

**IN THE UNITED STATES BANKRUPTCY
COURT NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:	:	
	:	Case No. 17-66172-pwb
CHRISTOPHER F. BROGDON	:	
and CONNIE B. BROGDON,	:	
	:	
	:	Chapter 11
Debtors.	:	
	:	Judge Bonapfel
	:	

**EMERGENCY MOTION OF DEBTORS IN POSSESSION TO APPROVE SALE OF
FAIRHOPE HEALTH AND REHAB FACILITY OWNED BY FAIRHOPE NURSING,
LLC DEBTORS' AFFILIATED LIMITED LIABILITY COMPANY**

COMES NOW Christopher F. Brogdon (“Brogdon”) and Connie B. Brogdon, debtors and debtors-in-possession herein (hereinafter “Brogdons” or the “Debtors), pursuant to 11 U.S.C. §§ 105, 1107, and 1108 and file this emergency motion for approval of the sale of certain real property located at 108 South Church Street, Fairhope, Alabama, 36533, a one-hundred thirty-one (131) bed skilled nursing facility owned by Fairhope Nursing, LLC, a limited liability company in which Connie Brogdon owns a fifty percent (50%) interest”(“Fairhope Nursing”), and as further defined in the Purchase Agreement (defined below). (the “Fairhope Facility”) In support hereof, Debtors respectfully state and show as follows:

JURISDICTION & VENUE

1.

This Court has jurisdiction to consider this matter pursuant to 28 U.S.C §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2.

On September 15, 2017 (the “Petition Date”), the Debtors filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtors have remained in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

3.

The Brogdons are in the business of investing in and own various interests in limited partnerships and closely-held corporations. All of the entities own or lease either a nursing homes, retirement centers, restaurants, or retail/offices. The Brogdons also own management companies that manage the operation of various nursing homes and assisted care living facilities.

4.

Debtors continue to work with the SEC Monitor to effectuate the Plan and Consent Judgment entered in the SEC action in the District Court of New Jersey to liquidate certain entities and assets listed therein including the Fairhope Facility.

5.

Fairhope Nursing owns the Fairhope Facility, a one-hundred thirty-one (131) bed skilled nursing facility commonly known as “Golden Living Center-Fairhope”. The Fairhope Facility is leased to Fairhope Health and Rehab, LLC (Lessee”) pursuant to that certain Lease Agreement dated July 28, 2009. (the “Lease”) The Debtors believe the fair and reasonable value of the property is equal to the proposed purchase price of \$6,000,000.00. (the “Purchase Price”) The outstanding balance on the first mortgage held by Community Bank is approximately \$4,078,698.00. A waterfall summary of expected closing costs and net equity to the Debtors will

be filed with the Court prior to the hearing.

6.

In connection with a potential sale of the Fairhope Facility, Fairhope Nursing tried to identify and contact all third party purchasers that might be interested in pursuing such a transaction. Fairhope Nursing employed Marcus & Millichap Real Estate Investment Brokerage Company (Marcus & Millichap”) as its broker in connection with the marketing process on May 4, 2017. Mike Pardoll, a principal of Marcus & Millichap has contacted all prospective purchasers or investors that he believed in good faith (a) have the financial wherewithal to consummate a transaction, (b) are interested in investing in projects similar to the skilled nursing business operating on the Fairhope Facility, and (c) were in a position to complete a transaction expeditiously. Mr. Pardoll contacted seventy (70) potential buyers of Alabama nursing homes and had fifteen (15) groups review the package and information. The property was built in 1928 and converted to a nursing home in 1980. The land is leased from the city. The Fairhope Facility is licensed for 131-beds but the census is currently only seventy-five (75) residents, has had minimal net operating income (“NOI”) after management fees, and produced a negative NOI after current lease payments. Noland Fairhope, LLC, a Delaware limited liability company, is the only group that has made an offer and the proposed purchase price of six million dollars (\$6,000,000.00) is more than a fair and reasonable value for the Fairhope Facility.

7.

Fairhope Nursing’s efforts culminated in the negotiation and execution of an asset purchase agreement with Noland Fairhope, LLC (the “Purchaser”), for the purchase of the Fairhope Facility pursuant to the terms set forth in the Asset Purchase Agreement dated September 1, 2017 (the “Purchase Agreement”), a true and correct copy of which is attached hereto as Exhibit “A”. The

Purchase Agreement contemplates the sale of the Fairhope Facility to Purchaser and contains the following material terms:

- Purchased Assets - All the Seller's real and personal property located at 108 South Church Street, Fairhope, AL 36533;
- Purchase Price - \$6,000,000.00 minus a \$250,000.00 Indemnification Escrow to fund any losses from operations prior to closing as more specifically set forth in Article IX of the Purchase Agreement - The purchase price shall be paid as follows:

1. Deposit.

- Within three (3) Business Days following the Effective Date, Purchaser deposited Earnest Money of \$125,000.00 with the Escrow Agent by wire transfer of immediately available funds.

2. Balance of Purchase Price. At the Closing, the Purchase Price less the Earnest Money shall be deposited into escrow with the Escrow Agent by wire transfer of immediately available funds and released to Fairhope Nursing upon Closing.

RELIEF REQUESTED

8.

Debtors believe the Purchase Price proposed to be paid by Purchaser represents the fair market value of the Fairhope Facility in light of overall marketing conditions, and an extensive marketing effort conducted through a recognized broker.

9.

The Bankruptcy Code authorizes the debtor-in-possession to operate the debtor's business and exercise all the functions and duties of a trustee pursuant to 11 §§ U.S.C. 1106, 1107 and 1108.

Section 105 of the Bankruptcy Code provides that the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code. Approval of the proposed sale of the Fairhope Facility is necessary and appropriate under these circumstances.

10.

Debtors have been in the business of owning, operating, buying and selling nursing homes and assisted care living facilities for decades. Since July 2016, the sale and refinancing transactions conducted pursuant to the Plan, the SEC Judgment, and the subsequent orders entered by the court in the SEC Enforcement Action, with the Monitor's review and approval, have been in the Debtors' ordinary course of business. The loan/sale transaction with Purchaser, with the Monitor's consent under the Plan, is within the Debtors' ordinary course of business. The Debtors' affiliate and proposed seller of the Fairhope Facility, Fairhope Nursing, LLC, is not in bankruptcy and arguably does not require authorization from this Court to enter into the loan/sale transaction with Purchaser but out of an abundance of caution Debtors seek the blessing of this honorable Court.

NOTICE

Notice of this Motion has been given to the United States Trustee, counsel for the Monitor, the twenty largest unsecured creditors, and the Secured Lender. In light of the nature of the relief requested, Debtors submit that no further notice is necessary.

WHEREFORE Debtors respectfully request that the Court enter an Order:

- (a) Scheduling an expedited hearing to consider approval of the Purchase Agreement; and
- (b) Granting such other and further relief as the Court deems just and proper.

Respectfully submitted this 15th day of October 2017.

THEODORE N. STAPLETON, PC
/s/ Theodore N. Stapleton
Theodore N. Stapleton
Georgia Bar No. 675850
Attorneys for Debtors-In-Possession

Suite 100-B
2802 Paces Ferry Road
Atlanta, Georgia, 30339
Telephone: (770) 436-3334
tstaple@tstaple.com

CERTIFICATE OF SERVICE

I certify that on the date indicated below I caused to be served a true and correct copy of the foregoing documents upon the party listed below via United States mail, postage prepaid, in a properly addressed envelope to assure deliver to:

Office of the U.S. Trustee
362 Richard Russell Building
75 Ted Turner Drive, SW
Atlanta, GA 30303

Twenty Largest Creditors

This 15th day of October, 2017

 /s/ Theodore N. Stapleton
Theodore N. Stapleton

ASSET PURCHASE AGREEMENT

by and between

FAIRHOPE NURSING, LLC

(“Seller”),

And

NOLAND FAIRHOPE, LLC

(“Purchaser”)

September 1, 2017

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the “Agreement”), dated as of September 1, 2017 (the “**Execution Date**”), is by and between **FAIRHOPE NURSING, LLC** a Georgia limited liability company (the “**Seller**”), and **NOLAND FAIRHOPE, LLC**, a Delaware limited liability company (the “**Purchaser**”).

A. Seller is the owner of that certain real property located at 108 South Church Street, Fairhope, Alabama, 36533 (the “**Real Property**”), as more fully described on Schedule 1.0.

B. Located on the Real Property is Fairhope Health and Rehab, a one hundred thirty-one (131) bed skilled nursing facility (the “**Facility**”), operated by Fairhope Health and Rehab, LLC, a Georgia limited liability company (referred to herein as “**Tenant**” or “**Transferor**”). Seller leases the Real Property to Tenant pursuant to that certain Lease Agreement dated as of July 28, 2009 (the “**Lease Agreement**”).

C. Concurrently herewith, Transferor and Purchaser are entering into that certain Operations Transfer Agreement with respect to the transfer of operations of the Facility (the “**OTA**”) by Transferor to Purchaser.

D. Subject to the terms and conditions set forth herein, Seller has agreed to sell to Purchaser, and Purchaser has agreed to purchase from Seller, the Real Property, the building used to operate the Facility (the “**Improvements**”) and other assets, as described herein.

E. The parties wish to provide for an orderly transition of the operations of the Facility from Transferor, as licensed operator of the Facility, to Purchaser.

NOW, THEREFORE, in consideration of the premises, the mutual obligations of the parties contained in this Agreement, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree to incorporate the foregoing recitals in this Agreement and further agree as follows:

ARTICLE I ASSETS, LIABILITIES, AND OTHER MATTERS

1.1 Assets Transferred.

(a) Subject to the terms and conditions of this Agreement, at the Closing (as defined in **Section 2.1** of this Agreement) Seller will transfer to Purchaser, free and clear of all claims or encumbrances, all of Seller's right, title and interest in and to all of the Real Property, the Improvements, equipment, furniture, fixtures and furnishings and other assets that are owned by Seller and located at the Real Property and all other tangible and intangible assets of every type and in every medium located at the Real Property, in each case, as the same shall exist at the Effective Time (as defined in **Section 2.1** of this Agreement) (collectively the “**Transferred Assets**”).

