged by fire, windstorm, or by any other casualty which caused the Demised Premises to be exposed to the elements, then the Landlord may enter upon the Demised Premises to make emergency repairs; but if the Landlord exercises its option to make emergency repairs, such act or acts shall not be deemed to excuse the Tenant from its obligation to keep the Demised Premises in repair and the Tenant shall, upon demand of the Landlord, immediately reimburse the Landlord for the cost and expense of such emergency repairs.

17.10 Easement for Bicycle, Vehicle, Pedestrian Access and Utilities. Prior to the Commencement Date and as a condition to the effectiveness of this Lease, Landlord and Tenant shall enter into an agreement regarding bicycle, vehicle, pedestrian ingress and egress and placement of utilities with respect to the real property identified in Exhibit "C". The agreement shall be in form and substance acceptable to Landlord and provide the public with nonexclusive but permanent ingress and egress for bicycles, vehicles, and pedestrians, and shall permit Landlord the use for utility purposes of such parcel.

18 – CONSTRUCTION OF PHASE I

18.1 **Zoning.** If necessary, Tenant will obtain all necessary zoning modifications, or otherwise obtain the right to build Phase I of the Project on or before the Commencement Date.

18.2 **Permitting and costs.** With regard to Phase I of the Project, Landlord shall furnish Tenant three (3) affordable allocations pursuant to the building permit allocation system of the City of Key West for the construction of the ten assisted living units for residents meeting the low income housing standards and the eighteen assisted living units for residents meeting the moderate income housing standards referred to in Section 5.1 above. The Parties recognize that these 3 affordable allocations permit the construction of up to 30 low and moderate assisted care units pursuant to the definition of “nursing homes, rest homes and convalescent homes” contained in section 86-9 of the Code of Ordinances of the City of Key West. With the exception of these three allocations, Tenant will obtain all necessary allocations and all required building permits or approvals for Phase I of the Project prior to the Commencement Date. Further, Tenant shall, at Tenant’s sole expense, be responsible for the payment of all costs and fees necessary to complete the Project, including, but not limited to, impact and system development fees, building and planning fees, and costs associated with acquiring additional entitlements.

18.3 **Project Plans.** The plans and specifications for Phase I of the Project must be presented to and approved by Landlord in writing prior to submission of any application or request to the City of Key West or any other governmental agency and prior to the Commencement Date. Tenant’s architect shall coordinate with the architect assisting Landlord in the development of the Truman Waterfront. The plans and specifications for Phase I of the Project may be submitted for approval to the Landlord and the Tenant must provide the plans and specifications within a reasonable time prior to a regularly scheduled meeting of Landlord’s governing board so that the Board can consider the matter in the normal course of business. Landlord shall not unreasonably withhold approval, and in the event of disapproval, Landlord shall give Tenant an itemized statement of the reasons for disapproval within ten (10) days after the Landlord considers the plans and specifications. Additionally, if the plans and specifications are not approved or disapproved by Landlord within a reasonable time after they are considered by the Landlord, then said plans and specifications shall be deemed approved by Landlord. Any modifications to the initial plans and specifications subsequent to the Commencement Date must also be approved in writing, in advance, by Landlord with the same process being used.

Any and all construction on the Demised Premises during the Term of this Lease shall be constructed in a good and workmanlike manner, pursuant to written contracts with licensed contractors and in accordance with any and all requirements of local ordinances and with all rules, regulations and requirements of all departments, boards, officials and authorities having jurisdiction thereof. It is understood and agreed that the plans and specifications for all construction shall be prepared by a duly qualified architect licensed in the State of Florida. Furthermore, no construction shall be commenced on the Demised Premises unless all the following have occurred: (a) the Tenant, at Tenant’s expense, shall have filed with the appropriate governmental bodies having jurisdiction with respect to the subject of the proposed construction, complete plans, specifications, certificates and any other documents required for the proposed construction, and (b) as to all construction work with a cost of greater than

\$100,000, there shall be delivered to the Landlord payment and performance bonds running to the Landlord as obligee conditioned on completion of the construction in accordance with the plans and specifications free and clear of all construction or other liens and free and clear of all financing statements under the Uniform Commercial Code or any successor statute. Such bonds shall be in an amount of the entire cost of construction in accordance with the plans and specifications as approved by Landlord as such cost of construction is stipulated in the construction contract between Tenant and its general contractor and must guarantee full performance of the contract for the construction in accordance with the plans and specifications as approved by Landlord.

Tenant further represents and warrants that any alterations, modifications, or construction performed by or for Tenant at the Demised Premises shall be performed in compliance with the requirements of the Americans With Disabilities Act of 1990, as amended (the "ADA") and any similar state or local law, regulation or ordinance. Tenant further represents and covenants that it shall conduct its occupancy and use of the Demised Premises in accordance with the ADA and any similar state or local law, regulation or ordinance (including, but not limited to, modifying its policies, practices, and procedures, and providing auxiliary aids and services to disabled persons). Moreover, Tenant shall abide by any and all applicable laws and regulations concerning any handicap or disability access or use now existing or hereafter imposed as such is applicable from time to time to the Demised Premises and the improvements thereon.

