

ORDINANCE 2007-21

AN ORDINANCE AUTHORIZING THE LEASE OF REAL PROPERTY LOCATED IN TRACTS 20 AND 21 OF ORCHARD SUBDIVISION IN THE CITY OF FRUITA TO THE LOWER VALLEY HOSPITAL ASSOCIATION

WHEREAS, the City of Fruita is the owner of land located in Tracts 20 and 21 of Orchard Subdivision, in the City of Fruita, County of Mesa, State of Colorado

WHEREAS, the land was acquired by the City of Fruita with grant funds with the intent that a portion of said property would be used for construction of a new hospital and the ball fields existing on the property be relocated to the city owned Little Salt Wash Park facility, and

WHEREAS, the Fruita City Council desires to lease the property to the Lower Valley Hospital Association for construction and operation of a new hospital facility pursuant to a long-term lease agreement, and

WHEREAS, pursuant to Section 2.11 of the Fruita City Charter, the Fruita City Council must, by ordinance, authorize the lease or conveyance of real property of the City.

WHEREAS, it is the intent of this ordinance to authorize the Mayor to execute the necessary documents to lease property owned by the City of Fruita to the Lower Valley Hospital Association.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO, AS FOLLOWS:

Section 1: The Mayor is hereby authorized to execute any documents necessary to lease the property described in Exhibit A to the Lower Valley Hospital Association pursuant to the terms of a long-term lease agreement attached hereto as Exhibit B.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL
ON THE 18th DAY OF SEPTEMBER, 2007**

City of Fruita

E. James Adams, Mayor

ATTEST:

City Clerk

EXHIBIT A

PROPERTY TO BE LEASED BY THE CITY OF FRUITA TO THE LOWER VALLEY HOSPITAL ASSOCIATION

A parcel of land situate in the NW¹/₄ NW¹/₄ Section 17, Township 1 North, Range 2 West of the Ute Meridian, Mesa County, Colorado and being more particularly described as follows:

Commencing at the Northwest Corner of said Section 17 from whence the Southwest Corner of the NW¹/₄ NW¹/₄ of said Section 17 bears S0°10'36"E a distance of 1324.06 feet; thence along the West line of the NW¹/₄ NW¹/₄ of said Section 17 S0°10'36"E a distance of 423.79 feet; thence N89°51'09E a distance of 30.00 feet to a point on the East right of way line for Coulson Street and the POINT OF BEGINNING; thence along said right of way N0°10'36"W a distance of 393.65 feet to a point on the South right of way for Ottley Avenue; thence along said right of way S89°52'49"E a distance of 609.80 feet to a point on the West right of way for Cherry Street; thence along said right of way S0°08'56"E a distance of 448.15 feet; thence leaving said right of way S89°51'00"W a distance of 8.32 feet to the start of a curve to the left; thence along said curve to the left with an arc length of 4.15 feet, a central angle of 47°32'45" and a radius of 5.00 feet whose chord bears S66°04'38"W a distance of 4.03 feet to the start of a curve to the right; thence along said curve to the right with an arc length of 124.47 feet, a central angle of 95°05'30" and a radius of 75.00 feet whose chord bears S89°51'00"W a distance of 110.67 feet to the start of a curve to the left; thence along said curve to the left with an arc length of 4.15 feet, a central angle of 47°32'45" and a radius of 5.00 feet whose chord bears N66°22'37"W a distance of 4.03 feet; thence S89°51'00"W a distance of 198.95 feet to the start of a curve to the right; thence along said curve to the right with an arc length of 71.73 feet, a central angle of 53°43'20" and a radius of 76.50 feet whose chord bears N63°17'20"W a distance of 69.13 feet to the start of a curve to the left; thence along said curve to the left with an arc length of 60.01 feet, a central angle of 53°43'11" and a radius of 64.00 feet whose chord bears N63°17'15"W a distance of 57.93 feet; thence S89°51'09"W a distance of 171.03 feet to the POINT OF BEGINNING. Said parcel contains 6.04 acres as described.

Above description written by:

Patrick W. Click PLS

695 36 Road Palisade, CO 81526

Phone 970-986-0522

EXHIBIT B

**LEASE AGREEMENT BETWEEN
THE CITY OF FRUITA AND
LOWER VALLEY HOSPITAL ASSOCIATION**

CITY OF FRUITA, COLORADO,

LANDLORD,

AND

THE LOWER VALLEY HOSPITAL ASSOCIATION,
d/b/a FAMILY HEALTH WEST,

TENANT

GROUND LEASE

_____, 2007

TABLE OF CONTENTS

	Page
1. Property and Term	1
(a) Property	1
(b) Term	1
2. Rent	1
(a) Rent	1
(b) Net Rental	1
(c) Additional Rent	1
3. Taxes	1
(a) Tenant's Obligation to Pay	1
(b) Additional or Substitute Taxes	2
(c) Apportionment to Term	2
(d) Protest	2
(e) Certificate as Evidence	3
4. Utilities and Services	3
(a) Tenant's Obligations	3
(b) No Abatement for Service Interruption	3
5. Permits	3
6. Insurance	3
(a) Required Insurance	3
(b) Tenant's Liability Not Limited	4
(c) Unusual Hazards	4
(d) Insureds and Policy Requirements	5
(e) Blanket Policies	5
(f) Certificates of Insurance	5
(g) No Concurrent Coverage	5
(h) Collection of Proceeds	5
7. "As-Is" Condition of the Property	6
8. Landlord's Representations	6
(a) Due Authorization	6
(b) No Breach	6
(c) No Condemnation	7
(d) Real Property Taxes	7
9. Liens	7
10. Construction of Buildings or Improvements	7
11. Repair and Maintenance	8
(a) Tenant's Obligation	8
(b) Disclaimer; Landlord's Cure	8
(c) No Abatement or Offset	8
(d) Manner of Performing Work	8
12. Surrender; Holding Over	8
(a) Surrender	8
(b) Holdover	9

13. Property Use; Compliance with Laws	9
(a) Use	9
(b) Compliance with Laws	9
(c) Violation and Indemnity	10
(d) Contest of Requirements.....	10
14. Damage or Destruction	10
(a) Tenant's Obligation.....	10
15. Condemnation	10
(a) Total Taking.....	10
(b) Partial Taking.....	11
(c) Condemnation Award.....	11
(d) Temporary Taking	11
16. Public Dedication; Adverse Possession	11
17. Indemnity; Waiver	11
18. Assignment, Subletting and Leasehold Mortgage	12
19. Landlord's Access Rights	14
20. Defaults	14
(a) Nonpayment.....	14
(b) Nonperformance	15
(c) Attachment.....	15
(d) Insolvency and Bankruptcy.....	15
(e) Proceedings Not Dismissed	15
(f) Appointment of Receiver.....	15
21. Remedies	15
22. Acts of God, Etc.	17
23. Interest Upon Arrears or Upon Default	17
24. Quiet Enjoyment	17
25. Survival of Tenant's Obligations	17
26. Notices	17
27. Entire Agreement	18
28. Headings	18
29. Severability	18
30. Relationship of Parties	18
31. Attorneys' Fees	18
32. Business Days	18
33. Binding Effect	18
34. No Automatic Merger	19
35. Payments After Termination	19
36. No Implied Surrender or Waiver	19
37. Limitation of Liability	19
38. Governing Law	19

EXHIBIT A Legal Description of the Property

GROUND LEASE

THIS GROUND LEASE (this "Lease"), dated as of the ____ day of _____, 2007, is by and between the City of Fruita, Colorado, a home rule city and a political subdivision of the State of Colorado ("Landlord"), and The Lower Valley Hospital Association, d/b/a Family Health West, a Colorado nonprofit corporation ("Tenant").

