

# **BARNSTABLE COUNTY**

In the Year Two Thousand and Three

Ordinance 03-09

To authorize the County of Barnstable to execute a ground lease between the County and Realty Resources Chartered/Housing Assistance Corporation for the property consisting of Barnstable County Hospital for the purpose of constructing and operating an affordable assisted living/elderly housing facility.

***BARNSTABLE COUNTY hereby ordains:***

## Section 1. Source of Authority and General Purposes

In accordance with Article II, Section 2-8, (d) (vii) of the Barnstable County Home Rule Charter, Barnstable County hereby enters into a ground lease for the property consisting of the former Barnstable County Hospital located on County Road in Bourne, Massachusetts. The purpose of this ground lease is to effectuate the construction and operation of an affordable assisted living and elderly housing facility on County owned land and in accordance with the terms and conditions specified in this document.

## Section 2. Effective Date

The Ground Lease Ordinance shall take effect upon passage of the ordinance by the Barnstable County Assembly of Delegates and execution by the Barnstable County Commissioners, Realty Resources, and Housing Assistance Corporation.

## Section 3. Ground Lease Table of Contents

### ARTICLE 1 - DEMISE OF GROUND LEASED PREMISES

- Section 1.1. Ground Leased Premises
- Section 1.2. Quiet Enjoyment
- Section 1.3. Utility Easements.
  - Section 1.3.1. Easement Agreements
  - Section 1.3.2. Additional Easement Rights and Obligations
- Section 1.4. Conservation Easement or Restriction
- Section 1.5. Lessor's Rights to Create Easements
- Section 1.6. Documentary Stamp Tax and Intangible Tax
- Section 1.7. "As Is" Condition of the Ground Leased Premises

### ARTICLE 2 - LEASE TERM

- Section 2.1. Lease Commencement
- Section 2.2. Lease Term; Extension
- Section 2.3. Reversion

### ARTICLE 3 - RENT, TAXES AND UTILITIES; OTHER COSTS

- Section 3.1. Rent
- Section 3.2. Taxes.
  - Section 3.2.1. Real and Personal Property
  - Section 3.2.2. Proof of Compliance
  - Section 3.2.3. Contesting Taxes
- Section 3.3. Utilities
- Section 3.4. No Security Deposit
- Section 3.5. Triple Net Rent

### ARTICLE 4 - USE OF PREMISES; LEGAL REQUIREMENTS; HAZARDOUS MATERIALS

- Section 4.1. Permitted Use
- Section 4.2. Termination if Use Becomes Unlawful, Impossible or Impractical
- Section 4.3. Legal Requirements.
  - Section 4.3.1. Lessee Compliance

**BARNSTABLE COUNTY ASSEMBLY OF DELEGATES**

**Ordinance 03-09: Barnstable County Ground Lease**

**May 21, 2003**

Section 4.3.2. Right to Contest

Section 4.4. Hazardous Materials.

Section 4.4.1. Definitions

Section 4.4.2. Lessor's Representations and Warranties re: Condition of Premises at Commencement of Lease; Site Assessment Report.

Section 4.4.3. Use of Premises by Lessee; Remediation of Contamination Caused by Lessee.

Section 4.4.4. Notice of Hazardous Materials Matters

Section 4.4.5. Indemnification by Lessee

Section 4.4.6. Lessor Indemnity

**ARTICLE 5 - IMPROVEMENTS; ALTERATIONS**

Section 5.1. Construction of the Facility

Section 5.2. Soil Conditions

Section 5.3. Conditions of Construction

Section 5.3.1. Delivery of Financing Commitments

Section 5.3.2. Proof of Compliance

Section 5.3.3. Completion Guaranty

Section 5.3.4. Plans and Specifications

Section 5.3.5. Completion of Construction

Section 5.3.6. Major Construction or Alterations

Section 5.3.7. Collateral Assignment of Contracts

Section 5.3.8. As Built Survey

Section 5.4. Minor Construction or Alterations

**ARTICLE 6 - ENCUMBRANCE OF LEASEHOLD ESTATE**

Section 6.1. Leasehold Financing; Recognized Mortgagees.

Section 6.2. No Assumption of Lessee Obligations

Section 6.3. Performance of Leasehold Mortgage Obligations

Section 6.4. Notices

Section 6.5. Performance of Lease Obligations by Recognized Mortgagee

Section 6.6. Cure by Recognized Mortgagee

Section 6.7. No Surrender or Merger

Section 6.8. Execution of New Lease

**ARTICLE 7 - MAINTENANCE**

Section 7.1. Maintenance of Ground Leased Premises

Section 7.2. Emergency Repairs

Section 7.3. Inspection by Lessor

Section 7.4. Groundwater Discharge Permit/Sewage Treatment System

**ARTICLE 8 - MECHANICS' LIENS**

Section 8.1. Liens on Fee or Leasehold Interest

Section 8.2. Lessee's Right to Contest Liens

**ARTICLE 9 - CONDEMNATION**

Section 9.1. Interests of Parties on Condemnation

Section 9.2. Total Taking - Termination

Section 9.3. Partial Taking - Termination

Section 9.4. Partial Taking - Continuation

Section 9.5. Partial Taking - Award

Section 9.6. Allocation of Award

Section 9.7. Voluntary Conveyance

**ARTICLE 10 - ASSIGNMENT AND SUBLEASE**

Section 10.1. No Assignment Generally

Section 10.2. General Provisions Regarding Assignments

Section 10.3. Subleases to Residential Tenants

**ARTICLE 11 - INSURANCE AND INDEMNIFICATION**

Section 11.1. Comprehensive Liability Insurance

Section 11.2. Fire and Extended Coverage Property Insurance

Section 11.3. Waiver of Subrogation

Section 11.4. Indemnification

**ARTICLE 12 -DAMAGE AND DESTRUCTION**

Section 12.1. Lessee's Duty to Restore Premises

Section 12.2. Option to Terminate Lease for Destruction

Section 12.3. Application of Insurance Proceeds

**ARTICLE 13 -DEFAULTS AND REMEDIES**

Section 13.1. Defaults

Section 13.1.1. Abandonment

Section 13.1.2. Attachment or Other Levy

Section 13.1.3. Appointment of Receiver

Section 13.1.4. Insolvency: Bankruptcy

Section 13.1.5. Default in Mortgage Payment

Section 13.1.6. Transfer of Lessee's Interest

Section 13.1.7. Default in Payments Under this Lease

Section 13.1.8. Default in Performance of Other Obligations Under this Lease

Section 13.2. Remedies

Section 13.2.1. Termination

Section 13.2.2. Re-entry Without Termination

Section 13.2.3. Lessee's Personal Property

Section 13.2.4. Appointment of Receiver

Section 13.3. Lessor's Right to Cure Defaults

Section 13.4. Remedies Cumulative

Section 13.5. Lessee's Liability After Default

Section 13.6. Holdover

**ARTICLE 14 -SURRENDER AND REMOVAL**

Section 14.1. Surrender of Possession

Section 14.2. Lessee's Quitclaim

**ARTICLE 15 -GENERAL PROVISIONS**

Section 15.1. Conditions and Covenants

Section 15.2. Survival of Indemnities

Section 15.3. No Waiver of Breach

Section 15.4. Unavoidable Delay - Force Majeure

Section 15.5. Notices

Section 15.6. Gender

Section 15.7. Captions

Section 15.8. Entire Agreement

Section 15.9. Waiver; Amendment

Section 15.10. Payment of Landlord's Third Party Costs

Section 15.11. Time

Section 15.12. Governing Law

Section 15.13. Binding Effect

Section 15.14. Execution of Other Instruments

Section 15.15. Severability

Section 15.16. Counterparts

Section 15.17. Estoppel Certificate

Section 15.18. Memorandum of Lease

**ARTICLE 16 -LOCAL OVERSIGHT PROVISIONS**

Section 16.1. Advisory Board

GROUND LEASE

**Between**

**THE COUNTY OF BARNSTABLE,**  
a body politic of the Commonwealth of Massachusetts

**And**

**POCASSET ASSISTED LIVING LIMITED PARTNERSHIP**  
a Massachusetts limited partnership

Dated as of \_\_\_\_\_, 2003

Covering

Property Consisting of a portion of the Former Barnstable County Hospital  
Located on County Road in Bourne, Massachusetts

## GROUND LEASE

THIS GROUND LEASE ("Lease") is made and entered into by THE COUNTY OF BARNSTABLE ("Lessor"), a body politic of the Commonwealth of Massachusetts, and POCASSET ASSISTED LIVING LIMITED PARTHERSHIP, a Massachusetts limited partnership ("Lessee"), dated as of \_\_\_\_\_, 2003 (the "Effective Date").

### RECITALS

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

A. Lessor is the fee owner of that certain real property consisting of approximately Eight and Four Hundred Fifty-nine Thousandths (8.459) acres of land, together with the buildings and other improvements thereon (the "**Ground Leased Premises**"), being a portion of the former Barnstable County Sanatorium located on County Road in Bourne, Barnstable County, Massachusetts. The Ground Leased Premises is more particularly described in **EXHIBIT "A"** attached hereto and incorporated herein by this reference.

B. Lessor desires to lease the Ground Leased Premises to Lessee, and Lessee desires to lease the Ground Leased Premises from Lessor, in order for Lessee to construct thereon and therein a facility containing eighty-four (84) affordable rental housing units for elderly individuals together with parking and related improvements (including a septic treatment facility to serve the rental units and the so-called Thorne Building located on land adjacent to the Ground Leased Premises) and landscaping (the "Facility"), all as more particularly described in **EXHIBIT "B"** attached hereto and incorporated herein by this reference.

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

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

### DEMISE OF GROUND LEASED PREMISES

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

**Quiet Enjoyment.** Lessor covenants and agrees that Lessee, upon paying the rent and other charges herein provided and observing and keeping the covenants, conditions, and terms of this Lease on Lessee's part to be kept or performed, shall lawfully and quietly hold, occupy and enjoy the Ground Leased Premises during the "Term" (as hereinafter defined) of this Lease without hindrance of Lessor or any person claiming under Lessor. Notwithstanding the foregoing, Lessor hereby retains the right to enter upon and inspect the Ground Leased Premises and the Facility at reasonable times and upon reasonable notice. Lessor further reserves the right to enter upon the Ground Leased Premises and the Facility, without prior notice, to the extent necessary to respond to an emergency condition or situation, as reasonably determined by Lessor.

### Utility Easements.

**Easement Agreements.** Lessee shall have the right to enter into agreements with utility companies creating easements in favor of such companies as are required in order to service the Facility to be constructed on the Ground Leased Premises; provided, however, that any such easements (i) may only be located within those areas of the Ground Leased Premises which will not interfere with improvements, if any, now or hereafter located upon the adjacent lands of Lessor; (ii) have been approved by Lessor as to their location and the form of the easement agreement, in Lessor's reasonable discretion; and (iii) may only be granted as non-exclusive easements. Lessor shall join in the grant of any such utility easements approved by it and execute any and all documents, agreements and instruments in order to effectuate the same, all at Lessee's cost and

expense. Lessor agrees not to unreasonably withhold its consent to any proposed utility easement joinder so long as the easement is approved by and acceptable to Lessor as described above. In addition, Lessee agrees, where requested by Lessor, to join in the grant of such easements and to execute any and all documents, agreements, and instruments and to take all other actions in order to effectuate the same in the event Lessee's joinder is required in connection with any easements affecting any portion of the Ground Leased Premises. The parties agree to use reasonable efforts to cause any encumbrances on the Ground Leased Premises to be subordinate to such easements, as may be required by any utility companies.