18.4 Completion Date. No later than 12 months from the Effective Date of this Lease, Tenant shall submit an application for building permit for construction of Phase I of the Project, to be built on the Demised Premises. Tenant shall obtain a building permit for construction of Phase I of the Project no later than the Commencement Date as described in Section 3.1 above. Tenant shall obtain a certificate of occupancy for Phase I of the Project no later than two (2) years following the Commencement Date as described in Section 3.1 above.

19 – LEASEHOLD MORTGAGE FINANCING

19.1 Leasehold Mortgage Permitted. Tenant shall have the right to encumber, by mortgage or other proper instrument, Tenant's interest under this Lease, together with all buildings and improvements on the Demised Premises, to a Federal or State Savings & Loan Association, governmental entity, Bank or Trust Company, Insurance Company, Pension Fund or Trust (or to a private lender so long as the terms and conditions of the financing from private lender are on substantially similar terms to those then existing by the other lenders referred to in this section) or similar lending institution authorized to make leasehold mortgage loans in the State of Florida without obtaining the prior consent of the Landlord, subject, however, to the other terms and conditions of this Lease. The outstanding mortgage balance shall not exceed eighty-five percent (85%) of the MAI appraised value of the project at any time.

19.2 Leasehold Mortgagee. If the Tenant shall mortgage its leasehold interest and if the holder of the mortgage or pledge shall forward to the Landlord a duplicate original of the mortgage in form proper for recording, or a copy of the mortgage certified as a true copy by the Office of Official Records of Monroe County, Florida, together with a written notice setting forth

the name and address of the leasehold mortgagee, then until the time that the leasehold mortgage shall be satisfied of record, the following provisions of this Section 19.2 shall apply:

(a) When giving notice to the Tenant with respect to any default under the provisions of this Lease, the Landlord will also serve a copy of such notice upon the leasehold mortgagee. No such notice to the Tenant shall be deemed to have been given unless a copy of such notice has been mailed to such leasehold mortgagee, which notice must specify the nature of each such default.

(b) In case the Tenant shall default under any of the provisions of this Lease, the leasehold mortgagee shall have the right to cure such default whether the same consists of the failure to pay rent or the failure to perform any other matter or thing which the Tenant is required to do or perform and the Landlord shall accept such performance on the part of the leasehold mortgagee as though the same had been done or performed by the Tenant. The leasehold mortgagee, upon the date of mailing by Landlord of the notice referred to in subparagraph (c) of this Section 19.2 shall have, in addition to any period of grace extended to the Tenant under the terms and conditions of this Lease for a non-monetary default, a period of sixty (60) days within which to cure any non-monetary default or cause the same to be cured or to commence to cure such default with diligence and continuity; provided, however, that as to any default of the Tenant for failure to pay rent, or failure to pay any amount otherwise required under the terms of this Lease (e.g., including, but not limited to, taxes or assessments), the leasehold mortgagee shall have thirty (30) days from the date the notice of default was mailed to the mortgagee within which to cure such default.

(c) Upon the happening of any default and upon receipt of notice of default from the Landlord, the Tenant agrees to notify the leasehold mortgagee promptly in writing of such occurrence and shall state in the notice what action has been or will be taken by the Tenant to cure the default.

(d) In the case of any default by the Tenant, other than in the payment of money under this Lease, the Landlord, so long as no default in respect of the payment of Rent and any monetary obligation shall exist, will take no action to effect a termination of the term of this Lease by reason of any such default, without first giving to the leasehold mortgagee a reasonable time, not to exceed ninety (90) days from the mailing of the default notice by Landlord to Tenant, with a copy to such mortgagee, within which either (i) to obtain possession of the Demised Premises (including possession by a receiver) and cure such non-monetary default in the case of a default which is susceptible of being cured when the leasehold mortgagee has obtained possession; or (ii) to institute foreclosure proceedings and complete such foreclosure or otherwise acquire the Tenant's interest under this Lease with diligence and continuity and thereafter to commence and diligently proceed to cure such default; provided, however, that the leasehold mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default shall be timely cured, and provided further, that nothing in this Section 19.2 shall preclude the Landlord from exercising any rights or remedies under this Lease with respect to any other default by the Tenant during any period of such forbearance.

