LEASE AGREEMENT

THIS LEASE AGREEMENT (this “Lease”) is made effective as of the ___ day of September, 2017 (the “Effective Date”), by and between MURPHY MEDICAL CENTER, INC., a North Carolina nonprofit corporation (“Landlord”), and MURPHY REHABILITATION, INC., a North Carolina corporation (“Tenant”).

Recitals:

A. Landlord is the owner of the land located at 3990 E. US Hwy. 64 Alternate, in Murphy, Cherokee County, North Carolina, as identified by the legal description on Exhibit A, attached hereto and incorporated herein by reference (the “Land”);

B. Landlord operates a hospital facility, known as Murphy Medical Center, on the Land (the “Hospital Building”), which houses both an acute care hospital and a skilled nursing facility, each of which is separately licensed;

C. Effective as of the Commencement Date (as defined below), Tenant will assume the operation of the 134-bed licensed skilled nursing facility (the “Skilled Nursing Facility”) located within the Hospital Building;

D. The parties anticipate that Tenant and its affiliate, Murphy Healthcare Properties LLC (“Murphy Healthcare Properties”), will purchase substantially all of the tangible and intangible assets associated with the operation of the skilled nursing facility, in accordance with the terms of that certain Asset Purchase Agreement, which will be by and among Landlord, Tenant, and Murphy Healthcare Properties (the “Asset Purchase Agreement”); and

E. Murphy Healthcare Properties desires to relocate and replace the skilled nursing facility with a newly constructed skilled nursing facility (“New Skilled Nursing Facility”), which is expected to be developed in, or within five (5) miles of, the Hospital Building or the Town of Murphy, North Carolina; provided, however, that Murphy Healthcare Properties needs sufficient time to secure land for the New Skilled Nursing Facility; develop site specific design and construction plans; prepare a certificate of need (“CON”) application, apply for a CON, and gain approval for a CON for the New Skilled Nursing Facility; and construct the New Skilled Nursing Facility, and therefore as of the Commencement Date, Tenant desires to lease the space used to operate the Skilled Nursing Facility, as described in this Lease, from Landlord, until it can relocate its operations to the New Skilled Nursing Facility.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Lease, and other good and valuable consideration, the receipt of which is hereby acknowledged, Landlord and Tenant hereby covenant, contract, and agree as follows:

1. Definitions. All capitalized terms not defined elsewhere in this Lease and used herein shall have the following meanings:

   (a) “Authorizations” means all licensure requirements, certification requirements under applicable federal and/or state reimbursement programs, including Medicare and Medicaid, building codes and zoning regulations, and all permits, licenses, certificates of
need, authorizations, and regulations necessary to operate the Leased Premises for the Intended Use.

(b) “Common Areas” means the entire areas designated from time to time by Landlord for common use by or for the benefit of the employees, agents, contractors, patients, and other invitees of the Hospital Building including, but not limited to, parking lots, landscaped and vacant areas, together with facilities such as restrooms, lounges, cafeterias, drinking fountains, toilets, stairs, ramps, and community rooms on the Hospital Property.

(c) “Environmental Laws” means all now existing or hereafter enacted or issued statutes, laws, rules, ordinances, orders, permits, and regulations of all state, federal, local, and other governmental and regulatory authorities, agencies, and bodies applicable to the Leased Premises, pertaining to environmental matters or regulating, prohibiting, or otherwise having to do with any Waste, including, but not limited to, the Federal Clean Air Act, the Federal Water Pollution Control Act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as from time to time amended.

(d) “Medical Waste” means any waste defined or listed as medical waste or infectious waste under the Federal Medical Waste Tracking Act of 1988 or the regulations promulgated thereunder or under any applicable environmental law. The term “medical waste” includes without limitation cultures and stocks, pathological wastes, human blood and blood products, animal wastes, isolation wastes, sharps, and unused sharps. All such handling, storage, and disposal must be conducted with a high degree of care, following precautions at least as safe as those described in guidance documents published by the Centers for Disease Control, and must comply with all applicable federal, state, and local statutes, regulations, and ordinances.

(e) “Waste” means any Medical Waste; waste products; radioactive waste; poly-chlorinated biphenyls; asbestos; biologically active, or infectious waste; hazardous materials of any kind; and any substance which is regulated by any Environmental Law.

2. Lease of Leased Premises. Landlord does hereby lease unto Tenant, and Tenant does hereby lease from Landlord, upon the terms and conditions hereinafter set forth, approximately thirty-six thousand one hundred fifty-eight (36,158) square feet of space in the Hospital Building, which space is depicted and more particularly described on Exhibit B, attached hereto and incorporated herein by reference, along with three (3) storage lockers located in Landlord’s storage building located on the Land, all of which provides Tenant with an additional four hundred eighty (480) square feet of storage space (collectively, the “Leased Premises”), together with the non-exclusive right in common with Landlord and its employees, agents, contractors, patients, and other invitees, to use and occupy the Common Areas on and subject to the terms and conditions hereinafter set forth. The Hospital Building, Common Areas, other improvements, and the Land are referred to herein as the “Hospital Property.”

3. Term. The initial term of this Lease shall commence on October 1, 2017 (the “Commencement Date”) and continue for a period of two (2) years (the “Initial Term”), unless terminated sooner in accordance with the terms of this Lease. Landlord hereby grants to Tenant an option to extend this Lease on the same terms and conditions as set forth herein for two (2) additional six (6)-month terms if no default exists hereunder at the time of any extension (each
timely exercised extension term is herein referred to as an “Extension Period”). Landlord also hereby grants to Tenant an option to extend this Lease on the same terms and conditions as set forth herein for the time necessary to complete any appeals that may occur related to its efforts to obtain a CON to relocate and replace the Facility at a new location (each timely exercised extension term is herein referred to as an “Appeal Extension Period”). Tenant shall give notice of its desire to extend this Lease to Landlord at least thirty (30) days prior to the end of the then current term. Unless terminated sooner in accordance with the terms and conditions set forth herein, the Initial Term plus all Extension Periods and Appeal Extension Periods shall be referred to herein as the “Term” of this Lease.

4. **Rental.** This Lease is made for and in consideration of an initial annual rental of Nine Hundred Eighty-four Thousand Nine Hundred Ninety-nine and 95/100 Dollars ($984,999.95), which is payable monthly at the rate of Eighty-two Thousand Eighty-three and 33/100 Dollars ($82,083.33) on the first (1st) day of each month during the Term of this Lease; provided, however, that during each Extension Period and Appeal Extension Period, the monthly rental amount owed by Tenant to Landlord shall be in the amount of Ninety-two Thousand Eighty-three and 33/100 Dollars ($92,083.33). If not sooner paid, the rent due hereunder shall be delinquent after the tenth (10th) day of each month and in such event Tenant shall pay to Landlord a late fee of ten percent (10%) of the amount due for such installment upon payment of such installment. Rent for any partial months during the Term of this Lease shall be prorated in accordance with the number of days in such month. The rent described in this Section 4 is hereinafter referred to as “Rent.”

5. **Intended Use.**

(a) Tenant shall only use the Leased Premises to operate the Skilled Nursing Facility within the Hospital Building (the “Intended Use”), and Landlord shall cooperate in a commercially reasonable manner with Tenant in making any and all arrangements necessary with the North Carolina Department of Health and Human Services, Division of Health Service Regulation (“DHSR”) to ensure that Tenant is licensed to operate the Skilled Nursing Facility within the Leased Premises throughout the Term of this Lease. Tenant may not change the use of the Leased Premises under any circumstances without the prior written consent of Landlord, which consent may be withheld or denied in its sole and absolute discretion. Operation of the Skilled Nursing Facility will be conducted in accordance with all applicable state licensing standards and Medicare certification regulations. Tenant shall not use or permit the use of the Leased Premises or Common Areas, or any part thereof, for any unlawful purpose or permit any nuisance to exist thereon. All use of the Common Areas by Tenant will be strictly and solely in furtherance of its operation of the Leased Premises as a skilled nursing facility.

(b) Throughout the Term of this Lease, Tenant shall maintain all licenses, permits, approvals, and other Authorizations needed to use and operate the Skilled Nursing Facility on the Leased Premises in accordance with all applicable local, state, and federal laws and all applicable state and federal programs, including, but not limited to, appropriate certifications for reimbursement and licensure. Citation of deficiencies by government authorities on a survey or complaint investigation shall not be deemed to be a breach of this Lease.
(c) Tenant shall neither suffer nor permit the Leased Premises, or any portion thereof, to be used in such a manner as (i) might reasonably tend to impair Landlord’s title thereto or to any portion thereof, or (ii) may reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Leased Property or any portion thereof.

6. Covenants of Tenant.

(a) Skilled Nursing Facility Operation. Tenant covenants to operate the Skilled Nursing Facility to serve the community. Tenant further covenants and agrees to:

(i) Comply with all applicable federal and state laws prohibiting discrimination based on race, religion, creed, color, gender, or national origin;

(ii) Maintain and operate the current memory care unit at the Skilled Nursing Facility during the Term of this Lease;

(iii) Strive to provide person-centered care that addresses the expectations and values of the Skilled Nursing Facility’s patients and their families; and

(iv) Collaborate with Landlord (and any Successor Landlord (as defined below)) and attending physicians of patients in the Skilled Nursing Facility on identifying strategies for reducing hospital readmissions and improving quality outcomes for the patients of the Skilled Nursing Facility.