**Additional Easement Rights and Obligations.** With regard to the utility easements referred to herein, Lessee shall (i) have the right to cause the construction of the utility improvements by Lessee or the utility company, as the case may be; (ii) maintain the utility easement areas subject to and in accordance with the easement agreements, and (iii) in a timely manner, cause all final utility easements to be located on and added to the survey of the Ground Leased Premises provided to Lessor by Lessee at the time construction of the Facility is completed.

**Conservation Easement or Restriction.** Lessee acknowledges and agrees that Lessor may impose a conservation easement or restriction on a portion of the Ground Leased Premises as shown in **EXHIBIT "A"** attached hereto and that, if so, Lessee will at all times during the Term of this Lease observe and comply with all restrictions and requirements applicable to the portions of the Ground Leased Premises pursuant to such conservation easement or restriction.

**Lessor's Rights to Create Easements.** Lessor reserves the right from time to time during the Term of this Lease to grant easements to public utilities or other public agencies over portions of the Ground Leased Premises provided that no such easement shall unreasonably interfere with Lessee's use and operation of the Facility and provided further such easements shall be subject to the approval of Lessee and any Recognized Mortgagee (as defined below), such approval not to be unreasonably withheld, conditioned or delayed. If requested by Lessor, Lessee and each Recognized Mortgagee shall execute, acknowledge and deliver a subordination of this Lease and any Recognized Mortgage (as defined below) to the grant of any such easement by Lessor approved as aforesaid.

**Documentary Stamp Tax and Intangible Tax.** Notwithstanding anything in this Lease to the contrary, in the event that at any time this Lease is determined to be a taxable instrument, or represent a taxable transaction by the Commonwealth of Massachusetts under provisions relating to documentary stamp tax, or intangible tax, then in such event payment of any such tax or taxes shall be paid in full by Lessee.

**"As Is" Condition of the Ground Leased Premises.** Lessee acknowledges that it has entered into this Lease following a full and complete examination of the Ground Leased Premises with such consultants as Lessee deemed appropriate, including sub-surface conditions and compliance thereof with Hazardous Materials Laws (as defined below), as well as the title thereto, and present uses and non-uses thereof, and Lessee accepts the same in their present condition. Lessee further acknowledges that neither Lessor nor any person acting under or on behalf of Lessor has made any representations or warranties (express or implied, in fact or in law) concerning the Ground Leased Premises, the condition, suitability, or title to or of the foregoing, the nature, condition or usability thereof or the use or uses to which the Ground Leased Premises (or any part thereof) may be put or, except as otherwise expressly set forth in this Lease, any matter whatsoever concerning this Lease. Lessor shall have no obligation or liability with respect to the condition of the Ground Leased Premises (or any improvements erected, installed or constructed thereon, therein or thereunder, or any use made thereof). Lessee is accepting the estate demised hereby in an "as is, where is, with all faults" condition, and without recourse to Lessor as to the nature, condition or usability thereof.

#### **LEASE TERM**

**Lease Commencement.** The effective commencement date of this Lease ("**Lease Commencement Date**") shall be the Effective Date .

**Lease Term; Extension.** The term (the "**Term**") of this Lease shall be for a period of fifty (50) years commencing on the Lease Commencement Date and terminating on the day immediately preceding the fiftieth (50th) anniversary of the Lease Commencement Date (the "**Expiration Date**"). However, provided Lessee is not then in default under any of the terms of this Lease (including without limitation any default by Lessee under the maintenance obligations set forth in Section 7.1 below), Lessee shall be entitled to one (1) extension of this Lease for an additional twenty-five (25) years by providing written notice of such extension to Lessor at least one (1) year

prior to the original Expiration Date and upon the receipt of such notice by Lessor, the **"Expiration Date"** shall be the new date as so extended.

**Reversion.** At the Expiration Date or sooner termination of this Lease, whether by default, eviction, or otherwise, the Facility, the Ground Leased Premises and all other improvements upon the Ground Leased Premises shall, without compensation to Lessee or any other party, then become the sole property of Lessor or Lessor's designee, free and clear of all claims to or against them by Lessee or any third person, and all liens, security interests, and encumbrances, other than any encumbrances that may have existed with respect to the Ground Leased Premises immediately prior to the Commencement Date and any other encumbrances or liens expressly agreed to by Lessor, and Lessee shall defend and indemnify Lessor against all liability and loss, including but not limited to attorneys' fees and costs through litigation and all appeals, arising from such claims, liens, security interests and encumbrances and from Lessor's exercise of the rights conferred by this section. All alterations, improvements, additions and utility installations (whether or not such utility installation constitutes trade fixtures of Lessee) which may be made on the Ground Leased Premises, shall be the property of Lessor and shall remain upon and be surrendered with the Ground Leased Premises at the Expiration Date or sooner termination of this Lease. Notwithstanding the provisions of this paragraph, the machinery and equipment of Lessee or any tenant of the Facility, other than that which is affixed to the Ground Leased Premises so that it cannot be removed without damage to the Ground Leased Premises, shall remain the property of Lessee or such tenant, as may be applicable, and may be removed; provided, however, that Lessee removes or causes its removal by the Expiration Date. Without hereby implying or suggesting any consent by Lessor to a sublease of the whole of the Ground Leased Premises other than as expressly permitted herein (which consent is subject to the terms of Article 10 of this Lease), all subleases of all or any portion of the Ground Leased Premises shall contain reversion language pertaining to the Facility in accordance with the terms of this Section 2.3.

#### **RENT, TAXES AND UTILITIES; OTHER COSTS**

**Rent.** From the Lease Commencement Date to the Expiration Date, Lessee agrees to pay Lessor, for the use and occupancy of the Ground Leased Premises, "Base Annual Rent" in the amount of TEN AND 00/100 DOLLARS (\$10.00), per annum payable in one annual installment on the Lease Commencement Date and on each anniversary of the Lease Commencement Date during the Term of this Lease. There shall be no increases in the Base Annual Rent other than as set forth in this Article 3. The term "rent," as used herein, shall mean Base Annual Rent and any additional rent due and payable hereunder.

#### **Taxes.**

**Real and Personal Property.** From and after the Lease Commencement Date, Lessee shall pay or cause to be paid, without abatement, deduction, or offset, the following items: All real and personal property taxes, general and special assessments, and all other charges, assessments and taxes of every description, including, without limitation, any so-called "PILOT" payments, levied on or assessed against the Ground Leased Premises, the Facility and other improvements located on the Ground Leased Premises; personal property located on or in the Ground Leased Premises, the Facility or improvements; the leasehold estate, or any subleasehold estate, to the full extent of installments assessed during the Term. Notwithstanding anything herein to the contrary, Lessee shall be obligated to pay for all development and impact fees for the Facility, and all related construction and development expenses for the Facility, from and after the Effective Date. Lessee shall make all such payments directly to the appropriate charging or taxing authority at least fifteen (15) days before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment. If, however, the law expressly permits the payment of any or all of the above items in installments (whether or not interest accrues on the unpaid balance), Lessee may, at Lessee's election, utilize the permitted installment method, but shall pay each installment with any interest at least fifteen (15) days before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment. All payments of taxes or assessments or both, including permitted installment payments, shall be prorated for the initial Lease year and for the year in which the Lease terminates.

**Proof of Compliance.** Lessee shall furnish to Lessor, within five (5) days before the date when any tax, assessment, or charge (for which Lessee is responsible hereunder) would become delinquent, receipts or other appropriate evidence establishing payment thereof.

**Contesting Taxes.** Lessee shall have the right to contest or review by legal proceedings, as

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

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

**No Security Deposit.** No security deposit is required hereunder.

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

#### USE OF PREMISES; LEGAL REQUIREMENTS; HAZARDOUS MATERIALS

**Permitted Use.** Lessee shall use or cause the Ground Leased Premises to be used only for the construction and operation of the Facility as a residential multi-family rental facility for elderly individuals and related improvements but for no other uses, unless Lessor shall consent to a change or addition of use, which consent Lessor may grant or withhold in Lessor's sole and absolute discretion (and provided further that Lessor will not under any circumstance consent to a change or addition of use without the prior approval of the Assembly of Delegates of Barnstable County). Further, the operation of the Facility shall at all times comply with the following requirements (unless such requirements are waived in writing by Lessor, which waiver Lessor may grant or deny in Lessor's sole and absolute discretion):

All residential rental units comprising the Facility shall be affordable to households where at least one of the household members is age 65 or older and such household's income does not exceed sixty percent (60%) of the median income for the relevant size of the household in question (as such median income figures are published from time to time by the Department of Housing and Community Development for the Commonwealth of Massachusetts, or if median income figures are not published by the Department of Housing and Community Development, then as such median income figures are established by the Federal Secretary of Housing and Urban Development or other comparable federal agency) for the geographic area within which the Facility is included for purposes of such median income publications;

At least sixty (60) of the eighty-four (84) residential units comprising the Facility shall be operated as so-called "assisted living" units in strict compliance with all state and federal laws relating to the operation of assisted living residential units;

At a minimum, services made available to those residents of the assisted living units shall include: assistance with bathing, dressing and toileting; 24-hour emergency response; preparation of three meals per day and elderly counseling services by licensed social workers; and

Use and enjoyment of any of the other amenities which are originally constructed as part of the Facility described in **EXHIBIT "B"** attached hereto or any future amenities which may be



constructed on the Ground Leased Premises by Lessee or any permitted sublessee shall be available to all residents of the residential units comprising the Facility.

**Termination if Use Becomes Unlawful, Impossible or Impractical.** If it becomes unlawful for Lessee, or anyone holding under Lessee directly or indirectly, to maintain an assisted living facility on the Ground Leased Premises, then Lessee shall have the right to terminate this Lease by giving Lessor within sixty (60) days after such occurrence, thirty (30) days written notice of such termination. In such event, rent, taxes and all other expenses directly related to the Ground Leased Premises will be prorated as of the date of termination.

**Legal Requirements.**

**Lessee Compliance.** Lessee, at its sole cost and expense, shall promptly comply with all federal, state and local laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state or local governmental bodies, departments, commissions, boards, authorities, agencies, officials and officers (collectively, called "**Legal Requirements**") relating to the construction, ownership and/or operation of the Ground Leased Premises or the Facility, including without limitation to all Hazardous Materials Laws (as defined in Section 4.4 below).

