

DRAFT

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 (1st) 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 TRANSFEEE MUST DETERMINE FROM ITS INVESTIGATION OF THE RECORDS OF TRANSFEROR AND THE FACILITY AND TRANSFEEE'S OWN BUSINESS ACUMEN.

6. REPRESENTATIONS AND WARRANTIES OF TRANSFEEE. 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

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

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: [_____]