(e) In the event of the termination of this Lease or of any succeeding Lease made pursuant to the provisions of this Section 19.2 (e) prior to this stated expiration date, the Landlord will enter into a new Lease of the Demised Premises with the leasehold mortgagee or, at the request of such leasehold mortgagee, to a corporation formed by or on behalf of such leasehold mortgagee or by or on behalf of the holder of the note secured by the leasehold mortgage held by such leasehold mortgagee, for the remainder of the Initial Term only, effective on the date of such termination, at the Rent and upon the covenants, agreements, terms, provisions and limitations contained in this Lease, provided that such leasehold mortgagee makes written request and executes, acknowledges and delivers to the Landlord such new Lease within thirty (30) days from the date of such termination and such written request and such new Lease is accompanied by payment to the Landlord of all amounts then due to the Landlord, including reasonable counsel fees, court costs and disbursements incurred by the Landlord in connection with any such default and termination as well as in connection with the execution and delivery of such new Lease, less the net income collected by the Landlord subsequent to the date of termination of this Lease and prior to the execution and delivery of the new Lease, any excess of such net income over the aforesaid sums and expenses to be applied in payment of the rent thereafter becoming due under such new Lease. Provided, however, the provision relating to the Option to Extend Term contained in section 3.4 above shall not pertain to any leasehold mortgagee, and the Landlord shall have no obligation whatsoever to enter into a new Lease with any leasehold mortgagee after expiration of the remainder of the Initial Term. In addition, immediately upon receipt by the Landlord of such new Lease, as provided in this Section 19.2(e), the Landlord shall be deemed to have executed, acknowledged and delivered to the leasehold mortgagee an assignment of all subleases covering the Demised Premises which theretofore may have been assigned and transferred to the Landlord and all subleases under which subtenants shall be required to attorn to the Landlord pursuant to the terms and conditions of such subleases or this Lease. Such assignment by the Landlord shall be deemed to be without recourse as against the Landlord. Within ten (10) days after a written request therefor by the leasehold mortgagee, such assignment or assignments shall be reduced to a writing in recordable form and executed, acknowledged and delivered by the Landlord to the leasehold mortgagee.

(f) The leasehold mortgagee may become the legal owner and holder of this Lease by foreclosure of its mortgage or as a result of the assignment of this Lease in lieu of foreclosure, which shall not require Landlord's consent, whereupon such leasehold mortgagee shall immediately become and remain liable under this Lease as provided in Section 19.2 (g) below, except that, notwithstanding anything contained in this Lease to the contrary, such leasehold mortgagee may assign this Lease without the Landlord's consent to any institutional assignee (as identified in (a) above) at any time whether prior or subsequent to the construction or completion of buildings, or other structures and improvements erected or to be erected upon the Demised Premises.

(g) In the event that a leasehold mortgagee shall become the owner or holder of the Tenant's interest by foreclosure of its mortgage or by assignment of this Lease in lieu of foreclosure or otherwise, the term "Tenant," as used in this Lease, means only the owner or holder of the Tenant's interest for the time being so that, in the event of a sale, assignment or other

disposition of the Tenant's interest in this Lease by the mortgagee, the mortgagee shall be entirely freed and relieved of all covenants and obligations of the Tenant under this Lease and it shall be deemed and construed, without further agreement between the Landlord and the mortgagee or between the Landlord, the mortgagee and the mortgagee's purchaser or assignee at any such sale or upon assignment of Tenant's interest, that the purchaser or assignee of Tenant's interest has assumed and agreed to carry out any and all covenants and obligations of Tenant. Any such disposition of Tenant's interest shall require Landlord's written approval, which approval shall not be unreasonably withheld.

(h) Within ten (10) days after written request by Tenant or by Tenant's leasehold mortgagee, or in the event that upon any sale, assignment or mortgaging of Tenant's interest in this Lease by Tenant or Tenant's leasehold mortgagee, an offset statement shall be required from the Landlord, the Landlord agrees to deliver in recordable form a certificate to any proposed leasehold mortgagee, purchaser, assignee or to Tenant, certifying (if such be the case) (i) the amount of Rent due under the Lease, if any, and the date to which rentals have been paid; (ii) that this Lease is in full force and effect; (iii) that the Landlord has no knowledge of any default under this Lease, or if any default exists, specifying the nature of the default; and (iv) that there are no defenses or offsets which are known and may be asserted by the Landlord against the Tenant in respect of obligations pursuant to this Lease.

(i) With respect to the leasehold mortgagee's security interest in the Demised Premises, so long as the Tenant's interest in this Lease shall be mortgaged to a leasehold mortgagee, the Parties agree for the benefit of such leasehold mortgagee, that they shall not surrender or accept a surrender of this Lease or any part of it, nor shall they cancel, abridge or otherwise modify this Lease or accept material prepayments of installments of rent to become due without the prior written consent of such mortgagee in each instance, which consent shall not be unreasonably withheld.

(j) Reference in this Lease to acquisition of the Tenant's interests in this Lease by the leasehold mortgagee shall be deemed to refer, where circumstances require, to acquisition of the Tenant's interest in this Lease by any purchaser at a sale on foreclosure of the leasehold mortgage and provisions applicable to the leasehold mortgagee in such instance or instances shall also be applicable to any such purchaser.

