

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

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

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**EMERGENCY MOTION OF DEBTORS IN POSSESSION TO APPROVE SALE  
OF BELL OAKS APARTMENTS FACILITY OWNED BY OAK PARTNERS TWO,  
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 §§ 105, 1107, and 1108 and file this emergency motion for approval of the sale of certain real and personal property located at 3160 Bell Oaks Circle, Montgomery, Alabama 36116, a ninety-four (94) unit senior living facility owned by Oak Partners Two, LLC, a limited liability company in which Debtors own a one hundred percent (100%) interest (“Oak Partners”), and as further defined in the Purchase Agreement (defined below). (the “Bell Oaks 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 Bell Oaks Facility.

5.

Oak Partners owns the Bell Oaks Facility, a senior living facility commonly known as “Bell Oaks Apartments”. The Debtors believe the fair market value of the property is approximately \$2,100,000.00 and equal to the proposed purchase price of \$2,100,000.00, less a one-hundred fifty thousand (\$150,000.00) credit for immediate repairs. (the “Purchase Price”) The outstanding balance on the first mortgage held by Wells Fargo, as Indenture Trustee is approximately \$3,535,000.00. This is a short sale and a waterfall summary of expected closing costs and net funds to the secured bondholders will be filed with the Court prior to the hearing.

6.

In connection with a potential sale of the Bell Oaks Facility, Oak Partners tried to identify and contact all third party purchasers that might be interested in pursuing such a transaction. Blueprint Healthcare Real Estate Advisors, LLC (“Blueprint”), a sell side advisory Firm specializing in senior housing nationwide, was engaged exclusively by Oak Partners to market the Bell Oaks Facility on or about April 3, 2017. Bell Oaks is a ninety-four (94) unit independent senior living community in Montgomery, Alabama. At the time of initial marketing, the community was severely distressed with low occupancy in the community. Blueprint took the community to 3-4 of its distressed asset customers and a winning Letter of Intent was executed on June 8, 2017 for \$2,100,000. After the customary due diligence period some structural issues were found at Bell Oaks and the parties agreed to a \$150,000 deduction of the purchase price (i.e. \$1,950,000). A Purchase and Sales Agreement was negotiated and executed shortly thereafter on July 11, 2017 and the transaction is waiting for approval from both Wells Fargo and this Court to be clear for closing. Blueprint confidently reports that the winning letter of intent and prospective purchaser of Bell Oaks represented the top value and purchase price for the asset in the current market.

7.

Oak Partners’s efforts culminated in the negotiation and execution of an asset purchase agreement with Elevation Properties, LLC (the “Purchaser”), for the purchase of the Bell Oaks Facility pursuant to the terms set forth in the Asset Purchase Agreement dated July 11, 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 Bell Oaks Facility to Purchaser and contains the following material terms:

- Purchased Assets - All the Seller's real and personal property located at 3160 Bell Oaks Circle, Montgomery, Alabama 36116;
- Purchase Price - \$2,100,000.00 less a one-hundred fifty thousand (\$150,000.00) credit for immediate repairs - The purchase price shall be paid as follows:

1. Deposit.

- Within three (3) Business Days following the Effective Date, Purchaser deposited Earnest Money of \$100,000.00 with the Escrow Agent by wire transfer of immediately available funds. (the "Initial Deposit")
- Following the expiration of the thirty (30) day Inspection Period Purchaser deposited \$50,000.00 with the Escrow Agent. (the "Additional Deposit")(collectively the "Earnest Money")

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 Wells Fargo, as indenture trustee for the secured bondholders upon Closing.

Closing is subject to approval by this Court and approval of the indenture trustee for the bondholders.

**RELIEF REQUESTED**

8.

Debtors believe the Purchase Price proposed to be paid by Purchaser represents the fair market value of the Bell Oaks 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 Bell Oaks 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 Bell Oaks Facility, Oak Partners, 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  
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**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 electronic mail or facsimile 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**

THIS ASSET PURCHASE AGREEMENT (the “**Agreement**”) is made and entered into as of July 11, 2017 (the “**Effective Date**”), by and between **OAKS PARTNERS TWO, LLC**, a Georgia limited liability company (hereinafter referred to as “**Seller**”), and **ELEVATION PROPERTIES, LLC**, a Florida limited liability company, (hereinafter referred to as “**Purchaser**”).

**WITNESSETH:**

**ARTICLE I**  
**DEFINITIONS**

1.01 Definitions. As used in this Agreement, the following terms shall have the meanings assigned below:

“**Affiliate**” shall mean with respect to any specified Person, (i) each Person that controls, is controlled by or is under common control with such Person, (ii) each Person that, directly or indirectly, owns any part of or controls, whether beneficially or as a trustee, guardian or other fiduciary, any of the ownership interest of such Person, and (iii) each of such Person’s officers, directors, members, managers, trustees, joint venturers and partners. For purposes of this definition, the term “controls,” “is controlled by,” or “is under common control with” includes the possession, direct or indirect, of the power to direct or cause the direction of the management policies of a Person or entity, whether through the ownership of voting securities, by contract or otherwise.

“**Business**” shall mean collectively the ownership and operation of a 96 unit independent living facility located at 3160 Bell Oaks Circle, Montgomery, Alabama 36116, known as “Bell Oaks Apartments,” and any ancillary business operated in connection therewith or relating thereto.

“**Claim**” shall mean any action, cause of action, claim, damage, demand, proceeding, fine, injury (including death), investigation, judgment, lawsuit, liability, loss, penalty, settlement or expense of any nature.

“**Contract Rights**” shall mean all contracts and other agreements relating to or incident to the ownership, operation or management of the Facility, including, but not limited to, Equipment leases, contracts for food service, housekeeping, other service agreements, contracts for repair, maintenance, pest control and Supplies, Property Claims, rental agreements and occupancy agreements, telephone service, web sites, email addresses, brochures and advertising for the Facility, and any management contracts. Seller shall schedule all such written and oral agreements on Exhibit C hereto, and the term “Contract Rights” shall include, without limitation, the agreements identified on such schedule.

“**Equipment**” shall mean all furniture, fixtures and equipment and other personalty now or hereafter attached to or appurtenant to the Land or used in connection with the operation of the Business or the ownership of the Facility.

“**Excluded Assets**” shall mean those items specifically described on **Exhibit B** hereto.

“**Excluded Liabilities**” shall mean all of the liabilities, debts and obligations relating to the Facility or Seller, other than the Assumed Liabilities, including, without limitation, the following:

(a) the outstanding amount of all principal, interest, fees and expenses in respect of borrowed money, letters of credit, capital leases and installment purchases;

(b) obligations relating to Taxes, including any retroactive adjustments to Taxes made by the taxing authority that relate to the period prior to Closing and taxes owed by Seller associated with the Closing;

(c) obligations under this Agreement or any agreement entered into in connection with the transactions contemplated by this Agreement (other than the obligations of Purchaser);

(d) any litigation, suit, proceeding, arbitration, Claim, audit or investigation, filed or otherwise, with respect to or relating in any manner to the affairs of Seller, the Facility or the Business prior to the Closing regardless of when such matter is initiated;

(e) obligations related to any pension, profit sharing, retirement, employee benefit or similar plan, 401(k) plan, benefit or arrangement, including any and all obligations of Seller to employees in respect of any (i) Retirement Plan or (ii) accrued paid time off, vacation or similar compensation or benefits, except to the extent Purchaser shall in this Agreement specifically assume any obligations described in (i) or (ii) of this Subsection;

(f) liabilities relating to any Contract Rights that are not Approved Contracts assumed by Purchaser;

(g) liabilities relating to any Approved Contracts to the extent the same arise or relate to any period prior to Closing;

(h) liabilities or obligations relating to the Excluded Assets;

(i) any liability, obligation or Claim (whether or not disclosed herein) arising out of or relating to the ownership or operation of the Business or the Facility relating to all periods of time prior to Closing, or any action, inaction or conduct of the Seller;

(j) any liability, obligation or Claim against or relating to Seller or its Affiliates which is unrelated to the Facility;

(k) the aggregate amount payable by Seller through the Closing, or arising as a result of the transactions contemplated by this Agreement, for (i) legal, accounting, investment banking, broker and other fees and expenses, (ii) sales and use taxes, documentary stamp, transfer, privilege, excise or other similar Taxes or fees, arising from the transactions contemplated by this Agreement, and (iii) all other payments, costs and

expenses incurred by Seller in connection with or as a result of the transactions contemplated by this Agreement;

(l) any duty whatsoever to take any action or receive or make any payment or credit arising from or related to any of the foregoing.

(m) any liability owed to any Affiliate of Seller; and

(n) liabilities or obligations relating to or arising under any management agreement.

**“Facility”** shall mean collectively the fee interest in the Land, Improvements, Equipment, Business, Contract Rights, Supplies, Leases, Intangible Personal Property, Records and the other intangible and tangible assets, whether real or personal or mixed, related to the Facility and/or used in connection with the Business.

**“Governmental Authority”** shall mean the government of the United States or any foreign country or any state or political subdivision thereof and any entity, body or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and other quasi-governmental entities established to perform such functions.

**“Government Authorizations”** shall mean all licenses, permits, approvals, certificate of occupancy and other authorizations from any Governmental Authority as are necessary to lawfully operate the Business at the Facility.

**“Improvements”** shall mean the buildings and all other improvements, including site improvements, landscaping, fixtures, mechanical equipment, apparatus and appliances, now owned or leased or hereafter placed on the Land.

**“Intangible Personal Property”** shall mean the trade name under which the Business is operated; logos; studies; trade lists; trademarks; Seller’s rights to all engineering and architectural plans and specifications, drawings, studies and as-built surveys relating to the Facility and any other intangible personal property used in connection with the ownership or operation of the Business or the Facility.

**“Land”** shall mean that certain tract(s) or parcel(s) of land located in Montgomery County, Alabama as more particularly described on **Exhibit A**, together with all easements, hereditaments, rights of way, privileges and rights benefiting same and all strips and gores of land lying adjacent to such land and owned by Seller.

