



# INVITATION TO BID AT FORECLOSURE SALE

Rosewood Care Center  
of St. Louis  
11278 Schuetz Road  
St. Louis, MO 63146

A 120 bed / 59 unit Skilled Nursing Facility

Is offered for sale at foreclosure:

- ❖ Property to be sold "all cash as is"
- ❖ HUD will not provide financing with this sale
- ❖ Minimum bid \$11,738,377



Oral bids will be  
accepted on:  
December 20,  
2019  
at:10:15 a.m.  
(local time)

Sale Location:  
East Front Door  
of the  
St. Louis County  
Circuit Court  
Building  
105 South  
Central Avenue  
Clayton,  
Missouri



U. S. Department of Housing and Urban Development  
Multifamily Property Disposition  
801 Cherry Street, Unit #45, Ste. 2500  
Fort Worth, TX 76102

**FORECLOSURE SALE  
ROSEWOOD CARE CENTER  
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## I. FORECLOSURE DEFINITIONS

The following definitions apply to capitalized terms in the Foreclosure Instructions.

1. **APPS:** The Active Partners Performance System is a secure systems website that allows HUD's business partners to manage their entity and individual participation information and submit Previous Participation Certification requests directly to HUD for processing. More information can be found at: [https://www.hud.gov/program\\_offices/housing/mfh/apps/appsmfhm](https://www.hud.gov/program_offices/housing/mfh/apps/appsmfhm).
2. **Acknowledgment By Bidder:** The document executed at the Foreclosure Sale by the Foreclosure High Bidder, obligating the Foreclosure High Bidder to the terms and conditions of the Foreclosure Sale. The document is incorporated in these Foreclosure Instructions at Section III.
3. **Act:** Multifamily Mortgage Foreclosure Act, 12 U.S.C. § 3701-15
4. **Affiliate:** Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways HUD may determine control include, but are not limited to (a) Interlocking management or ownership; (b) Identity of interests among family members; (c) Shared facilities and equipment; (d) Common use of employees; or (e) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person. (2 C.F.R. § 180.905 - Affiliate.)
5. **Approved Foreclosure High Bidder:** The Foreclosure High Bidder HUD determines, following a review of the Post-Bid Document Submittals, is qualified to purchase and own a Property.
6. **Bid:** an oral or written offer of a certain price submitted by a Foreclosure Bidder to purchase the Property that complies with all the requirements contained in the Foreclosure Instructions.
7. **Business Partners Registration (BPR):** Registration in this System is required for access to HUD's secure systems (TRACS, Inspection retrieval, Financial Reporting) for companies that have never done business with HUD.
8. **Cash Due at Foreclosure Closing:** The bid price less the Foreclosure Earnest Money Deposit plus all initial deposits to escrow and/or reserve accounts HUD may require less any prorations and any outstanding encumbrance that survived the Foreclosure Sale. Funds shall be paid in the form of a money order, certified funds or a cashier's check made payable to: The U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.
9. **Centers For Medicare and Medicaid Services (CMS):** A federal agency within the U.S. Department of Health and Human Services (HHS) that administers the Medicare program, quality standards in nursing homes and works in partnership with state governments to administer Medicaid and health insurance portability standards.
10. **Certification of Substantial Compliance:** A certification by Foreclosure High Bidder that its other properties in the jurisdiction of a Property are in substantial compliance with state and local laws. Exhibit H of the Foreclosure Instructions.

11. **Days:** Federal government business days, unless otherwise stated as calendar days.
12. **Extension Period:** A additional thirty (30) calendar day period that HUD may give for the Foreclosure Closing to occur.
13. **Foreclosure Bidder:** Person or agent at the Foreclosure Sale who submits the Foreclosure Earnest Money Deposit and registers to bid or who submits a written sealed bid in accordance with requirements in the Foreclosure Instructions.
14. **Foreclosure Closing:** Date when legal title to a Property is transferred to the Approved Foreclosure High Bidder.
15. **Foreclosure Commissioner:** An individual or entity HUD designates to conduct the Foreclosure Sale, pursuant to 12 U.S.C. § 3704 and 24 C.F.R. § 27.10. Contact information can be found in the Property at a Glance.
16. **Foreclosure Deed:** The deed that transfers title of a Property to the Approved Foreclosure High Bidder. It will not contain any warranties of title.
17. **Foreclosure Earnest Money Deposit:** The amount of the deposit identified in the Property at a Glance that must be submitted at the Foreclosure Sale for each Property.
18. **Foreclosure Extension Fees:** Fee HUD assesses when the Foreclosure High Bidder requests a Extension Period for Foreclosure Closing. If authorized, the Approved Foreclosure High-Bidder must pay for the entire Extension Period, the amount of which HUD determines, consistent with current policies and procedures.
19. **Foreclosure High Bidder:** The Foreclosure Bidder that submits the highest responsive bid amount to the Foreclosure Commissioner
20. **Foreclosure Instructions:** These instructions to Bid at Foreclosure Sale including all the accompanying exhibits, which sets forth the terms and conditions of the sale of a Property at a Foreclosure Sale and includes information about the documents and actions necessary to submit a complete and responsive bid and for HUD to approve a Foreclosure Bidder as qualified.
21. **Foreclosure Sale:** Sale of a Property pursuant to 12 U.S.C. § 3710.
22. **Letter of Credit (LOC):** An unconditional, irrevocable, and documentary assurance to HUD, issued from a recognized FDIC-insured lending institution, that serves as an incentive for the Approved Foreclosure High Bidder/Owner to satisfactorily complete the Post-Closing Repairs. The required amount is identified in the Property at a Glance.
23. **Operator:** The licensed operator of a Property that leases the Property from the Purchaser pursuant to a lease agreement.

24. **Owner:** The Approved Foreclosure High Bidder that completes the Foreclosure Closing and takes title to a Property through the execution and recordation of the Foreclosure Deed.
25. **Post-Bid Document Submittals:** All documents, statements, and forms listed in the Foreclosure Instructions that must be submitted by the Foreclosure High Bidder and its principals and management company, if any, in order to be considered for HUD-approval to purchase and/or manage a Property.
26. **Post-Closing Repairs:** All HUD-required repair and/or rehabilitation work at a Property that the Approved Foreclosure High Bidder/Owner must perform after Foreclosure Closing in a workmanlike manner and compliant with state and local codes, laws, ordinances, regulations, and HUD's Physical Condition Standards. A list of HUD-required repairs is provided on the Cost Estimate Summary as Exhibit E to these Foreclosure Instructions. HUD has estimated the cost of these repairs. Actual costs ultimately incurred by the Approved Foreclosure High Bidder/Owner may be more or less than the estimates.
27. **Previous Participation Certification:** HUD Healthcare Previous Participation forms and required supporting documentation submitted by the Foreclosure High Bidder and principals after the Foreclosure Sale, containing information about the Foreclosure High Bidder's and principals' previous participation in HUD programs and, if applicable, other federal, state, or local housing programs. HUD uses the Previous Participation Certification, in combination with other factors, as a prerequisite to determine whether the Foreclosure High Bidder and its affiliates can participate in owning and/or operating a Property.
28. **Principal:** (a) an officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or (b) a consultant or other person, whether or not employed by the participant or paid with Federal funds, who (1) is in a position to handle Federal funds; (2) is in a position to influence or control the use of those funds; or, (3) occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction; or (c) a person who has a critical influence on, or substantive control over, a covered transaction, whether or not employed by the participant. (For complete definition see 2 C.F.R. § 180.995 – Principal, as supplemented by 2 C.F.R. § 2424.995.)
29. **Property:** The Rosewood Care Center identified in the Property At A Glance in these Foreclosure Instructions pursuant to the Foreclosure Instructions, including all real and personal property appurtenant thereto.
30. **Property at a Glance:** Document in these Foreclosure Instructions that contains information specific to this Property and contact information for the Realty Specialist.
31. **Realty Specialist:** HUD staff member identified in the Property at a Glance documents who can be contacted if a Bidder has inquiries concerning a Property or the Foreclosure Sale.
32. **Receiver:** Long Hill at Rosewood, LLC appointed by Final Order of the US District Court, Northern District of Illinois, Eastern Division, on September 7, 2018, to operate the Property.
33. **Second Highest Foreclosure Bidder:** The Bidder at the Foreclosure Sale that submits the second highest Bid to the Foreclosure Commissioner. Bidders who submit a Bid in an amount less than the second highest

amount could ultimately be deemed Second Highest Foreclosure Bidder should HUD not approve the Foreclosure High Bidder or a higher Bidder withdraws its higher Bid.

34. **Statement of Experience:** A written statement in the Post-Bid Document Submittals the Foreclosure High Bidder provides for HUD to determine whether to grant approval as Approved Foreclosure High Bidder of the Property.
35. **Use Agreement:** The Foreclosure Sale Use Agreement which the Approved Foreclosure High Bidder will execute at the Foreclosure Closing and which will run with the land to bind the Owner and any permitted successors and assigns.

## II. FORECLOSURE SALE INSTRUCTIONS

### SECTION A - INTRODUCTION AND GENERAL INFORMATION

1. **GENERAL:** These instructions and requirements apply to a Foreclosure Bidder interested in submitting a bid at the Foreclosure Sale for the Property. This Property is one of thirteen (13) separate residential healthcare facilities located in Illinois and Missouri that HUD is offering for sale. Prior to the Foreclosure Closing, HUD will require the successful Foreclosure High Bidder to comply with the terms of the Foreclosure Instructions and possess or have the ability to obtain all necessary licensing to continue operations of the Property as a licensed healthcare facility.
2. **SALE TYPE:** The Foreclosure Sale is an oral, open bid sale that takes place in the county where the Property is located at the date and time indicated in these Foreclosure Instructions.
3. **BID RESPONSIVENESS:** A Bid must meet all the terms of the Foreclosure Sale to be responsive. Each Bid shall be firm, unconditional, fixed in an amount certain, and not in the alternative. Special conditions, alterations, or deletions will render a Bid non-responsive. The terms of the Foreclosure Sale are those set out in the Foreclosure Instructions. Lack of the Foreclosure Earnest Money Deposit will be cause for HUD to reject a Bid.
4. **SALE TO HIGHEST QUALIFIED FORECLOSURE BIDDER:** The sale of the Property will be awarded to the Foreclosure High Bidder that HUD determines is qualified to purchase the Property. Bidding is restricted to Foreclosure Bidders with the requisite capacity, qualifications, and experience to own and operate a skilled nursing facility in Illinois. The Foreclosure High Bidder's ability to obtain the appropriate governmental approvals will be considered in determining whether a Foreclosure Bidder is qualified. Pursuant to 24 CFR 27.20, the defaulting owner of the Property, or any Principal, successor, Affiliate, or assignee thereof is not eligible to bid, or otherwise acquire, the Property.
5. **NO REDEMPTION PERIOD:** This Foreclosure Sale is not subject to redemption by the defaulting owner of the Property.
6. **BID ACCEPTANCE OR REJECTION:** At any time prior to the Foreclosure Closing, HUD reserves the right to reject any and all Bids, to waive any informality in any received Bid, and to reject the Bid of any Foreclosure Bidder HUD determines lacks the eligibility to bid or the experience, ability, or financial responsibility necessary to own and manage the Property in a manner acceptable to HUD.
7. **CANCELLATION OF SALE:** HUD reserves the unconditional right to cancel the Foreclosure Sale and reject any and all Bids at any time prior to the Foreclosure Closing.
8. **FORECLOSURE BIDDER'S DUE DILIGENCE:** Foreclosure Bidders should carefully review the information in the Foreclosure Instructions and any additional information made available by HUD and should undertake their own analysis of the Property to evaluate the benefits and risks associated with purchasing the Property.
9. **FORECLOSURE POST-CLOSING REQUIRED REPAIRS:** The Post-Closing Repairs that the Owner must complete are included in Riders 2 and 3 of the Use Agreement and Exhibits D and E to these Foreclosure Instructions. The Owner's obligation to complete all Post-Closing Repairs will survive the Foreclosure Closing and will be recorded as part of the Use Agreement and with the Foreclosure Deed.
10. **OUTSTANDING ENCUMBRANCES THAT SURVIVE FORECLOSURE:** By entering its Bid, the Foreclosure High Bidder agrees to assume all responsibility for paying all outstanding encumbrances and expenses, including, but not limited to, taxes, assessments, utility bills and any liens not extinguished by the Foreclosure Sale. Bidders are advised to determine outstanding expenses, taxes, utilities, assessments, and liens as part of their due diligence and consideration when submitting a Bid.
11. **RECORDATION OF CERTAIN DOCUMENTS:** The Use Agreement, any and all riders thereto and the Post-Closing Repairs will be recorded with the Foreclosure Deed.

12. **QUESTIONS:** Inquiries regarding the Property or the Foreclosure Instructions, should be addressed to the Realty Specialist identified in the Property at a Glance.

## **SECTION B – PREVIOUS PARTICIPATION CERTIFICATION FOR PARTICIPANTS IN HUD HEALTHCARE PROGRAMS**

1. **GENERAL:** HUD requires the Foreclosure High Bidder, Operator, any management agent and any other participants in the operation of the Property to file a Previous Participation Certification in either electronic or paper format. The Foreclosure High Bidder must comply with all Previous Participation Certification requirements as outlined in the Acknowledgment by Bidder.
2. **ELECTRONIC FILING:** The Foreclosure High Bidder can use APPS to electronically file the Previous Participation Certification. Prior registration in APPS is not mandatory in order to bid at the Foreclosure Sale but is recommended. If the organization/entity has not conducted business with HUD previously, access to HUD's secure systems will be required and the entity must first register with BPR. Click on the "Business Partner Registration HUD Multifamily" link on the APPS Home Page at the following URL to start the registration process. [http://www.hud.gov/program\\_offices/housing/mfh/apps/appsmfhm](http://www.hud.gov/program_offices/housing/mfh/apps/appsmfhm). After registration, a Foreclosure Bidder must wait at least 24 hours before registering for a Coordinator or User ID. Foreclosure Bidders must allow approximately two (2) weeks to receive the User/Coordinator ID. Instructions for registering for both Secure Systems and APPS are located on the Active Partners Performance System (APPS) web site, accessible using the above cited URL. Once a Foreclosure Bidder receives a Coordinator ID, details on requesting access key codes and other relevant information is provided in APPS Quick Tips available on the APPS web site.
3. **PAPER FILING:** A Foreclosure High Bidder using paper format must submit the Previous Participation Certification and an organizational chart, in accordance with HUD NOTICE H 2016-15, of the proposed ownership entity to the Realty Specialist within the time limits outlined in Section 4 below. All controlling participants must be identified in compliance with 24 CFR Part 200, Subpart H.
4. **UPDATES:** If the Foreclosure High Bidder expects an Operator or management agent to participate in the management of the Property, or if the Foreclosure High Bidder is changing principals, adding principals, changing the name of the purchasing entity, or changing tax identification from information already recorded in the Previous Participation Certification, it is the Foreclosure High Bidder's responsibility to ensure that all necessary changes are made to the Previous Participation Certification within the prescribed time frames.
5. Failure of any participant to submit a Previous Participation Certification or other required document(s) within the time frame specified in Section D below may be grounds for HUD to reject the Bid.
6. HUD must approve the Foreclosure High Bidder's experience, qualifications and capacity in order for the Foreclosure High Bidder to purchase the Property. This includes, but is not limited to, Previous Participation Certification approval.

## **SECTION C - FORECLOSURE SALE PROCEDURES AND SUBMISSION OF FORECLOSURE BIDS**

1. **GENERAL:** The Foreclosure Sale will be an oral, open bid sale that will occur on the date at the time and location indicated on the cover of the Foreclosure Instructions. HUD has designated a Foreclosure Commissioner to conduct the foreclosure sale of this Property.
2. **BIDDING AT THE FORECLOSURE SALE:** A Foreclosure Bidder must either:
  - a. State its Bid price orally at the foreclosure sale, or



- b. Submit a sealed written Bid with the Foreclosure Earnest Money Deposit to be received by the Foreclosure Commissioner at least three (3) business days before the published date of the Foreclosure Sale. Written Bids, if received timely, will be read aloud before oral Bids are accepted. The front of the outside envelope must conspicuously state “SEALED FORECLOSURE BID: Rosewood Care Center of St. Louis. DO NOT OPEN” Refer to the Property At A Glance for the mailing address of the Foreclosure Commissioner.
3. **CORRECTIONS:** Any changes or erasures made to a written Bid must be completed and initialed by the Foreclosure Bidder or Foreclosure Bidder’s agent at least 2 business days prior to the published date for each Foreclosure Sale.
  4. **E-MAILED OR FACSIMILE BIDS:** E-mailed or facsimile Bids and/or Bid modifications will not be considered.
  5. **ITEMS THAT MUST BE SUBMITTED AT THE FORECLOSURE SALE:**
    - a. Foreclosure Earnest Money Deposit:
      - i. The Foreclosure Earnest Money Deposit in the amount specified in the Property at a Glance must be submitted directly to the Foreclosure Commissioner or his designee before the start of the Foreclosure Sale and prior to presenting an oral bid or simultaneously with a written bid.
      - ii. The Foreclosure Earnest Money Deposit must be in the form of a money order, certified funds, or cashier’s check payable to: THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. No other method of payment is acceptable.
      - iii. A financial organization submitting a bid on its own behalf must have the Foreclosure Earnest Money Deposit drawn on a different financial organization.
      - iv. A Foreclosure Bidder’s lack of proper Foreclosure Earnest Money Deposit is cause for HUD to reject any Bid.
    - b. Evidence of Foreclosure Bidder eligibility, if applicable.
  6. **NOTIFICATION TO THE FORECLOSURE HIGH AND SECOND HIGHEST BIDDERS:** After reviewing all the written and oral Bids, the Foreclosure Commissioner will orally notify the Foreclosure High Bidder and Foreclosure Second High Bidder of their bidding positions immediately after the Foreclosure Sale.
  7. **ACKNOWLEDGMENT BY BIDDER:** Immediately after the Foreclosure Sale, the Foreclosure High Bidder must submit a signed copy of the Acknowledgment by Bidder to the Foreclosure Commissioner.
  8. **HUD AS FORECLOSURE HIGH BIDDER:** In the event that HUD bids its debt at the Foreclosure Sale, is declared the Foreclosure High Bidder, and purchases the Property, HUD will dispose of the Property in accordance with the all applicable laws governing the disposition of HUD-owned property.

## SECTION D - POST-FORECLOSURE SALE PROCEDURES

1. **CONTINUANCE OF OFFERS:** All Bids shall be deemed to be continuing offers from the time of the Foreclosure Sale until rejection by HUD or until the Foreclosure Closing.
2. **POST-BID DOCUMENTS SUBMITTALS:** The Foreclosure High Bidder must submit the following items to the Realty Specialist within five (5) business days after the Foreclosure Sale:
  - a. **Previous Participation Certification**
    - i. Previous participation Certification – Controlling Participants (Exhibit H)
    - ii. Eligibility Certification (Exhibit G)

**Certification of Substantial Compliance:** A complete and original certification found as Exhibit I to the Foreclosure Instructions. If HUD determines that properties disclosed by the Foreclosure High Bidder are

not in substantial compliance with federal regulations and state and local codes, HUD may determine the Foreclosure High Bidder is not qualified to purchase a Property. The Foreclosure Earnest Money Deposit may be forfeited.

- c. **Operations Transfer Agreement:** The sale of the Property at Foreclosure Sale will necessitate a transfer of the current operations from the current owner to an owner of the Foreclosure High Bidder's choosing. Foreclosure High Bidder shall submit an executed Operations Transfer Agreement, attached to these Foreclosure Instructions, to ensure a smooth and orderly transition to a new Operator.
- d. **Written Statement of Experience:** The Foreclosure High Bidder must submit a written Statement of Experience. Instructions for preparing the written Statement of Experience are provided in the Acknowledgment by Bidder.

FAILURE TO SUBMIT THE REQUIRED DOCUMENTS WITHIN THE INDICATED TIME FRAME MAY BE GROUNDS FOR REJECTION OF THE BID. HUD RESERVES THE RIGHT TO REJECT THE BID AND RETAIN THE BIDDER'S EARNEST MONEY DEPOSIT.

### 3. **QUALIFICATION, ACCEPTANCE, REJECTION OF BID:**

- a. Required Bidder Qualifications to Purchase Property:
  - i. The objective of HUD's multifamily foreclosure process is to transform troubled and/or distressed residential healthcare properties into viable, long-term residential healthcare resources. To accomplish this, HUD will only sell the Property to a Foreclosure High Bidder that is eligible to bid, has the financial capacity and demonstrated experience (approximately five (5) years) of successfully owning, managing and transforming distressed and/or troubled healthcare properties into viable, skilled nursing and/or supportive housing resources.
  - ii. HUD has the sole and absolute discretion to evaluate Foreclosure Bidders, starting with the Foreclosure High Bidder and proceeding in descending order, if necessary, on the Foreclosure Bidder's eligibility to bid, demonstrated experience, qualifications and capacity to purchase and successfully transform the Property into a long-term, viable residential healthcare resource. HUD will base its determination on a review of the Post-Bid Document Submittals and information HUD independently obtains and verifies. A Foreclosure Bidder must demonstrate that he owns (or has owned) and is successfully managing and operating (or has successfully managed and operated) properties of similar size and characteristics as the Property.
  - iii. HUD may, in its sole discretion, accept or reject any Bid submitted for the purchase of the Property. HUD's review and approval of the Previous Participation Certification is a requirement for the Foreclosure High Bidder to purchase of a Property. However, Previous Participation Certification review is only one aspect of HUD's approval process concerning the Foreclosure Bidder's qualifications.
  - iv. If HUD determines that the Foreclosure High Bidder is not eligible to bid, does not have the experience, qualifications and/or financial capacity to purchase the Property, HUD will reject the Bid and proceed to the Foreclosure Second Highest Bidder pursuant to the terms of the Foreclosure Instructions.
  - v. In the event that HUD rejects a Bid, HUD will return the Foreclosure Bidder's Foreclosure Earnest Money Deposit, provided the Foreclosure High Bidder has not failed to meet time limits required to submit documentation, or made any misrepresentation or material omission(s) in the Post-Bid Document Submittals. If the Foreclosure High Bidder fails to properly submit all required documentation within the required time limit or HUD determines that the Foreclosure High Bidder misrepresented his or her eligibility to bid, experience, qualifications, or financial capacity, the

Foreclosure Earnest Money Deposit will be forfeited and retained as liquidated damages. HUD may seek any and all additional remedies.

- vi. HUD may require the Foreclosure High Bidder to obtain the services of a qualified operator and/or management firm. HUD must approve any operator and/or management agent prior to the Foreclosure Closing.
- b. Bidder Approval:
  - i. Upon HUD's determination that the Foreclosure High Bidder is qualified, the Foreclosure High Bidder will be confirmed as and identified as the Approved Foreclosure High Bidder;
  - ii. Upon HUD's determination that the Foreclosure High Bidder is not qualified, HUD will notify the Foreclosure High Bidder in writing;
  - iii. If HUD rejects the Foreclosure High Bidder, HUD may in its sole discretion elect to contact the Foreclosure Second Highest Bidder, which may include succeeding bidders as bidders withdraw or do not qualify, to purchase the Property. If contacted, the Foreclosure Second Highest bidder or succeeding bidder will be offered the opportunity to purchase a Property and will be given forty-eight (48) hours to submit evidence of eligibility to bid, the Foreclosure Earnest Money Deposit and execute the Acknowledgment by Bidder, and thereby will become the Foreclosure High Bidder. HUD will then review the Post-Bid Document Submittals, which must be submitted within the same timeframes detailed in Section D of the Foreclosure Instructions beginning from the date the Acknowledgment is executed, in order to determine if the new Foreclosure High Bidder is qualified to purchase the Property;
  - iv. HUD's notification of rejection due to lack of eligibility and/or qualifications, if applicable, shall be given when mailed to the individual or entity that executed the Acknowledgment by Bidder; and
  - v. HUD's rejection of a Bid will be made as promptly as possible.
4. **FORECLOSURE EARNEST MONEY DEPOSIT:** Immediately following the Foreclosure Sale, the Foreclosure Earnest Money Deposit will be returned to all Foreclosure Bidders except the Foreclosure High Bidder. HUD will not pay interest on Foreclosure Earnest Money Deposits.
  - a. If HUD determines that the Foreclosure High Bidder is qualified, the Foreclosure Earnest Money Deposit will be credited toward the Cash Due at Foreclosure Closing.
  - b. If HUD rejects the Bid because the amount is unacceptable, the Foreclosure Bidder's Foreclosure Earnest Money Deposit will be refunded.
  - c. If HUD determines the Foreclosure High Bidder is not qualified to purchase the Property and the Foreclosure High Bidder has complied with the requirements of the Foreclosure Instructions, the Foreclosure Earnest Money Deposit will be refunded.
  - d. If, during the review of the Foreclosure High Bidder, HUD finds that the Foreclosure High Bidder has made any material misrepresentation or material omission(s) in its submission of evidence of eligibility and/or documentation, the Foreclosure Earnest Money Deposit will be forfeited. HUD has the sole discretion to determine whether such misrepresentation or omission is material.
  - e. If the Foreclosure High Bidder fails to comply with the provisions of the Foreclosure Instructions, the Foreclosure Earnest Money Deposit will be forfeited.
5. **REVIEW OF OPERATIONS/MANAGEMENT:** HUD will review the Post-Bid Document Submittals to determine if the proposed Operator and/or management entity has the necessary qualifications to operate, manage, and/or administer the type of subsidy and characteristics of the Property. HUD may elect to discuss operations/management plans of the Property after the Foreclosure High Bidder provides the Post-Bid Document Submittals. HUD reserves the right to reject the Bid of any Foreclosure High Bidder and retain the Foreclosure Earnest Money Deposit if the HUD does not find the management acceptable.