(b) Except as expressly otherwise provided in this Agreement or the OTA, Purchaser shall not assume any claims, lawsuits, liabilities, obligations or debts of Seller, whether statutory, regulatory, judicially created or constitutional, or any contracts or agreements (the “**Excluded Liabilities**”), including, without limitation: (a) malpractice or other tort claims, statutory or regulatory claims, claims of state or federal agencies whether civil or criminal, fraud-based claims or claims for breach of contract to the extent any such claims are based on agreements, acts or omissions of Seller occurring on or before the Effective Time; (b) any accounts payable, taxes, or other obligation or liability of Seller to pay money incurred by Seller on or prior to the Effective Time; (c) any environmental or similar liabilities arising prior to the Effective Time; and (d) any other obligations or liabilities arising in whole or in part from Seller’s acts or omissions prior to the Effective Time, or relating to or arising out of any of the Transferred Assets prior to the Effective Time.

(c) Upon full execution of this Agreement, Purchaser shall cause the Earnest Money provided for in **Section 1.3** to be deposited with the Escrow Agent. The Earnest Money shall be held, administered and applied as hereinafter provided.

(d) At the Closing, subject to **Section 1.4**, Seller will convey the Transferred Assets by executing and delivering to Purchaser a Bill of Sale (“**Bill of Sale**”) substantially in the form of **Exhibit 1**, attached hereto and made a part hereof, and also a Quitclaim Deed - Improvements in a form to be agreed upon by the parties, and Seller shall also execute and deliver a Limited Warranty Deed (the “**Limited Warranty Deed**”) conveying the Real Property substantially in the form of **Exhibit 2**.

1.2 **Purchase Price.** The purchase price for the Transferred Assets shall be six million and 00/100 Dollars (\$6,000,000.00) (the “**Purchase Price**”) to be paid, plus or minus prorations provided herein and minus Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) to fund the Indemnification Escrow as established by **Section 9.5**, in immediately available funds at the Closing, by wire transfer to an account or accounts designated by Seller. Prior to the Closing, Seller and Purchaser shall allocate the Purchase Price in a manner that complies with Section 1060 of the Internal Revenue Code of 1986, as amended (the “**Code**”). Such allocation will be agreed to by Purchaser and Seller prior to the Closing. Seller shall prepare and deliver IRS Form 8594 after the Closing if such form is required to be filed with the IRS. Purchaser acknowledges and agrees that Seller plans to distribute the net proceeds from the sale (the “**Net Sales Proceeds**”) to Seller’s owners immediately following the Closing, that all such Net Sales Proceeds that are owed or are distributable by Seller to Connie Brogdon or Christopher Brogdon (together, the “**Brogdons**”) shall be contemporaneously assigned, transferred, and contributed by them to a segregated account approved by the Monitor (as defined in Section 3.1(a)(ii) below) to be used to satisfy the obligations of the Brogdons pursuant to a judgment of the Court (as defined in Section 3.1(a)(ii) below) in the Brogdon Case (as defined in Section 3.1(a)(ii) below), and that the Monitor would not approve the transactions contemplated by this Agreement unless Seller made such distributions of Net Sales Proceeds owed or distributable to the Brogdons and the Brogdons assigned, transferred, and contributed all their Net Sales Proceeds to such segregated account to be used as described above. With respect to the Escrow Fund, as defined in the Indemnification Escrow Agreement, Purchaser acknowledges and agrees that all funds remaining in the Escrow Fund at the conclusion of the period set forth in paragraph 6.d. of the

Indemnification Escrow Agreement and Section 9.5 of this Agreement, shall be distributed as set forth in the preceding sentence.

1.3 Earnest Money; Due Diligence Period.

(a) The Purchaser hereby agrees to deposit via wire transfer (in accordance with the wire transfer instructions attached hereto as **Exhibit 3**) with The Title Group, Incorporated (the “**Escrow Agent**”) the sum of one hundred twenty five thousand and 00/100 dollars (\$125,000.00) (the “**Earnest Money**), within three (3) business days following the execution of this Agreement by both parties, to be held and disbursed on the terms and conditions hereinafter set forth. Purchaser, Seller and Escrow Agent shall execute and deliver the Deposit Escrow Agreement substantially in the form attached hereto as **Exhibit 4** contemporaneously with executing this Agreement. Upon the Closing of the transaction contemplated by this Agreement, the Earnest Money shall be applied against the Purchase Price.

(b) A period for conduct of due diligence (“**Due Diligence Period**”) shall commence on the day following execution of this Agreement by all parties hereto and end thirty (30) days thereafter. During the Due Diligence Period, Seller and Tenant shall provide to Purchaser such records and information relating to the Transferred Assets as Purchaser shall request. Within ten (10) days from and after the full execution of this Agreement, to the extent they are in Seller's possession, custody or control, or are available to Seller through reasonable effort and to the extent not previously provided to Purchaser, Seller shall deliver to, or make available to Purchaser, the following: (i) copies of all title reports, and title insurance policies and surveys relative to the Transferred Assets, (ii) copies of all environmental, inspection, structural and similar reports associated with the Transferred Assets, (iii) architectural drawings and plans of the Facility, (iv) records of operating expenses associated with the Transferred Assets, (v) Seller's Disclosure Schedule (as defined in **Section 3.1(a)**), and (vi) any available but undelivered items on Purchaser's information request list previously provided to Seller.

(c) To the extent not previously delivered to Purchaser, within five (5) days of the beginning of the Due Diligence Period, Seller will provide to Purchaser a complete list of all owners, shareholders, members, stockholders, and/or any other persons having any ownership, control or real interest in Seller or the Transferred Assets and that has standing to effect the transaction described herein.

(d) If Purchaser terminates this Agreement (i) as a result of Seller's breach of any provision of this Agreement, (ii) pursuant to **Section 1.4(d)**, (iii) because any of the conditions set forth in **ARTICLE V** and **ARTICLE VI** have not been satisfied despite Purchaser's commercially reasonable efforts to satisfy them, (iv) because Purchaser terminates the Agreement in its discretion by so notifying Seller prior to the expiration of the Due Diligence Period, (v) because Purchaser terminates this Agreement pursuant to **ARTICLE VIII** hereof or (vi) because any covenant, representation or warranty of Seller under this Agreement is not true and correct in all material respects on the Closing, the Earnest Money shall be returned to Purchaser within five (5) days of Purchaser's termination of this Agreement.

1.4 Condition of Title and Survey.

(a) Seller's interest in the Real Property shall be conveyed to Purchaser at the Closing by Limited Warranty Deed, free and clear of all liens and encumbrances, except those caused by or on behalf of Purchaser and except that the Real Property may be subject to (i) the lien for taxes for the current year, or assessments, if not yet due and payable, (ii) minor defects in title which in Purchaser's reasonable discretion do not adversely affect the operation of the Facility, (iii) water, sewer, gas, electric, cable television and telephone lines or easements of record, (iv) all applicable laws, ordinances, rules and governmental regulations affecting the development, use, occupancy or enjoyment of the Facility, (v) rights of current residents to possession under Facility occupancy agreements; and (vi) any other matters of record acceptable to Purchaser in its sole discretion (all items listed in clauses (i) through (vi) of this **Section 1.4(a)** being "**Permitted Exceptions**"). As a part of Purchaser's due diligence, during the Due Diligence Period, Purchaser shall obtain with respect to the Real Property a title insurance commitment (and title endorsements) for a title insurance policy on behalf of a title company acceptable to Purchaser (the "**Title Commitment**") in the amount of the Purchase Price.

(b) As a part of Purchaser's due diligence, during the Due Diligence Period, Purchaser may obtain, at its expense, a current survey of the Real Property prepared and certified by a surveyor registered and licensed in the State of Alabama (the "**Survey**"). The Survey shall certify as to any flood plain restrictions affecting the Real Property and shall identify and locate all easements or encroachments which traverse or affect the Real Property and shall set forth the location, availability and, where appropriate, dimensions or diameters of all utilities servicing the land, including water, sewer, electric and telephone. The Survey shall be sufficient to enable the title insurer to delete the general exception relating to survey matters and shall establish the boundaries of the Real Property and the Facility to Purchaser's reasonable satisfaction.

(c) Prior to the Closing, and subject to the limitations on invasive testing set forth herein, Purchaser may obtain an environmental assessment of the Transferred Assets (the "**Environmental Report**").

(d) If the Title Commitment discloses exceptions to title unacceptable to Purchaser (other than Permitted Exceptions and liens and encumbrances which Seller provides assurances satisfactory to Purchaser that it will cause to be released at the Closing), or if the Survey reveals circumstances that are objectionable to Purchaser, or if the Environmental Report discloses any environmental conditions which in Purchaser's determination adversely affect the condition or future continued operations of the Facility (each such exception, circumstance and condition being an "**Objection**"), Purchaser shall notify Seller of the Objection. If Purchaser fails to so notify Seller, then Purchaser shall be deemed to have no Objections. If Purchaser does so notify Seller, then Seller shall have five (5) days after receipt of Purchaser's Objections to give Purchaser: (i) assurance that Seller will cure such Objections to Purchaser's reasonable satisfaction on or before the Closing Date or such date as the parties shall agree; or (ii) notice that Seller elects not to cause such Objection to be so cured. If Seller gives Purchaser notice under clause (ii), Purchaser shall have five (5) days immediately thereafter to notify Seller of its election either to proceed with the purchase of the Transferred Assets or to terminate this Agreement and have all Earnest Money returned to it. If Purchaser shall fail to give Seller notice on or before the expiration of such five (5) day period of Purchaser's election to proceed with the

purchase of the Property, then Purchaser shall be deemed to have elected to terminate this Agreement. If Seller shall give notice pursuant to clause (i) but shall fail to cure such Objections prior to the Closing Date or such date as the parties shall agree, and if Purchaser is unwilling to accept the Property without the Objections being cured, then this Agreement shall be deemed terminated, and Purchaser shall be entitled to a return of the Earnest Money.

1.5 Access to Facility and Transferred Assets. In addition to environmental or other surveys and inspections allowed herein, Seller agrees to use reasonable efforts to cause Tenant to agree to give Purchaser reasonable access to the Facility and the Transferred Assets as necessary to conduct Due Diligence activities including, but not limited to, inspection of the physical plant and equipment, to prepare for installation of data and communication network infrastructure, to evaluate space and equipment plans and/or any other activities that are commercially reasonable. Purchaser must give at least 24 hours' notice prior to any visit unless the parties have mutually agreed otherwise. Purchaser is to follow Tenant's guidelines for site visits while at the Facility. Purchaser hereby agrees to restore any property disturbed due to its activities to the property's condition prior to the conducting of Purchaser's inspections. Purchaser's obligation to restore any disturbed property shall survive the Closing or the earlier termination of this Agreement. To the extent Purchaser hires any third party site inspectors, engineers or other parties that will invasively inspect and/or test the Facility, Purchaser shall also ensure that such third party(ies) have adequate insurance, determined in Seller's reasonable discretion, covering any potential damage to the Facility as a result of such inspection/testing (and certificates evidencing such coverage naming Seller and Tenant as an additional insured shall be made available to Seller prior to such access). Purchaser shall indemnify, defend and hold Seller harmless from and against any costs, damage, liability, loss, expense, lien or claim (including, without limitation, reasonable attorney's fees) arising from physical damage to the Facility and injury to persons asserted against or incurred by Seller as a direct result of entry onto the Facility by Purchaser, its agents, employees and representatives. The foregoing indemnity shall survive the Closing, or if the sale is not consummated, the termination of this Agreement.