**“Leases”** shall mean all leases and all occupancy agreements of the residents of the Facility, a schedule of same being included within **Exhibit C** hereto.

**“Material Adverse Change”** or **“Material Adverse Effect”** shall mean any change or event or effect that is or could reasonably be expected to be materially adverse to the Facility or the Business or financial condition or operations of the Facility. Notwithstanding the foregoing, a Material Adverse Change shall not be deemed to exist if the event giving rise to such event or change was caused, directly or indirectly, by Purchaser’s breach of this Agreement.

“**Person**” shall mean any entity or natural person.

“**Property Claims**” shall mean all assignable or transferable claims, remedies or causes of action of Seller against any contractor or repairman related to any work done on or about the Land or to the extent they are in the nature of enforcing any unexpired warranty, guaranty or contract obligation to complete improvements, make repairs or deliver services to the Facility.

“**Records**” shall mean all books and records maintained in connection with the ownership, operation or conduct of the Business or the Facility, by Seller.

“**Supplies**” shall mean all supplies at the Improvements, including food, cleaning materials and equipment and supplies for the maintenance of the Facility.

“**Taxes**” shall mean all taxes, charges, fees, levies, duties, penalties, additions or assessments imposed by any Governmental Authority, including income, excise, property, sales, transfer, use, ad valorem, profits, license, employment, occupancy, environmental, sewer, tap, severance, franchise, payroll, withholding, FICA, value added, unemployment, social security or other taxes, including any interest, penalties or additions attributable thereto.

“**Trade Name**” shall mean Bell Oaks Apartments.

1.02 General Construction. Whenever required by the context herein, the singular includes the plural and masculine includes the feminine or the neuter. The word “including” means “including without limitation.” Words such as “herein,” “hereof,” “hereby” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or Subsection of this Agreement. When the term “Seller” is used herein, it shall include the Facility and the Business, whether or not another entity is the manager, operator or licensee thereof, jointly and severally.

1.03 Schedules and Exhibits.

(a) The schedules and exhibits referenced in this Agreement are incorporated herein by this reference. All items disclosed hereunder shall be deemed disclosed in connection with the specific representation to which they are explicitly referenced. Nothing in any Schedule shall be deemed adequate to disclose an exception to a representation or warranty made herein unless the applicable Schedule identifies the exception and the specific representation to which it relates with reasonable particularity and describes the relevant facts in reasonable detail. The Schedules are arranged in paragraphs corresponding to the numbered and lettered paragraphs of the Agreement to which such Schedule relates. Any fact or item disclosed on any Schedule hereto shall not be deemed by reason only of such inclusion, to be material and shall not be employed as a point of reference in determining any standard of materiality under this Agreement.

(b) If no disclosure schedule is attached with reference to a specific Section of the Agreement, then such missing schedule shall be deemed to state “None.” The parties acknowledge that all disclosure schedules and/or exhibits may not be attached at the time this Agreement is executed. All disclosure schedules and/or exhibits shall be subject to Purchaser’s approval in its sole discretion. Seller agrees to use its best efforts to provide

all schedules and exhibits to Purchaser as soon as possible, but shall deliver same in any event not later than ten (10) days from the Effective Date. Notwithstanding anything herein to the contrary, should Seller not deliver all schedules, exhibits and other deliveries required hereunder to Purchaser within ten (10) days from the Effective Date, then the Inspection Period and the Closing Date shall be extended on a day-for-day basis until Seller delivers all schedules and exhibits to Purchaser.

## ARTICLE II AGREEMENT AND CONSIDERATION

2.01 Agreement to Sell and Purchase. In consideration of the mutual covenants and promises contained in this Agreement, Seller agrees to sell, assign, transfer and convey unto Purchaser the Facility (but not any Excluded Assets), and Purchaser agrees to purchase the Facility (but not any Excluded Assets), all upon the terms and conditions set forth herein.

2.02 Consideration. Purchaser agrees to pay to Seller the sum of TWO MILLION ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,100,000.00) in consideration for the sale of the Facility, subject to the adjustments and credits described herein. This sum is hereinafter referred to as the “**Purchase Price**”. Notwithstanding the foregoing, the parties hereto acknowledge that certain immediate and necessary repairs to the Property have been determined to exist and, further, the parties hereto have agreed to provide Purchaser a credit at closing of ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) therefor.

2.03 Method of Payment. The Purchase Price, subject to all prorations and credits set forth herein, shall be payable as set forth in this Section 2.03. Purchaser shall deposit with the Escrow Agent (as hereinafter defined) the sum of ONE HUNDRED THOUSAND AND NO/100 (\$100,000.00) within three (3) days following execution of this Agreement (the “**Initial Deposit**”). Within three (3) days following expiration of the Thirty (30) day Inspection Period, Purchaser shall deposit the additional sum of Fifty Thousand Dollars (\$50,000.00) (the “**Additional Deposit**”) with the Escrow Agent. The Initial Deposit and the Additional Deposit may sometimes be referred to collectively as the “**Earnest Money**”). All monies escrowed shall be delivered to and held by First American Title Insurance Company (the “**Escrow Agent**”) in accordance with the terms and considerations of the Deposit Escrow Agreement among Seller, Purchaser and Escrow Agent in the form attached hereto as Exhibit D. The Escrow Agent shall invest the Earnest Money pursuant to directions from Purchaser and Seller, and any interest or other income earned on the Earnest Money shall be deemed part of the Earnest Money. Notwithstanding anything to the contrary contained in this Agreement, one hundred dollars (\$100.00) of the Earnest Money shall be non-refundable and shall be the independent consideration for this Agreement. At Closing, Purchaser shall pay the balance of the Purchase Price, less the Earnest Money, in cash or other immediately available funds subject to all prorations provided herein.

2.04 Allocation of the Purchase Price. The Purchase Price shall be allocated in the manner set forth on Exhibit E, said allocation being mutually agreed upon by the parties. Notwithstanding the foregoing, if no Exhibit E is attached hereto at the initial signing of this Agreement, the parties agree to endeavor to agree upon an allocation of the Purchase Price prior

to Closing, but such agreement shall not be a condition precedent to Closing. If the parties are unable to agree on a Purchase Price allocation prior to Closing, the parties may independently determine the Purchase Price allocation and each file their own IRS Form 8594.

2.05 Excluded Assets. Notwithstanding anything herein to the contrary, Purchaser shall not acquire any interest in the Excluded Assets as a result of this transaction.

2.06 Assumed Liabilities. At the Closing, Purchaser shall assume and agree to pay when due, and discharge in accordance with the terms thereof, only those liabilities and obligations of Seller which accrue for performance subsequent to the Closing under the Approved Contracts expressly assumed by Purchaser (the "**Assumed Liabilities**") in accordance with Section 7.10. Except with respect to the Assumed Liabilities, Purchaser shall not assume and shall not in any way be responsible for any of the debts, liabilities, or obligations of any kind or nature of Seller. Without limiting the generality of the foregoing, Purchaser shall have no liability for any Excluded Liabilities.

2.07 Inspection Period. Purchaser shall have a period of Thirty (30) days following the execution of this Agreement by all parties (the "**Inspection Period**"), to make such physical, legal, zoning, title, survey, land use, environmental, financial and other examinations, inspections and investigations of the Facility or the use or operation thereof which Purchaser, in Purchaser's sole discretion, may determine to make. If Purchaser is not satisfied with its inspections of the Facility, in Purchaser's sole discretion, Purchaser may cancel this Agreement by written notice of cancellation (the "**Termination Notice**") given to Seller on or before the end of the Inspection Period. Upon termination of this Agreement under the terms of this Section, the Initial Deposit shall be disbursed in accordance with Section 10.01(a) below and no party to this Agreement shall have any further claims or obligations under this Agreement, except those obligations that expressly survive termination of this Agreement. If Purchaser does not timely deliver the Termination Notice to Seller, Purchaser (i) shall be deemed to have elected to waive its right to terminate this Agreement under the terms of this Section (but shall not be deemed to waive any other term of this Agreement, including satisfaction of the conditions precedent to Purchaser's obligation to close expressly provided herein) and (ii) shall timely make the Additional Deposit with Escrow Agent.

2.08 Right To Enter the Property for Inspections. In connection with Purchaser's inspection rights provided above, Purchaser, Purchaser's agents and contractors, shall have the right during the Inspection Period and continuing up until the Closing Date during reasonable business hours in a fashion such that Seller's business operations are not disrupted to: (i) enter upon the Facility, (ii) perform tests and conduct studies on the Facility, and (iii) meet with Seller's employees. Purchaser hereby agrees to restore any disturbed property to its condition prior to the conducting of Purchaser's inspections. Purchaser's obligation to restore any disturbed property shall survive 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 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, for a period of twelve (12) months.

### **ARTICLE III** **REPRESENTATIONS AND WARRANTIES**

3.01 Seller's Representations and Warranties. Seller makes the following representations and warranties to Purchaser:

(a) Organization of Seller. Seller is a limited liability company duly organized and validly existing and in good standing under the laws of the State of Georgia, is duly and validly licensed to operate the Business and is authorized to transact business in the State of Alabama.

(b) Authority. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated have been duly and validly authorized by all necessary action on the part of Seller, and this Agreement constitutes, and the documents contemplated hereby will be, valid and legally binding obligations of Seller, enforceable in accordance with their terms, subject to bankruptcy, insolvency and other statutes affecting creditors' rights generally.

(c) Conflict or Default. Neither the execution nor delivery of this Agreement nor the consummation of the transactions herein contemplated will conflict with, violate, result in a breach by, constitute a default under or accelerate the performance provided by the terms of any law, rule, regulation or material agreement to which Seller may be subject, or which could result in the creation of any lien, charge or Encumbrance upon any part of the Facility.

(d) No Consent. No consent or approval by any governmental agency or authority or any non-governmental person or entity is required in connection with the execution, performance and delivery by Seller of this Agreement or the consummation by Seller of the transactions contemplated herein.