6. **FORECLOSURE CLOSING DATE:** The date and place for Foreclosure Closing will be determined by HUD and the Foreclosure Commissioner and occur within the time period specified in the Acknowledgment by Bidder. HUD reserves the right to extend the Foreclosure Closing as set forth in the Acknowledgment by Bidder.

## SECTION E – FORECLOSURE CLOSING

1. **EXECUTION OF USE AGREEMENT:** The Approved Foreclosure High Bidder and HUD will execute the Use Agreement at Foreclosure Closing. HUD will record the Foreclosure Deed and the Use Agreement, with all riders.
2. **CASH DUE AT FORECLOSURE CLOSING:** At Foreclosure Closing, the Approved Foreclosure High Bidder will pay all Cash Due at Foreclosure Closing. Cash Due at Foreclosure Closing is the Bid price less the Foreclosure Earnest Money Deposit received, less any prorations, plus all initial deposits to escrows and/or reserve accounts, if applicable. Any outstanding encumbrance amount that survives the Foreclosure Sale is also due.
3. **PRORATIONS:**
- Approved Foreclosure High Bidder is responsible for paying all taxes, assessments, liens, and utility bills including but not limited to, water, sewer, gas and electric, and any other encumbrances not extinguished by the Foreclosure Sale. These amounts will not be prorated.
  - If Foreclosure Extension Fees were paid, and the Foreclosure Closing occurs prior to the expiration of an Extension Period, the prorated amount of the Foreclosure Extension Fees for the unused portion of the Extension Period will be credited toward the Cash Due at Foreclosure Closing.
4. **FORECLOSURE CLOSING EXPENSES:** HUD will pay all recordation fees for the Foreclosure Deed and Use Agreement. Irrespective of local custom, the Approved Foreclosure High Bidder shall pay all remaining Foreclosure Closing expenses, including, but not limited to, all documentary stamp taxes, and any costs in connection with a review of title or title insurance.
5. **METHOD OF PAYMENT:** Cash Due at Foreclosure Closing shall be paid only in the form of a money order, certified funds, or cashier's check made payable to:  
THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.
6. **POST-CLOSING REPAIR ESCROW:** If Post-Closing Repairs are required as a condition of Foreclosure Closing, the Approved Foreclosure High Bidder shall provide Letters of Credit totaling the required amount in the Property at a Glance as assurance that the Approved Foreclosure High Bidder will complete the Post-Closing Repairs.
7. **CONVEYANCE:** Conveyance of the Property shall be by Foreclosure Deed at the Foreclosure Closing. The Foreclosure Deed will not contain any warranties of title.
8. **DOCUMENTS TO BE FURNISHED OR EXECUTED AT FORECLOSURE CLOSING:**

Foreclosure Sale Use Agreement  
Letter(s) of Credit  
Bill of Sale  
Closing Statement  
Signed Operations Transfer Agreement  
Any Other Documentation HUD Deems Necessary

## SECTION F - DISCLAIMERS

1. This is an “all-cash, as-is” foreclosure sale. As stated above, all bidders are expected to perform their own due diligence to arrive at conclusions as to physical condition, number and occupancy of revenue producing units, estimates of operating costs, repair costs (where applicable), and any other factors bearing on valuation of the Property. HUD shall consider any Bid submitted to have been made with full knowledge of all the terms, conditions and requirements contained in the Foreclosure Instructions.
2. While HUD has exercised care to assure accuracy, all information provided is solely for potential Foreclosure Bidders to determine whether or not the Property is of such type and general character as might interest them. HUD makes no warranty as to the accuracy of such information. The failure of any Foreclosure Bidder to be fully informed as to the condition or value of the Property, or conditions of sale, will not constitute grounds for any claim, demand, adjustment or withdrawal of a Bid.
3. **UNAUTHORIZED ORAL STATEMENT OR MODIFICATIONS:** Any oral statement or modification by any HUD representative that changes or supplements the Foreclosure Instructions, or any condition hereof, is unauthorized, unenforceable, and shall confer no right upon any Foreclosure Bidder, including the Approved Foreclosure High Bidder.
4. **HUD LIABILITY:** HUD’s liability shall not exceed the Earnest Money amount submitted by the Foreclosure High Bidder.

FAILURE TO SUBMIT THE REQUIRED DOCUMENTS WITHIN THE INDICATED TIME FRAME SHALL BE GROUNDS FOR REJECTION OF THE BID. HUD RESERVES THE RIGHT TO REJECT THE BID AND RETAIN THE HIGH BIDDER’S EARNEST MONEY DEPOSIT.

### **Information /Links For Licensing and Certifications**

**CMS Online Application:** Get an [I&A System](#) user account:  
(<https://nppes.cms.hhs.gov/IAWeb/warning.do?fwdurl=/>).

Then apply in [NPPES](#) for the institution’s NPI: <https://nppes.cms.hhs.gov>.

To enroll as a Medicare provider Use your I&A System credentials to log in to  
<https://pecos.cms.hhs.gov/pecos/login.do#headingLv1>.

**CMS Paper Application:** Complete, sign, and mail the [NPI Application/Update Form \(Form CMS-10114\)](#) paper application to the address on the NPI Enumerator form. To request a hard copy application, call 1-800-465-3203, TTY 1-800-692-2326, or email [customerservice@npienumerator.com](mailto:customerservice@npienumerator.com)

### **ILLINOIS SUPPORTIVE LIVING PROGRAM**

Healthcare and Family Services – Supportive Living Program website:  
<https://www.illinois.gov/hfs/MedicalPrograms/slf/Pages/default.aspx>

Illinois Administrative Code – Supportive Living Program:  
<http://www.ilga.gov/commission/jcar/admincode/089/08900146sections.html> [Title 89: Social Services Part 146 Subpart B]

Supportive Living Program dedicated email inbox: [HFS.SLF@illinois.gov](mailto:HFS.SLF@illinois.gov)

**III. TERMS AND REQUIREMENTS OF FORECLOSURE SALE –  
ACKNOWLEDGMENT BY BIDDER**

**PART I**

FORECLOSURE BID PRICE - The Undersigned, \_\_\_\_\_, (the "Foreclosure High Bidder") submits a bid of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) (the, "Foreclosure Bid") at the Foreclosure Sale of Rosewood Care Center of St. Louis (the "Property"), the legal description of which is included as Exhibit F, to be paid as follows:

1. FORECLOSURE EARNEST MONEY DEPOSIT: \$ 50,000 in the form of a money order, certified funds, or cashier's check, as the Earnest Money Deposit, which has been submitted at the Foreclosure Sale to the Foreclosure Commissioner, and which shall not earn interest, **and**
2. BALANCE OF THE BID: \$ \_\_\_\_\_, to be paid by the Foreclosure High Bidder at the Foreclosure Closing, in the form of a money order, certified funds, or cashier's check in accordance with the Acknowledgment. The Foreclosure Closing will be held at a place, date and time established in accordance with Part II, paragraph 4 below.
3. CLOSING COSTS, DEPOSITS, REPAIR ESCROW: In addition to the above, the Foreclosure High Bidder will be required to pay all Foreclosure Closing costs at Foreclosure Closing, regardless of local custom, and, where applicable, deposits to reserve accounts, and/or Letters of Credit as described in the Foreclosure Instructions, the Use Agreement and Riders incorporated therein.
4. PRORATIONS:
  - a. Foreclosure High Bidder is responsible for paying all taxes, assessments, liens, and utility bills including, but not limited to, water/sewer, gas and electric, and any other encumbrances not extinguished by the foreclosure. These amounts will not be prorated.
  - b. If Extension Fees were paid, and the Foreclosure Closing occurs prior to the expiration of the Extension Period, the prorated amount of the Extension Fees for the unused portion of the Extension Period shall be credited against the amount owed by the Foreclosure High Bidder at Foreclosure Closing.

**PART II**

The Foreclosure High Bidder, by executing this Acknowledgment, accepts the following requirements as conditions of purchasing the Property:

1. ACKNOWLEDGMENT OF TERMS: Foreclosure High Bidder affirms to have full knowledge of all the terms, conditions and requirements of the Foreclosure Sale contained herein, including the Use Agreement and Foreclosure Instructions, which are incorporated by reference in this Acknowledgment.
2. EXECUTION OF USE AGREEMENT: Without limiting the foregoing, at Foreclosure Closing the Foreclosure High Bidder will, in addition to any other related documents, execute the Use Agreement and required Exhibits as contained in the Foreclosure Instructions. Such documents will control the use of the Property for a specified period, be recorded with the Foreclosure Deed, and run with the land.
3. SUBMISSION OF POST-BID DOCUMENTS BY FORECLOSURE HIGH BIDDER:
  - a. Five (5) Days After Foreclosure Sale:
    - i. **Previous Participation Certification:**
      - (a) Electronic Filers:
        - (i) Foreclosure Bidders not registered in BPR, APPS and Secure Systems: Submit certification and evidence of BPR, Secure Systems and APPS Registrations. (Copies of the Participant Successfully Registered page from the APPS System and the Multifamily Coordinator and User Registration page or the Participant Detail Page.)
        - (ii) Electronic Filers registered in APPS and Secure Systems: Submit evidence of filing Previous Participation Certification.

(b) Paper Filers:

- (i) Previous Participation Certification Controlling Participant (Section 232): The completed paper form, with original signatures, for the Foreclosure High Bidder and all principals. Proposed ownership must have established tax identification or social security number; an entity “to be formed” will not be accepted, and
- (ii) Organizational Chart: an organizational chart, reflecting all principals of the purchasing entity and each principal’s percentage or ownership must accompany the completed required HUD Form.

- ii. **Certification of Substantial Compliance:** Complete, original certification (Exhibit I). The Foreclosure High Bidder must certify to HUD that any/all properties that are owned by the Foreclosure High Bidder or its Affiliates and are located in the same jurisdiction (city or town) where the Property is located are in substantial compliance with applicable state and local housing statutes, regulations, ordinances and codes.

NOTE: If HUD determines that such properties of the Foreclosure High Bidder are not in substantial compliance with state and local codes, HUD may refuse to sell the Property to the Foreclosure High Bidder and retain its Earnest Money Deposit.

- iii. **Written Statement of Experience:** The Foreclosure High Bidder must submit a written Statement of Experience demonstrating approximately five (5) years of experience in successfully owning and managing properties similar to the Property. The Statement of Experience shall provide the following information for all properties similar to the Property, not to exceed three (3) specific examples. The Statement of Experience should not exceed five (5) pages per property:

- The location of other owned residential healthcare properties.
- The number of units/beds and construction type for each property.
- Identify type of management.
- Identify properties that have government assistance and type of assistance
- Identify the initial physical needs of each property and how they were addressed.
- Identify the social needs of each property and how they were addressed.
- Identify the economic needs of each property and how they were addressed.

In addition, for the Property, describe how you will:

- Satisfy conditions of the sale, i.e., Post-Closing Repairs, etc.
- Implement a sound financial and physical management program for the Property.
- Respond to the needs of the residents and work cooperatively with service providers.
- Provide adequate organizational staff and financial resources to the Property.
- Provide services, maintenance and utilities to the Property.
- Use other government assistance, if applicable.

- iv. **Operations Transfer Agreement:** The Foreclosure High Bidder must submit an executed Operations Transfer Agreement to transition the operations of the facility to a new operator of its choosing. The form of the Operations Transfer Agreement has already been agreed upon by HUD and the Receiver that the District Court appointed to operate the Project. Any changes to the proposed Operations Transfer Agreement must be approved by HUD and the Receiver.

These Foreclosure Instructions are for a residential healthcare facility. HUD is not providing any financial assistance or mortgage insurance with this Foreclosure Sale.

Based on the required documentation set forth above, as well as any additional information independently obtained and verified, HUD will determine whether the Foreclosure High Bidder is eligible to bid, has the requisite experience, qualifications and financial capacity to purchase the

Property. This determination is within HUD's sole and absolute discretion. If HUD determines that the Foreclosure High Bidder is not eligible to bid, does not have the experience, qualifications and/or financial capacity to purchase the Property, HUD will reject the bid and proceed to the next highest bidder pursuant to the terms of the Foreclosure Instructions.

- b. Within Ten (10) Days of Foreclosure Sale: The Foreclosure High Bidder must submit the following documents:

**Healthcare Forms:** Foreclosure Bidders must complete and submit the Previous Participation documents listed below, as applicable, with their links:

- i. *Borrower:* HUD-90013-ORCF - [HUD-90013-ORCF](#)
- ii. *Principal of the Borrower:* HUD-90014-ORCF - [HUD-90014-ORCF](#)
- iii. *Operator:* HUD-90015-ORCF - [HUD-90015-ORCF](#)
- iv. *Parent of the Operator:* HUD-90016-ORCF - [HUD-90016-ORCF](#)
- v. *Management Agent:* HUD-90017-ORCF - [HUD-90016-ORCF](#)
- vi. Personal Financial and Credit Statement (Form HUD-92417-ORCF) - [HUD-92417-ORCF](#)
- vii. Project Owner's Certification for Owner-Managed Projects (Form HUD-9839-ORCF) – [HUD-9839-ORCF](#)

- c. Within Fifteen (15) Days of Foreclosure Sale: If the Operator, management agent or the Foreclosure High Bidder's ownership entity changes, the individual or entity must subsequently resubmit a corrected Previous Participation Certification.

**NOTICE:** It is the Foreclosure High Bidder's responsibility to ensure compliance with form and document submission as required in these Foreclosure Instructions and Acknowledgment. Failure to comply with all requirements of the Foreclosure Instructions or Acknowledgment may result in the Foreclosure High Bidder being declared ineligible to purchase the Property. In such case, the Foreclosure Bidder shall forfeit the Foreclosure Earnest Money Deposit and any Extension Fees paid.

All forms and instruments referred to in this Acknowledgment are standard HUD forms prepared by HUD, used by HUD in the Property's jurisdiction, and contain additional covenants and conditions required by the Invitation.

4. ESTABLISHMENT OF FORECLOSURE CLOSING DATE, TIME AND PLACE:

- a. Time is of the essence.
- b. If HUD finds the Foreclosure High Bidder qualified based on all required Post-Bid Document Submittals, the Foreclosure High Bidder will be identified as the Approved Foreclosure High Bidder and notified in writing. The Foreclosure Closing **shall be within sixty (60) calendar days of such notification**, unless extended pursuant to paragraph 9 below.
- c. The Foreclosure Closing date and place will be determined by the Foreclosure Commissioner and/or HUD and will take place within the time period specified above. The Approved Foreclosure High Bidder will be notified of said date and place by HUD and/or the Foreclosure Commissioner.

5. FORECLOSURE CLOSING, CLOSING EXPENSES AND TRANSFER OF POSSESSION:

- a. The sale and transfer of title and possession of the Property shall be effective upon Foreclosure Closing.
- b. Notwithstanding any local custom, Approved Foreclosure High Bidder shall pay all Foreclosure Closing costs and expenses, excluding fees for recording the Foreclosure Deed and Use Agreement. Recording fees for the Foreclosure Deed and Use Agreement shall be paid by HUD.

6. PAYMENTS DUE AT FORECLOSURE CLOSING: The Approved Foreclosure High Bidder shall pay any remaining balance of the Bid at the Foreclosure Closing in the form of a money order, certified funds, or cashier's check made payable to: **THE U.S. DEPARTMENT OF HOUSING AND URBAN**



**DEVELOPMENT.** If necessary, the Approved Foreclosure High Bidder shall also make the appropriate deposits to escrow and reserve accounts.

7. **POST-CLOSING REPAIR ESCROW:** At Foreclosure Closing, the Approved Foreclosure High Bidder shall submit to HUD a minimum of two (2), and a maximum of four (4) unconditional, irrevocable and documentary Letters of Credit that:
  - i. total \$90,000.00, and
  - ii. shall remain in effect and may be drawn on by HUD for at least six (6) months past the later of the deadline or actual date for the completion of repairs

Each Letter of Credit must expire at least six (6) months beyond HUD's repair completion deadline. Letters of Credit may be returned as the Owner completes Post-Closing Repairs and HUD inspects and accepts them, with the exception of the final Letter of Credit, which will be held for six (6) months past the completion deadline to ensure the integrity of Post-Closing Repairs.

8. **LIQUIDATED DAMAGES:** Should the Approved Foreclosure High Bidder fail to perform all obligations hereunder for any reason including, but not limited to, failure to establish the legal entity to take title in a timely manner, HUD reserves the right to retain the Foreclosure Earnest Money Deposit.
9. **EXTENSION FEES:** HUD has the sole and absolute discretion to grant extensions allowing more time for Foreclosure Closing to occur. Any extension will be on the following conditions:
  - a. A written request, which clearly states the reason for the Approved Foreclosure High Bidder's inability to close the sale on or before Foreclosure Closing, or any Extension Period, must be received within seven (7) days prior to Foreclosure Closing, or within any Extension Period. The request **must be accompanied by the payment** of the required Extension Fees and sent to the following address:

Multifamily Property Disposition  
Attn: Jovanna M. Morales, Director  
801 Cherry Street, Unit #45, Ste. 2500  
Fort Worth, TX 76102
  - b. The Approved Foreclosure High Bidder will be notified in writing of all granted Extension Periods.
  - c. For each Extension Period the Approved Foreclosure High Bidder requests and HUD approves, Extension Fees shall be equal to;
    - i. \$ 1.08, per bed, per calendar day, which is \$ 129.60 daily, a cost of \$ 3,888.00, which covers the Extension Period, **or**
    - ii. one and one-half percent (1.5%) of the bid price, whichever is greater.
  - d. Extension Fees are not credited against the Cash Due at Foreclosure Closing. However, if the Foreclosure Closing is held prior to the expiration of an Extension Period, the prorated amount of the Extension Fees for the unused portion of the Extension Period shall be credited toward the Cash Due at Foreclosure Closing.
  - e. HUD shall not be obligated to grant an additional Extension Period because it has previously granted one or more Extension Period.
  - f. If the Approved Foreclosure High Bidder does not submit any HUD-required form within sufficient time for HUD's review and such delay necessitates an Extension Period, Extension Fees shall be paid for this period.
  - g. Extension Fees must be submitted by money order, certified funds or cashier's check made payable to:  
**THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**
10. **FORECLOSURE BIDDER RESTRICTIONS:**
  - a. No member of/or delegate to Congress, resident commissioner of the Property, or local elected official, shall be allowed to share in any part of this Foreclosure Sale, or to any benefit arising from it. However, this provision does not apply to the Foreclosure Sale to the extent that Approved Foreclosure High Bidder is a corporation and the Foreclosure Sale is for the corporation's general benefit.

- b. If the Foreclosure High Bidder is, or becomes suspended, debarred, or temporarily denied from participating in HUD programs prior to Closing, this Foreclosure Sale may be terminated. In addition, if such suspension, debarment or temporary denial of participation occurs either before or after the Foreclosure High Bidder's execution of this Acknowledgment, any Extension Fees paid under paragraph 9 shall be retained by HUD as liquidated damages.
- c. Pursuant to 24 C.F.R. Part 27.20(f), the defaulting mortgagor, or any Principal, successor, Affiliate, or assignee thereof, on the multifamily mortgage being foreclosed, shall not be eligible to bid on, or otherwise acquire, the Property.

11. AS-IS SALE; NO REPRESENTATIONS:

- a. The Approved Foreclosure High Bidder shall accept the Property "as-is." HUD makes no representations or warranties concerning the physical condition of the Property. In addition, HUD does not represent or warrant the number and occupancy of revenue producing units, or any factor bearing upon the value of the Property or otherwise.
- b. The Foreclosure High Bidder acknowledges that the Foreclosure Bid is based on its own evaluation of the Property and not upon any representations by HUD. The Foreclosure High Bidder's failure to inspect, or to be fully informed as to any factor bearing upon the valuation of the Property, shall not affect the liabilities, obligations or duties of HUD, nor be a basis for termination of this Foreclosure Sale or for the return of the Foreclosure Earnest Money Deposit or Extension Fees paid to HUD.

12. RISK OF LOSS AND RIGHTS OF RESCISSION: In the event of any substantial damage to the Property prior to Foreclosure Closing by any cause including, but not limited to, fire, flood, earthquake, tornado and significant vandalism other than willful acts or neglect, HUD, in its sole discretion, may negotiate with the Foreclosure High Bidder for a reduction in the Foreclosure Bid corresponding to the estimated amount of damages. *Such amount shall be added to the Post-Closing Repair amount, if applicable.* If the Foreclosure Bid reduction cannot be negotiated or if the Foreclosure High Bidder and HUD are unable to agree on the amount by which the Foreclosure Bid should be reduced or on the amendment to the Post-Closing Repair requirements, the Foreclosure High Bidder may withdraw the bid. In such case, the Foreclosure Earnest Money Deposit and any Extension Fees paid will be returned, *unless* there is cause to retain the Foreclosure Earnest Money Deposit based on breach of the Invitation and/or Acknowledgment.

13. LIMITATION OF LIABILITY: In no event shall HUD's liability exceed the portion of the Bid paid to HUD.

14. ANTI-COLLUSION CERTIFICATION:

- a. The Foreclosure High Bidder certifies that:
  - i. The Foreclosure Bid was arrived at independently, without any consultation, communication, or agreement with any other bidder relating to:
    - (a) the bid price;
    - (b) the intention to submit a bid price; or
    - (c) the methods or factors used in calculating the bid price.
  - ii. The Foreclosure Bid has not been and will not be knowingly disclosed, directly or indirectly, to any other bidder or competitor before or during the actual time of the bid event, unless otherwise required by law; and
  - iii. No attempt has been made or will be made to induce any other bidder to submit or not to submit a bid for the purpose of restricting competition.
- b. If the Foreclosure Sale requires or permits written bids, each signature on the Bid is considered to be certification by the signatory that the signatory:
  - i. Is the person in the Foreclosure High Bidder's organization with authority to bid and that the signatory has not participated and will not participate in any action contrary to paragraph a. above;

**or**

- ii. Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraph a., above;

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Organization responsible

for determining bid: \_\_\_\_\_

(a) As an authorized agent, does certify that the principals named in the above have not participated, and will not participate, in any action contrary to paragraph a. above;

and

(b) As agent, has not personally participated, and will not participate, in any action contrary to paragraph a. above.

15. FAILURE TO COMPLY: Upon the failure or refusal of the Foreclosure High Bidder to comply with any of the requirements listed above or elsewhere in these Foreclosure Instructions, HUD may declare the Foreclosure High Bidder ineligible to purchase the Property. In which case the Foreclosure High Bidder shall forfeit the Foreclosure Earnest Money Deposit and any Extension Fees paid.

**HUD reserves the right to approve or reject the proposed Operator and/or management.** If HUD determines that the Foreclosure High Bidder is not qualified to operate the Property, HUD, in its sole discretion, may either reject the Foreclosure Bid or require the Foreclosure High Bidder to obtain the services of an Operator or management firm satisfactory to HUD. If HUD chooses the latter, the Foreclosure High Bidder must provide HUD with evidence prior to Foreclosure Closing that a qualified Operator or management firm has been retained. HUD must approve the Operator or management prior to Foreclosure Closing. If the Foreclosure High Bidder does not meet this obligation, HUD reserves the right to reject the Foreclosure Bid and retain the Foreclosure High Bidder's Foreclosure Earnest Money Deposit and any Extension Fees paid.

16. SEVERABILITY: If for any reason one or more of the provisions contained in the Foreclosure Instructions, including this Acknowledgment, the Use Agreement, or any other attachments or exhibits thereto, shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision(s) of the Foreclosure Instructions, but the Foreclosure Instructions shall be construed as if such invalid, illegal or unenforceable provision(s) had never been included therein.

17. ASSIGNMENT: The Foreclosure High Bidder may not assign its rights and responsibilities under this Acknowledgment without the prior written approval of HUD.

18. CONFLICTING TERMS: In the event that there are terms or conditions herein that conflict with terms or conditions contained in the Foreclosure Instructions incorporated herein by reference, the terms or conditions of this Acknowledgment shall control.

19. REQUIRED STATEMENTS AND FORMS: The Foreclosure High Bidder acknowledges the receipt of the Use Agreement applicable to this Property's Foreclosure Sale and the inclusion of the following Riders to that Use Agreement:

- Enforcement
- Required Rehabilitation
- Environmental Hazards

## 20. EXECUTION

- a. By signature below, Foreclosure High Bidder acknowledges and agrees to the terms and conditions of this Foreclosure Sale.

- b. In the case where an agent or representative of the Foreclosure High Bidder submitted the Foreclosure Bid, the signatory attests to be duly authorized to submit the Bid on behalf of the Foreclosure High Bidder and to execute this Acknowledgment.

**WARNING:** It is a crime to knowingly make false statements to the United States in this document or any other document related to this Foreclosure Sale. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code, Section 1001 and Section 1010.

Executed by the Bidder on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

Typed Name: \_\_\_\_\_ Typed Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, ST Zip: \_\_\_\_\_

Phone No. with Area Code:(\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

#### IV. FORECLOSURE SALE USE AGREEMENT

(to be recorded as part of the Foreclosure Deed)

This Use Agreement (the "Agreement") is entered into by \_\_\_\_\_ ("Owner") and the Secretary of Housing and Urban Development ("Secretary" or "HUD").

WHEREAS, pursuant to the provisions of the Multifamily Mortgage Foreclosure Act, 12 U.S.C. § 3701 et seq. (the "Act"), and the Department of Housing and Urban Development's regulations thereunder at 24 C.F.R. Part 27, the Secretary has elected to exercise the nonjudicial power of sale provided under the Act, with respect to \_\_\_\_\_, HUD Project No. \_\_\_\_\_, (the "Property") and land upon which the Property sits, a legal description of which is attached as Exhibit F; and

WHEREAS, pursuant to the Act and to provisions of 12 U.S.C. Section 1715z-11a, the Secretary has authority to impose certain use restrictions, as set forth in this Agreement, on the Property subject to a mortgage held by the Secretary that is sold at foreclosure to a purchaser other than HUD; and

WHEREAS, by deed executed this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_[Foreclosure Commissioner] \_\_\_\_\_, the Property has been conveyed to the Owner;

NOW THEREFORE, in consideration of the mutual promises set forth herein and in further consideration of the sale of the Property to the Owner, the parties agree as follows:

1. **TERM OF AGREEMENT:** This Agreement shall be in effect for three (3) years from the date of this Agreement (the "Restricted Period".) During the Restricted Period the Property must be maintained as a residential healthcare facility.
2. **SUBJECT TO EXAMINATION:** The Property shall at all times during the Restrictive Period,
  - a. Be maintained in decent, safe and sanitary condition and in good repair to the greatest extent possible,
  - b. Maintain full occupancy to the greatest extent possible,
  - c. Be maintained as a skilled nursing facility for the Restricted Period,

At the request of the Secretary, Owner must supply evidence by means of occupancy reports, physical condition reports, operation reports, or any evidence as requested to ensure that the above requirements are being met.