ARTICLE II THE CLOSING

2.1 Time and Place of the Closing. The closing contemplated herein (the "**Closing**") shall occur at the offices of Purchaser's counsel on or before the later to occur of thirty (30) days after expiration of the Due Diligence Period and approval of the title commitment or five (5) days after approval from SHPDA and ADPH that the License for the Facility has been approved for transfer to Purchaser. Hereinafter, the date on which the Closing occurs in accordance with this Section 2.1 is referred to as the "**Closing Date**". The Closing may be effected through an escrow closing with the title company. Notwithstanding the actual time at which the Closing occurs, the time at which the Closing shall be deemed to be effective and the risk of loss shall pass from Seller to Purchaser (the "**Effective Time**") shall be 12:00:01 a.m., Central Time on the Closing Date. Notwithstanding any provision hereof, the outside Closing Date shall be November 30, 2017.

2.2 Deliveries at the Closing. At the Closing, Purchaser shall deliver to Seller: (i) the Purchase Price; (ii) the Bill of Sale and (iii) such other documents, instruments and certifications as may be required to facilitate the purposes of this Agreement. At the Closing, Seller shall

deliver to Purchaser, in consideration of payment to Seller of the Purchase Price: (i) Limited Warranty Deed and Bill of Sale conveying and assigning the Transferred Assets, (ii) Quitclaim Deed - Improvements and (iii) such other documents, instruments and certifications as may be required to facilitate the purposes of this Agreement.

ARTICLE III
SELLER'S REPRESENTATIONS AND WARRANTIES

3.1 Seller's Covenants, Representations and Warranties.

(a) As an inducement to Purchaser to enter into this Agreement and to pay the Purchase Price, Seller hereby covenants, warrants and represents to Purchaser as follows, except as indicated in the Disclosure Schedule in form similar to Schedule 3.1(a) delivered by Seller to Purchaser concurrently with the execution of this Agreement and numbered to correspond with the Sections below (the “**Disclosure Schedule**”); provided, however, that Seller is entitled to update the Disclosure Schedule (i) through fifteen (15) days after the Execution Date with respect to any representation, warranty or covenant in this Section and (ii) through the Closing with respect to any Intervening Event. For purposes of this Agreement, disclosure of any Intervening Event pursuant to subparagraph (ii) shall be treated as having been made within the Due Diligence Period. “**Intervening Event**” shall mean a fact or event with respect to the Transferred Assets or the Facility that is not existing as of the date hereof which has an adverse effect on the Transferred Assets:

(i) Organization. Seller is a Georgia limited liability company, validly existing and in good standing under the laws of the State of Alabama. Seller has the full power and authority to own, lease and operate its properties and assets as presently owned, leased, and operated and to carry on its business as presently conducted. Seller is authorized to enter into, execute and deliver this Agreement and perform all its obligations under this Agreement. No other corporate or other action on the part of Seller is necessary to authorize the execution, delivery or performance of this Agreement by Seller.

(ii) Authority. Seller has the full power and authority to make, execute, deliver and perform this Agreement including the schedules, exhibits, and the other instruments and documents required or contemplated hereby (this Agreement and other documents being collectively the “**Seller's Transaction Documents**”). Such execution, delivery, performance and consummation have been duly authorized by all necessary action, corporate or otherwise, on the part of Seller, its managers and members, as applicable. Neither the execution and delivery of Seller's Transaction Documents nor the consummation of the transactions contemplated therein violate any provision of Seller's governing documents. Except as set forth in the following sentence, no consent or approval of any other individual, committee or governmental authority is required in connection with the execution, delivery and performance of this Agreement by Seller. The Monitor (as defined below) shall have approved this Agreement and the consummation of the transaction contemplated by this Agreement. For purposes hereof, the term “**Monitor**” shall mean the monitor appointed pursuant to that certain Order Appointing Monitor on Consent in the case styled Securities and Exchange Commission v Christopher Freeman Brogdon, defendant and Connie Brogdon et al., relief defendants (the “**Brogdon**

Case”) filed in the United States District Court District of New Jersey (15 CIV. 8173) (the “Court”).

(iii) Binding Effect. Seller's Transaction Documents, when executed by Seller, constitute the valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.

(iv) No Breach. Seller's execution, delivery and performance of Seller's Transaction Documents and Seller's consummation of the transactions contemplated herein will not result in any breach, violation, default or cancellation of any contract, agreement, mortgage, security agreement, deed to secure debt, lease or similar arrangement to which Seller is a party and that could be expected to have an adverse effect on the Real Property, the Improvements, the Facility, or other Transferred Assets.

(v) Compliance With Laws. Seller is not in violation of any applicable order, judgment, injunction, award, decree, writ, or any law, statute, regulation, rule, building code or ordinance (including any life safety codes), of any local, municipal, state or federal authority having jurisdiction over Seller, the Improvements, the Facility or any of the Transferred Assets that could be expected to have an adverse effect on the Transferred Assets, the Improvements or the Facility. Seller has not received any notice of any violation of or noncompliance with any such order, judgment, injunction, award, decree, writ, law, statute, regulation, rule, building code or ordinance. Seller has not received notice of, nor is Seller the subject of, any law enforcement, governmental or regulatory actions, investigations, or inquiries related to operations and/or the services at the Facility or at any of its affiliates or subsidiaries. Neither the execution and delivery of Seller's Transaction Documents nor the consummation of the transactions provided for therein violate any order, judgment, injunction, award, decree, writ, or any law, statute, regulation, rule, building code or ordinance, in each case, that could be expected to have an adverse effect on the Transferred Assets, the Improvements or the Facility.

(vi) Litigation. Except for the case described in Section 3.1(a)(ii) above, Seller is not a party to any litigation or administrative proceedings nor has Seller received written notice containing a threat of any litigation or administrative proceedings which could adversely affect the Transferred Assets or the Facility or Seller's right to enter into this Agreement or to consummate the transactions contemplated by this Agreement. Seller has no knowledge of any facts which might be asserted to support any such litigation or proceeding. Seller is not party to or subject to any judgment, order, writ, injunction, decree or award of any court, arbitrator or governmental department, agency, board, bureau or instrumentality, including any uncorrected license deficiencies, restrictions or limitations, which will be binding after the Closing upon Purchaser, the Transferred Assets or the Facility or which could subject the Transferred Assets or the Facility to a claim by any third party.

(vii) No Health Care Proceedings. To Seller's knowledge, without investigation or inquiry, there are no investigations, enforcement actions, audits, surveys, charges or similar proceedings pending against or involving the Transferred Assets or Tenant's operation of the Facility, or facts which would support such proceedings. To Seller's knowledge, without investigation or inquiry, there are no open statements of deficiency, statements of non-compliance, negative findings, plans of correction, waivers or survey reports

with respect to the License (as defined below), the Transferred Assets or Tenant's operation of the Facility.

(viii) Title; Condition. Seller has good title to all of the Transferred Assets. None of the Transferred Assets are subject to any lien, claim, encumbrance, or other restriction of any kind or nature. The Transferred Assets shall, on the Closing Date, be in the same condition as they were on the Execution Date, normal wear and tear, ordinary use and disposition, and damage by casualty excepted.

(ix) Taxes. To the extent Seller is subject to such requirements, Seller has duly filed all income, foreign, franchise, excise, employment, and payroll related, real and personal property, sales and gross receipts tax returns, and all other tax returns or reports which were required to be filed by it with respect to its ownership of the Transferred Assets. No agreement for the extension of time for the assessment of any deficiencies or adjustment with respect to any tax return filed by Seller with respect to its ownership of the Transferred Assets has been entered, and Seller has received no written notice of any unassessed tax deficiency proposed or threatened against Seller with respect to its ownership of the Transferred Assets.

(x) Brokers. Seller represents and warrants that it has not dealt with any broker or finder in connection with the transactions contemplated by this Agreement, other than Marcus & Millichap, whose commission shall be paid by Seller. Seller agrees to defend, indemnify and hold Purchaser harmless against any claim made by any broker, finder or financial advisor acting for or on behalf of Seller or pursuant to any agreement, arrangement or understanding made by or on behalf of Seller.

(xi) Insurance. Under the terms of the Lease, Tenant has maintained during Seller's ownership of the Real Property and will maintain through the Closing the insurance on the Real Property as provided in Schedule 3.1(a)(xi).

(xii) Usage. During the time in which Seller has owned the Transferred Assets, Seller has not unlawfully used, generated, transported, treated, constructed, deposited, stored, disposed, placed or located at, on, under or from the Transferred Assets or the Real Property any flammable materials, explosives, radioactive materials, hazardous or toxic substances, materials or wastes, pollutants or contaminants defined, listed or regulated by any local, state or federal environmental laws that could be expected to have an adverse effect on the Transferred Assets or the Real Property.

(xii) Environmental. To Seller's knowledge, without investigation or inquiry, there are no Hazardous Substances on, at, beneath, or in the Facility, the Improvements or the Real Property. "Hazardous Substance" means any chemical, substance, material, object, condition, or waste harmful to human health or safety or to the environment due to its radioactivity, ignitability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, infectiousness, or other harmful or potentially harmful properties or effects, including petroleum or petroleum products, and all of those chemicals, substances, materials, objects, conditions, wastes or combinations of them which are now or become listed, defined or regulated in any manner by any Environmental Law. "Environmental Law" means the

Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, including the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Sections 466 et seq.), the Safe Drinking Water Act Sections 1401 (14 U.S.C. Section 1450), the Hazardous Materials Transportation Act (79 S.S.C. Sections 1801 et seq.), the Toxic Substances Control Act (15 U.S.C. Sections 2601-2629) and any other similar federal, state, or local law, regulation, or ordinance.

(xiii) Zoning. Seller has received no written notice from any governmental authority stating that, nor has Seller or any affiliate received any information that: (a) the Real Property is not in compliance with all applicable zoning and building laws, ordinances and regulations, which noncompliance could reasonably be expected to have an adverse effect on the Real Property or its current or intended use or (b) the Real Property lacks or is in jeopardy of losing any regulatory approval, zoning or other legal rights, utility service, and access to a public street necessary for conduct of operations.