(k) So long as the Tenant's interest in this Lease shall be mortgaged to a leasehold mortgagee, the parties agree for the benefit of such leasehold mortgagee that the Landlord shall not sell, grant or convey to the Tenant all or any portion of the Landlord's fee simple title to the Demised Premises without the prior written consent of such mortgagee. In the event of any such sale, grant or conveyance by the Landlord to the Tenant, the Landlord and the Tenant agree that no such sale, grant or conveyance shall create a merger of this Lease into a fee simple title to the Demised Premises. This subparagraph (k) shall not be construed to prevent a sale, grant or conveyance of the Landlord's fee simple title by the Landlord to any person, firm or corporation other than the Tenant, its successors, legal representatives and assigns, so long as this Lease is not terminated.

(l) Reference in this Lease to a leasehold mortgagee shall be deemed to refer where circumstances require, to any assignee (subject to the provisions of this Article of a leasehold mortgage; provided that such assignee shall forward to the Landlord a duplicate original of the assignment of the leasehold mortgage in form proper for record or a copy of such assignment, certified as a true copy by the Office of Official Records of Monroe County, together with a written notice setting forth the name and address of the assignee.

(m) Any leasehold mortgage shall be specifically subject and subordinate to the Landlord's rights under this Lease. The sentence immediately preceding shall not be deemed or construed (by implication or otherwise) to impose or establish upon the Tenant's interest in this Lease or upon the lien of any leasehold mortgage the superiority of any lien or encumbrance, including, without limitation, the lien of any fee mortgage, judgment or tax created directly or indirectly by, through or against the Landlord or the Landlord's interest in this Lease. Despite any provision which is or may appear to be to the contrary in this Lease, under no circumstances whatsoever shall the fee simple title interest of the Landlord in the Demised Premises, or any portion of them, be subordinated to any leasehold mortgage.

(n) Landlord agrees to cooperate with Tenant during the term of this Lease in obtaining a leasehold mortgage. To this extent Landlord agrees to not unreasonably withhold its consent to any non-material revisions to this Lease that may be requested by a leasehold mortgagee as an inducement to said mortgagee for making its leasehold mortgage. Notwithstanding the foregoing, it is understood that Landlord shall be under no obligation to change any of the financial terms hereof or to consent to any subordination. In the event the Landlord believes the Tenant request for modification of this Lease is unreasonable, the reasonableness of Tenant's request shall be determined in accordance with the rules of the American Arbitration Association. Such determination shall be binding on the parties. The expenses of such determination shall be borne equally by the parties.

20 - DEFAULT

20.1 Event of Default. The occurrence of any of the following events, acts, or circumstances shall constitute an "Event of Default":

20.1.1 Failure by Tenant to make any payment required hereunder when due or to perform any other obligation or duty required of Tenant pursuant to this Lease.

20.1.2 The bankruptcy of, or appointment of a receiver or trustee for, Tenant. IN THE EVENT TENANT FILES ANY FORM OF BANKRUPTCY, LANDLORD SHALL BE ENTITLED TO IMMEDIATE TERMINATION OF THE AUTOMATIC STAY PROVISIONS OF 11 U.S.C. §352, GRANTING THE LANDLORD COMPLETE RELIEF AND ALLOWING THE LANDLORD TO EXERCISE ALL OF ITS LEGAL AND EQUITABLE RIGHTS AND REMEDIES, INCLUDING, WITHOUT LIMITATION, THE RIGHT TO TERMINATE THIS LEASE AND DISPOSSESS TENANT FROM THE DEMISED PREMISES IN ACCORDANCE WITH FLORIDA LAW. ADDITIONALLY, TENANT AGREES NOT TO DIRECTLY OR INDIRECTLY OPPOSE OR OTHERWISE DEFEND AGAINST THE

LANDLORD'S EFFORT TO GAIN RELIEF FROM THE AUTOMATIC STAY. THE LANDLORD SHALL BE ENTITLED AS AFORESAID TO THE LIFTING OF THE AUTOMATIC STAY WITHOUT THE NECESSITY OF AN EVIDENTIARY HEARING AND WITHOUT THE NECESSITY OR REQUIREMENT OF THE LANDLORD TO ESTABLISH OR PROVE THE VALUE OF THE LEASEHOLD, THE LACK OF ADEQUATE PROTECTION OF HIS INTEREST IN THE LEASEHOLD, OR THE LACK OF EQUITY IN THE SAME. TENANT SPECIFICALLY AGREES AND ACKNOWLEDGES THAT THE LIFTING OF THE AUTOMATIC STAY HEREUNDER BY THE APPROPRIATE BANKRUPTCY COURT SHALL BE DEEMED TO BE "FOR CAUSE" PURSUANT TO SECTION 362(D)(1).

THIS CLAUSE WAS A MATERIAL CONSIDERATION TO THE LANDLORD TO GIVE THIS LEASE, AND HAD THE TENANT NOT AGREED TO THIS PROVISION, THE LANDLORD WOULD NOT HAVE ENTERED INTO THIS LEASE.

20.1.3 Tenant's voluntarily petitioning for relief under, or otherwise seeking the benefit of, any bankruptcy, reorganization, or insolvency law.

20.1.4 The sale of Tenant's interest under this Lease by execution or other legal process.

20.1.5 Tenant's making an assignment of a material portion of its assets for the benefit of creditors.

20.1.6 Tenant's dissolution or liquidation.

20.1.7 Tenant's failure to submit an application for building permit for construction of Phase I within 12 months from the Effective Date of this Lease.