3. **HAZARD INSURANCE:** Hazard insurance shall be maintained in an amount to ensure that the Owner is able to restore the Property so that it meets the rental housing requirements described in this Agreement after restoration.
4. **DESTRUCTION OF PROPERTY:** In the event that any, or all, of the Property is destroyed or damaged by fire or other casualty, the money derived from any insurance on the Property shall be applied to rebuild or replace the Property destroyed or damaged, unless the Secretary gives written approval to use insurance proceeds for other purposes.
5. **DEMOLITION OF PROPERTY:** The Owner will not demolish any part of the Property or withdraw any part of the Property from use during the Restrictive Period (except as temporarily necessary for routine repairs), without the prior written approval of HUD.
6. **REMEDIES FOR NONCOMPLIANCE:** Upon any violation of any provision of this Agreement by the Owner, HUD may give written notice thereof to the Owner by registered or certified mail, to the address stated in this Agreement, or such other address as subsequently designated by the Owner as its legal business address. If such violation is not corrected to the satisfaction of the Secretary within thirty (30) calendar days after the date such notice is mailed or within such further time as HUD reasonably determines is necessary to correct the violation, without further notice, HUD may declare a default under this

Agreement and may apply to any court, state or federal, for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Property in accordance with the terms of this Agreement, and/or such other relief as may be appropriate, since the injury to the Secretary arising from a default of the terms of the Agreement would be irreparable and the amount of damage would be difficult to ascertain. The availability of any remedy under the Agreement shall not preclude the exercise of any other remedy available under any provision of the law, nor shall any action taken in the exercise of any remedy be considered a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not be construed as a waiver of the right to exercise that or any other right or remedy at any time.

7. **SUCCESSORS AND ASSIGNS:** This Agreement is binding upon the Owner's heirs, successors and assigns. If HUD approves a Conveyance during the Restricted Period, it shall be conditioned upon, among other things, the new owner assuming in writing the obligations under this Agreement.

8. **RESTRICTIONS:** No member of or delegate to Congress or resident commissioner of the Property shall be allowed to share in any part of the benefits of the Use Agreement, but this provision shall not extend to this Agreement if the Agreement is made with a corporation and the benefits of the Agreement are for its general benefit.

9. **CONTRADICTIONARY AGREEMENTS:** The Owner certifies that it has not, and agrees that it will not, execute any other Agreement with provisions contradictory to the provisions of this agreement, and that, in any event, the requirements of this Agreement are controlling as to the rights and obligations set forth herein and supersede any other provisions or requirements in conflict with this Agreement.

10. **SEPARABILITY:** The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions hereof.

11. **AMENDMENT:** This Agreement may be amended by the mutual written consent of the parties, except those provisions required by statute. Such amendment will be recorded in the land records in the jurisdiction of the Property.

12. **RIDERS TO THE USE AGREEMENT:** The Riders listed below and initialed by the Owner and HUD are attached to and incorporated into this Agreement and will be recorded in the land records to run with the land. Capitalized terms used but not defined in a Rider shall have the meaning given in this Agreement.

- Enforcement
- Required Rehabilitation
- Environmental Hazards

13. **PRIORITY:** This Agreement shall be recorded against the Project in a superior position to any post foreclosure liens or mortgage debts.

[Signature Page Follows]

IN WITNESS WHEREOF:

The Owner has executed this Use Agreement this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

WITNESS:

OWNER:

\_\_\_\_\_

By: Signature

\_\_\_\_\_

Typed Name of Owner

Street Address

City, State, Zip Code

The U.S. Department of Housing and Urban Development has executed this Use Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

WITNESS:  
DEVELOPMENT

FOR: THE SECRETARY OF HOUSING AND URBAN

\_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_

Official's Typed Name

Title

RIDER 1 OF 3  
**ENFORCEMENT**

1. The restrictive covenants set forth in this Agreement shall run with the land hereby conveyed and, to the fullest extent permitted by law and equity, shall be binding for the benefit and in favor of and enforceable by HUD.
  
2. Without limiting any other rights and remedies available, HUD shall be entitled to:
  - a. institute legal action to enforce performance and observance of these covenants,
  - b. enjoin any acts which violate these covenants,
  - c. exercise any other legal or equitable right or remedy with respect to these covenants.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is part of the Use Agreement.

Owner \_\_\_\_\_

HUD \_\_\_\_\_



RIDER 2 OF 3  
**REQUIRED REHABILITATION**

1. **REPAIRS:** All property and property improvements must meet or surpass, at a minimum:
  - All state and local codes and ordinances,
  - Physical Condition Standards (pursuant to 24CFR Part 5),
  - General Repair and Property Standards (listed below),
  - Post-Closing Repair Requirements (Exhibit E) and
  - Environmental Hazards Rider (collectively the “Repairs”).
  - a. General Repair and Property Standards
    - i. Exterior:
      - (a) Any trip hazards (deviations of  $\frac{1}{2}$  in or greater) on all surfaces of the property must be mitigated.
      - (b) Repair and/or replace any loose, damaged or deteriorated facade, trim, posts, and cornice.
      - (c) All exterior paint must be fully intact, mold and rust free.
      - (d) All drainage, water diversion, roofing, and water proofing systems must be performing as originally intended to ensure positive drainage and minimize pooling.
      - (e) All windows and exterior doors must be operable, lockable, draft free and water tight.
    - ii. Interior/MEPs:
      - (a) All mechanical, plumbing, plumbing fixtures, electrical fixtures, electrical devices, appliances and HVAC must be in “Good” operating condition and hazard free.
      - (b) All fire protection devices and systems must be working as originally intended.
      - (c) All ventilation systems must be working as originally intended.
      - (d) All interior painted surfaces and millwork must be fully intact, free of excessive grease and dirt.
      - (e) All floor coverings must be fully attached, free of holes, chips, frays and excessive dirt.
      - (f) All interior doors, locks, closures and stops must be operating as originally intended.
    - iii. Workmanship and Materials:
      - (a) All work shall be performed in a workmanlike manner and in accordance with generally accepted practices and procedures.
      - (b) Materials installed shall be of such kind and quality to ensure that the dwelling will provide acceptable durability for the duration of the Restricted Period.
      - (c) All repair/rehabilitation work must be performed in a manner compliant with the essential and material requirements of all state codes, local codes, laws, ordinances, regulations, Physical Conditions Standards pursuant to 24 CFR Part 5.
      - (d) All long and short lived building components must be performing as originally designed or intended.
  - b. Post-Closing Repair Requirements (Exhibit E) describes additional, specific required Repairs. It is probable that not all units were surveyed. However, units not surveyed must also be rehabilitated to the same level as those units that were surveyed.
  - c. All Repairs, required by this provision, will not be considered complete until such time as HUD or its designee has inspected the Repairs and HUD has accepted the Repairs.
2. **REPAIR PERIOD:** The Repair Period begins at closing and expires **eighteen (18) months** from the date of the Use Agreement. The Owner covenants that the Repairs will be completed within the Repair Period.
3. **EXTENSION OF THE REPAIR PERIOD:** If the Owner cannot complete the Repairs within the Repair Period, Owner shall submit a written request for an extension to HUD stating the reason(s) for Owner’s inability to complete the Repairs. Owner’s request must be received not less than thirty (30) calendar days prior to the expiration of the Repair Period.

- a. In the event an extension for completion of Repairs is granted, the Owner shall extend the expiration of the LOCs, or Payment and Performance Bond(s) accordingly;
  - b. Extensions of time to complete Repairs are within HUD's sole and absolute discretion; and
  - c. The granting of one or more extensions shall not obligate HUD to grant additional extensions.
4. **REPAIR ESCROW:** To ensure completion of the Repairs by the Owner, at Closing the Owner shall deliver to HUD a repair escrow **in the amount of \$ \_\_\_\_\_ reflected on the Property At A Glance (Exhibit B)** in the following form:
- Letter of Credit (LOC): An unconditional, irrevocable and non-documentary Letter of Credit (LOC) which shall remain in effect and **may be drawn by HUD for at least twenty-four (24) months** from the date of closing (sample acceptable LOC is included in bid kit). Repair Escrow will be returned when the Owner completes the Repairs and HUD has inspected and accepted the Repairs.
5. **REPORTING:** HUD will monitor the progress of the Repairs using reports from the Owner and inspections performed by HUD or a designee.
- a. Quarterly Reports: Owner must submit quarterly reports (Post-Closing Repair Report) to HUD on the status of Repairs. The first report is due 90 days after closing and must include:
    - i. the number and type of units completed,
    - ii. a list of major Repairs and percentage completed,
    - iii. a narrative describing:
      - (a) the status of the planned rehabilitation, i.e. are Repairs ahead of, on schedule, or behind on the original rehabilitation schedule.
      - (b) any special circumstances which may or have delayed the Repairs.
  - b. Additional Reports: Upon request, Owner must submit reports, in addition to the Quarterly Reports, to HUD. The frequency and content of these reports will be provided to the Owner by HUD.

HUD may perform periodic inspections to ascertain the status of the Repairs. If, at any time, HUD determines the Owner is failing to make adequate progress toward completion of the required Repairs or that the Repairs completed are not acceptable to HUD, Owner may be required to provide a plan with milestones to show that acceptable Repairs can be completed within the Repair Period. Failure to meet milestones without adequate justification is a reason for Noncompliance as explained below.

6. **CHARGES:** The Purchaser covenants not to increase the room charges for any unit/bed, from the room/unit charge a resident paying on the Closing Date, until such unit meets all the requirements set forth in paragraph 1, above. Room charges to be covered by a CMS Contract may be increased only pursuant to and following execution of such Contract.
7. **RELOCATION:** If temporary or permanent relocation is necessary because of Repairs required under this provision, Owner covenants to comply with the Relocation provision of this Use Agreement and applicable State and local laws.
8. **NONCOMPLIANCE:** If Owner fails to complete the required Repairs within the Repair Period and no extension by written agreement has been granted by HUD, HUD and any/all successors in office, in its sole discretion, shall be entitled to:
- Cash any Repair Escrow or request performance under any payment and/or performance bond, and seek remedies provided in the Enforcement provision of this Use Agreement, as HUD deems appropriate.

If HUD cashes the Owner's Repair Escrow, HUD will NOT apply the funds to complete the Repairs. HUD will retain the funds as liquidated damages or for any other purposes as HUD deems appropriate. In the event that HUD cashes the Owner's Repair Escrow, the Owner is still responsible for completion of the Repairs and HUD may initiate sanctions to prevent the Owner from doing business with the U.S. Government in the future.

These rights and remedies may be exercised separately or in combination with the rights and remedies set forth in the Enforcement provision of this Use Agreement.

9. **LENDER OR SECURITY INTEREST:** If the Owner fails to repair the Property in accordance with this Use Agreement, HUD will not exercise the remedies as described in paragraph 8 above, if any lender holding a lien or security interest on the Property:
- a. Gives written notice to HUD within the period provided for Repairs, that it intends to complete the Repairs, and
  - b. Completes such Repairs within thirty (30) calendar days of the notice or within such longer periods as HUD may approve in writing. However, HUD is under no obligation to notify any lender or security interest of its intent to cash any Repair Escrow.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is part of the Use Agreement.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is part of the Use Agreement.

Owner \_\_\_\_\_

HUD \_\_\_\_\_

RIDER 3 OF 3  
**ENVIRONMENTAL HAZARDS**

Purchaser covenants that within six months of the date of Closing they will:

1. Investigate and test the Property for substances, chemicals and waste (collectively "Hazardous Substances") and perform cleanup, remedial, removal or restoration work required by any governmental authority ("Inspect and Remediate Requirements").
2. Certify to HUD (in a form acceptable to HUD) that the Inspect and Remediate Requirements have been performed in accordance with this provision.
3. Indemnify, defend, and hold HUD harmless from any liability arising from Purchaser's failure to satisfactorily perform the Inspect and Remediate Requirements. Purchaser acknowledges that HUD's acceptance of the work is not a warranty that all Hazardous Substances have been eliminated from the Property and does not relieve Purchaser of its ongoing responsibility to comply with appropriate governmental authorities.
4. This provision shall remain in effect until all Hazards referenced in this Rider have been removed and certification of such removal is provided to HUD.

Purchaser shall comply with Inspect and Remediate Requirements listed below and any additional Hazardous Substances it becomes aware of concerning:

- ASBESTOS: 29 CFR 1926 and any subsequent regulations(s) including, but not limited to, all federal, state and local laws regarding detection, abatement, containment and removal of asbestos containing materials.
- MOLD: All federal, state and local laws, and EPA guidelines regarding detection and abatement of mold.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is part of the Use Agreement.

Owner \_\_\_\_\_

HUD \_\_\_\_\_

**OPERATIONS TRANSFER AGREEMENT**

**BY AND AMONG TRANSFEREE, \_\_\_\_\_  
AND TRANSFEROR, \_\_\_\_\_**

**\_\_\_\_\_, 2019**

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This Operations Transfer Agreement (“**Agreement**”) is made and entered into as of \_\_\_\_\_, 2019 (the “**Effective Date**”) by and among \_\_\_\_\_ (“**Transferee**”) and \_\_\_\_\_ (“**Transferor**”; and, together with Transferee, collectively, the “**Parties**”, and each a “**Party**”). \_\_\_\_\_ (“**Landlord**”) is executing this Agreement solely for the purposes of Section 14.

#### RECITALS

A. Transferor is the named subtenant under a sublease agreement dated as of \_\_\_\_\_ (the “**Sublease**”) with CR Finance II, LLC (“**Master Tenant**”), pursuant to which Transferor serves as the licensed operator of the Medicare and Medicaid-certified skilled nursing facility [and supportive living facility] more fully identified on Exhibit A, including identification of the number and types of beds, attached hereto (the “**Facility**”).

B. The Facility premises are owned by \_\_\_\_\_ (“**Owner**”), and Master Tenant is the named tenant under that certain master lease agreement with Owner, dated as of \_\_\_\_\_ (the “**Master Lease**”).

C. The U.S. Department of Housing and Urban Development (“**HUD**”) is the Owner’s mortgagee of the Facility, and Owner owes mortgage payments to HUD. HUD is also such a mortgagee for twelve other facilities that are owned by Affiliates of Owner, all also subject to the Master Lease.

D. On behalf of HUD, the United States filed a lawsuit seeking, among other things, the appointment of a receiver for the Facility, which lawsuit is captioned *United States of America v. Alton Real Estate, Inc., et al.*, Civil No. 18-cv-05625, and is pending in the United States District Court Northern District of Illinois Eastern Division (the “**Receivership Action**”).

E. In the Receivership Action, Long Hill at Rosewood, LLC was appointed as the receiver (the “**Receiver**”) on an interim basis on August 21, 2018, and on a final basis pursuant to that certain Final Order Appointing Receiver on September 7, 2018 (including any amendments thereto, the “**Receiver Order**”). Pursuant to, without limitation, paragraph 12, including 12(p), and (q) of the Receiver Order, the Receiver has the authority to enter into this Agreement, on behalf of Transferor, to transfer the operations of the Facility to Transferee.

F. Pursuant to the terms of this Agreement, Transferee desires to acquire, and Transferor desires to transfer to Transferee, the business and operations of the Facility and, in connection therewith, the Operations Assets (as hereinafter defined).

G. Transferee (or Transferee’s Affiliate) and HUD are entering into or have entered into a purchase and sale agreement (“**PSA**”), pursuant to which Transferee (or its Affiliate) shall acquire fee title to the Facility premises. **[alternatively: HUD and a third party landlord (“TPL”) are entering into a purchase and sale agreement (“PSA”), pursuant to which TPL is shall acquire fee title to the Facility premises and lease the Facility to Transferee.]**

H. Upon the Closing under this Agreement (i) at the option of Transferee, the Master Lease and Sublease shall be terminated with respect to the Facility or shall be assigned to Transferee, (ii) the closing under the PSA shall be consummated **[alternatively: (ii) the closing**

**under the PSA shall be consummated and a lease of the Facility from TPL (the “TPL Lease”) to Transferee shall be consummated]** and (iii) the transactions contemplated by this Agreement shall be consummated.

**NOW, THEREFORE**, in recognition of and incorporating the introduction, definitions and recitals above, and in consideration of the terms, conditions and mutual covenants contained in this Agreement, and for good and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

**1. DEFINED TERMS.** The terms set forth on **Exhibit B** constitute certain of the defined terms in this Agreement and when used in this Agreement they shall have the respective meanings specified or referred to thereon.

**2. TRANSITION OF OPERATIONS AND ASSETS.**

**2.1 Transfer of Operations and Related Assets.** Pursuant to and subject to applicable Legal Requirements and the terms of this Agreement, and except for the Excluded Assets, as of the Effective Time and only to the extent owned by Transferor, Transferor shall sell, transfer, convey and/or assign to Transferee, and Transferee shall accept and assume, the business and the operations of the Facility including financial management, resident care, supervision of employees, and regulatory and licensure responsibility, and such conveyance shall include the following assets (but expressly excluding the Excluded Assets, the “**Operations Assets**”):

(a) all computers, computer equipment hardware, office equipment, motor vehicles and other transportation equipment, parts, supplies, keys, building keys/access passwords, and other tangible personal property which are used exclusively in connection with operation of the Facility;

(b) all inventory and supplies located at the Facility on the Closing Date, including, but not limited to, food supplies, central supplies, linens and housekeeping supplies, office supplies, disposables, prescription and non-prescription drugs and medications, and other inventories, supplies and articles of personal property of every kind and nature attached to or used in connection with the Facility;

(c) without limiting (a) and (b) above, such other items of personal property attached or appurtenant to, located on or used in connection with the ownership, use, operation or maintenance of the Facility;

(d) all Records (to the extent transferrable under applicable Legal Requirements);

(e) all Assumed Contracts, to the extent expressly assumed by Transferee in accordance with Section 7.3 below;

(f) all Governmental Authorizations owned, held or used by Transferor or the Facility in connection with the operations of the Facility and Operations Assets, and all pending applications for Governmental Authorizations related to the Facility and the operations of the Facility and Operations Assets, in each case to the extent transferable to, assignable to, or

assumable by, Transferee pursuant to applicable Legal Requirements (collectively, the “**Licenses**”);

(g) without limiting (f) above, on the basis of an assumption by Transferee, all of Transferor’s interests in and under the Medicare Provider Agreement and Medicaid Provider Agreement to the extent permitted under applicable Legal Requirements;

(h) all (i) registered and unregistered copyrights and copyright applications and all renewals and extensions related to the Proprietary Policies and Procedures and any other materials used in connection with the operation of the Facility or the Operations Assets, (ii) software, databases and information technology systems, including, without limitation, accounting and other proprietary software and all applications, custom configurations, workflows, file transfer protocols and automation scripts, but for each of the foregoing, only to the extent owned or otherwise readily and legally transferable or assignable by Transferor, (iii) domain names (URLs) and domain name registrations and all content contained in or stored in or displayed by the websites associated with such domain names that relate solely to the Facility, including, without limitation, the domain names set forth on Schedule 2.2(h); and (iv) passwords related to, as may be applicable, the software and systems (collectively, the “**Transferred IP**”);

(i) all assignable or transferrable warranties and guaranties presently in effect from contractors, suppliers or manufacturers of personal or intangible property installed in or used in connection with the Facility or any work performed or improvements included as a part of the Facility;

(j) all Facility specific telephone and telecopier and telephone directory listings used primarily in, at or with respect to the Facility;

(k) all proprietary manuals, forms, regulations, policies and procedures of Transferor used in connection with the Facility, other than Transferor’s proprietary software (collectively, the “**Proprietary Policies and Procedures**”);

(l) all marketing and sales literature, advertising materials, catalogues, and other items of similar character used solely in the operation of the Business;

(m) goodwill; and

(n) all other assets, properties, rights, business and tangible personal property of every kind and nature owned by Transferor on the Closing Date, known or unknown, fixed or unfixed, choate or inchoate, accrued, absolute, contingent or otherwise, whether or not specifically referred to in this Agreement relating exclusively to the Facility and its operations to the extent transferable and not expressly excluded pursuant to this Agreement.

**2.2 Excluded Assets.** Notwithstanding anything to the contrary contained in this Agreement, the following assets of Transferor shall not be assigned, transferred or conveyed to Transferee (collectively, the “**Excluded Assets**”):

(a) All cash, cash equivalents, securities and investments of Transferor;

(b) The “**Accounts Receivable**” of Transferor prior to the Effective Time, including without limitation (i) all trade accounts receivable representing amounts payable to Transferor for services rendered to Facility residents, or items or goods sold to Facility residents or others, (ii) amounts due Transferor on account of audits or appeals of audits, rate adjustments, reconciliations and other recoupments with any Third Party Payor or Governmental Authority, (iii) without limiting the foregoing, all claims, rights, interests and proceeds (whether received in cash, by credit to amounts otherwise due to a third party or any other proceeds) with respect to amounts overpaid by Transferor to any third party with respect to periods prior to the Effective Time (e.g., such overpaid amounts may be determined by billing audits undertaken by Transferor or Transferor’s Representatives) to the extent not offset against any underpayments by any applicable Third Party Payor in respect of services rendered prior to the Closing; and (iv) without limiting the foregoing, any receipts to the extent not offset against any overpayments by a Governmental Authority reimbursement program in respect of services rendered prior to the Effective Time, (x) relating to Transferor’s Cost Reports or rights to settlements and retroactive adjustments on the same (whether resulting from an appeal by Transferor or otherwise) with respect to time periods prior to the Closing Date, or (y) that result from Transferor’s pursuit of one or more appeals pertaining to a Governmental Authority reimbursement program;

(c) All notes receivable, capital stock, Tax refunds for tax periods prior to the Effective Time and claims under insurance policies obtained by or for the benefit of Transferor;

(d) Any License that relates to or affects the Facility but is not assignable or transferable by its terms or pursuant to Legal Requirements;

(e) Proprietary software, trademarks, trade names and trade secrets of Transferor;

(f) Except to the extent set forth in Section 2.1 (including, without limitation, the Records), and provided that Transferor shall provide Transferee with access to such data in accordance with other provisions of this Agreement below, all of Transferor’s data on telecommunications, computer and networking equipment, including any of the hard drives of Transferor’s computers;

(g) All prepaid expenses, security deposits and other current assets of the Facility (excluding deferred tax assets) except as may be otherwise set forth in this Agreement;

(h) All Contracts not expressly assumed by Transferee pursuant to this Agreement;

(i) All shared back-office and other shared services unless part of an assumed Contract;

(j) Assets of Transferor disposed of in the ordinary course of business prior to the Effective Time;

(k) The minute books and ownership records of Transferor, all Transferor Organizational Documents, stock registers, and such other records of Transferor as they

pertain to the ownership, organization, or existence of Transferor and duplicate copies of such records;

(l) All shares of any capital stock, membership interests or partner interests in any partnership, of Transferor;

(m) All of Transferor's email accounts;

(n) All rights of Transferor under this Agreement or Ancillary Documents;

(o) All insurance policies of Transferor or any of its Affiliates (including, without limitation, any officer and director insurance policies) and all rights of every nature and description under or arising out of such insurance policies, including the right to make claims thereunder, to the proceeds thereof and to any insurance refunds relating thereto;

(p) Transferor's Tax returns for periods up to and including the Closing Date and all rights of Transferor to any recoveries or refunds in respect of Taxes for periods up to and including the Closing Date, whether or not any refund of or credit for claims have been filed prior to the Closing Date;

(q) Transferor's attorney-client privilege;

(r) All Employee Benefit Plans (including Plans) and all assets related thereto;

(s) Transferor's information technology systems, emails, software licenses, corporate minute books, records, marketing materials, policies and procedures, and all assets that are used at the corporate level and do not solely relate to the operations of the Business;

(t) All claims or rights of Transferor with and among any other Transferor or amounts due from Affiliates or other related parties;

(u) All unclaimed property of any third party as of the Closing, including, without limitation, property which is subject to applicable escheat Laws;

(v) All assets of Transferor not used in connection with or held in whole or in part for use in connection with the Business; and

(w) The items of personal property brought to the Facility by Employees of Transferor or its Affiliates that are not used or held for use with the Business and the operation of any of the Facility.

**2.3 Resident Contracts.** At least ten (10) days prior to the Effective Time, or as otherwise agreed to by the Parties, or such date as may be required under applicable Legal Requirements or Resident Contracts then in effect: (a) Transferor shall provide notice to all Facility residents (and their personal representatives, if applicable) of the planned transfer of operations of the Facility to Transferee at Closing; (b) *solely to the extent required by Law,*

contemporaneously with the notice given to the residents (and their personal representatives), Transferee shall cause to be delivered to the residents (and their personal representatives) of the Facility new Resident Contracts relating to the admissions, residency, care and goods and services to be provided by Transferee to the current residents of the Facility from and after the applicable Effective Time; and (c) with respect to the existing Resident Contracts relating to the admissions, residency, care and goods and services to be provided by Transferee to the current residents of the Facility that are not provided new Resident Contracts, Transferee and Transferor shall enter into an Assignment and Assumption of Resident Agreements substantially in the form attached hereto as **Exhibit C** (the “**Assignment of Resident Contracts**”), which existing Resident Contracts shall be Assumed Contracts hereunder. Each of the Parties shall cooperate with one another and use Commercially Reasonable Efforts to facilitate timely notices to the residents (and their personal representatives), and to coordinate the delivery to and secure the signatures of all residents (or their personal representatives) as necessary to effect the purposes of this Section 2.3.