(e) Financial Statements. Within five (5) days after the Effective Date, Seller shall furnish Purchaser with true, correct and complete copies of the balance sheet and income statements covering the Facility (collectively, "**Financial Statements**") for the prior three (3) years and the current year-to-date. After the Effective Date, Seller shall provide interim unaudited Financial Statements of the Facility for each month prior to Closing within fifteen (15) days of the end of such month. All Financial Statements fairly and accurately present the financial position of Seller, the results of the Facility operations and all costs and expenses for the periods specified as of the dates thereof, and the results of operations for the periods then ended. The Financial Statements are true, complete and correct, and prepared in accordance with standard accounting practices consistently applied and the books and records of the Seller. Seller has no liabilities or

obligations of any kind or nature, including any liability for Taxes, that are not set forth in the Financial Statements for the applicable period. Seller also shall make available for Purchaser's review any historical financial information relating to the Facility reasonably requested by Purchaser.

(f) Material Adverse Changes. Except as fully described on Schedule 3.01(f) hereto, there have been no Material Adverse Changes in the income or expenses of the Facility between the Effective Date and the ending date of the period covered by the Financial Statements furnished to Purchaser pursuant to this Agreement. Seller has no knowledge or information concerning any prospective Material Adverse Change in the income or expenses of the Facility or in any other manner relating to the Facility, unless indicated on the Financial Statements.

(g) Title. Seller has, and at Closing will have, good, insurable and marketable fee simple title to the Facility. The Land is the only real property used in the Business. To Seller's knowledge, there are no encroachments on the Land by adjoining property or improvements, and the Improvements do not encroach on any adjoining property, easements or public or private streets; there are no disputes concerning the location of property lines or corners; and there is vehicular access to and from the Facility by a public roadway.

(h) Encumbrances. Except as fully described on Schedule 3.01(h) hereto, neither the Seller nor any part of the Facility is subject to any (i) use or occupancy restrictions; (ii) special taxes or assessments; (iii) legal or equitable interests in the Facility claimed by any person or entity other than Seller; or (iv) other liens, security interests, encumbrances, or other agreement, arrangement, Claim, contract, commitment, understanding or obligation (collectively, the "**Encumbrances**"). The Facility consists of all of the properties, assets and/or rights which are necessary or appropriate to carry on the Business as presently conducted. At Closing, the Facility shall not be subject to any Encumbrance except Permitted Encumbrances (defined below).

(i) [INTENTIONALLY OMITTED].

(j) Equipment. The Equipment is in good operating condition and repair, ordinary wear and tear excepted. Seller is not aware of any material latent or patent physical or mechanical defects with the Equipment.

(k) Improvements. The Improvements, including, but not limited to, mechanical, electrical, heating, air conditioning, drainage, sewers, water and plumbing systems and all other fixtures and tangible personal property are owned by Seller and, except for the repair items described on Schedule 3.01(k) and for which Purchaser is receiving a credit under Section 2.02 above, to Seller's knowledge in good operating condition and repair, ordinary wear and tear excepted. Any material items of deferred maintenance are fully described on Schedule 3.01(k) hereto. Seller is not aware of any material latent or patent physical or mechanical defects with any of the foregoing.

(1) Leases and Contract Rights. **Exhibit C** hereto sets forth a complete and accurate list of all Leases and Contract Rights whether oral or written, and all assignments, amendments, schedules, exhibits and appendices thereof, affecting or relating to the Facility, the Business, or any interest therein, to which Seller is a party or by which Seller or the Facility are bound or affected. True, accurate and complete copies of all Leases and Contract Rights have been provided to Purchaser and are listed on **Exhibit C**. To the extent any Leases or Contract Rights are oral, Seller has included an accurate and complete summary of same on **Exhibit C**.

(1) Except to the extent shown on **Exhibit C**, none of the Leases or Contract Rights has been modified, amended, assigned or transferred. Each of the Leases and Contract Rights is in full force and effect and is valid, binding and enforceable in accordance with its respective terms.

(2) Except as fully described on Schedule 3.01(1)(2) hereto, no event or condition has happened or presently exists which constitutes a default or breach or, after notice or lapse of time or both, would constitute a default or breach by any party under any of the Leases or Contract Rights. There are no counterclaims or offsets under any of the Leases or Contract Rights.

(3) Except as fully described on Schedule 3.01(h) hereto, there does not exist, and between the date hereof and Closing Seller will not grant or suffer, any Encumbrance to exist on any interest created under any of the Leases or Contract Rights.

(4) Except as fully described on Schedule 3.01(1)(4) hereto, none of the Leases or Contract Rights: (i) is a capitalized lease within the meaning of generally accepted accounting principles; or (ii) is a lease with a remaining term of one (1) year or more from Closing and which cannot be cancelled within thirty (30) days at the option of Purchaser or Seller without penalty; or (iii) is a lease containing an option to purchase on the part of any party other than Seller; or (iv) contains any discount, rebate or bill back arrangement.

(5) No resident using or occupying any part of the Facility has been promised any special concessions except as fully set forth in the Lease for such resident and included in **Exhibit C** hereto. No resident using or occupying any part of the Facility has paid any entrance fee or other lump sum monetary payment in connection with his or her use or occupancy of the Facility other than refundable security deposits to be transferred to Purchaser at Closing. Seller heretofore furnished, or shall within five (5) days of the Effective Date furnish to Purchaser, copies of the standard form of resident agreement which Seller uses in the conduct of the Business.

(6) Except as fully described on Schedule 3.01(1)(6) hereto, no Leases or Contract Rights involve any Affiliate of Seller or its principals, directly or indirectly, whether as a party, creditor, beneficiary or otherwise.

(m) Compliance with Laws. Except as fully described on Schedule 3.01(m) hereto, to Seller's knowledge, there is no violation of any federal, state or local legal or regulatory requirement of any kind or nature whatsoever relating to the Business or the Facility which could have an adverse effect on Purchaser or the Business (including zoning and land use laws, building, safety or health ordinances and codes, environmental laws and civil rights laws, covenants, conditions and restrictions affecting or relating to the use and occupancy of the Facility, and including the National Fire Protection Association's most recent edition of the Life Safety Code). Seller has not received any unremediated notice of complaint from any governmental agency, insurance company or third party, and has not received notice of and has no knowledge of any material violation or any Claim of violation of any law, rule, regulation, ordinance, order, writ, injunction, decree, certificate, license, permit, authorization, or standard related to any legal or insurance requirement that is unremedied or which could have an adverse effect on the Facility or Purchaser. Seller has not received any notice from any Governmental Authority of any pending proceeding to take all or any part of the Land by condemnation or right of eminent domain and Seller has no knowledge that such proceeding is threatened. Seller is not a party to any agreement or instrument, or subject to any judgment, order, writ, injunction, rule, regulation, code or ordinance not also applicable to other similarly situated businesses which has an adverse effect, or might reasonably be expected to have an adverse effect, on the operations, condition or prospects of Purchaser's ownership of the Business or the Facility.

(n) Litigation and Proceedings. Schedule 3.01(n) hereto sets forth a complete and accurate description of any litigation, proceeding, Claim or investigation pending before any court, arbitrator or administrative agency, or to the best knowledge of Seller threatened, affecting or relating to the Business or the Facility. Except as noted, all of the matters disclosed on Schedule 3.01(n) hereto are covered by policies of insurance meeting the minimum standards described herein, and no insurance company has denied coverage or expressly reserved in writing its right to deny coverage. Except as fully described on Schedule 3.01(n) hereto, there are no outstanding orders, consent decrees, corporate integrity agreements, rulings, decrees, judgments or stipulations by or with any court, arbitrator or administrative agency which affect the Seller, the Business or the Facility. Seller shall promptly notify Purchaser of any changes to said Schedule and shall deliver an updated disclosure schedule at Closing which shall be complete and accurate in all respects.

(o) Utilities. To Seller's knowledge, all water, gas, electricity, telephone, cable, drainage facilities, sewer and other utilities required for the operation of the Facility or the Business either enter the Land through adjoining public streets or, if they pass through adjoining private land, they do so in accordance with recorded easements which are described on the Survey and Title Commitment.

(p) Taxes. Except as fully described on Schedule 3.01(p) hereto, all Taxes against or relating to the Facility and/or Seller which are due and payable on or before the Effective Date have been paid. There are no agreements, waivers or other arrangements providing for an extension of time with respect to the assessment of any tax or deficiency against the Facility or Seller, nor does Seller have knowledge of the pendency of any

actions, suits, proceedings, investigations or Claims for additional Taxes and assessments against the Facility or Seller asserted by any taxing authority.

(q) Inventory. As of the Closing Date, inventories of food and supplies shall not be less, in quantity or value, than the normal operating levels of the Facility as presently operated by Seller and as reflected on the most recent Financial Statements of the Business. Until Closing, the Facility will be operated only in the normal course with due regard for proper maintenance and repair of the Facility.

(r) **[INTENTIONALLY OMITTED]**.

(s) Rent Roll. Attached as Schedule 3.01(s) is a rent roll for the Facility, which Seller hereby certifies as true and correct as of the date reflected thereon (or if no other date is reflected, then as of the Effective Date), showing the name of each resident, monthly rent for each such resident, and the amount of any security deposits held on behalf of such resident. Seller shall deliver an updated rent roll showing all such information at the Closing.

(t) Broker's Fee. Other than **Blueprint** (which Seller agrees to pay under a separate agreement), Seller has not engaged or consulted with any broker or advisor with respect to the transactions contemplated by this Agreement so as to give rise to any claim against any of the parties to this Agreement for a brokerage commission, consulting fee, finder's fee or similar payment.

(u) Bulk Sales Law. Seller has complied with, or will comply, with, at Seller's sole cost and expense, any applicable bulk sales law requirements applicable to the sale of the Facility.