In consideration of the mutual covenants contained in this Lease, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. **Property and Term.**

(a) **Property.** Upon and subject to the terms and conditions set forth in this Lease, Landlord leases to Tenant and Tenant leases from Landlord the real property in the City of Fruita, County of Mesa, State of Colorado that is more particularly described on Exhibit A attached to and made a part of this Lease, and all easements and appurtenances thereto (collectively, the "Property"), subject to all matters of record and apparent easements and encroachments. Tenant represents it intends to construct a 20-bed hospital on the Property (the "Project"). Title to the Project and any improvements thereto during the Term shall at all times remain in the Tenant.

(b) **Term.** The term of this Lease (the "Term") commences at 12:01 A.M. noon on _____ (the "Commencement Date") and ends at 11:59 P.M. on _____, 2106, unless sooner terminated by law or pursuant to terms of this Lease or unless sooner.

2. **Rent.**

(a) **Rent.** Tenant shall pay to Landlord, without any setoff, credit, abatement or deduction and without prior notice or demand, a fixed, net rent ("Rent") of \$500,000.00 for the term of the lease payable in advance on the Commencement Date.

(b) **Net Rental.** The Rent is intended to and shall be a net rental, and Tenant shall pay all costs of upkeep, maintenance, repair, utilities, taxes, insurance and all other costs and expenses necessary or appropriate in connection with the Property during the Term or Tenant's use of the Property, regardless of whether payment of the same by Tenant is expressly required under other provisions of this Lease.

(c) **Additional Rent.** All amounts payable by Tenant pursuant to this Lease, except Rent reserved in this Section 2, shall be deemed to be additional rent and Landlord shall have all rights against Tenant for default in payment thereof.

3. **Taxes.**

(a) **Tenant's Obligation to Pay.** Except as provided in Sections 3(c) through (e), Tenant shall pay, at least 30 days prior to the date due, all real estate taxes (whether special or general, ordinary or extraordinary), special improvement and other assessments (ordinary and extraordinary), water rents and charges, and all other taxes, duties, charges, fees and payments

that are imposed, assessed or levied by any governmental or public authority with respect to the Property, or that arise in connection with the use, occupancy or possession of the Property or any part thereof during the Term (collectively and as the definition may be expanded pursuant to Section 3(b) below, the "Governmental Impositions"). In each case, Tenant shall pay all such Governmental Impositions directly to the taxing authority and deliver to Landlord copies of the receipted bills or other evidence satisfactory to Landlord showing such payment promptly after Tenant receives receipts showing the payment thereof.

(b) Additional or Substitute Taxes. If at any time during the Term, under the laws of the United States, the State of Colorado, the County of Mesa, or the City of Fruita or any political subdivision thereof, a tax or excise on rents or the leasing, use and/or occupancy of the Property is levied or assessed against Landlord or Tenant or against the Rent, as a substitution in whole or in part for or in addition to taxes assessed or imposed by the United States, the State of Colorado, the County of Mesa, or the City of Fruita, or any political subdivision thereof, on land and buildings, then such substitute or additional tax, assessment or imposition is to be included within the term "Governmental Imposition" as defined in this Section 3(a), calculated as if the Property were the only property of Landlord subject to such tax.

(c) Apportionment to Term. Tenant's obligation to pay Governmental Impositions applies only to those Governmental Impositions that accrue during the Term, plus interest thereon and penalties, if any, with respect thereto. Governmental Impositions that are payable for the tax years in which the Term commences and expires shall be apportioned between Landlord and Tenant according to the number of days of the period covered by the Governmental Impositions that Landlord and Tenant, respectively, are entitled to or in actual possession of the Property. This provision does not limit Tenant's obligation to pay Governmental Impositions through the end of the scheduled Term in the event of earlier termination of this Lease by reason of Tenant's default.

(d) Protest. Tenant may protest any Governmental Imposition by appropriate proceedings conducted promptly and diligently at Tenant's sole expense, in Tenant's name, or (whenever necessary) in Landlord's name. Landlord agrees to cooperate reasonably with Tenant and to execute any documents or pleadings reasonably required for such purpose, but Landlord is not obligated to incur any expense or liability in that regard. Tenant may defer payment of the contested Governmental Imposition pending such contest, if, and only if, such deferment does not, in Landlord's reasonable judgment, subject Landlord's interest in the Property to any risk of forfeiture or involuntary sale or subject Landlord to any risk of civil or criminal penalty. Tenant shall, if Landlord so requests, deposit with Landlord prior to the due date of such Governmental Imposition, an amount equal to the payment so deferred plus penalties and interest thereon as estimated by Landlord. Landlord may, but has no obligation to, upon notice to Tenant, pay such contested items from the deposit in case the protection of the Property or of Landlord's interest therein, in the reasonable judgment of Landlord, requires such payment. When all contested Governmental Impositions have been paid or canceled, Landlord shall pay to Tenant, without interest, the balance, if any, of the funds deposited by Tenant with Landlord to secure the payment of such contested Governmental Imposition. In lieu of any such deposit, Tenant may, at its election, furnish a bond in a form, in an amount, and with a surety reasonably satisfactory to Landlord. All refunds of Governmental Impositions are the property of Tenant to the extent they are based on payments made by Tenant, with any balance being Landlord's property. Tenant

hereby agrees to indemnify and save Landlord harmless from and against any and all costs, expenses (including without limitation, reasonable attorneys' fees), claims, losses and damages by reason of, in connection with, on account of or in any way resulting or arising from any action or proceeding relating to Tenant's protest of any Governmental Imposition.

(e) Certificate as Evidence. The certificate, bill or statement of the existence, non-payment or amount of any Governmental Imposition issued or given by the appropriate officials authorized or designated by law to issue or give the same or to receive payment of any Governmental Imposition constitutes prima facie evidence for all purposes of the existence, non-payment or amount of such Governmental Imposition.

4. **Utilities and Services.**

(a) Tenant's Obligations. Tenant shall, to the extent it desires utility services or other services to the Property, make its own arrangements in its own name, for such services to the Property, and Tenant shall pay all costs of obtaining such services, including without limitation, any and all deposits, service initiation or transfer charges, line extension costs and other such fees and costs. Tenant shall pay, when due, directly to the service provider, all charges for gas, electricity, steam, water, telephone, snow removal and other utilities or services furnished to the Property during the Term.

(b) No Abatement for Service Interruption. Landlord shall not be liable to Tenant or any other person for any damages or injury to person or property, including, without limitation, damages for injury to or loss of Tenant's business, resulting from interruption, curtailment or cessation of any utility service, however caused. No such interruption, curtailment or cessation entitles Tenant to any abatement or reduction of Rent, nor shall any such event be deemed an eviction of Tenant in whole or in part or otherwise relieve Tenant from performing its obligations under this Lease.

5. **Permits.** Tenant shall, at Tenant's sole cost and expense, procure every permit, license, certificate or other authorization required in connection with the use of the Property by Tenant or required in connection with any building or improvements now or hereafter erected on the Property (collectively, the "Permits").