**2.4 Transfer of Patient Trust Funds and Resident Inventory.** On the first (1<sup>st</sup>) Business Day following the Closing, Transferor shall wire transfer or overnight a check to Transferee in an amount equal to the resident trust funds held by Transferor for the residents of the Facility (collectively the “**Resident Trust Funds**”). Transferor shall also transfer to Transferee all resident personal property held by Transferor for the residents of the Facility at the Effective Time (collectively, the “**Resident Inventory**”). Upon receipt, Transferee shall accept and assume responsibility for the Resident Trust Funds and Resident Inventory related to the Facility upon and pursuant to the terms of an Assignment and Assumption of Resident Trust Funds and Resident Inventory in the form attached hereto as **Exhibit D** (the “**Assignment of Resident Trust Funds**”). Transferee shall accept such assignment on behalf of such a resident and shall indemnify and hold Transferor harmless in connection with any such resident to the extent of the Resident Trust Funds received by Transferee. At least fifteen (15) days prior to the Closing Date, Transferor shall provide to Transferee a schedule identifying the residents, by Facility, having Resident Trust Funds accounts and the balances of Resident Trust Funds in such accounts as of such date. From and after the Effective Time, Transferee shall maintain and hold such Resident Trust Funds in trust for the residents or residents’ responsible parties and shall assume, perform, discharge and be accountable to such residents and responsible parties for such Resident Trust Funds in accordance with the terms of this Agreement, the Resident Contracts, any applicable other agreements or trust instruments in effect with the residents or residents’ responsible parties, and applicable Legal Requirements; provided, however, that Transferee shall have no obligation with respect to Resident Trust Funds not actually delivered by Transferor to Transferee.

#### **2.5 Assumed Liabilities**

(a) Except for the Assumed Liabilities as set forth below in Section 2.5(b), and except as may otherwise be set forth in this Agreement, Transferee shall in no manner become responsible or liable for any of the Liabilities of Transferor or any of its respective Affiliates, or otherwise arising from or related to the Business, Facility or Operations Assets prior to the Effective Time.

(b) As of the Effective Time, Transferee shall assume the following Liabilities of Transferor to the extent such Liabilities are associated with Transferee’s Facility or Operations Assets: (i) the Assumed Contracts, (ii) the Assumed Employment Liabilities (iii) the

Medicare/Medicaid Liabilities, and (iv) any indemnification by Transferee set forth in this Agreement (collectively, the “**Assumed Liabilities**”); provided, however, that the Assumed Liabilities shall exclude (i) any Liabilities arising from, caused by or arising out of any breach of any Assumed Contract (excluding any Contract that is a Medicare Provider Agreement or Medicaid Provider Agreement) on or prior to the Effective Time (collectively, and as further described below, the “**Excluded Contract Liabilities**”); (ii) the Excluded Third Party Payor Liabilities, and (iii) except for the Assumed Employment Liabilities and as otherwise expressly set forth in this Agreement, any other Liability that any Person seeks to impose upon Transferee or its respective Affiliates by virtue of any theory of successor liability with respect to the acts or omissions of Transferor prior to the Effective Time.

**3. PAYMENTS AT CLOSING.** At the Closing, the Closing Payment reflecting the appropriate credits and debits required by Section 9 shall be paid by the applicable Party. In addition, the total consideration to be paid to Transferor by Transferee on the Closing Date for the Operating Assets shall be an amount equal to \$10.00 (the “**Purchase Price**”) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, plus the assumption of the Assumed Liabilities. If the Closing Payment is owed by Transferee to Transferor, then Closing Payment as well as the Purchase Price shall be paid to the Transferor Lockbox Account.

**4. CLOSINGS; ACTIONS TAKEN AT THE CLOSINGS.**

**4.1 The Closing.** The closing of the transfer of Operations Assets (the “**Closing**”) shall take place on the first day of the calendar month (the “**Closing Date**”) after all conditions precedent to the Closing set forth in Section 11.1 and Section 12.1 hereof have been fully satisfied or duly waived, or at such time or on such other date as the Parties shall agree, and shall occur concurrently with the closing under the PSA. The effective time of the Closing (the “**Effective Time**”) shall be 12:01 a.m (Eastern Standard Time) on the Closing Date.

**4.2 Deliveries by Transferor.** At the Closing, each Transferor shall deliver to Transferee (duly executed where appropriate) the following:

(a) an Assignment of Resident Trust Funds for the Facility, together with the applicable Resident Trust Funds, pursuant to Section 2.4 of this Agreement;

(b) a general assignment in the form of Exhibit E attached to this Agreement (the “**General Assignment**”);

(c) such other instruments of conveyance, in form reasonably acceptable to the Parties, as Transferee shall reasonably require (including, without limitation, vehicle titles), duly executed by Transferor, conveying to Transferee the Operations Assets, other than those Operations Assets being transferred by another document described in this Section 4;

(d) an Assignment and Assumption Agreement for the Assumed Contracts, in the form of Exhibit F attached to this Agreement (“**Assignment and Assumption Agreement**”);

(e) possession of (i) the Facility, subject only to the rights of Facility residents and the rights of any Person that is party to a lease or sublease that is an Assumed Contract, which Person provides ancillary services to the Facility, and (ii) the Operations Assets;

(f) keys to all locks, garage door openers and passcodes necessary to access the Facility;

(g) originals, or if originals are not available, copies of all of the Assumed Contracts, to the extent not previously delivered to Transferee or not otherwise immediately available at the Facility;

(h) a closing statement setting forth the Closing Payment to be made pursuant to the provisions of this Agreement (the “**Closing Statement**”);

(i) a duly executed termination agreement, terminating the Master Lease as it relates to the Facility and the Sublease;

(j) immediately available funds in the amount of the Closing Payment and the Purchase Price to the extent owed under this Agreement; and

(k) such other documents and instruments as may be expressly required under this Agreement or the Ancillary Documents or otherwise reasonably necessary to carry out the transactions contemplated hereby or thereby.

**4.3 Deliveries by Transferee.** At the Closing, Transferee shall deliver to Transferor (duly executed where appropriate) the following:

(a) immediately available funds in the amount of the Closing Payment and the Purchase Price to the extent owed under this Agreement, paid to the Transferor Lockbox Account;

(b) an Assignment of Resident Trust Funds for the Facility;

(c) assignments of Admission Agreements for the Facility;

(d) the Assignment and Assumption Agreement;

(e) the General Assignment;

(f) the Closing Statement; and

(g) such other documents and instruments as may be expressly required under this Agreement or the Ancillary Documents or otherwise reasonably necessary to carry out the transactions contemplated hereby or thereby.

**4.4 Operation of Facility.** Commencing on the Effective Date, and continuing at all times thereafter until Closing, Transferor shall operate the Facility in substantially the same manner as it has heretofore been operated, in substantial compliance with Legal Requirements,



and Transferee shall use Commercially Reasonable Efforts to (i) preserve intact the business operations and relationships of the Facility with third parties, and (ii) keep available the services of materially all the Facility's Employees.

**5. REPRESENTATIONS AND WARRANTIES OF THE RECEIVER.** Transferor represents and warrants to Transferee, and Transferee acknowledges the limitations on any representations and warranties, express or implied, under this Agreement, as of the date hereof and as of the Closing Date, as follows:

**5.1 Power and Authority.** Subject to the entry of an order approving this Agreement and the Receiver Order, the Receiver has the relevant power to execute and deliver this Agreement and to consummate the transactions provided for herein.

**5.2 Execution and Delivery.** The Receiver has taken all actions necessary to consummate the transactions provided for herein on behalf of Transferor.

**5.3 Limitations; No Warranty of Condition.** **THE ASSETS ARE BEING SOLD, TRANSFERRED, ASSIGNED AND DELIVERED BY TRANSFEROR AND RECEIVED BY TRANSFEEE "AS IS, WHERE IS", AND WITH ALL FAULTS, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL, WHETHER STATUTORY, ARISING BY OPERATION OF LAW, ARISING BY CUSTOMS OR USAGES OF TRADE, OR OTHERWISE, IT BEING THE INTENTION OF THE PARTIES THAT TRANSFEEE EXPRESSLY REVOKES, RELEASES, WAIVES, DISCLAIMS, NEGATES AND EXCLUDES ALL EXPRESS AND IMPLIED REPRESENTATIONS AND WARRANTIES (EXCEPT SOLELY AS EXPRESSLY SET FORTH IN THIS SECTION 5) UNDER THIS AGREEMENT) INCLUDING, WITHOUT LIMITATION, AS TO (a) THE CONDITION OF THE FACILITY OR ASSETS OR ANY ASPECT THEREOF INCLUDING, WITHOUT LIMITATION, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES OF OR RELATED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE OR NON-INFRINGEMENT; (b) THE NATURE OR QUALITY OF CONSTRUCTION, STRUCTURAL DESIGN, OR ENGINEERING OF THE OPERATING ASSETS, FACILITY, OR ANY OTHER ASSET OR PROPERTY; (c) THE QUALITY OF THE LABOR OR MATERIALS INCLUDED IN THE ASSETS; (d) ANY FEATURES OR CONDITIONS AT OR WHICH AFFECT THE ASSETS WITH RESPECT TO ANY PARTICULAR PURPOSE, USE, POTENTIAL, OR OTHERWISE; (e) THE SIZE, SHAPE, CONFIGURATION, CAPACITY, QUANTITY, QUALITY, CASH FLOW, EXPENSES, VALUE, MAKE, MODEL OR CONDITION OF THE ASSETS; (f) ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES CREATED BY ANY AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE ASSETS; (g) ANY STRUCTURAL CONDITION OR HAZARD OR THE ABSENCE THEREOF HERETOFORE, NOW OR HEREAFTER AFFECTING IN ANY MANNER ANY OF THE OPERATING ASSETS, FACILITY, OR ANY OTHER ASSET OR PROPERTY; AND (h) ALL OTHER EXPRESS OR IMPLIED WARRANTIES AND REPRESENTATIONS BY TRANSFEROR WHATSOEVER, EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 5 AND SUBJECT TO ANY AND ALL LIMITATIONS**

**AND QUALIFICATIONS HEREIN. FURTHERMORE, TRANSFEROR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE FUTURE PROFITABILITY, FUTURE CASH FLOW OR VIABILITY OF THE BUSINESS RELATED TO THE ASSETS, ALL OF WHICH TRANSFEREE MUST DETERMINE FROM ITS INVESTIGATION OF THE RECORDS OF TRANSFEROR AND THE FACILITY AND TRANSFEREE'S OWN BUSINESS ACUMEN.**

**6. REPRESENTATIONS AND WARRANTIES OF TRANSFEREE.** Transferee hereby represents and warrants to Transferor as follows:

**6.1 Organization and Qualification.** Transferee is an Entity duly organized, validly existing and in good standing under the Legal Requirements of the state of its organization. Transferee is duly registered or otherwise authorized to transact business and is in good standing (if applicable) in all states in which qualification and good standing are necessary for Transferee to conduct its business and own its properties, except where the failure to so qualify would not reasonably be expected to have a material adverse effect on Transferee.

**6.2 Authority.** Transferee has all requisite corporate power and authority to execute and deliver this Agreement and each of the Ancillary Documents to which it may be a party and to carry out and consummate the transactions contemplated herein and therein. This Agreement and the Ancillary Documents have been, and at Closing each of the Ancillary Documents will be, duly and validly authorized, executed and delivered by Transferee, constitute, and will constitute when executed by Transferee (assuming due authorization, execution and delivery by Transferee), the legal, valid and binding obligation of Transferee, as applicable, enforceable against Transferee in accordance with their terms, subject to the qualification that such enforceability may be limited by bankruptcy, insolvency, reorganization and other Legal Requirements of general application relating to or affect the rights of creditors generally and that equitable remedies, including the remedies of specific performance and injunction, may only be granted in the discretion of a court of competent jurisdiction.

**6.3 Validity; No Conflict.** The authorization, execution and delivery of this Agreement and the Ancillary Documents to which Transferee may be a party and the consummation of the transactions contemplated hereby and thereby by such Parties do not and will not, violate, conflict with or result in the breach of any term or provision of (i) the Organizational Documents of Transferee or (ii) any Legal Requirements binding upon or applicable to Transferee in any material respect.

**6.4 Proceedings.** Except as disclosed on Schedule 6.4, there are no material Proceedings pending or, to Transferee's knowledge, threatened against Transferee, before or by any Governmental Authority, or by any third party, that seek to prohibit, restrict or enjoin the ability of Transferee to consummate the transactions described in this Agreement.

**6.5 Qualifications and Financial Capacity,**

(a) Neither Transferee nor any of its officers, directors, agents, or employees, or any person contracted by Transferee to provide professional or healthcare services, has been disbarred, suspended, or otherwise excluded from participation in any federal or state

health care program, including the Medicare and Medicaid programs, nor to the knowledge of Transferee is any such disbarment, suspension or exclusion threatened. Transferee is not subject to any Order or agreement with any Governmental Authority that would limit or restrict its ability to operate the Facility from and after the applicable Effective Time as currently operated.

(b) There are no incurable circumstances that have not been disclosed to Transferor concerning Transferee or its directors or officers, or that are within its sole control, that would prevent or impede the ability of Transferee to obtain and receive the Regulatory Approvals on or prior to the Closing Date.

**6.6 Brokers.** All negotiations relative to this Agreement and the transactions described in this Agreement have been conducted by Transferee without the assistance or intervention of any other Person in such manner as to give rise to any valid claim against Transferee or Transferor for a finder's fee, investment banking fees, brokerage commission or other like payment.

**6.7 Examination; No Contingencies.** **WITHOUT LIMITING SECTION 5.3 IN ANY MANNER, EXCEPT AS SET FORTH IN THIS AGREEMENT AND THE ANCILLARY DOCUMENTS, IN ENTERING INTO THIS AGREEMENT, TRANSFEEE HAS NOT BEEN INDUCED BY AND HAS NOT RELIED UPON ANY WRITTEN OR ORAL REPRESENTATIONS, WARRANTIES OR STATEMENTS, WHETHER EXPRESS OR IMPLIED, MADE BY TRANSFEROR OR ANY OF ITS AFFILIATES OR REPRESENTATIVES, WITH RESPECT TO THE FACILITY OR ANY OF THE OPERATIONS ASSETS, THE CONDITION AND QUALITY OF THE FACILITY OR ANY OF THE OPERATIONS ASSETS, OR ANY OTHER MATTER AFFECTING OR RELATING TO THE TRANSACTIONS DESCRIBED IN THIS AGREEMENT. TRANSFEEE ACKNOWLEDGES THAT, EXCEPT AS SET FORTH IN THIS AGREEMENT AND THE ANCILLARY DOCUMENTS AND IN RELIANCE UPON THE REPRESENTATIONS AND WARRANTIES HEREIN AND THEREIN (WHICH TRANSFEROR ACKNOWLEDGES AND AGREES TRANSFEEE IS ENTITLED TO RELY, AND IS RELYING, UPON), IT WILL ACQUIRE THE OPERATIONS ASSETS IN THEIR THEN CONDITION, "AS IS, WHERE IS" AND WITH ALL FAULTS. TRANSFEEE'S OBLIGATIONS UNDER THIS AGREEMENT SHALL NOT BE SUBJECT TO ANY CONTINGENCIES, DILIGENCE OR CONDITIONS EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE ANCILLARY DOCUMENTS. TRANSFEEE ACKNOWLEDGES THAT IT HAS KNOWLEDGE AND EXPERTISE IN FINANCIAL AND BUSINESS MATTERS THAT ENABLE IT TO EVALUATE THE MERITS AND RISKS OF THE TRANSACTIONS DESCRIBED IN THIS AGREEMENT AND THE ANCILLARY DOCUMENTS.**

## **7. PRE-CLOSING COVENANTS; INTERIM BILLING.**

### **7.1 *Transfer of Health Care Licenses and Medicare/Medicaid Provider Agreements***

(a) Immediately upon the Effective Date, Transferee shall initiate, file applications (or notices as may be applicable) for, and use best efforts to obtain all Licenses,

including without limitation, as applicable, all licenses directly related to health care, such as licenses, permits, registrations, certifications, payor agreements, provider numbers and provider agreements, submitter identification and billing numbers, including, but not limited to, Medicare and Medicaid provider numbers and agreements (such respectively, the “**Medicare Provider Agreement**” and “**Medicaid Provider Agreement**”), necessary to operate the Facility for its current Healthcare Use from each appropriate Governmental Authority without materially interrupting the business or operation of the Facility (collectively, these Healthcare Use Licenses are referred to herein as the “**Health Care Licenses**”), as soon as is reasonably practicable and in any event effective as of the Effective Time. Notwithstanding the foregoing: (i) to the extent permitted under applicable Legal Requirements and by the applicable Governmental Authority, Transferor shall assign, effective as of the Effective Time, all such Health Care Licenses, as applicable, permitted to be so transferred to or assumed by Transferee, and Transferee will accept such assignment or assumption; and (ii) to the extent that any such Health Care Licenses cannot be transferred to Transferee under applicable Legal Requirements, Transferor shall surrender or terminate, as applicable, to the extent permitted by applicable Law, such Health Care Licenses with the appropriate Governmental Authority.

(b) Without limiting the requirements of (a) above, Transferee shall provide all notices and make all necessary filings as required under applicable Law in order for Transferee to become the certified Medicare and Medicaid provider at the Facility. So long as Transferee is utilizing its best efforts to become the certified Medicare and Medicaid provider at the Facility, to the extent allowed under Legal Requirements, Transferee shall be permitted to bill under the Medicare Provider Agreement and Medicaid Provider Agreement utilizing Transferor’s applicable identifier/provider numbers as applicable, during the period (the “**Transition Period**”) that commences on the Effective Time and that ends on the earlier of (i) in the case of Medicare, the issuance of the Medicare tie-in notice, and in the case of Medicaid, the issuance of the new Medicaid number and related provider agreement to Transferee, or (ii) the date which is six (6) months following the Effective Time. If, notwithstanding Transferee’s continuing best efforts, the Medicare tie-in notice shall not have been issued and a new Medicaid provider agreement shall not have been issued to Transferee within such six-month period, as applicable, Transferor, upon Transferee’s written request, shall agree to such reasonable extensions of the Transition Period as may be necessary for Transferee to complete the applicable certification process. In no event shall Transferee bill under the Medicare Provider Agreement or Medicaid Provider Agreement following expiration of the Transition Period, as may be reasonably extended by Transferor. Transferee shall indemnify and hold Transferor harmless from and against any and all Liabilities arising out of Transferee’s tie-in use of the Medicare Provider Agreement and/or Medicaid Provider Agreement following the Effective Time.

(c) Transferor agrees to use Commercially Reasonable Efforts to cooperate, both pre- and post- Effective Time, with Transferee: (i) to accomplish the transfer of operation of the Facility effective as of the Effective Time and (ii) in order for Transferee to obtain all Health Care Licenses, including, without limitation, by providing Transferee or any Governmental Authority any information reasonably required for such transfer, issuing notices to Governmental Authorities or residents and, if required by the appropriate Governmental Authority, entering into a power of attorney for use of any Health Care Licenses.

**7.2 Obtaining Consent to the Assignment of the Assumed Contracts.**

Transferor and Transferee shall cooperate and use their respective Commercially Reasonable Efforts to obtain, on or before the Closing Date, required Consent to the assignment to Transferee of those Assumed Contracts that are not assignable without the prior Consent of the other party to such Assumed Contract.

**7.3 Assumed Contracts.**

All Facility-based Contracts (other than Resident Contracts) are listed on Schedule 7.3(a) hereto. At the Effective Time, subject to Section 2.5, and to the extent permitted under applicable Legal Requirements and by applicable Governmental Authorities, Transferor shall assign and Transferee shall assume, at Transferee's sole cost and expense, (i) all Facility-based Contracts (excluding any national, regional or multi-Facility Contracts to the extent not described on Schedule 7.3(a), which omitted Contracts or portions thereof shall constitute Excluded Contract Liabilities) selected by Transferee, a schedule of which shall be attached hereto as Schedule 7.3(b) on or before the Closing Date and (ii) the Medicare Provider Agreement, Medicaid Provider Agreement, and other Third Party Payor provider agreements ((i) and (ii) being, together with all amendments, waivers, modifications, exhibits, schedules and annexes thereto, the "**Assumed Contracts**"). Any Contracts that Transferee does not select to assume and continue shall be deemed rejected by Transferee (the "**Rejected Contracts**"), it being understood that any national, regional or multi-Facility Contracts that are not described on Schedule 7.3(a) shall not be deemed Rejected Contracts. Transferor shall terminate such Rejected Contracts in accordance with the applicable provisions under such Rejected Contracts, and Transferee shall indemnify and hold Transferor harmless from and against any and all Liabilities arising out of such termination. Transferor shall reasonably cooperate with Transferee, at no expense to Transferor, in connection with the assignment and assumption of all Assumed Contracts. Transferee shall assume and perform any and all obligations under the Assumed Contracts from and after the Effective Time. In addition, to the extent that any party to one of the Assumed Contracts requests consideration or payments as a fee for approving the assignment thereof to Transferee (e.g., a transfer premium," "recapture payment," "assignment fee" or "fees and costs related to consent to assignment"), upon prior notice and confirmation that Transferee still selects such contract to be an Assumed Contracts, Transferee shall be solely responsible for such costs and will be required to pay such amounts to secure the such approval. In the event that any required consents to the assignment of any Assumed Contracts cannot be obtained by Closing, at Transferor's sole option, Transferor may choose to decline to assign such contract (in which case, such contracts will be deemed Rejected Contracts).

**7.4 Access in Preparation of Closing Date.**

Prior to the Closing Date, Transferor shall provide Transferee, its Affiliates and their Representatives with reasonable access to the Facility for purposes reasonably related to this Agreement, and including so that Transferee can install any additional equipment necessary for computer, telecommunications and network operation, provided that in no event shall such access disrupt the provision of care to the residents. In addition, prior to the Closing Date, Transferor shall cooperate with Transferee and provide Transferee with such assistance as Transferee may reasonably request in order to provide for an orderly, efficient and safe transition of the operations from Transferor to Transferee and the continued operation of the Facility.

## 8. POST-CLOSING COVENANTS OF THE PARTIES.

### 8.1 *Cost Reports; Rate Adjustments.*

(a) Transferor shall prepare and file with the appropriate Governmental Authority Cost Reports as soon as reasonably practicable after the Closing Date, but in no event later than the date on which such final Cost Reports are required to be filed under Legal Requirements or under the direction of the Governmental Authority, and Transferor shall provide the appropriate Governmental Authority with any information needed to support claims for reimbursement made by Transferor either in the final Cost Reports or in any Cost Reports filed for prior cost reporting periods. Transferee shall reasonably cooperate with Transferor in providing Records and other information necessary for the cost report filings. Transferor shall provide Transferee with a copy of the final Cost Reports and such supporting documentation reasonably requested by Transferee in writing.

(b) Transferee shall timely prepare and file with the appropriate Governmental Authority its initial Cost Reports related to its operation of the Facility for the fiscal year commencing with the fiscal year in which the Closing Date occurs, but in no event later than the date on which such Cost Reports are required to be filed under Legal Requirements or under the direction of the Governmental Authority. Transferee shall provide the appropriate Governmental Authority with any information needed to support claims for reimbursement made by Transferee in the initial Cost Reports or in any Cost Reports filed for subsequent cost reporting periods. Transferee shall provide Transferor with a copy of the initial Cost Reports and such supporting documentation reasonably requested by Transferor in writing.

(c) Each Party hereto agrees to immediately notify the other in writing after such party has knowledge of or upon receipt of any notice of any claim of recapture by any Governmental Authority or private Third Party Payor with respect to an alleged overpayment or any alleged underpayment of any Tax or assessment for periods relating prior to the Closing Date.

### 8.2 *Collection of Accounts Receivable.*

(a) Revenues and Expenses. All revenues (including, but not limited to, payments due from the residents of the Facility or third party payors) and expenses related to the operation of the Facility shall be prorated as of the Effective Time, with Transferor entitled to such revenues and responsible for such expenses (including, without limitation, the payment of all accounts payable) arising out of its operation of the Facility for periods prior to the Effective Time (the "Pre-Effective Time Receivables"), and Transferee shall be entitled to the revenues and responsible for the expenses (including, without limitation, the payment of all accounts payable and other obligations) arising out of its operation of the Facility on and after the Effective Time (the "Post- Effective Time Receivables").

(b) Accounts Receivable. Transferor shall retain its right, title and interest in and to all Pre-Effective Time Receivables. Attached as Schedule [ ] is a preliminary accounts receivable report relating to accounts receivable of the Facility for services rendered through \_\_\_\_\_ 31, 2019. No later than thirty (30) days after the Effective Time, Transferor or Receiver shall provide Transferee with a final, updated schedule, which shall be added to

Schedule [ ], setting forth, by patient, its outstanding accounts receivable as of the Effective Time. Any payments received with respect to the Facility which relate services provided or operation of the Facility on or after the Effective Time shall be retained by Transferee.

(1) Third Party Payments. Without limiting the generality of the foregoing, payments received by Transferee from and after the Effective Time from third party payors, shall be handled as follows:

(i) Medicaid. [Transferee shall have Medicaid provider numbers different from the provider number under which Transferor has been paid, and the Parties acknowledge and agree that Medicaid provider agreements for the Facility will not be assigned to Transferee.] Transferee agrees that any payments received under Transferor's Medicaid provider number and which relate to the period prior to the Effective Time shall be forwarded to Transferor by depositing the same in the Transferor Lockbox Account. Any payments received under Transferee's provider numbers and which relate to periods on or after the Effective Time shall be retained by Transferee.