(b) Except as set forth on the Disclosure Schedule, all of the foregoing representations and warranties shall be applicable, true, correct and complete in all respects, both as of the date hereof and as of the Closing Date, and Seller shall certify in writing at the Closing that all of said representations and warranties are true, correct and complete as of and with respect to that date in all respects.

(c) Except as expressly set forth in this Agreement, the Limited Warranty Deed and information provided to Purchaser during the Due Diligence Period, neither Seller nor any officer, director, employee, member, partner, agent or representative thereof nor any other party acting for or on its or their behalf, has made or is making or shall make any representation or warranty of any kind or nature, whether direct or implied, with respect to the Transferred Assets, including, but not limited to, the Real Property, the Facility or any other matter, and Purchaser hereby expressly agrees and acknowledges that the transfer of the Transferred Assets and the Real Property are AS IS, WHERE IS AND WITH ALL FAULTS WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE IV **PURCHASER'S REPRESENTATIONS AND WARRANTIES**

4.1 Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller as follows:

(a) Organization and Standing of Purchaser. Purchaser or its assignee is a corporation or limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware. Purchaser is qualified to conduct business in, and is in good standing under the laws of, the State of Alabama. Purchaser has the power and authority to own the Transferred Assets and assets now owned by it and to conduct the business presently being conducted by it.

(b) Authority. Purchaser's execution and performance under this Agreement, including the schedules, exhibits, and other instruments and documents required or

contemplated hereby (the “**Purchaser's Transaction Documents**”, collectively with the Seller's Transaction Documents, the “**Transaction Documents**”), does not violate any provision of the corporate governing documents of Purchaser. Purchaser’s execution, delivery, performance and consummation of the transaction contemplated by this Agreement have been tentatively approved by Purchaser’s Board of Directors.

(c) Binding Effect. Purchaser's Transaction Documents, when executed by Purchaser, constitute the valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms.

(d) No Breach. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein will not result in any breach, violation, default or cancellation of any contract, agreement, mortgage, security agreement, deed to secure debt, lease or similar arrangement to which Purchaser is a party and that could be expected to have an adverse effect on the transactions contemplated by this Agreement.

(e) Compliance With Laws. Purchaser is not in violation of any applicable order, judgment, injunction, award, decree, or writ, or any law, statute, regulation, rule, building code or ordinance (including any life safety codes), of any local, municipal, state or federal authority having jurisdiction over Purchaser that could be expected to have an adverse effect on the transactions contemplated by this Agreement. Purchaser has not received any notice of any violation of or noncompliance with any such order, judgment, injunction, award, decree, writ, law, statute, regulation, rule, building code or ordinance.

(f) Litigation. Purchaser is not a party to any litigation or administrative proceedings nor has Purchaser received written notice containing a threat of any litigation or administrative proceedings which could adversely affect Purchaser's right to enter into this Agreement or to consummate the transactions contemplated by this Agreement. Purchaser has no knowledge of any facts which might be asserted to support any such litigation or proceeding.

(g) Brokers. No individual or entity has acted directly or indirectly as a broker, finder or financial advisor of Purchaser in connection with this Agreement or the transactions contemplated hereby, and no individual or entity acting for or on behalf of Purchaser is entitled to receive any broker's, finder's or similar fee or commission in respect thereof based in any way on any agreement, arrangement or understanding made by or on behalf of Purchaser. Purchaser agrees to defend, indemnify and hold Seller harmless against any claim made by any broker, finder or financial advisor acting for or on behalf of Purchaser or pursuant to any agreement, arrangement or understanding made by or on behalf of Purchaser.

(h) Licensure Matters. Neither Purchaser nor any of its officers, directors or controlling persons, nor any affiliate thereof or related party thereto, has ever been denied a Skilled Nursing Facility license by the DPH (as defined below) or SHPDA (as defined below), nor has DPH or SHPDA ever revoked, rescinded or suspended any such license held by any such party.

ARTICLE V
OBLIGATIONS OF THE PARTIES PRIOR TO THE CLOSING

5.1 Pursuit of State License, Federal and State Regulatory Approvals and Insurance. Purchaser shall timely file and diligently pursue all required applications with the Alabama Department of Public Health (“DPH”), the Alabama State Health Planning & Development Agency (“SHPDA”) and all other governmental authorities necessary for the issuance or transfer of the licenses and Certificates of Need for Purchaser to operate the Facility (collectively, the “License”) and the transfer of the Facility operations to Purchaser (or its designee), and shall pay all filing and other fees associated therewith. Seller agrees to cooperate and to use its reasonable best efforts to cause Tenant to cooperate with Purchaser in the preparation of required regulatory filings and to coordinate all communications with the DPH and SHPDA related to this transaction with Purchaser's designated representative.

5.2 Condition of Facility. Between the Execution Date and the Closing, except as otherwise permitted under this Agreement, Seller shall: (i) use its good faith efforts to maintain the Improvements in substantially the same condition they are in as of the Execution Date, ordinary wear and tear excepted; (ii) to use its good faith efforts to cause Tenant to operate the Facility in the ordinary course of business in substantially the same manner as the Facility was operated before the Execution Date provided such manner is in compliance with applicable laws; (iii) to use its good faith efforts to cause Tenant to take no actions to close the Facility, change the number of licensed beds, or change the Medicare or Medicaid certification status of the Facility; and (iv) take no actions to remove from the Facility any equipment located at the Facility as of the Execution Date.

5.3 Operation of Facility. Between the Execution Date and the Closing, Seller shall use its good faith efforts to cause Tenant to continue to maintain the operations of the Facility, including maintaining current census levels and payor mix.

ARTICLE VI CONDITIONS PRECEDENT TO PURCHASER'S OBLIGATIONS

Unless waived by Purchaser, its obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction, prior to or at the Closing, of each of the following conditions. Upon failure of any of the following conditions, Purchaser may terminate this Agreement pursuant to and in accordance with Article VIII.

6.1 Representations and Warranties. The representations and warranties of Seller contained in this Agreement shall be true and correct in all respects at and as of the Effective Time as though such representations and warranties were made at and as of such time.

6.2 Performance of Covenants. Seller shall have performed or complied in all respects with each of its agreements, covenants and obligations required by this Agreement to be performed or complied with by it prior to or at the Effective Time, including all of Seller's preclosing commitments and obligations pursuant to Article I.

6.3 Transferred Assets at the Closing. Seller shall have executed and delivered the Bill of Sale, the Limited Warranty Deed, Quitclaim Deed - Improvements and the other Transaction Documents.

6.4 Resident Trust Funds. Tenant shall have executed and delivered the Assignment and Assumption of Resident Trust Funds.

6.5 No Termination. Purchaser shall not have terminated this Agreement as permitted by the provisions of this Agreement.

6.6 Monitor Approval. The Monitor shall have approved the closing of the transaction contemplated hereunder.

6.7 Lease Termination. Seller and Tenant shall have entered into a lease termination agreement for the Lease Agreement.

6.8 Closing under the OTA. All conditions precedent contained in the OTA shall be fulfilled, and the Closing shall have occurred under the OTA concurrently with the Closing hereunder.

6.9 License. Purchaser shall have received the License.

6.10. Purchaser shall have received ratification and approval to close from its Board of Directors within five (5) days after expiration of the Due Diligence Period.

ARTICLE VII **CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS**

Unless waived by Seller, its obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction, prior to or at the Closing, of each of the following conditions. Upon failure of any of the following conditions, Seller may terminate this Agreement pursuant to and in accordance with **Article VIII**:

7.1 Representations and Warranties. The representations and warranties of Purchaser contained in this Agreement shall be true and correct in all respects at and as of the Effective Time as though such representations and warranties were made at and as of such time.

7.2 Performance of Covenants. Purchaser shall have performed or complied in all respects with each of its agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Effective Time.

7.3 Resident Trust Funds. Purchaser shall have executed and delivered the Assignment of Resident Trust Funds.

7.4 No Termination. Seller shall not have terminated this Agreement as permitted by the provisions of this Agreement.

ARTICLE VIII
TERMINATION

8.1 Termination before the Closing. This Agreement may be terminated at any time at or prior to the time of the Closing by:

- (a) the mutual consent of Seller and Purchaser;
- (b) by Purchaser without cause on or before conclusion of the Due Diligence Period;
- (c) the termination of the OTA in accordance with the terms set forth therein;
- (d) by Purchaser if the conditions precedent to closing in **Article VI** have not been satisfied, or otherwise waived by Purchaser;
- (e) by Seller if the conditions precedent to closing in **Article VII** have not been satisfied, or otherwise waived by Seller;
- (f) by either party if all material covenants, representations, warranties and conditions precedent of the other party have not been satisfied by Closing or any agreed extension; or
- (g) by either party if the License required under **Section 5.1** of this Agreement has not been issued or transferred, as applicable, prior to the Closing Date, despite Purchaser's commercially reasonable efforts to obtain the approvals.

8.2 Casualty or Condemnation. If prior to the Closing Date, all or a substantial portion of the Transferred Assets shall be damaged by fire or other casualty or condemned or taken by eminent domain by any competent authority for any public or quasi-public use or purpose, or if Seller shall receive information concerning initiation of such proceedings then, in such event, Purchaser shall have the option to terminate this Agreement and receive refund of all of the Earnest Money or close the transactions herein provided for. If Purchaser shall elect pursuant to such option to terminate this Agreement, this Agreement shall be null and void. If, however, Purchaser shall elect to close this transaction, then Seller shall assign to Purchaser all insurance and condemnation proceeds allocable to the Transferred Assets and there shall be no reduction or adjustment of the Purchase Price.

8.3 Effect of Termination before the Closing. If a party terminates this Agreement pursuant to this Article, this Agreement shall become null and void without any liability of any party to the other; provided, that if such termination is as a result of a breach by any of the parties hereto of any of its representations, warranties or covenants in this Agreement, nothing herein shall affect the non-breaching party's right to damages on account of such other party's breach. This Section shall not affect the applicability of **Section 10.4**.

ARTICLE IX
INDEMNIFICATION

9.1 Indemnification by Seller to the extent of the amount of Escrow Fund. Seller shall, to the extent of the amount of the Escrow Fund, indemnify and defend Purchaser and its members, managers, officers, agents, representatives, employees, successors and assigns, and hold them harmless against and with respect to any and all Losses resulting from:

(a) the breach of any representation, warranty, covenant or undertaking made by Seller in this Agreement;

(b) retroactive adjustments or recoupments from the Medicare or Medicaid programs for overpayments made to Tenant;

(c) the operation of the Facility prior to the Effective Time; or

(d) the breach of any representation, warranty, covenant or undertaking made by Transferor in the OTA.

