

STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD

IN RE: PROPOSED PURCHASE OF  
BIRCHWOOD TERRACE

) GMCB 014-17con  
)

**APPLICANTS' RESPONSES TO THE GREEN MOUNTAIN CARE BOARD'S  
JANUARY 8, 2017 REQUESTS FOR INFORMATION RE BLUE MOUNTAIN**

NOW COME the Applicants and submit the following responses to the January 8, 2017 requests for information from the Green Mountain Care Board.

1. Specifically name the "affiliate of BM Eagle" that would become a 50% ownership member in the real estate entity (Birchwood Property) for the proposed transaction. Explain the reasons for adding that entity as a 50% member in the real estate entity only. Also provide an organizational chart showing the relationship of BME, "the affiliate of BM Eagle," and BlueMountain Capital Management LLC and Birchwood Property.

**RESPONSE:**

Eagle Birchwood Investor LLC ("EBI LLC") is the affiliate of BM Eagle that will hold a 50% membership interest in Birchwood Prop LLC, the entity that will own the leasehold interest in the proposed transaction.

At the time the CON was submitted, BM Eagle and the Applicants were unsure whether an affiliate of BM Eagle would be part of Birchwood Prop LLC. Since the time of the submission, the parties have determined that EBI LLC, an affiliate of BM Eagle, will own a 50% membership interest in Birchwood Prop LLC. Although EBI LLC will not be involved in the operations of the Facility, they will bring an additional level of financial acumen and wherewithal to the proposed transaction.

EBI LLC is an affiliate of BlueMountain Capital Management LLC ("BlueMountain"). BlueMountain is a leading alternative asset manager and, as of December 31, 2017, manages assets in excess of \$21 billion. Funds and affiliates managed by BlueMountain have invested over \$1 billion in healthcare-related sectors in recent years, with a large footprint across skilled nursing and rehabilitation facilities, assisted living and memory care facilities, acute care hospitals, long term acute care hospitals, inpatient rehab facilities, integrated medical facilities, and other more specialized healthcare-related assets. BlueMountain's affiliate BM Eagle most recently acquired the skilled nursing assets of Kindred Healthcare Inc. in a \$700 million transaction.

An organizational chart showing the relationship among the entities is submitted herewith and as **Attachment 37** to the Revised Certificate of Need Narrative.

2. Explain in detail the current involvement of, affiliation with, or relationships between, each of the following individuals with BME, BlueMountain Capital Management LLC and any of their affiliates
- Ariel Erlichman
  - Milton Ostreicher
  - Isaac Rubin

**RESPONSE:**

Except for the proposed transaction herein, none of the individual applicants has any affiliation or relationship with BlueMountain, BME or any of their affiliates.

3. In a table format, list each of the skilled nursing and rehabilitation facilities (name and city) in which BME acts as a landlord under triple net lease arrangements with third party tenants and operators. For each facility, indicate the Center for Medicare & Medicaid Services (CMS) stars ratings star ratings for overall, staffing, and RN staffing, and penalties imposed, if any, (description and fine)
- for the last reported period prior to BME becoming involved in the real estate (specify date), and
  - the most recently reported period (specify date).

**RESPONSE:**

BME via an affiliate, Smith Ranch Prime Tenant, LLC, acts as sublandlord for one facility. Effective August 31, 2017, BME became the owner of a leasehold interest for the Kindred Transitional Care and Rehabilitation-Smith Ranch facility in San Rafael, California ("Smith Ranch Facility"). Pursuant to their sublease with the operator of the Smith Ranch Facility, neither BME nor its affiliate has any involvement in the operations of the facility. Similarly, here, BME's affiliate, EBI LLC, will not be involved in, nor have any authority to direct, the operations of the Facility.

Below are the CMS star ratings and penalties imposed for the most recent reported period for the Smith Ranch facility.

Facility Name	City, ST	CMS Stars Rating						Date	Date (s)	Federal Fines	Payment
		Overall Rating	Health	Quality	RN	Measures	Staffing				
			Inspection	Rating							
			Rating	Rating	Rating	Rating	Staffing Rating	Most Recent Health Ins.	Complaint Inspections	Last 3 Years	Denials 3 Years
KINDRED TRANSITIONAL CARE AND REHAB - SMITH RANCH	SAN RAFAEL, CA	***	SR	****	SR	****	****	11/21/2016	8/8/2017; 07/06/2017	\$ -	\$ -

BME does not have any information for the last reported period.