(ii) Medicare. To the extent Transferor has entered into any provider agreements with Medicare and such agreements are being transferred to Transferee in accordance with this Agreement, all payments received for a period of the later of ninety (90) days after the Effective Time or the Tie-In Date shall continue to be paid by Medicare, CMS or such other intermediary directly into the Transferor Government Lockbox Account. All payments received thereafter shall be paid into accounts established by Transferee for the receipt of payments pursuant to the Medicare program. Notwithstanding anything herein to the contrary, any funds received by any Party which relate to periods prior to the Effective Time shall belong to Transferor, and any payments received by any Party which relate to periods on or after the Effective Time shall belong to Transferee. The Parties acknowledge and agree that Transferee shall *not* bill CMS using Transferor's existing Medicare provider number until such time as CMS provides notice to Transferee and Transferor's intermediary that the provider number has been assigned to Transferee (*i.e.*, until Transferee and Transferor shall have received a "Tie-In Notice" from CMS with respect to the transfer of Transferor's Medicare provider number to Transferee (the date of such Tie-In Notice, the "**Tie-In Notice Date**")).

(iii) Commercial Payors. Without limiting the generality of the foregoing, all payments received from Third Party Payors other than Medicare and Medicaid prior to the Effective Time shall be retained by Transferor. All such payments received after the Effective Time shall be paid into accounts established by Transferee for the receipt of payments from managed care organizations and other commercial payors. Any funds received by Transferee on or after the Effective Time, which relate to the period prior to the Effective Time, shall be remitted by Transferee to Transferor by wiring or otherwise depositing

such amounts into the Transferor Lockbox Account within five (5) business days of Transferee's receipt thereof.

(2) Private Pay Payments. Without limiting the generality of the foregoing, payments received by Transferee from and after the Effective Time from self-pay and other non-Third Party Payor sources shall be handled as follows:

(i) If such payments either specifically indicate on the accompanying remittance advice, or if the Parties agree, that they relate to the period prior to the Effective Time, they shall be forwarded to Transferor by Transferee by wiring or otherwise depositing such amounts into the Transferor Lockbox Account and Transferee shall deliver the remittance advance to Transferor, in each case, within five (5) business days after receipt thereof;

(ii) If such payments indicate on the accompanying remittance advice, or if the Parties agree, that they relate to the period on or after the Effective Time, they shall be retained by Transferee;

(iii) If such payments indicate on the accompanying remittance advice, or if the Parties agree, that they relate to periods for which both Parties are entitled to payment under the terms hereof, the portion thereof which relates to the period prior to the Effective Time shall be remitted to Transferor by Transferee wiring or otherwise depositing such amounts in to the Transferor Lockbox Account within five (5) business days after receipt thereof, and the balance shall be retained by Transferee; and

(iv) For a period of six (6) months after the Effective Time, if there is no remittance advice accompanying any payment received by Transferee, or if the accompanying remittance advice does not indicate the period to which a payment relates, then any such unidentified payment shall first be applied to Pre-Effective Time balances and be remitted to Transferor by Transferee wiring or otherwise depositing such amounts in to the Transferor Lockbox Account within five (5) business days after receipt thereof, with any excess applied to balances due for services rendered by the applicable Transferee on or after the Effective Time.

(3) Misapplication. In event that any payment under this Section 8.3 is misapplied by the Parties, the Party that erroneously received said payment shall remit the same to the proper Party within five (5) business days after said determination is made.

(c) Transferee's Collection of Pre-Effective Time Receivables.

(1) Billing and Collection. From and after the Effective Time, Transferee shall, on behalf of Transferor, bill and collect all amounts related to the Pre-Effective Time Receivables in the name of Transferor, including, without limitation, the following functions with respect to the Pre-Effective Time Receivables:



(i) submitting all bills and re-bills to the appropriate payers including but not limited to Medicaid, Medicare, commercial insurance, managed care, and self-pay;

(ii) correcting all claims to facilitate their submission and manage all unbilled accounts to ensure that all are billed in a timely manner; and

(iii) performing follow-up functions on all existing and subsequently created accounts including such actions as: (A) making follow up calls to third party payors and patients; (B) correcting claims on payor provided electronic interfaces and any other payor provided reports or remittances; and (C) assuming responsibility for non-billing and follow up functions including processing third party payor remittance advices to facilitate secondary billing, patient billing, accounts receivable reclassification and denial and underpayment identification.

(2) Notwithstanding Transferee's collection duties hereunder, without Capital Finance's and HUD's prior written consent, Transferee shall not (i) institute any legal proceedings for the collection of bad debts and the methods of collection and/or attorney(s) or collection firm used with respect to the Pre-Effective Time Receivables; (ii) decide not to bill any customer for any Pre-Effective Time Receivables; or (iii) decide not to pursue collection of any account for Pre-Effective Time Receivables.

(3) With respect to Transferee's obligations in this Section 8.2, Transferee will adhere to all policies and procedures that Capital Finance or HUD may establish and all relevant state and federal laws and regulations including, without limitation: (a) HIPAA privacy and security regulations; (b) Fair Debt Collection Practices Act; and (c) Medicare and Medicaid regulations.

(4) With respect to Transferee's obligations and duties under this Section 8.2, Transferee shall:

(i) during the period beginning on the Effective Time through [date that is three months after the Effective Time] (the "Initial Period") with respect to the Pre-Effective Time Receivables, on Monday of each calendar week (or the next succeeding business day if such Monday is not a business day), provide Capital Finance and HUD with (i) a report and reconciliation detailing (A) the collections of Pre-Effective Time Receivables and Post-Effective Time Receivables received during the prior calendar week, (B) the billing or other invoice of Pre-Effective Time Receivables submitted during the prior calendar week and (C) the Pre-Effective Time Receivables outstanding as of Friday of the prior calendar week and (ii) such supporting documentation as Capital Finance or HUD shall request;

(ii) following the Initial Period, on the first and sixteenth day of each calendar month (or the next succeeding business day if such day is not

a business day), provide Capital Finance and HUD with (i) a report and reconciliation detailing (A) the collections of Pre-Effective Time Receivables and Post-Effective Time Receivables received since the last date included in the most recent report and reconciliation delivered to Capital Finance, (B) the billing or other invoice of Pre-Effective Time Receivables submitted since the last date included in the most recent report and reconciliation delivered to Capital Finance, and (C) the Pre-Effective Time Receivables outstanding as of the date of such report and reconciliation and (ii) such supporting documentation as Capital Finance or HUD shall request;

(iii) on the last day of each calendar month until [ ] (or the next succeeding business day if such day is not a business day), provide Capital Finance and HUD with a detailed aging and categorizing of the Pre-Effective Time Receivables and such supporting documentation as Capital Finance or HUD may request; and

(iv) provide Capital Finance and HUD with all additional reports and information that Capital Finance may request regarding the Pre-Effective Time Receivables and the Post-Effective Time Receivables and all other accounts receivable and accounts and all payments received in connection therewith, including, without limitation, copies of bank statements for all accounts into which any proceeds or other collections of Pre-Closing Date Receivables are or have been deposited.

(5) Access and Assistance. For six (6) months after the Closing Date, Transferee shall:

(i) provide Capital Finance and HUD access to (i) Transferee's books, records, computer hardware, software, servers, communications portals and other computer systems and equipment on which any records relating to any Pre-Effective Time Receivables are maintained and (ii) the employees and other agents working at or employed by Transferee that are responsible for billing, collecting or reconciling the Pre-Effective Time Receivables and the Post-Effective Time Receivables;

(ii) upon Capital Finance's or HUD's request, provide to Capital Finance and HUD all electronic and other hard copy remittance advices and related files upon receipt thereof by Transferee and any explanation of benefits (EOBs) received by Transferee relating to any Pre-Effective Time Receivables;

(iii) upon Capital Finance's or HUD's request, provide access to and copies of print images of all billing files; and

(iv) provide Capital Finance and HUD with all reasonable assistance that they may request regarding the Pre-Effective Time

Receivables and the Post-Effective Time Receivables and all other accounts receivable and accounts and all payments received in connection therewith.

(d) Notwithstanding anything herein to the contrary, in no event shall Transferee offset from the proceeds of any Pre-Effective Time Receivables in its possession any amount owed to it by Transferor under this Agreement or otherwise.

### **8.3 Preservation of Records; Access.**

(a) On the Closing Date, Transferor shall cause the Designated Record Set of the current residents of the Facility and the Facility's records for Transferee Employees (the "**Current Records**") to be either (i) located at the Facility or (ii) if such record is stored offsite, Transferee and Transferor shall mutually agree on the proper delivery of such records to Transferee, provided, however, that nothing herein shall be construed as precluding Transferor from removing from the Facility on the Closing Date its corporate financial records which relate to its operations at the Facility or to its overall corporate operations; and provided further, that Transferor shall give Transferee access to any information and any such removed records as is necessary for the efficient and lawful operation of the Facility by Transferee or as otherwise required by any Legal Requirements to be maintained at the Facility.

(b) Subsequent to the Closing Date, Transferee shall allow Transferor and its Representatives, subject to applicable Legal Requirements, to have reasonable access to (upon reasonable prior written notice and during normal business hours), and to make copies of, at Transferor's expense, the available books and records, including, but not limited to, any Records, the Designated Record Sets, and any records related to current or former Employees records, and supporting material of the Facility relating to any period prior to the Closing Date, to the extent reasonably necessary to enable Transferor to investigate and defend current or former Employees or other claims, to file or defend Tax returns and to verify Accounts Receivable collections due a Transferor. In addition, subsequent to the Closing Date, Transferee shall allow Transferor and its Representatives to have reasonable access to Transferee Employees, at Transferor's sole cost and expense and provided that such access does not unreasonably disrupt the performance of any such Person's duties, to the extent reasonably necessary to enable Transferor to investigate and defend claims of current or former Employees, resident or other Persons.

(c) Transferor shall be entitled to remove, at its sole cost and expense, the available originals of any records, including, but not limited to, a Designated Record Set and records related to any current or former Employees, previously delivered to Transferee, for purposes of litigation involving a resident or one of the current or former Employees to whom such record relates, if an officer of a court of competent jurisdiction, Government Authority official or outside legal counsel for Transferor certifies that (i) such original must be produced in order to comply with applicable Legal Requirements or the Order of a court of competent jurisdiction in connection with such litigation and (ii) such removal is permitted by applicable Legal Requirements. Any record so removed shall promptly be returned to Transferee following its use and prior to such return Transferor shall permit copying and access thereto in accordance with Section 8.3(a).

(d) Transferee shall maintain in accordance with applicable Legal Requirements or in accordance with any litigation hold of Transferor (in which case it shall be at the sole cost and expense of Transferor) that Transferee has been given notice of and that is in place as of the Closing Date, and shall not destroy, without the prior written consent of Transferor, the Current Records transferred to Transferee in accordance with this Section 8.4(d).

**9. ADJUSTMENTS.** Unless otherwise provided below, the following are to be adjusted and prorated between Transferor and Transferee as of the Effective Time, based upon a 365-day year, and the net amount thereof shall be paid to Transferor, if such net amount is in Transferor's favor, or Transferee, if such net amount is in Transferee's favor, as applicable, at Closing (as applicable, the "**Closing Payment**"):

**9.1 Taxes and Assessments.** All ad valorem Taxes assessable against the Facility or Operations Assets for the Tax period in which the Closing occurs shall be adjusted and prorated based on the period of operation by Transferor and Transferee during such Tax period. If such ad valorem Taxes to be apportioned between Transferor and Transferee pursuant to this Section 9.1 are not available or have not been billed, such Taxes shall be prorated based on one hundred two percent (102%) of the most recent invoices received, subject to further and final adjustment when the rate and assessed valuation for such Taxes for the applicable period is fixed. If the Operations Assets or any part thereof shall be, or shall have been, affected by an ad valorem assessment or assessments, whether or not the same become payable in installments before or after the Effective Time, Transferor shall be responsible for all assessments attributable to periods prior to the Effective Time.

**9.2 Utility Charges.** Gas, steam, electricity, water, sewage and other public utility charges will be paid by Transferor to the utility company through the Effective Time. Transferor shall arrange for a final reading of all utility meters (covering gas, steam, electricity, water and sewage) as of the Effective Time. Transferor and Transferee shall execute a letter to all appropriate utility companies advising such utility companies of the termination of Transferor's responsibility for such charges for utilities furnished to the Facility as of the Effective Time and commencement of Transferee's responsibilities therefore from and after the Effective Time. If a bill is obtained from any such utility company on or before the Closing, Transferor shall pay such bill on or before the Closing. If such bill shall not have been obtained on or before the Closing, Transferor shall, promptly upon receipt of such bill, pay all such utility charges as evidenced by such bill or bills pertaining to the period through the Effective Time, and Transferee shall pay all such utility charges pertaining to the period thereafter. Any bill that covers a period both before and after the Effective Time shall be apportioned between Transferee and Transferor as of the Effective Time. Transferor shall be entitled to a refund of all deposits held by such utility companies and Transferee shall arrange to make its own deposits with the utility companies for its obligations from and after the Effective Time.

**9.3 Provider Taxes.** Transferor shall be responsible for the payment of any and all Taxes related to the Facility through the Effective Time, including, but not limited to, any provider Tax, gross receipts Tax and quality assessment Tax (collectively, the "**Provider Taxes**"). Transferor shall be entitled to a credit on the Closing Date in the amount equal to any accrued but unpaid reimbursement or payment with respect to any Provider Taxes for the period of time prior to the Effective Time.

**9.4 Assumed Contracts.** All charges and payments under all Assumed Contracts, including prepayments and payments in arrears, will be adjusted and prorated on per diem basis as of the Effective Time.

**9.5 Re-Adjustment.** All amounts which are subject to proration under the terms of this Agreement (except for Accounts Receivable which are subject to Section 8.2 hereof) and which require adjustment after the Closing Date shall be settled within sixty (60) days after the Closing Date or, in the event the information necessary for such adjustment is not available within said sixty (60) day period, then within fifteen (15) Business Days of receipt of information by Transferee necessary to settle the amounts subject to proration. The provisions of this Section 9.5 shall survive the Closing.

## **10. EMPLOYEES.**

**10.1 Employees Offers of Employment.** Not less than \_\_\_\_ ( ) days prior to the Closing, Transferee shall (or shall cause one or more of its Affiliates to) offer in writing employment to substantially all of those Persons employed by Transferor, its Affiliates, or its third party contractor (such Persons of an Affiliate or third party contractor being herein “**Contracted Employees**”) to provide services at or for the Facility (individually and collectively, “**Employee**” or “**Employees**”) listed on such revised Schedule 10.1 who meet Transferee’s employment eligibility requirements as of the Effective Time (and subject to such Employee’s continued employment at or on behalf of Facility as of immediately prior to the Effective Time), on the terms and conditions set forth in this Section 10. Employees who accept Transferee’s (or its Affiliate’s) offers of employment and commence employment with Transferee are referred to herein as “**Transferee Employees.**” The employment of Transferee Employees shall be effective as of the Effective Time. Transferee’s (or its Affiliate’s) employment of Contracted Employees shall be, as it may be necessary, subject to consent in the sole discretion of the applicable Affiliate or third party contractor. Nothing contained in this Agreement shall constitute a guaranty of employment or continued employment of any kind for any Employee or former Employee of Transferor, whether or not such Employee is hired by Transferee (or its Affiliate). Schedule 10.1 shall be updated from time-to-time by Transferor at the reasonable written request of Transferee.

**10.2 Transferor Termination of Employees.** As of 11:59:59 p.m. on the Closing Date, Transferor shall terminate or cause to be terminated the employment of all Employees at the Facility including, without limitation, Persons temporarily absent from active employment by reason of disability, illness, injury, workers’ compensation, approved leave of absence or layoff. Transferee’s or its Affiliate’s accepted offer of employment to Transferee Employees pursuant to Section 10.1 above shall commence at the Effective Time, such that those Transferee Employees shall not experience a period of unemployment in connection with the transactions contemplated herein.

**10.3 Content of Offers.** Except as otherwise required by Law and subject to Section 10.6 hereto, Transferor shall process payroll for Transferee Employees at least in accordance with its standard payroll practice, for all earned wages due and payable as of the Closing Date including, but not limited to, any severance, retention bonus or other change in control payment payable to any Transferee Employees that become due or owed as a result of the consummation of the transactions contemplated by this Agreement, provided, however, that

Transferee (or Affiliate, as applicable) shall assume all of the paid time off, personal leave, and vacation benefits for each of Transferee Employees as of the Effective Time (the “**Assumed PTO**”). Further, Transferee (or its Affiliate, as applicable) shall initially employ Transferee Employees on at least the following terms and conditions: (i) the terms of employment shall be to perform similar services, in a position similar to the position such Person held with a Transferor immediately prior to the date of hire by Transferee; provided, however, that Transferee shall offer (i) compensation and benefits to such Persons at levels at least commensurate with compensation levels and benefits provided to other employees or other staff of Transferee holding similar positions, and (ii) employee benefits that are comparable in the aggregate to the benefits that are provided by Transferee to its other employees or other staff under its Employee Benefit Plans. Transferee shall treat prior service with Transferor as service with Transferee for purposes of determining eligibility of each of Transferee Employees to receive and participate in all Employee Benefit Plans maintained by Transferee or its Affiliates.

**10.4 Employee Meetings.** Transferor shall provide or cause to provide Transferee (or its Representatives) with reasonable opportunities to meet with Transferee Employees prior to the Closing Date at times mutually agreed upon by the Parties to discuss the transfer of operations and employment contemplated hereunder, and Transferee shall be entitled to distribute employment and employee plan applications and materials at such meetings.

**10.5 Liability Responsibility.** Except for the Assumed PTO, Transferor shall retain the liability for the claims respecting all Transferee Employees that are incurred prior to the Effective Time, unless the claim resulted from actions or omissions of Transferee or its Representatives, in which case Transferee shall indemnify and hold Transferor harmless from and against any and all liabilities arising out of such actions or omissions. Transferee shall be responsible for any and all liabilities arising out of or with respect to any Transferee Employee arising with respect to (i) employment by Transferee (or its Affiliate) after the Effective Time or attributable to events or circumstances occurring after the Effective Time, and (ii) the Assumed PTO (collectively, the “**Assumed Employee Liabilities**”). This Agreement shall not create and shall not be deemed to create or grant to any Transferee Employee or any other Person any third party beneficiary rights or claims or any cause of action of any kind or nature. Nothing in this Agreement shall create any rights in favor of any Employees, or constitute an employment agreement or condition of employment for any Employee.

**10.6 Transferee Employee Benefits.** Immediately following the Closing, Transferee shall provide Transferee Employees, as well as eligible dependents of such Persons, the opportunity to participate in the applicable Employee Benefit Plans, programs or policies maintained or established by Transferee (or in conjunction with its Affiliates) that are comparable to the plans and benefits Transferee provides to other employees or other staff of Transferee holding similar positions. Each Transferee Employee shall receive credit for the length of service with Transferor, or its Affiliates, for purposes of determining eligibility and vesting under Transferee’s benefit plans (as applicable). Transferee Employees who are eligible to participate as of the Closing Date in group health insurance coverage sponsored by Transferor, shall be eligible for participation in a group health plan (as defined for purposes of Section 4980B of the Code) sponsored, established or otherwise maintained by Transferee (or in conjunction with its Affiliate) for the general benefit of employees and their dependents (the “**Group Health Plan**”). Each Transferee Employee shall be covered without a waiting period and without regard to any pre-

existing condition unless (i) he/she is under a waiting period with Transferor at the time of Closing, in which case they shall be required, unless waived by the insurer, to complete their waiting period while under the Group Health Plan, receiving full credit for the time employed by Transferor, or (ii) they were subject to a pre-existing condition exclusion while under Transferor's group health plan, in which case they shall be subject to the same exclusion, unless waived by the insurer, while in the Group Health Plan.

**10.8 WARN Act.** Notwithstanding anything in this Agreement to the contrary, Transferee shall offer employment to such numbers of Employees on such terms and conditions that are sufficient to not give rise to any Liability under the Worker Adjustment and Retraining Notification Act of 1988 or any similar state or local Law (collectively, "**WARN Act**"). Taking into account the number of Employees not hired by Transferee, Transferee shall not, for a period of ninety (90) days after the Effective Time, engage in any conduct which, if aggregated with Transferor's termination of such non-hired Employees, would trigger any Liability under the WARN Act, and Transferee shall indemnify and hold Transferor harmless from and against any and all liabilities arising out of such actions or omissions.

## **11. CONDITIONS PRECEDENT TO TRANSFEEE'S OBLIGATION TO CLOSE.**

**11.1 Closing.** Transferee's obligation to consummate the transactions described in this Agreement and the Ancillary Documents, and to take the actions required to be taken by Transferee, at the Closing is subject to the satisfaction, at or prior to such Closing, of each of the following conditions (any of which may be waived by Transferee, in whole or in part):

(a) **Accuracy of Representations.** Each representation and warranty of Transferor in this Agreement and the Ancillary Documents must be accurate in all material respects as of the Closing Date as if made on the Closing Date, except for those representations and warranties which refer to facts existing at a specific date, which shall be accurate in all material respects as of such date.

(b) **Deliveries.** At or prior to Closing, Transferee shall have received the deliveries required under Section 4.2.

(c) **No Injunction.** There must not be in effect any Legal Requirements or any injunction or other Order that prohibits transfer of operations of, or the Operations Assets used in connection with, the Facility.

(d) **Governmental Authorizations.** At or prior to the Closing, Transferee shall have obtained all Governmental Authorizations required by Law for conveyance to Transferee of the Licenses, including the Health Care Licenses, listed on Schedule 11.1 hereto, from the applicable Governmental Authorities, or if obtaining actual Licenses is not possible until post-Closing, to the reasonable satisfaction of Transferor, obtained such assurances from such Governmental Authorities as are customarily obtained under local custom and practice to allow a reasonable Person, acting in good faith, to conclude that the Licenses have been or will be issued or transferred to Transferee, effective as of the Effective Time (collectively, the "**Regulatory Approvals**").

(e) **Senior Lender Consents.** Transferor shall have received the written consent of Capital Finance and HUD with respect to the transfer of operations contemplated by this Agreement.

(f) **Termination of Master Lease and Sublease.** [option to assign] At or prior to the Closing, Transferor shall have delivered to Transferee a duly executed termination agreement, terminating the Master Lease as it relates to the Facility, and a duly executed termination agreement terminating the Sublease.

(g) **Compliance.** Transferor shall have performed or complied in all material respects with each of its agreements and covenants required by this Agreement to be performed or complied with by it prior to or at the Effective Time.

(h) **Pending or Threatened Actions.** No action or proceeding shall have been instituted or threatened before any court or governmental body or authority, the result of which is reasonably likely to prevent or make illegal the consummation of the transactions contemplated hereby, or which could materially and adversely affect Transferee's ability to operate the Facility as a skilled nursing bed facility with the number of beds for which the Facility is currently licensed.

(i) **Covenants.** The Parties shall have duly and timely performed and fulfilled in all material respects all of their duties, obligations, promises, covenants and agreements hereunder.

(j) **Material Adverse Change.** From the Effective Date until the Closing Date, there shall have been no material adverse change in the physical condition of the Operations Assets (or any portion thereof), the condition of Transferor's material Licenses, and the status of the Facility as certified for participation in the Medicare and Medicaid programs, respectively.

(k) **Liens.** The Operations Assets shall be free and clear of all liens, claims and Encumbrances other than those permitted herein or that will be paid or otherwise satisfied by the applicable Party on the Closing Date.

(l) **Forced Closing.** There shall be no Orders which are entered after the Effective Date and prior to the Closing which shall result in the forced closing of the Facility prior or upon the Closing Date, unless such Orders are due to some act of Transferee.

(m) **PSA.** HUD and Transferee (or Transferee's Affiliate) shall have entered into and consummated the transactions contemplated under, the PSA. **[alternatively: HUD and TPL shall have entered into and consummated the transactions contemplated under, the PSA and the TPL Lease.]**

(n) **Waiver of Conditions Precedent.** Notwithstanding anything herein to the contrary, if Transferee or TPL acquires the Facility pursuant to the PSA, the conditions precedent to Transferee's obligation to consummate the transactions contemplated in this Agreement set forth in Section 11.1 shall be deemed waived, despite the fact that one or more conditions precedent to its performance have not been satisfied, and Transferee shall be required



to proceed with the consummation of the transactions contemplated by this Agreement. The closing under the PSA shall occur simultaneously with the closing under this Agreement.

**11.2 Efforts.** Each Party hereto shall use its Commercially Reasonable Efforts to satisfy any condition described in this Section 11 that is within its its Obligation under this Agreement, power and control to satisfy.

## **12. CONDITIONS PRECEDENT TO TRANSFEROR'S OBLIGATION TO CLOSE.**

**12.1 Closing.** The obligation of Transferor to consummate the transactions described in this Agreement and the Ancillary Documents, and to take the actions required to be taken by each of Transferor, at the Closing is subject to the satisfaction, at or prior to such Closing, of each of the following conditions (any of which may be waived by Transferor, in whole or in part):

(a) **Accuracy of Representations.** Each representation and warranty of Transferee in this Agreement and the Ancillary Documents must be accurate in all material respects as of the Closing Date as if made on the Closing Date, except for those representations and warranties which refer to facts existing at a specific date, which shall be accurate in all material respects as of such date.

(b) **Deliveries.** At or prior to Closing, Transferor shall have received the deliveries under Section 4.3.

(c) **No Injunction.** There must not be in effect any Legal Requirements or any injunction or other Order that prohibits transfer of operations of, or the Operations Assets used in connection with, the Facility.

(d) **Pending or Threatened Actions.** No action or proceeding shall have been instituted or threatened before any court or governmental body or authority, the result of which is reasonably likely to prevent or make illegal the consummation of the transaction contemplated hereby, or which could materially and adversely affect Transferee's ability to operate the Facility under the Healthcare Use.

(e) **Governmental Authorizations.** At or prior to the Closing, Transferee shall have obtained the Regulatory Approvals.