(b) Compliance with N.C. Gen. Stat. § 131E-13(a). To the extent required at the time by N.C. Gen. Stat. § 131E-13(a), throughout the Term of this Lease, Tenant agrees to comply with the following:

(i) Tenant will continue to provide the same or similar clinical nursing services to the patients of the Skilled Nursing Facility that Landlord provided prior to the Commencement Date;

(ii) Tenant will serve low income individuals and individuals with disabilities as described in this Lease; and

(iii) Tenant will ensure that admission to and services of the Skilled Nursing Facility are available to beneficiaries of governmental reimbursement programs (Medicaid/Medicare/Tricare) without discrimination or preference because they are beneficiaries of those programs. The parties acknowledge and understand that Tenant does not have an agreement with the Veteran’s Administration to accept veterans as patients who wish for their care to be reimbursed by the Veteran’s Administration.

(c) Participation in Medicare/Medicaid and Private Insurance Programs. Tenant covenants that it will maintain the Skilled Nursing Facility’s participation in the Medicare and Medicaid programs and shall use its best efforts to participate in all private
insurance programs in which Landlord participates. Tenant shall be responsible for making all filings due to the Medicare, Medicaid, and private insurance programs regarding patient services provided by Tenant. Tenant shall be responsible for taking all actions with respect to any liability to the Medicare, Medicaid, or other private insurance programs with respect to the Skilled Nursing Facility and its operations on and after the Commencement Date that arise or were incurred during the Term of this Lease.

(d) Admission of Difficult to Place Individuals. Tenant will accept from Landlord patients, who qualify for admission and that it has the capability and capacity to serve, who are difficult to place ("DTP"), contingent upon the following conditions being satisfied:

(i) A DTP individual is someone who cannot be placed in any other post-acute setting due to issues which may include complex medical issues, family dynamics, or poor/no payor source;

(ii) Landlord’s discharge group must use commercially reasonable efforts to place these individuals in another skilled nursing facility through normal processes, before the individual can be nominated as a DTP;

(iii) Once a patient is nominated as a DTP, Landlord’s designee and Tenant’s Director of Operations must agree to the designation of DTP before that patient can be admitted to the Skilled Nursing Facility as a DTP;

(iv) Tenant will not be expected to accept any individual who is nominated as DTP if the Skilled Nursing Facility cannot meet such patient’s health, safety, or psychological needs or who presents risk of harm or decreased quality of life to any other patient or employee; and

(v) Based on the history of placement of DTP individuals in Landlord’s skilled nursing beds prior to the Commencement Date, Tenant shall not be obligated to care for more than two (2) DTPs at the Skilled Nursing Facility at any given time. The parties agree that pursuant to N.C. Gen. Stat. § 131E-13(a)(2), two (2) DTPs at any one time is consistent with the levels of indigent care provided by Landlord in the Skilled Nursing Facility prior to the Commencement Date.

(vi) Landlord will reimburse Tenant each month for room and board at the then current Medicaid rate for each day of stay for each DTP admitted to the Skilled Nursing Facility. For DTPs with excessive medication and/or therapy costs, Landlord and Tenant will share the cost as mutually determined by Tenant’s Director of Operations and Landlord’s designee prior to Tenant’s acceptance of the DTP patient. Tenant shall have no obligation to accept a DTP patient without this prior agreement concerning sharing such costs. Records of DTP placement and cost will be maintained by the Skilled Nursing Facility and Tenant will share such records with Landlord on a monthly basis.

(e) Payments of Other Obligations. Other than as stated in this Lease to be the obligation of Landlord, Tenant covenants that it will pay or cause to be paid when due: (i)
each and every lawful cost, expense, and obligation of every kind and nature, foreseen or unforeseen, which arises or is incurred during the Term of this Lease, by reason of, or in any manner connected with or arising out of the operation of the Skilled Nursing Facility within the Hospital Building, or Tenant’s possession, operation, use, or occupancy of the Leased Premises or any part thereof; (ii) assessments of every kind and nature relating to the whole or any part of the Leased Premises or this Lease, which may arise or are incurred during the Term, including, without limitation, all provider assessment fees associated with operating the Skilled Nursing Facility; and (iii) all lawful charges for services used, rendered, or supplied to, upon, or in connection with the Leased Premises, which may arise or are incurred during the Term of this Lease.

(f) **Encumbrances.** Tenant covenants that it will not, without prior written consent of Landlord, sell, pledge, assign, sublease, license, grant a security interest in or otherwise encumber the Skilled Nursing Facility, the Leased Premises, or the fixtures located in the Leased Premises. Such covenant shall not apply to funds, accounts, or accounts receivable associated with Tenant’s operations or to moveable equipment, computer equipment, software, furniture or other moveable items obtained by Tenant during the Term of this Lease. Such covenant shall also not apply to Tenant’s assignment to an affiliated entity.

(g) **Non-Solicitation of Landlord’s Employees by Tenant.** During the Term, Tenant, for itself and its affiliates, except as provided in this Lease, agrees not to solicit, recruit or engage on any basis, any employee of Landlord; provided, that the foregoing restriction shall not apply to any employee whose employment with Landlord has been terminated by Landlord, and shall not preclude a general solicitation of employment or engagement as an independent contractor, such as by advertisement or engagement of a recruiter, and Tenant’s subsequent hiring or engaging as an employee or independent contractor any person who responds to such general solicitation.

7. **Covenants of Landlord.**

(a) **Participation in Medicare, Medicaid and Private Insurance Programs.** Landlord shall be responsible for taking all actions with respect to any liability to the Medicare, Medicaid, or other private insurance programs with respect to the Skilled Nursing Facility and its operations prior to the Commencement Date. To Landlord’s knowledge, the Skilled Nursing Facility is in compliance in all material respects with the conditions of participation in the Medicare, Medicaid and other government programs (“Government Programs”) and with the terms, conditions and provisions of the provider agreements with such programs. To Landlord’s knowledge, all billing practices of Landlord with respect to the Skilled Nursing Facility have been in material compliance with all applicable legal requirements and/or billing guidelines of third party payors, including Government Programs and private insurance programs. There is no proceeding, investigation or survey pending, or, to Landlord’s knowledge, threatened, involving any of the Government Programs, or any other third party payor programs, and Landlord has no reason to believe that any such investigations or surveys are pending, threatened, or imminent. Neither Landlord nor any of its employees, officers, or directors are excluded from participation in the Government Programs, nor is any such exclusion pending or threatened. To Landlord’s knowledge, neither Landlord nor any of its employees, officers, or directors have committed a
material violation of any legal requirement, specifically including, but not limited to, the Medicare and Medicaid fraud and abuse provisions of the federal Social Security Act.

(b) Payments of Other Obligations. Other than as stated in this Lease are the obligations of Tenant, Landlord covenants that it will pay or cause to be paid when due: (i) each and every lawful cost, expense, and obligation of every kind and nature, foreseen or unforeseen, which arises or is incurred by reason of or in any manner connected with or arising out of its operation of the Skilled Nursing Facility, or Landlord’s possession, operation, use, or occupancy of the Leased Premises or any part thereof other than during the Term; (ii) assessments of every kind and nature relating to the whole or any part of the Leased Premises or this Lease, which may arise or are incurred other than during the Term, including, without limitation, all provider assessment fees associated with operating the Skilled Nursing Facility; and (iii) all lawful charges for services used, rendered, or supplied to, upon, or in connection with the Leased Premises, which may arise or are incurred other than during the Term of this Lease.

(c) Encumbrances. Landlord covenants that it will not, without prior written consent of Tenant, sell, pledge, assign, sublease, license, grant a security interest in or otherwise encumber the Skilled Nursing Facility, the Leased Premises, or the fixtures, equipment, or personal property located in the Leased Premises. Such covenant shall not apply to funds, accounts, or accounts receivable associated with Landlord’s operations or to moveable equipment, computer equipment, software, furniture, or other moveable items of Landlord located outside the Leased Premises. Such covenant shall also not apply to Landlord’s assignment to an affiliated entity or any Successor Landlord.

(d) Non-solicitation of Tenant’s Employees by Landlord. During the Term, Landlord, for itself and its affiliates, except as provided in this Lease, agrees not to solicit, recruit or engage on any basis, any employee of Tenant; provided, that the foregoing restriction shall not apply to any employee whose employment with Tenant has been terminated by Tenant, and shall not preclude a general solicitation of employment or engagement as an independent contractor, such as by advertisement or engagement of a recruiter, and Landlord’s subsequent hiring or engaging as an employee or independent contractor any person who responds to such general solicitation.

8. Modification to Comply with Law; Material Adverse Change. In the event that: (a) any one or more of the terms of this Lease are determined to: (i) be unlawful or invalid under state or federal law, (ii) jeopardize the right to receive Medicare and Medicaid payments as a result of the Anti-Kickback Statute (as defined below), or other legislation; or (b) there is any legislative or regulatory change or determination, or change in the general instructions or application or official interpretation thereof, whether federal or state, that has or would have a materially adverse impact on Landlord, Tenant, or Murphy Healthcare Properties in connection with the performance of this Lease (each a “Material Adverse Change”), the parties to this Lease agree to reform this Lease to (A) eliminate the illegality or invalidity; (B) revise any provision which jeopardizes or causes the loss of the right to receive Medicare and Medicaid payments so that after revision, the parties continue to qualify to receive such payments; or (C) revise this Lease to substantially eliminate the legal, regulatory, and/or economic effects of the Material Adverse Change.

(a) Compliance with Medicare/Medicaid Anti-Kickback Statute. The parties to this Lease intend to comply with and have therefore structured this Lease so as to comply with the safe harbor regulations of the Anti-Kickback Statute ("Anti-Kickback Statute"). The parties to this Lease specifically warrant that they shall comply with the Safe Harbor Regulation 42 C.F.R. 1001.952(b) pertaining to space rental. It is not a purpose of this Lease to induce the referral of patients. The parties acknowledge that there is no requirement or payment under this Lease or any agreement between the parties that requires either party to refer, recommend, or arrange for any items or services paid for by a federal health care program. Either party may refer patients to any health care institution or other provider that furnishes services needed by a patient, and will make such referrals, if any, consistent with professional medical judgment and the wishes of the patient.