4. For the same facilities named in your response to Question 3, in a table format show the annual lease amounts, in dollars, for the last five years (specify dates), and the annual percent increase/decrease in lease amounts.

RESPONSE:

As set forth above, BME closed on the Smith Ranch Facility on August 31, 2017. The rental payments for the current lease are below. Pursuant to the lease, the rental payments increase by 2% on annual basis.

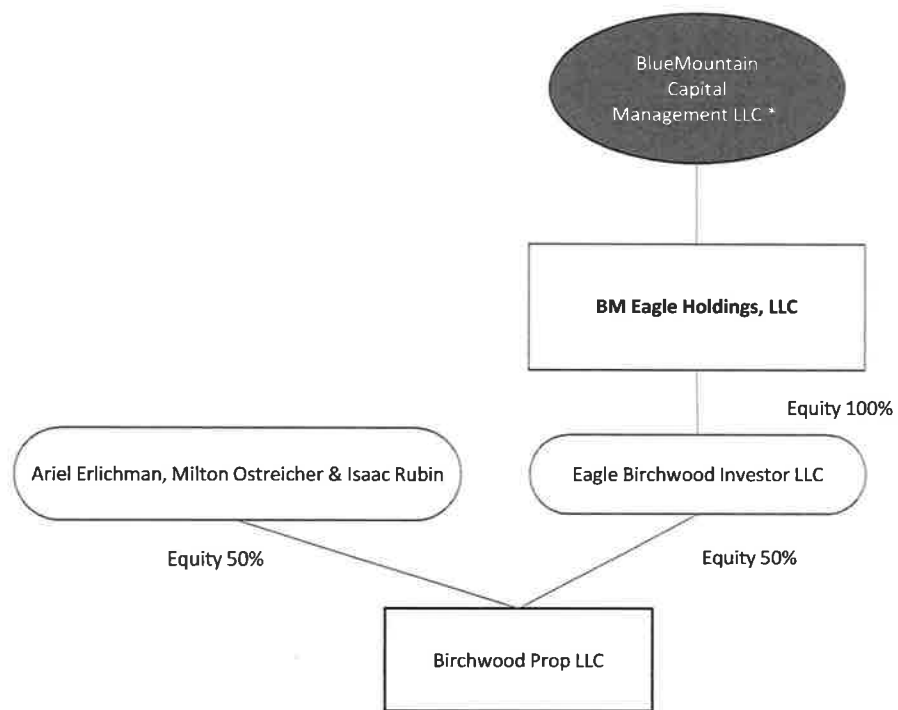
Month	Rent
9/1/2017	202,333.33
10/1/2017	202,333.33
11/1/2017	202,333.33
12/1/2017	202,333.33
1/1/2018	202,333.33

- 5. The Board also requests a copy of the lease agreement so it can review its specific terms.**

RESPONSE:

A copy of the sublease between BME's affiliate Smith Ranch Prime Tenant, LLC and the Smith Ranch Facility operator is submitted herewith and as **Attachment 38** to the Revised Certificate of Need Narrative.

## ATTACHMENT 37



\* Note: BM Eagle Holdings LLC is owned 80% by Investment Funds managed on a discretionary basis by BlueMountain Capital Management LLC and 20% by co-investors of BlueMountain Capital Management LLC.

## ATTACHMENT 38

## **SUBLEASE AGREEMENT**

THIS SUBLEASE AGREEMENT (this "Sublease") is made and entered into as of the 1<sup>st</sup> day of September, 2017, by and between SMITH RANCH PRIME TENANT, LLC, a Delaware limited liability company ("Sublandlord") and GHC OF SAN RAFAEL, LLC, a California limited liability company ("Subtenant").