(v) Environmental Matters. To Seller's knowledge, the Facility is in material compliance with all federal, state and local environmental, health and safety laws, statutes ordinances and regulations, including without limitation, all laws relating to hazardous substances and wetlands. Seller represents and warrants that, to Seller's knowledge, currently and as of the Closing, no oil or hazardous substances have been generated, released, stored or deposited over, beneath or on the Land or on or in any structures located on the Land, from any source whatsoever, by Seller, or, to Seller's knowledge, its predecessors in interest or any other person. For purposes hereof, "**hazardous substances**" means any substance or matter defined as such by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**"), any pollutants or contaminants as defined in CERCLA, or any hazardous waste as defined by the Resource Conservation and Recovery Act, or any other similar applicable federal, state or local laws, statutes, regulations or ordinances which shall include, but not be limited to, asbestos, radon, PCBs and urea formaldehyde.

(w) Employment Related Claims. Except as fully described on Schedule 3.01(w) hereto, no person or party (including, but not limited to, any Governmental Authority) has filed or asserted any Claim or reasonable basis for any Claim against Seller arising out of any statute, ordinance or regulation relating to wages or hours, collective bargaining, discrimination in employment or employment practices or occupational safety and health standards (including, but not limited to, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, as amended, the Occupational Safety and Health Act, the Age Discrimination in Employment Act of 1967 or the Americans With Disabilities Act of 1990). Except as fully described on Schedule 3.01(w), no present or former employee has filed or asserted any Claim, nor is there any reasonable basis for any Claim, against any Seller (whether under federal or state law or under any employment agreement or collective bargaining agreement) on account of or for (i) overtime pay other than overtime pay for the current payroll period, (ii) wages or salary for any period other than the current payroll period and bonuses and amounts accruing under any plans of the type described in Section 3.01(x)(4) in accordance with the terms of such plans, (iii) vacation, time off or pay in lieu of vacation or time off, other than vacation or time off (or pay in lieu thereof) earned in respect of the current year, (iv) any violation of any statute, ordinance or regulation relating to minimum wages or maximum hours of work, or (v) collective bargaining, discrimination in employment or employment practices, occupational safety and health standards. None of any such Claims shall result in any liability to or obligation of Purchaser, or lien or Encumbrance against the Facility. Seller is in compliance in all material respects with the terms and provisions of the Immigration & Nationality Act of 1990 (8 U.S.C. §1101 *et seq.*) in all material respects with respect to the Facility.

(x) Employees and Employee Benefit Plans.

(1) Welfare Benefit Plans. There is no “employee welfare benefit plan” (as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974 as amended (“ERISA”)) maintained by Seller or to which Seller contributes or is required to contribute (such employee welfare benefit plans being hereinafter collectively referred to as the “**Welfare Benefit Plans**”).

(2) Pension Benefit Plans. There is no “employee pension benefit plan” (as defined in Section 3(2) of ERISA) maintained by Seller, to which Seller contributes or is required to contribute, or which covered employees of Seller during the period of their employment with any predecessor of Seller, including any multi-employer pension plan as defined under Internal Revenue Code of 1986, Section 414(f) (such employee pension benefit plans being hereinafter collectively referred to as the “**Pension Benefit Plans**”).

(3) Liabilities. Upon Closing and thereafter, Purchaser shall not be liable and shall not be responsible for any debt, obligation, responsibility or liability of Seller under any Welfare Benefit Plans or Pension Benefit Plans, including any multi-employer plan as defined under Internal Revenue Code of 1986, Section 414(f), maintained by Seller or to which Seller contributes or is required to contribute. Seller shall be liable under its Welfare Benefit Plans and

Pension Benefit Plans for all Claims due and unpaid at Closing and for all Claims incurred before Closing, whether or not paid or presented before Closing. There are no unfunded liabilities under any such plans.

(4) Compensation Plans. There are no deferred compensation, pension, 401 (k), profit sharing and retirement plans, and all material bonus and other employee benefit or fringe benefit plans maintained or with respect to which contributions are made by Seller.

(5) Collective Bargaining Agreements; Strikes. No collective bargaining agreements, union contracts or other labor or employment agreements exist or are being negotiated or threatened, and no strike, labor dispute, slowdown or work stoppage exists or is threatened, with respect to the Facility.

(6) Employees. Schedule 3.01(x)(6) contains a true and complete list of all persons providing services at the Facility including, for each employee or service provider, their current titles, date of hire, aggregate pay rate (bonus and salary), average number of hours worked per pay period, and description of employee benefits, including vacation and sick pay, specifying earned and accrued amounts. No employee of Seller receives any compensation except as set forth on Schedule 3.01(x)(6). Seller shall update such employee information at Closing.

(y) Bankruptcy. No bankruptcy, insolvency, rearrangement or similar action involving the Facility or the Seller, whether voluntary or involuntary, is pending or threatened, and Seller has never:

(1) filed a voluntary petition in bankruptcy;

(2) been adjudicated a bankrupt or insolvent or filed a petition or action seeking any reorganization, arrangement, recapitalization, readjustment, liquidation, dissolution or similar relief under any Federal bankruptcy act or any other laws;

(3) sought or acquiesced in the appointment of any trustee, receiver or liquidator of all or any substantial part of its or his properties, the Facility, personal property or any portion thereof; or

(4) made an assignment for the benefit of creditors or admitted in writing its or his inability to pay its or his debts generally as the same become due. Seller is not anticipating or contemplating any of the actions set forth in this subsection.

Except for the representations and warranties of Seller expressly set forth in this Agreement, Purchaser acknowledges and agrees with Seller that Purchaser is purchasing the Facility in “as-is, where is” condition “with all faults” as of the Closing Date and specifically and expressly without any warranties, representations or guarantees, either express or implied, as to their condition, fitness for any particular purpose, merchantability, or any other warranty of any

kind, nature, or type whatsoever from or on behalf of Seller. Except for the representations and warranties of Seller expressly set forth in this Agreement, Seller specifically disclaims any warranty, guaranty or representation, oral or written, past or present, of any kind or character whatsoever, whether express or implied, oral or written, with respect to the Facility.

3.02 Purchaser's Representations and Warranties. Purchaser makes the following representations and warranties to Seller:

(a) Organization of Purchaser. Purchaser is limited liability company duly organized and validly existing and in good standing under the laws of the State of Florida and is authorized to transact business in the State of Alabama.

(b) Authority. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated have been duly and validly authorized by all necessary corporate action on the part of Purchaser, and this Agreement constitutes, and the documents contemplated hereby will be, valid and legally binding obligations of Purchaser, enforceable in accordance with their terms, subject to bankruptcy, insolvency and other statutes affecting creditors' rights generally.

(c) Conflict or Default. Neither the execution or delivery of this Agreement nor the consummation of the transactions herein contemplated will conflict with, violate, result in a breach by, constitute a default under or accelerate the performance provided by the terms of any law, rule, regulation or agreement to which Purchaser may be subject.

(d) Broker's Fee. Purchaser has not engaged or consulted with any broker or acquisition consultant with respect to the transactions contemplated by this Agreement so as to give rise to any valid claim against any of the parties to this Agreement for a brokerage commission, consulting fee, finder's fee or similar payment by or through Purchaser.

3.03 Full Disclosure. No representation or warranty by Seller or Purchaser herein, and no statement, document, Financial Statement, certificate or other instrument, schedule or exhibit furnished or to be furnished hereunder or in connection with the transactions contemplated hereby (including, but not limited to, all exhibits and schedules hereto) contains or will contain any untrue or misleading statement of fact or omit to state or contain anything necessary to make such matter correct, complete and not misleading in all respects and fairly present the information set forth in a manner that is not misleading.

#### ARTICLE IV COVENANTS

4.01 Covenants of Seller. Seller hereby agrees with Purchaser as follows:

(a) Interim Operation. Seller agrees from the Effective Date of this Agreement to the Closing Date, as follows:

(1) To deliver to Purchaser all due diligence items as may be requested by Purchaser from time to time relating to the Facility.

(2) To operate the Business as now operated and only in the ordinary course and to preserve Seller's relationships with all persons having business dealings with it.

(3) To maintain the Facility in accordance with current practices, and to take all steps reasonably necessary to maintain Seller's assets.

(4) To maintain all books, accounts and Records in accordance with current practices.

(5) To pay all Taxes relating to the Facility or the Business operated at the Facility as they become due.

(6) Not to dispose of or encumber any part of the Facility.

(7) To maintain insurance in accordance with its current practices.

(8) Not to do any act or omit to do any act that would cause a breach of any Lease or Contract Right.

(9) Not to (i) grant any increase in compensation or (ii) enter into or amend or alter any bonus, incentive compensation, deferred compensation, profit sharing, retirement, pension, group insurance, death benefit or other fringe benefit plan, trust agreement or arrangement, or any employment or consulting agreement.

(10) To comply with all legal requirements applicable to the Facility.

(11) Not to amend or terminate any Leases or Contract Rights or waive any rights or obligations thereunder, and not to enter into or assume any Contract Right, agreement, obligation, Lease, license or commitment other than in the ordinary course of business.

(12) To promptly disclose in writing to Purchaser any Material Adverse Change occurring between the Effective Date and Closing, including updating any exhibit or schedule hereto as need be.

(b) Records. Seller will reasonably cooperate with Purchaser to permit a smooth commencement of operations of the Business by Purchaser after the Closing, including transfer of copies of all Records to Purchaser or Purchaser's designee.

(c) Satisfaction of Conditions. Seller shall not undertake any course of action inconsistent with the satisfaction of the requirements set out herein applicable to it, or its agreements, undertakings, obligations or covenants set forth in this Agreement or in any exhibit or other document referred to in this Agreement, and shall use commercially reasonable efforts to promptly perform the agreements, undertakings, obligations and covenants herein provided to be performed by it, and to enable the conditions precedent to the Closing to be satisfied.

(d) Trade Name. At Closing, Seller shall transfer and assign to Purchaser and its affiliates all of its rights to use the Trade Name in connection with the current and future business of Purchaser, including without limitation, operation of the Facility. Seller shall not use the Trade Name, or license or otherwise permit use of the Trade Name by any third party.