(b) Compliance with Regulations. It is expressly understood that the parties intend that this Lease will substantially comply with all applicable rules and regulations of all governmental, regulatory, and accreditation authorities. Accordingly, the parties agree to renegotiate, in good faith, any term, condition, or provision of this Lease, or any other agreement between the parties, that any such authority determines to be in contravention of any federal, state, or local regulation or law in accordance with Section 8. Without limiting the foregoing, the parties intend that the rental payments reserved hereunder are intended to represent the fair market rental negotiated in an arms-length transaction between the parties. Notwithstanding any unanticipated effect of any of the provisions in this Lease, neither party will conduct itself under the terms of this Lease in a manner that violates the Medicare and Medicaid fraud and abuse provisions.

(c) Medicare Access to Books and Records. Pursuant to Section 1861(v)(1)(I) of the Social Security Act, until the date that is four (4) years after the expiration or earlier termination of this Lease, Landlord and Tenant shall make available, one to the other, upon written request from the Secretary of the U.S. Department of Health and Human Services or the U.S. Comptroller General, or any of their duly authorized representatives, this Lease, books, documents, and records of Landlord and Tenant that are necessary to verify the nature and extent of costs incurred by Landlord and Tenant under this Lease. No attorney-client, accountant-client, or other privilege will be deemed to be waived by the parties by virtue of this provision.

(d) HIPAA. Landlord and Tenant agree that each is considered a “covered entity” under the Health Insurance Portability and Accountability Act of 1996, as amended by the HITECH Act of the American Recovery and Reinvestment Act of 2009 ("HIPAA"), and each agrees to use its best efforts to comply with HIPAA and not to use or disclose protected health information, as that term is defined in HIPAA, regardless of source, in any manner that would violate HIPAA during the Term or after the termination thereof. Landlord agrees that with regard to the services it shall provide on behalf of Tenant under this Lease, it is acting as a business associate as defined by HIPAA and the parties agree to the business associate agreement attached as Exhibit C and separately executed by the parties. The parties further agree to amend this Lease as necessary to comply with applicable federal and state laws and
regulations pertaining to HIPAA, as amended, governing the use and/or disclosure of protected health information.

10. **Landlord Services and Maintenance Obligations.**

(a) Subject to a casualty or condemnation event as determined by Landlord in its reasonable discretion, in which case Sections 18 and 19 shall control, respectively, Landlord covenants that it shall maintain in good condition and shall perform all reasonably necessary testing, maintenance, repair, and replacement to the Common Areas, the Hospital Building and the Leased Premises, and all operating systems serving the Hospital Building and the Leased Premises during the Term of this Lease in accordance with applicable laws and regulations. Landlord has the right to enter the Leased Premises periodically, at any reasonable time, and shall endeavor to provide reasonable prior notice to Tenant when reasonably feasible, to inspect the condition of the Leased Premises and to make repairs required of Landlord. All repairs, restorations, or payments which are obligations of Landlord shall be completed or made within a reasonable time. Any entry into the Leased Premises by Landlord and any repairs or other work done by Landlord shall be performed so as not to cause unreasonable interference with Tenant’s operation of the Skilled Nursing Facility or to jeopardize patients.

(b) Subject to reasonable nondiscriminatory rules and regulations to be promulgated by Landlord, the Common Areas are hereby made available to Tenant and its employees, agents, contractors, patients, and invitees for their reasonable nonexclusive use in common with Landlord and its employees, agents, contractors, patients, and invitees, subject to the terms, conditions, and limitations set forth in this Lease. Landlord shall have the right, provided that Tenant shall at all times during the Term of this Lease have reasonable access to the Leased Premises, to change the location and arrangement of parking areas and other portions of the Common Areas; to enter into, modify, and terminate easements and other agreements pertaining to the use and maintenance of the Common Areas; and to do and perform such other acts in and to said areas and improvements as, in the exercise of good business judgment, Landlord shall determine to be necessary. Landlord shall operate and maintain the Common Areas, or shall cause the same to be operated and maintained in a manner deemed by Landlord, in a reasonable and appropriate manner, and in compliance with all applicable laws, statutes, rules, regulations, and ordinances.

(c) Landlord shall maintain all parking and roadway facilities, including, but not limited to, landscaping; repairs; line painting; lighting; removal of snow and ice from parking areas and roadway areas as reasonably possible; and removal of trash, rubbish, and refuse from parking and roadway areas.

(d) Landlord shall pay all rates and charges which become payable for propane gas, electricity, emergency power, sewer, water, wireless access (but not services) and other similar utilities and items used at the Leased Premises during the Term of this Lease.

(e) Landlord shall be solely responsible for the expenses incurred in connection with all testing, maintenance, and repairs associated with the heating, ventilation, lighting, plumbing, electrical systems, air conditioning, propane gas, water, and sewage in the Hospital Building and the Leased Premises, which shall be conducted in accordance with
applicable laws and regulations, and shall be responsible for the entire cost of repairs and replacements of all such equipment. Landlord also shall be responsible for routine maintenance of all movable equipment that is in the Skilled Nursing Facility as of the Commencement Date; provided, however, Tenant acknowledges that routine maintenance does not include replacement parts and/or supplies for movable equipment, and to the extent the same is needed, Tenant solely shall be responsible for the cost of such parts and/or supplies.

(f) With Landlord’s written approval, not to be unreasonably withheld, delayed, or denied, Tenant shall at all times have the right to remove any fixture or item of equipment affixed to the Leased Premises installed by Tenant and not an Excluded Fixture (as defined below), provided that the removal can be completed without substantial damage to the Leased Premises, or that Tenant provides Landlord adequate assurance that any damage caused by such removal shall be promptly repaired by Tenant so that the Leased Premises shall be in as good a condition as it was on the Commencement Date of this Lease, ordinary wear and tear and damage from casualty or condemnation excepted. “Excluded Fixtures” shall mean any fixtures or items of equipment of Landlord in the Leased Premises replaced by Tenant which shall become the property of Landlord, as well as any cabinetry, light fixtures, plumbing fixtures, wall, ceiling, and floor coverings, HVAC equipment, mechanical systems, and other fixtures and equipment which comprise part of the building systems.

(g) Landlord shall test (where applicable and required by law) and maintain in accordance with applicable laws and regulations, the existing life/safety system, fire sprinklers, building standard lighting fixtures and light bulb replacement, mechanical fixtures, electrical fixtures, and plumbing fixtures and any aspect of such systems within the Leased Premises or that may be located outside of, but function to provide services to, the Leased Premises.

(h) In the event any repair or maintenance is performed by Landlord as the same may be necessitated by the negligence or willful misconduct of Tenant or Tenant’s agents, employees, or invitees, Tenant shall reimburse Landlord for all costs and expenses related to such repairs.

(i) Landlord, at its expense, shall provide, test (where applicable and required by law) and maintain the following within the Leased Premises: housekeeping and laundry services at the current level of services, and telephone system, cable television, trash, disposal, hot water heaters, nurse call system, fire alarm panels, smoke and fire alarms, sprinkler system, generator, wanderguard system and security, and legacy CAT-5 cabling and associated equipment in the Skilled Nursing Facility in accordance with applicable laws and regulations.

(j) During the Term of this Lease, Landlord will provide to Tenant dietary services at the level existing prior to the Commencement Date, including three (3) meals per day, as well as appropriate snacks, supplements, and tube feeding as needed by the Skilled Nursing Facility patients (the “Dietary Services”). Tenant shall be responsible for reimbursing Landlord for the cost of the Dietary Services at a rate of Nineteen Dollars ($19.00) per patient, per day, based on the daily census (collectively, the “Dietary Services Payments”) for Dietary Services provided during the Term of this Lease. (The estimated amount of the Dietary Services Payments to Landlord is One Million Three Hundred Ninety Thousand Dollars ($1,390,000.00) for the Initial Term based upon an average daily census of one hundred (100) patients.) Tenant
shall make monthly Dietary Services Payments to Landlord based upon the actual utilization by Tenant of the Dietary Services per patient per month during the Term of this Lease, calculated as set forth above; provided, however, in the event a patient receives three (3) meal trays per day, plus tube feeding, the daily rate of Nineteen Dollars ($19.00) will be doubled for such patient, in order to account for both forms of nourishment. Monthly Dietary Services Payments shall be made to Landlord within five (5) days of the conclusion of each month during the Term of this Lease. Landlord shall continue to provide registered dietician services for clinical support to the patients and special meals and snacks for seven (7) scheduled special events/holidays, which services will be included as part of the Dietary Services Payments. Landlord’s provision of Dietary Services shall be in accordance with applicable laws and regulations.

11. Tenant Services and Maintenance Obligations.

   (a) Tenant shall give Landlord prompt written notice of any damage to, or defective condition in, any part or appurtenance of the Hospital Building’s foundation, roof, walls, plumbing, electrical, heating, air conditioning, or other system serving, located in, or passing through the Leased Premises.

   (b) Tenant, at Tenant’s sole cost and expense, shall be responsible for Medical Waste removal for the Leased Premises and the maintenance and storage of Medical Waste pending removal, all in accordance with all applicable laws, regulations, and orders.

   (c) Tenant, at Tenant’s sole cost and expense, shall be responsible for maintaining all of the moveable furniture, furnishings, equipment and other personal property that Murphy Healthcare Properties purchases or obtains and locates in the Leased Premises during the Term of this Lease.

12. Compliance with Laws, Rule, and Regulations.

   (a) Tenant. Tenant, at its sole cost and expense, shall promptly comply with all laws, ordinances, orders, rules, and regulations of state, federal, municipal, or other agencies or bodies having jurisdiction relating to the use, condition, and occupancy of the Leased Premises.