6. **Insurance.**

(a) Required Insurance. At all times during the Term, Tenant shall, at its sole cost and expense:

(i) maintain in force, and require any independent contractor providing services to or for the Property to maintain in force, a comprehensive commercial general public liability insurance in the amount of \$1,000,000 combined single limit against claims for personal injury, death or property damage occurring in, on or about the Property, or such higher limits as Landlord reasonably requires from time to time;

(ii) cause its construction agents, contractors and subcontractors to maintain in force from the commencement of any construction work at the

Property (including demolition work and debris removal) until the completion of any construction at the Property, broad form coverage against damage to the Property, including all improvements that are part of the Property (sometimes referred to as "builder's all-risk" insurance), in the full replacement value, together with an endorsement for demolition and debris removal,

(iii) maintain in force, and cause any independent contractor providing services to or for the Property to maintain in force, worker's compensation and employer's liability insurance covering all persons employed by Tenant in connection with the demolition, construction, erection, maintenance, repair, operation and use of the Property (including any improvements), with the amount of such worker's compensation insurance to be that required by law (or, if not specified by law, in an amount reasonably required by Landlord from time to time), and the amount of such employer's liability insurance to be not less than \$100,000 per accident for bodily injury, \$100,000 per accident for bodily injury by disease, and a \$500,000 policy limit, with \$100,000 per employee for bodily injury by disease;

(iv) maintain in force all insurance required to be maintained by Tenant by law, including without limitation, automobile liability insurance covering any damage to property or injury to persons associated with use and operation of motor vehicles owned or operated by Tenant or its agents; and

(v) maintain in force such other insurance, as Landlord reasonably requires from time to time.

(b) Tenant's Liability Not Limited. Tenant's liability is not limited to the amount of the insurance required to be obtained by Tenant under this Lease, but in all cases extends to the full amount of all claims, damages, losses, costs and expenses. Landlord has no liability or responsibility whatsoever on account of Landlord's approval of or request for any specific amount or type of insurance, and Tenant shall bear the entire liability and responsibility for obtaining and keeping in force insurance, in such amounts and providing such coverage as are appropriate to protect the Property and Landlord's and Tenant's interests therein.

(c) Unusual Hazards. In addition, if Tenant commits, permits, suffers or causes the conduct of any activity, the storing or use of any materials or the bringing or operation of any equipment on or about the Property that create unusual hazards, Tenant shall procure and maintain in force, during such activity, storing, use or operation, insurance sufficient to cover the risks represented thereby. Neither this provision nor Tenant's procurement of such insurance limits or affects or constitutes a waiver of Landlord's right to demand the removal, cessation or abatement of any such activity, storing, use or operation. In that regard, Tenant acknowledges and agrees that it is not permitted to use the Property for the conduct of any dangerous or hazardous activities or operations on the Property, with the exception of inherently dangerous or hazardous activities incident to the operation of Tenant's hospital business in accordance with the terms of this Lease.

(d) Insureds and Policy Requirements. All insurance required to be carried under this Section, or otherwise carried by Tenant with respect to the Property shall:

(i) be carried in favor of Landlord and Tenant, as their respective interests may appear, naming Landlord as an additional insured or loss payee, as the context requires;

(ii) provide that coverage may not be terminated, reduced or materially amended without at least thirty days' prior written notice to Landlord, Tenant and any other insureds; and

(iii) be obtained from responsible companies licensed to do business in the State of Colorado and reasonably acceptable to Landlord.

(e) Blanket Policies. Tenant may, at its option, bring its obligations to insure under this Section within the coverage of any so-called blanket policy or policies of insurance that it may now or hereafter carry, on the condition that the interest of Landlord must be as fully protected as it would be if Tenant was not permitted to use blanket policies.

(f) Certificates of Insurance. Tenant shall, before commencement of the Term hereof and thereafter upon Landlord's reasonable request, deliver to Landlord certificates of insurance or certified copies of policies for all insurance policies required under this Lease, together with evidence of the payment of premiums thereon. Tenant shall require that all contractors (including without limitation, independent contractors) deliver certificates of insurance to Landlord before such contractors commence working in, on or about or providing services to or for the Property. Tenant shall deliver to Landlord certificates of renewals of all policies at any time in force, with evidence of payment of premiums thereon, at least 30 days before the expiration of such policies.

(g) No Concurrent Coverage. Neither Tenant nor Landlord shall carry separate insurance, concurrent in coverage and contributing in the event of any loss with any insurance to be furnished by Tenant under the provisions of this Section 6 if the effect of such separate insurance would be to reduce the protection or the payment to be made under the insurance required to be furnished by Tenant, unless both Tenant and Landlord are included as insureds with loss payable as provided herein. Tenant or Landlord, as the case may be, shall promptly notify the other of the issuance of any such separate insurance and shall cause such policies to be delivered to Tenant and Landlord as provided in this Section 6. Nothing contained in this Section 6 or elsewhere in this Lease prohibits Tenant from carrying use and occupancy and/or business interruption insurance for its own benefit.

(h) Collection of Proceeds. Landlord and Tenant shall cooperate with each other and all mortgagees in the collection of insurance proceeds that may become due by reason of loss or damage or destruction to the Property and shall execute and deliver proofs of loss and other instruments as may be required to recover insurance proceeds. Subject to Section 18, all insurance proceeds payable with respect to the Property, must be paid over to Landlord. Subject to Section 18, Landlord shall make the insurance proceeds available to Tenant during the course of repairing and rebuilding in an amount equal to 90% of the value of the work completed since the last prior advance (or since commencement of work, as to the first advance) according to a

certificate by a responsible architect or contractor having charge thereof (the "Architect"), together with a reasonable showing of bills for labor and material, accompanied by appropriate lien waivers or bonds to protect Tenant's and Landlord's interest in the Property from mechanic's and materialmen's liens. The final payment or disbursement shall be in an amount equal to the entire amount of proceeds not previously advanced and shall be made upon receipt of (i) the Architect's proper certification of completion; (ii) evidence that all repairs, restoration, rebuilding or improvements have been completed to the satisfaction of Landlord and in accordance with the terms of this Lease and (iii) evidence that no mechanic's or materialmen's liens have or will attain priority over or parity with such first mortgage or have or will attach to the fee title, estate or interest of Landlord in the Property or under the terms of this Lease.

7. **"As-Is" Condition of the Property.** Tenant accepts the Property in its present condition, "as is," with all faults, patent or latent, and Tenant will not require Landlord to make any repairs, improvements or alterations thereto. Tenant warrants and represents that it has examined or has been afforded the opportunity to examine all matters concerning the Property that it deems material to its lease and use of the Property, including without limitation, topography, geology, soil conditions, status of title, physical conditions, any environmental conditions, sizes and dimensions, availability and capacity of utility and sanitary facilities, any hazardous or unsafe conditions, any development and use restrictions, suitability and feasibility of the Property for Tenant's intended use, zoning, applicability of any governmental requirements and availability of permits, approvals and other entitlements from governmental authorities. Except as provided in Section 8, LANDLORD HAS NOT MADE AND DOES NOT HEREBY MAKE ANY REPRESENTATIONS OR WARRANTIES TO TENANT THAT THE PROPERTY IS SUITABLE OR ADEQUATE IN ANY RESPECT FOR THE ACTIVITIES OR USES THAT TENANT INTENDS TO CONDUCT OR MAY CONDUCT THEREON. ALL EXPRESS AND IMPLIED WARRANTIES ARE HEREBY DISCLAIMED. TENANT ACKNOWLEDGES AND AGREES THAT THERE ARE NO PROMISES, REPRESENTATIONS, AGREEMENTS, WARRANTIES (WHETHER EXPRESS OR IMPLIED, CONDITIONS OR UNDERSTANDINGS, WHETHER ORAL OR WRITTEN, BETWEEN THE PARTIES OTHER THAN THOSE EXPRESSLY STATED IN THIS LEASE.

