

**FIRST AMENDMENT TO THE**

**LEASE AGREEMENT**

**By and Between**

**THE MORRIS COUNTY IMPROVEMENT AUTHORITY**

**And**

**MORRIS VIEW MANAGEMENT CO., LLC D/B/A MORRIS VIEW HEALTHCARE  
CENTER**

**Dated as of September 1, 2020**

## **FIRST AMENDMENT TO LEASE AGREEMENT**

**THIS FIRST AMENDMENT TO THE LEASE AGREEMENT** dated as of September 1, 2020 (the "First Amendment to the Lease Agreement" or the "First Amendment") by and between the MORRIS COUNTY IMPROVEMENT AUTHORITY, a New Jersey public body corporate and politic, having an address of P.O. Box 900, Morristown, New Jersey 07963-0900 (the "Lessor"), and MORRIS VIEW MANAGEMENT CO., LLC, D/B/A MORRIS VIEW HEALTH CENTER, a New Jersey Limited Liability Company, having an address of 115 Dutch Lane Road, Freehold, New Jersey 07728 (the "Lessee") (the Lessor and Lessee each, a "Party" and, together, the "Parties"). Any terms used herein, and not otherwise defined or modified herein, shall have the meanings ascribed to them in the Lease Agreement dated as of July 27, 2017 as amended from time to time (the "Lease").

### **WITNESSETH**

**WHEREAS**, pursuant to the Lease, Lessor has acquired possession of the Premises, as depicted on Exhibit "A" to the Lease (of which the Leased Premises is a portion thereof), on or before the date of the Lease, from the County, and possession of certain other assets including furniture, fixtures, equipment and inventory, from the County; and

**WHEREAS**, as noted in the Recitals to the Lease, the Lessor issued the RFP, a copy of which is attached to the Lease as Exhibit "B", and is incorporated into the Lease (and this First Amendment) by reference, pursuant to which the Lessee provided the Response; and

**WHEREAS**, as noted in the Recitals to the Lease, Lessor accepted the Response from the Lessee, and pursuant to Resolution No. 17-28, dated June 28, 2017, agreed to sublease the Leased Premises and the Equipment to Lessee, and transfer the business (all collectively referred to in the Lease as the "Facility") in accordance with the Lease; and

**WHEREAS**, the Parties in consequence entered into the Lease; and

**WHEREAS**, subsequent thereto, the Parties have determined to enter into this First Amendment, in order to (i) acknowledge and memorialize the Lessee's acquisition of certain accounts receivables in the amount of \$4,385,959.93 as of October 31, 2017 (the "Accounts Receivable") appurtenant to the Facility, which were not specifically addressed or covered by the terms of the Lease, (ii) address the Lessee's undertaking of certain improvements to the Facility, (iii) to make provision for Lessee Medicaid screening reimbursement shortfalls and/or overpayments, (iv) modify the apportionment of utility costs upon the completion of certain HVAC work, (v) permit Lessee to defer Rent given the worldwide COVID-19 pandemic, and (vi) provide Lease optional renewals in addition to those set forth in the Lease, all in accordance with the terms hereof; and

**WHEREAS**, specifically, the Parties have agreed that Lessee will install a new Nurse Call Bell System in the Facility (the "System"), which the County had originally contemplated installing, using County provided specifications for the same (appended to this First Amendment

as Exhibit A and incorporated herein), and in consideration thereof, Lessor will pay Lessee up to \$350,000 towards the cost of the System in accordance with the terms hereof; and

**WHEREAS**, the County and Lessor are required, for fire safety reasons, and the Lessor desires to install a canopy outside the Facility (the "Canopy"); and

**WHEREAS**, the Lessee has agreed to install the Canopy at the Facility, using County provided specifications for the same (appended to this First Amendment as Exhibit B and incorporated herein), and the County and the Lessor agree to pay up to \$105,000 towards the costs of the Canopy, in accordance with the terms hereof; and