   (b) Landlord. Landlord, at its sole cost and expense, shall promptly comply with all laws, ordinances, orders, rules, and regulations of state, federal, municipal, or other agencies or bodies having jurisdiction relating to the use, condition, and occupancy of the Hospital Building and the provision of services to Tenant under this Lease.

13. Assignments and Subleases; Attornment. Except to an affiliated entity, Tenant shall not, without Landlord’s prior written consent, assign this Lease or sublease any portion of the Leased Premises, which consent may be withheld or denied in Landlord’s sole and absolute discretion. Landlord may transfer, assign, or delegate its rights and obligations under this Lease to its successor in interest (“Successor Landlord”) on the same terms and conditions at any time, without the consent of Tenant, and Tenant shall attorn to such Successor Landlord and recognize this Lease as a direct Lease between Successor Landlord and Tenant. Landlord’s agreement with
such Successor Landlord shall require the Successor Landlord to abide by and not alter this
Lease without the written consent of Tenant.

14. **General Indemnity.**

(a) **Tenant’s Indemnity.** Tenant shall defend, indemnify, and hold Landlord
harmless from and against any and all claims, damages, losses, liabilities, lawsuits, actual, and
reasonable costs and expenses (including reasonable attorneys’ fees in judicial proceedings and
any tribunal levels) arising out of or related to (i) any act or omission done, permitted, or
suffered by Tenant in or about the Leased Premises or the Hospital Property; (ii) any material
breach or default by Tenant in the performance of any of its obligations under this Lease; (iii)
any act or omission of Tenant, or any officer, agent, employee or contractor of Tenant; or (iv)
any act or omission of Tenant’s invitee, patient, or guest while in the Leased Premises. The
provisions of this Section 14(a) shall survive the termination or expiration of this Lease.

(b) **Landlord’s Indemnity.** Landlord shall defend, indemnify and hold Tenant
harmless from and against any and all claims, damages, losses, liabilities, lawsuits, actual, and
reasonable costs and expenses (including reasonable attorneys’ fees in judicial proceedings and
any tribunal levels) arising out of or related to (i) any act or omission done, permitted, or
suffered by Landlord in or about the Leased Premises or the Hospital Property; (ii) any material
breach or default by Landlord in the performance of any of its obligations under this Lease; (iii)
any act or omission of Landlord, or any officer, agent, employee, contractor, invitee, patient, or
guest of Landlord; or (iv) the operation of the Leased Premises prior to the Commencement
Date. The provisions of this Section 14(b) shall survive the termination or expiration of this
Lease.

15. **Insurance Coverage.**

(a) **Landlord’s Property Insurance.** Throughout the Term of this Lease,
Landlord, at Landlord’s sole expense, shall keep the Hospital Building and all other
improvements on the Hospital Property as well as all fixtures, equipment, and other personal
property in the Common Areas insured at full replacement value against loss by fire and all of
the risks and perils usually covered by an extended coverage endorsement to a policy of fire
insurance upon property comparable to the Hospital Building.

(b) **Landlord’s Liability Insurance.** Throughout the Term of this Lease,
Landlord, at Landlord’s expense, shall keep in effect, at its sole expense, the following insurance
coverage (collectively, the “**Landlord’s Liability Insurance**”):

(i) Commercial general liability insurance, with contractual liability
broad form liability endorsement insuring against liability for injury to or death of
a person or persons and for damage to property occurring, on, in or about the
Hospital Property or occasioned by or arising out of the activities of Landlord, its
agents, contractors, employees, patients, guests, invitees, or licensees, the limits
of such policy or policies to be in amounts not less than One Million Dollars
($1,000,000.00) for each occurrence combined single limit and an aggregate of
not less than Three Million Dollars ($3,000,000.00) on a per occurrence basis for
personal injury, death, or property damage occurring on, in or about the Hospital Property (collectively, the “Landlord’s Liability Insurance”). Notwithstanding the foregoing, such contractual liability coverage shall extend to liability of Landlord arising out of the indemnities provided for in this Lease and damages awarded to Tenant arising out of a breach of this Lease by Landlord, but such contractual liability coverage shall not extend to a breach of any contract other than of this Lease.

(ii) Professional liability insurance, with the limits of such policy to be in amounts not less than One Million Dollars ($1,000,000.00) for each occurrence combined single limit and an aggregate of not less than Three Million Dollars ($3,000,000.00) on a per occurrence basis.

(c) Tenant’s Liability Insurance. Throughout the Term of this Lease, Tenant shall keep in effect, at its sole expense, the following insurance coverage:

(i) Property insurance insuring all of Tenant’s fixtures, equipment, and other personal property located in the Leased Premises or Common Areas at full replacement value against loss by fire and all of the risks and perils usually covered by an extended coverage endorsement to a policy of fire insurance.

(ii) Commercial general liability insurance, with contractual liability broad form liability endorsement insuring against liability for injury to or death of a person or persons and for damage to property occasioned by or arising out of the use or occupancy of the Leased Premises, or occasioned by or arising out of the activities of Tenant, its agents, contractors, employees, patients, guests, invitees, or licensees in the Leased Premises, the limits of such policy or policies to be in amounts not less than One Million Dollars ($1,000,000.00) for each occurrence combined single limit and an aggregate of not less than Three Million Dollars ($3,000,000.00) on a per occurrence basis. Notwithstanding the foregoing, such contractual liability coverage shall extend to liability of Tenant arising out of the indemnities provided for in this Lease and damages awarded to Landlord arising out of a breach of this Lease by Tenant, but such contractual liability coverage shall not extend to a breach of any contract other than of this Lease.

(iii) Professional liability insurance, with the limits of such policy to be in amounts not less than One Million Dollars ($1,000,000.00) for each occurrence combined single limit and an aggregate of not less than Three Million Dollars ($3,000,000.00) on a per occurrence basis.

(d) Other Insurance. During the Term, Landlord and Tenant shall each keep in effect, at its sole expense, cyber insurance as a separate policy with the limits of such policy to be in amounts not less than One Million Dollars ($1,000,000.00) for each occurrence combined single limit and an aggregate of not less than Three Million Dollars ($3,000,000.00) on a per occurrence basis.
(e) **Certificates of Insurance.** Prior to taking possession of the Leased Premises, and at least seven (7) days after the expiration of an existing insurance policy required under this Lease, Tenant shall deliver to Landlord certificates or other evidence of insurance reasonably satisfactory to Landlord. However, upon request from Landlord, Tenant shall provide a letter from Tenant’s broker on or prior to expiration of the current policies that coverage has been renewed and bound without any gaps in coverage should such a certificate not be available prior to such expirations. All such policies shall be non-assessable and shall, with their certificates evidencing coverage, contain language that: (i) Tenant be named as a named insured, (ii) any loss shall be payable notwithstanding any act or negligence of Landlord or Tenant that might otherwise result in forfeiture of the insurance, (iii) that the policies are primary and non-contributing with any insurance that Landlord may carry, (iv) that the policies contain contractual liability coverage, and (v) to the extent obtainable, that the policies cannot be canceled, non-renewed, or coverage materially reduced except after at least thirty (30) days’ prior notice to Landlord. If Tenant fails to provide Landlord with such certificates or other evidence of insurance coverage, Landlord may obtain such insurance coverages at commercially reasonable rates. In such case Landlord shall provide a written invoice to Tenant itemizing the cost of such premiums and other costs to obtain coverage which amounts plus interest accruing at the Default Rate (as hereafter defined) from the date of Landlord’s payment thereof shall be immediately due by Tenant to Landlord as additional Rent upon delivery of such invoice.

(f) **Insurance Policy Requirements.** Tenant and Landlord agree that each of its purchased insurance policies required under this Lease will be issued by insurers which are authorized to do business in the State of North Carolina and rated not less than Financial Size X, and with a Financial Strength rating of A in the most recent version of Best’s Key Rating Guide or equivalent ratings by similar rating publication approved by Landlord.

(g) **Waiver of Subrogation.** All commercial liability insurance policies carried with respect to this Lease shall contain a provision whereby the insurer waives, prior to loss, all rights of subrogation against either Landlord or Tenant. Upon request, either party may request a copy of the endorsement evidencing the waiver of subrogation required herein. Notwithstanding anything in this Lease to the contrary, the parties mutually release and waive unto the other all rights to claim damages, costs, or expenses for any loss if such damages, costs, or expenses have been paid to such damaged party under the terms of any policy of insurance or would have been paid if the injured party had carried the insurance required of it hereunder, less the cost of any applicable deductibles.

16. **Taxes.** Tenant shall pay prior to delinquency all income taxes, any prorated real and personal property taxes attributed to the Leased Premises, sales and use taxes, other taxes, public rates, dues and special assessments of every kind which shall become due and payable or which are assessed against or levied upon Tenant, the Leased Premises, the leasehold estate created by this Lease, and the personal property or other items owned by Tenant or placed in the Leased Premises by Tenant. Landlord shall pay all taxes, public rates, dues, and special assessments of every kind which shall become due and payable or which are assessed against or levied upon any real property owned by Landlord other than the real property attributable to the Leased Premises and personal property owned by Landlord and placed in the Hospital Building by Landlord.
17. **Defaults; Remedies.**

(a) **Tenant’s Default.** It is agreed that Tenant shall be in default under this Lease if:

(i) Tenant fails to pay any Rent after the same shall be delinquent as provided in this Lease, and such failure is not cured within fifteen (15) days thereafter;

(ii) Tenant files or is put into bankruptcy or otherwise becomes insolvent;

(iii) Any representation or warranty by Tenant in this Lease proves to be incorrect, now or hereafter, in any material respect and such circumstances creating such misrepresentation or breach of warranty are not cured so as to remove the misrepresentation or breach within thirty (30) days after written notice by Landlord to Tenant setting forth the nature of such misrepresentation, or if the nature of the default is such that it cannot reasonably be cured within thirty (30) days, then Tenant shall have a reasonable time to cure said default not to exceed sixty (60) days, provided that Tenant shall have commenced the curing of said default within such initial thirty (30) period and shall thereafter diligently pursue the curing of same;

(iv) Tenant violates, fails, or neglects to keep and perform any of the covenants, conditions, and agreements to be kept or performed by Tenant in this Lease, or in the Asset Purchase Agreement, and such failure is not cured within thirty (30) days after written notice by Landlord to Tenant, or if such failure cannot be cured within thirty (30) days, then Tenant shall have a reasonable time to cure said default not to exceed sixty (60) days, provided that Tenant shall have commenced the curing of said default within such initial thirty (30) period and shall thereafter diligently pursue the curing of same; or

(v) Tenant fails to maintain insurance required of Tenant under Section 15 hereof and such failure is not cured within three (3) days after written notice by Landlord to Tenant.