### **RECITALS**

A. WHEREAS, Sublandlord, as the successor-in-interest of California Nursing Centers, L.L.C., a Delaware limited liability company (the "Original Tenant"), is a party to that certain Amended and Restated Lease dated as of January 1, 2016 ("Original Lease"), as amended by that certain Consent, Estoppel, Lease and Option Agreement Amendment dated as of August 31, 2017 (the "Ocadian Consent") (the Original Lease, as amended by the Ocadian Consent, is referred to herein as the "Master Lease"), a copy of which is attached hereto as Exhibit "A", by and among between, Original Tenant, as tenant, and Ocadian Care Centers, LLC, a California limited liability company (the "Landlord"), as landlord; and

B. WHEREAS, pursuant to the Master Lease, Sublandlord is leasing that certain skilled nursing facility known as Smith Ranch Care Center and located at 1550 Silveira Parkway, San Rafael, CA 94903 (the "Facility"), legally described on Exhibit "A" attached hereto; and

C. WHEREAS, Life Generations Healthcare LLC, an affiliate of Subtenant ("Life Generations"), and BM Eagle Holdings, LLC ("BMH"), an affiliate of Sublandlord, are parties to that certain Real Estate Purchase Agreement dated as of July 28, 2017 (the "Purchase Agreement"), pursuant to which BMH has agreed, among other things, to enter into this Sublease.

D. WHEREAS, concurrently herewith, that certain Second Amended and Restated Option Agreement dated August 31, 2017 by and between Landlord (and affiliates of Landlord) on the one hand, and California Nursing Centers, L.L.C. (a Kindred affiliate) on the other hand (the "Option Agreement") is being assigned to an affiliate of BMH, pursuant to which such BMH affiliate has the option to acquire the Facility on the terms more specifically set forth therein (the "Smith Ranch Option").

E. WHEREAS, Sublandlord wishes to sublease the Facility to Subtenant, and Subtenant wishes to sublease the Facility from Sublandlord, all on the terms and conditions set forth herein. All capitalized terms that are not defined herein shall have the same meaning as in the Master Lease.

### **AGREEMENT**

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged,

the parties agree as follows effective as of the "Closing" under (and as defined in) the Purchase Agreement (referred to herein as the "Sublease Commencement Date"):

Section 1.     General Provisions.

1.01     The term of this Sublease shall commence on the Sublease Commencement Date and shall terminate on the earlier of (i) the expiration of the term under the Master Lease, (ii) in the event of an Option Default (defined below) the earlier of the six-month anniversary of the Option Default Election Date (as defined below) or the date on which Sublandlord signs a lease for the Facility with a replacement tenant.

1.02     This Sublease is, and shall be at all times, subject and subordinate to the Master Lease and to all matters to which the Master Lease is subject and subordinate. Subtenant hereby covenants and agrees to fully comply with and abide by all terms and conditions set forth in the Master Lease as if Subtenant were the tenant under the Master Lease as of the Sublease Commencement Date; provided, however, that in no event shall Subtenant be deemed to have assumed any Excluded Liabilities (as defined below) or liability for any Excluded Master Lease Defaults (as defined below). Except as otherwise provided herein, the parties agree that all the terms, covenants and conditions contained in the Master Lease shall be applicable to this Sublease. Subtenant hereby expressly assumes and agrees to fully comply with and be bound by, for the benefit of Sublandlord, each and every obligation, liability, responsibility and duty of Sublandlord under the Master Lease (including, without limitation, any and all increases in rent and other charges thereunder) respecting the Facility solely to the extent first arising on or after the Sublease Commencement Date, it being agreed and understood that in no event shall Subtenant be deemed to have assumed any obligation, liability, responsibility and/or duty of "Lessee" under the Master Lease related to the period of time prior to the Sublease Commencement Date, all of which the parties acknowledge constitute Excluded Liabilities herein (collectively, the "Excluded Liabilities"). Furthermore, notwithstanding anything to the contrary in this Sublease, and except as otherwise provided in the Ocadian Consent following a "Recognition" (as defined in the Ocadian Consent), any default(s) under the Master Lease respecting Lessee Guarantor and/or any other guarantor's obligations in connection with the Master Lease shall not be deemed defaults of Subtenant under this Sublease (collectively, "Excluded Master Lease Defaults"). Subtenant acknowledges and agrees that Sublandlord shall have no liability to Subtenant in the event of an Excluded Master Lease Default not caused by Sublandlord or BMH; provided, however, the foregoing shall not limit Sublandlord's obligations under Section 1.11, including, without limitation, the return of the Initial Earnest Money to Subtenant. Without limiting the generality of the foregoing, Subtenant shall maintain for the benefit of Landlord, Sublandlord, and Subtenant the types of insurance with the minimum coverage amounts required under the Master Lease, including, but not limited to, Article XIII of the Master Lease. All such insurance policies so maintained shall be in accordance with the requirements of Article XIII in the Master Lease and shall name (x) Landlord, (y) any other parties designated by Landlord from time to time pursuant to Article XIII of the Master Lease to be an additional insured and/or loss payee (as



applicable) to the extent provided in the Master Lease, and (z) Sublandlord as additional insured and/or loss payee (as applicable) to the extent provided in the Master Lease.