20.1.8 Tenant's failure to obtain a certificate of occupancy and complete Phase I of the Project and begin operations of the assisted living community within twenty-four (24) months after the Commencement Date as provided for in Section 18.4 above.

20.1.9 Failure to continuously operate the assisted and independent living community after completion of the Project. "Failure to continuously operate" includes, without limitation, loss of any required State licensure for operation of an Assisted Living Facility, or failure to use the facility as an Assisted and Independent Living Community.

20.1.10 Failure of Tenant to comply with any of its material obligations to the Landlord as provided for herein such action shall constitute a default under this Agreement.

20.1.11 Tenant's effecting a change of the use of the Project as identified in this lease, or Tenant's alteration of the percentages of the Project devoted to low income or to moderate income housing as set forth in Section 5.1.

{SDS to insert language regarding repeat violations to constitute breach}

20.2 **Notice and Cure Periods.** Tenant shall not be deemed to be in default under this Lease in the payment of rent or the payment of any other moneys as herein required or in the furnishing of any bond or insurance policy when required herein unless Landlord shall first give to Tenant ten (10) days' written notice of such default and Tenant fails to cure such default within such ten (10) days of said notice.

Except as to the provisions or events referred to in the preceding paragraph of this section 20.2 which refer to monetary and insurance obligations, Tenant shall not be deemed to be in default under this Lease unless Landlord shall first give to Tenant thirty (30) days' written notice of such default, and Tenant fails to cure such default within such thirty (30) day period or, if the default is of such a nature that it cannot be cured within thirty (30) days, Tenant fails to commence to cure such default within such period of thirty (30) days or fails thereafter to proceed to the curing of such default with all possible diligence.

Regardless of the notice and cure periods provided herein, in the event that more rapid action is required to preserve any right or interest of the Landlord in the Demised Premises or other detrimental occurrence (such as, but not limited to, payment of insurance premiums, actions to prevent construction or judgment lien foreclosures or tax sales), then the Landlord is empowered to take such action and to request reimbursement or restoration from the Tenant as appropriate.

All default and grace periods shall be deemed to run concurrently and not consecutively.

20.3 **Remedies.** If any such Event of Default occurs and is not cured after the notice described herein, Landlord may, without further notice, immediately or at any time thereafter do one or more of the following:

(a) Reenter and repossess the Leased Premises and remove any property therein and store the same elsewhere at Tenant's expense without relieving Tenant from any liability or obligation hereunder. Landlord shall have the right to sell such stored property, without notice to Tenant, after it has been stored for a period of thirty (30) days or more, or as otherwise provided by law. The proceeds of such sale shall be applied first to the cost of such sale, second to the payment of any other sums of money which may then be due from Tenant to Landlord under any of the terms hereof, the balance, if any, to be paid to Tenant.

(b) Relet the Leased Premises or any part thereof for Tenant's account, using commercially reasonable efforts, but without obligation to do so and without relieving Tenant from any liability or obligation hereunder. Any amount received by Landlord from reletting will apply first to all reasonable costs and expenses incurred by Landlord in reletting (including, without limitation, broker's commissions, advertising expenses, cleaning and remodeling expenses).

(c) Bring an action then or thereafter against Tenant to recover the amount of any payment owing by Tenant to Landlord as the same is due, becomes due or accumulates.

(d) Terminate this Lease by giving Tenant written notice thereof, without relieving Tenant from any liability or obligation for payments theretofore becoming due or for present and prospective damages resulting from Tenant's default.

(e) Accelerate the entire amount of Rent due under this Lease for the entire Term of this Lease, which amount shall be immediately due and payable.

20.4 **Default by Landlord.** If Tenant asserts that Landlord has failed to meet its obligations under this Lease, Tenant shall give written notice to Landlord specifying the alleged failure to perform. If Landlord has not begun and pursued with reasonable diligence the cure of any failure of the Landlord to meet its obligations under this Lease within thirty (30) days of receipt of the notice, then Landlord shall be in default but Tenant's remedies are limited to the specific remedies set forth in this Lease. If Landlord's default is caused by factors within Landlord's control and is substantial and continuing and of a nature that prevents Tenant from using the Leased Premises, then Tenant may vacate the Leased Premises and Rent shall abate for the period of such vacation until the default has been cured. Landlord's liability for a default by Landlord under this Lease shall, in all events, be limited to the stipulated land value for market rate units in effect at the time of default pursuant to sections 4.2 and 4.3 above as pertains to the Initial Term. Landlord's liability for a default by Landlord during any Option term shall be limited to the fair rental value of the Demised Premises as determined pursuant to section 4.4 above.