8. **Landlord's Representations.** Landlord hereby represents and warrants to Tenant that, as of the date hereof:

(a) **Due Authorization.** Landlord has full power, and has taken all necessary action, to authorize the execution, delivery and performance of this Lease, and this Lease constitutes the legal, valid and binding obligation of Landlord enforceable in accordance with its terms except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and equitable remedies.

(b) **No Breach.** The execution and delivery of this Lease and the performance by Landlord of its obligations hereunder (i) are not in violation of or prohibited by any contract, agreement or other obligation to which Landlord is a party or, to its knowledge, by which Landlord or the Property is bound, and (ii) will not result in the creation of any mortgage, pledge, lien, claim, charge or encumbrance or other encumbrance or other adverse interest on any of the Property other than obligations to Tenant created herein.

(c) No Condemnation. There are no pending or, to Landlord's knowledge, threatened condemnation proceedings relating to the Property.

(d) Real Property Taxes. Real property taxes assessed against the Property have been paid in full, except for real property taxes not yet due and payable.

9. Liens. Except as provided in Section 18, if, because of any act or omission of Tenant, or its employees, agents or contractors, or anyone claiming by, through or under Tenant or its employees, agents or contractors, after the date of this Lease, any mechanic's or other lien or claim of lien is filed against the Property, or against Landlord, then, regardless of whether such lien or claim is valid or enforceable as such, Tenant shall, at Tenant's own cost and expense, cause the same to be canceled and discharged of record within 15 days after the filing or recording thereof. Tenant may, at its own expense, contest all such liens and claims, on the conditions that (i) Tenant bonds over the lien or claim as permitted by law, using a bonding company reasonably acceptable to Landlord, which process must result in the discharge of record of the lien within 15 days after the filing or recording thereof, and (ii) any such contest must be conducted without allowing any sale or transfer of the Property. If Tenant fails to pay any charge for which a lien has been filed, and such lien is not discharged of record as described above, Landlord may, at its option, pay such charge and related costs and interest, without any obligation to inquire into the validity of the claim or the amount properly due. In that event, the amount so paid by Landlord, together with reasonable attorneys' fee incurred in connection therewith, shall be immediately due from Tenant to Landlord, with interest at the Interest Rate from the date of payment by Landlord to the date that Tenant reimburses Landlord. Tenant shall indemnify and hold Landlord harmless from and against any and all costs, expenses (including, without limitation, reasonable attorneys' fees), claims, actions, damages and suits of any nature resulting from or arising out of any mechanic's or other lien or claim of lien that is filed against the Property, or against Landlord, due to any act or omission of Tenant, or its employees, agents or contractors, or anyone claiming by, through or under Tenant or its employees, agents or contractors, after the date of this Lease, including but not limited to any and all costs and expenses incurred by Landlord to obtain a discharge of record of such lien. Nothing contained in this Lease shall be deemed the consent or agreement of Landlord to subject Landlord's interest in the Property to liability under any mechanics' or other lien law. On the contrary (and notice is hereby given), the right and power to charge any such lien or encumbrance of any kind against Landlord or its estate is hereby expressly denied.

10. Construction of Buildings or Improvements. Tenant may, at Tenant's sole expense, prepare plans and specifications for the Project and, from time to time, any other new buildings or improvements to be erected on the Property. Such plans and specifications shall be submitted to the Landlord as a part of its customary public approval process. Tenant shall, at Tenant's sole expense, commence, and shall thereafter diligently proceed to completion, the necessary demolition of any existing improvements and the construction of the Project or any other new buildings in accordance with such plans and specifications. Tenant shall have the right to make such alterations, improvements, and changes to the Project or any building that may from time to time be on the Property as Tenant may deem necessary, or to replace the Project or any building with a new one. Tenant shall have no obligation to restore or replace at the expiration or other termination of this Lease any building located on the Property at the commencement of the term of this Lease, except that Tenant shall keep and maintain the

buildings and improvements in a condition comparable to their condition when delivered to Tenant, except for normal, reasonable wear and tear. Tenant shall obtain, at its sole cost, all necessary variances or zoning changes, construction permits and licenses for the construction of the Project or any improvements, and shall comply with all local, state, and federal laws and regulations concerning the demolition and removal of any existing buildings and improvements on the Property, the excavation thereof, and the construction and maintenance of the Project or improvements.

11. **Repair and Maintenance.**

(a) **Tenant's Obligation.** Tenant, at its own expense, shall keep the Property (including all improvements) in constant good order, condition and repair, whether the necessity of such repairs arises from wear, tear, obsolescence, casualty or any other cause. Tenant shall not commit or permit waste or injury to the Property. To that end, Tenant shall make all necessary repairs, replacements and renewals, ordinary and extraordinary, structural or otherwise. Tenant shall, at its own expense, keep any sidewalks and curbs on or adjoining the Property clean, free from snow and ice, and in a good state of repair.

(b) **Disclaimer; Landlord's Cure.** Landlord is not, under any circumstances, required to furnish any services or facilities or to make any repairs or alterations of any kind in or on the Property. Landlord may, but has no obligation to, perform any obligation of Tenant under Section 10(a) upon Tenant's failure or refusal to do so. If Landlord elects to cure any default of Tenant's obligations under Section 10(a), Tenant shall indemnify and hold Landlord harmless from and against any and all costs, expenses (including without limitation, reasonable attorneys' fees), damages, claims and actions of whatever nature related to or arising out of Landlord's actions in that regard. If any amount is paid by Landlord to cure any default of Tenant, then Tenant shall promptly reimburse Landlord for such amount, together with interest at the Interest Rate from the date paid by Landlord to the date Landlord receives reimbursement.

(c) **No Abatement or Offset.** No deprivation, impairment or limitation of use resulting from any event or from work performed by Landlord on behalf of Tenant, or otherwise, will entitle Tenant to any offset or abatement, any suspension or reduction of Tenant's obligations under this Lease, or any termination or extension of the Term.

(d) **Manner of Performing Work.** Any work performed on the Property by or under the direction of Tenant must be performed diligently, in a good and workmanlike manner and in compliance with all applicable statutes, ordinances and requirements of all building departments, zoning boards and other governmental bodies and officials. Tenant shall obtain all permits and approvals required by law before commencement of any work on the Property.

12. **Surrender; Holding Over.**

(a) **Surrender.** On the last day of the Term or on the earlier termination of this Lease, Tenant shall peaceably and quietly leave, surrender and deliver up to Landlord the Property, including all improvements (except for Removable Property, as that term is used below), in the condition in which Tenant is required to maintain the same under this Lease. All Tenant's Removable Property that is not so removed shall conclusively be deemed to have been

abandoned and may be appropriated, sold, stored, destroyed and otherwise disposed of by Landlord without notice to Tenant or any other person and without obligation to account therefor. Tenant's obligation to observe and perform its obligations under this Section 12(a) survive the expiration or earlier termination of this Lease. As used in this Lease, the term "Removable Property" shall mean alterations and fixtures made or installed at the Property by Tenant and all inventory, furniture, furnishings, equipment and personal effects placed at the Property by Tenant; provided that Removable Property shall not include any alterations or fixtures reasonably necessary for the operation of the Property or whose removal might impair the structural integrity of any building or improvement.