(f) **Senior Lender Consents.** Transferor shall have received the written consent of Capital Finance and HUD with respect to the transfer of operations contemplated by this Agreement.

(g) **PSA.** PSA, HUD and Transferee (or Transferee's Affiliate) shall have entered into and consummated the transactions contemplated under, the PSA. **[alternatively: HUD and TPL shall have entered into and consummated the transactions contemplated under, the PSA and the TPL Lease.]**

**12.2 Efforts.** Each Party hereto shall use its Commercially Reasonable Efforts to satisfy any condition described in this Section 13 that is within its Obligation under this Agreement, power and control to satisfy.

### **13. TERMINATION.**

**13.1 Termination.** This Agreement shall terminate automatically on the Outside Date. Prior to the Outside Date, this Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing:

- (a) by the mutual written consent of Transferee, Transferor and HUD;
- (b) by Transferor, if Transferee shall have committed a material Breach or failed to perform any of its representations, warranties, covenants or agreements set forth in this Agreement, which Breach or failure is incapable of being cured, or is not cured, by Transferee within thirty (30) calendar days following receipt of written notice from Transferor of such Breach or failure;
- (c) by Transferee, if Transferor shall have shall have committed a material Breach or failed to perform any of its representations, warranties, covenants or agreements set forth in this Agreement, which Breach or failure is incapable of being cured, or is not cured, by Transferor within thirty (30) calendar days following receipt of written notice from Transferee of such Breach or failure; or
- (d) automatically, if the PSA is terminated.

#### **13.2 Effect of Termination.**

(a) In the event of the termination of this Agreement as provided in Section 13.1, written notice thereof shall be given to the other Parties, specifying the provision hereof pursuant to which such termination is made.

(b) In the event this Agreement is terminated under Section 13.1 as the result of a material Breach of this Agreement by any Party, the non-breaching Party or Parties shall be entitled to pursue all remedies available at Law or in equity.

(c) If this Agreement is terminated in accordance with this Section 13, all further obligations of the Parties under this Agreement will terminate and be of no further force and effect, except for the provisions of this Agreement which expressly survive such termination, and no Party shall have any additional Liability to the other as a result of the termination of this Agreement except such Liability, including indemnification, as expressly imposed on that Party. All of the provisions of this Section 13.2 shall survive the termination of this Agreement.

### **14. MISCELLANEOUS PROVISIONS.**

**14.1 Amendment; Waiver.** This Agreement may be amended, modified or superseded only by a written instrument signed by all of the Parties to this Agreement; provided that the provisions set forth in Section 8 above, this Section 14.1, Section 14.2 below and Section

14.3(d) below may not be amended, modified, waived or terminated without the prior written consent of Capital Finance and HUD. No Party shall be deemed to have waived compliance by another Party of any provision of this Agreement unless such waiver is contained in a written instrument signed by the waiving Party and no waiver that may be given by a Party will be applicable except in the specific instance for which it is given. The failure of any Party to enforce at any time any of the provisions of this Agreement, to exercise any right or option contained in this Agreement, or to require at any time performance of any of the provisions of this Agreement by the other Party shall not be construed to be a waiver of such provisions and shall not affect the validity of this Agreement or any of its provisions or the right of such Party thereafter to enforce each provision of this Agreement. No course of dealing shall operate as a waiver or modification of any provision of this Agreement or otherwise prejudice a Party's rights, powers and remedies hereunder.

**14.2 Assignment; Binding Effect.** No Party may assign any of its rights or obligations under this Agreement without obtaining the prior consent of the other Parties to this Agreement; provided however that the Parties acknowledge and agree that Transferor may assign its rights under this Agreement and the Ancillary Documents to Capital Finance and/or HUD pursuant to the terms of any document, instrument or agreement entered into between Transferor, Capital Finance and/or HUD, as the case may be, and each other person or entity that may be party thereto (if any) to the extent necessary for purposes of creating a security interest in this Agreement and the Ancillary Documents or otherwise assign this Agreement and the Ancillary Documents as collateral in respect of any indebtedness, obligations or other liabilities at any time owing by Transferor and its affiliates to Capital Finance and/or HUD (each such document, instrument and agreement, a "Collateral Assignment"). Transferor acknowledges that Capital Finance and/or HUD, as the case may be, may enforce any and all of Transferor's rights against Transferee hereunder and under the Ancillary Documents pursuant to the terms of any Collateral Assignment notwithstanding any term or provision contained in this Agreement or any Ancillary Document to the contrary.

**14.3 Construction and Interpretation of Agreement.**

(a) Section titles or captions in this Agreement are included for purposes of convenience only and shall not be considered a part of the Agreement in construing or interpreting any of its provisions. All references in this Agreement to Sections shall refer to Sections of this Agreement unless the context clearly otherwise requires.

(b) The Parties have participated jointly in the negotiation and drafting of this Agreement. If any ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

(c) Unless the context otherwise requires, when used in this Agreement, the singular shall include the plural, the plural shall include the singular, and all pronouns shall be deemed to refer to the masculine, feminine or neuter, as the identity of the person or persons may require.

(d) Except as specifically set forth in this Agreement, the Parties do not intend that this Agreement shall confer on any third party any right, remedy or benefit or that any third party shall have any right to enforce any provision of this Agreement; provided, however, that notwithstanding anything in this Agreement to the contrary, (i) all rights of Transferor under this Agreement and the Ancillary Documents may be enforced by the Receiver and (ii) each of Capital Finance and HUD is an intended third party beneficiary of, and may enforce, the provisions of Section 8 above, Section 14.1 above, Section 14.2 above and this Section 14.3(d). Notwithstanding anything herein to the contrary, Transferor and Receiver shall deliver copies of all notices, reports and other documents received or delivered by Transferor or Receiver hereunder (including, without limitation, notices of termination under Section 13.1 above) or under any other Ancillary Document to Capital Finance and HUD simultaneously with delivery thereof or within three (3) Business Days following Transferor's or Receiver's receipt thereof.

**14.4 Severability of Provisions.** If a court in any Proceeding holds any provision of this Agreement or its application to any Person or circumstance invalid, illegal or unenforceable, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those to which it was held to be invalid, illegal or unenforceable, shall not be affected, and shall be valid, legal and enforceable to the fullest extent permitted by Law, but only if and to the extent such enforcement would not frustrate materially and adversely the Parties' essential objectives as expressed in this Agreement. Furthermore, in lieu of any such invalid or unenforceable term or provision, the Parties intend that the court reform this Agreement to add a provision as similar in terms to such invalid or unenforceable provision as may be valid and enforceable, so as to effect the original intent of the Parties to the greatest extent possible.

**14.5 Confidentiality of Certain Information.**

(a) Subject to Section 14.5(b), the Parties and their respective Representatives and Affiliates shall hold and keep confidential all Confidential Information which any of them may receive from any other Party concerning such other Party. Failure to mark any of the Confidential Information as non-public, proprietary or confidential shall not affect its status as Confidential Information under the terms of this Agreement.

(b) None of the Parties nor their respective Representatives or Affiliates shall disclose or use, without the prior consent of the disclosing party, any such Confidential Information, in whole or in part, except in connection with the performance of the transactions, or enforcement of any rights or obligations, described in this Agreement and the Ancillary Documents (including, without limitation, to the extent reasonably necessary to operate the Facility and the Operations Assets in accordance herewith and therewith). Unless otherwise required by Legal Requirement or Order, none of the Parties shall disclose any Confidential Information acquired as a result of this Agreement to any Person, other than (i) its respective counsel and other Representatives, and (ii) such other Persons (such as insurers, bankers, lessors and Governmental Authorities) with whom it must communicate to consummate the transactions described in this Agreement, all of whom (excluding any Governmental Authority) must agree to keep the Confidential Information confidential. If the Closing does not occur, each Party will destroy or return to the disclosing Party all copies of documents that contain that party's Confidential Information.

**14.6 Exhibits and Schedules.** All Exhibits and Schedules to this Agreement shall constitute part of this Agreement and shall be deemed to be incorporated in this Agreement by reference and made a part of this Agreement as if set out in full at the point where first mentioned.

**14.7 Counterparts.** To facilitate execution, this Agreement may be executed in as many counterparts as may be required. It shall not be necessary that the signature of or on behalf of each Party appears on each counterpart, but it shall be sufficient that the signature of or on behalf of each Party appears on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in any proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of or on behalf of all of the Parties. Executed versions of this Agreement may be delivered by the Parties via facsimile transmission or electronic mail, either or both of which shall constitute a delivery of an original.

**14.8 Entire Agreement.** This Agreement and the Ancillary Documents embodies the entire agreement and understanding of the Parties related to its subject matter and supersedes all prior proposals, understandings, agreements, correspondence, arrangements and contemporaneous oral agreements relating to subject matter of this Agreement. No representation, promise, inducement or statement of intention has been made by any party that has not been embodied in this Agreement or the Ancillary Documents.

**14.9 Expenses.** Except as otherwise expressly set forth below or otherwise provided in this Agreement, each Party will bear its own expenses incurred in connection with the preparation, execution and performance of its obligations under this Agreement. Transferee shall pay any sales, use transfer and similar Taxes relating to the transfer of any Operations Assets to Transferee pursuant to this Agreement.

**14.10 Further Assurances.** Each Party shall execute and deliver such additional documents or take such additional actions as may be requested by another Party to this Agreement if such requested document or action is reasonably necessary to effect the transactions described in this Agreement or the Ancillary Documents.

**14.11 Governing Law and Venue.** This Agreement and all matters arising out or related to this Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of Illinois, without giving effect to any conflict of law rule or principle of such state. Any legal action or proceeding relating to this Agreement shall be subject to the exclusive jurisdiction of the courts of the State of Illinois, the courts of the United States of America for the Northern District of Illinois and appellate courts from any thereof, located in Cook County, Illinois.

**14.12 No Public Announcement.** Unless the Parties agree otherwise, no Party shall make any press release or other public announcement regarding this Agreement or the transactions described in this Agreement, unless such Party is obligated by any Law or the rules of any stock exchange upon which its shares are traded to make such a disclosure. When a Party determines that it is obligated by any Legal Requirements or the rules of a stock exchange to make

such a disclosure, it shall notify the other Party in writing prior to such disclosure and all of the Parties shall cooperate to cause a mutually agreeable release or announcement to be issued.

**14.13 Notices.** All notices, requests, consents, approvals, waivers, demands and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed delivered to the Parties (a) on the date of personal delivery, transmission by facsimile transmission with confirmation of completed transmission, or transmission by electronic mail with confirmation from the recipient of the successful delivery of such transmission, (b) on the first Business Day following the date of delivery to a nationally recognized overnight courier service, or (c) on the third Business Day following the date of deposit in the United States Mail, postage prepaid, by certified mail, in each case, addressed as follows, or to such other address or Person as any Party may designate by notice to the others in accordance herewith: \_\_\_\_\_

**14.14 Waiver of Jury Trial.** Transferor and Transferee hereby waive trial by jury in any Proceeding brought by any Party against another Party on any matter arising out of or in any way connected with this Agreement.

**14.15 Receiver Exculpation.** Nothing in this Agreement shall in any way modify or waive the immunity afforded the Receiver under applicable law and the Receiver Order. The Receiver-Related Persons (as defined in the Receiver Order) shall have no personal liability and shall have no claims asserted against them relating to or arising out of the execution and performance of this Agreement on behalf of the Parties and the consummation of the transactions set forth herein.

**[SIGNATURE PAGE FOLLOWS.]**

**TRANSFEROR:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRANSFeree:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit A**

**THE FACILITY**

<b><u>Name of Facility</u></b>	<b><u>Address</u></b>	<b><u>Bed Count by Service Type and Licensure Category</u></b>



## **Exhibit B**

### **DEFINED TERMS**

“**Accounts Receivable**” shall have the meaning set forth in Section 2.2(b).

“**Admission Agreement**” means the Contract between Transferor and a Facility resident under which resident occupies a Facility bed and receives services and items from the Facility.

“**Affiliate**” means any Person that, directly or indirectly through one or more intermediaries, Controls or is Controlled by, or is under common Control with, the Person specified.

“**Agreement**” means this Agreement to Transfer Operations and Related Assets, including the Exhibits hereto.

“**Ancillary Documents**” means (a) the agreements and other instruments attached to this Agreement as Exhibits, and (b) any other agreements or other instruments required to be executed or delivered by any of the Parties pursuant hereto or thereto.

“**Assignment and Assumption Agreement**” shall have the meaning set forth in Section 4.2(d).

“**Assignment of Resident Contracts**” shall have the meaning set forth in Section 2.3.

“**Assignment of Resident Trust Funds**” shall have the meaning set forth in Section 2.4.

“**Assumed Contracts**” shall have the meaning set forth in Section 7.3.

“**Assumed Employment Liabilities**” shall have the meaning set forth in Section 10.5.

“**Assumed Liabilities**” shall have the meaning set forth in Section 2.5(b).

“**Assumed PTO**” shall have the meaning set forth in Section 10.3.

“**Breach**” means a breach of a representation, warranty, covenant, obligation, or other provision of this Agreement or any instrument delivered pursuant to this Agreement, which will be deemed to have occurred if there is or has been any inaccuracy in or breach of, or any failure to perform or comply with, such representation, warranty, covenant, obligation, or other provision.

“**Business**” means the business of the operation of the skilled nursing facility being conducted by Transferor at the Facility immediately prior to Closing Date.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which banks are authorized or required by law to be closed in New York, New York.

“**Capital Finance**” means Capital Finance, LLC, Transferor’s working capital lender, and its successors and assigns.

“**Closing**” shall have the meaning set forth in Section 4.1.

“**Closing Date**” shall have the meaning set forth in Section 4.1.

“**Closing Payment**” shall have the meaning set forth in Section 9.

“**Closing Statement**” shall have the meaning set forth in Section 4.2(h).

“**CMS**” means the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services, or any successor agency thereto.

“**Code**” the Internal Revenue Code of 1986, as amended and in effect from time to time.

“**Commercially Reasonable Efforts**” means the efforts that a prudent Person desirous of achieving a result would use in similar circumstances to ensure that such result is achieved as expeditiously as possible; provided, however, that an obligation to use Commercially Reasonable Efforts under any agreement does not require the Person subject to that obligation to take actions that would result in a materially adverse change in the benefits to such Person of such agreement and the transactions described therein.

“**Confidential Information**” means any information which is proprietary in nature and non-public or confidential, in whole or in part; provided, however, that Confidential information does not include any information in the possession of the receiving party (a) that is independently developed by the such party, (b) is learned from a third party not under any duty of confidence to the disclosing party or (c) becomes part of the public domain through no fault of the receiving party.

“**Consent**” means any approval, consent, certification, acknowledgment, ratification, waiver, or other authorization.

“**Cost Reports**” means, individually and collectively, all cost reports exclusively related to the Facility pursuant to the requirements of any applicable Government Reimbursement Programs for cost-based payments or reimbursement due to, or claimed by Facility from, any applicable Government Reimbursement Programs or their fiscal intermediaries or payor agents, and without limitation includes a Medicare cost report.

“**Contract**” means any written agreement, contract, obligation, promise, or undertaking that is legally binding.

“**Contracted Employees**” shall have the meaning set forth in Section 10.1.

“**Control**” or “**Controlled**” means, as applied to any Person, the possession, directly or indirectly, of the power to direct the management and policies of that Person, whether through ownership, voting control, by Contract or otherwise.

“**Current Records**” shall have the meaning set forth in Section 8.3(a).

“**Damages**” means any obligation, loss, claim, Liability, deficiency, demand, assessment, Order, cost and other expense (including reasonable attorneys’ and accounting fees) of any nature and of any kind whatsoever.

“**Designated Record Set**” shall mean the group of records maintained by or for a Facility that consists of the medical records and billing records of a resident and issued, in whole or in part, by or for a Facility to make decisions about a resident, including any item, collection, or grouping of information (including Protected Health Information), that is maintained, collected, used or disseminated by or for a Facility.

“**Effective Date**” means the date that this Agreement is fully executed by each of the Parties and an order has been entered by the Court in the Receivership Action approving this Agreement.

“**Effective Time**” shall have the meaning set forth in Section 4.1.

“**Employee(s)**” shall have the meaning set forth in Section 10.1.

“**Employee Benefit Plan**” means any plan, program, agreement or policy for the benefit of any current or former employee, director, independent contractor, or owner (or any dependent or beneficiary thereof) that is (a) a welfare plan within the meaning of Section 3(1) of ERISA, (b) a pension plan within the meaning of Section 3(2) of ERISA, (c) a stock bonus, stock purchase, stock option, restricted stock, stock appreciation right or similar equity-based plan, or (d) any other compensation, deferred-compensation, retirement, welfare-benefit, bonus, incentive, retention, severance pay, sick leave, vacation pay, salary continuation, disability, dental, vision, medical, life insurance or fringe-benefit plan, program, agreement or policy.

“**Encumbrance**” means any charge, claim, community property interest, condition, equitable interest, lien, option, pledge, security interest, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership.

“**Entity**” means any corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association or any other type of organization.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**Excluded Assets**” shall have the meaning set forth in Section 2.2.

“**Excluded Contract Liabilities**” shall have the meaning set forth in Section 2.5(b).

“**Excluded Third Party Payor Liabilities**” means any Liability (including, without limitation, any regulatory or administrative claims, deficiencies, civil monetary penalties or recoupment of overpayments, whether collected by lump sum or by decreasing the third party payments that are otherwise payable to Transferee for services provided by the Business on or after the Effective Time or the reimbursement rates upon which such payments are based) under the Medicare Provider Agreement, the Medicaid Provider Agreement or any other Third Party

Payor Agreement to the extent such Medicare Provider Agreement, Medicaid Provider Agreement or any other Third Party Payor Agreement are not assigned to, or used by, Transferee.

“**Facility**” shall have the meaning set forth on page 1.

“**General Assignment**” shall have the meaning set forth in Section 4.2(b).

“**Governmental Authority**” means any (a) nation, state, county, city, town, village, district, or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign, or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal); (d) multi-national organization or body; or (e) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature.

“**Governmental Authorization**” means any Consent, license or permit issued, granted, given, or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Legal Requirement.

“**Group Health Plan**” shall have the meaning set forth in Section 10.6.

“**Health Care Licenses**” shall have the meaning set forth in Section 7.1(a).

“**Healthcare Use**” shall mean the use and operation by Transferee of the Facility for the number of beds specified on Exhibit A hereto.

“**HUD**” means the U.S. Department of Housing and Urban Development.

“**Including**” means the commonly accepted meaning associated with such word and any list of items that may follow such word shall not be deemed to represent a complete list of the contents of the referent of the subject.

“**Landlord**” shall have the meaning set forth on page 1.

“**Law**” or “**Laws**” means any Legal Requirement.

“**Legal Requirement**” means any federal, state, local, municipal, foreign, international, multinational, or other Order, constitution, law, ordinance, principle of common law, regulation, statute, treaty, or rule or regulation of or enforceable guideline or policy imposed by any Governmental Authority.

“**Liability**” or “**Liabilities**” means debts, obligations, duties, or liabilities of every type and trade, known or unknown, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, asserted or unasserted, fixed, contingent, absolute or otherwise.

“**Licenses**” shall have the meaning set forth in Section 2.1(f).

“**Master Tenant**” shall have the meaning set forth on page 1.

“**Medicare**” means Title XVIII of the Social Security Act and implementing federal and state regulations.

“**Medicare /Medicaid Liability**” means any Liabilities arising prior to the Effective Time under any Medicare Provider Agreement or Medicaid Provider Agreement.

“**Medicaid**” means Title XIX of the Social Security Act and implementing federal and state regulations.

“**Medicaid Provider Agreement**” shall have the meaning set forth in Section 7.1(a).

“**Medicare Provider Agreement**” shall have the meaning set forth in Section 7.1(a).

“**Master Lease**” shall have the meaning set forth on page 1.

“**Master Tenant**” shall mean CR Finance II, LLC

“**Operations Assets**” shall have the meaning set forth in Section 2.1. For the avoidance of doubt, the term “Operations Assets” shall not include any Excluded Assets.

“**Order**” means any award, decision, injunction, judgment, writ, decree, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any court, administrative agency, or other Governmental Authority or by any arbitrator.

“**Organizational Documents**” means (a) the articles or certificate of incorporation and the bylaws of a corporation; (b) the partnership agreement and any statement of partnership of a general partnership; (c) the limited partnership agreement and the certificate of limited partnership of a limited partnership; (d) the articles of organization and operating agreement of a limited liability company; (e) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a Person; and (f) any amendment to any of the foregoing.

“**Outside Date**” means \_\_\_\_\_, 2019.

“**Owner**” shall have the meaning set forth on page 1.

“**Party**” and “**Parties**” shall have the meaning on page 1.

“**Person**” means any individual, Entity, labor union, or Governmental Authority.

“**Pre-Effective Time Receivables**” shall have the meaning set forth in Section 8.2(a).

“**Post-Effective Time Receivables**” shall have the meaning set forth in Section 8.2(a).

“**Proceeding**” means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

“**Proprietary Policies and Procedures**” shall have the meaning set forth in Section 2.1(k).

**“Property”** means the real property and improvements where the Facility is located that is owned by Landlord.

**“Protected Health Information”** means individually identifiable health information, including as defined by any applicable Laws, that is transmitted by or maintained in an electronic medium, or transmitted or maintained in any other form or medium, including oral.

**“Provider Taxes”** shall have the meaning set forth in Section 9.3.

**“Purchase Price”** shall have the meaning set forth on Section 3.

**“PSA”** shall have the meaning set forth on page 1.

**“Receiver”** shall have the meaning set forth on page 1.

**“Receiver Order”** shall have the meaning set forth on page 1.

**“Receivership Action”** shall have the meaning set forth on page 1.

**“Records”** means, to the extent related to any of the Operations Assets, the Facility or the operation thereof, the Employees or current residents of the Facility, as applicable: (a) all files, charts, billing records and other resident information in Transferor’s possession or control relating to all residents occupying or using the Facility on the Closing Date (including all patient records, medical records, therapy records, pharmacy records, clinical records, financial and accounting records, Resident Trust Funds records, any other Protected Health Information and any other patient health records as defined by applicable state Law), (b) litigation records, (c) maintenance records, (d) employment records (including all medical and health records and all non-medical records including evaluations, etc.) and (e) administrative compliance records, including all state surveys and plans of correction, and correspondence and any other data which was utilized in connection with the operation of the Facility or Operations Assets, in each case, whether in written or electronic format. To the extent that any Records have been removed from the Facility, such Records shall be made available to Transferee at a convenient location or returned to the Facility prior to the Closing.

**“Regulatory Approvals”** shall have the meaning set forth in Section 11.1(d).

**“Rejected Contracts”** shall have the meaning set forth in Section 7.3.

**“Representative”** means with respect to a particular Person, any director, manager, shareholder, member, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants, and financial advisors. For the avoidance of doubt, the term “Representative” as it relates to the Transferor shall include the Receiver and the Receiver’s Representatives.

**“Resident Contracts”** means all admissions Contracts, personal care Contracts, and other Contracts for the provision of services or goods to residents of the Facility

**“Resident Inventory”** shall have the meaning set forth in Section 2.4.

**“Resident Trust Funds”** shall have the meaning set forth in Section 2.4.

**“Senior Lender Consents” [RESERVED]**

**“Sublease”** shall have the meaning set forth on page 1.

**“Third Party Payor”** means Medicare, Medicaid, Tricare, Veteran’s Administration, commercial and private insurers, managed care company, employee assistance programs, HMOs, preferred provider organizations and any other Governmental Authority, commercial, or other organization which maintains a healthcare reimbursement program or policy.

**[“TPL” shall have the meaning set forth on page 1.]**

**[“TPL Lease” shall have the meaning set forth on page 2.]**

**“Transferee”** shall have the meaning set forth on page 1.

**“Transferee Employees”** shall have the meaning set forth in Section 10.1.

**“Transferred IP”** shall have the meaning set forth in Section 2.1(h).

**“Transferor”** shall have the meaning set forth on page 1.

**“Transferor Lockbox Account”** shall mean the “Transferor Lockbox Account” set forth on Exhibit G.

**“Transferor Government Lockbox Account”** shall mean the “Transferor Government Lockbox Account” set forth on Exhibit G.