**Right to Contest.** Lessee may, at its sole cost and expense, after written notice to Lessor, contest by appropriate legal proceedings conducted in good faith and diligently any Legal Requirement provided that as a result of such contest (a) neither the Ground Leased Premises nor the Facility, nor any interest in either, would be in danger of being sold, forfeited or lost, and (b) Lessor would not be in any danger of incurring civil or criminal liability for Lessee's failure to comply with the Legal Requirement in question.

**Hazardous Materials.**

**Definitions.** "**Hazardous Materials**" shall mean any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive or corrosive, including, without limitation, petroleum, PCBs, asbestos, materials known to cause cancer or reproductive problems and those materials, substances and/or wastes, including infectious waste, medical waste, and potentially infectious biomedical waste, which are or later become regulated by any local governmental authority, the Commonwealth of Massachusetts or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; all corresponding and related Commonwealth of Massachusetts and local Statutes, ordinances and regulations, including without limitation any dealing with underground storage tanks; and in any other environmental law, regulation or ordinance now existing or hereinafter enacted (collectively, "**Hazardous Materials Laws**").

**Lessor's Representations and Warranties re: Condition of Premises at Commencement of Lease; Site Assessment Report.**

Lessor hereby represents and warrants to Lessee as follows, which representations are made as of the Effective Date: (i) Lessor has not received any request for information, notice, demand letter, administrative inquiry or formal or informal complaint or claim from or by any public or private agency or entity concerning any release or discharge of any Hazardous Materials on, under, about or off of the Ground Leased Premises or any alleged violation of any Hazardous Materials Laws involving the Ground Leased Premises or any property owned by Lessor in the vicinity of the Ground Leased Premises; (ii) no litigation is pending or, to the best of Lessor's knowledge without investigation, threatened with respect to the Ground Leased Premises concerning any Hazardous Materials or any Hazardous Materials Laws; and (iii) no lien has been imposed or, to the best knowledge of Lessor without investigation, threatened to be imposed against the Ground Leased Premises by any governmental agency or entity in connection with the presence of Hazardous Materials or violation of any Hazardous Materials Laws on or off the Ground Leased Premises.

Lessee acknowledges that it has received and reviewed a copy of the Phase I site assessment report covering the Ground Leased Premises entitled "21E Site Assessment", prepared by Horsley and Whitten, Inc. and dated June 26, 1997. Lessee acknowledges and agrees that such report has been provided to Lessee strictly as an accommodation and that Lessor makes no warranties or representations of any kind with respect to the contents or accuracy of such report.

**Use of Premises by Lessee; Remediation of Contamination Caused by Lessee.**

Use. Lessee hereby agrees that Lessee and Lessee's officers, directors, employees, representatives, agents, contractors, subcontractors, successors, assigns, lessees, sublessees, concessionaires, invitees and any other occupants of the Ground Leased Premises (for purpose of this Section 4.6.3, referred to collectively herein as "**Lessee's Representatives**") shall not use, generate, manufacture, refine, produce, process, store or dispose of, on, under or about the Ground Leased Premises or transport to or from the Ground Leased Premises in the future for the purpose of generating, manufacturing, refining, producing, storing, handling, transferring, processing or transporting Hazardous Materials, except in compliance with all applicable Hazardous Materials Laws. Furthermore, Lessee shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for the storage or use by Lessee or any of Lessee's Representatives of Hazardous Materials on the Ground Leased Premises, including without limitation, discharge of appropriately treated materials or wastes into or through any sanitary sewer serving the Ground Leased Premises.

Remediation. If at any time during the Term or any extended term any contamination of the Ground Leased Premises by Hazardous Materials shall occur or be discovered, then Lessee, at its sole cost and expense, shall promptly and diligently remove such Hazardous Materials from the Ground Leased Premises, or the groundwater underlying the Ground Leased Premises, to the extent reasonably possible in accordance with the requirements of the applicable Hazardous Materials Laws and industry standards then prevailing in the Hazardous Materials management and remediation industry in Massachusetts. However, Lessee shall not take any required remedial action in response to any such contamination in, on or about the Ground Leased Premises or enter into any settlement agreement, consent, decree or other compromise in respect to any claims relating to any such contamination without first notifying Lessor of Lessee's intention to do so and affording Lessor the opportunity to appear, intervene or otherwise appropriately assert and protect Lessor's interest with respect thereto. In addition to all other rights and remedies of Lessor hereunder, if Lessee does not promptly and diligently take all steps to prepare and obtain all necessary approvals of a remediation plan (including, without limitation, Lessor's reasonable approval of the remediation plan, which approval shall be deemed granted if Lessor has not responded to Lessee's submission of a proposed remediation plan within thirty (30) days after such remediation plan has been presented to Lessor by Lessee) and thereafter commence the required remediation of any such contamination following receipt of all necessary approvals and consents and thereafter continue to prosecute said remediation to completion in accordance with the approved remediation plan, then Lessor, at its sole discretion, shall have the right, but not the obligation, to cause said remediation to be accomplished, and Lessee shall reimburse Lessor within fifteen (15) business days of Lessor's demand for reimbursement of all amounts reasonably paid by Lessor (together with interest from the date of expenditure on said amounts at the highest lawful rate until paid), when said demand is accompanied by proof of payment by Lessor of the amounts demanded. Lessee shall promptly deliver to Lessor copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Ground Leased Premises as part of Lessee's remediation of any such contamination.

Disposition of Hazardous Materials. Except as discharged into the sanitary sewer or otherwise removed from the Ground Leased Premises in strict accordance and conformity with all applicable Hazardous Materials Laws, Lessee shall cause any and all Hazardous Materials removed from the Ground Leased Premises as part of the required remediation of to be removed and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and wastes.

Notice of Hazardous Materials Matters. Each party hereto (for purposes of this Section, "Notifying Party") shall immediately notify the other party (the "Notice Recipient") in writing of: (a) any enforcement, clean-up, removal or other governmental or regulatory action instituted, contemplated or threatened concerning the Ground Leased Premises pursuant to any Hazardous Materials Laws; (b) any claim made or threatened by any person against the Notifying Party or the Ground Leased Premises relating to damage contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Materials on or about the Ground Leased Premises; and (c) any reports made to any environmental agency arising out of or in connection with any Hazardous Materials in or removed from the Ground Leased Premises including any complaints, notices, warnings or asserted violations in connection therewith, all upon receipt by the Notifying Party of actual knowledge of any of the foregoing matters.

Notifying Party shall also supply to Notice Recipient as promptly as possible, and in any event within five (5) business days after Notifying Party first receives or sends the same, with copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Ground Leased Premises or Lessee's use thereof.

**Indemnification by Lessee.** Lessee shall indemnify, defend (by counsel reasonably acceptable to Lessor), protect, and hold Lessor, and each of Lessor's partners (if applicable), employees, agents, attorneys, shareholders, officers, successors and assigns, free and harmless from and against any and all claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses or expenses (including, without limitation, attorneys' fees and costs through litigation and all appeals) resulting from death of or physical injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly by (a) Lessee's failure to comply with any Hazardous Materials Laws with respect to the Ground Leased Premises, or (b) a breach of any covenant, warranty or representation of Lessee under this Section 4.4. Lessee's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, clean-up or detoxification or decontamination of the Premises, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith. For purposes of the indemnity provisions hereof, any acts or omissions of Lessee, or by employees, agents, assignees, lessees, sublessees, contractors or subcontractors of Lessee or others acting for or on behalf of Lessee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Lessee. The foregoing indemnification by Lessee shall not extend to conditions not attributable to Lessee prior to the commencement of the Term or conditions which develop during the Term as a result of a release of, or other activities involving, Hazardous Materials on the land owned by Lessor adjacent to the Ground Leased Premises.

**Lessor Indemnity.** Lessor shall indemnify, defend, protect and hold Lessee and each of Lessee's employees, agents, officers, partners, shareholders, attorneys, successors and assigns free and harmless from and against any and all claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses or expenses (including, without limitation, attorneys' fees and costs through litigation and all appeals) or death or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by a breach of any covenant, warranty or representation of Lessor under Section 4.4.2 hereof or conditions which develop during the Term as a result of a release of, or other activities involving, Hazardous Materials on the land owned by Lessor adjacent to the Ground Leased Premises; and this indemnity of Lessor shall survive the expiration or sooner termination of this Lease.

#### **IMPROVEMENTS; ALTERATIONS**

**Construction of the Facility.** Within three hundred sixty five (365) days after the Effective Date, Lessee shall commence construction of the Facility on the Ground Leased Premises, and shall within eighteen (18) months after commencement of such construction complete all such construction, together with all required landscaping and parking, in a good and workmanlike manner, in conformity in all respects with all applicable Legal Requirements and, in accordance with the Plans and specifications set forth in **EXHIBIT "B"** attached hereto and incorporated herein by this reference.

**Soil Conditions.** Lessor makes no covenants or warranties respecting the condition of the soil or subsoil or any other condition of the Ground Leased Premises.

**Conditions of Construction.** Before any construction (as described in Section 5.1 or Section 5.4) is commenced on the Ground Leased Premises, and before any building materials have been delivered to the Ground Leased Premises by Lessee or under Lessee's authority, Lessee shall cause compliance with all of the conditions to commencement of construction set forth below:

**Delivery of Financing Commitments.** Lessee shall deliver to Lessor true copies of the documents to evidence the commitments of financing for the new construction. "Financing" includes both the construction (or interim) financing, the take-out (also called permanent or long-term) loan, and any and all other sources of debt or equity funds to be utilized by Lessee in connection with the construction and operation of the Facility. No construction shall commence until all such financing and funding is firmly committed (subject to written commitments reasonably acceptable to Lessor, with contingencies which Lessee in good faith certifies to Lessor can be satisfied prior to expiration of such commitment(s)).

**Proof of Compliance.** Lessee shall deliver to Lessor, at Lessee's expense, evidence of compliance with all then applicable Legal Requirements and reasonable evidence (which, if

required by Lessor, will include the same legal opinion, in form and substance, which Lessee or Lessee's counsel delivers to any Recognized Mortgagee) of Lessee's ability to comply with all Legal Requirements which will apply to the ownership and operations of the Facility and Ground Leased Premises once the construction of Facility is completed.

**Completion Guaranty.** As a condition to commencement of any construction, or demolition of any of the existing improvements on the Ground Leased Premises Lessee shall obtain all written performance bonds and/or completion guaranties, in favor of Lessor and Lessee.

**Plans and Specifications.** Lessee shall submit to Lessor the plans and specifications ("**Plans and Specifications**") for the Facility and related improvements for final review and approval by Lessor, which approval shall not be unreasonably withheld or delayed. Moreover, Lessor's failure to respond with detailed objections to particular portions of the Plans and Specifications (together with a proposal for a change which will eliminate such objection) within fifteen (15) business days after receipt of such Plans and Specifications for review shall constitute Lessor's approval of the Plans and Specifications. Lessor agrees that the Plans and Specifications described in **EXHIBIT "B"** attached hereto have been approved by Lessor and no further approval will be required from Lessor prior to commencement of construction of the Facility as long as such Plans and Specifications are not changed in any material way.