(b) Holdover. If Tenant or anyone claiming under Tenant shall remain or continue to be in possession of the Property or any part thereof after the expiration of the Term or earlier termination of this Lease, without the express written agreement of Landlord, such holding over shall constitute a tenancy from month to month on the same terms and conditions herein specified so far as applicable, except that Rent payable for each month (or fraction of a month) of the holdover period shall be equal to 200% of the Rent paid by Tenant on the Commencement Date.

13. **Property Use; Compliance with Laws.**

(a) Use. Tenant may use the Property solely for the conduct of a hospital or other healthcare related activities and for no other purpose. Tenant shall conduct its business and control its employees, agents, invitees and visitors in such manner as not to create any public or private nuisance.

(b) Compliance with Laws. Tenant shall, at Tenant's own cost and expense, promptly comply with all present and future laws, rules, requirements, orders, directions, ordinances and regulations of the United States of America and of the state, county and local governments, and of all other municipal, governmental or lawful authority whatsoever, and of all of their departments, bureaus or officials, affecting the Property or appurtenances or any part thereof (collectively, the "Requirements of Law"), whether such requirements are ordinary or extraordinary, foreseen or unforeseen and whether such requirements relate to: (i) structural or other alterations, changes, additions, improvements; or (ii) repairs, extraordinary or ordinary; or (iii) remediation of any environmental condition; or (iv) the manner in which the Property may be used or occupied; or (v) any other matter affecting the Property, whether like or unlike the foregoing. Without limiting the generality of the foregoing, the Requirements of Law expressly include all federal, state and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits pertaining to the protection of human health and/or the environment ("Environmental Laws"), including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. §§6901, et seq. ("RCRA"), the Clean Air Act, 42 U.S.C. §§7401, et seq. ("CAA"), the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, et seq. ("FWPCA"), the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§11001, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq. ("CERCLA"), the Toxic Substances Control Act, 15 U.S.C. §§2601, et seq., the Oil Pollution Act of 1990, 33 U.S.C. §§2701, et seq., and any other local, state (including, without limitation, Colorado) or federal statute or ordinance pertaining to the environment or natural resources and all regulations pertaining thereto. Requirements of Law

also includes all federal, state or local land use laws dealing with environmental sensitivity including, but not limited to, present and future laws, rules, requirements, orders, directions, ordinances and regulations regarding wetlands, steep slopes, aquifers, critical or sensitive areas, shorelines, fish and wildlife habitat, and areas of historical or archeological significance.

(c) Violation and Indemnity. Tenant shall immediately upon the discovery of any violation of a Requirement of Law: (i) provide written notice to Landlord describing the violation, and (ii) take all necessary steps, legal and equitable, to terminate such violation. Tenant agrees to indemnify and save harmless Landlord from and against any and all costs, expenses (including without limitation, reasonable attorneys' fees), claims, actions, damages, liabilities and penalties of whatever nature incurred by reason of any violation of this Section 13. Tenant shall pay all costs and expenses, including reasonable attorneys' fees that may in any manner arise out of the failure of Tenant to comply with the provisions of this Section 13. Tenant's indemnity and payment obligations under this Section 13 shall survive the expiration of the Term or earlier termination of this Lease.

(d) Contest of Requirements. Tenant may contest in good faith by appropriate proceedings conducted promptly and diligently at its own expense, in its name, or (whenever necessary) in Landlord's name, the validity or enforcement of any Requirement of Law and may defer compliance therewith on the condition that (i) such non-compliance does not constitute a crime or misdemeanor on the part of Landlord and will not, under any circumstances, result in the imposition of a civil fine, penalty or imposition of any kind, (ii) such non-compliance does not involve any risk of forfeiture or sale of the Property or of damage to Landlord's reputation, and (iii) Tenant shall diligently prosecute such contest to final determination by the court, department or governmental authority or body having final jurisdiction. Landlord agrees to cooperate reasonably with Tenant, and to execute all documents and pleadings required for the purpose of such contest, provided Tenant shall discharge any expense or liability of Landlord in connection therewith.

14. **Damage or Destruction.**

(a) Tenant's Obligation. Subject to Section 18, in case of damage to or destruction of any improvements that are part of the Property, by any cause whatever during the Term, Tenant shall give Landlord prompt notice of such occurrence and shall promptly proceed, at its own expense, to repair and reconstruct the damaged or destroyed improvements, to the condition required by this Lease prior to such damage or destruction. In absolutely no event shall Landlord have any obligation to repair, reconstruct or restore any improvement or any Removable Property.

15. **Condemnation.**

(a) Total Taking. If the entire Property is taken for any public or quasi-public use, under any statute, by right of eminent domain or by purchase by public authority in lieu thereof, then this Lease will terminate as of the date upon which title or possession vests in the condemning authority (whichever occurs first), and all Rent, taxes, insurance premiums and other charges will be prorated and paid to the date of such termination and Tenant shall surrender the Property to Landlord.

(b) Partial Taking. If a portion of the Property is taken for any public or quasi-public use, and Tenant reasonably determines that the remaining portion of the Property is unsuitable for the continued conduct of Tenant's business, Tenant may, at its option, terminate this Lease, by written notice to Landlord given within 30 days after the date upon which title or possession vests in the condemning authority (whichever occurs first). If Tenant does not timely elect to terminate this Lease, then it shall remain in full force and effect as to all portions of the Property not so taken.

(c) Condemnation Award. In the event of any total or partial taking of the Property, Landlord shall be entitled to any and all payment, income, rent, award, or any interest therein whatsoever which may be paid or made in connection with such taking or conveyance, and Tenant shall have no claim against Landlord or otherwise for the value of any unexpired Term. Notwithstanding the foregoing sentence, Tenant shall have the right to claim for and prosecute a separate action to recover for loss of business, Tenant's personal property, moving cost or loss of goodwill and to receive any compensation specifically and separately awarded Tenant for such claim.

(d) Temporary Taking. If all or any portion of the Property is so taken for temporary use or occupancy, the foregoing provisions of this Section 15 shall be inapplicable to such taking. In such event, this Lease will continue in full force and effect without reduction or abatement of Rent, and Tenant shall be entitled to make claim for, recover and retain, so long as it shall not be in default hereunder, any awards in the form of rent recoverable in respect to such taking, but only to the extent of such award that is attributable to the Term. If any award is made for a period that includes a portion of the Term and a period after the Term, the award shall be prorated between such two periods, based on the number of days in each such period, and Landlord shall be entitled to the portion of such award attributable to the period after the Term. In the event of any temporary taking, all options of Tenant to renew the Term that had not been previously properly exercised by Tenant shall be null and void and of no further effect.

Notwithstanding the foregoing, the provisions of Section 15 are subject to Section 18.

16. **Public Dedication; Adverse Possession.** Tenant shall not, and nothing in this Lease may be construed to give Tenant the authority to, dedicate any portion of the Property to public use, Tenant shall take any and all necessary and appropriate actions (including without limitation periodic and temporary closures of any access roadway) to ensure that no portion of the Property is inadvertently dedicated to any public authority or to public use. Tenant shall take all necessary and appropriate actions to ensure that no portion of the Property becomes subject to a claim for adverse possession, prescriptive easement rights or other similar claims.