9.2 Indemnification by Purchaser. Purchaser shall indemnify and defend Seller and its members, managers, officers, agents, representatives, employees, successors and assigns, and hold them harmless against and with respect to any and all Losses resulting from:

(a) the breach of any representation, warranty, covenant or undertaking made by Purchaser in this Agreement; or

(b) the operation of the Facility after the Effective Time.

9.3 Limitations on Indemnification. Each party's liability hereunder shall be limited to all losses, liabilities, damages, claims, actions, causes of action, costs and expenses, including, without limitation, reasonable attorney's fees (collectively "**Losses**") and no party shall be liable to the other party hereunder for special, consequential, incidental, punitive, extra-contractual, bad faith, exemplary or other damages, fines and penalties, except when such damages, fines and penalties are asserted against or imposed upon the Indemnitee (as herein defined) by a government or private third party, at which time such damages, fines and penalties shall be deemed to be the actual damages of Indemnitee.

9.4 Control of Defense of Indemnifiable Claims. Each indemnified party (each, an "**Indemnitee**") shall give the indemnifying party (the "**Indemnitor**") prompt notice of each claim for which it seeks indemnification. A claim for indemnification for any matter not involving a third-party claim may be asserted by notice to the party from whom indemnification is sought. A claim for indemnification for any matter involving a third party claim shall be made against the Indemnitor promptly after receipt by the Indemnitee of notice of the assertion of the claim or commencement of any proceeding against the Indemnitee. Failure to timely notify the Indemnitor will not relieve the Indemnitor of any liability it may have to the Indemnitee, except to the extent the Indemnitor's defense of such action is prejudiced by the Indemnitee's failure to timely deliver such notice. The Indemnitor, upon written authorization by the Indemnitee, will be entitled to assume the defense of such claims

by counsel acceptable to Indemnitee (unless the Indemnitor is also a party to such claim and joint representation would be inappropriate) and, after notice to the Indemnitee of its election to assume the defense of such claim, the Indemnitor will not be liable to the Indemnitee for any fees of other counsel or any other expenses with respect to the defense of such claim. If the Indemnitor assumes the defense of a claim, no compromise or settlement of such claims may be effected by the Indemnitor without the Indemnitee's consent unless (i) there is no finding or admission of any violation of legal requirements or any violation of the rights of any person and no effect on any other claims that may be made against the Indemnitee, and (ii) the sole relief provided is monetary damages that are paid in full by the Indemnitor. If notice is given to an Indemnitor of the commencement of any claim and the Indemnitor does not, within ten days after the Indemnitee's notice is given, give notice to the Indemnitee of its election to assume the defense of such claim, the Indemnitor will be bound by any determination made in such claim or any compromise or settlement effected by the Indemnitee.

9.5 Indemnification Escrow. Because Purchaser will not enter into either this Agreement or the OTA without Seller establishing the Escrow Fund to secure payment of its obligations under Section 9.1 hereof, at the Closing, Seller, Purchaser and New Operator shall enter into an Indemnification Escrow Agreement, substantially in the form attached hereto as Exhibit 5, which shall be funded pursuant to Section 1.2 of this Agreement. The Escrow Fund being used to establish the Indemnification Escrow shall also be available to fund the Indemnification obligations of Transferor under the OTA. Any amount of the Escrow Fund remaining in the Indemnification Escrow at the end of the escrow period shall be distributed as provided in Section 1.2 of this Agreement.

9.6 Effect of Insurance. The amount of any indemnification under this Article IX shall be reduced by the insurance proceeds received and any other amount, if any, recovered from third parties by the indemnified party (or its affiliated entities) with respect to any indemnifiable amounts, provided, however, that a party's obligation to timely indemnify is not modified by the foregoing, and provided, further, notwithstanding anything herein to the contrary, no party shall be required to make or pursue any claim under its insurance policies. If, after an indemnification payment is made by any indemnifying party to any indemnified party, such indemnified party subsequently recovers insurance proceeds or proceeds from a third party in respect of such indemnifiable amounts, then such indemnified party shall pay to the indemnifying party the amount of such insurance proceeds (but not in excess of the indemnification payment or payments actually received with respect to such indemnifiable amounts), less expenses and increases in premiums.

9.7 Survival. The indemnification obligations of the Seller and Purchaser hereunder shall survive for a period of twenty-four (24) months following the Closing Date.

ARTICLE X MISCELLANEOUS PROVISIONS

10.1 Continued Cooperation. After the Closing, Seller shall cooperate and use its reasonable best efforts to cause Tenant to cooperate with Purchaser in the orderly transition of the operation of the Facility to Purchaser, including, but not limited to, granting Purchaser or

third parties on behalf of Purchaser access to records and materials needed in connection with Purchaser's operation of the Facility.

10.2 Drafting. The parties hereto have reviewed and negotiated the terms of this Agreement and the Transaction Documents, and Seller and Purchaser hereby acknowledge and agree that they have had a full and fair opportunity to review and negotiate this Agreement and the Transaction Documents with the advice of its counsel. Therefore, there shall be no presumption in favor of the non-drafting party.

10.3 Costs and Expenses. Except as expressly otherwise provided in this Agreement, each party hereto shall bear its own costs and expenses in connection with this Agreement and the transactions contemplated hereby.

10.4 Performance. In the event of a breach by either party of its obligations hereunder, the other party shall have the right, in addition to any other remedies which may be available, to obtain specific performance of the terms of this Agreement, and the breaching party hereby waives the defense that there may be an adequate remedy at law.

10.5 Benefit and Assignment. This Agreement binds and inures to the benefit of each party hereto and its successors and proper assigns.

10.6 Effect and Construction of this Agreement. The captions used herein are for convenience only and shall not control or affect the meaning or construction of the provisions of this Agreement. This Agreement may be executed in one or more counterparts, and all such counterparts shall constitute one and the same instrument. Copies of original signatures sent by facsimile transmission shall be deemed to be originals for all purposes of this Agreement. All gender employed in this Agreement shall include all genders, and the singular shall include the plural and the plural shall include the singular whenever and as often as may be appropriate. When used in this Agreement, the term "including" shall mean "including but not limited to."

10.7 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed to be properly given when personally delivered to the party entitled to receive the notice, or the next business day after being sent, overnight service, by nationally recognized overnight courier, or upon receipt after being mailed by certified or registered mail (return receipt requested), in each case, postage prepaid, registered or certified mail, and properly addressed to the party entitled to receive such notice at the address stated below:

If to Seller:

Fairhope Nursing, LLC
Two Buckhead Plaza
3050 Peachtree Road, NW, Suite 355
Atlanta, Georgia 30305
Attn: Christopher Brogdon

With copy to:

Gregory P. Youra, Esq.
Holt Ney Zatcoff & Wasserman, LLP
100 Galleria Parkway, Suite 1800
Atlanta, Georgia 30339

If to Purchaser:

Noland Fairhope, LLC
600 Corporate Parkway, Suite
100 Birmingham, AL 35242
Attn: Gary M. Glasscock

With a copy (which shall not constitute notice) to:

G. Thomas Sullivan
Cabaniss, Johnston, Gardner, Dumas & O'Neal
LLP
Post Office Box 830612
Birmingham, Alabama 35283-0612

10.8 Waiver, Discharge, etc. This Agreement shall not be released, discharged, abandoned, changed or modified in any manner, except by an instrument in writing executed by or on behalf of each of the parties hereto by their duly authorized officer or representative. The failure of any party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

10.9 Rights of Persons Not Parties. Nothing contained in this Agreement shall be deemed to create rights in persons not parties hereto, other than the successors and proper assigns of the parties hereto.

10.10 Governing Law; Disputes.

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama disregarding any contrary rules relating to the choice or conflict of laws. Venue and jurisdiction for any action shall be in the relevant State or Federal court in the county in which the Facility is located. The parties waive all rights to maintain any action other than in such courts. In the event that neither party elects to invoke paragraph (b) of this **Section 10.10**, each party hereto waives its rights to trial by jury of any dispute relating to or arising out of this Agreement or the subject matter of this Agreement.

(b) Arbitration. At the election of either party, any controversy or claim relating to or arising out of this Agreement, the subject matter hereof, or the Transferred Assets as defined in this Agreement, shall be submitted to arbitration in Birmingham, Alabama in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”). The case shall be heard by a single arbitrator, who shall render an award in which he sets forth findings of fact and conclusions of law on which the award is based. Arbitration shall be initiated by filing a written Demand with AAA and serving a copy thereof on all other parties. Prior to the appointment by AAA, the parties may agree to utilize any arbitrator, but AAA shall continue to administer the proceeding. The arbitrator to be selected shall have experience in transactions and regulations applicable to skilled nursing facilities in Alabama. Alabama law shall govern any matter submitted to arbitration. The arbitrator shall permit reasonable discovery to any party, but since one purpose for arbitration is to more expeditiously and economically resolve disputes than in a court of law, the arbitrator shall in general limit discovery to the minimum which is necessary to ensure a fair hearing. Except as otherwise provided in this Agreement, each party shall bear its own costs in the arbitration, including attorney fees, and the arbitrator may not award punitive or consequential damages.

10.11 Entire Agreement. This Agreement (including the schedules, exhibits and the other Transaction Documents), the OTA and the agreements contemplated therein, constitute the entire agreement between the parties hereto and thereto with respect to the subject matter hereof and thereof, and there are no other agreements, understandings, restrictions, warranties, or representations between the parties with respect to the subject matter hereof and thereof. This Agreement shall be construed to further the purpose of the OTA and an integral part of the transaction contemplated by the OTA.

10.11 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other, except that Purchaser may, without the prior written consent of Seller, transfer or assign all or a portion of its rights and obligations under this Agreement to any Affiliate or subsidiary of Purchaser, *provided that* in the event Purchaser assigns all or a portion of its rights and obligations under this Agreement, Purchaser hereby unconditionally and irrevocably guarantees to Seller the prompt and full discharge of such subsidiary or Affiliate of all of Purchaser’s obligations under this Agreement in accordance with the terms hereof.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written.