**WHEREAS**, due to an acuity audit of the Facility, it has been learned that the Lessee is collecting \$2.35 per diem per patient *less* in Medicaid screen reimbursements than it thought it would when it submitted its Response to the RFP for the Lease, and, as a result, from November 1, 2017 through to July 31, 2020, that shortfall in Medicaid screen reimbursements will total \$385,815.00, plus the amount from August 1, 2020 through August 31, 2020 to be computed in the same manner as such \$385,815.00 (the "Medicaid Shortfall"), as trued up in accordance with the terms hereof; and

**WHEREAS**, in further consideration of the Lessee's operation of the Facility under the Lease, the County and Lessor are willing to reimburse Lessee for the Medicaid Shortfall in accordance with the terms hereof; and

**WHEREAS**, in further consideration of the Lessee's operation of the Facility under the Lease, and specifically, its undertaking of the renovation and construction of four (4) tub and shower rooms, the Lessor is amenable of reimbursing the Lessee up to \$300,000 for the same, to be reimbursed in accordance with the terms hereof; and

**WHEREAS**, the Parties have agreed that, in lieu of actual payment, the cost of the System, the Canopy, the Medicaid Shortfall and the tub and shower room improvements, shall be paid to the Lessee from the Lessor in the form of credits against the Rent and/or the Additional Rent due Lessor for the Facility, in accordance with the terms hereof; and

**WHEREAS**, the Parties have also agreed, upon the completion of certain HVAC improvements at the Facility, to apportion utility costs seventy five percent (75%) to the Lessee, and twenty five (25%) to the Lessor and the County, in accordance with the terms hereof; and

**WHEREAS**, given the COVID-19 worldwide pandemic and the consequent inability of the Facility to accept admissions for a portion of the 2020 calendar year, the Parties have agreed to allow the Lessee to defer Rent, in accordance with the terms hereof; and

**WHEREAS**, lastly, the Parties also desire to amend the Lease to address the terms and conditions of three (3), ten (10) year optional renewals of the Lease, in accordance with the terms hereof; and

**WHEREAS**, pursuant to Section 23.01 of the Lease, the Lease may be amended in writing and signed by the Parties; and

**WHEREAS**, in connection with this contemplated amendment, the Parties recognize that the County, as Overlessor, must first approve hereof before the Parties execute the same; and

**WHEREAS**, on the basis of the foregoing Recitals, the Parties are desirous of entering into this First Amendment, to memorialize the foregoing.

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, and in the Lease as amended and supplemented from time to time, and the undertakings of each Party to the other and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, mutually covenant, promise and agree as follows:

**Section 1. Amendment to Article 12 to Address Undertaking of the System.** The Lease is amended to read as follows to address the undertaking of the System by the Lessee:

“**Section 12.07.** The Parties, in further consultation with each other and in further consideration of their respective rights and obligations herein, have agreed that the Lessee will install a new Nurse Call Bell System in the Facility (the “System”), which the County had originally contemplated installing prior to the lease of the Facility to the Lessor. In consideration of the Lessee undertaking the development and installation of the System, the Lessor will pay Lessee up to \$350,000 towards the cost of that System, payable as set forth below. The Lessee has agreed to install the System at the Facility, using County provided specifications for the same (which are appended to the First Amendment as Exhibit A thereto, and incorporated herein by reference as if set forth at length). The Parties shall consult and confer with respect to the System. In lieu of actual payment from the Lessor or the County, the cost of the System shall be paid to the Lessee in the form of credits against the Rent and/or the Additional Rent due Lessor by Lessee for the rental of the Facility, in equal credits over the twelve (12) month period following Lessee’s demonstration, to the reasonable, commercial satisfaction of the Lessor, of the completion of the System, in whole or in part, by the Lessee. No credits shall be deducted against the Rent and/or the Additional Rent until Lessee so demonstrates.”