17. **Indemnity; Waiver.** Tenant shall indemnify, defend and hold harmless Landlord and Landlord's agents, employees, officers, and contractors from and against any and all liabilities, losses, causes of action, suits, claims, demands, judgments, damages, penalties, costs, expenses (including without limitation, reasonable attorneys' fees and costs), claims, suits or actions due to or in any way arising out of or resulting from or related to (a) any breach, violation or nonperformance of any obligation of Tenant under this Lease, (b) Tenant's use or occupancy of the Property or the condition of the Property; (c) any act, thing or work done or omitted to be done in, on or about the Property or adjacent property by Tenant or any of the agents,

contractors, servants, employees, licensees, visitors or guests of Tenant; (d) any contest of Governmental Impositions or Requirements of Law by Tenant authorized by this Lease; and (e) any damage to property or any injury to persons (including death resulting at any time therefrom) in, on, under or about the Property from any cause. If any action is brought against Landlord by reason of any such claim, Tenant, upon notice from Landlord, agrees to defend any such action or proceeding at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant waives all claims against Landlord for damage or injury to person or property arising, or asserted to have arisen, from any cause whatsoever, including without limitation, any negligence or alleged negligence of Landlord or its agents, employees, directors, officers, shareholders, members, or contractors. Tenant's obligations under this Section 17 shall survive the expiration or earlier termination of this Lease.

18. **Assignment, Subletting and Leasehold Mortgage.**

(a) Tenant shall have the right, without Landlord's consent, to mortgage its interest in this Lease to _____, as Trustee (the "Trustee") under the Trust Indenture dated as of _____, 2007 between the Tenant and the Trustee by that certain Leasehold Deed of Trust to Public Trustee, Security Agreement, Assignment of Leases, Rents, and Revenues, Financing Statement, and Fixture Filing, dated of even date herewith (the "Leasehold Mortgage").

(b) Until the Leasehold Mortgage shall be satisfied of record, Landlord agrees that it shall not, without the prior written consent of Trustee:

- (i) terminate, amend or modify this Lease;
- (ii) consent to, acquiesce in or accept the termination of this Lease or surrender of all or part of the Property;
- (iii) consent to the assignment or other transfer of all or part of Tenant's estate and interest in this Lease (the "Leasehold Interest");
- (iv) consent to any further encumbrance of Tenant's Leasehold Interest;
- (v) create or permit a sale or an assignment or any further encumbrance of Landlord's interest in the real property described in this Lease or in Landlord's interest in this Lease.

(c) Until the Leasehold Mortgage shall be satisfied of record: Trustee shall have and be subrogated to any and all rights of Tenant with respect to the curing of any default under this Lease; Landlord shall give to Trustee, simultaneously with the serving of the same on Tenant, a copy of each notice or demand ("Notice") which it gives to Tenant, including all Notices of default by Tenant (which shall specify the default), each Notice to be sent to the address designated by Trustee, by registered or certified mail, return receipt requested, and the same shall be effective upon receipt by such addressee; Trustee shall have the right, but not the obligation, to perform any covenant or agreement under this Lease to be performed by Tenant,

and Landlord shall accept such performance by Trustee as though the same had been performed by Tenant; Trustee shall have the right (but not the obligation) to cure any default by Tenant in the payment of rent and all other charges provided for in this Lease and Landlord shall accept such performance by Trustee as though the same had been performed by Tenant; and Tenant may assign its Leasehold Interest to Trustee (or its assignee, designee or nominee) without Landlord's consent. Any notice or demand given by Landlord in derogation hereof shall be deemed of no effect.

(d) Tenant covenants and agrees that there shall be no merger of this Lease, or of the Leasehold Interest, or of any interest in the Project, any building, building service equipment or other improvement now or hereafter located on the Property, with the fee estate of the owner or owners of the land and other property described in this Lease or with a superior leasehold estate, by reason of the fact that this Lease or the Leasehold Interest or any interest in the Project or any such building, equipment or other improvements, may be held by or for the account of any person or persons who shall be the owner or owners of such fee estate or superior leasehold estate in said land and other property, unless and until all persons at the time having an interest in the fee estate or superior leasehold estate in said land and premises and all persons, including Trustee, at the time having an interest in this Lease, Leasehold Interest, buildings, equipment and improvements, shall join in a written instrument effecting such merger and shall duly record the same.

(e) With respect to the rights granted to Tenant to assign or otherwise transfer its interest under this Lease, the granting of the Leasehold Mortgage to Trustee shall not cause Trustee to be deemed an assignee or transferee of this Lease or of the leasehold estate thereby created so as to require it, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed thereunder, but the purchaser at any sale of this Lease and of the leasehold estate thereby created in any proceedings for the foreclosure of the Leasehold Mortgage, or the assignee or transferee of this Lease and of the leasehold estate thereby created under any instrument of assignment or transfer in lieu of the foreclosure of the Leasehold Mortgage, or the assignee or transferee of this Lease and of the leasehold estate thereby pursuant to any other right granted to Trustee under the Leasehold Mortgage, shall be deemed to be an assignee or transferee within the meaning of this Lease and shall be deemed to have assumed the performance of all of the terms, covenants and conditions on the part of Tenant to be performed thereunder from and after the date of such purchase and assignment.

(f) If Trustee or any purchaser at a foreclosure sale shall acquire Tenant's Leasehold Interest, and cure all defaults of Tenant which affect the Property and are susceptible of being cured (other than requirements of this Lease which are no longer applicable or have already been performed), then said party shall be entitled to exercise any options or rights contained in this Lease, such other defaults which are not susceptible of being cured by Trustee or by such purchaser no longer shall be defaults thereunder, and notwithstanding any provision in this Lease to the contrary, Trustee or such purchaser or any of their designees or nominees shall have the further right, to assign the Leasehold Interest without Landlord's consent.

(g) Landlord hereby agrees that any and all liens, distraints and other rights against Tenant's inventory, equipment, machinery, personal property and fixtures located on the

Property which Landlord has or may have under applicable law or agreement for the payment of rent and other sums due pursuant to this Lease or otherwise are fully subordinate to Trustee's now existing and hereafter arising security interests and liens in such property which secure Tenant's obligations and indebtedness to Trustee.

(h) Notwithstanding any provision in this Lease to the contrary, in the event of any casualty to or condemnation of the Project, any other improvements on the Property or any portion thereof, Trustee shall be entitled to receive insurance proceeds and/or condemnation awards otherwise payable to Tenant and shall have the right (but not the obligation except as provided in the next sentence) to apply the proceeds in accordance with the Indenture. In addition, if Trustee (by reason of its acquiring Tenant's Leasehold Interest) shall be obligated under this Lease to restore the Property in such event, then such obligation shall be limited to the amount of such proceeds or award.

(i) Landlord recognizes the Trustee as a third-party beneficiary of this Lease and represents to the Trustee that Landlord (i) is the owner of record of the Premises and (ii) has the necessary power and Landlord to execute this Agreement and has obtained all the consents or approvals of any party necessary to effectuate the terms of this Agreement.

(j) The rights accorded to Trustee hereunder shall bind and inure to the benefit of its successors, assignees, nominees and designees.

(k) Tenant may sublease the Property in whole or in part without Landlord's consent, but the making of any sublease shall not release Lessee from, or otherwise affect in any manner, any of Tenant's obligations under this Lease.

19. **Landlord's Access Rights.** Subject to patient's privacy rights, Tenant shall permit Landlord's agents and representatives to enter the Property during reasonable hours (and during all hours in case of emergency) for the purposes of: (a) inspecting the same, (b) performing obligations of Tenant hereunder which Tenant has neglected or refused to perform, (c) posting notices of nonliability regarding claims of persons furnishing labor or materials, and (d) in cases of emergency. For such purposes, Landlord may bring and keep upon the Property all necessary materials, supplies and equipment, and may erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed. No exercise by Landlord of its rights under this Section 19 shall constitute an eviction of Tenant in whole or in part or entitle Tenant to any abatement of Rent or damages, by reason of loss or interruption of business, or otherwise, nor shall the same affect Tenant's obligations under this Lease in any manner whatsoever.