SELLER:

FAIRHOPE NURSING, LLC, a Georgia limited liability company

By: 

Name: Christopher F. Brogdon

Title: Manager

PURCHASER:

NOLAND FAIRHOPE, LLC, a Delaware limited liability company

By: **NOLAND HEALTH SERVICES, INC.**, a Delaware corporation, its Manager and Sole Member

By: 

Name: Gary M. Glasscock

Title: President

EXHIBIT 1

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS THAT, FAIRHOPE NURSING, LLC, a Georgia limited liability company ("**Seller**"), for and in consideration of the sum of and No/100 Dollars (\$ _____) and other good and valuable consideration to it in hand paid by **NOLAND FAIRHOPE, LLC**, a Delaware limited liability company ("**Purchaser**"), does by these presents, sell, assign, transfer and convey unto Purchaser, all right, title, and interest in and to the Transferred Assets as described in the Asset Purchase Agreement dated September 1, 2017, by and between Seller and Purchaser (the "**Asset Purchase Agreement**"). Except as provided in the Asset Purchase Agreement, the Transferred Assets are being transferred in their "AS-IS" "WHERE-IS" condition as of the Effective Time. Seller hereby covenants that it will, at any time and from time to time upon written request therefore, execute and deliver to Purchaser, its nominees, successors and/or assigns, any new or confirmatory instruments which Purchaser, its nominees, successors and/or assigns, may request in order to assign and transfer to Purchaser its rights, title and interest in, the Transferred Assets. All capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Asset Purchase Agreement.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Bill of Sale as of the _____ day of _____, 2017.

SELLER:

FAIRHOPE NURSING, LLC, a Georgia limited liability company

By: _____
Name: _____
Title: _____

PURCHASER:

NOLAND FAIRHOPE, LLC, a Delaware limited liability company

By: **NOLAND HEALTH SERVICES, INC.**, a Delaware corporation, its Manager and Sole Member

By: _____
Name: Gary M. Glasscock
Title: President

FAIRHOPE NURSING, LLC, a Georgia limited liability company

By: _____

Its: _____

—

STATE OF _____)
:)
_____ COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that _____, whose name as _____ of **FAIRHOPE NURSING, LLC**, a Georgia limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said company on the day the same bears date.

GIVEN under my hand and official seal this _____ day of _____, 2017.

NOTARY PUBLIC

[NOTARIAL SEAL]

My Commission Expires: _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Block 15, Division 1, of the land as per plat thereof filed for record in Probate Records of Baldwin County, Alabama in Map Book 8, Page 60, Amendment of Map filed for record September 13, 1911 and recorded in Miscellaneous Book 1, Pages 320-321.

ALSO DESCRIBED AS FOLLOWS: Beginning at a ½ inch rebar found at the Northwest intersection of South Church Street and Morphy Avenue; thence North 89 degrees 59 minutes 07 seconds West along the North right-of-way margin of Morphy Avenue a distance of 419.88 feet to a ½ inch rebar found on the East right-of-way margin of Summit Street; thence North 03 degrees 04 minutes 55 seconds East along the East right-of-way margin of Summit Street a distance of 185.64 feet; thence leaving Summit Street South 89 degrees 55 minutes 51 seconds East a distance of 409.90 feet to a ½ inch rebar found on the West right-of-way margin of South Church Street; thence South 00 degrees 00 minutes 00 seconds East along the West right-of-way margin of South Church Street a distance of 184.99 feet to the Point of Beginning.

EXHIBIT B
PERMITTED EXCEPTIONS

EXHIBIT 3

ESCROW AGENT WIRE INSTRUCTIONS

To: Whom it may concern

From: _____

Email address: _____

Direct Fax#: _____

Date: _____

Pages: (including this page) _____

WIRING INSTRUCTION FOR TITLE COMPANY

NAME OF

BANK: ABA

ROUTING #:

BENEFICIARY

BANK: BANK

ADDRESS:

BENEFICIARY:	The Title Group, Incorporated
ACCOUNT #:	1027903
ADDRESS:	2101 First Avenue North Birmingham, Alabama 35203

FURTHER BENEFIT:

Place note our file Number T-_____ in the reference line when able. If not, please reference Transferred Assets address.

EXHIBIT 4

DEPOSIT ESCROW AGREEMENT

THIS DEPOSIT ESCROW AGREEMENT (this “**Agreement**”) made and entered into this ____ day of _____, 2017 by and among **FAIRHOPE NURSING, LLC**, a Georgia limited liability company (hereinafter referred to as “**Seller**”), **NOLAND FAIRHOPE, LLC**, a Delaware limited liability company (hereinafter referred to as “**Purchaser**”) and **THE TITLE GROUP, INCORPORATED** (hereinafter referred to as “**Escrow Agent**”).

WITNESSETH:

WHEREAS, Seller and Purchaser have entered into an Asset Purchase Agreement dated the date hereof to transfer certain Transferred Assets located in Fairhope, Alabama (hereinafter referred to as the “**Asset Purchase Agreement**”); and

WHEREAS, Purchaser and Seller desire to have Escrow Agent hold certain funds as required under the Asset Purchase Agreement, in escrow, pursuant to the terms hereof.

NOW, THEREFORE, in consideration of the premises and of good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the parties hereto covenant and agree as follows:

1. Seller and Purchaser hereby appoint The Title Group, Incorporated as Escrow Agent hereunder.

2. Seller has deposited and delivered to the Escrow Agent a wire transfer in the amount of One Hundred Twenty-Five Thousand and No/100 Dollars (\$125,000.00) (the “**Initial Deposit**”), which Initial Deposit is referred to as the “**Escrow Fund**” and represent the Earnest Money called for under the Asset Purchase Agreement. The Escrow Agent shall deposit the monies in the Escrow Fund in its attorney trust account in a non-interest bearing account.

3. Upon (i) written notification from Purchaser and Seller that the contemplated sale is to be consummated, or in the alternative, that the contemplated sale shall not take place, or upon written notification from Purchaser that the Asset Purchase Agreement has been terminated by Purchaser in accordance with **Section 1.3(d)** thereof, Escrow Agent shall deliver the Escrow Fund as instructed, (ii) receipt of a copy, certified by counsel to the presenting party as being a true and complete copy thereof, of any determination, award, decision, order, judgment or decree (a “**Final Order**”) of or by any court, which Final Order directs and authorizes the Escrow Agent to disburse the Escrow Fund or any portion thereof, then the Escrow Agent shall distribute the Escrow Fund in accordance with such Final Order, or (iii) receipt of written notice (the “**Release Notice**”) from Seller or Purchaser (the “**Releasing Party**”) directing the release of the Escrow Fund, the Escrow Agent shall deliver a copy of said Release Notice to the other party (the “**Non-releasing Party**”). In the event the Escrow Agent shall not receive a written objection from the Non-releasing Party within ten (10) days following its receipt of the Release Notice, the Escrow Agent shall release the Escrow Fund in accordance with the provisions of the Release Notice. If the Escrow Agent shall timely receive written

objection therefor, the Escrow Agent shall continue to hold the Escrow Fund in accordance with the terms hereof.

4. Purchaser and Seller agree that:

(a) Purchaser and Seller shall have the right to examine the records of the Escrow Fund during regular business hours and upon prior notice at the office of the Escrow Agent, and the Escrow Agent shall periodically provide a written accounting of the Escrow Fund to Purchaser and Seller in accordance with the Escrow Agent's standard practices;

(b) the Escrow Agent's duties and responsibilities shall be limited to those expressly set forth in this Agreement, as amended in accordance with the provisions of this Agreement;

(c) no assignment of the interest of any party or their respective successors shall be binding upon the Escrow Agent unless and until written evidence of such assignment in form satisfactory to the Escrow Agent shall be filed with and accepted by the Escrow Agent;

(d) the Escrow Agent shall exercise the same degree of care toward the Escrow Fund as it exercises toward similar property held in escrow for the account of others, and shall not be held to any higher standard of care under this Agreement;

(e) the Escrow Agent shall be entitled to rely upon any determination, award, decision, order, judgment or decree of any arbitrators or court and any certification, opinion, instruction, notice or other writing delivered to it in compliance with the provisions of this Agreement without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity or service thereof;

(f) the Escrow Agent may act in reliance upon any instrument comporting with the provisions of this Agreement or signature believed in good faith by the Escrow Agent to be genuine and may assume that any person purporting to give notice or receipt or advice or make any statement or execute any document in connection with the provisions of this Agreement has been duly authorized to do so;

(g) the Escrow Agent shall be entitled to rely upon any notice, consent, certificate, affidavit, statement, paper, document, writing or other communication (which may be by email, telecopier, or telephone) reasonably believed by it to be genuine and to have been signed, sent or made by the proper person or persons, and upon opinions and advice of legal counsel (including itself or counsel for any party hereto), independent accountants or other experts selected by the Escrow Agent;

(h) if the Escrow Fund is at any time attached, garnished or levied upon under any court order, or in the event that payment of the Escrow Fund shall be stayed or

enjoined by any court order, or in the event that an order, judgment or decree shall be made or entered by any court affecting the Escrow Fund, or any part thereof, then and in any of such events, the Escrow Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree, which it believes to be binding upon it;

(i) the Escrow Agent may act pursuant to the advice of counsel chosen by it with respect to any matter relating to this Agreement and shall not be liable for any action taken or omitted in good faith and in reliance on such advice;

(j) the Escrow Agent shall be under no duty to monitor or enforce compliance of the Asset Purchase Agreement by any party or with any term or provision of this Agreement;

(k) if the Escrow Agent shall be uncertain as to its duties or rights under this Agreement or shall receive instructions with respect to any property held by it in escrow pursuant to this Agreement which, in the good faith opinion of the Escrow Agent, are in conflict with any of the provisions of this Agreement, then the Escrow Agent shall be entitled to refrain from taking any action until it shall be directed otherwise in writing by Purchaser and Seller or a Final Order;

(l) except with respect to claims based upon or incurred due to the Escrow Agent's gross negligence or willful misconduct, the Escrow Agent shall not be liable under this Agreement for, and Purchaser and Seller shall, jointly and severally, indemnify the Escrow Agent for, and hold it harmless as to, any loss, liability or expense, including reasonable attorneys' fees and expenses, paid or incurred by the Escrow Agent in connection with the Escrow Agent's duties under this Agreement; and

(m) the Escrow Agent may resign as escrow agent under this Agreement and Purchaser and Seller, acting jointly and not singly, may remove and replace the Escrow Agent as escrow agent under this Agreement by delivering to the Escrow Agent a letter of removal executed by Purchaser and Seller. If the Escrow Agent shall be removed as escrow agent by Purchaser and Seller or shall resign or otherwise cease to act as escrow agent, then Purchaser and Seller shall jointly appoint a successor which successor shall be deemed to be the Escrow Agent for all purposes of this Agreement. If a successor Escrow Agent has not been appointed and accepted such appointment by the end of the thirty (30) day period following such removal, resignation or cessation, then the Escrow Agent may apply to any federal or state court located in the Northern District of Alabama, Southern Division of Alabama for the appointment of a successor Escrow Agent and deposit the Escrow Fund with the then chief or presiding judge of such court (and upon so depositing such property, the Escrow Agent shall be relieved of all liability (other than liability based upon or incurred due to the gross negligence or willful misconduct of the Escrow Agent) under the terms of this Agreement as to the Transferred Assets so deposited). The removal, resignation or other ceasing to act as escrow agent by the Escrow Agent or any successor thereto shall have no effect on this Agreement or any of the rights of the parties under this Agreement, all of which shall remain in full force and effect. The agreements contained in this Agreement shall

survive termination of this Agreement and, with respect to any Escrow Agent, the removal, resignation or withdrawal of such Escrow Agent.