Subtenant acknowledges that, in accordance with the requirements of the Master Lease, the Facility shall not be enrolled in the Medi-Cal program without Landlord's and Sublandlord's prior written consent which Landlord and Sublandlord may withhold in their respective sole and absolute discretion.

1.03 The parties further agree that, except as otherwise provided herein, the Subtenant shall have each and every of the rights and privileges of the Sublandlord under the Master Lease. For the purposes of this Sublease, wherever in the Master Lease the word "Landlord" or "Lessor" is used it shall be deemed to mean the Sublandlord herein and wherever in the Master Lease the term "Tenant" or "Lessee" is used it shall be deemed to mean the Subtenant herein, and whenever in the Master Lease the word "Commencement Date" is used it shall be deemed to mean the "Sublease Commencement Date" and "Effective Time" shall be deemed to mean 12:01 am on the Sublease Commencement Date. Subtenant's indemnification obligations under the Sublease (as incorporated from the Master Lease), shall include Damages (as defined in the Master Lease) from the failure of Sublessee to perform any of the covenants, agreements, terms, provisions, or conditions contained in the Master Lease that Sublessee is obligated to perform under the provisions of this Sublease insofar as it relates to the period from and after the Sublease Commencement Date (except to the extent any such obligation is the result of the gross negligence or willful malfeasance of Sublandlord, Sublandlord's breach of this Sublease and/or constitutes an Excluded Liability and/or Excluded Master Lease Default provided such Excluded Master Lease Default occurs prior to Recognition, as that term is defined in the Ocadian Consent). The rights and obligations of Sublandlord and Subtenant to each other under this Sublease shall be the rights and obligations of the Landlord and Sublandlord to each other under the Master Lease, which is incorporated herein by reference, except for those provisions in the Master Lease which are directly contradicted by this Sublease (in which event the terms of this Lease Sublease shall control over the Master Lease).

1.04 Intentionally Omitted.

1.05 This Sublease is not an assignment of the Master Lease by Sublandlord to Subtenant, and Subtenant does not assume and shall not be liable to any person or entity for obligations arising under the Master Lease with respect to the period prior to the Sublease Commencement Date.

1.06 Sublandlord hereby authorizes Subtenant to deal directly with the Landlord with respect to any and all matters arising under the Master Lease; provided that Subtenant shall keep Sublandlord apprised, in a timely fashion, of all such dealings.

1.07 Reserved.

1.08 During the Term, Subtenant shall pay to Sublandlord a fixed annual rent equal to \$2,428,000.00 (the "Sublease Base Rent"). Subtenant shall

also be responsible for paying any and all other Rent first due under the Master Lease after the Sublease Commencement Date (other than Base Rent), except to the extent such other Rent pertains to any Excluded Liabilities, and/or any Excluded Master Lease Default(s). At the times provided for Rent increases under the Master Lease, the Sublease Base Rent shall concurrently be increased in the same amounts. At all times the Sublease Base Rent shall equal the Base Rent due under the Master Lease (except as otherwise set forth in this Sublease). The Sublease Base Rent shall be paid directly by Subtenant to Landlord at the times and in the manner Base Rent for the Facility is due and payable by Sublandlord to Landlord under the Master Lease and Subtenant shall concurrently provide to Sublandlord evidence of timely payment of same.

1.09 The obligations and liabilities of Subtenant under this Sublease shall be guaranteed by Life Generations Healthcare LLC, a California limited liability company ("Guarantor"), pursuant to the terms and provisions of a guaranty, substantially in the form of guaranty executed pursuant to the Master Sublease entered into concurrently herewith between 1359 Pine Street SF, LLC, a Delaware limited liability company, 1575 Seventh Avenue SF, a Delaware limited liability company, and 1224 Rossmoor Parkway WV, LLC, a Delaware limited liability company, as Landlord, and GHC Of North Master, LLC, a California limited liability company, as Tenant (the "Guaranty"). On or before the Sublease Commencement Date, Subtenant shall cause Guarantor to execute and deliver a fully executed Guaranty to Sublandlord. Subtenant agrees that the Guaranty shall also run to and for the benefit of Landlord.