**Section 2. Amendment to Article 12 to Address the Undertaking of the Canopy.** The Lease is amended to read as follows to address the undertaking of the Canopy by the Lessee:

“**Section 12.08.** The County and Lessor are required, for fire safety and code related reasons, to install a canopy outside of the Facility (the “Canopy”). In addition, the Lessee wants to install the Canopy for aesthetic reasons pertaining to the Facility. In further consideration of the respective rights and obligations of the Parties hereunder, the Lessee has agreed to install the Canopy at the Facility, using County provided specifications for the same (which are appended to the First Amendment as Exhibit B thereto, and incorporated herein by reference as if set forth at length). The Parties agree to confer with respect to the undertaking and installation of the Canopy. In consideration of the Lessee undertaking the development and installation of the Canopy, the County and the Lessor agree to pay up to \$105,000 towards the costs of the Canopy, payable as set forth below. In lieu of actual payment from the Lessor or the County, the cost of the Canopy shall be paid to the Lessee in the form of credits against the Rent and/or the Additional Rent due Lessor by Lessee for the rental of the Facility, in equal credits over the twelve (12) month period following Lessee’s demonstration, to the reasonable, commercial

satisfaction of the Lessor, of the completion of the Canopy, in whole or in part, by the Lessee. No credits shall be deducted against the Rent and/or the Additional Rent until Lessee so demonstrates.”

**Section 3. Amendment to Article 2 to Address the Medicaid Shortfall.** The Lease is amended to read as follows to address reimbursement to the Lessee with respect to the Medicaid Shortfall:

“**Section 2.04.** (a) In the event the New Jersey Department of Human Services ("NJDOHS"), Center for Medicare and Medicaid Services ("CMS"), Office of the Inspector General for the United States Department of Health and Human Services ("OIG") or any other governmental or quasi-governmental authority or agency making payments to Lessee for services performed at the Facility on or after the Effective Date makes any claim of recapture with respect to an alleged Medicare or Medicaid overpayment or any alleged underpayment of any tax or assessment for periods relating prior to the Effective Date (collectively, a "Recapture Claim"), and such entity withholds amounts from Lessee's reimbursement checks as a result of such Recapture Claim, then Lessee shall be entitled to a credit against Rent payable in a given month in an amount equal to the aggregate amount of Recapture Claims assessed in the prior month. For each month in which Lessee takes such a credit against Rent, Lessee shall provide the County with a written report summarizing the details of each Recapture Claim, together with the written remittance advice supporting such Recapture Claim.

(b) In the event the County is entitled to a refund or credit from NJDOHS, CMS, OIG or any other governmental or quasi-governmental authority or agency with respect to an alleged Medicare or Medicaid underpayment, any alleged overpayment of any tax or assessment or an adjustment to a prior Recapture Claim, all for periods relating prior to the Effective Date (collectively, a "Reimbursement Claim"), and such Reimbursement Claim was originally paid to or made for the benefit of Lessee, then the County shall be entitled to receive such amount from Lessee in the form of Additional Rent. Lessee shall make such Additional Rent payment to the County in the month following written notice from the County to the Lessee of the amount of the Reimbursement Claim.

(c) The Parties acknowledge the Lessee's Recapture Claim of \$2.35 per diem per patient in *less* Medicaid screen reimbursements from November 1, 2017 through to July 31, 2020, in the aggregate amount of \$385,815.00, plus the amount from August 1, 2020 through August 31, 2020 to be computed in the same manner as such \$385,815.00 (such amount the “Medicaid Shortfall”). In further consideration of the Lessee’s maintenance and operation of the Facility under the Lease, the County and Lessor are willing to reimburse the Lessee for the actual amount of the Medicaid Shortfall, true up to and including August 31, 2020. In lieu of actual payment from the Lessor or the County, the Medicaid Shortfall shall be paid to the Lessee in the form of credits against the Rent and/or the Additional Rent due Lessor by Lessee for the rental of the Facility, in equal credits over the twelve (12) month period following such true up.