5. The Escrow Agent is acting under this Agreement as a stakeholder only and in a ministerial capacity and shall be considered an independent contractor with respect to the parties hereunder. No term or provision of this Agreement is intended to create, nor shall any such term or provision be deemed to have created, any principal-agent, trust, joint venture, partnership, debtor-creditor or attorney-client relationship between or among the Escrow Agent and the Seller, on the one hand, or Purchaser, on the other hand. The Escrow Agent's duties and obligations hereunder are limited to those expressly set forth in this Agreement. The Escrow Agent may exercise or otherwise enforce any of its rights, powers, privileges, remedies and interests under this Agreement and applicable law or perform any of its duties under this Agreement by or through its partners, employees, attorneys, agents or designees.

6. The Escrow Agent and its designees, and their respective directors, officers, partners, employees, attorneys and agents, shall not incur any liability whatsoever for the investment or disposition of Escrow Fund or the taking of any other action or omission to act with respect to this Agreement, for compliance with any applicable law or regulation or any attachment, order or other directive of any court or other authority, (irrespective of any conflicting term or provision of the Asset Purchase Agreement), or for any mistake or error in judgment of the Escrow Agent or any act or omission of any other person engaged by the Escrow Agent in connection with this Agreement (other than for the Escrow Agent's or such other person's mistakes, errors in judgment, acts or omissions which have been determined in a final and non-applicable ruling by a court of competent jurisdiction to constitute gross negligence or willful misconduct).

7. Miscellaneous

(a) Purchaser and Seller shall each be responsible for their own fees and expenses (including, without limitation, the fees and expenses of their accountants and counsel) in connection with the entering into of this Agreement and the performance by them of their obligations hereunder.

(b) All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed given if delivered personally or sent by telecopier or overnight courier (providing proof of delivery) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

To Seller: Two Buckhead Plaza
3050 Peachtree Road, NW, Suite 355
Atlanta, Georgia 30305
Attention: Christopher Brogdon

To Purchaser: Noland Fairhope, LLC
600 Corporate Parkway, Suite 100

Birmingham, AL 35242
Attn: Gary M. Glasscock

With Copy To: Cabaniss, Johnston, Gardner, Dumas & O'Neal LLP
2001 Park Place North Suite 700
Birmingham, AL 35203
Attn: G. Thomas Sullivan

To Escrow Agent: Kathy Mitchell
The Title Group, Incorporated
2101 First Avenue North
Birmingham, Alabama 35203

(c) This Agreement may be executed in one or more counterparts (including telecopy), all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

(d) This Agreement (i) constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties and the Escrow Agent with respect to the subject matter of this Agreement, and (ii) is not intended to confer upon any person other than the parties hereto (and their respective successors and assigns) any rights or remedies.

(e) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

(f) Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part (except by operation of law), by any of the parties hereto without the prior written consent of the other parties hereto. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of and be enforceable by, the parties hereto and their respective successors and assigns.

(g) Each party hereto hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or other proceeding directly or indirectly arising out of, under or in connection with this Agreement. Each party hereto (i) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such party would not, in the event of any action, suit or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other parties hereto have been induced to enter into this Agreement, by, among other things, the mutual waiver and certifications in this Section.

(h) If any term or other provision of this Agreement is determined to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions

and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

(i) Any provision of this Agreement may be amended or waived, but only if such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement or, in the case of a waiver, by each party against whom the waiver is to be effective.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed and its seal to be affixed thereto as of the day and year first above written.

SELLER:

FAIRHOPE NURSING, LLC, a Georgia limited liability company

By: _____
Name: _____
Title: _____

PURCHASER:

NOLAND FAIRHOPE, LLC, a Delaware limited liability company

By: **NOLAND HEALTH SERVICES, INC.**, a Delaware corporation, its Manager and Sole Member

By: _____
Name: Gary M. Glasscock
Title: President

ESCROW AGENT:

The Title Group, Incorporated
2101 First Avenue North
Birmingham, Alabama 35203

By: _____
Name: _____
Title: _____

EXHIBIT 5

INDEMNIFICATION ESCROW AGREEMENT

THIS INDEMNIFICATION ESCROW AGREEMENT (this “Agreement”) made and entered into this ____ day of _____, 2017 by and among **FAIRHOPE NURSING, LLC**, a Georgia limited liability company (hereinafter referred to as “**Seller**”) and **NOLAND FAIRHOPE, LLC**, a Delaware limited liability company (hereinafter referred to as “**Purchaser**” and/or “**New Operator**”) and **THE TITLE GROUP, INCORPORATED** (hereinafter referred to as “**Escrow Agent**”).

WITNESSETH:

WHEREAS, Seller and Purchaser have entered into an Asset Purchase Agreement dated September 1, 2017 (the “**Purchase Agreement**”) in respect to certain Transferred Assets (terms defined in the Purchase Agreement having the same meaning when used herein);

WHEREAS, Fairhope Health and Rehab, LLC, a Georgia limited liability company (“**Transferor**”) and New Operator have entered into an Operations Transfer Agreement (the “**OTA**”) dated September 1, 2017 in respect of the operations of the Facility (terms defined in the OTA having the same meaning when used herein);

WHEREAS, Purchaser, New Operator and Seller desire to have Escrow Agent hold certain funds as required under the Purchase Agreement, in escrow, pursuant to the terms hereof; and

WHEREAS, Seller hereby acknowledges that the funds being held hereunder are held pursuant to its obligations under the Purchase Agreement and the Indemnification obligations of Transferor under the OTA.

NOW, THEREFORE, in consideration of the premises and of good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the parties hereto covenant and agree as follows:

1. Seller, Purchaser and New Operator hereby appoint The Title Group, Incorporated, as Escrow Agent hereunder.

2. Seller has deposited and delivered to the Escrow Agent a wire transfer in the amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) (the “**Escrow Fund**”). The Escrow Agent shall deposit the monies in the Escrow Fund in its escrow account in an interest bearing account, including without limitation, an account whose funds are invested in: (i) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof having maturities of not more than 30 days from the date of acquisition; (ii) certificates of deposit and Eurodollar time deposits with maturities of 30 days or less from the date of acquisition, bankers’ acceptances with maturities not exceeding 30 days and overnight bank deposits, in each case with any domestic commercial bank having capital and surplus in excess of \$50,000,000; (iii) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (i) and (ii) above

entered into with any financial institution meeting the qualifications specified in clause (ii) above; (iv) commercial paper having the highest rating obtainable from Moody's Investors Service, Inc. or Standard & Poor's, a division of The McGraw Hill Companies, and in each case maturing within six months after the date of acquisition; and (v) money market funds substantially all the assets of which consist of cash and securities and other obligations of the types described in the preceding clauses (i) through (iv).

3. All earnings on the Escrow Fund shall be added to the Escrow Fund and disbursed in accordance with the terms of this Agreement.

4. Contemporaneously with the execution and delivery of this Agreement, Seller shall deliver a Form W-9 to the Escrow Agent.

5. Except as expressly provided herein, Seller, New Operator and Purchaser shall have no right, title or interest in or possession of any of the Escrow Fund or any right or ability to transfer, pledge, convey, hypothecate or grant a security interest in any portion of the Escrow Fund, and until disbursed pursuant to this Agreement, the Escrow Agent shall be in sole possession of the Escrow Fund and will not act or be deemed to act as custodian for any party for purposes of perfecting a security interest therein.

6. The Escrow Fund shall be held by the Escrow Agent and shall only be released in accordance with the following:

a. If the Escrow Agent shall receive a written notice (a "**Claim Notice**") from, or on behalf of, New Operator or Purchaser stating (i) that a Loss as described in **Section 9.1** of the Purchase Agreement has been incurred by Purchaser (as a result of a payment made by Purchaser or New Operator or an offset against or deduction from payments to which Purchaser or New Operator is otherwise entitled) and such party is entitled, under the terms of the Purchase Agreement to reimbursement and/or indemnification of such Claim from Seller and (ii) Purchaser or New Operator has first demanded payment of such Claim from Transferor in accordance with the terms of the OTA and such Claim has not been paid by Transferor within sixty (60) days of such demand, then the Escrow Agent shall promptly deliver a copy of such Claim Notice to Seller, in accordance with the notice provisions set forth herein. In the event the Escrow Agent shall not receive a written objection from Seller within ten (10) days following Seller's receipt of the Claim Notice, the Escrow Agent shall release from the Escrow Fund the amount of the Claim set forth in the Claim Notice (or, if less, the balance of the unreserved Escrow Fund then held by the Escrow Agent) in accordance with the provisions of the Claim Notice. If the Escrow Agent shall timely receive written objection from, or on behalf of, Seller, the Escrow Agent shall continue to hold the Escrow Fund in accordance with the terms hereof. The amount of the Loss set forth in a Claim Notice shall be deemed "reserved" from the Escrow Fund as of the date of notice provided to Transferor pending final determination of such Claim Notice.

b. If the Escrow Agent shall receive joint written instructions from Purchaser and Seller, the Escrow Agent shall distribute the Escrow Fund in accordance with such instructions.

c. If the Escrow Agent shall receive a copy, certified by counsel to the presenting party as being a true and complete copy thereof, of any determination, award, decision, order, judgment or decree (a “**Final Order**”) of or by any court having jurisdiction thereof, which Final Order directs and authorizes the Escrow Agent to disburse the Escrow Fund or any portion thereof, then the Escrow Agent shall distribute the Escrow Fund in accordance with such Final Order.

d. If and to the extent the Escrow Agent has not disbursed or reserved the entire Escrow Fund on or before the last day of the twenty fourth (24th) month following the Closing Date (as defined in the Asset Purchase Agreement) (the “**Expiration Date**”), then on the next business day, the Escrow Agent shall disburse the then remaining balance of the Escrow Fund pursuant to the procedure as provided in **Section 1.2** of the Asset Purchase Agreement, provided, however, if as of the Expiration Date there remain any reserved portion of the Escrow Fund in respect of any outstanding Claim Notices, then the Escrow Agent shall continue to hold such reserved portion of the Escrow Fund in accordance with the terms of this Agreement and the remaining balance, if any, of the Escrow Fund shall be distributed pursuant to the procedure as provided in **Section 1.2** of the Asset Purchase Agreement.