**Completion of Construction.** Once the work is commenced, Lessee shall with reasonable diligence cause the prosecution to completion of the construction of all improvements in accordance with this Lease. All work shall be performed in a good and workmanlike manner, shall substantially comply with Plans and Specifications submitted to Lessor as required by Section 5.3.5 above, and shall comply with all applicable Legal Requirements.

**Major Construction or Alterations.** If Lessee shall desire or be required to demolish the Facility or any part thereof, or to make alterations to the Facility or to construct any new improvements on the Ground Leased Premises, Tenant shall comply with the provisions of Section 5.3 above before commencing any such demolition, construction or alteration work; provided, however, that any such demolition, construction or alteration shall be exempt from this Section and shall be governed by Section 5.4 below if the total cost of such work will be less than **Twenty-Five Thousand and 00/100 Dollars (\$25,000.00)** in the aggregate.

**Collateral Assignment of Contracts.** Lessee shall provide Lessor, in a form reasonably acceptable to Lessor, but subject to the prior and paramount right of any senior Recognized Mortgagee (as defined below), conditional assignments of the contracts for architectural work and other design services, project or construction management and general contracting services for the work in question (as well as the plans and any other work product prepared pursuant to any of such contracts) executed by Lessee, the architect and other design professionals, project or construction management and the general contractor, as applicable, which assignments shall provide that in the event Lessor or its designee takes over the construction work described in such contracts by reason of occurrence of an Event of Default under this Lease, Lessor shall succeed to the rights of Lessee as a party to all such contracts.

**As Built Survey.** With respect to any work on the Ground Leased Premises which changes the layout or location of the physical improvements located on the Ground Leased Premises or the location of any utility installations servicing any of the improvements on the Ground Leased Premises, Lessee shall deliver to Lessor within thirty (30) days after completion of such work an updated ALTA "As-Built" Survey of the Ground Leased Premises showing all such new locations and layouts.

**Minor Construction or Alterations.** Lessee may at its expense make minor additions and alterations of the Facility and any of the other related improvements from time to time during the Term provided that any alteration or addition (a) would not change the general character of the Facility or reduce the fair market value thereof below its fair market value immediately before such alteration or addition, or impair its usefulness, (b) is effected with due diligence, in a good workmanlike manner equal in quality, condition, character and class to the original work and in compliance with all Legal Requirements, and (c) is promptly and fully paid for by Lessee.

#### **ENCUMBRANCE OF LEASEHOLD ESTATE**

##### **Leasehold Financing; Recognized Mortgagees.**

Lessee shall have the unrestricted right to mortgage Lessee's leasehold estate to one or more Institutional Mortgagees (as defined below) without the prior consent of Lessor; however, any other proposed leasehold mortgagee which is not a Institutional Mortgagee must obtain Lessor's prior written approval for such leasehold mortgage, not to be unreasonably withheld. Any such

Institutional Mortgagee (or other approved leasehold mortgagee) which provides notice to Lessor as provided in Section 6.4 below is herein referred to as a "Recognized Mortgagee" and the leasehold mortgage held by any Recognized Mortgagee is referred to as a "Recognized Mortgage". All proceeds of any such leasehold mortgage will be used by Lessee only in connection with the construction, rehabilitation and/or operation of the Leased Premises ("Approved Debt").

Lessor agrees to amend this Lease and/or provide any Recognized Mortgagee with such certificates with regard to this Lease as such Recognized Mortgagee may reasonably require. Each Recognized Mortgage or other security instrument acquired by any Recognized Mortgagee shall be subject and subordinate to all rights and interests of Lessor herein and shall be a lien only on Lessee's interests in and to this Lease and the leasehold estate and shall not be a lien on Lessor's fee interest in the Ground Leased Premises or Lessor's reversionary interest in the Facility or other improvements on the Ground Leased Premises. Each Recognized Mortgage shall be subject to the terms and provisions of this Lease, including, without limitation, all the provisions of Article 4 hereof; and any Recognized Mortgagee, or anyone claiming by, through or under the same, shall not, by virtue thereof, acquire any greater rights hereunder than Lessee has under this Lease.

"Institutional Mortgagee" means any state or federally chartered bank, insurance company authorized by the Massachusetts Commissioner of Insurance to do business in Massachusetts, governmental agency or department (such as the U.S. Department of Housing and Urban Development, the Cape Cod Home Consortium, or an agency thereof, the Commonwealth of Massachusetts or an agency thereof), or other recognized federal, state or municipally sponsored lender for affordable housing which holds a leasehold mortgage securing Approved Debt.

**No Assumption of Lessee Obligations.** The making of Recognized Mortgage shall not be deemed to constitute an assignment, nor shall any Recognized Mortgagee not in possession be deemed an assignee of the leasehold estate so as to require such Recognized Mortgagee to assume the obligations of the Lessee hereunder, but the purchaser at a sale of the leasehold estate upon foreclosure of a Recognized Mortgage, or the assignee of the leasehold estate pursuant to an assignment in lieu of such foreclosure, shall be deemed to be an assignee of the Lessee (but no consent by the Landlord to assignment in the event of such a foreclosure or assignment in lieu thereof shall be required except for any change in the individual(s) or entity responsible for the day-to-day management of the Facility) and shall be deemed the successor to (but only for the period of its ownership) the obligations of the Lessee hereunder from and after the date of such purchase or assignment.

**Performance of Leasehold Mortgage Obligations.** The Lessee agrees to make all payments and perform all obligations required or secured by any leasehold mortgage permitted hereunder as and when the same are required to be made or performed thereunder.

**Notices.** The holder of any leasehold mortgage permitted by this Article may give written notice (in the manner specified in Section 15.5 below) to Lessor of the name and address of such holder and if such notice is given, Lessor shall give to any such permitted leasehold mortgagee such a copy of each notice of default by Lessee at the same time as and whenever any such notice of default shall thereafter be given by Lessor to Lessee, addressed to any such permitted leasehold mortgagee at its address last furnished to Lessor. No such notice by Lessor to Lessee hereunder shall be deemed to have been duly given unless and until a copy thereof has been served on such Recognized Mortgagee in the manner provided in this Lease.

**Performance of Lease Obligations by Recognized Mortgagee.** The Landlord agrees to accept performance on the part of any Permitted Mortgagee as though it had been done or performed by the Lessee. No payment made to the Landlord by the Recognized Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease. The Recognized Mortgagee having made any payment to the Landlord pursuant to the Landlord's wrongful, improper, or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof provided it shall have made demand therefor not later than one year after the date of its payment.

**Cure by Recognized Mortgagee.** Lessor agrees that it will not terminate this Lease, except based on a default by the Lessee (or any subLessee) in the payment of money (in connection with which the Recognized Mortgagee shall have the right to perform as provided in Section 6.5 above), without first giving to the Recognized Mortgagee reasonable time within which to cure any default that is reasonably susceptible of cure by the Recognized Mortgagee with reasonable diligence, and if necessary to do so, to obtain possession of the Premises, including possession by a receiver, or to institute and complete foreclosure proceedings or otherwise acquire the Lessee's interest under

this Lease with diligence and without unreasonable delay. Nothing herein shall preclude the Landlord from exercising any rights or remedies under this Lease, including termination, with respect to any default in the payment of rent by the Lessee during any period of such forbearance.

**No Surrender or Merger.** This Lease shall not be modified or surrendered to the Landlord or canceled by the Lessee, nor shall the Landlord accept a surrender of this Lease without the prior written consent of all Recognized Mortgagees nor shall any merger result from the acquisition by, or devolution upon, any one entity of both the fee in the Ground Leased Premises and the leasehold estate.

**Execution of New Lease.** If this Lease shall terminate prior to its expiration, the Landlord shall enter a new lease of the Premises with any Recognized Mortgagee (or if there shall be more than one Recognized Mortgagee, the Recognized Mortgagee with the highest priority lien on the leasehold estate) for the remainder of the then term hereof, effective as of the date of such termination, at the same rent and upon the same terms, covenants, and conditions contained herein, except that such new lease shall not guaranty possession of the Premises as against the Lessee or anyone claiming under the Lessee, on condition that: (i) such Recognized Mortgagee shall make written request for such new lease within thirty days after the date of its actual receipt of notice of such termination or, if proceedings are commenced by or on behalf of the Lessee within such thirty-day period stay or extend the effective date of such termination, within ten days of the date on which such termination is finally determined to be effective by a court of competent jurisdiction, any applicable appeals period having run without appeal having been taken; and (ii) on the commencement date of the term of the new lease, the Recognized Mortgagee shall cure all defaults of the Lessee under this Lease that are susceptible of being cured by such Recognized Mortgagee and that remain uncured on such date and shall pay or cause to be paid all unpaid sums which at such time would have been payable to the Landlord on that date including all reasonable expenses, reasonable counsel fees, court costs, and disbursements, incurred by the Landlord in connection with any such termination, execution, and delivery of such new lease.

#### **MAINTENANCE**

**Maintenance of Ground Leased Premises.** Lessee agrees that it will, at its own cost and expense, maintain or cause to be maintained the Ground Leased Premises, the Facility and any other improvements thereon and appurtenances thereto and every part thereof, in good order, condition and repair and in accordance with all applicable Legal Requirements, including without limitation all building codes, sanitary and health codes, and laws, regulations and ordinances relating to the operation of a so-called "assisted living" facility. In the event any repairs required to be made under the applicable Legal Requirements are not made within thirty (30) days after written notice from the applicable public authority to do so, then Lessor may, at its option, enter upon the Ground Leased Premises and repair the same, and the cost and expense of such repairs, with interest at the maximum rate then allowed by law, shall be due and paid by Lessee as additional rent to Lessor upon demand.

**Emergency Repairs.** Notwithstanding the provisions of Section 7.1, in the event of an emergency, Lessor, at its option, may without notice enter on the Ground Leased Premises to effect repairs needed as a result of the emergency. The cost and expense of such repairs, together with interest at the maximum rate allowed by law, shall be due and paid by Lessee to Lessor on demand as additional rent due hereunder.

**Inspection by Lessor.** Lessor shall be entitled to make bi-annual inspections of the Ground Leased Premises in order to ensure that Lessee is meeting the requirements of Section 7.1 above. Further, if any other state or federal agency or any other governmental authority having jurisdiction to enforce any Legal Requirements makes any inspection of the Ground Leased Premises, Lessee shall promptly provide to Lessor any written report or notices of violation issued in connection with such inspection.

**Groundwater Discharge Permit/Sewage Treatment System.** Lessee shall be responsible for the establishment, maintenance, upkeep, and repair of the sewage treatment system. Further, Lessee at its own expense, shall be responsible for ensuring full compliance with all terms and conditions of the Groundwater Discharge Permit issued for the facility by the Massachusetts Department of Environmental Protection (DEP).

#### **MECHANICS' LIENS**

**Liens on Fee or Leasehold Interest.** If any mechanics' lien, notice of contract or other similar lien relating to construction work on the Ground Leased Premises is recorded, Lessee shall take all steps required by Massachusetts General Law Chapter 254 to insure that the contractor,

laborer, materialman or other service provider recording such lien or notice of contract is paid in due course so as to avoid any enforcement of the lien or notice of contract against the fee or leasehold relating to the Ground Leased Premises or any other real or personal property owned by Lessor adjacent to the Ground Leased Premises.