20.5 **Landlord's Right to Perform.** In the event that Tenant by failing or neglecting to do or perform any act or thing herein provided by it to be done or performed, shall be in default under this Lease and such failure shall continue for a period of thirty (30) days after written notice from Landlord specifying the nature of the act or thing to be done or performed, then Landlord may, but shall not be required to, do or perform or cause to be done or performed such act or thing (entering on the Demised Premises for such purposes, with notice, if Landlord shall so elect), and Landlord shall not be or be held liable or in any way responsible for any loss, inconvenience, or annoyance resulting to Tenant on account thereof, and Tenant shall repay to Landlord on demand the entire expense thereof, including compensation to the agents and employees of Landlord. Any act or thing done by Landlord pursuant to the provisions of this section shall not be or be construed as a waiver of any such default by Tenant, or as a waiver of any covenant, term, or condition herein contained or the performance thereof, or of any other right or remedy of Landlord, hereunder or otherwise. All amounts payable by Tenant to Landlord under any of the provisions of this Lease, if not paid when the amounts become due as in this Lease provided, shall bear interest from the date they become due until paid at the highest rate allowed by law.

20.6 **Assignment of Rents; Receiver.** Except as to any priority in favor of a leasehold mortgagee, the Tenant pledges with, and assigns to, the Landlord all of the rents, issues, and profits which might otherwise accrue to the Tenant for the use, enjoyment, and operation of the Demised Premises and, in connection with such pledging of the rents, the Tenant covenants and agrees with the Landlord that if the Landlord, upon the default of the Tenant, elects to file suit to enforce the Lease and protect the Landlord's rights, then the Landlord may, as ancillary to such

suit, apply to any court having jurisdiction thereof for the appointment of a receiver of all and singular the Demised Premises, the improvements, and buildings located thereon; and, thereupon, it is expressly covenanted and agreed that the court shall, forthwith, appoint a receiver with the usual powers and duties of receivers in like cases, and such appointment shall be made by such court as a matter of strict right to the Landlord and without reference to the adequacy or inadequacy of the value of the property, which is subject to the Landlord's lien, or to the solvency or insolvency of the Tenant and without reference to the commission of waste. Nothing in this Section contained shall be construed as empowering the Landlord to collect rents accruing from the Demised Premises, unless and until the Tenant is in default.

20.7 Late Fees on Past Due Obligations/ Penalty for Non-Monetary Default.

(a) Monetary Obligations. Landlord shall have the right to charge Tenant a late fee equal to ten (10%) percent of any amount due from Tenant to Landlord, which is not paid when due; provided, however, such payment shall not excuse or cure any default by Tenant under this Lease. It is agreed by the parties hereto that said late fee is reimbursement to Landlord for collection charges incurred as a result of the overdue rent and/or additional rent. Such late fee shall be in addition to any interest payable by Tenant as set forth in this Lease. In the event that any check, bank draft, order for payment or negotiable instrument given to Landlord for any payment under this Lease shall be dishonored for any reason whatsoever, Landlord shall be entitled to charge Tenant an administrative fee of Fifty Dollars (\$50.00) for each such instrument in addition to any other charges due under this Lease. In addition, Landlord shall be reimbursed by Tenant for any costs incurred by Landlord as a result of said payment being dishonored. Rent shall be paid to Landlord by electronic means if so requested by Landlord.

(b) Non-Monetary Obligations. Landlord shall have the right to charge Tenant a penalty of \$150.00 per day for any violation or failure to perform any of the other conditions, covenants or agreements made by Tenant in this Lease if such violation or failure continues for a period of three (3) business days after written notice thereof to Tenant from Landlord.

If such violation or failure cannot be cured through the use of commercially reasonable efforts within the three (3) business days herein provided, Tenant shall commence to cure such violation or failure within the three (3) business days and diligently pursue such cure to completion within a reasonable time. Furthermore, within the three (3) business days herein provided, Tenant shall provide Landlord, in writing, a detailed account of its commercially reasonable efforts to cure the violation or failure and the estimated time to fully cure such violation or failure.

TENANT HEREBY ACKNOWLEDGES AND AGREES IF TENANT FAILS TO RESPOND IN WRITING TO LANDLORD WITHIN THREE (3) BUSINESS DAYS OF LANDLORD'S NOTICE TO TENANT, TENANT WILL BE DEEMED TO HAVE ACKNOWLEDGED THAT TENANT IS IN VIOLATION OR HAS FAILED TO PERFORM THE CONDITION, COVENANT OR AGREEMENT STATED IN THE NOTICE BY LANDLORD AND THAT TENANT WILL PAY THE \$150.00 PER DAY PENALTY FOR ANY VIOLATION WHICH IS NOT CURED WITHIN THE ABOVE

MENTIONED THREE (3) BUSINESS DAYS FROM LANDLORD'S WRITTEN NOTICE TO TENANT.

21 - WAIVER; ACCORD AND SATISFACTION

21.1 The failure of a Party to insist, in any one or more instances, upon strict performance of any covenants or agreements of this Lease, or to exercise any option of such party herein contained, shall not be construed as a waiver or relinquishment of that or any right or remedy of such Party hereunder and shall not be deemed a waiver of any subsequent breach or default by the other party of the covenants or conditions herein. No waiver by a Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such party or their authorized agent. With respect to Landlord, such waiver shall be effective only upon an appropriate Resolution approved by a majority of the commissioners of the City of Key West, sitting in their capacity as members of the Naval Properties Local Redevelopment Authority.