4.02 Covenants of Purchaser. Purchaser hereby further agrees with Seller as follows:

(a) Satisfaction of Conditions. Purchaser shall not undertake any course of action inconsistent with the satisfaction of the requirements set out herein applicable to it, or its agreements, undertakings, obligations or covenants set forth in this Agreement or in any exhibit or other document referred to in this Agreement, and it shall undertake commercially reasonable and good faith efforts to promptly perform the agreements, undertakings, obligations and covenants herein provided to be performed by it, and to enable the conditions precedent to the Closing to be satisfied.

(b) Access to Records. Following the Closing, Seller shall have reasonable access to the Facility and shall be permitted to review and make copies of and extractions from the Records as may be determined by Seller to be necessary in connection with litigation or tax matters, the winding up of Seller's business or otherwise.

## ARTICLE V TITLE AND SURVEY

5.01 Title Report and Policy. Purchaser shall obtain, at Seller's expense, a current form ALTA title commitment issued by a nationally recognized title company of the condition of title to the Land (the "**Commitment**") for a title insurance policy, in the current ALTA policy form (the "**Title Policy**") within ten (10) days after the Effective Date. The Commitment and Title Policy shall show that Seller has marketable fee simple title to the Land and Improvements, free from all liens, restrictions, encumbrances, easements and clouds on title whatsoever, except Taxes not yet due and payable and other matters approved by Purchaser in writing in its sole discretion. The Commitment and Title Policy also will contain (a) a so-called "tax parcel endorsement" listing all of the tax parcel identification numbers affecting the Land and that no other property is included in the Land and that no other tax parcel identification numbers affect such Land, (b) a contiguity endorsement, (c) an ALTA 3.1 zoning endorsement in form and substance acceptable to Purchaser, (d) extended coverage deleting all standard and general exceptions, and (e) the following endorsements: environmental (ALTA Form 8.1), restrictions, easements and minerals endorsement (ALTA Form 9), survey endorsement, access endorsement, subdivision endorsement, utility facility endorsement, creditor's rights endorsement and arbitration endorsement. The title company shall provide to Purchaser when delivering the Commitment copies of all recorded documents affecting title of the Land and Improvements. At Closing, there shall be issued to Purchaser the Title Policy in the amount of the Purchase Price. Seller agrees to provide the Title Company with customary lien waivers, affidavits or undertakings in a form required by the Title Company in order to delete the standard exceptions to the Title Policy.

5.02 Survey. Purchaser may at its option (at its expense) obtain an ALTA/NSPS as-built survey of the Land (the “**Survey**”) accompanied by a certificate of a registered surveyor licensed in the State of Alabama, certified as directed by Purchaser, sufficient to cause the title company to delete the standard printed survey exceptions and to issue the Title Policy free from any survey objections or exceptions whatsoever. The Survey shall show the boundaries of the Land; separate legal descriptions and boundaries for each tract of the Land; and the location of the Improvements and all streets, highways, alleys and public ways crossing or abutting said Land; all dominant and servient easements identified by recording information; all building lines and all Improvements as are situated thereon as of said date; the area of the Land in square feet; the location of all physical encroachments, if any, by or upon the Land and Improvements; the location of ingress and egress to and from or serving the Land; the location and identification of all water bodies and water courses on, abutting or serving the Land, whether incessant or intermittent; and the location of all utilities serving the Land and the Improvements, and the point of entry of such utilities upon the Land. Said certificate shall state that the Improvements situated on the Land lie wholly within the boundaries thereof and that no part thereof encroach upon or overhang any easement or rights-of-way or upon the land of others; that such Improvements are wholly within the building restriction lines however established and will not violate any use or other restriction contained in prior conveyances, zoning ordinances or regulations; that no adjoining structure encroaches upon the Land or upon any dominant easement appurtenant thereto; and that as of said date there were no visible encroachments, overlaps, overhangs, easements, improvements, utility lines or rights-of-way on, above or below the ground except as shown on the survey plat. Said Survey certificate also shall state whether or not the Land or any part thereof lies within the boundaries of a local, state or federal flood plain designation.

5.03 Defects and Cure. The Commitment and Title Policy and Survey described in this Article are collectively referred to as “**Title Evidence**.” Purchaser shall provide written notification (a “**Title Objection**”) within fifteen (15) days of its receipt of the Title Commitment of any liens, Claims, encroachments, exceptions or defects disclosed in the Title Evidence (including but not limited to any refusal or inability to issue any endorsement or requested coverage or meet any survey requirements) which in Purchaser’s sole discretion is unacceptable or adversely impacts any of the Facility, the Business or the financeability or operation thereof (collectively, “**Defects**”). Seller shall elect whether it will cure the Defects, and if Seller fails to give such notice of its decision within five (5) days of its receipt of the Title Objection, Seller shall be deemed to have elected to cure the Defects. If Seller elects not to cure the Defects, it shall give written notice to Purchaser within five (5) days of its receipt of the Title Objection of its decision not to cure. Within ten (10) days of receipt of such written notice from Seller, Purchaser may (i) waive such Defects and close (whereupon such defects shall be deemed to be “**Permitted Encumbrances**”), or (ii) terminate this Agreement at any time and thereupon receive prompt refund of the Earnest Money and all interest accrued thereon. Alternatively, if Seller elects or is deemed to elect to cure such Defects, then Seller shall cure the Defects at its sole cost and expense, and shall be given a reasonable period to do so, but not to exceed ten (10) days. Should Seller fail or refuse to cure such Defects within a reasonable period, but not to exceed ten (10) days, Purchaser may (i) waive such Defects and close or (ii) terminate this Agreement prior to Closing. If Purchaser elects to terminate this Agreement pursuant to the preceding sentence, Purchaser shall thereupon receive prompt refund of the Earnest Money and all interest accrued thereon. Upon termination of this Agreement under the terms of this Section,

no party to this Agreement shall have any further claims or obligations under this Agreement except for those that expressly survive termination of this Agreement. Notwithstanding the foregoing, Seller shall be obligated to terminate or cure any of the following objections to title, and Purchaser shall be entitled to bring suit for damages or specific performance in the event the following are not cured prior to or at Closing:

- (a) all deeds of trust, mortgages, security deeds, UCC financing statements or other security instruments affecting the Facility or any part thereof;
- (b) all liens, fines, past due taxes or assessments of any kind constituting a lien against the Land, Improvements and/or the Facility to the extent such assessments can be cured by the payment of money;
- (c) all mechanic's, materialmen's or similar liens; and
- (d) all judgments which have attached to and become a lien against the Land, Improvements and/or the Facility or any party thereof.

## **ARTICLE VI** **CONDITIONS**

6.01 Conditions to Purchaser's Obligations. The duties and obligations of Purchaser under the terms and provisions of this Agreement are and shall be expressly conditioned upon the following (which may be waived, in whole or in part, by Purchaser in writing):

- (a) Performance of Covenants. Seller shall have timely performed all covenants and obligations and timely complied with all conditions required of Seller by this Agreement.
- (b) Representations and Warranties. All of Seller's representations and warranties contained herein shall be true, complete and correct in all material respects on the Effective Date and as of the Closing Date as if made at that time.
- (c) Closing Documents. At the Closing, Seller shall deliver or cause to be delivered each of the items required of it as specified in Section 7.02 of this Agreement.
- (d) Litigation. No notice shall have been received as to litigation commenced or Claim made or threatened against any party, by any person, firm, corporation or other entity or enterprise, or Governmental Authority with regard to this Agreement, or the transactions provided for in this Agreement which, if successfully prosecuted, would have an adverse effect on Purchaser or make any representation or warranty of Seller hereunder untrue or misleading.
- (e) Consent. All certifications, consents, waivers, approvals, authorizations, Government Authorizations and determinations from and by third parties necessary legally to consummate the change of ownership and other transactions contemplated herein shall have been obtained, and the same shall not place restrictions on the operation

of the Facility by Purchaser, or Purchaser's agent or lessee, which are deemed unacceptable by Purchaser, in Purchaser's sole discretion.

(f) Title Policy. The Title Company shall issue the Title Policy described in Article V of this Agreement.

(g) Condition of Assets. There shall have been no material damage or other adverse changes in the physical condition of the Facility.

(h) Subsequent Events. No action, investigation, Claim or proceeding shall have been instituted or threatened or other matters occurred which involve the likelihood of a Material Adverse Effect on the Business or the Facility, and no action, investigation or proceeding shall have been instituted or threatened before any court or Governmental Authority to restrain or prohibit, or to obtain substantial damages in respect of, this Agreement, or the consummation of the transactions herein contemplated.

(i) Utilities. All utilities necessary for the operation of the Facility on the Land by Purchaser shall be immediately available to serve the Facility, through public rights of way or permanent easements appurtenant to the Land, and there shall be no moratorium, ban or suspension in effect which would preclude the Purchaser from connecting to, and receiving service from, such utilities, including, without limitation, sewer, water, electricity, gas, cable, telephone and storm drainage.

(j) Material Adverse Change. There shall have been no Material Adverse Change.

(k) Monitor. 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 filed in the United States District Court District of New Jersey (15 CIV. 8173) (the "Court").

(l) Wells Fargo Bank, N.A. Wells Fargo Bank, N.A., as trustee (the "Trustee") under the Trust Indenture dated as of May 1, 2010 with the Medical Clinic Board of the City of Montgomery-1976 East shall have approved the transaction contemplated by this Agreement.

6.02 Conditions to Seller's Obligations. The duties and obligations of Seller under the terms and provisions of this Agreement are and shall be expressly conditioned upon the following (which may be waived, in whole or in part, by Seller):

(a) Performance of Covenants. Purchaser shall have timely performed all covenants and obligations and timely complied with all conditions required of Purchaser by this Agreement, including without limitation payment to Seller of the Purchase Price.

(b) Representations and Warranties. All of Purchaser's representations and warranties contained herein shall be true, complete and correct in all material respects on the date hereof and as of the Closing Date, as if made at that time.

(c) Conveyances. All certifications, covenants, waivers, approvals, authorizations, Government Authorizations and determinations by third parties necessary to legally consummate the transactions contemplated herein.