(b) **Landlord’s Remedies.** Upon the occurrence and during the continuance of any of such events of default described above or elsewhere in this Lease, Landlord shall have the option to pursue any one or more of the following remedies without notice or demand:

(i) Landlord, at its election, may terminate this Lease;

(ii) Landlord, without being obligated and without waiving the default, may cure the default in accordance with the Self-Help provisions of Section 17(f) hereof; or

(iii) Landlord shall be entitled to pursue any and all other rights or remedies pursuant to any other terms and provisions of this Lease or available at
law or equity with respect to Tenant’s default including the acceleration of the payment of future unpaid Rent for the remainder of the Term.

Notwithstanding anything to the contrary set forth in this Lease, Tenant shall not be liable for, and hereby expressly disclaims, liability for any consequential, special, indirect, or incidental damages involving, relating to, or arising under or out of this Lease or any addendum or amendment thereto, and Landlord agrees that it will be prohibited from pursuing any such damages in the event of a default by Tenant hereunder except that Landlord may pursue a lump sum claim for all future installments of unpaid Rent for the remainder of the Term in the event this Lease is terminated as a result of Tenant’s default not cured within the time permitted, if any.

(c) **Landlord’s Default.** The following events shall constitute events of default by Landlord under this Lease:

(i) Any representation or warranty by Landlord in this Lease proves to be incorrect, now or hereafter, in any material respect and such circumstances creating such misrepresentation or breach of warranty are not cured so as to remove the misrepresentation or breach within thirty (30) days after written notice by Tenant to Landlord setting forth the nature of such misrepresentation, or if the nature of the default is such that it cannot reasonably be cured within thirty (30) days, then Landlord shall have a reasonable time to cure said default not to exceed sixty (60) days, provided that Landlord shall have commenced the curing of said default within such initial thirty (30) period and shall thereafter diligently pursue the curing of same;

(ii) Landlord violates or fails or neglects to keep and perform any of the covenants, conditions, and agreements to be kept or performed by Landlord in this Lease, or in the Asset Purchase Agreement, and such failure is not cured within thirty (30) days after written notice by Tenant to Landlord, or if same cannot be cured within thirty (30) days, then Landlord shall have a reasonable time to cure said default not to exceed sixty (60) days, provided that Landlord shall have commenced the curing of said default within such initial thirty (30) period and shall thereafter diligently pursue the curing of same;

(iii) Landlord files or is put into bankruptcy or otherwise becomes insolvent; or

(iv) Landlord fails to maintain insurance required of Landlord under Section 15 hereof and such failure is not cured within three (3) days after written notice by Tenant to Landlord.

(d) **Tenant’s Remedies.** Upon the occurrence and during the continuance of any of such events of default described above or elsewhere in this Lease, Tenant shall have the option to pursue any one or more of the following remedies without notice or demand:

(i) Tenant, at its election, may terminate this Lease with no obligations to make any further rent payments;
(ii) Tenant, without being obligated and without waiving the default, may cure the default in accordance with the Self-Help provisions of Section 17(f) hereof; or

(iii) Tenant shall be entitled to pursue any and all other rights or remedies pursuant to any other terms and provisions of this Lease or available at law or equity with respect to Landlord’s default.

Notwithstanding anything to the contrary set forth in this Lease, Landlord shall not be liable for, and hereby expressly disclaims, liability for any consequential, special, indirect, or incidental damages involving, relating to, or arising under or out of this Lease or any addendum or amendment thereto, and Tenant agrees that it will be prohibited from pursuing any such damages in the event of a default by Landlord hereunder.

(e) Failure to Timely Pay Rent; Interest. Unless specifically provided otherwise in this Lease, any Rent not paid when due, together with any other now or hereafter past due unpaid Rent or other amount due under this Lease, shall accrue interest at the United States prime rate, as published in The Wall Street Journal from time to time, or if such rate is no longer published in The Wall Street Journal then such other established national or international publisher of the index, or if such prime rate index is no longer available an established successor to such index, plus five percent (5%) per annum (such rate is referred to herein as the “Default Rate”), from the due date until paid.

(f) Self-Help. In the event that Tenant or Landlord shall default in the performance or observance of any agreement, condition, or other provision in this Lease and shall not cure such default within the cure period set forth in this Section 17(a) and (c), the non-defaulting party may (in addition to any other remedy available to the non-defaulting party as set forth in this Section 17(a) and (c)) at any time thereafter cure such default and the defaulting party shall reimburse the non-defaulting party for any amount paid and any expense or contractual liability so incurred, and any amounts shall be deemed additional Rent as to Tenant and shall be due and payable within fifteen (15) days of the defaulting party receiving an invoice from the non-defaulting party with reasonable documentation of such expenses; provided, however, that either non-defaulting party may cure any such default as aforesaid prior to the expiration of said cure period but after notice to the other party, if it is necessary to protect the Leased Premises, the Hospital Building, or Common Areas or to prevent injury or damage to persons or property. Any invoice not paid by Tenant and any amounts due from Landlord but not paid within such fifteen (15) day period shall begin to accrue interest at the Default Rate.

(g) No Accord and Satisfaction. No acceptance by Landlord of a lesser sum than the Rent and other sums then due shall be deemed to be other than on account of the earliest installment of such payments due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed as accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord’s right to recover the balance of such installment or pursue any other remedy provided in this Lease. With regard to Section 17(f), no acceptance by Tenant of a lesser sum than the amounts required to be paid by Landlord but not paid shall be deemed to be other than an installment of such payments due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be
deemed as accord and satisfaction, and Tenant may accept such check or payment without prejudice to Tenant’s right to recover the balance due or pursue any other remedy provided in this Lease.

(h) No Reinstatement. No payment of money by Tenant to Landlord after the expiration or termination of this Lease shall reinstate or extend the Term, or make ineffective any notice of termination 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 Leased Premises, Landlord may receive and collect any sums due under this Lease, and the payment thereof shall not make ineffective any notice or in any manner affect any pending suit or any judgment previously obtained. No payment of money after the expiration or termination of this Lease by Landlord to Tenant pursuant to Section 17(f) of amounts or obligations owed under this Lease shall reinstate or extend the Term, or make ineffective any notice of termination given to Landlord 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 Leased Premises, Landlord may receive and collect any sums due under this Lease, and the payment thereof shall not make ineffective any notice or in any manner affect any pending suit or any judgment previously obtained.

(i) Summary Ejectment. Tenant agrees that in addition to all other rights and remedies, Landlord may obtain an order for summary ejectment from any court of competent jurisdiction without prejudice to Landlord’s rights to otherwise collect rents or breach of contract damages from Tenant; provided arrangements are made by Tenant to place patients in an appropriate placement, if and as may be required under applicable laws and regulations.

18. Casualty.

(a) If the Leased Premises should be totally destroyed by fire or other casualty, or partially damaged by fire or other casualty and rebuilding or repairs cannot reasonably be completed within sixty (60) days after the date of the destruction or damage, or such other time as the parties may agree in writing, this Lease shall terminate and the Rent shall abate for the unexpired portion of the Lease, effective as of the date of the destruction or damage; except in the case of damage or destruction caused by or contributed to by the acts or negligence of Tenant, its contractors, employees, agents, or licensees, Tenant shall be liable for such Landlord’s damages which shall survive such termination of this Lease.

(b) If the Leased Premises should be partially damaged by fire or other casualty and rebuilding or repairs can reasonably be completed within sixty (60) days after the date of the destruction or damage, this Lease shall not automatically terminate. Landlord may at its sole risk and expense proceed with reasonable diligence to rebuild or repair the damaged portion of the Leased Premises to substantially the condition in which it existed prior to the damage. If the Leased Premises are to be repaired and the Leased Premises are untenantable in whole or in part following the damage, and the damage or destruction was not caused by or contributed to by the acts or negligence of Tenant, its contractors, employees, agents, or licensees, and if, as a result of such damage, it is impractical for Tenant to continue to use the Leased Premises for Tenant’s intended purposes, the Rent payable under this Lease during the period for which the Leased Premises are untenantable shall abate to such extent as the Leased
Premises are unsuitable for Tenant’s intended use. In the event that Landlord fails to complete the necessary repairs within sixty (60) days after the date of the damage subject to such reasonable extension of time thereafter as a result of force majeure, Tenant may at its option terminate this Lease by delivering written notice of termination to Landlord, whereupon all rights and obligations under the Lease shall cease to exist as of the date of such damage or destruction except in the case of damage or destruction caused by or contributed to by the acts or negligence of Tenant, its contractors, employees, agents, or licensees, in which case this Lease will remain in effect until completed by Landlord, provided that Landlord diligently continues to pursue such completion and Tenant shall be liable for such Landlord’s damages which shall survive any termination of this Lease.