22 - NOTICES

22.1 All notices, requests, demands, and other communications which are required or may be given under this Agreement shall be in writing and shall be served on the parties at the addresses indicated below:

To Tenant:

Family Pride of Key West, LLC
1125 Grove Street
Loudon, TN 37774

To Landlord:

Naval Properties Local Redevelopment Authority
P.O. Box 1409
Key West, FL 33041

With a copy to:

The City Attorney
P.O. Box 1409
Key West, FL 33041

Any such notices shall be (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the U.S. Mail, (b) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (c) sent by telephone facsimile transmission, in which case notice shall be deemed delivered on the day of transmission of such notice and confirmation of such transmission, or (d) sent by personal delivery, in which case notice shall be deemed delivered on the day of actual delivery. The above addresses may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

23- ATTORNEY'S FEES

23.1 In the event of litigation affecting the rights of either Party under this Lease, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights hereunder.

24 - MISCELLANEOUS

24.1 **Entire Agreement.** This Lease and the exhibits attached hereto all exhibits hereto (all of which are expressly incorporated herein by this reference) constitute the sole and exclusive agreement between the parties with respect to the Demised Premises. No amendment, modification, or revision of this Lease shall be effective unless in writing and executed by Landlord and Tenant. No prior written or prior or contemporaneous oral promises or representations shall be binding. The execution hereof has not been induced by either party by representations, promises, or understandings not expressed herein and there are no collateral agreements, stipulations, promises, or undertakings whatsoever upon the respective Parties in any way touching the subject matter of this instrument which are not expressly contained in this Lease.

24.2 **Severability.** With the exception of the provision pertaining to the priority for residents of the City of Key West contained in section 5.1 above, if any term or provision of this Lease or the application thereof to any present or future circumstances, to any extent, be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Lease shall be in full force and effect, and only the provision found to be unenforceable shall be stricken from the terms hereof.

24.3 **Force Majeure.** Should a party be unable to perform any of its obligations contained in this Lease due to circumstances beyond its reasonable control, including but not limited to labor disputes; Governmental Regulations; fire or other casualty; acts of the other party or the other party's employees, agents, contractors, subcontractors, or invitees; inability to obtain material or services; strikes; or acts of nature, such party shall not be considered in default under the terms of this Lease, the time for performance by such party of the obligation shall be extended for a period of time equal to the length of the delay caused by such circumstances, and the other party shall not be excused from the obligation to pay all amounts and charges required under this Lease as the same become due except as otherwise expressly provided herein.

24.4 **Governing Law, Venue.** This Lease shall be construed under the laws of the State of Florida, and the venue for any legal proceeding to enforce or determine the terms and conditions of this Lease shall be in the Circuit Court in and for Monroe County, Florida.

24.5 **Binding Effect.** The terms and conditions of this Lease are binding upon the heirs, successors, and assigns of the parties hereto. The obligations of Tenant hereunder shall be joint and several.

24.6 **Usage.** Whenever used herein, the singular number shall include the plural and the plural the singular, and the use of any gender shall include all genders. Titles of articles, paragraphs,

and subparagraphs of this Lease are for convenience only and neither limits nor amplifies the provisions of this Lease.

24.7 **No Third Party Rights.** The provisions of this Lease are for the exclusive benefit of Landlord and Tenant, and except for rights expressly granted to third parties by the terms hereof, no third party shall have any right or claim against Landlord or Tenant by reason of such provisions or be entitled to enforce any of such provisions against Landlord or Tenant. This Lease creates a landlord/tenant relationship, and no other relationship, between the parties.

24.8 **Consents and Approvals.** With the exception of the provisions relating to assignment and subleasing contained in section 8 above, whenever the Lease requires Landlord's consent or approval, Landlord will not withhold its approval or consent in bad faith, and Landlord will not unreasonably delay its response to Tenant's request for approval or consent. Landlord will be deemed to have given its consent or approval to any such request made by Tenant if Landlord does not respond to Tenant in writing within thirty (30) days (or such other time period as is expressly provided herein) after Landlord's receipt of such request. If Landlord withholds its consent or approval to any such Tenant request, Landlord shall give Tenant a written statement setting forth the basis for withholding its consent or approval.

24.9 **Brokers.** Landlord and Tenant covenant, warrant and represent that no broker was instrumental in consummating this Lease, and that no conversations or negotiations were had with any broker concerning the renting of the Demised Premises. Tenant and Landlord agree to hold one another harmless from and against, and agrees to defend at its own expense, any and all claims for a brokerage commission by either of them with any brokers.

24.10 **Authority for Execution, Time of the Essence.** The person executing this Lease on behalf of the Tenant hereby personally represent and personally warrant to the Landlord that he has the authority to bind the Tenant and to execute and deliver this Lease on behalf of the Tenant. Time is of the essence in the performance of the obligations of the Parties hereto.