(d) Monitor. The Monitor shall have approved this Agreement and the consummation of the transaction contemplated hereby.

(e) Wells Fargo Bank, N.A. The Trustee shall have approved the transaction contemplated by this Agreement.

## **ARTICLE VII** **CLOSING AND TRANSITION OF OPERATIONS**

7.01 Closing. Subject to satisfaction of the terms and conditions of this Agreement, including those conditions precedent set forth in Article VI, the consummation of the transactions contemplated by this Agreement (the "**Closing**") shall occur on a date (the "**Closing Date**") within thirty (30) days following the end of the Inspection Period. The transactions contemplated hereby shall be effective for all purposes as of 12:01 a.m. on the Closing Date, unless otherwise agreed in writing by Seller and Purchaser. The Closing shall be held on a date mutually agreed upon by Seller and Purchaser, but absent such agreement shall be held on a date designated by Purchaser in writing to Seller. Notwithstanding the foregoing, Seller and Purchaser shall deliver all of their respective closing documents required hereunder with respect to the Closing to the Escrow Agent on or before the Closing Date (to hold in escrow in accordance with customary conveyancing practices subject to the consummation of the Closing) by mail or overnight courier.

7.02 Seller's Closing Documents. At the Closing, Seller shall deliver to Purchaser the following documents:

(a) Warranty Deed. A Limited Warranty Deed (the "**Limited Warranty Deed**") conveying to Purchaser title to the Land and Improvements in fee simple, free and clear of all liens and Encumbrances whatsoever, except as set forth herein. The legal description of the Land in the Limited Warranty Deed shall be the record legal description and Seller shall also deliver a quit-claim deed for the legal description taken from the Survey.

(b) Bill of Sale. A Bill of Sale containing limited warranty of title conveying to Purchaser the Equipment, the Intangible Personal Property, the Supplies, the Records, and all components of the Facility which constitute personalty, free and clear of all liens and Encumbrances whatsoever.

(c) Assignment of Contract Rights and Leases. An assignment of all right, title and interest in and to all Leases and such Contract Rights as are approved by Purchaser as Approved Contracts.

(d) Records and Deposits. Originals of all Records and all resident security deposits in the possession of Seller.

(e) Title Affidavits. The lien waivers and affidavits as required by Section 5.01 of this Agreement.

(f) Operations Transfer Agreement. An Operations Transfer Agreement in substantially the form attached hereto as EXHIBIT "F".

(g) Closing Certificate. A Seller's closing certificate reaffirming Seller's representations and warranties hereunder.

(h) Other Documents. Such other documents as Purchaser may reasonably request to accomplish the transactions contemplated by this Agreement or to evidence Seller's compliance with the covenants and agreements of Seller contained in this Agreement, including without limitation, a FIRPTA affidavit.

7.03 Closing Costs. Seller shall pay (i) the cost of preparing the Limited Warranty Deed and the Bill of Sale, (ii) the cost of recording the Limited Warranty Deed, (iii) any document stamps, transfer or other Tax on the Limited Warranty Deed, (iv) the title insurance premium for the owner's and any lender's Title Policy and (v) the fees of its counsel. Purchaser shall be responsible for the payment of (i) the cost of the Survey, (ii) the cost of any environmental site assessment and any other third party reports, (iii) any mortgage taxes and (iv) the fees of its counsel. The parties agree to split equally any escrow or closing fee charged by the closing agent.

7.04 Adjustments to the Purchase Price. At the Closing, the following adjustments shall be made as of 12:01 a.m. on the Closing Date and shall be added to the Purchase Price or credited against the Purchaser's cash payment obligations at Closing, as the case may be. It is the general intent of Seller and Purchaser that all revenue and expenses accruing prior to the Closing Date would be the property and liability of the Seller and all revenue and expenses accruing on or after the Closing Date would be the property and liability of the Purchaser.

(a) Taxes and Utilities. Real property Taxes, real and personal ad valorem Taxes and all utility charges, including water, sewer, gas, electricity or utilities incurred or relating to Seller's operation and ownership of the Facility prior to the Closing Date shall be prorated, and the portion allocable to Seller shall be credited to Purchaser on the closing statement. To the extent of such credit, Purchaser shall pay such amounts as and when they become due. Seller and Purchaser hereby agree that if any of the aforesaid prorations and credits cannot be calculated accurately on the Closing Date, then the same shall be calculated as soon as reasonably practicable after the Closing Date, but in any event on or before forty-five (45) days following the Closing Date, and either party owing the other party a sum of money based on such subsequent proration(s) or credits shall pay said sum to the other party within ten (10) days thereafter.

(b) Resident Advance Payments. Any advance rent payments by or on behalf of any resident of the Facility prior to Closing shall be prorated on a daily basis, and the portion allocable to the period including and following the Closing Date shall be credited to Purchaser on the closing statement.

7.05 Employees. To the extent that the Worker Adjustment and Retraining Notification Act (“**WARN Act**”) and any Department of Labor (“**DOL**”) regulations related thereto pertain to Seller with respect to the transfer of the Facility, Seller hereby agrees to comply with the WARN Act and all DOL regulations with respect to the transfer of the Facility. Purchaser intends to rehire, as of the Closing Date, substantially all employees of the Facility as employees at will, provided that Purchaser shall have no obligation to hire any particular employee. For purposes of this Section, each employee hired by Purchaser on the Closing Date shall be referred to as a “**Hired Employee**”. Seller has not committed and shall not commit to any employee that any such employee shall be employed by Purchaser on or after the Closing Date, and Purchaser reserves the right not to hire any employee for any lawful reason whatsoever. Following expiration of the Inspection Period or upon approval of Seller, Purchaser shall be permitted to interview and take applications from employees of the Facility in order to evaluate each for employment with Purchaser, and in connection therewith may review Seller’s personnel and other employee-related files. Purchaser shall designate to Seller prior to Closing which employees, if any, that Purchaser elects not to hire. Seller agrees that it shall terminate all employees of the Facility as of the Closing Date. To the extent that any Georgia counterpart to the WARN Act pertains to Seller with respect to the transfer of the Facility, Seller hereby agrees to comply with any such state law with respect to the transfer of the Facility.

7.06 Security Deposits. Seller will at Closing transfer and assign to Purchaser all resident security deposits then held by it, and shall indemnify and hold Purchaser harmless from all Claims arising out of or resulting from Seller’s failure to maintain or otherwise comply with applicable agreements and/or laws relating to resident security deposits prior to Closing. Purchaser shall indemnify and hold Seller harmless for all claims arising out of or resulting from Purchaser’s failure to maintain or otherwise comply with applicable agreements and/or laws relating to resident security deposits following Closing.

7.07 Assignment of Contract Rights. Purchaser shall have the right to review and approve all Contract Rights as provided in this Section. Not less than thirty (30) days prior to Closing, Purchaser shall notify Seller which Contract Rights Purchaser desires to assume, and all such approved items shall be referred to as the “**Approved Contracts.**” At Closing, Seller agrees to assign all of its right, title and interest in the Approved Contracts to Purchaser. Seller shall provide reasonable cooperation to Purchaser in connection with the assignment and assumption of the Approved Contracts, it being understood that it shall be the sole responsibility of Seller to obtain any consent required for such assignment. If, as a condition to the assignment and assumption of any of the Approved Contracts, it shall be necessary to cure any defaults thereunder, then Seller shall perform such acts and pay such sums as shall be required to cure any such default. As to Approved Contracts, Purchaser shall assume and undertake to perform all obligations under the Approved Contracts assigned to it but only to the extent such obligations arise from and after the Closing Date. All Contract Rights that are not assumed by Purchaser shall be terminated on or prior to Closing by and at the expense of Seller.

**ARTICLE VIII**  
**RISK OF LOSS; CONDEMNATION**

8.01 Damage; Risk of Loss. In the event there is damage to or loss to any part of the Facility (whether by fire, theft, vandalism or other cause or casualty) between the Effective Date and the Closing, the Purchase Price shall be reduced by the amount necessary to repair the damage, which reduction shall be offset by any amounts actually received from Seller's insurance company and assigned to Purchaser; provided, however, in the event of a casualty which in Purchaser's judgment adversely affects the Business or operation of the Facility, Purchaser, at its sole option, may either (i) terminate this Agreement in its entirety and thereupon receive prompt refund of the Earnest Money and all interest accrued thereon, or (ii) terminate this Agreement with respect to the damaged property only with a reduction in the Purchase Price determined in this Section. Upon the termination of this Agreement under the terms of this Section, no party to this Agreement shall have any further claims under this Agreement against any other party. The reduction in Purchase Price shall be determined, based on the value on the date of this Agreement of the Facility damaged or lost, by an MAI appraiser to be mutually selected and paid equally by Seller and Purchaser. If Seller and Purchaser are unable to mutually select an appraiser, then one appraiser shall be selected and paid by Purchaser and one appraiser shall be selected and paid by Seller. If a party does not select an appraiser as provided in the preceding sentence within ten (10) days after the other party has given written notice of the name of its appraiser, such party shall lose its right to appoint an appraiser. If the two appraisers are selected by the parties as provided above, they shall meet promptly to determine the reduction in Purchase Price. If they are unable to agree within fifteen (15) days after the second appraiser has been selected, they shall jointly select a third appraiser. The reduction in Purchase Price shall be set by agreement of any two (2) of the three (3) appraisers. If the two (2) appraisers are unable to agree on a third appraiser within thirty (30) days after the second appraiser has been selected, either party, by giving written notice to the other, may apply to the American Arbitration Association for the purpose of determining the reduction in Purchase Price. Seller and Purchaser shall each bear one-half (1/2) of the cost of selecting the third appraiser and of paying the third appraiser's fee. Each appraiser, however selected, shall be a person who has not previously acted in any capacity for either party or their counsel. If any two (2) appraisers are unable to determine the reduction in Purchase Price within fifteen (15) days after the third appraiser has been selected, then the three (3) appraisals shall be added together and their total divided by three (3); the resulting quotient shall be the reduction in Purchase Price. In determining the reduction in Purchase Price, each appraiser shall take into consideration, understand, and correctly employ those recognized techniques that are necessary to produce a credible appraisal.