7. Seller, Purchaser and New Operator agree that:

a. Any party to this Agreement shall have the right to examine the records of the Escrow Fund during regular business hours and upon prior notice at the office of the Escrow Agent, and the Escrow Agent shall periodically provide a written accounting of the Escrow Fund to the parties in accordance with the Escrow Agent’s standard practices;

b. the Escrow Agent’s duties and responsibilities shall be limited to those expressly set forth in this Agreement, as amended in accordance with the provisions of this Agreement;

c. no assignment of the interest of any party or their respective successors shall be binding upon the Escrow Agent unless and until written evidence of such assignment in form reasonably satisfactory to the Escrow Agent shall be filed with and accepted by the Escrow Agent;

d. the Escrow Agent shall exercise the same degree of care toward the Escrow Fund as it exercises toward similar property held in escrow for the account of others, and shall not be held to any higher standard of care under this Agreement;

e. the Escrow Agent shall be entitled to rely upon any determination, award, decision, order, judgment or decree of any arbitrators or court and any certification, opinion, instruction, notice or other writing delivered to it in compliance with the provisions of this Agreement without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity or service thereof;

f. the Escrow Agent may act in reliance upon any instrument comporting with the provisions of this Agreement or signature believed in good faith by the Escrow Agent to be genuine and may assume that any person purporting to give notice or receipt or advice or make any statement or execute any document in connection with the provisions of this Agreement has been duly authorized to do so;

g. the Escrow Agent shall be entitled to rely upon any notice, consent, certificate, affidavit, statement, paper, document, writing or other communication (which may be by email, telecopier, or telephone) reasonably believed by it to be genuine and to have been signed, sent or made by the proper person or persons, and upon opinions and advice of legal counsel (including itself or counsel for any party hereto), independent accountants or other experts selected by the Escrow Agent;

h. if the Escrow Fund is at any time attached, garnished or levied upon under any court order, or in the event that payment of the Escrow Fund shall be stayed or enjoined by any court order, or in the event that an order, judgment or decree shall be made or entered by any court affecting the Escrow Fund, or any part thereof, then and in any of such events, the Escrow Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree, which it believes to be binding upon it;

i. the Escrow Agent may act pursuant to the advice of counsel chosen by it with respect to any matter relating to this Agreement and shall not be liable for any action taken or omitted in good faith and in reliance on such advice;

j. the Escrow Agent shall be under no duty to monitor or enforce compliance of the Purchase Agreement or the OTA by any party or with any term or provision of this Agreement;

k. if the Escrow Agent shall be uncertain as to its duties or rights under this Agreement or shall receive instructions with respect to any property held by it in escrow pursuant to this Agreement which, in the good faith opinion of the Escrow Agent, are in conflict with any of the provisions of this Agreement, then the Escrow Agent shall be entitled to refrain from taking any action until it shall be directed otherwise in writing by all parties or a Final Order; and

l. except with respect to claims based upon or incurred due to the Escrow Agent's gross negligence or willful misconduct, the Escrow Agent shall not be liable under this Agreement for, and Seller, Transferor, Purchaser and New Operator, as applicable, shall jointly and severally indemnify the Escrow Agent for, and hold it harmless as to, any loss, liability or expense, including reasonable attorneys' fees and expenses, paid or incurred by the Escrow Agent in connection with the Escrow Agent's duties under this Agreement.

m. the Escrow Agent may resign as escrow agent under this Agreement and the parties, acting jointly and not singly, may remove and replace the Escrow Agent as escrow agent under this Agreement by delivering to the Escrow Agent a letter of removal

executed by all of the parties. If the Escrow Agent shall be removed as escrow agent by the parties or shall resign or otherwise cease to act as escrow agent, then the parties shall jointly appoint a successor which successor shall be deemed to be the Escrow Agent for all purposes of this Agreement. If a successor Escrow Agent has not been appointed and accepted such appointment by the end of the thirty (30) day period following such removal, resignation or cessation, then the Escrow Agent may apply to any federal or state court located in the Northern District of Alabama, Southern Division for the appointment of a successor Escrow Agent and deposit the Escrow Fund with the then chief or presiding judge of such court (and upon so depositing such property, the Escrow Agent shall be relieved of all liability (other than liability based upon or incurred due to the gross negligence or willful misconduct of the Escrow Agent) under the terms of this Agreement as to the property so deposited). The removal, resignation or other ceasing to act as escrow agent by the Escrow Agent or any successor thereto shall have no effect on this Agreement or any of the rights of the parties under this Agreement, all of which shall remain in full force and effect. The agreements contained in this Agreement shall survive termination of this Agreement and, with respect to any Escrow Agent, the removal, resignation or withdrawal of such Escrow Agent.

8. The Escrow Agent is acting under this Agreement as a stakeholder only and in a ministerial capacity and shall be considered an independent contractor with respect to the parties hereunder. No term or provision of this Agreement is intended to create, nor shall any such term or provision be deemed to have created, any principal-agent, trust, joint venture, partnership, debtor-creditor or attorney-client relationship between or among the Escrow Agent and Transferor or Seller, on the one hand, or New Operator or Purchaser, on the other hand. The Escrow Agent's duties and obligations hereunder are limited to those expressly set forth in this Agreement. The Escrow Agent may exercise or otherwise enforce any of its rights, powers, privileges, remedies and interests under this Agreement and applicable law or perform any of its duties under this Agreement by or through its partners, employees, attorneys, agents or designees.

9. The Escrow Agent and its designees, and their respective directors, officers, partners, employees, attorneys and agents, shall not incur any liability whatsoever for the investment or disposition of Escrow Fund or the taking of any other action or omission to act with respect to this Agreement, for compliance with any applicable law or regulation or any attachment, order or other directive of any court or other authority (irrespective of any conflicting term or provision of the OTA or the Purchase Agreement), or for any mistake or error in judgment of the Escrow Agent or any act or omission of any other person engaged by the Escrow Agent in connection with this Agreement (other than for the Escrow Agent's or such other person's mistakes, errors in judgment, acts or omissions which have been determined in a final and non-applicable ruling by a court of competent jurisdiction to constitute gross negligence or willful misconduct).

10. Miscellaneous

a. Seller, Transferor, New Operator and Purchaser shall each be responsible for their own fees and expenses (including, without limitation, the fees and expenses of

their accountants and counsel) in connection with the entering into of this Agreement and the performance by them of their obligations hereunder.

b. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by overnight courier (providing proof of delivery) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

To Seller: Fairhope Nursing, LLC
Two Buckhead Plaza
3050 Peachtree Road, NW, Suite 355
Atlanta, Georgia 30305
Attention: Christopher Brogdon

Copy (which shall not
Constitute notice) to: Holt Ney Zatcoff & Wasserman, LLP
100 Galleria Parkway, Suite 1800
Atlanta, Georgia 30339
Attn: Gregory P. Youra, Esq.

To New Operator
or Purchaser: Noland Fairhope, LLC
600 Corporate Parkway, Suite 100
Birmingham, AL 35242
Attn: Gary M. Glasscock

Copy to: Cabaniss, Johnston, Gardner, Dumas & O'Neal LLP
2001 Park Place North, Suite 700
Birmingham, Alabama 35203
Attn: G. Thomas Sullivan, Esq.

To Escrow Agent: Kathy Mitchell
The Title Group, Incorporated
2101 First Avenue North
Birmingham, Alabama 35203

c. This Agreement may be executed in one or more counterparts (including telecopy), all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

d. This Agreement (i) constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties and the Escrow Agent with respect to the subject matter of this Agreement, and (ii) is not intended to confer upon any person other than the parties hereto (and their respective successors and assigns) any rights or remedies.

e. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

f. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part (except by operation of law), by any of the parties hereto without the prior written consent of the other parties hereto. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of and be enforceable by, the parties hereto and their respective successors and assigns.

g. Each party hereto hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or other proceeding directly or indirectly arising out of, under or in connection with this Agreement. Each party hereto (i) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such party would not, in the event of any action, suit or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other parties hereto have been induced to enter into this Agreement, by, among other things, the mutual waiver and certifications in this Section.

h. If any term or other provision of this Agreement is determined to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

i. Any provision of this Agreement may be amended or waived, but only if such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement or, in the case of a waiver, by each party against whom the waiver is to be effective.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed and its seal to be affixed thereto as of the day and year first above written.

[Remainder of page intentionally left blank.]

SELLER:

FAIRHOPE NURSING, LLC, a Georgia limited liability company

By: _____
Name: _____
Title: _____

PURCHASER AND NEW OPERATOR:

NOLAND FAIRHOPE, LLC, a Delaware limited liability company

By: **NOLAND HEALTH SERVICES, INC.**, a Delaware corporation, its Manager and Sole Member

By: _____
Name: Gary M. Glasscock
Title: President

THE TITLE GROUP, INCORPORATED

By: _____
Name: _____
Title: _____

SCHEDULE 1.0
PROPERTY DESCRIPTION

Block 15, Division 1, of the land as per plat thereof filed for record in Probate Records of Baldwin County, Alabama in Map Book 8, Page 60, Amendment of Map filed for record September 13, 1911 and recorded in Miscellaneous Book 1, Pages 320-321.

ALSO DESCRIBED AS FOLLOWS: Beginning at a 1/2 inch rebar found at the Northwest intersection of South Church Street and Morphy Avenue; thence North 89 degrees 59 minutes 07 seconds West along the North right-of-way margin of Morphy Avenue a distance of 419.88 feet to a 1/2 inch rebar found on the East right-of-way margin of Summit Street; thence North 03 degrees 04 minutes 55 seconds East along the East right-of-way margin of Summit Street a distance of 185.64 feet; thence leaving Summit Street South 89 degrees 55 minutes 51 seconds East a distance of 409.90 feet to a 1/2 inch rebar found on the West right-of-way margin of South Church Street; thence South 00 degrees 00 minutes 00 seconds East along the West right-of-way margin of South Church Street a distance of 184.99 feet to the Point of Beginning.

SCHEDULE 3.1(a)
DISCLOSURE SCHEDULE
FOR REPRESENTATIONS AND WARRANTIES

SCHEDULE 3.1(a)(xi)

INSURANCE