24.11 **Liability continued, Landlord Liability.** All references to the Landlord and Tenant mean the persons who, from time to time, occupy the positions, respectively, of Landlord and Tenant, although this shall not be construed as relieving a person of any liability incurred by them by reason of or in connection with their having been Landlord or Tenant at one time. In the event of an assignment of this Lease by the Landlord, except for liabilities that may have been incurred prior to the date of the assignment, the Landlord's liability under this Lease shall terminate upon such assignment. In addition, the Landlord's liability under this Lease shall be at all times limited to a maximum of the value of Landlord's interest in the Demised Premises.

24.12 **No Developer Fee.** There shall be no monetary sum or consideration paid, tendered, or accepted by any person or entity in the form of a developer fee in connection with the Project.

24.13 **Annual operating reports.** Tenant shall file annual independently audited operating reports with Landlord by January 31 of each Lease Year for the preceding, which shall account for all income, operating expenses, mortgage payments, outstanding mortgage balance, and return on equity.

24.14 **Personal Guaranty.** This Lease is contingent upon Tenant furnishing Landlord simultaneously with the execution of this Lease a Personal Guaranty executed by Tenant's managing member in a form acceptable to Landlord and guaranteeing to the Landlord the full and complete performance of all of Tenant's covenants and obligations under this Lease and full payment by Tenant of all rentals, additional charges and other charges and amounts required to be paid hereunder during the entire term. In the event Tenant's initial managing member or a subsequent managing is replaced or removed, each succeeding managing member shall execute a Personal Guaranty as provided for herein.

24.15 **Option to Lease Additional parcel in connection with the development of Phase II.** In the event Landlord and Tenant stipulate to the total number of units to be developed as part of Phase II of the Project, and in the event that the parties agree that Tenant is unable to develop those units wholly on that part of the Main Parcel described on Exhibit "A", Landlord herein expressly grants unto Tenant an option to Lease the Option Parcel which is more particularly described on Exhibit "B", which is attached hereto and incorporated by reference, under terms substantially similar to those contained in this Lease and conditions which are mutually acceptable to the parties. Provided, however, Tenant shall advise Landlord of its intent to exercise this Option no later than 48 months of the Commencement Date of this Lease. Provided, however, that the term, all financial terms, development timelines, and numbers of units must be specifically negotiated and agreed to by the Parties within 12 months of the exercise of the Option, failing which the Option shall thereafter be null and void and of no further force or effect.

24.16 **Preamble.** Tenant represents and warrants to Landlord that the statements set forth in the Preamble to this Lease are true and correct, and the Parties agree that all such statements are incorporated herein.

24.17 **Waiver of a Jury Trial.** EXCEPT AS PROHIBITED BY LAW, LANDLORD AND TENANT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION OF LANDLORD, TENANT OR ANY GUARANTOR. THIS WAIVER IS A MATERIAL INDUCEMENT FOR LANDLORD TO ENTER INTO THIS LEASE. IF THE SUBJECT MATTER OF ANY LITIGATION IS ONE IN THAT THE WAIVER OF JURY TRIAL IS PROHIBITED, NEITHER LANDLORD NOR TENANT SHALL PRESENT AS A NON-COMPULSORY COUNTERCLAIM IN SUCH LITIGATION

ANY CLAIM ARISING OUT OF THIS LEASE. FURTHERMORE, NEITHER LANDLORD NOR TENANT SHALL SEEK TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY LITIGATION IN WHICH A JURY TRIAL CANNOT BE WAIVED.

24.18. U.S. Navy Consent. This Lease is expressly contingent upon issuance of any consent by the U. S. Navy that may be required under the terms of the instrument of conveyance from the U.S. Navy, as grantor of the subject property, to the City of Key West. Landlord shall promptly provide the U.S. Navy a copy of the Lease, together with a request for any required consent thereto.

SPACE INTENTIONALLY BLANK
SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first above mentioned.

Two Witnesses:

Sign: _____
Print: _____

Sign: _____
Print: _____

Sign: _____

Print: _____

Sign: _____
Print: _____

Landlord:

NAVAL PROPERTIES LOCAL
REDEVELOPMENT AUTHORITY

By: _____
Printed Name: _____
Title: _____
Date: _____

Tenant:

FAMILY PRIDE SENIOR CARE OF
KEY WEST, LLC,
a Florida limited liability company

By: _____
Printed Name: _____
Title: _____
Date: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____ as _____ of _____
_____, a _____, on behalf of the _____, who is personally known to me or
has produced _____ (state) driver's license or _____
as identification.

My Commission Expires: _____

(AFFIX NOTARY SEAL)

Notary Public (Signature)

(Printed Name)

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____ as _____ of _____
_____, a _____, on behalf of the _____, who is personally known to me or
has produced _____ (state) driver's license or _____
as identification.

My Commission Expires: _____

(AFFIX NOTARY SEAL)

Notary Public (Signature)

(Printed Name)