1.10 At the direction of Life Generations in accordance with the Purchase Agreement, Sublandlord and/or BMH shall cause the Smith Ranch Option to be exercised in accordance with the terms of the Option Agreement. An uncured default by Sublandlord and/or BMH under the Option Agreement and/or under the Purchase Agreement (to the extent pertaining to obligations with respect to the Smith Ranch Option) shall be a default by Sublandlord under this Sublease. Similarly, as between Subtenant and Sublandlord only, an uncured default by Subtenant and/or Life Generations under the Purchase Agreement to the extent pertaining to obligations with respect to the Smith Ranch Option, shall be a default by Subtenant under this Sublease. The foregoing is not, however, intended to cross default the Option Agreement and the Master Lease. Sublandlord retains the right to exercise the Smith Ranch Option for the benefit of Sublandlord or BMH should Life Generations fail to timely direct Sublandlord and/or BMH to exercise same. This Section 1.10 is subject to the terms of the Ocadian Consent following a Recognition under the Ocadian Consent.

1.11 Sublandlord acknowledges that Subtenant desired to purchase the Facility at the Closing under the Purchase Agreement, but that the parties were unable to effectuate such sale because of timing delays associated with Landlord's contemplated 1031 exchange, and that Subtenant is therefore entering into this Sublease in reliance on Sublandlord maintaining the Master Lease and the Option Agreement in full force and effect pending the conveyance of the Facility to Subtenant pursuant to the Option Agreement, and that Subtenant would not have entered into this Sublease but for Subtenant's right to acquire the Facility pursuant to the Option Agreement. Accordingly, Sublandlord, based solely on the representations and warranties of Kindred Healthcare

Operating, Inc (“Kindred”) set forth in that certain Asset Purchase Agreement between Kindred and BMH dated as of June 30, 2017, and that certain Consent, Estoppel, Lease and Option Agreement Amendment dated as of July \_\_, 2017 executed by, among others, Smith Ranch Land Company, Inc., a California corporation and Ocadian Care Centers, LLC, a California limited liability company, (i) represents and warrants to Subtenant that the Master Lease and Option Agreement are in full force and effect, and Sublandlord is not aware of any default under the Master Lease or Option Agreement by any party thereto, (ii) shall not terminate the Master Lease or Option Agreement voluntarily (including as a result of casualty damage), or modify the Master Lease or Option Agreement, without Subtenant’s prior written consent, (iii) will use its commercially reasonable efforts to obtain any consent or performance on behalf of the Subtenant required of the Master Landlord under the Master Lease, (iv) will refrain from any act or omission that would materially and adversely affect Subtenant’s rights under this Sublease and/or with respect to the Option Agreement, or would result in the failure or breach of any or the covenants, provisions, or conditions of the Master Lease and/or the Option Agreement, and (v) subject to the last sentence of Section 1.10 above, will timely exercise the Option if and when directed by Subtenant. Without limiting the foregoing, if for any reason other than a default of Subtenant under this Sublease (or under the Purchase Agreement as it pertains to the Smith Ranch Option), fee title to the Facility is not conveyed to Subtenant or its designee in accordance with the Option Agreement (an “Option Default”), then, at the election of Subtenant to be exercised in writing within ninety (90) days of the date on which title to the Facility was to be conveyed in accordance with the Option Agreement (such exercise date referred to herein as the “Option Default Election Date”): (a) Sublandlord shall cause BMH to promptly reimburse Life Generations for the \$4,700,000 Initial Earnest Money paid pursuant to the Purchase Agreement, (b) the Sublease shall terminate early as more specifically set forth in Section 1.01 above, and (c) notwithstanding anything to the contrary in Section 1.08 or elsewhere in this Sublease, for so long as Subtenant continues to operate the Facility, the total Rent payable under this Sublease shall be reduced by fifty percent (50%). Notwithstanding anything in this Sublease to the contrary, in the event of a discrepancy between the terms of this Sublease and the terms of the Purchase Agreement, the terms of the Purchase Agreement shall be controlling. This Section 1.11 is not applicable following a Recognition under the Ocadian Consent, except as otherwise set forth in the Ocadian Consent, but without limiting Life Generations’ rights under the Purchase Agreement as between Life Generations and BMH.