**“Transition Period”** shall have the meaning set forth in Section 7.1(h).

**“WARN Act”** shall have the meaning set forth in Section 10.8.

**Exhibit C**

**Assignment of Resident Contracts**



**Exhibit D**

**Form of Assignment and Assumption of Resident Trust Funds**

**Exhibit E**

**Form of General Assignment**

**Exhibit F**

**Form of Assignment and Assumption Agreement**

**Exhibit G**

**Lockbox Accounts**

**Transferor Lockbox Account**

Bank Name: St. Louis Bank  
City / state: St. Louis, Missouri  
Account #: [Non-Government Lockbox Account for Transferor]  
ABA Routing: [\_\_\_\_\_]   
Acct Name [Transferor's Name]  
Ref: [\_\_\_\_\_]

**Transferor Government Lockbox Account**

Bank Name: St. Louis Bank  
City / state: St. Louis, Missouri  
Account #: [Government Lockbox Account for Transferor]  
ABA Routing: [\_\_\_\_\_]   
Acct Name [Transferor's Name]  
Ref: [\_\_\_\_\_]



***Rosewood Care Center of St Louis***

***11278 Schuetz Road***

***St. Louis, MO 63146***



59 Units

Licensed Capacity: 120 skilled nursing beds

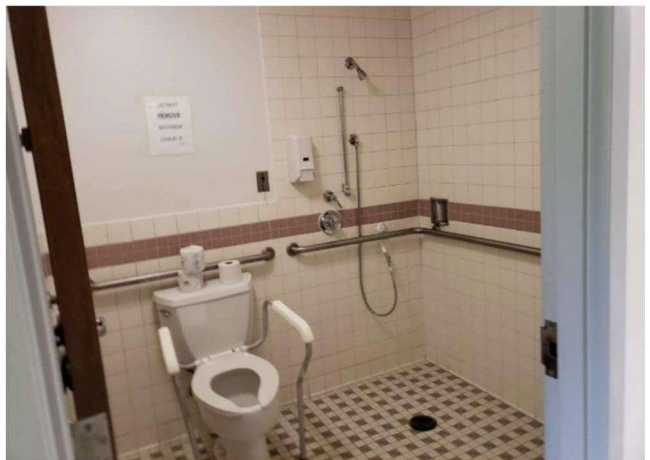
Operating Capacity: 100 skilled nursing beds



**U. S. Department of Housing and Urban Development  
Multifamily Property Disposition  
801 Cherry Street, Unit #45, Ste. 2500  
Fort Worth, TX 76102**

**DUE DILIGENCE SHOULD BE PERFORMED IN ADVANCE OF SUBMITTING A BID. WHILE CARE HAS BEEN EXERCISED TO ENSURE ACCURACY, ALL INFORMATION PROVIDED IS SOLELY FOR THE PURPOSE OF PERMITTING PARTIES TO DETERMINE WHETHER OR NOT THE PROPERTY IS OF SUCH TYPE AND GENERAL CHARACTER AS TO INTEREST THEM IN ITS PURCHASE. HUD MAKES NO WARRANTY AS TO THE ACCURACY OF SUCH INFORMATION**

## Rosewood Care Center of St Louis





**Exhibit B  
PROPERTY AT A GLANCE**

**Rosewood Care Center of St. Louis FHA# 085-22017**

ADDRESS: **11278 Schuetz Rd.  
St. Louis, MO 61346**  
COUNTY: **St. Louis**

PROPERTY EARNEST MONEY: **\$50,000**  
LETTER OF CREDIT: **\$90,000**

SALES PRICE: **Absolute**  
TERMS: **"All-Cash, As-Is"**  
SALE: **Foreclosure**

**PROPERTY INFORMATION**

Number of Buildings	Stories	Year Built	Rehab Year	Approximate Site Acreage	Approximate Gross Building Area
1	1	1989	N/A	6.79	40,794 sq. ft.

Foundation, Frame & Exterior		Interior Description	
<b>Foundation:</b>	Poured Concrete Slab	<b>Floor Cover:</b>	Carpet/Vinyl/Tile
<b>Basement:</b>	None	<b>Interior Walls:</b>	Wallpaper & Painted Drywall
<b>Structural Frame:</b>	Wood Frame	<b>Ceilings:</b>	Drywall and acoustic ceiling panels
<b>Exterior:</b>	Brick	<b>Lighting:</b>	Mix of Fluorescent and Incandescent
<b>Roof Type/Cover:</b>	Gable/Shingles	<b>Restrooms:</b>	All units have bathroom with sink and toilet. Some units have showers.

Mechanical Systems	
<b>Heating/Cooling:</b>	Individual PTAC system in all resident rooms. Central heating & cooling for common areas
<b>Sprinkler:</b>	Fully fire sprinkled with a wet system
<b>Elevators:</b>	None
<b>Security:</b>	Central monitored emergency call system in resident bedrooms and bathrooms
<b>Emergency Power:</b>	Yes

Property Description		Resident Days 7/1/2019 – 9/30/2019	
<b>Zoning:</b>	R-3 (Residential)	Private Hold Days:	0
<b>Property Type:</b>	Skilled Nursing Facility	Private Pay Days:	173
<b>Licensed Capacity:</b>	120 skilled nursing beds	Private Insurance Days:	0
<b>Operating Capacity:</b>	100 skilled nursing beds	Managed Care Insurance Days:	98
		Medicaid Days:	6,562
Semi-Private:	41	Medicaid Pending Days:	1,304
Private:	18	Medicare Days:	594
<b>Total Units:</b>	<b>59</b>	<b>Total:</b>	<b>8,731</b>
Semi-Private:	82	<b>Financial Performance 7/1/2019 – 9/30/2019</b>	
Private:	18	Total Operating Revenue:	\$1,253,800
<b>Total Beds:</b>	<b>100</b>	Total Operating Expense:	\$1,363,444
		<b>Net Operating Income/(Loss):</b>	<b>(\$109,643)</b>

**COMMENTS CONCERNING PROPERTY INFORMATION:**

- The "Absolute" Sales Price or Minimum Bid is \$11,738,377
- Resident Days and Financial Performance data obtained from the Receiver's Report as submitted by Long Hill at Rosewood, LLC to the United States District Court for the Northern District of Illinois, Eastern Division on November 18, 2019.
- HUD cannot provide any financial information regarding the operations of the Property beyond what is reflected in this Property At A Glance.

## FORECLOSURE USE RESTRICTIONS

**Purchaser will be required to complete the HUD-required repairs for the Property within 18 months. Purchaser must be able to obtain and maintain the necessary licensing and CMS certification to operate the Property as a skilled nursing facility.**

## TERMS OF FORECLOSURE SALE

1. This is an "All-cash, As-is" sale. HUD is not providing financing for this sale. Payment of the full bid price minus the Foreclosure Earnest Money Deposit must be presented at Closing.
2. Sale of the Property will be awarded to the Foreclosure High Bidder that HUD determines has the experience, qualifications and capacity to successfully own and operate the Property.
3. The Foreclosure Earnest Money Deposit is a prerequisite for bidding at the Foreclosure Sale. Foreclosure Bidders must adhere to the Foreclosure Instructions, Section II, including submission of Previous Participation Certification and supporting documentation. No consideration will be given to a bid submitted by any party currently suspended or debarred from participating in HUD programs.
4. The Foreclosure High Bidder must certify to HUD that any and all properties that the Foreclosure High Bidder or its affiliates owns, are in substantial compliance with applicable state and local housing statutes, regulations, ordinances and codes. See Exhibit H, Certification of Substantial Compliance.
5. Foreclosure High Bidder has the option to file the required Previous Participation Certification in electronic or paper format. **For questions concerning APPS, contact the Multifamily Housing Systems Help Desk at 1-800-767-7588. For questions concerning Secure Systems contact the REAC Help Desk at 1-888-245-4860.**
6. Post-Closing Repairs for the Property are estimated at \$361,408 and must be completed to HUD's satisfaction within 18 months of Closing. Refer to Exhibit D, Executive Summary, Exhibit E, Cost Estimate Summary, and the Use Agreement's Required Rehabilitation Rider for more information.
7. No consideration will be given to a bid submitted by any party currently suspended or debarred from participating in HUD programs. As provided for in 24 C.F.R. § 27.20(f), the defaulting mortgagor, or any Principal, successor, Affiliate, or assignee on the mortgage at the time of default of the original HUD-insured mortgage shall not be eligible to bid on or otherwise purchase this Property.
8. Foreclosure Closing is to be held after the Approved Foreclosure High Bidder: 1) signs an Acknowledgement by Bidder to acquire the Property, and 2) has submitted the application and supporting documentation to acquire the necessary licensing and certification for the Property which the Approved Foreclosure High Bidder must obtain within 60 days of completion of the Foreclosure Sale.
9. If HUD approves an extension of the Foreclosure Closing, the Approved Foreclosure High Bidder must pay a fee which is the greater of 1.5% of the bid price or HUD's holding costs of \$1.08 per bed per calendar day for each thirty (30) calendar day period.
10. The Use Agreement will include the following Riders: Enforcement, Required Rehabilitation, and Environmental Hazards.

**PROSPECTIVE BIDDERS SHOULD READ AND THOROUGHLY UNDERSTAND ALL INFORMATION PROVIDED HEREIN AND IN THE FORECLOSURE INSTRUCTIONS PRIOR TO SUBMITTING A BID.**

## INFORMATION AND FORECLOSURE INSTRUCTIONS

The complete Invitation, which includes the FORECLOSURE INSTRUCTIONS, may be viewed or printed at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/pd/mfplist](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/pd/mfplist).

You may also sign up for our electronic mailing list at <https://www.hud.gov/subscribe/signup?listname=Multifamily%20Property%20Disposition&list=MFPD-L>.

### Property Will Be Offered at Foreclosure Sale

Date: December 20, 2019

### Oral Bids Will Be Received

Time: 10:00 a.m.

Place: East Front Door of the St Louis County Circuit Court Bldg.,  
105 South Central Ave.,  
Clayton, Mo.

### Contact Information regarding this Property:

**Realty Specialist:** Farla Knight  
Phone: (817) 978-5810  
Email: [farla.g.knight@hud.gov](mailto:farla.g.knight@hud.gov)

**Foreclosure Commissioner:**  
Fred R. Greenstein, Esq.  
4550 West 109 Street, Suite 150  
Overland Park, KS 66211  
913-948-7780, x102

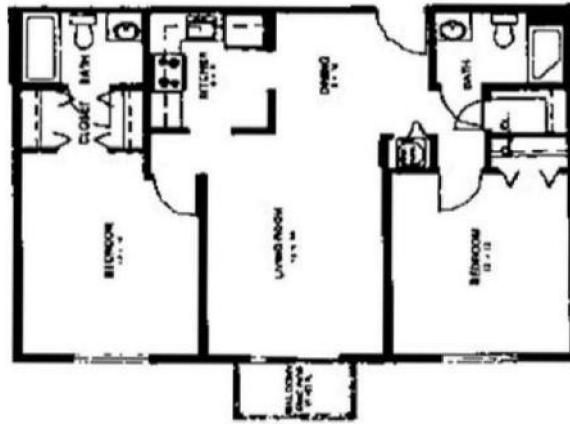
## INSPECTION OF PROPERTY

No Open House is scheduled for this sale.

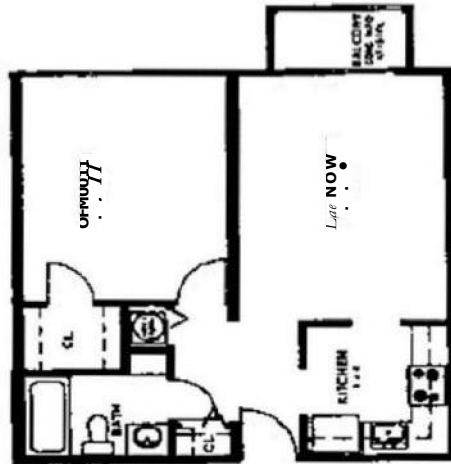
**Bidders should perform due diligence in advance of submitting a Bid. While HUD has exercised care to ensure accuracy, all information provided is solely for the purpose of assisting parties with determining whether the Property is of such type and general character as to interest them. HUD makes no warranty as to the accuracy of such information.**



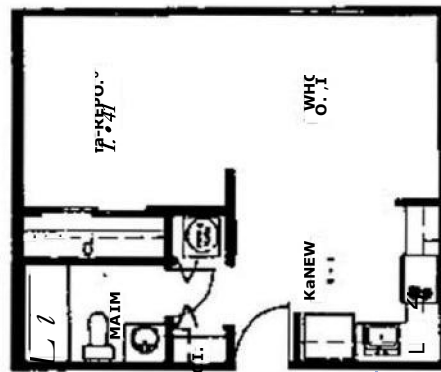
Exhibit C  
FLOOR PLAN



**Two Bedroom**  
approx. 864 sq.ft



**One Bedroom**  
approx. 576 sq.ft



**Studio**  
approx. 432 sq.ft

## Exhibit D EXECUTIVE SUMMARY

The subject property, Rosewood Care Center of St. Louis, was inspected by Leetex Group (Leetex) on November 16, 2018. The purpose of this inspection was to assess this existing multifamily project to ensure that the property meets (1) the “decent, safe, and sanitary and in-good-repair requirements (24 CFR886.113 and 24 CFR 5.703 see attached PDFs) and (2) local building code requirements. This report identifies existing property conditions and required repair items.

### Property Overview

<b>Address</b>	11278 Schuetz Road, St Louis, Missouri 63146
<b>Year Built</b>	1991
<b>No. of Buildings</b>	One
<b>Building Type</b>	One-Story with no basement
<b>Building Use</b>	Institutional Residential long-term care
<b>Total Number of Units</b>	60 (all HAP)

The following rooms were inspected:

111	117	118	204	212	213	215	216
304	314	315	317	408	409	410	413

### General Observations

The property is in good condition and has been well-maintained. Walkways and sidewalks are in serviceable condition. The rear patio requires replacement. There were no structural issues detected anywhere in the complex. The main entry and exit from the complex is in the building front. There are additional locked emergency exits in each wing at the end of the corridor.

The property is comprised of 58 two-bed units and two private suites with showers. The building is comprised of four residential wings: 100, 200, 300, and 400. At the main entry point there are administrative offices and a conference room. Throughout the facility there are two nurses' stations, one main kitchen, a dining room, a serving room, and off the main entry are the mechanical, laundry, and physical therapy rooms.

Roofs are pitched with asphalt shingles as their covering.

Ground level interior floors are concrete-slab-on-grade construction.

The building exteriors are comprised of 4" brick cladding over wood framing.

All the interior and exterior walls are 2x4 wood framing. Interior walls are comprised of gypsum board.

Interior finishes are painted and wallpapered gypsum board walls. Unit ceilings are gypsum board with painted popcorn ceilings. Corridors and common spaces are comprised of acoustic ceiling panels, carpet for the entry lobby and offices, and VCT for the bedrooms, corridors, kitchen, and elsewhere throughout the facility.

The site is initially supplied by three-phase 480-volt alternating current (AC) electric power. There is one main meter with breakers inside the mechanical room.

Hot water is supplied to the units by three hot water tanks.

Heating and cooling is provided in each unit via an original HVAC split-system heat pump unit located below the window opening. An electric split system air handler cools and heats the common spaces.

The main kitchen has a beverage room with upper and lower cabinets along with plastic laminate countertops, a stainless steel sink, a soda machine, and an ice maker. Inside the main kitchen is a commercial grade double bowl stainless steel sink, a six-burner range/oven, a commercial refrigerator, a walk-in freezer unit, and an automatic dishwasher. The appliances are in good condition.

The standard unit has an enclosed toilet and interior corner vanity. The private unit suites have an interior corner vanity and an enclosed bathroom with toilet and ceramic stand up shower.

Individual units are supplied with hard wired smoke detectors. The residential unit is supplied with three sprinkler heads in each unit.

Building entrance lighting is provided at the building front. Exterior area security lighting for the common walkways and parking is provided on the buildings with pole lighting for the site parking.

Visitor parking is accommodated at the building's front entry point; employee parking and additional visitor parking is located in the back-right section of the lot. The parking lots and roadways are in poor shape and require resurfacing. The walkways and curbs are poured concrete and in good shape. There are 78 parking stalls requiring resurfacing.

There is one trash area for the complex.

There are four handicap signs and parking stalls near the entrance.

### **Exterior Observations**

Generally, the building is in good condition. The asphalt shingle roof appears to be in good shape, and replacement is not needed at this time. Asphalt parking and roadways are in poor shape and require resurfacing. The poured concrete patio has severe settlement issues, and replacement of concrete is necessary to correct storm water runoff.

### **Interior Observations**

The ceiling is in average condition, with acceptable acoustic ceiling tiles in corridors and common areas. The room ceilings are paint over popcorn texture. At this time, painting is needed on the popcorn ceilings throughout the facility.

The gypsum board walls are in good condition, and minor routine touch ups are needed. Interior wall painting and wallpaper is in fair condition; repairing/replacing is needed in most units. It is recommended to repaint walls and ceilings in residential units.

The solid core wood doors are in good condition as are the window blinds/shades. The original windows inside the rooms inspected are currently providing good thermal protection; however, their operation is no longer acceptable and all require replacement.

### **Plumbing/Electrical/HVAC**

The sanitary sewer system is reported to be in good working condition. The domestic water supply to each of the residential room units is in good working condition.

Power is distributed from metering distribution panels on the exterior of each building. There is one electrical meter for the facility located in the mechanical room. Electrical panels are all located inside the mechanical rooms. No deficiencies observed.

Each residential room unit has its own individual split-system type combination HVAC heat pump; all units are original and require replacement. The two heat pumps are original and operable. Air handlers are also all original; they have been refurbished and are in good running condition. The boiler serving the facility is original; replacement is recommended.

For domestic hot water, the complex is serviced by three hot water tanks, which appear to be in good running condition.

The cooling tower has been recently replaced by BAC Company.

### **Code Issues**

There were no observable code violations at the time of the inspection.

### **Handicap Accessibility**

There were no observable handicap accessibility issues at the time of the inspection. There are current provisions for ADA access to the main offices including proper parking and ramps. There are four handicap signs and four handicap parking stalls in the lot.

### **Health & Safety**

There were no observable health or safety issues at the time of the inspection.

There is no evidence of fires in the past in any areas of the building. The building is 100% sprinklered with the original fire sprinkler system. There is a fire alarm system in all the structures and smoke/fire detectors in each residential room unit.

Mold is a serious health concern to the residents and staff of the facility. No mold growth was observed in the inspected units. No health-related adverse findings were observed based on the limitations of the reports and applicable standards and guidelines.

### **Environmental**

No evidence of any recognized environmental concerns for the property was found during the inspection.

## **Recommendations**

This complex is in good condition. It is in good interior cosmetic shape, and mechanically it appears to be in good operating condition as some of the original equipment has been replaced. Major issues:

1. Resurface parking lot and roadways
2. Replace poured concrete patio
3. Replace the original boiler
4. Replace 60 original heat pumps
5. Paint 60 resident rooms
6. Replace the original windows in 60 resident rooms

## **Exhibit E**

### **COST ESTIMATE SUMMARY**

#### **DESCRIPTIVE SUMMARY OF SUGGESTED REPAIRS**

*COST FACTOR #1: Asphalt Resurfacing*

The asphalt parking lots and driveways are in poor shape and require resurfacing of 78 stalls (31,200 SF) at a cost of \$101,400.

*COST FACTOR #2: Poured Concrete*

Poured concrete patio has severe settlement issues, replacement of concrete is necessary to correct storm water runoff. Total replacement (1,200 SF) is recommended at a cost of \$9,300.

*COST FACTOR #3: Boiler Replacement*

The boiler serving the facility is original, and replacement is recommended. The cost to replace is \$15,223.

*COST FACTOR #4: Heat Pump Replacement*

We recommend the replacement of 60 original heat pumps at a cost of \$141,000.

*COST FACTOR #5: Interior Wall Painting*

While interior wall painting is in good condition and wallpapered walls are in fair condition, repairing/replacing is needed in most units. A total replacement (45,740 SF) would cost \$34,305.

*COST FACTOR #6: Window Replacement*

The original windows inside the rooms inspected are currently providing good thermal protection; however, their operation is no longer acceptable. A total replacement of 60 window assemblies would cost \$60,180.

	Quantity	Unit Cost	Cost
<b>Division 1: General Requirements</b>			
General Conditions	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
<b>General Requirements Subtotal</b>			<b>\$0.00</b>
<b>Division 2: Site Construction</b>			
Site Demolition:	0	\$0.00	\$0.00
General Building Demolition:	0	\$0.00	\$0.00
Excavation, Fill & Grading:	0	\$0.00	\$0.00
Site Utilities	0	\$0.00	\$0.00
Storm Drainage & Sanitary Sewer Rodding (Annually)	0	\$0.00	\$0.00
Water, Steam & Gas Distribution	0	\$0.00	\$0.00
Miscellaneous Site Improvements	0	\$0.00	\$0.00
Irrigation, Sprinkler Head Systems	0	\$0.00	\$0.00
Landscaping	0	\$0.00	\$0.00
Other: Asphalt Resurfacing	31,200	\$3.25	\$101,400.00
<b>Site Construction Subtotal</b>			<b>\$101,400.00</b>
<b>Division 3: Concrete</b>			
Precast Concrete	0	\$0.00	\$0.00
Specialty Concrete	0	\$0.00	\$0.00
Excavation & Backfill	0	\$0.00	\$0.00
Concrete Forms	0	\$0.00	\$0.00
Foundation forms	0	\$0.00	\$0.00
Footing Forms	0	\$0.00	\$0.00
Forms, Slab on Grade (Replace patito slab)	1,200	\$7.75	\$9,300.00
Reinforcing steel	0	\$0.00	\$0.00
Slab Finishes	0	\$0.00	\$0.00
Insulating Decks	0	\$0.00	\$0.00
Fiber Deck	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
<b>Concrete Subtotal</b>			<b>\$9,300.00</b>
<b>Division 4: Masonry</b>			
Brick Masonry	0	\$0.00	\$0.00
Concrete Masonry	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
<b>Masonry Subtotal</b>			<b>\$0.00</b>
<b>Division 5: Metals</b>			
Structural Steel	0	\$0.00	\$0.00
Decking & Siding	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
<b>Metals Subtotal</b>			<b>\$0.00</b>
<b>Division 6: Woods and Plastics</b>			
Rough Carpentry	0	\$0.00	\$0.00
Vertical Framing, Walls	0	\$0.00	\$0.00
Horizontal Framing	0	\$0.00	\$0.00
Misc. Framing & Materials	0	\$0.00	\$0.00
Sheathing	0	\$0.00	\$0.00
Finish Carpentry	0	\$0.00	\$0.00
Beams, trusses	0	\$0.00	\$0.00
Stairs, Wood	0	\$0.00	\$0.00
Rough Hardware	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
<b>Wood and Plastics Subtotal</b>			<b>\$0.00</b>
<b>Division 7: Thermal &amp; Moisture Protection</b>			
Waterproofing	0	\$0.00	\$0.00
Thermal & Sound Insulation	0	\$0.00	\$0.00
Roofing	0	\$0.00	\$0.00
Composite Building Panels	0	\$0.00	\$0.00
Architectural Sheet Metal	0	\$0.00	\$0.00
Caulking & Sealants	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
<b>Thermal and Moisture Protection Subtotal</b>			

<b>Division 8: Doors and Windows</b>			
Hollow Metal Doors & Frames	0	\$0.00	\$0.00
Wood Doors & Frames	0	\$0.00	\$0.00
Wood Garage Doors	0	\$0.00	\$0.00
Wood Door Specialties	0	\$0.00	\$0.00
Special Doors	0	\$0.00	\$0.00
Vinyl, Windows & Doors	0	\$0.00	\$0.00
Aluminum, Windows & Doors (complete window assembly)	60	\$1,003.00	\$60,180.00
Wood Windows & Doors	0	\$0.00	\$0.00
Finish & Hardware	0	\$0.00	\$0.00
Glass & Glassing	0	\$0.00	\$0.00
Curtain Walls	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
<b>Doors and Windows Subtotal</b>			<b>\$60,180.00</b>
<b>Division 9: Finishes</b>			
Studs	0	\$0.00	\$0.00
Furring	0	\$0.00	\$0.00
Lathing	0	\$0.00	\$0.00
Plaster & Lath	0	\$0.00	\$0.00
Gypsum Wall board, Secularities	0	\$0.00	\$0.00
Ceramic Tile	0	\$0.00	\$0.00
Terrazzo	0	\$0.00	\$0.00
Acoustic Treatment	0	\$0.00	\$0.00
Wood Flooring	0	\$0.00	\$0.00
Resilient Flooring	0	\$0.00	\$0.00
Painting & Wall covering (residential rooms throughout)	45,740	\$0.75	\$34,305.00
Plastic & Factory Finish Wall Surfaces	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
<b>Finishes Subtotal</b>			<b>\$34,305.00</b>
<b>Division 10: Specialties</b>			
Toilet Partitions & Compartments	0	\$0.00	\$0.00
Partitions Toilet Accessories	0	\$0.00	\$0.00
Misc. Building Specialties	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
<b>Specialties Subtotal</b>			<b>\$0.00</b>
<b>Division 11: Equipment</b>			
Other:	0	\$0.00	\$0.00
<b>Equipment Subtotal</b>			<b>\$0.00</b>
<b>Division 12: Furnishings</b>			
Blinds & Shades	0	\$0.00	\$0.00
Cabinets & Laminated Plastic Tops	0	\$0.00	\$0.00
Laminated Plastic & Simulated Marble Tops	0	\$0.00	\$0.00
Carpets	0	\$0.00	\$0.00
Draperies & Curtains	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
<b>Furnishings Subtotal</b>			<b>\$0.00</b>
<b>Division 13: Special Construction</b>			
Special Construction	0	\$0.00	\$0.00
Prefabricated Structures	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
<b>Special Construction Subtotal</b>			<b>\$0.00</b>
<b>Division 14: Conveying Systems</b>			
Conveying Systems	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
<b>Conveying Systems Subtotal</b>			<b>\$0.00</b>
<b>Division 15: Mechanical (Ex. Plumbing and HVAC)</b>			
Equipment	0	\$0.00	\$0.00
Fixtures	0	\$0.00	\$0.00
Piping	0	\$0.00	\$0.00
Valves & Specialties	0	\$0.00	\$0.00
Insulation, Piping	0	\$0.00	\$0.00
Miscellaneous Plumbing Specialties	0	\$0.00	\$0.00
Medical & Laboratory Equipment & Pipe	0	\$0.00	\$0.00



Industrial Piping Insulation	0	\$0.00	\$0.00
HVAC	0	\$0.00	\$0.00
Equipment, Furnaces	0	\$0.00	\$0.00
Equipment, Hot Water & Steam Boilers - (400 MBH)	1	\$15,223.00	\$15,223.00
Equipment, Cooling	0	\$0.00	\$0.00
Equipment, Heating & Cooling Combinations (Heat Pumps)	60	\$2,350.00	\$141,000.00
Auxiliary heating & Cooling Equipment	0	\$0.00	\$0.00
Air Handling Equipment, Primary	0	\$0.00	\$0.00
Distribution, Terminal Equipment	0	\$0.00	\$0.00
Miscellaneous Equipment	0	\$0.00	\$0.00
Controls	0	\$0.00	\$0.00
Duct Work, Grills & Registers	0	\$0.00	\$0.00
Piping & Insulation	0	\$0.00	\$0.00
Fittings	0	\$0.00	\$0.00
Valves & Specialties	0	\$0.00	\$0.00
Insulation, Piping	0	\$0.00	\$0.00
Fire Protection Systems	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
		<b>Mechanical Subtotal</b>	<b>\$156,223.00</b>
<b>Division 16: Electrical</b>			
Total Electrical Work, Buildings	0	\$0.00	\$0.00
Main Switchboards, 600v, Service & Distribution	0	\$0.00	\$0.00
Transformers	0	\$0.00	\$0.00
Lighting Fixtures, In-Place	0	\$0.00	\$0.00
Branch Circuit Runs, Sp Purpose Conduit & Wire	0	\$0.00	\$0.00
Signal & Communications Systems	0	\$0.00	\$0.00
Combination Service & Distribution, Switchboards	0	\$0.00	\$0.00
Motor Control Centers	0	\$0.00	\$0.00
Panelboards, 600v Max, Bolt-On Breakers	0	\$0.00	\$0.00
Lighting Fixtures- Parking Lot Light Poles	0	\$0.00	\$0.00
Electric & Signal Devices	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
		<b>Electrical Subtotal</b>	<b>\$0.00</b>
		<b>TOTAL</b>	<b>\$361,408.00</b>

Exhibit F  
LEGAL DESCRIPTION

Rosewood Care Center of St. Louis

A tract of land being part of the Southeast one-quarter of the Northwest fractional one-quarter and the Southwest one-quarter of the Northeast one-quarter of Section 35, Township 46 North Range 5 East, St. Louis County, Missouri and being more particularly described as: Beginning at the intersection of the Southwest line of Schuetz Road as widened by deed recorded in Book 8746 Page 1481 of the St. Louis County Records with the West line of property conveyed to Howard C. Holman and wife by deed recorded in perpendicularly distant Southwest of the original centerline of Schuetz Road; thence Southwardly along said West line of Howard C. Holman and wife property being also the centerline of a creek the following courses and distances: South 07 degrees 12 minutes 24 seconds West 34.73 feet, South 34 degrees 07 minutes 57 seconds West 33.80 feet, South 07 degrees 43 minutes 31 seconds West 35.97 feet, South 12 degrees 30 minutes 33 seconds East 47.31 feet, South 08 degrees 47 minutes 34 seconds East 26.87 feet, South 21 degrees 37 minutes 34 seconds West 40.10 feet, South 28 degrees 39 minutes 53 seconds West 41.75 feet, South 26 degrees 11 minutes 42 seconds West 75.98 feet, South 18 degrees 54 minutes 29 seconds East 27.44 feet and South 41 degrees 20 minutes 42 seconds East 31.40 feet to a point; thence North 89 degrees 36 minutes 13 seconds West 497.71 feet to a point; thence North 01 degree 00 minutes 55 seconds East 514.27 feet to a point; thence North 57 degrees 34 minutes 46 seconds West 131.62 feet to a point in an East line of property conveyed to Herbert Vohsen by deed recorded in Book 6529 Page 2226 of the St. Louis County Records; thence Northwardly and Eastwardly along said East Line and a South line of said Herbert Vohsen property North 01 degree 00 minutes 55 seconds East 69.50 feet and North 65 degrees 19 minutes 20 seconds East 132.15 feet to a point in the Southwest line of aforesaid Schuetz Road as widened by deed recorded in Book 8746 page 1484 of the St. Louis County Records, said point being 35 feet perpendicularly distant Southwest of the original centerline of Schuetz Road; thence Southeastwardly along the Southwest line of Schuetz Road as widened by said deed recorded in Book 8746 Page 1484 and by aforesaid deed recorded in Book 8746 Page 1481 of the St. Louis County Records, South 57 degrees 29 minutes 40 seconds East 16.96 feet and South 56 degrees 32 minutes 47 seconds East 619.16 feet to the point of beginning according to a survey by Volz Engineering and Surveying, Inc. dated July 3, 1991, and as shown as "Adjusted Parcel A" on the boundary adjustment plat recorded in Plat Book 307 Page 44 of the St. Louis County Records.