(d) Additionally, Lessee shall be entitled to credits against Rent for Medicaid screen reimbursements in the amount of \$2.35 per diem per patient beginning September 1, 2020 for the remaining term of this Lease, including all exercised Lease renewal options; provided that if the

per diem per person shortfall amount changes as a result of a new audit, the Rent credit shall be computed in the same manner, using the changed per diem per person shortfall amount. Any such modified Rent credits shall commence upon Lessee's reporting of the audit result."

**Section 4. Amendment to Article 12 to Address the Construction and Renovation of Tub and Shower Rooms.** The Lease is amended to read as follows to address the construction and renovation of Tub and Shower Rooms:

"**Section 12.09.** In further consideration of the respective rights and obligations of the Parties hereunder, the Lessee has agreed to construct and renovate four (4) tub and shower rooms at the Facility, using designated specifications for the same (which are appended to the First Amendment to this Lease as Exhibit C thereto, and incorporated herein by reference as if set forth at length). The Parties agree to confer with respect to the undertaking of the construction and renovation of the tub and shower rooms. In consideration of the Lessee undertaking the construction and renovation of the tub and shower rooms, the County and the Lessor agree to pay up to \$300,000 towards the costs thereof, payable as set forth below. In lieu of actual payment from the Lessor or the County, the cost of the tub and shower room construction and renovation shall be paid to the Lessee in the form of credits against the Rent and/or the Additional Rent due Lessor by Lessee for the rental of the Facility, in equal credits over the twelve (12) month period following Lessee's demonstration, to the reasonable, commercial satisfaction of the Lessor, of the completion of the tub and shower room construction and renovation, by the Lessee. No credits shall be deducted against the Rent and/or the Additional Rent until Lessee so demonstrates."

**Section 5. Amendment to Article 2 to Address HVAC System Completion and Allocation of Utility Costs.** The Lease is amended to read as follows to address HVAC system completion, and the attendant allocation of utility costs:

"**Section 2.05.** Utility costs as a component of Additional Rent are presently apportioned evenly between the Parties. Upon completion of the new HVAC system at the Facility for Homeless for Solutions, the utility costs (as a component of Additional Rent) relative to the rest of the Facility, which includes Allaire LTC, Cornerstone Adult Day Care, Veterans Clinic/Veterans Services and Head Start Child Care, shall be apportioned seventy five percent (75%) to the Lessee, and twenty five (25%) to the Lessor and the County."

**Section 6. Amendment to Article 2 to Address Rent Deferment Due to COVID-19.** The Lease is amended to read as follows to address rent deferment due to the COVID-19 pandemic:

"**Section 2.06.** The Parties recognize that the worldwide COVID-19 pandemic resulted in admissions to the Facility temporarily ceasing during a portion of calendar year 2020. As a result, the Parties agree that three (3) months of the calendar year 2020 Rent, totaling \$618,509.70, may be deferred and paid by the Lessee to the Lessor in equal, monthly amounts of \$34,367.65 over an eighteen (18) month period commencing on January 1, 2021, and ending on June 30, 2022 (the "Deferred Rent"). The Parties agree that the Deferred Rent shall be paid in addition to the Rent, and any Additional Rent, due for that same period under this Lease."

**Section 7. Amendments to Recitals and Article 1 to Address Optional Lease Extensions and Rent Escalation Associated Therewith.** The Lease is amended to read as follows to address the issue of optional Lease extensions, and associated Rent escalation:

“**Witnesseth. Subsection (d)** TO HAVE AND TO HOLD the Facility unto Lessee, its permitted successors and assigns, for a term (the “Term” shall include the initial fifteen (15) year term, the first optional four (4) year renewal thereof, and each of three (3), ten (10) year optional renewals), to commence on the Effective Date (hereinafter defined) and to expire at midnight on the date Fifteen (15) years from the Effective Date (the “Initial Expiration Date”), or until the Term shall sooner cease and expire under the provisions hereof. Provided however, and assuming there is no Event of Default under this Lease and the Lease has not otherwise been terminated, the Lessee shall have the right, upon not less than eighteen (18) months prior written notice to the Lessor (i) prior to the Initial Expiration Date, to at its option renew the Lease for an additional four (4) year term; and/or, (ii) prior to the Expiration Date of the four (4) year term or the then current optional renewal term, as the case may be, at its option to renew the Lease for up to three (3), sequential ten (10) year optional renewals, in each case, subject to Lessor's limited consent right on the terms described in the next sentence hereof. The Lessor may withhold its consent to any such ten (10) year optional renewal period only in the event that the Rent amount in the first year of such applicable renewal term is below the then-prevailing market rental amount for a "like facility" by more than ten (10%) percent, and shall provide Lessee with written notice of its consent decision within sixty (60) days of Lessor's receipt of Lessee's written notice requesting the applicable renewal term. In the event that the Rent amount in the first year of such applicable renewal term is higher than the then-prevailing market rental amount for a "like facility" by more than ten (10%) percent, the Rent amount for such first year shall be adjusted to match the rental amount of such "like facility". For purposes of this section, a "like facility" shall be one similar in size, number of beds, provision of services and geographic location of the Facility as of September 1, 2020. The Lease shall expire at midnight on the date of the last day of the optional four (4) year term, or the last day of the last optional ten (10) year renewal term exercised, as the case may be, and such date shall become the Expiration Date.”

“**Section 1.02.** During the first year of the Term, the Rent shall be One Hundred Ninety-Seven Thousand Two Hundred Eighty-Three Dollars (\$197,283) per month (the “Monthly Rent”). The Rent shall increase 2.00% annually in each subsequent year of the initial fifteen (15) years of the Term, and during the optional four (4) year extension thereof. During any of the three (3), sequential ten (10) year optional renewal terms, the Rent shall increase by 2% annually in each subsequent, even numbered year of the Term. The forgoing shall be based upon a notional Rent amount of Two Million Three Hundred Sixty-Seven Thousand Three Hundred Ninety-Six Dollars (\$2,367,396) during the first year of the Term.”

**Section 8. Acquisition of Accounts Receivable.** The Parties acknowledge that, prior to the date of this First Amendment, and notwithstanding any provision of Article 2 of the Lease or the Lease generally to the contrary, the Lessee paid to the Lessor Additional Rent in consideration for the Lessee's acquisition of the Accounts Receivable as a component of the Equipment, in the amount of \$1,624,767.84.

**Section 9. Reaffirmation of the Lease.** Except as amended hereby, the Lease is reaffirmed and ratified in its entirety.

**Section 10. Counterparts.** This First Amendment may be executed and delivered in any number of counterparts, and such counterparts taken together shall constitute one and the same instrument.

**Section 11. Governing Law.** This First Amendment shall be construed in accordance with, and governed by, the applicable law of the State of New Jersey, without consideration given to choice of law principles.

**Section 12. County Consent Required.** In connection with this contemplated amendment, the Parties recognize that the County, as Overlessor, must first approve hereof before the Parties execute the same. As a result, this amendment is expressly conditioned upon the approval of the County before the execution hereof by the Parties.

*[Remainder of this page intentionally left blank. Signature page follows.]*

**IN WITNESS WHEREOF**, the Parties hereto have caused this First Amendment to the Lease to be executed as of the day and year first above written.

**LESSOR:**

THE MORRIS COUNTY IMPROVEMENT  
AUTHORITY

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

Attest: \_\_\_\_\_

**LESSEE:**

MORRIS VIEW MANAGEMENT CO., LLC, D/B/A  
MORRIS VIEW HEALTHCARE CENTER

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

Attest: \_\_\_\_\_

Acknowledged and Approved

COUNTY OF MORRIS (Overlessor)

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

## **EXHIBIT A – NURSE CALL BELL SYSTEM SPECIFICATIONS**

## **EXHIBIT B – CANOPY SPECIFICATIONS**

## **EXHIBIT C – TUB AND SHOWER ROOM SPECIFICATIONS**