**Lessee's Right to Contest Liens.** If Lessee in good faith desires to contest any such lien or notice of contract, Lessee shall be privileged to do so, but in such case Lessee hereby agrees to indemnify and save Lessor harmless from all liability for damages, including attorneys' fees and costs, occasioned thereby and shall, in the event of a judgment of foreclosure upon any such lien or notice of contract, cause the same to be discharged and removed prior to the execution of such judgment. Lessor may, in its sole discretion, require that the lien or notice of contract be transferred to a bond as a condition precedent to Lessee's privilege to contest any lien.

#### **CONDEMNATION**

**Interests of Parties on Condemnation.** If the Ground Leased Premises or any part thereof shall be taken for public purpose by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, the interests of Lessor and Lessee in the award or consideration for such transfer, and the allocation of the award and the other effect of the taking or transfer upon this Lease, shall be as provided by this Article 9.

**Total Taking - Termination.** If the entire Ground Leased Premises is taken or so transferred, this Lease and all of the right, title and interest thereunder shall cease on the date title to such land so taken or transferred vests in the condemning authority.

**Partial Taking - Termination.** In the event of the taking or transfer of only a part of the Ground Leased Premises, leaving the remainder of the Ground Leased Premises in such location, or in such form, shape or reduced size as to be not effectively and practicably usable in the good faith opinion of Lessee for the operation thereon of Lessee's business, taking into consideration the effect, if any, of such taking on the availability of parking proximately located to the Facility and/or the continued use of the septic treatment facility, and if Lessor agrees with Lessee's determination, which consent will not be unreasonably withheld, this Lease and all right, title and interest thereunder may be terminated by Lessee giving, within sixty (60) days of the occurrence of such event, thirty (30) days' notice to Lessor of Lessee's intention to terminate.

**Partial Taking - Continuation.** In the event of such taking or transfer of only a part of the Ground Leased Premises leaving the remainder of the premises in such location and in such form, shape or size as to be used effectively and practicably in the good faith opinion of Lessee for the purpose of operation thereon of Lessee's business, this Lease shall terminate only as to the portion of the Ground Leased Premises so taken or transferred as of the date title to such portion vests in the condemning authority, and shall continue in full force and effect as to the portion of the Ground Leased Premises not so taken or transferred.

**Partial Taking - Award.** If title and possession of a portion of the Ground Leased Premises is taken under the power of eminent domain, and the Lease continues as to the portion remaining, all compensation and damages ("**Compensation**") payable to Lessee by reason of any improvements so taken shall be available to be used, to the extent reasonably needed, by Lessee in replacing any improvements so taken with improvements of the same type as the remaining portion of the Ground Leased Premises. All plans and specifications for such replacement and improvements shall be subject to Lessor's reasonable prior approval and all such repairs shall be in compliance with all then existing codes, zoning ordinances, rules and regulations governing the Ground Leased Premises.

**Allocation of Award.** Any compensation awarded or payable because of the taking of all or any portion of the Ground Leased Premises by eminent domain shall be awarded in accordance with the values of the respective interests in the Ground Leased Premises and all improvements thereon immediately prior to the taking. The value of Lessor's interest in the Ground Leased Premises and all improvements thereon immediately prior to a taking shall include the then value of its interest in the Ground Leased Premises and improvements prior to the Expiration Date of this Lease, together with the value of its reversionary interest in the Facility and any other improvements on the Ground Leased Premises after the Expiration Date. The value of Lessee's interest in the Ground Leased Premises and improvements immediately prior to a taking shall include the then value of its interest in the Ground Leased Premises and improvements for the remainder of the Term of this Lease. Such values shall be those determined in the proceeding relating to such taking or, if no separate determination of the values is made in such proceeding,



those determined by agreement between Lessor and Lessee. If such agreement cannot be reached, such values shall be determined based upon then prevailing MAI appraisal standards by a single arbitrator in accordance with the rules and procedures of the American Arbitration Association. The time of taking shall mean 12:01 a.m. of, whichever shall first occur, the date of title or the date physical possession of the portion of the Ground Leased Premises on which the improvements are located is taken by the taking agency or entity. In the event of separate awards, then Lessor and Lessee may retain such separate awards made to each and any of them.

**Voluntary Conveyance.** A voluntary conveyance by Lessor to a public utility, agency or authority under threat of a taking under the power of eminent domain in lieu of formal proceedings shall be deemed a taking within the meaning of this Article 9.

#### **ASSIGNMENT AND SUBLEASE**

**No Assignment Generally.** Except as otherwise expressly permitted by the provisions of Article 6 above regarding leasehold mortgages and this Article 10, Lessee shall not assign this Lease or any interest herein, nor permit any assignment or pledge of this Lease or otherwise sell, transfer or convey (whether voluntarily or involuntarily, or by mortgage, pledge, operation of law or otherwise) this Lease or Lessee's interest in the Ground Leased Premises, the Facility, or sublease (which term, for purposes of this Lease shall mean and include the granting or entering into of any license, concession or occupancy right or agreement) all or any portion of the Ground Leased Premises, the Facility (each of the foregoing to be deemed an "**Assignment**"), without Lessor's prior written consent in each instance, which consent Lessor may grant or withhold in Lessor's sole and absolute discretion. If Lessee is a partnership (whether a general partnership, limited partnership or limited liability partnership), joint venture, trust, corporation, or limited liability company, either (i) any sale, assignment or other transfer of ten percent (10%) or more of the ownership interest of such entity (whether in one transaction or as a result of a series of related transactions) or (ii) any change in the general partner or manager of Lessee shall constitute an Assignment for purposes of this Lease; provided, however, that if Lessee is a limited partnership, a portion or all of the limited partnership interest of Lessee may be sold, transferred or assigned without any approval of Lessor.

**General Provisions Regarding Assignments.** The following provisions shall be generally applicable to all Assignments (except for the sale, transfer or assignment of a portion or all of the limited partnership interest of the Lessee):

Notwithstanding any Assignment, Lessee's liability to Lessor for the performance of all of the covenants and agreements under this Lease on the part of Lessee to be so performed shall in all events remain direct and primary.

The proposed assignee must, in a written instrument suitable for recording and otherwise satisfactory in form and substance to Lessor, in Lessor's sole and absolute discretion, assume and agree to pay, perform and fulfill from and after the date of such Assignment all of the obligations, agreements, covenants and conditions on the part of Lessee to be paid, performed or fulfilled by Lessee hereunder; and such assignee shall deliver to Lessor such evidence as Lessor may reasonably require with respect to such assignee's financial condition and legal existence and authority to execute and deliver such assignment and perform the obligations of such assignee thereunder (collectively, the "**Assignment and Assumption Documentation**").

Lessee shall pay to Lessor, as additional rent upon demand, all third-party costs incurred by Lessor (including, without limitation, attorneys' fees) in reviewing or evaluating any proposed Assignment and any proposed Assignment and Assumption Documentation, whether or not Lessor ultimately consents to the same.

Within three (3) business days following Lessee's entering into an Assignment, Lessee shall deliver a complete fully-executed copy thereof to Lessor, and Lessee shall deliver complete and fully-executed copies of all amendments of the same to Lessor within three (3) business days following the execution of such amendments; provided, however, that no such delivery, receipt or acceptance thereof by Lessor shall be deemed a consent or approval thereof by Lessor or a waiver of any requirement or provision of this Lease or a release of Lessee from direct and primary liability for the performance of all of the covenants of this Lease.

Lessee judicially contests any determination by Lessor pursuant to the provisions of this Article 10, it is agreed that no damages shall be payable to Lessee in any such action unless Lessor shall have acted in bad faith or with actual malice.

The provisions of this Article 10 shall apply to each and every proposed Assignment during the Term of this Lease, and nothing contained in this Article 10, and no action or inaction by Lessor,



shall be deemed to constitute or operate as a waiver of any of such provisions to any subsequent proposed Assignment.

**Subleases to Residential Tenants.** Notwithstanding the prior provisions of this Article 10, Lessee shall be entitled to enter in to subleases with tenants for each of the eighty-four (84) residential units comprised of the Facility provided that (a) each such sublease is executed on a form previously approved by Lessor as the Residential Lease Form for the Facility and (b) the rent to be paid by the tenant under each such sublease does not exceed the applicable rent for the type of unit being leased as approved by Lessor from time to time (it being acknowledged and agreed that in order to preserve the "affordable" character of the units of the Facility, Lessor will review and approve a maximum rent schedule for such units so as to assure that such rents will be affordable by elderly households whose income does not exceed sixty percent (60%) of the area's median income level established in the manner set forth in Section 4.1(a) above). Not later than March 31 of any year during the Term of this Lease, Lessee shall provide Lessor with a written report which identifies the residential tenants who have occupied any of the residential units during the calendar year ending on the immediately prior December 31 and will provide in such report such information as is reasonably requested by Lessor in order to permit Lessor to evaluate whether the affordability standards set out above in this Section 10.3 and also in Section 4.1 above are in fact being met by Lessee.

#### **INSURANCE AND INDEMNIFICATION**

##### **Public Liability Insurance**

**Commercial General Liability Insurance.** Lessee shall, at its cost and expense, at all times during the Term, maintain in force, for the joint benefit of Lessor and Lessee, and any holder of a mortgage on the Ground Leased Premises, a Commercial General Liability and/or Umbrella Liability policy issued by a carrier satisfactory to Lessor and licensed to do business in the Commonwealth of Massachusetts with a Best's Insurance Guide Rating of A, VIII, the terms of which Lessor and Lessee, are named as insureds, and are indemnified against liability for damage or injury to the property or person (including death) of any Lessee, its invitee or any other person entering upon or using the Ground Leased Premises, or any structure thereon or any part thereof. Such insurance policy or policies shall be maintained on the minimum basis of \$5,000,000.00 on a per occurrence combined single limit basis for damage to property and for bodily injury or death as to any person, with a deductible not exceeding \$5,000.00. Lessor reserves the right to require reasonable increases in the limits of coverage from time to time during the Term; and the requested increase will be deemed reasonable if consistent with commercially reasonable practices for similar projects in the same geographic area. Such insurance policy or policies shall be stated to be primary and noncontributing with any insurance which may be carried by Lessor. A certificate of said insurance, together with proof of payment of the premium thereof shall be delivered to Lessor on the Lease Commencement Date, effective from and after the Lease Commencement Date, and renewal certificates and proof of payment of premium therefor shall be delivered to Lessor not less than fifteen (15) business days prior to the renewal date of any such insurance policies during the Term. Such insurance shall be cancelable only after thirty (30) days' prior written notice to Lessor and Lessee. In the event Lessee fails to timely pay any premium when due, Lessor shall be authorized to do so, and may charge all costs and expenses thereof, including the premium and interest at the maximum rate allowed by law, to Lessee, to be paid by Lessee as additional rent hereunder.