19. Condemnation. In the event all or any portion of the Leased Premises is condemned which substantially affects Tenant’s operation of the Skilled Nursing Facility, this Lease shall automatically terminate as of the date of such condemnation and the Rent shall abate for the unexpired portion of this Lease, effective as of the date of such taking. Tenant shall have no claim to any condemnation award.

20. Responsibility for Laws, Rules and Regulations. Throughout the Term of this Lease, Landlord shall cause and maintain the Hospital Building, including the Leased Premises and any utilities and services furnished by Landlord, to substantially conform to all applicable regulatory requirements promulgated by the Centers for Medicare and Medicaid Services, DHSR, the Occupational Health and Safety Administration, and the administrative regulations promulgated thereunder and all other federal, state, and local regulatory requirements and applicable building codes (collectively, the “Building Compliance Requirements”). Landlord also shall be responsible for assuring that the Hospital Building, including the Leased Premises, is in compliance with the requirements of the Americans with Disabilities Act of 1990, as amended, Pub. L. 101-336, 42 U.S.C. 1210, et seq.


(a) Tenant Compliance.

(i) Tenant’s Responsibility. Except in the ordinary course of business of operating a skilled nursing facility, and then only in accordance with prevailing industry standards and applicable law, Tenant shall not (either with or without negligence), on the Hospital Property, make, store, use, treat, dispose of, cause or permit any person or entity to make, store, use, treat, allow to escape, release or dispose of any “Hazardous Substance,” which is defined as any hazardous or toxic substance, material, or waste, regulated or listed pursuant to any Environmental Law, or any other hazardous waste, contaminant, petroleum, oil, radioactive, or other materials, the removal of which is required or the maintenance of which is prohibited, penalized, or regulated by any local, state, or federal agency, authority, or governmental unit. Notwithstanding the foregoing, Landlord recognizes that Tenant may generate Medical Waste which shall be disposed of by Tenant in accordance with applicable law and as otherwise set forth herein. Tenant’s obligations under this Section 21(a)(i) are collectively the “Tenant’s Environmental Responsibilities.”
(ii) **Tenant's Liability.** Tenant shall hold Landlord free, harmless, and indemnified from any penalty, fine, claim, demand, liability, cost, or charge whatsoever which Landlord shall incur, or which Landlord would otherwise incur, by reason of Tenant’s failure to comply with Tenant’s Environmental Responsibilities, including but not limited to: (a) the cost of full remediation of any contamination to bring the Hospital Property into the same condition as prior to the Commencement Date and into full compliance with all Environmental Laws; (b) the reasonable cost of all appropriate tests and examinations of the Property to confirm that the Hospital Property and any other contaminated areas have been remediated and brought into compliance with all Environmental Laws; and (c) the reasonable fees and expenses of Landlord’s attorneys, engineers, and consultants incurred by Landlord in enforcing and confirming compliance with Tenant’s Environmental Responsibilities.

(iii) **Limitation on Tenant's Liability.** Notwithstanding anything to the contrary contained in this Lease, Tenant’s Environmental Responsibilities shall not apply to any condition or matter constituting a violation of any Environmental Laws: (a) which existed prior to the Commencement Date; (b) which was not caused in whole or in part by Tenant or any of its agents, employees, contractors, guests, or invitees; or (c) to the extent that such violation is caused in whole or in part by, or results from, the acts, negligence or omissions of Landlord or Landlord’s agents, employees, or contractors, guests, or invitees.

(b) **Landlord Compliance.**

(i) **Landlord’s Responsibility.** Except in the ordinary course of business of operating a hospital facility, and then only in accordance with prevailing industry standards and applicable law, Landlord shall not (either with or without negligence), on the Hospital Property, make, store, use, treat, dispose of, cause or permit any person or entity to make, store, use, treat, allow to escape, release or dispose of any Hazardous Substance or any other hazardous waste, contaminant, petroleum, oil, radioactive, or other materials, the removal of which is required or the maintenance of which is prohibited, penalized, or regulated by any local, state, or federal agency, authority, or governmental unit. Notwithstanding the foregoing, Tenant recognizes that Landlord may generate Medical Waste which shall be disposed of by Landlord in accordance with applicable law and as otherwise set forth herein. Landlord’s obligations under this Section 21(b)(i) are collectively the “**Landlord’s Environmental Responsibilities.**”

(ii) **Landlord’s Liability.** Landlord shall hold Tenant free, harmless, and indemnified from any penalty, fine, claim, demand, liability, cost, or charge whatsoever which Tenant shall incur, or which Tenant would otherwise incur, by reason of Landlord’s failure to comply with Landlord’s Environmental Responsibilities, including but not limited to: (a) the cost of full remediation of any contamination to bring the Leased Premises and Common Areas into the same condition as prior to the Commencement Date and into full compliance with

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(1) Medical Waste: Medical waste is any waste generated in connection with medical, surgical, or dental treatment, including but not limited to, used needles, syringes, and gloves, as well as infectious and hazardous materials associated with the treatment of disease. Medical waste must be managed according to specific regulations to ensure the safety of both healthcare workers and the environment.
all Environmental Laws; (b) the reasonable cost of all appropriate tests and examinations of the Leased Premises to confirm that the Leased Premises and any other contaminated Common Areas have been remediated and brought into compliance with all Environmental Laws; and (c) the reasonable fees and expenses of Tenant’s attorneys, engineers, and consultants incurred by Tenant in enforcing and confirming compliance with Landlord’s Environmental Responsibilities.

(iii) **Limitation on Landlord’s Liability.** Notwithstanding anything to the contrary contained in this Lease, Landlord’s Environmental Responsibilities shall not apply to any condition or matter constituting a violation of any Environmental Laws: (a) which was not caused in whole or part by Landlord or its agents, employees, contractors, guests, or invitees; or (b) to the extent that such violation is caused by, or results from the acts or negligence of Tenant, or Tenant’s agents, employees, contractors, guests, or invitees.

(c) **Liability after Termination of Lease.** Tenant’s and Landlord’s indemnity obligations and liability with respect to any of their respective environmental responsibilities shall survive for three (3) years after the expiration or termination of this Lease.

**22. Inspections.** Tenant shall permit Landlord and the agents of Landlord to enter the public space within the Leased Premises and the private areas within the Leased Premises at all reasonable times after reasonable prior notice to Tenant, to examine the condition thereof. Landlord hereby agrees to exercise such right of entry in a manner which prevents an unreasonable amount of interference with Tenant’s use of the Leased Premises. In exercising Landlord’s right of entry pursuant to the terms and provisions hereof, Landlord agrees to comply with all privacy and HIPAA laws, rules, and regulations pertaining to the medical and business records of Tenant and protection of any patient confidentiality.

**23. Termination.** This Lease shall terminate automatically with no further obligation to pay any Rent upon the occurrence of any of the following events: (a) the closure of Murphy Medical Center as an acute care hospital for any reason; or (b) upon the successful location of all patients of the Skilled Nursing Facility to the New Skilled Nursing Facility; provided, however, that Tenant shall notify Landlord of its plans to relocate the patients as soon as practicable, but not less than thirty (30) days prior to the expected relocation date.

**24. Surrender of the Leased Premises Upon Expiration or Earlier Termination.** On the expiration or earlier termination of this Lease, Tenant shall surrender promptly the Leased Premises to Landlord in the same condition as when received, ordinary wear and tear excepted. All alterations, installations, additions, and improvements which have been made in or attached to the Leased Premises and granted to Landlord under the terms of this Lease and not otherwise reserved by Tenant shall be surrendered along with the Leased Premises. Tenant shall remove its trade fixtures (including signs), and Tenant shall repair any damage to the Leased Premises caused thereby.

**25. Attorneys’ Fees.** If either party named herein brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, trial, or appeal
thereon shall be entitled to its reasonable attorneys’ fees to be paid by the losing party as fixed by
the court in the same or separate suit, and whether or not such action is pursued to decision or
judgment.

26. **Governing Law; Venue.** This Agreement shall be construed and enforced in
accordance with the substantive laws of the State of North Carolina. The parties agree that any
litigation necessary to resolve a dispute arising under this Agreement shall be brought in the
General Court of Justice in the County of Cherokee and the State of North Carolina.

27. **Holding Over.** Unless otherwise agreed to in writing by the Parties, if Tenant
holds over after the termination or expiration of the Term of this Lease, such holding over shall
not be a renewal of this Lease but shall create a tenancy at sufferance. Tenant shall continue to
be bound by all of the terms and conditions of this Lease, except that during such tenancy at
sufferance Tenant shall pay to Landlord Rent equal to one hundred fifty percent (150%) of that
provided for as of the expiration or termination date which shall be liquidated damages to
Landlord hereunder for any loss or damage incurred by Landlord for any such holdover. The
increased Rent during such holding over is intended to compensate Landlord partially for its
losses, damages, and expenses associated with Tenant’s holding over.

28. **Waivers.** No waiver of any default or breach of any covenant, agreement, or
condition of this Lease shall be construed to be a waiver of the rights as to any future default or
breach by Tenant or Landlord.

29. **Remedies Cumulative.** The remedies available to the parties under the terms of
this Lease and in law or equity shall be cumulative, and the exercise of any remedy shall not
constitute an election of remedies.

30. **Notice.** Any notice required to be given hereunder shall be in writing and shall be
served by hand delivery or by reputable overnight express courier for next business day delivery.
All such notices shall be sent as follows:

If to Landlord: Murphy Medical Center, Inc.
3990 E. US Highway 64 Alternate
Murphy, North Carolina 28906
Attn: Chief Executive Officer

With Copy to: Nelson Mullins Riley & Scarborough LLP
GlenLake One, Suite 200
4140 Parklake Avenue
Raleigh, North Carolina 27612
Attention: Robert L. Wilson, Jr.