8.02 Condemnation. If, prior to Closing, any Governmental Authority shall institute condemnation, eminent domain or similar proceedings or take any steps preliminary thereto (including the giving of any direct or indirect notice of intent to institute any such proceeding) with respect to the Facility, Purchaser may in its sole discretion either (i) terminate this Agreement upon written notice to Seller prior to Closing and receive a prompt refund of the Earnest Money and all interest accrued thereon, and the parties shall have no further obligations hereunder, (ii) terminate this Agreement with respect only to that part which is condemned or threatened to be condemned with a reduction in the Purchase Price determined as provided in Section 8.01 of this Agreement, or (iii) elect to proceed to Closing by written notice to Seller. If Purchaser elects to proceed to Closing, Purchaser shall either receive a credit at Closing equal to

the condemnation proceeds received by Seller or receive an assignment of the right to all condemnation proceeds from Seller.

8.03 Risk of Loss Generally. Except as otherwise specifically provided above, risk of loss from the Facility, including, without limitation, operation of any law which would impose liability relating to ownership of the Facility, shall not pass until acceptance of the deed by Purchaser at Closing.

## **ARTICLE IX** **SURVIVAL OF PROVISIONS AND INDEMNIFICATION**

9.01 Survival. The covenants, obligations, representations and warranties of Purchaser and Seller contained in this Agreement, any exhibit or schedule hereto, or any certificate or document delivered pursuant hereto shall be deemed to be material and to have been relied upon by the parties hereto notwithstanding any investigation prior to the Closing and shall survive the Closing for a period of twelve (12) months and shall not be merged into any deeds or other documents delivered in connection with the Closing.

9.02 Indemnification by Seller. Seller promptly shall indemnify, defend and hold harmless Purchaser and each of the directors, officers, managers, members, employees, Affiliates, and agents of Purchaser (collectively, the “**Purchaser Indemnified Parties**” and each, a “**Purchaser Indemnified Party**”) against any and all losses, costs, Claims (whether or not disclosed herein), liabilities, obligations, damages, and expenses (including reasonable costs of investigation, court costs and legal fees) of any nature (collectively, “**Losses**”) resulting from or relating to any manner to (i) any breach by Seller or failure to perform by Seller of any of its covenants, obligations, representations or warranties or breach or untruth of any covenant, obligation, representation, or warranty contained in this Agreement, any exhibit or schedule hereto (including all updates to any schedule or exhibit), or any certificate or document of Seller delivered pursuant to this Agreement, or (ii) any Excluded Asset or Excluded Liability (regardless of whether information with respect thereto is set forth on a schedule or exhibit hereto).

9.03 Indemnification by Purchaser. Purchaser promptly shall indemnify, defend and hold harmless Seller and each of the directors, officers, managers, members, employees, Affiliates, and agents of the Seller (collectively, the “**Seller Indemnified Parties**” and each, a “**Seller Indemnified Party**”) against any and all Losses resulting from (i) any breach by Purchaser or failure to perform by Purchaser of any of its covenants, obligations, representations or warranties or breach or untruth of any covenant, obligation, representation or warranty contained in this Agreement, any exhibit or schedule hereto (including all updates to any exhibit or schedule), or any certificate or document of Purchaser delivered pursuant to this Agreement, or (ii) any Assumed Liability.

9.04 Rules Regarding Indemnification. The obligations and liabilities of each party which may be subject to indemnification liability hereunder (the “**indemnifying party**”) to the other party (the “**indemnified party**”) shall be subject to the following terms and conditions:

(a) Claims by Non-parties. (1) The indemnified party shall give written notice (“**Indemnity Notice**”) within a reasonably prompt period of time to the indemnifying party of any written Claim by a third party which is likely to give rise to a Claim by the indemnified party against the indemnifying party based on the indemnity agreements contained in this Article, stating the nature and basis of said Claim and the amount thereof, to the extent known. The Indemnity Notice shall give notice to the indemnifying party that pursuant to the indemnity, the indemnified party is asserting against the indemnifying party a claim with respect to a potential loss from the third party Claim, and such Indemnity Notice shall constitute the assertion of a claim for indemnity by the indemnified party. (2) If, within thirty (30) days after receiving an Indemnity Notice, the indemnifying party advises the indemnified party that it will provide indemnification and assume the defense at its expense, then so long as such defense is being reasonably conducted, the indemnified party shall not settle or admit liability with respect to the third party Claim and shall afford to the indemnifying party and defending counsel all reasonable assistance in defending against such Claim. If the indemnifying party assumes the defense, counsel shall be selected by such party and if the indemnified party then retains its own counsel, it shall do so at its own expense. (3) If the indemnified party does not receive a written objection to the Indemnity Notice from the indemnifying party within thirty (30) days after the indemnifying party’s receipt of such Indemnity Notice, the claim for indemnity shall be conclusively presumed to have been assented to and approved, and in such case the indemnified party may control the defense of the matter or case and, at its sole discretion, settle or admit liability. (4) If within the aforesaid thirty (30) day period the indemnified party shall have received written objection to an Indemnity Notice (which written objection shall briefly describe the basis of the objection to the Indemnity Notice or the amount thereof, all in good faith), then for a period of ten (10) days after receipt of such objection the parties shall attempt to settle the dispute as between the indemnified and indemnifying parties. If they are unable to settle the dispute, the unresolved issue or issues shall be settled by arbitration in accordance with the rules and procedures of the American Arbitration Association. (5) Notwithstanding the foregoing, in the case of defense counsel as described in Sections 9.04(a)(2) or (a)(3), if: (i) the third party Claim would, if successful, result in the imposition of damages for which the indemnifying party would not be solely responsible, or (ii) representation of both parties by the same counsel would otherwise be inappropriate due to actual or potential differing interests between them, then the indemnifying party shall not be entitled to assume the entire defense and each party shall be entitled to retain counsel who shall cooperate with one another in defending against such claim. In the case of clause (i) of this paragraph, the indemnifying party shall be obligated to bear only that portion of the expense of the indemnified party’s counsel that is in proportion to the damages indemnifiable by the indemnifying party compared to the total amount of the third-party claim against the indemnified party. In the

case of clause (ii) of this paragraph, the indemnifying party shall pay all costs of defense of both itself and the actual out-of-pocket costs of the indemnified party. (6) The indemnifying party will not compromise or settle any such action, suit, proceeding, claim or demand without the prior written consent of the indemnified party unless such compromise or settlement (i) gives the indemnified party a full and unconditional release of and from any claims based on matters which are the subject of the third party Claim, (ii) involves only the payment of money by the indemnifying party, and (iii) does not involve the entry of any injunction or other equitable relief against the indemnified party, nor otherwise require or prohibit any particular course of conduct or activity by the indemnified party.

(b) Claims by a Party. (1) The determination of a Claim asserted by a party hereunder pursuant to this Article (other than as set forth in Subsection 9.04(a) above) shall be made as follows: (1) The indemnified party shall give an Indemnity Notice within a reasonably prompt period of time to the indemnifying party of any Claim by the indemnified party which has not been made pursuant to Subsection 9.04(a) above, stating the nature and basis of such Claim and the amount thereof, to the extent known. (2) The Indemnity Notice shall be deemed to have resulted in a determination in favor of the indemnified party and to have resulted in a liability of the indemnifying party in an amount equal to the amount of such Claim estimated pursuant to this Section 9.04 if within forty-five (45) days after the indemnifying party's receipt of the Indemnity Notice the indemnified party shall not have received written objection to the Indemnity Notice. In such event, the claim for indemnity shall be conclusively presumed to have been assented to and approved. (3) If within the aforesaid forty-five (45) day period the indemnified party shall have received written objection to an Indemnity Notice (which written objection shall briefly describe the basis of the objection to the Indemnity Notice or the amount thereof, all in good faith), then for a period of sixty (60) days after receipt of such objection the parties shall attempt to settle the disputed claim as between the indemnified and indemnifying parties. If they are unable to settle the disputed claim, the unresolved issue or issues shall be settled by arbitration in accordance with the rules and procedures of the American Arbitration Association.

9.05 Remedy. Should any Purchaser Indemnified Party be entitled to indemnification or to be held harmless hereunder then, in addition to any other right or remedy which such Purchaser Indemnified Party may have, Purchaser may withhold or offset any payment due Seller, or any Affiliate thereof, under any obligation owed any such person or entity.

9.06 Limitation of Indemnification. No party shall be entitled to indemnification from any other party hereunder until such time that the claims subject to indemnification equal or exceed, in the aggregate, the sum of Ten Thousand Dollars (\$10,000.00) after which such indemnifying party shall be liable for all such claims beginning with the first dollar of claims. The maximum liability of each of Seller and Purchaser for indemnification under this Agreement shall be in the aggregate an amount equal to the Purchase Price; provided however, that this limitation shall not apply to any knowing and intentional breach by a party of its representations

and warranties under this Agreement or any fraud committed by a party in connection with this Agreement.

9.07 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.

## **ARTICLE X** **REMEDIES FOR FAILURE TO CLOSE**

### 10.01 Remedies.

(a) Seller's Remedies. Purchaser shall fully perform and comply with all agreements, conditions and covenants of Purchaser required by this Agreement to be performed or complied with hereunder, provided the Seller may waive in writing, in whole or in part at or prior to the Closing, the Purchaser's performance of and compliance with any such agreement, condition or covenant. If the purchase and sale of the Facility pursuant hereto is not closed and consummated on or before the Closing Date for any reason other than (i) Seller's failure to cure title Defects as described in Section 5.03 above, (ii) casualty or condemnation, in which event, the provisions of Article VIII shall govern, (iii) failure by Seller to satisfy any condition to Purchaser's obligations under Section 6.01 (unless the failure results primarily from Purchaser's breaching any representation, warranty or covenant herein) and such condition shall not have been waived by Purchaser or (iv) Seller's default (which is not cured within five (5) days of delivery of notice of such default from Purchaser), Seller shall receive the Earnest Money as liquidated damages, and this shall be Seller's sole remedy at law and equity. The parties acknowledge the difficulty of ascertaining Seller's damages in such a circumstance and agree that the Earnest Money represents a reasonable and mutual attempt by Purchaser and Seller to anticipate the consequence to Seller of Purchaser's failure to close.