**Worker's Compensation Insurance.** Lessee shall, at its cost and expense and at all times during the Term, maintain in force, insurance coverage or an approved self-insurance program covering the Lessee's obligations under the Worker's Compensation Act for statutory benefits, with a minimum limit of \$500,000.00 for employer's liability coverage.

**Automobile Liability Insurance.** Lessee shall, at its cost and expense at all times during the Term, maintain in full force, Automobile Liability Insurance for all owned, non-owned, and hired vehicles. The minimum limit of liability shall be \$1,000,000.00 each accident, combined single limit for Bodily Injury and Property Damage.

**Insurance Requirements of Third Parties.** Lessee shall require all aforementioned insurance coverages and limits as stipulated in Sections 11.1.1, 11.1.2, and 11.1.3 of its contractors, subcontractors, property managers or other similar parties and shall maintain evidence of such coverages via certificates of insurance.

**Property and Rental Income Insurance.** Lessee shall, at its cost and expense and at all times during the Term, maintain in force, for the joint benefit of Lessor and Lessee, policy of

insurance against loss or damage, including rental income, to the Facility or any of the other improvements on the Ground Leased Premises by fire and lightning, and such other perils as are covered under the broadest "all risk" form available in Massachusetts with endorsements extending such coverage to flood and earthquake perils. Lessor shall be named as an additional insured on such policy of insurance carried and maintained to the extent of full (actual) replacement cost of the Facility and all such other improvements, in such amounts as may be reasonably acceptable to Lessor from time to time during the Term of this Lease; provided however, that during the period of any construction, Lessee shall provide or cause to be provided in lieu thereof builders' risk or similar type of insurance to the full replacement costs thereof. Such insurance policy or policies shall be stated to be primary and noncontributing with any insurance which may be carried by Lessor. In addition, the deductible for such insurance shall not exceed \$5,000.00. A certificate of said insurance, together with proof of payment of the premium thereof, shall be delivered to Lessor on the Lease Commencement Date, to be effective from and after the Lease Commencement Date. Any renewal certificates and proof of payment of premium therefor shall be delivered to Lessor not less than fifteen (15) business days prior to the renewal date of any such insurance policies during the Term. Such insurance shall be cancelable only after thirty (30) days' prior written notice to Lessor, Lessee. In the event Lessee fails to timely pay any premium when due, Lessor shall be authorized to do so, and may charge all costs and expenses thereof, including the premium and interest at the maximum rate allowed by law, to Lessee, to be paid by Lessee as additional rent hereunder.

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

**Indemnification.** Lessee hereby agrees to indemnify, protect, defend and save Lessor, its agents, officers, shareholders, employees, and attorneys harmless from and against any and all losses, damages, actions, fines, penalties, demands, damages, liability and expense, including attorneys' fees and costs through litigation and all appeals, in connection with the loss of life, personal injury and damage to property arising from or out of (i) any occurrence in, upon, at or about the Ground Leased Premises; (ii) the occupancy, use, construction upon and maintenance of the Ground Leased Premises by Lessee and its lessees, sublessees, guests and invitees, and any party acting by, through or under any of them; and (iii) the operation of the business of Lessee thereon. Nothing contained herein shall be construed to make Lessee liable for any injury or loss caused by the gross negligence or willful misconduct of Lessor or any agent or employee of Lessor.

#### **DAMAGE AND DESTRUCTION**

**Lessee's Duty to Restore Premises.** At any time during the Term or Extended Term(s) of this Lease, and so long as no Event of Default has occurred, if the Facility or any of the other improvements now or hereafter on the Ground Leased Premises are damaged and/or destroyed in whole or in part by fire, theft, the elements, or any other cause, this Lease shall continue in full force and effect, and Lessee, at its sole cost and expense, shall use its best efforts to repair and restore the damaged or destroyed Facility and other improvements according to the original plan hereof or according to such modified plans as shall be reasonably approved in writing by Lessor, whether or not there are sufficient insurance proceeds to cover the repair and restoration expenses. The work of repair and restoration shall be commenced by Lessee as soon as possible but in no event later than ninety (90) days after the damage or destruction occurs and shall be completed with due diligence not longer than six months after the work is commenced, unless otherwise agreed to in writing by Lessor. In all other respects, the work of repair and restoration shall be done in accordance with the requirements for original construction work on the Ground Leased Premises set forth in Article 5 of this Lease.

**Option to Terminate Lease for Destruction.** Notwithstanding Section 12.1 above, in the

event that during the last five (5) years of the Term the Facility is damaged or destroyed by fire, theft or any other casualty, through no fault of Lessee, so that it cannot be repaired and restored as required by Section 12.1 of this Lease at a cost less than thirty-five percent (35%) of the cost of replacing the entire Facility, then Lessee and Lessor shall each have the option of terminating this Lease on the last calendar day of any month during the last year of the Term by giving to Lessor or Lessee, as the case may be, at least sixty (60) days' prior written notice of Lessee's or Lessor's intent to do so; and if Lessee elects to terminate this Lease, then Lessee shall also be required to remove, at Lessee's own cost and expense, all debris and remains of the damaged improvements from the Ground Leased Premises. Any failure by Lessee to timely and properly repair and restore the Facility and Ground Leased Premises, once Lessee has elected to do so, shall constitute an Event of Default hereunder.

**Application of Insurance Proceeds.** Any and all fire or other insurance proceeds that become payable at any time during the Term because of damage to or destruction of any buildings or improvements on the Ground Leased Premises shall, be paid to Lessee and any Permitted Mortgagee (and if there is no Permitted Mortgagee, then the same shall be paid jointly to Lessee and Lessor) and applied toward the cost of repairing and restoring the damaged or destroyed buildings or improvements in the manner required by Section 12.1 of this Lease; provided, however, that should Lessee or Lessor exercise its option granted by Section 12.2 of this Lease to terminate this Lease because of damage to or destruction of buildings or improvements on the Ground Leased Premises, then, in that event, any and all fire or other insurance proceeds that become payable because of such damage or destruction shall be allocated between Lessor and Lessee in accordance with the values of their respective interests in the Ground Leased Premises and all improvements thereon immediately prior to the damage or destruction. The value of Lessor's interest in the Ground Leased Premises and all improvements thereon immediately prior to the damage or destruction shall include the then value of its interest in the Ground Leased Premises and improvements prior to the Expiration Date of this Lease and the value of its reversionary interest in the Facility after the Expiration Date. The value of Lessee's interest in the Ground Leased Premises and improvements immediately prior to the damage or destruction shall include the then value of its interest in the Ground Leased Premises and improvements for the remainder of the Term of this Lease. Such values shall be those determined by agreement between Lessor and Lessee. If such agreement cannot be reached, such values shall be determined based upon the then prevailing MAI appraisal standards by a single arbitrator in accordance with the rules and procedures of the American Arbitration Association.

#### **DEFAULTS AND REMEDIES**

**Defaults.** Each of the following events shall be a default by Lessee and a breach of this Lease and constitute an "Event of Default":

**Abandonment.** Abandonment of the Ground Leased Premises, or the improvements now or hereafter constructed thereon, where such abandonment continues for a period of one hundred eighty (180) days after notice thereof by Lessor to Lessee. For purposes of this Section, "abandonment" shall mean that the occupancy rate at the Facility is less than 25% for six (6) consecutive months unless the vacancies at the Facility are due to damage by casualty or eminent domain which Lessee is in the process of restoring or replacing in accordance with the other provisions of this Lease.

**Attachment or Other Levy.** The attachment of any right or interest of Lessee in the Ground Leased Premises if not released or bonded over within one hundred twenty (120) days.

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

**Insolvency: Bankruptcy.** An assignment by Lessee for the benefit of creditors, or the filing of a voluntary or involuntary petition by or against Lessee under any law for the purpose of adjudicating Lessee a bankrupt; or for extending time for payment, adjustment or satisfaction of Lessee's liabilities; or reorganization, dissolution, or arrangement on account of, or to prevent

bankruptcy or insolvency; unless, in case of such that are involuntary on Lessee's part, the assignment, proceedings, and all consequent orders, adjudications, custodies and supervisions are dismissed, vacated or terminated within one hundred twenty (120) days after the assignment, filing or other initial event

**Default in Mortgage Payment.** Any default under any mortgage encumbering the leasehold estate of this Lease, or under any loan agreement or promissory note secured by any such mortgage which is not cured by Lessee within the applicable cure period, if any, or not otherwise waived in writing by any leasehold mortgagee.

**Transfer of Lessee's Interest.** Except as expressly permitted in this Lease, any transfer, sale, conveyance, assignment, subletting, hypothecation, encumbrance or pledge of Lessee's interest in the Ground Leased Premises or Facility, whether voluntary, involuntary or otherwise by operation of law, in violation of the terms of this Lease.

**Default in Payments Under this Lease.** Failure of Lessee to pay any installment of Base Annual Rent, rent, additional rent, or any impositions or other monetary obligations of any nature whatsoever required to be paid by Lessee under this Lease when due and payable, which failure shall continue for twenty (20) days after written notice thereof.

**Default in Performance of Other Obligations Under this Lease.** Lessee shall default in the observance or performance of any other of Lessee's covenants, agreements, or obligations hereunder and such default shall not be cured within forty-five (45) days after written notice thereof, or if such default is of a nature that it cannot be reasonably cured within such forty-five (45) day period, Lessee shall not have commenced to cure such default within said forty-five (45) day period and diligently proceed to completion of said cure, provided such extended period without a completed cure will not have a material adverse effect on the value of the Leased Property or expose Landlord to any liability; provided however, that Landlord shall not be required to give more than two (2) notices during any consecutive twenty-four (24) month period with regard to Lessee's failure to perform its obligations under a particular Section of this Lease (a "Previously Defaulted Provision") and in the event that Landlord has already given two (2) such notices during any consecutive twenty-four (24) month period, any subsequent failure of Lessee during such twenty-four (24) month period to fully and punctually observe such Previously Defaulted Provision shall immediately constitute a default even though no notice has been given.

**Remedies.** If any default by Lessee shall continue uncured upon expiration of the applicable curing period, Lessor may exercise any one or all of the following remedies in addition to all other rights and remedies provided by law or equity, from time to time, to which Lessor may resort cumulatively or in the alternative:

**Termination.** Lessor may, at Lessor's election, following written notice to Lessee, terminate this Lease. All Lessee's rights in the Ground Leased Premises, the Facility and in all improvements shall terminate upon termination of this Lease. Promptly after any such termination, Lessee shall surrender and vacate the Ground Leased Premises, the Facility and any other improvements in broom-clean condition, and Lessor may re-enter and take possession of the Ground Leased Premises, the Facility and all other improvements. Termination under this paragraph shall not relieve Lessee from the payment of any sum then due to Lessor, or from any claim for damages previously accrued, or then accruing, against Lessee; however, Lessor shall use its reasonable efforts to relet the Ground Leased Premises so as to mitigate Lessor's damages. (It being understood that Lessor will not have any ability to relet the Ground Leased Premises for any use other than Permitted Uses without the prior approval of the Assembly of Delegates of Barnstable County, which approval the Assembly of Delegates may grant or withhold in its sole and absolute discretion).