If to Tenant: Murphy Rehabilitation, Inc.
130 Edinburgh South, Suite 208
Cary, North Carolina 27511-7902
Attention: Bob Gilliam
Either party may hereafter and from time to time designate in writing a different address for the mailing of notices.

31. **Captions.** The paragraph captions in this Lease are for convenience only and shall have no effect upon the terms and provisions of this Lease.

32. **No Joint Venture.** Nothing contained in this Lease shall be deemed or construed to create the relationship of principal and agent, or of partnership or joint venture, or of any association whatsoever between Landlord and Tenant, except that of landlord and tenant.

33. **Quiet Enjoyment.** Landlord represents that it has good right and authority to lease the Leased Premises and that Tenant shall quietly enjoy the Leased Premises so long as Tenant complies with the terms and conditions of this Lease.

34. **Severable Provisions.** The provisions of this Lease shall be severable, and if any provisions shall be invalid or void or unenforceable in whole or in part for any reason, the remaining provisions shall remain in full force and effect.

35. **Entire Agreement.** This Lease and any other agreements executed and delivered contemporaneously herewith concerning the lease of the Leased Premises by Tenant from Landlord contain the entire agreement of the parties with regard only to such subject matter and supersede any and all prior agreements between the parties, written or oral, with respect to the subject matter contemplated hereby. This Lease may not be changed or terminated orally, but may only be changed by an agreement in writing signed by the party or parties against whom enforcement of any waiver, change, modification, extension, discharge, or termination is sought.

36. **Counterparts; Electronic Execution and Retention.** This Lease may be executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original, and such counterparts shall, together, constitute and be one and the same instrument. A signature on a counterpart may be made by facsimile or otherwise electronically transmitted, and such signature shall have the same force and effect as an original signature. Further, this Lease may be retained in any electronic format, and all electronic copies thereof shall likewise be deemed to be an original and shall have the same force and effect as an original copy of this Lease.

37. **Binding Effect.** This Lease shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, executors, administrators, successors, and assigns.

38. **No Rule of Construction.** The parties acknowledge that this Lease was initially prepared by Landlord solely as a convenience and that all parties hereto, and their counsel, have read and fully negotiated all the language used in this Lease. The parties acknowledge that, because all parties and their counsel participated in negotiating and drafting this Lease, no rule of
construction shall apply to this Lease which construes ambiguous or unclear language in favor of or against any party because such party drafted this Lease.

39. **Exhibits.** All Exhibits and documents referred to in or attached to this Lease are integral parts of this Lease as if fully set forth herein, and all statements appearing therein shall be deemed disclosed and relied upon for all purposes and not just in connection with the specific representation to which they are explicitly referenced.

40. **Memorandum of Lease.** Upon the request of either party, the parties agree to execute a Memorandum of Lease in the form attached hereto as Exhibit D, and either party shall have the right to record such Memorandum of Lease in the public records of the county in which the Land is located.

41. **Signage.** Tenant shall have the right to install signage within the Leased Premises and on the Hospital Property subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld. Such signage shall be installed at Tenant’s expense and in accordance with all applicable laws, ordinances, regulations, and statutes.

42. **Condition of Leased Premises; AS IS.** Landlord hereby represents and warrants that as of the Commencement Date, the Leased Premises, the Common Areas, and the roof and all other structural portions of the Hospital Building, shall be in good condition, and all systems serving the Leased Premises, including but not limited to mechanical, HVAC, plumbing, and electrical, shall be in good condition and in normal working order. Except as otherwise specifically set forth in this Lease, Tenant agrees to accept the Leased Premises in its “AS IS” condition. This acceptance does not negate any obligation of Landlord to maintain, repair, or replace the Hospital Building as otherwise specified in this Lease.

43. **Time of the Essence; Time for Performance.** Time shall be of the essence in every part of this Lease. A “business day” shall be defined as any weekday which is not a Federal or customary bank holiday in North Carolina. In the event a time for performance deadline under this Lease should fall on a non-business day, the time for performance shall be extended until the next business day.

44. **Force Majeure.** If either party to this Lease shall be delayed or hindered in or prevented from the performance of any act required under this Lease by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, named tropical storm or hurricane, riots, insurrection, war, or other reason of a like nature not the fault of the party delayed in performing the work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay and the time for performance shall be extended for a period equivalent to the period of such delay.

45. **No Third Party Beneficiaries.** No person or entity shall be deemed to be a third party beneficiary with respect to the obligations of Landlord or Tenant under this Agreement.

46. **Brokerage.** Tenant represents and warrants to Landlord that Tenant has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, and that Tenant knows of no real estate broker or agent who is or might be entitled to a commission.
in connection with this Lease. Tenant hereby agrees to indemnify Landlord for any breach of the warranty given by Tenant in this Section 46. Landlord represents and warrants to Tenant that Landlord has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, and that Landlord knows of no other real estate broker or agent who is or might be entitled to a commission in connection with this Lease. Landlord hereby agrees to indemnify Tenant for any breach of the warranty given by Landlord in this Section 46.

[SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, Landlord and Tenant have hereunto executed this Lease as of the day and year first above written.

LANDLORD:

MURPHY MEDICAL CENTER, INC., a North Carolina nonprofit corporation

By: ________________________________
Name: ______________________________
Title: ______________________________

TENANT:

MURPHY REHABILITATION, INC., a North Carolina corporation

By: ________________________________
Name: ______________________________
Title: ______________________________
EXHIBIT A

DESCRIPTION OF LAND
EXHIBIT B

DESCRIPTION AND FLOOR PLAN OF LEASED PREMISES
EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (the “Agreement”) is made effective the 1st day of October, 2017, by and between MURPHY REHABILITATION, INC., hereinafter referred to as “Covered Entity,” and MURPHY MEDICAL CENTER, INC., hereinafter referred to as “Business Associate” (individually, a “Party” and collectively, the “Parties”).

WITNESSETH:

WHEREAS, the Parties wish to enter into a Business Associate Agreement to ensure compliance with the Privacy and Security Rules of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA Privacy and Security Rules") (45 C.F.R. Parts 160 and 164); and

WHEREAS, the Health Information Technology for Economic and Clinical Health ("HITECH") Act of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, modified the HIPAA Privacy and Security Rules (hereinafter, all references to the “HIPAA Privacy and Security Rules” include all amendments thereto set forth in the HITECH Act and any accompanying regulations); and

WHEREAS, the Parties have entered into a written or oral arrangement or arrangements (the “Underlying Agreements”) whereby Business Associate will provide certain services to Covered Entity that require Business Associate to create, receive, maintain, or transmit Protected Health Information on Covered Entity’s behalf, and accordingly Business Associate may be considered a “business associate” of Covered Entity as defined in the HIPAA Privacy and Security Rules; and

WHEREAS, Business Associate and Covered Entity wish to comply with the HIPAA Privacy and Security Rules, and Business Associate wishes to honor its obligations as a business associate to Covered Entity.

THEREFORE, in consideration of the Parties’ continuing obligations under the Underlying Agreements, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement.

Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Privacy and Security Rules. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy and Security Rules, as amended, the HIPAA Privacy and Security Rules in effect at the time shall control. Where provisions of this Agreement are different than those mandated by the HIPAA Privacy and Security Rules, but are nonetheless permitted by the HIPAA Privacy and Security Rules, the provisions of this Agreement shall control.
I. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

A. Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreements, provided that such use or disclosure would not violate the HIPAA Privacy and Security Rules if done by Covered Entity.

B. Business Associate may use Protected Health Information in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Business Associate, provided that such uses are permitted under state and federal confidentiality laws.

C. Business Associate may disclose Protected Health Information in its possession to third parties for the purposes of its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that:
   
   1. the disclosures are required by law; or
   
   2. Business Associate obtains reasonable assurances from the third parties to whom the Protected Health Information is disclosed that the information will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party, and that such third parties will notify Business Associate of any instances of which they are aware in which the confidentiality of the information has been breached.

D. Until such time as the Secretary issues regulations pursuant to the HITECH Act specifying what constitutes “minimum necessary” for purposes of the HIPAA Privacy and Security Rules, Business Associate shall, to the extent practicable, access, use, and request only Protected Health Information that is contained in a limited data set (as defined in 45 C.F.R. § 164.514(e)(2)), unless Business Associate requires certain direct identifiers in order to accomplish the intended purpose of the access, use, or request, in which event Business Associate may access, use, or request only the minimum necessary amount of Protected Health Information to accomplish the intended purpose of the access, use, or request. The Parties shall collaborate in determining what quantum of information constitutes the “minimum necessary” amount for Business Associate to accomplish its intended purposes.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

A. Business Associate agrees not to use or further disclose Protected Health Information other than as permitted or required by this Agreement or the Underlying Agreements or as required by law.

B. Business Associate agrees to use appropriate safeguards and to comply, where applicable, with 45 C.F.R. Part 164, Subpart C with respect to Electronic Protected Health Information, to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement. Specifically, Business Associate will:
1. implement the administrative, physical, and technical safeguards set forth in 45 C.F.R. §§ 164.308, 164.310, and 164.312 that reasonably and appropriately protect the confidentiality, integrity, and availability of any Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity, and, in accordance with 45 C.F.R. § 164.316, implement and maintain reasonable and appropriate policies and procedures to enable it to comply with the requirements outlined in 45 C.F.R. §§ 164.308, 164.310, and 164.312; and

2. report to Covered Entity any Security Incident that does not rise to the level of a Breach of Unsecured Protected Health Information ("Breach"), and any use or disclosure of Protected Health Information that is not provided for by this Agreement but that does not rise to the level of a Breach, of which Business Associate becomes aware. The report shall be made as soon as practical, and in any event within ten (10) days of Business Associate’s discovery of the Security Incident or the impermissible use or disclosure. A Security Incident shall be treated as discovered by Business Associate as of the first day on which such Security Incident is known to Business Associate or, through the exercise of reasonable diligence, would have been known to Business Associate.