**Tax Locator No. 16N-52-0465**

**Commonly known as 11278 Schuetz Road, St. Louis, MO 63146**

**Exhibit G  
ELIGIBILITY CERTIFICATION**

The undersigned (*check one*)  Bidder  Operator  Sponsor  Management Agent  Controlling Participant (hereinafter referred to as "Participant") certifies that he/she has extensive knowledge about the requirements of the Invitation to Bid issued by the U.S. Department of Housing and Urban Development ("HUD") for the sale of the "\_\_\_\_\_ " (hereinafter referred to as "Property") and that to the best of his/her knowledge and belief, Participant has complied, or will be able to comply, with all of the requirements the Invitation to Bids that are prerequisites to submitting a responsive Bid.

Participant further certifies that to the best of his/her knowledge and belief, no information, data, exhibits, or attachments utilized to demonstrate Participant's financial capacity, demonstrated experience and/or qualifications, are in any way false or incorrect and that they are truly descriptive of the physical condition and financial feasibility of the properties and financial capability and capacity of all Controlling Participants.

- |  | Yes                      | No                       |
|--|--------------------------|--------------------------|
| 1. Has Participant been delinquent on any federal debt within the past 10 years? If yes, attach a letter from the affected agency that the debt is satisfied or under a workout agreement? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Has the Participant been a defendant in any suit or legal action within the past 10 years?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Has the Participant ever claimed bankruptcy or made compromised settlements with creditors within the past 10 years?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Are there judgements recorded against the Participant?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Are there any unsatisfied tax liens against the Participant?  | <input type="checkbox"/> | <input type="checkbox"/> |

If the answer to any of questions 1 through 5 is "yes," attach the details on a separate sheet using instructions below. Participant certifies that its answer to each of the questions in this Part and the information in any such attached sheets is true and correct.

- A. Delinquent Government Debt — Provide the following for HUD, Office of the Inspector General (OIG), US Department of Health and Human Services (HHS), other Federal Agency or State or Municipal government:
1. A detailed, written explanation from any applicant or Principal with a prior federal default or claim or whose credit report and financial statements contain conflicting or adverse information.
  2. A letter from the affected agency, on agency letterhead and signed by an officer, stating the delinquent federal debt is current or satisfactory arrangements for repayments have been made.
- B. Judgments — Provide a detailed, written explanation explaining the circumstances of the judgment, the resolution, and if not resolved, the expected outcome and resolution date.
- C. Suits or legal actions — Provide a detailed, written statement explaining the circumstances of the suit or action describing the expected resolution of or mitigation for the action, and indicating the entity has insurance to cover the suit. Documentation must show likelihood and date to resolve. If previously resolved, indicate date of original suit and resolution date.
- D. Bankruptcies — Any Participant of a healthcare facility or their affiliate or renamed or reformed company that has filed for, is in, or has emerged from bankruptcy within the last five years.

**Part I. Byrd Amendment**

The Participant states, to the best of its knowledge and belief, that: "If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Bid, the Participant shall complete and submit *Standard Form-La-Disclosure Form to Report Lobbying*, in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**Part II. Credit Authorization**

Participant consents to the release of any credit information to HUD in connection with this Invitation if selected by HUD as the High Bidder, Second High Bidder, or will be their Operator, Management Agent or a Controlling Participant with regard to the purchase of the Property.

Participant will provide a recent credit report (within 30 days) and/or authorizes HUD to request credit reports from an independent credit reporting agency and agrees to cooperate fully with said independent agency in regard to this matter. HUD is also authorized to verify references and depository institutions supplied by the undersigned.

**Part III. Parties to the Transaction**

Does the Participant know of any changes in the ownership structure of any of the following parties that have not been previously approved by HUD?

	<b>Not Applicable</b>	<b>Yes</b>	<b>No</b>
Bidder:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Operator (Lessee):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Management Agent:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Controlling Participant:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If the answer to any of the questions in this Part is "yes," attach a separate sheet setting forth the ownership of each party that has not been previously approved by HUD and setting forth the nature of any applicable identity of interest. Participant certifies that, to the best of its knowledge, its answer to each of the questions in this Part, and the information in any such attached sheets is true and correct.

Does Participant have an identity of interest with the following parties or their Principals?

	<b>Not Applicable</b>	<b>Yes</b>	<b>No</b>		<b>Not Applicable</b>	<b>Yes</b>	<b>No</b>
Operator (Lessee):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Management Agent:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Current Owner:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sponsor:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Receiver:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If the answer to any of the questions in this part is "yes," attach a separate sheet setting forth the nature of each such identity of interest. The Participant certifies that, to the best of its knowledge, its answer to each of the questions in this Part and the information in any such attached sheets is true and correct.

#### **Part IV. Previous Participation**

- Participant has completed an electronic Previous Participation certification via the Active Partners Performance System (APPS), and is proceeding to Section X.
- Participant has NOT completed an electronic submission, but has completed a paper filing of the Previous Participation Certification and the required documentation is provided as part of the Bid.

The Participant certifies that:

- It has NO Previous Participation in Office of Residential Care Facilities (ORCF) or Multifamily Housing programs of HUD, USDA FmHA, State, or Local Housing Finance Agencies.
- It DOES have Previous Participation as a Principal in ORCF or Multifamily Housing programs of HUD, USDA FmHA, State, or Local Housing Finance Agencies as listed on Attachments 1 and 2 (included with this certification).

**Certifications:** All the statements made in this certification and in any attachments hereto are true, complete and correct to the best of my knowledge and belief and are made in good faith, including the data contained in the Exhibits signed and submitted as part of the Bid. **Warning: HUD** will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties.

Participant further certifies that:

1. Participant's organizational chart, in such detail as approved by HUD, including participation role, ownership percentage, and SSN/TIN, is attached hereto ("Organizational Chart"). This Organizational Chart lists all Principals of Principal, as defined in 24 CFR 200.215 or otherwise required by HUD, and such listed Principals are referred to as "Principal's Members" for purposes of this certification.
2. The *Schedule of Previous Participation in FHA Insured & Other Government Agency Facilities* attached hereto contains a listing of every skilled nursing facility, supportive living facility, and assisted or insured project of HUD, USDA FmHA and state and local government housing finance agencies in which Principals of the Participant have been or are now Principals.
3. For the period beginning 10 years prior to the date of this certification, and except as shown on the certification:
  - a. No mortgage on a project listed on the attached schedule has ever been in default, assigned to the government or foreclosed, nor has mortgage relief by the mortgagee been given.
  - b. Participant has not experienced defaults or non-compliance under any Conventional Contract or Turnkey Contract of Sale in connection with a public housing project.
  - c. There has not been a suspension or termination of payments under any HUD assistance contract in which Participant (or any Principal) has had a legal or beneficial interest.
  - d. Neither Participant nor any Principal has been convicted of a felony and nor is presently, to its knowledge, the subject of complaint or indictment charging a felony. (A felony is defined as any offense punishable by imprisonment for a term exceeding one year but does not include any offense classified as a misdemeanor under the laws of a state and punishable by imprisonment of two years or less).
4. All the names of the parties, known to me to be principals in this project(s) in which I propose to participate, are listed above or on the attached organizational chart.
5. Neither Participant nor any principal is a principal participant in an assisted or insured project as of this date on which construction has stopped for a period in excess of 20 days or which has been substantially completed for more than 90 days and documents for closing, including final cost certification have not been filed with HUD or FmHA.

- Participant nor any principal is on the U.S. Department of Health and Human Services' Exclusion List or any debarment list of any federal state or municipal governmental agency.

Statements above (if any) to which the Participant cannot certify have been deleted by striking through the words. An authorized representative of Participant has initialed each deletion (if any) and has attached a true and accurate signed statement (if applicable) to explain the facts and circumstances that I think helps to qualify me as a responsible Participant for participation in this project.

#### **Part V. Fair Housing; Title VI of the Civil Rights Act of 1964 (et al)**

The Participant certifies that the Participant, and each person or entity authorized to act for the Participant, shall comply with the provisions of the **Fair Housing Amendments Act of 1988, as amended, and Executive Order 11063; Title VI of the Civil Right Act of 1964; Section 504 of the Rehabilitation Act of 1973, as amended, and, where applicable, Section 3 of the Housing and Urban Development Act of 1968.** Neither the Participant, nor any person or entity authorized to act for the Bidder, Operator or Controlling Participant, shall in the rental, lease or sale; in the provision of services or any other manner discriminate against any person on the grounds of race, color, creed, religion, sex, national origin, handicap or familial status.

Without limiting the generality of the foregoing, the Participant HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended and all requirements imposed by or pursuant to the Regulations of HUD (24 CFR, Subtitle A, Part 1) issued pursuant to that Title, to the end that, in accordance with Title VI of the Act and said Regulations, no person in the United States shall, on the grounds of race, color, creed, religion, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Participant receives federal financial assistance from HUD or HHS, and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of federal financial assistance extended to the Participant by HUD, this assurance shall obligate the Participant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision or similar services or benefits. If any personal property is so provided, this assurance shall obligate the Participant for the period during which it retains ownership or possession of the property.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal loans, advances, grants, properties, contracts or other federal financial assistance extended after the date hereof to the Participant by HUD, including installment payments after such date on account of applications for federal financial assistance which were approved before such date. The Participant recognizes and agrees that such federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Participant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Participant.

Participant hereby certifies that he/she has sufficient financial resources to qualify for a commercial real estate loan to cover the acquisition and rehabilitation costs for the Property.

Participant hereby certifies that he/she is capable of implementing a sound financial and physical management program that is designed to enable the Property to meet anticipated operating and repair expenses to ensure that the Property will remain in decent, safe and sanitary condition and in compliance with any standards under applicable Federal, State or local laws, rules, ordinances, or regulations relating to the physical condition of the Property.

Operator and/or Controlling Participant hereby certifies that it has sufficient financial resources to cover the front-end costs of operating the Property and maintain sufficient working capital.

The Participant has read and agrees to comply with the provisions of the above certifications for **the** purpose of qualifying as a Bidder for the purchase of the Property.

Participant hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete and that each signatory has read and understands the terms of this agreement. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD in selecting an Approved High Bidder and may be relied upon by HUD as a true statement of the facts contained therein.

The individual signing below on behalf of the Participant certifies that he/she is an authorized representative of the Participant and has sufficient knowledge to make these certifications on behalf of the Bidder, Operator or Controlling Participant.

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Signature

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Printed Name

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Title

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Company

**WARNING: It is a crime to knowingly make false statements to the United States in this document or any other document related to this sale. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code, Section 1001 and Section 1010.**

**Previous Participation Certification –  
Controlling Participant  
Section 232**

**U.S. Department of Housing  
and Urban Development  
Office of Healthcare Programs**

**Public reporting** burden for this collection of information is estimated to average 1.5 hours. This includes the time for collecting, reviewing, and reporting the data. The information is being collected to obtain the supportive documentation which must be submitted to HUD for approval, and is necessary to ensure that viable projects are developed and maintained. The Department will use this information to determine if properties meet HUD requirements with respect to development, operation and/or asset management, as well as ensuring the continued marketability of the properties. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. No confidentiality is assured.

**Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

**Privacy Act Notice:** The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in the form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

This form is to be used for Controlling Participants not covered by other Consolidated Certifications.

**Controlling**

**Participant:** Controlling Participant Name

**Lender:** Lender Name

**Project Name:** Project Name

**Project Location:** Project City, State

**Project Number:** Project Number

**Part I. Program.**

- Section 232 New Construction**
- Section 232 Substantial Rehabilitation**
- Section 232 Blended Rate**
- Section 232 pursuant to Section 223(f)**
- Section 232 pursuant to Section 223(a)(7)**
- Section 232 pursuant to Section 241(a)**
- Section 232 (i) (Projects that are not currently FHA insured, only)**
- Section 223(d) (2)**
- Section 223(d) (3)**
- Transfer of Physical Assets**
- Change in Participant**



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## Part II Previous Participation Certification

Controlling Participant HAS completed an electronic Previous Participation Certification in the Active Partners Performance System (APPS).

Controlling Participant has NOT completed an electronic submission, and must complete this Part II certification.

### The Controlling Participant certifies that:

**It has NO Previous Participation** in Office of Healthcare or Multifamily Housing programs of HUD, housing projects with current flags under the U.S. Department of Agriculture's previous participation review system and any other housing project participating in a federal, state or local or government program if during the Controlling Participant's participation in the housing project (i) the housing project was foreclosed upon; (ii) the housing project was transferred by a deed in lieu of foreclosure; or (iii) an event of default, or similarly termed event, was declared and remained after any applicable notice and cure periods against the housing project or the Controlling Participant pursuant to the government program's project documents in the past 10 years.

**It DOES have Previous Participation** in Office of Healthcare or Multifamily Housing programs of HUD, housing projects with current flags under the U.S. Department of Agriculture's previous participation review system and any other housing project participating in a federal, state or local or government program if during the Controlling Participant's participation in the housing project (i) the housing project was foreclosed upon; (ii) the housing project was transferred by a deed in lieu of foreclosure; or (iii) an event of default, or similarly termed event, was declared and remained after any applicable notice and cure periods against the housing project or the Controlling Participant pursuant to the government program's project documents in the past 10 years as listed on the attached Attachment Two.

**Certifications:** Controlling Participant hereby certifies that the Controlling Participant has never been found to be in noncompliance with any applicable fair housing and civil rights requirements in 24 CFR 5.105 (a), except as disclosed to HUD in an attached signed statement explaining the relevant facts, circumstances, and resolution, if any. All the statements made in this certification and in any attachments hereto are true, complete and correct to the best of my knowledge and belief and are made in good faith, including the data contained in Schedule of Previous Participation in FHA Insured & Other Government Agency Facilities and Exhibits signed and attached to this form. **Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties.

Controlling Participant further certifies that:

1. The Schedule of Previous Participation in FHA Insured & Other Government Agency Facilities attached hereto contains a listing of every assisted or insured project in Office of Healthcare or Multifamily Housing programs of HUD, housing projects with current flags under the U.S. Department of Agriculture's previous participation review system and any other housing project participating in a federal, state or local or government program if during the Controlling Participant's participation in the housing project (i) the housing project was foreclosed upon; (ii) the housing project was transferred by a deed in lieu of foreclosure; or (iii) an event of default, or similarly termed event, was declared and remained after any applicable notice and cure periods against the housing project or the Controlling Participant pursuant to the government program's project documents in the past 10 years.

2. For the period beginning 10 years prior to the date of this certification, and except as shown on the certification:
    - a. No mortgage on a project listed on the attached schedule has ever been in default, assigned to the Government or foreclosed, nor has it received relief from mortgage by mortgagee.
    - b. Controlling Participant has not experienced defaults or noncompliance under any Conventional Contract or Turnkey Contract of Sale in connection with a public housing project.
    - c. There are no known unresolved findings raised as a result of HUD audits, management reviews or other Governmental investigations concerning any of the projects listed on Attachment 2.
    - d. There has not been a suspension or termination of payments under any HUD assistance contract due to the fault or negligence of the controlling participant.
    - e. The Controlling Participant has not been convicted of a felony and nor is presently, to its knowledge, the subject of complaint or indictment charging a felony. (A felony is defined as any offense punishable by imprisonment for a term exceeding one year, but does not include any offense classified as a misdemeanor under the laws of a State and punishable by imprisonment of two years or less);
    - f. The Controlling Participant has not been suspended, debarred or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency.
    - g. The Controlling Participant has not defaulted on an obligation covered by a surety or performance bond and have not been the subject of a claim under an employee fidelity bond.
  3. The Controlling Participant is not a HUD/FmHA employee or a member of a HUD/FmHA employee's immediate household as defined in Standards of Ethical Conduct for Employees of the Executive Branch in 5C.F.R. Part 2635 (57 FR 35006) and HUD's Standard of Conduct in 24 C.F.R. Part 0 and USDA's Standard of Conduct in 7 C.F.R. Part 0 Subpart B.
  4. The Controlling Participant is not a principal participant in an assisted or insured project as of this date on which construction has stopped for a period in excess of 20 days or which has been substantially completed for more than 90 days and documents for closing, including final cost certification have not been filed with HUD or FmHA.
  5. The Controlling Participant has not been found by HUD or FmHA to be in noncompliance with any applicable fair housing and civil rights requirements in 24 CFR 5.105 (a).
  6. The Controlling Participant is not a Member of Congress or a Resident Commissioner nor otherwise prohibited or limited by law from contracting with the Government of the United States of America.
  7. Statements above (if any) to which the Controlling Participant cannot certify have been deleted by striking through the words. Authorized representative of the Controlling Participant has initialed each deletion (if any) and have attached a true and accurate signed statement (if applicable) to explain the facts and circumstances which I think helps to qualify the Controlling Participant as a responsible principal for participation in this project.
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**PART IV Signature**

The Controlling Participant has read and agrees to comply with the provisions of the above certifications for the purpose of the Controlling Participant obtaining mortgage insurance under the National Housing Act.

The Controlling Participant hereby certifies that the statements and representations contained in this certification and all supporting documentation thereto are true, accurate, and complete and that each signatory has read and understands the terms of this certification. This certification has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

The individual signing below on behalf of the Controlling Participant certifies that he/she is an authorized representative of the Controlling Participant and has sufficient knowledge to make these certifications on behalf of the Controlling Participant.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Controlling Participant Name

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

\_\_\_\_\_  
(Printed Name & Title)

**Attachment One Organization Chart**

[See Housing Notice H 2016-15 for Organization Chart Requirements]

**Attachment Two to Controlling Participant Previous Participation Certification**  
**Schedule of Previous Participation in HUD Insured & Other Government Agency Projects/Facilities**

Project/Facility (name, location)	Roles in Project/Facility	Loan Status
<b>Name of Facility</b> City, State	Role in Project/Facility (describe):  Dates Participated in Project/Facility to  Healthcare Facility YES <input type="checkbox"/> NO <input type="checkbox"/>	<input type="checkbox"/> HUD FHA Number:  <input type="checkbox"/> Gov't Agency Financing other than HUD (indicate):  <u>Loan Status during participation:</u> <input type="checkbox"/> Current <input type="checkbox"/> Default Assignment <input type="checkbox"/> Foreclosed
<b>Name of Facility</b> City, State	Role in Project/Facility (describe):  Dates Participated in Project/Facility to  Healthcare Facility YES <input type="checkbox"/> NO <input type="checkbox"/>	<input type="checkbox"/> HUD FHA Number:  <input type="checkbox"/> Gov't Agency Financing other than HUD (indicate):  <u>Loan Status during participation:</u> <input type="checkbox"/> Current <input type="checkbox"/> Default Assignment <input type="checkbox"/> Foreclosed
<b>Name of Facility</b> City, State	Role in Project/Facility (describe):  Dates Participated in Project/Facility to  Healthcare Facility YES <input type="checkbox"/> NO <input type="checkbox"/>	<input type="checkbox"/> HUD FHA Number:  <input type="checkbox"/> Gov't Agency Financing other than HUD (indicate):  <u>Loan Status during participation:</u> <input type="checkbox"/> Current <input type="checkbox"/> Default Assignment <input type="checkbox"/> Foreclosed
<b>Name of Facility</b> City, State	Role in Project/Facility (describe):  Dates Participated in Project/Facility to  Healthcare Facility YES <input type="checkbox"/> NO <input type="checkbox"/>	<input type="checkbox"/> HUD FHA Number:  <input type="checkbox"/> Gov't Agency Financing other than HUD (indicate):  <u>Loan Status during participation:</u> <input type="checkbox"/> Current <input type="checkbox"/> Default Assignment <input type="checkbox"/> Foreclosed

Additional pages attached.

**EXHIBIT I**

**Certification of Substantial Compliance**

TO: The United States Department of Housing and Urban Development

FROM: \_\_\_\_\_

I Certify to HUD that any and all properties that are owned by \_\_\_\_\_, or its affiliates, and located in

\_\_\_\_\_ (City or Town where the Property being purchased is located) is/are in substantial compliance with

applicable state and/or local housing statutes, regulations, ordinances and codes and are listed on Schedule A attached hereto.

WARNING: It is a crime to knowingly make false statements to the United States in this document or any other document related to this sale. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code, Section 1001 and Section 1010.

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

Owner Name

\_\_\_\_\_

Title

\_\_\_\_\_

Address

\_\_\_\_\_

\_\_\_\_\_

Telephone Number

\_\_\_\_\_

Date

STATE OF:                    )  
COUNTY OF:                )

Came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.   **Notary Seal**

**EXHIBIT J**  
LETTER OF CREDIT SAMPLE

(ISSUING BANK'S LETTERHEAD)

IRREVOCABLE UNCONDITIONAL LETTER OF CREDIT NO. \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_

U.S. Department of Housing and Urban Development  
801 Cherry Street, Unit #45, Ste. 2500  
Ft. Worth, TX 76102

Attention: Mr. Taylor Hawes  
6AC – 28<sup>th</sup> Floor

Dear Sir:

For the account of \_\_\_\_\_  
(name of account party/customer)  
we hereby authorize you to draw on us at sight up to an aggregate amount of U.S.  
\$ \_\_\_\_\_, effective immediately and expiring on \_\_\_\_\_,  
20\_\_\_\_.

This Letter of Credit is irrevocable and unconditional.

Funds under all or any part of this Letter of Credit are available to you against your sight draft(s) on us, substantially in the form attached as Exhibit A.

This Letter of Credit sets forth in full the terms of our obligations to you, and such undertaking shall not in any way be modified or amplified by any agreement in which this letter is referred to or to which this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any agreement.

We will promptly honor all drafts in compliance with the terms of this credit if received on or before the expiration date at

\_\_\_\_\_  
(bank's address)

This Letter of Credit is governed by the laws of \_\_\_\_\_.

Sincerely,

(Issuing Bank)

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

**SAMPLE SIGHT DRAFT**

(HUD LETTERHEAD)

(Name and address of bank) \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_  
(City, State)

Pay to the order of the U.S. Department of Housing and Urban Development the sum of  
\$\_\_\_\_\_. This draft is drawn under your Letter of  
Credit NO.\_\_\_\_\_.

U.S. Department of Housing and Urban Development

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