**Re-entry Without Termination.** Lessor may, at Lessor's election and following written notice to Lessee, re-enter the Ground Leased Premises, the Facility and improvements thereon, and without terminating this Lease, at any time, relet the Ground Leased Premises and improvements, or any part(s) of them, for the account, and in the name of Lessee or otherwise, all upon commercially reasonable rates and terms determined by Lessor, without hereby obligating Lessor to relet the Ground Leased Premises and the Facility or make an effort to relet either or both of them in whole or in part, at any time. Any reletting may be for the remainder of the Term, or for any longer or shorter period. Lessor may execute any leases made under this provision either in Lessor's name or in Lessee's name, and Lessor shall be entitled to all rents from the use, operation or occupancy of the Ground Leased Premises or improvements, or both. Lessor shall have the further right, at Lessor's option, to make such reasonable and necessary alterations, repairs,

replacements and/or restorations which shall not operate or be construed to release Lessee from liability hereunder. Lessee shall nevertheless pay to Lessor on the due dates specified in this Lease the equivalent of all sums required of Lessee under this Lease, plus Lessor's expenses. No act by or on behalf of Lessor under this provision shall constitute a termination of this Ground Lease unless Lessor gives Lessee written notice of termination; however, Lessor shall use its reasonable efforts to relet the Ground Leased Premises so as to mitigate Lessor's damages.

**Lessee's Personal Property.** Lessor may remove and store Lessee's personal property and trade fixtures for the account and at the cost of Lessee.

**Appointment of Receiver.** Lessor may, if Lessor elects to file suit to enforce this Lease and/or protect its rights hereunder, in addition to the other remedies provided in this Lease and by law, have the appointment of a receiver of the Ground Leased Premises and the improvements thereon.

**Lessor's Right to Cure Defaults.** Any mortgage documents encumbering Lessee's leasehold estate shall contain provisions that all notices of default under the note and mortgage must be sent to Lessor and Lessee simultaneously and that Lessor shall have the curing rights described under Section 6.5 above. Any reasonable expenses incurred by Lessor in connection with any such performance, and all costs, expenses, and disbursements of every kind and nature whatsoever, including reasonable attorneys' fees including appellate, bankruptcy and post-judgment proceedings involved in collecting or endeavoring to collect the rent or any additional rent or any part thereof or enforcing or endeavoring to enforce any rights against Lessee or Lessee's obligations hereunder, shall be due and payable upon Lessor's submission of an invoice therefor. All sums advanced by Lessor on account of Lessee under this section, or pursuant to any other provision of this Lease, and all rent, if delinquent or not paid by Lessee and received by Lessor when due hereunder, shall bear interest at the maximum rate permitted by law, from the due date thereof until paid and the same shall be and constitute additional rent and be due and payable upon Lessor's demand therefor.

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

**Lessee's Liability After Default.** If Lessee shall default in the performance of any of its obligations under this Lease, Lessor, without thereby waiving such default, may (but shall not be obligated to) perform the same for the account and at the expense of Lessee, without notice in a case of emergency, and in any other case only if such default continues after the expiration of the curing period applicable, if any, under Section 13.1.9 of this Lease. Any reasonable expenses incurred by Lessor in connection with any such performance, and all costs, expenses, and disbursements of every kind and nature whatsoever, including reasonable attorneys' fees including appellate, bankruptcy and post-judgment proceedings involved in collecting or endeavoring to collect the rent or any additional rent or any part thereof or enforcing or endeavoring to enforce any rights against Lessee or Lessee's obligations hereunder, shall be due and payable upon Lessor's submission of an invoice therefor. All sums advanced by Lessor on account of Lessee under this section, or pursuant to any other provision of this Lease, and all rent, if delinquent or not paid by Lessee and received by Lessor when due hereunder, shall bear interest at the maximum rate permitted by law, from the due date thereof until paid and the same shall be and constitute additional rent and be due and payable upon Lessor's demand therefor.

**Holdover.** If Lessee remains in possession of the Ground Leased Premises or any part thereof after the expiration or sooner termination of the Term or any extension thereof, Lessee shall become a tenant at sufferance and shall pay Lessor a rent equal to twice the Base Annual Rent paid by Lessee in the last month prior to the expiration or termination of the Lease, which shall be payable on a per diem basis, not to exceed the amount permitted to be charged by a lessor under applicable Massachusetts law. Notwithstanding that Lessor may allow Lessee to continue in possession after the expiration or sooner termination of this Lease, neither that nor the provisions of this section shall constitute a waiver of any of Lessor's rights under this section or this Lease. Further, notwithstanding the payment of rent by Lessee and acceptance thereof by Lessor as provided in this section, Lessee shall be in continuing breach of this Lease at any time or during

any period in which Lessee is a holdover tenant.

#### **SURRENDER AND REMOVAL**

**Surrender of Possession.** Upon the expiration of the Term or any earlier termination thereof, Lessee shall surrender to Lessor possession of the Ground Leased Premises and all improvements constructed and installed thereon. If Lessee is not then in default under any of the covenants or conditions hereof, Lessee may remove, or cause to be removed, all personal property and equipment of Lessee, other than permanent fixtures, from the Ground Leased Premises within thirty (30) days after the date of any termination of this Lease; thereafter all such personal property and equipment not removed shall belong to Lessor without the payment of any consideration.

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

#### **GENERAL PROVISIONS**

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

**Survival of Indemnities.** All representations, warranties and indemnities of Lessee under this Lease shall survive the expiration or sooner termination of this Lease.

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

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

**Notices.** Unless otherwise specifically provided in this Lease or by law, any and all notices or other communications required or permitted by this Lease or by law to be served on, given to, or delivered to any party to this Lease shall be writing and shall be deemed duly served, given, delivered and received when personally delivered (including confirmed overnight delivery service to the party to whom it is directed), or in lieu of such personal delivery, when three (3) business days have elapsed following deposit thereof in the United States mail, first-class postage prepaid, certified, return receipt requested, addressed to:

LESSOR: THE COUNTY OF BARNSTABLE  
Superior Court House  
P.O. Box 427  
Barnstable, Massachusetts 02630  
Attention: E. Mark Zielinski

LESSEE: REALTY RESOURCES CHARTERED  
247 Commercial Street  
Rockport, Maine 04856  
Attention: Joseph M. Cloutier

and

HOUSING ASSISTANCE CORPORATION  
460 West Main Street

Hyannis, Massachusetts 02601  
Attention: Frederick Presbrey

Either party may change its address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in its paragraph.

**Gender.** The use herein of (a) any gender includes all others, and (b) the singular number includes the plural and vice-versa, whenever the context so requires.

**Captions.** Captions in this Lease are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of this Ground Lease or any of the terms hereof.

**Entire Agreement.** This Lease contains the entire agreement between the parties regarding the subject matter hereof. Any oral or written representations, agreements, understandings and/or statements shall be of no force and effect.

**Waiver; Amendment.** Lessor may in its sole and absolute discretion (and without any obligation whatsoever to do so) from time to time waive strict compliance by Lessee with any of the requirements of this Lease. However, no modification, waiver, amendment, discharge or change of this Lease shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought. Further, no waiver given by Lessor in a particular instance with respect to a particular requirement shall constitute a waiver of any other requirement in the Lease or a waiver of such requirement in any other instances except as expressly and specifically identified in the written waiver, and without limiting the generality of the foregoing, Lessor's waiver of any requirement relating to commencement of construction under Section 5.3 above shall not constitute a waiver of any of the other requirements set forth in Section 5.3 which are not expressly identified in the written waiver.

**Payment of Landlord's Third Party Costs.** Lessee covenants and agrees that Lessee shall promptly reimburse Lessor, as additional rent hereunder, for all third party costs (including, without limitation, consultants' and attorneys' fees) (collectively, "**Third Party Costs**") incurred by or on behalf of Lessor (a) in connection with any review, approval or consent of Lessor provided for by the terms of this Lease or (b) in connection with any Event of Default under this Lease.

**Time.** Time is of the essence of each obligation of each party hereunder.

**Governing Law.** This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

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

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

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

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

**Estoppel Certificate.** Either party shall execute, acknowledge and deliver to the other party, within twenty (20) days after requested by the other party, a statement in writing certifying, if such is the case, that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified); the date of commencement of this Lease; the dates for which the rent and other charges have been paid; any alleged defaults and claims against the other party and providing such other information as shall be reasonably requested.

**Memorandum of Lease.** On or before the Effective Date, Lessor and Lessee shall execute and acknowledge a Memorandum of this Lease for purpose of recordation. This Memorandum shall be in the form attached hereto as **Exhibit "C"** and incorporated herein by reference.

**Miscellaneous Tax-Related Issues.** The parties agree that during the Term of this Lease, as between them, the Lessee shall be entitled to all depreciation deductions with respect to any depreciable property comprising a part of the Facility or located on the Ground Lease Premises and

to any low-income housing tax credits with respect to any part of the Facility. Notwithstanding any provisions of this Lease that may in any way suggest the contrary, during the Term of this Lease, Lessee shall be deemed, for such purposes, to have the benefits and burdens of ownership of the Ground Lease Premises, in order that Lessee shall be treated as the owner of the Facility and Ground Lease Premises for purposes of the income tax laws.

**LOCAL OVERSIGHT PROVISIONS**

**Advisory Board.** The Barnstable County Commissioners shall establish an Advisory Board for the assisted living and senior residence portions of the Facility. Said Advisory Board shall meet from time to time, but in no event shall meet less than four times per year. The Advisory Board shall make inspections of the Facility, hear issues from residents, neighbors and other interested parties, and shall make recommendations to the Barnstable County Commissioners, Housing Assistance Corporation and the managers of the Facility. Members of the Advisory Board shall be appointed by the Barnstable County Commissioners and nominated by the following entities:

- Town of Bourne Board of Selectmen
- Town of Bourne Council on Aging
- Bourne Housing Authority
- Housing Assistance Corporation
- Visiting Nurses Association
- Elder Services of Cape Cod and the Islands
- Barnstable County Commissioners
- Barnstable County Assembly of Delegates

IN WITNESS WHEREOF, this Lease has been executed as an instrument under seal as of the date set forth above.