C. Business Associate shall require each subcontractor that creates, receives, maintains, or transmits Protected Health Information on its behalf to enter into a business associate agreement containing the same restrictions on access, use, and disclosure of Protected Health Information as those applicable to Business Associate under this Agreement. Furthermore, to the extent that Business Associate provides Electronic Protected Health Information to a subcontractor, Business Associate shall require such subcontractor to comply with all applicable provisions of 45 C.F.R. Part 164, Subpart C.

D. Business Associate agrees to comply with any requests for restrictions on certain disclosures of Protected Health Information to which Covered Entity has agreed in accordance with 45 C.F.R. § 164.522 of which Business Associate has been notified by Covered Entity.

E. If Business Associate maintains a designated record set on behalf of Covered Entity, at the request of Covered Entity and in a reasonable time and manner, Business Associate agrees to make available Protected Health Information required for Covered Entity to respond to an individual’s request for access to his or her Protected Health Information in accordance with 45 C.F.R. § 164.524. If Business Associate maintains Protected Health Information in an electronic designated record set, it agrees to make such Protected Health Information available electronically to Covered Entity or, upon Covered Entity’s specific request, to the applicable individual or to a person or entity specifically designated by such individual, upon such individual’s request.

F. If Business Associate maintains a designated record set on behalf of Covered Entity, at the request of Covered Entity and in a reasonable time and manner, Business Associate agrees to make available Protected Health Information required for amendment by Covered Entity in accordance with the requirements of 45 C.F.R. § 164.526.

G. Business Associate agrees to document any disclosures of Protected Health Information, and to make Protected Health Information available for purposes of accounting of disclosures, as required by 45 C.F.R. § 164.528.
H. If Business Associate is to carry out one or more of Covered Entity’s obligations under 45 C.F.R. Part 164, Subpart E, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).

I. Business Associate agrees that it will make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, available to the Secretary, in a time and manner designated by the Secretary, to enable the Secretary to determine Business Associate’s or Covered Entity’s compliance with the HIPAA Privacy and Security Rules. Business Associate also shall cooperate with the Secretary and, upon the Secretary’s request, pursuant to 45 C.F.R. § 160.310, shall disclose Protected Health Information to the Secretary to enable the Secretary to investigate and review Business Associate’s or Covered Entity’s compliance with the HIPAA Privacy and Security Rules.

J. Unless expressly authorized in the Underlying Agreements, Business Associate shall not:

1. use Protected Health Information for marketing or fundraising;
2. use Protected Health Information to create a limited data set or to de-identify the information;
3. use Protected Health Information to provide data aggregation services relating to the health care operations of Covered Entity; or
4. use or disclose Protected Health Information in exchange for remuneration of any kind, whether directly or indirectly, financial or non-financial, other than such remuneration as Business Associate receives from Covered Entity in exchange for Business Associate’s provision of the services specified in the Underlying Agreements.

III. BUSINESS ASSOCIATE’S MITIGATION AND BREACH NOTIFICATION OBLIGATIONS

A. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

B. Following the discovery of a Breach, Business Associate shall notify Covered Entity of such Breach without unreasonable delay and in no case later than ten (10) calendar days after discovery of the Breach, and shall assist in Covered Entity’s breach analysis process, including risk assessment, if requested. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or, through the exercise of reasonable diligence, would have been known to Business Associate. The Breach notification shall be provided to Covered Entity in the manner specified in 45 C.F.R. § 164.410(c) and shall include the information set forth therein to the extent known. If, following the Breach notification, Business Associate learns additional details about the Breach, Business Associate shall notify Covered Entity promptly as such information becomes available. Covered Entity shall determine whether Business Associate or Covered Entity will be responsible for

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providing notification of any Breach to affected individuals, the media, the Secretary, and/or any other parties required to be notified under the HIPAA Privacy and Security Rules or other applicable law. If Covered Entity determines that Business Associate will be responsible for providing such notification, Business Associate may not carry out notification until Covered Entity approves the proposed notices in writing.

C. Notwithstanding the provisions of Section III.B., above, if a law enforcement official states to Business Associate that notification of a Breach would impede a criminal investigation or cause damage to national security, then:

1. if the statement is in writing and specifies the time for which a delay is required, Business Associate shall delay such notification for the time period specified by the official; or

2. if the statement is made orally, Business Associate shall document the statement, including the identity of the official making it, and delay such notification for no longer than thirty (30) days from the date of the oral statement unless the official submits a written statement during that time.

Following the period of time specified by the official, Business Associate shall promptly deliver a copy of the official’s statement to Covered Entity.

IV. OBLIGATIONS OF COVERED ENTITY

A. Upon request of Business Associate, Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520.

B. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information, if such changes could reasonably be expected to affect Business Associate’s permitted or required uses and disclosures.

C. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information to which Covered Entity has agreed in accordance with 45 C.F.R. § 164.522, and Covered Entity shall inform Business Associate of the termination of any such restriction, and the effect that such termination shall have, if any, upon Business Associate’s use and disclosure of such Protected Health Information.

V. TERM AND TERMINATION

A. Term. The Term of this Agreement shall be effective as of the date first written above, and shall terminate upon later of the following events: (i) in accordance with Section V.C., when all of the Protected Health Information provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is returned to Covered Entity or destroyed (and a certificate of destruction is provided) or, if such return or destruction is infeasible, when protections are extended to such information; or (ii) upon the expiration or termination of the last of the Underlying Agreements.
B. Termination. Upon either Party’s knowledge of a material breach by the other Party of its obligations under this Agreement, the non-breaching Party shall, within twenty (20) days of that determination, notify the breaching Party, and the breaching Party shall have thirty (30) days from receipt of that notice to cure the breach or end the violation. If the breaching Party fails to take reasonable steps to effect such a cure within such time period, the non-breaching Party may terminate this Agreement and the Underlying Agreements without penalty.

Where either Party has knowledge of a material breach by the other Party and determines that cure is infeasible, prior notice of the breach is not required, and the non-breaching Party shall terminate the portion of the Underlying Agreements affected by the breach without penalty.

C. Effect of Termination.

1. Except as provided in paragraph 2 of this subsection C., upon termination of this Agreement, the Underlying Agreements or upon request of Covered Entity, whichever occurs first, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors of Business Associate. Neither Business Associate nor its subcontractors shall retain copies of the Protected Health Information except as required by law.

2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide within ten (10) days to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate, and its applicable subcontractors, shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate and its applicable subcontractors maintain such Protected Health Information.

VI. MISCELLANEOUS

A. Indemnification. Each Party shall indemnify and hold the other harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards, or other expenses, of any kind or nature whatsoever, including, without limitations, attorneys’ fees, expert witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out of any breach of this Agreement, or any Breach, by that Party or its subcontractors or agents.

B. No Rights in Third Parties. Except as expressly stated herein or in the HIPAA Privacy and Security Rules, the Parties to this Agreement do not intend to create any rights in any third parties.

C. Survival. The obligations of Business Associate under Section V.C. of this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Underlying Agreements, and/or the business relationship of the Parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth.
herein. Furthermore, the Parties’ indemnification obligations pursuant to Section VI.A. of this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Underlying Agreements, and/or the business relationship of the Parties, and shall continue to bind the Parties, their agents, employees, contractors, successors, and assigns as set forth herein.

**D. Amendment.** The Parties agree that this Agreement will be amended automatically to conform to any changes in the HIPAA Privacy and Security Rules as are necessary for each of them to comply with the current requirements of the HIPAA Privacy and Security Rules and the Health Insurance Portability and Accountability Act, unless a particular statutory or regulatory provision requires that the terms of this Agreement be amended to reflect any such change. In those instances where an amendment to this Agreement is required by law, the Parties shall negotiate in good faith to amend the terms of this Agreement within sixty (60) days of the effective date of the law or final rule requiring the amendment. If, following such period of good faith negotiations, the Parties cannot agree upon an amendment to implement the requirements of said law or final rule, then either Party may terminate this Agreement and the Underlying Agreements upon ten (10) days written notice to the other Party. Except as provided above, this Agreement may be amended or modified only in a writing signed by the Parties.

**E. Assignment.** Neither Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.

**F. Independent Contractor.** None of the provisions of this Agreement are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. Nothing in this Agreement creates or is intended to create an agency relationship.

**G. Governing Law.** To the extent this Agreement is not governed exclusively by the HIPAA Privacy and Security Rules or other provisions of federal statutory or regulatory law, it will be governed by and construed in accordance with the laws of the state in which Covered Entity has its principal place of business.

**H. No Waiver.** No change, waiver, or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

**I. Interpretation.** Any ambiguity of this Agreement shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with the HIPAA Privacy and Security Rules.

**J. Severability.** In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.
K. **Notice.** Any notification required in this Agreement shall be made in writing to the representative of the other Party who signed this Agreement or the person currently serving in that representative’s position with the other Party.

L. **Certain Provisions Not Effective in Certain Circumstances.** The provisions of this Agreement relating to the HIPAA Security Rule shall not apply to Business Associate if Business Associate does not receive, create, maintain, or transmit any Electronic Protected Health Information from or on behalf of Covered Entity.

M. **Entire Agreement.** This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written. In the event of any inconsistency between this Agreement and any other agreement between the Parties concerning the use and disclosure of Protected Health Information and the Parties’ obligations with respect thereto, the terms of this Agreement shall control.

N. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

**IN WITNESS WHEREOF,** the Parties have executed this Agreement as of the day and year written above.

Covered Entity: 

**MURPHY REHABILITATION, INC.**

By: ____________________________

Title: __________________________

Business Associate: 

**MURPHY MEDICAL CENTER, INC.**

By: ____________________________

Title: __________________________