20. **Defaults.** The occurrence or existence of any one or more of the following events constitutes a default under this Lease by Tenant ("Events of Default"):

(a) **Nonpayment.** Tenant fails to pay any sum payable hereunder by Tenant to Landlord when the same becomes due and payable; or

(b) Nonperformance. Tenant fails to perform or comply with any other term hereof and such failure continues for more than fifteen days after Landlord gives written notice thereof to Tenant, unless a shorter cure period is specified in this Lease; or

(c) Attachment. Any execution or attachment is issued whereby any of the Property will be taken or is attempted to be taken by someone claiming through or under the Tenant, if the same is not vacated or discharged within ten days after the issuance thereof; or

(d) Insolvency and Bankruptcy. Tenant becomes unable to pay its debts as they become due, or makes a general assignment for the benefit of creditors, or is adjudicated bankrupt or insolvent, or is the subject of any involuntary petition in that regard, or files any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief, under any present or future statute, law or regulation or files an answer admitting or failing to deny the material allegations of a petition against it for any such relief; or

(e) Proceedings Not Dismissed. Proceedings against Tenant of the type referred to in paragraph (d) above or seeking any such relief are not dismissed within sixty days after commencement; or

(f) Appointment of Receiver. Any trustee, receiver or liquidator is appointed with respect to Tenant or any substantial part of its properties or assets or with respect to the Property, provided that if such an appointment is made without the application, consent or acquiescence of Tenant, the appointment constitutes a default only if it remains unvacated or unstayed for an aggregate of sixty days (regardless of whether consecutive).

21. **Remedies**. Subject to Section 18, upon the occurrence or existence of an Event of Default, Landlord may at any time thereafter while such Event of Default continues, in addition to the exercise of all available remedies at law and in equity, and none of the following, whether or not exercised by Landlord, shall preclude the exercise of any other right or remedy whether herein set forth or existing at law or equity:

(i) give a written termination notice to Tenant, and upon the date specified in such notice (subject to the provisions of this Section 21 relating to the survival of Tenant's obligations), the Term of this Lease shall expire and terminate, and all rights of Tenant under this Lease shall cease without the necessity of reentry or any other act on Landlord's part. Landlord shall have the right to terminate this Lease by giving Tenant such written notice at any time. No act by or on behalf of Landlord, such as entry of the Property by Landlord to perform maintenance and repairs and efforts to relet the Property, other than giving Tenant written notice of termination, shall terminate this Lease. Upon any termination of this Lease, Tenant shall quit and surrender to Landlord the Property as set forth in Section 12. If this Lease is terminated, Tenant shall be and remain liable to Landlord for damages as hereinafter provided and Landlord shall be entitled to recover forthwith from Tenant as damages an amount equal to the total of: (i) all sums accrued and unpaid at the time of termination of this Lease, plus interest thereon at the Interest Rate, and (ii) the amount of Rent and

all other sums that would have been payable hereunder if this Lease had not been terminated, less the net proceeds, if any, of any reletting of the Property, after deducting all Landlord's expenses in connection with such reletting, which damages Tenant shall pay to Landlord on the days on which the Rent would have been payable if this Lease had not terminated.

(ii) Subject to patient privacy rights, and upon reasonable notice, enter upon and repossess the Property or any part thereof, and repossess the same as of Landlord's former estate and expel Tenant and those claiming through or under Tenant, and remove the effects of any and all such persons, by force, summary proceedings, ejectment or otherwise, without being deemed guilty of any manner of trespass and without prejudice to Landlord's rights to recover Rent and damages. If Landlord elects to reenter as provided in this Section 21(a)(ii), or if Landlord takes possession pursuant to legal proceedings or pursuant to any notice provided for by law, Landlord may, from time to time, without terminating this Lease, relet the Property or any part thereof as provided in Section 21(a)(iii) below. No such reentry, repossession or reletting of the Property by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of termination is given to Tenant by Landlord. No such reentry, repossession or reletting of the Property shall relieve Tenant of its liability and obligation under this lease, all of which shall survive such reentry, repossession or reletting. Upon the occurrence of such reentry or repossession, Landlord shall be entitled to all sums, which would be payable hereunder if such reentry or repossession had not occurred, less the net proceeds, if any, of any reletting of the Property after deducting all of Landlord's expenses in connection with such reletting, including, but without limitation, the expenses enumerated in Section 21(a)(i) above. Tenant shall pay such amounts to Landlord on the days on which such sums would have been payable hereunder if possession had not been retaken. If this Lease is terminated as a result of Landlord's actions in retaking possession of the Property or otherwise, Landlord shall be entitled to recover damages from Tenant as provided in Section 21(a)(i) above.

(iii) at any time or from time to time after the repossession of the Property or any part thereof pursuant to Section 21(a)(ii) above, regardless of whether the Term of this Lease has terminated pursuant to Section 21(a)(i) above, relet the Property or any part thereof for the account of Tenant, in the name of Tenant or Landlord or otherwise, without notice to Tenant, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease) and on such conditions (which may include concessions or free rent) and for such uses as Landlord, in its uncontrolled discretion, may determine, with the right to make alterations and repairs to the Property, and may collect and receive the rents therefor. Notwithstanding Landlord's ability to relet the Property, Landlord has no obligation in that regard, and Tenant expressly disclaims any rights or claims that it may have to require such reletting by Landlord as mitigation. In no event shall Tenant be entitled to receive the excess, if any, of net rent collected by Landlord

as a result of such reletting over the sums payable by Tenant to Landlord hereunder.

22. **Acts of God, Etc.** In any case where either party is required to perform any work hereunder, delays caused by war, strike, riot, acts of God, shortages of material or labor, governmental regulation, or other cause beyond such party's reasonable control will not be counted in determining the time during which such work must be completed. In any case where work is to be paid for out of insurance proceeds or condemnation awards, due allowance will be made, both to the party required to perform such work and to the party required to make such payment, for delays in the collection of such proceeds and awards. In no event whatsoever shall any obligation of Tenant to pay sums under this Lease be delayed or extended under this Section 22 or otherwise.

23. **Interest Upon Arrears or Upon Default.** All sums becoming due or payable to Landlord under this Lease or on account of any default by Tenant in performance or observance of any of the covenants of this Lease, will, if it is not paid when due, bear interest from the due date until the same is paid at the rate of 10 percent per annum, or if such rate exceeds the maximum rate of interest that may be legally charged, such maximum rate (the "Interest Rate"). All sums advanced or paid by Landlord under the provisions of this Lease are due and payable with the installment of Rent next becoming due after the date of such advance or payment.

24. **Quiet Enjoyment.** Landlord covenants that for and during the Term of this Lease, subject to Tenant's full payment and performance of its obligations under this Lease, Landlord will not cause or suffer anything to be done that will impair Tenant's leasehold interest and rights hereunder, subject, nevertheless, to the terms and conditions of this Lease.

25. **Survival of Tenant's Obligations.** Tenant's obligations to pay all sums payable hereunder attributable to the Term of this Lease shall survive the expiration or earlier termination of this Lease.