## Section 2      Miscellaneous.

2.01    In the event that any party to this Sublease brings suit to enforce any provision of this Sublease or is required to defend any action, the defense to which is any provision of this Sublease, the unsuccessful party agrees to pay to the prevailing party its actual third party costs and reasonable attorneys’ fees.

2.02    This Sublease is made and entered into in the State of California, and shall in all respects be interpreted, enforced, and governed by and under the laws of that State.

2.03 This Sublease together with the Master Lease and the Purchase Agreement contain the entire agreement and understanding between the parties concerning the subject matter hereof, and supersedes and replaces all prior negotiations, proposed agreements, and agreements, whether written, oral or implied. Each of the parties hereto acknowledges that no other party, nor any agent or attorney of any other party, has made any promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof, to induce it to execute this Sublease in reliance upon any such promise, representation, or warranty not contained herein.

2.04 All notices to be given by any party to this Sublease to the other parties hereto or thereto shall be in writing, and shall be (a) given in person, (b) deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, or (c) sent by national overnight courier service with confirmed receipt, each addressed as follows:

If to Sublandlord: Smith Ranch Prime Tenant, LLC  
c/o BME Holdco, LLC  
45 Broadway, Suite 2640  
New York, NY 10006  
Attention: Elliott Mandelbaum  
Fax: 212-269-1521

If to Subtenant: 6 Hutton Centre Drive, Suite 400  
Santa Ana, CA 92707  
Attention: Thomas Olds, Jr.  
Fax: 714-434-3995

2.05 Whenever in this document the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular to refer to and include the plural.

2.06 This Sublease may not be modified except by a writing signed by all parties hereto, and consented thereto by Landlord pursuant to Section 6(h) of the Ocadian Consent, which consent shall not be unreasonably withheld, conditioned or delayed.

2.07 Each of the parties hereto agrees to undertake its best efforts, including all steps and efforts contemplated by this Sublease, and any other steps and efforts which may become necessary by order or otherwise, to effectuate this Sublease, including, without limitation, the preparation and execution of any documents reasonably necessary to do so.

2.08 The parties may execute this Sublease in two or more counterparts which shall, in the aggregate, be signed by all of the parties; each counterpart shall be deemed an original instrument as against any party who has signed it.

2.09 If any provision of this Sublease or the application thereof to any person or circumstance shall to any extent be finally determined by the applicable fact finder to be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each provision of this Sublease shall be valid and enforceable to the fullest extent permitted by law.

***[SEE ATTACHED SIGNATURE PAGE]***

**SUBLEASE AGREEMENT  
SIGNATURE PAGES**

IN WITNESS WHEREOF, the Parties have executed or caused the execution of this Sublease by their respective officers duly authorized as of the day and year first above written.

**SUBLANDLORD:**

SMITH RANCH PRIME TENANT, LLC,  
a Delaware limited liability company

By: BME Holdco Manager LLC, its Manager

By:   
Name: Elliott Mandelbaum  
Title: Authorized Signer

**SUBTENANT:**

GHC OF SAN RAFAEL, LLC,  
a California limited liability company

By: Life Generations Healthcare LLC,  
a California limited liability company  
Its: Manager

By: \_\_\_\_\_  
Name: Thomas Olds, Jr.  
Its: President and Manager

By: \_\_\_\_\_  
Name: Lois Mastrocola  
Its: Chief Financial Officer

**SUBLEASE AGREEMENT  
SIGNATURE PAGES**

IN WITNESS WHEREOF, the Parties have executed or caused the execution of this Sublease by their respective officers duly authorized as of the day and year first above written.

**SUBLANDLORD:**

SMITH RANCH PRIME TENANT, LLC,  
a Delaware limited liability company

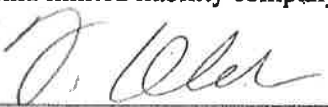
By: BME Holdco Manager LLC, its Manager

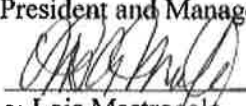
By: \_\_\_\_\_  
Name: Elliott Mandelbaum  
Title: Authorized Signer

**SUBTENANT:**

GHC OF SAN RAFAEL, LLC,  
a California limited liability company

By: Life Generations Healthcare LLC,  
a California limited liability company  
Its: Manager

By:   
Name: Thomas Olds, Jr.  
Its: President and Manager

By:   
Name: Lois Mastrocola  
Its: Chief Financial Officer