LESSOR:

THE COUNTY OF BARNSTABLE

By: \_\_\_\_\_  
LLC,  
Name: \_\_\_\_\_  
Title: County Commissioner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: County Commissioner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: County Commissioner

LESSEE:

POCASSET ASSISTED LIVING  
LIMITED PARTNERSHIP

By: PARKER & PLUMMER AND JMC,  
its sole general partner

By: \_\_\_\_\_  
Name: Joseph M. Cloutier  
Title: Manager



## **EXHIBIT "A"**

### **LEGAL DESCRIPTION OF GROUND LEASED PREMISES**

The Ground Lease Premises shall consist of approximately 368,471 square feet of land on the former Barnstable County Hospital site at 870 County Road in the Town of Bourne, Massachusetts, the full property shown as Land Court record 24204. The boundaries of said Ground Lease Premises shall be as follows:

Commencing at a point on the westerly sideline of County Road a distance of 10.00 feet from the northeast corner of Lot 8 as shown on Land Court Plan 24204-D; thence northerly along the westerly side line of County Road along an arc of 1746.39 feet a distance of 59.99 feet; thence along the westerly side line of County Road N 16° 00' 00" W a distance of 143.17 feet; thence along the westerly side line of County Road N 19° 30' 20" W a distance of 142.59 feet; thence S 79° 52' 07" W a distance of 248.75 feet; thence N 82° 58' 21" W a distance of 359.55 feet; thence S 62° 38' 12" W a distance of 283.11 feet; thence S 05° 13' 10" W a distance of 118.99 feet; thence S 77° 07' 01" E a distance of 163.71 feet; thence S 47° 40' 02" E a distance of 154.12 feet; thence S 62° 40' 48" E a distance of 115.18 feet; thence S 44° 12' 46" E a distance of 200.31 feet; thence S 75° 35' 50" E a distance of 144.59 feet; thence N 14° 48' 37" E a distance of 160.77 feet; thence N 79° 41' 08" E a distance of 259.86 feet to the point of beginning.

Excluding from the lease area commencing at a point 19.97 feet from the northwesterly property corner of Lot 8 Land Court Plan 24204-D located on the northerly lot line of said Lot 8; thence N 13° 40' 59" E a distance of 38.09 feet; thence N 20° 57' 40" W a distance of 65.82 feet; thence N 13° 40' 59" E a distance of 47.77 feet; thence N 76° 19' 01" W a distance of 67.42 feet; thence S 13° 40' 59" W a distance of 141.58 feet; thence N 73° 19' 48" W a distance of 30.04 feet to the point of beginning.

All as shown on a plan entitled "Ground Lease Plan Pocasset Assisted Living Scale 1" = 100' Bourne, Massachusetts, April 16, 2003" prepared by Coastal Engineering Co., to be recorded with the Barnstable County Registry of Deeds.

**EXHIBIT "A" (Continued)**

Further, said Ground Lease Premises shall be subject, upon approval, to a Conservation Restriction as envisioned in Barnstable County Ordinance 98-26, (Attachment A3). The boundaries of said Conservation Restriction shall be as follows:

Commencing at a point on the westerly side of County Road, on the south easterly corner of the abutting property, N/F Dept. of Mental Health, and the north easterly corner of the subject property, thence S 71\_ 07' 20" W a distance of 834.2 feet; thence N 32\_ 36' 10" W a distance of 277.25 feet; thence S 48\_ 27' 35" W a distance of 541.75 feet; thence S 28\_ 01' 10" E a distance of 138.92 feet; thence S 62\_ 47' 30 W a distance of 240.99 feet; thence S 59\_ 56' 40" W a distance of 92.65 feet; thence S 55\_ 28' 50" W a distance of 89.67 feet; thence S 00\_ 48' 10" W a distance of 128.00 feet; thence S 18\_ 04' 40" W a distance of 128.00 feet; thence S 39\_ 48' 00" W a distance of 127.26 feet; thence S 02\_ 50' 00" E a distance of 196.60 feet; thence S 81\_ 04' 10" a distance of 636.82 feet; thence S 05\_ 79' 00" a distance of 103.12 feet; thence S 78\_ 43' 00" E a distance of 349.25 feet; thence S 13\_ 48 30 W a distance of 218.79; thence S 83\_ 22' 40" E a distance of 227.74; thence S 15\_ 50' 40" W a distance of 219.71 feet; thence S 63\_ 14' 00" E a distance of 442.56; thence N 26\_ 47' 50" E a distance of 217.40; thence S 63\_ 20' 50" E a distance of 235.72 feet; thence N 15\_ 79' 40" E a distance of 111.35 feet; thence N 22\_ 33' 00" E a distance of 322.10 feet; thence northerly along the westerly side of Old County Road along an arc of 860.00 feet a distance of 138.72 feet; thence S 19\_ 30' 20" E a distance of 127.88 feet; thence N 08\_ 20' 00" w a distance of 131.20 feet; thence N 16\_ 00' 00" w a distance of 268.80 feet to the point of beginning.

All as shown on a plan entitled "Conservation Restriction Plan Pocasset Assisted Living Scale 1" = 100' Bourne, Massachusetts April 16, 2003" prepared by Coastal Engineering Co., to be recorded with the Barnstable County Registry of Deeds.

## **EXHIBIT "B"**

### **APPROVED PLANS AND SPECIFICATIONS FOR THE FACILITY ATTACHED**

Plans and Specifications consist of the following documents.

Prepared by Coastal Engineering Co. and entitled:

OVERALL SITE PLAN – Scale 1" = 100' (dated 10/28/02; revised 3/04/03)  
EXISTING CONDITIONS PLAN – Scale 1" = 50' (dated 10/28/02)  
Layout and materials plan – Scale 1" = 40' (dated 10/28/02; revised 3/04/03)  
GRADING AND DRAINAGE PLAN – Scale 1" = 40' (dated 10/28/02; revised 1/31/03)  
UTILITIES PLAN – Scale 1" = 40' (dated 10/28/02; revised 1/31/03)  
LANDSCAPING & LIGHTING PLAN – Scale 1" = 40' (dated 10/28/02; revised 1/31/03)

Prepared by Burnell Johnson & Tracy Architects and entitled:

FIRST FLOOR PLAN PART A – A1.03 (dated 11/6/02)  
SECOND FLOOR PLAN PART A – A1.04 (dated 11/6/02)  
FIRST FLOOR PLAN PART B – A1.05 (dated 11/6/02)  
SECOND FLOOR PLAN PART B – A1.06 (dated 11/6/02)  
FIRST FLOOR PLAN PART C – A1.07 (dated 11/6/02)  
SECOND FLOOR PLAN PART C – A1.08 (dated 11/6/02)  
FIRST FLOOR PLAN PART D – A1.09 (dated 11/6/02)  
SECOND FLOOR PLAN PART D – A1.10 (dated 11/6/02)  
BUILDING ELEVATIONS A-G – A2.01 (dated 11/6/02)  
BUILDING ELEVATIONS H-K – A2.02 (dated 11/6/02)  
BUILDING ELEVATIONS L-P – A2.03 (dated 11/6/02)

## **EXHIBIT "C"**

### **NOTICE OF LEASE [To Ground Lease]**

Date: As of \_\_\_\_\_, 2003

Pursuant to the provisions of Section 4 of Chapter 183 of the General Laws of Massachusetts, notice is hereby given of the following Lease. All capitalized terms used and not defined herein shall have the meaning ascribed to such terms in the Lease.

(1) **PARTIES TO LEASE:**

Lessor: The County of Barnstable, a body politic of the  
Commonwealth of Massachusetts  
c/o Barnstable County  
Superior Court House  
P.O. Box 427  
Barnstable, Massachusetts 02630  
Attention: E. Mark Zielinski

Lessee: Pocasset Assisted Living Limited Partnership, a  
Massachusetts limited partnership  
c/o Realty Resources Chartered  
247 Commercial Street  
Rockport, Maine 04856  
Attention: Joseph M. Cloutier

and

c/o Housing Assistance Corporation  
460 West Main Street  
Hyannis, Massachusetts 02601  
Attention: Frederick Presbrey

- (2) **DATE OF EXECUTION:** As of \_\_\_\_\_, 2003
- (3) **TERM:** The term of the Lease commences upon \_\_\_\_\_, 2003 and continues through \_\_\_\_\_, 2053, unless sooner terminated or extended in accordance with the terms and provisions contained in the Lease.
- (4) **EXTENSION OPTION:** One Twenty-Five (25) Year term, subject to the terms and provisions contained in the Lease.
- (5) **PREMISES:** Approximately Eight and Four Hundred Fifty-nine Thousandths (8.459) acres of land of the former Barnstable County Hospital located on County Road in Bourne, Massachusetts, as more particularly described in Exhibit A attached hereto.

For Lessor's title, see Certificate of Title number 18176 recorded with the Barnstable County Land Court.

This instrument is executed pursuant to the provisions contained in the Lease, does not purport to include all of the provisions thereof, and is not intended to vary the terms and conditions thereof.

This Notice of Lease is executed as a Massachusetts sealed instrument as of the date first

above written.

LESSOR:

THE COUNTY OF BARNSTABLE

By: \_\_\_\_\_  
LLC,

Name: \_\_\_\_\_  
Title: County Commissioner

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: County Commissioner

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: County Commissioner

LESSEE:

POCASSET ASSISTED LIVING  
LIMITED PARTNERSHIP

By: PARKER & PLUMMER AND JMC,

its sole general partner

By: \_\_\_\_\_

Name: Joseph M. Cloutier  
Title: Manager

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_, ss.

\_\_\_\_\_, 2003

Then personally appeared the above-named \_\_\_\_\_, t a Commissioner of The County of Barnstable as aforesaid, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of The County of Barnstable, before me.

\_\_\_\_\_  
Notary Public

My commission expires:

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_, ss.

\_\_\_\_\_, 2003

Then personally appeared the above-named \_\_\_\_\_, a Commissioner of The County of Barnstable as aforesaid, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of The County of Barnstable, before me.

\_\_\_\_\_  
Notary Public

My commission expires:

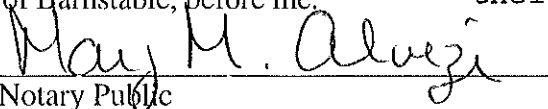
**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_, ss.

\_\_\_\_\_, 2003

Mary J. LeClair, Lance Lambros William Doherty

Then personally appeared the above-named \_\_\_\_\_, a Commissioner of  
The County of Barnstable as aforesaid, and acknowledged the foregoing instrument to be ~~his~~ free  
act and deed and the free act and deed of The County of Barnstable, before me, ~~his~~ their



Notary Public

My commission expires:

MARY M. ALVEZI, Notary Public  
My Commission Expires Nov. 21, 2003

## COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

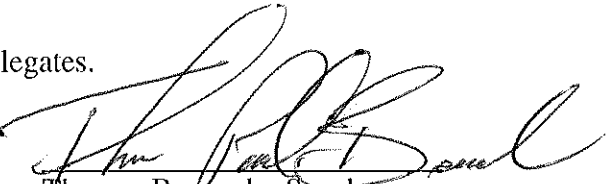
\_\_\_\_\_, 2003

Then personally appeared the above-named Joseph M. Cloutier, the Manager of the sole  
general partner of Pocasset Assisted Living Limited Partnership as aforesaid, and acknowledged  
the foregoing instrument to be his free act and deed and the free act and deed of Pocasset Assisted  
Living Limited Partnership, before me.

\_\_\_\_\_  
Notary Public

My commission expires:

Adopted on May 21, 2003 by the Assembly of Delegates.

  
Thomas Bernardo, Speaker

Approved by the Board of County Commissioners, JUN 4 2003 at, 10:02 AM.  
Date Time

  
Mary Heenan