26. **Notices.** All notices, demands and communications permitted or required under this Lease shall be in writing and shall be delivered by certified mail, hand delivery or reputable overnight courier, postage or delivery charges prepaid, addressed as follows:

If to Landlord: City of Fruita
325 East Aspen Street, Suite 155
Fruita, CO 81521
Phone: 970-858-3663
Attn: City Manager

If to Tenant: The Lower Valley Hospital Association
228 North Cherry Street
Fruita, CO 81521
Phone: 970-858-9871
Attn: Chief Executive Officer

Either party may change its address for notice hereunder by giving notice hereunder to that effect. Notices sent by certified mail will be deemed received two days after deposit in the U.S. mail, postage prepaid, addressed as required above; notices sent by hand delivery will be deemed received upon delivery; and notices sent by overnight courier will be deemed received on the date designated to such courier for delivery.

27. **Entire Agreement.** This Lease contains the entire agreement between the parties and may not be modified or amended in any manner except by an instrument in writing executed by the parties or their respective successors in interest.

28. **Headings.** The section and paragraph headings are inserted only as a matter of convenience and in no way define, limit or describe the scope or intent of this Lease or in any way affect the interpretation hereof.

29. **Severability.** Invalidation of any of the provisions of this Lease or any paragraph, sentence, clause, phrase or word herein, or the application thereof in any particular circumstance, shall not affect the validity of the remainder of this Lease or its application in any other circumstance. In lieu of each provision of this Lease that is invalid, there shall be added as a part of this Lease, without further agreement of the parties, a provision as similar in terms to such invalid provision as may be possible and be legal, valid and enforceable.

30. **Relationship of Parties.** Nothing herein shall be deemed by the parties hereto or by any third party to create any relationship between the parties other than that of landlord and tenant. This Lease does not create a partnership or joint venture and does not in any manner render Landlord liable for any debts or obligations of Tenant.

31. **Attorneys' Fees.** If Landlord is made a party to any litigation concerning this Lease, the Property, or Tenant, by reason of any act of omission of Tenant or Tenant's authorized representatives, Tenant shall be liable for the reasonable attorneys' fees and court costs incurred in the litigation by Landlord. If either party successfully maintains an action against the other arising out of or in connection with this Lease, the successful party shall be entitled to have and receive from the other party, reasonable attorneys' fees and cost of suit (including without limitation, fees of witnesses and costs of legal assistants), including on appeal.

32. **Business Days.** If any amount payable hereunder becomes due on a Saturday, Sunday or a banking holiday, then such amount shall be due and payable on the business day preceding such Saturday, Sunday or holiday.

33. **Binding Effect.** The terms, covenants and conditions in this Lease shall be binding and inure to the benefit of Landlord and Tenant and their respective successors and permissible assigns.

34. **No Automatic Merger.** The voluntary or other surrender of this Lease by Tenant or the cancellation of this Lease by mutual agreement of Tenant and Landlord or the termination of this Lease on account of Tenant's default shall not work a merger, and shall, at Landlord's option, terminate all or any subleases and subtenancies or operate as an assignment to Landlord of all or any subleases or subtenancies. Landlord's option hereunder shall be exercised by notice to Tenant and all known sublessees or subtenants in the Property or any part thereof.

35. **Payments After Termination.** No payments of money by Tenant to Landlord after the termination of this Lease, in any manner, or after the giving of any notice (other than a demand for payment of money) by Landlord to Tenant, shall reinstate, continue or extend the term of this Lease or make ineffective any notice given to Tenant prior to the payment of such money. After the service of notice or the commencement of a suit or after final judgment granting Landlord possession of the Property, Landlord may receive and collect any sums of rent due or any other sums due under the terms of this Lease, and the payment of such sums of money, whether as rent or otherwise, shall not make ineffective any notice, or in any manner affect any pending suit or any judgment theretofore obtained.

36. **No Implied Surrender or Waiver.** The waiver by either party of the other party's failure to perform or observe any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent failure to perform or observe the same or any other term, covenant or condition therein contained, and no custom or practice which may develop between the parties hereto during the Term shall be deemed a waiver of, or in any way affect, the right of either party to insist upon performance and observance by the other party in strict accordance with the terms hereof. The receipt by Landlord of rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No act or thing done by Landlord or Landlord's agent during the Term shall be deemed an acceptance of a surrender of the Property, and no agreement to accept such surrender shall be valid unless in writing signed by Landlord. Time is of the essence of this Lease and of each and all of its provisions.

37. **Limitation of Liability.** Notwithstanding anything to the contrary expressly or impliedly contained in this Lease, there shall be absolutely no personal liability of any elected official or employee of the Landlord, under or with respect to any of the terms, covenants, conditions or provisions of this Lease, or of any violation hereof; such exculpation of personal liability is absolute and without any exception or modification whatever, now or hereafter.

38. **Governing Law.** This Lease is governed by and must be construed in accordance with the laws of Colorado.

Landlord and Tenant have duly executed and delivered this Lease as of the day and year first above written.

LANDLORD

CITY OF FRUITA, COLORADO, a home rule city and political subdivision of the State of Colorado

By: _____
Name: _____
Title: _____

TENANT

THE LOWER VALLEY HOSPITAL ASSOCIATION, d/b/a FAMILY HEALTH WEST, a Colorado nonprofit corporation

By: _____
Name: _____
Title: _____

EXHIBIT A

Attached to and forming a part of the Ground Lease, dated as of _____, 2007 between the City of Fruita, Colorado, as landlord, and The Lower Valley Hospital Association, as tenant.

LEGAL DESCRIPTION OF THE PROPERTY

A parcel of land situate in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 17, Township 1 North, Range 2 West of the Ute Meridian, Mesa County, Colorado and being more particularly described as follows:

Commencing at the Northwest Corner of said Section 17 from whence the Southwest Corner of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 17 bears S0°10'36"E a distance of 1324.06 feet; thence along the West line of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 17 S0°10'36"E a distance of 423.79 feet; thence N89°51'09E a distance of 30.00 feet to a point on the East right of way line for Coulson Street and the POINT OF BEGINNING; thence along said right of way N0°10'36"W a distance of 393.65 feet to a point on the South right of way for Ottley Avenue; thence along said right of way S89°52'49"E a distance of 609.80 feet to a point on the West right of way for Cherry Street; thence along said right of way S0°08'56"E a distance of 448.15 feet; thence leaving said right of way S89°51'00"W a distance of 8.32 feet to the start of a curve to the left; thence along said curve to the left with an arc length of 4.15 feet, a central angle of 47°32'45" and a radius of 5.00 feet whose chord bears S66°04'38"W a distance of 4.03 feet to the start of a curve to the right; thence along said curve to the right with an arc length of 124.47 feet, a central angle of 95°05'30" and a radius of 75.00 feet whose chord bears S89°51'00"W a distance of 110.67 feet to the start of a curve to the left; thence along said curve to the left with an arc length of 4.15 feet, a central angle of 47°32'45" and a radius of 5.00 feet whose chord bears N66°22'37"W a distance of 4.03 feet; thence S89°51'00"W a distance of 198.95 feet to the start of a curve to the right; thence along said curve to the right with an arc length of 71.73 feet, a central angle of 53°43'20" and a radius of 76.50 feet whose chord bears N63°17'20"W a distance of 69.13 feet to the start of a curve to the left; thence along said curve to the left with an arc length of 60.01 feet, a central angle of 53°43'11" and a radius of 64.00 feet whose chord bears N63°17'15"W a distance of 57.93 feet; thence S89°51'09"W a distance of 171.03 feet to the POINT OF BEGINNING. Said parcel contains 6.04 acres as described.

Above description written by:
Patrick W. Click PLS
695 36 Road Palisade, CO 81526
Phone 970-986-0522