(b) Purchaser's Remedies. Seller shall fully perform and comply with all agreements, conditions, and covenants required by this Agreement to be performed or complied with by the Seller hereunder, provided, the Purchaser may expressly waive in writing in whole or in part at or prior to the Closing Date the Seller's performance or any compliance with such agreements, conditions, and covenants. If the purchase and sale of the Facility pursuant hereto is not closed

and consummated on or before the Closing Date for the reasons set forth in Sections 10.1(a)(i), 10.01(a)(iii) or 10.01(a)(iv) above, the Earnest Money shall be returned to the Purchaser or the Purchaser shall have the right to pursue such remedies at law or in equity against the Seller as maybe afforded to it under law or equity, including, without limitation, specific performance.

10.02 Attorney's Fees. In the event either party hereto brings an action at law or other proceeding against the other party to enforce any of the terms, covenants or conditions hereof or any instrument executed in pursuance of this Agreement, or by reason of any breach or default hereunder or thereunder, the party prevailing in any such action or proceeding and any appeal thereupon shall be paid all costs and reasonable attorney's fees by the other party, and in the event any judgment is secured by such prevailing party, all such costs and attorney's fees shall be included in any such judgment, attorney's fees to be set by the court and not by the jury. For purposes of this Section 10.02, "prevailing party" shall mean, in the case of a person asserting a Claim, such person is successful in obtaining substantially all of the relief sought, and in the case of a person defending against or responding to a claim, such person is successful in denying substantially all of the relief sought.

10.03 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by Seller or Purchaser of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

## **ARTICLE XI** **MISCELLANEOUS**

11.01 Assignability. Purchaser may assign this Agreement in whole but not in part to an Affiliate without the consent of Seller but upon five (5) days prior written notice to Seller. In the event of an assignment by Purchaser to an Affiliate, Purchaser shall not be released from any and all of its obligations hereunder. Any permitted assignment of this Agreement shall be binding upon and inure to the benefit of the successor or assignee of Purchaser.

11.02 Entire Agreement. This Agreement shall constitute the entire contract between the parties and may not be modified except by an instrument in writing and signed by both of them. All of the schedules and exhibits attached hereto, including any and all updates thereto, or to be attached hereto are incorporated herein by this reference.

11.03 Governing Law. This Agreement shall be construed and interpreted according to the laws of the State of Alabama and for all purposes shall be governed by and construed in accordance with the internal laws of said state excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

11.04 Notice. Any notice, demand, waiver or consent required or permitted hereunder shall be in writing and shall be deemed to have been properly given if sent (a) by prepaid registered or certified mail, with return receipt requested, (b) by a national overnight courier service, or (c) by facsimile or electronic mail (followed by a copy mailed or delivered as provided in subsections (a) or (b)) addressed as follows:

If to Seller: Oaks Partners Two, LLC  
Two Buckhead Plaza  
3050 Peachtree Road NW, Suite 355  
Atlanta, Georgia 30305  
Attn: Christopher F. Brogdon  
Email: [cfbrogdon@winterhavenhomesinc.com](mailto:cfbrogdon@winterhavenhomesinc.com)  
Facsimile: 404-842-1899  
Phone: 404-549-4293

With a copy to: Gregory P. Youra Esq.  
Holt, Ney, Zatzoff & Wasserman, LLP  
100 Galleria Parkway, Suite 1800  
Atlanta, GA 30339  
Fax: (770) 956-1490  
Phone: (770) 661-1510  
[gyoura@honzw.com](mailto:gyoura@honzw.com)

If to Purchaser: Elevation Financial Group, LLC  
507 N. New York Avenue  
Suite 300  
Winter Park, Florida 32789  
Attn: Kenneth D. Najour, CFO  
Email: [knajour@elevationfinancialgroup.com](mailto:knajour@elevationfinancialgroup.com)  
Facsimile: (407) 215-0061  
Phone: (407) 215-1350

With a copy to: Elevation Financial Group, LLC  
507 N. New York Avenue  
Suite 300  
Winter Park, FL 32789  
Attn: Stuart A. Heaton, COO  
Email: [sheaton@elevationfinancialgroup.com](mailto:sheaton@elevationfinancialgroup.com)  
Facsimile: (407) 215-0061  
Phone: (407) 215-1350

The date of any such notice and of service thereof shall be deemed to be upon the earlier of: receipt, or three (3) days after deposit in registered or certified mail, or one (1) business day following deposit with an overnight courier as set forth above. Electronic notices shall be deemed given on the date of transmission, provided that an identical notice is also sent simultaneously by mail or overnight carrier, as provided in subsections (a) and (b) above. Any party may change its address for the purpose of notice by giving written notice in accordance with the provisions of this Section.

11.05 Section Headings; Drafting Party. The article and section headings of this Agreement are for convenience of reference only and do not form a part thereof and do not in any way modify, interpret or construe the intentions of the parties. The provisions of this Agreement have been examined, negotiated, drafted and revised by counsel for each party, and no implication shall be drawn for or against any party hereto by virtue of the drafting of this Agreement.

11.06 Waivers. Any waiver by any party of any violation of, breach of or default under any provision of this Agreement or any exhibit, schedule or other document referred to in this Agreement by any other party shall not be construed as or constitute a waiver of any subsequent violation, breach of, or default under that provision or any other provision of this Agreement, or any Exhibit, Schedule or other document referred to in this Agreement.

11.07 No Assumption of Liabilities. Notwithstanding any provision contained in this Agreement or in any exhibit, schedule or other document referred to in this Agreement to the contrary, this Agreement is intended as and shall be deemed to be an agreement for the sale of the Facility and, except as expressly provided herein, none of the provisions hereof shall be deemed to create any obligation or liability of any party to any person or entity that is not a party to this Agreement, whether under a third-party beneficiary theory, laws relating to transferee liabilities or otherwise. Except for the Assumed Liabilities expressly provided in this Agreement, Purchaser shall not assume and shall not discharge or be liable for any debts, liabilities or obligations of Seller, whether known or unknown by Seller or Purchaser.

11.08 Waiver of Trial by Jury. EACH PARTY HEREBY AGREES NOT TO ELECT TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT, OR ANY OTHER DOCUMENT RELATED TO THIS AGREEMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH PARTY, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. ANY PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY EACH PARTY HERETO.

11.09 Further Assurances. Each of the parties hereto shall, at any time and from time to time after the Closing, execute and deliver, or cause to be executed and delivered, to the other party or their designee, such further consents, approvals, conveyances, assignments and other documents and instruments as any party shall reasonably request in order to carry out any and all of the terms and provisions of this Agreement.

11.10 Counterparts. This Agreement may be executed in several counterparts and by facsimile transmission or email scan, each of which when so executed and delivered (including delivery by facsimile transmission, email scan) shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.11 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors, heirs, assigns and legal representatives.

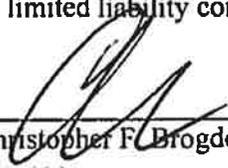
11.12 Saturdays, Sundays, Legal Holidays. If the time period by which any right, option or election provided under this Agreement must be exercised or by which any acts or payments required hereunder must be performed or paid, or by which the Closing must be held, expires on a Saturday, Sunday, legal or bank holiday, then such time period shall be automatically extended to the close of business on the next regularly scheduled business day.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date and year first written.

**SELLER:**

**OAKS PARTNERS TWO, LLC,**  
a Georgia limited liability company

By:   
Name: Christopher F. Brogdon  
Title: Manager

**PURCHASER:**

**ELEVATION PROPERTIES, LLC,**  
a Florida limited liability company

By: Elevation Financial Group, LLC, a Florida  
limited liability company  
Its: Manager

By: \_\_\_\_\_  
T. Chris King, Manager

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date and year first written.

**SELLER:**

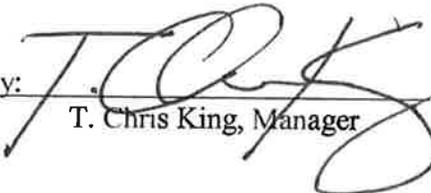
**OAKS PARTNERS TWO, LLC,**  
a Georgia limited liability company

By: \_\_\_\_\_  
Name: Christopher F. Brogdon  
Title: Manager

**PURCHASER:**

**ELEVATION PROPERTIES, LLC,**  
a Florida limited liability company

By: Elevation Financial Group, LLC, a Florida  
limited liability company  
Its: Manager

By:   
T. Chris King, Manager

**OTHER DEFINED TERMS**

<b>TERM</b>	<b>SECTION</b>
Approved Contracts	7.07
Assumed Liabilities	2.06
Closing	7.01
Closing Date	7.01
Commitment	5.01
Defects	5.03
Deposit	2.03
DOL	7.05
Encumbrances	3.01(h)
Financial Statements	3.01(e)
Hired Employee	7.05
Indemnified Party	9.04
Indemnifying Party	9.04
Indemnity Notice	9.04(a)
Inspection Period	2.07
Limited Warranty Deed	7.02(a)
Losses	9.02
Pension Benefit Plans	3.01(x)(2)
Permitted Encumbrance	5.03
Purchase Price	2.02
Purchaser Indemnified Party	9.02
Seller Indemnified Party	9.03
Survey	5.02
Title Evidence	5.03
Title Objection	5.03
Title Policy	5.01
WARN Act	7.05
Welfare Benefit Plans	3.01(x)(1)

**EXHIBITS**

- Exhibit A: Legal Description of Land *(See Section 1.01)*
- Exhibit B: Excluded Assets *(See Sections 1.01 and 2.05)*
- Exhibit C: Contract Rights and Leases *(See Sections 1.01 and 3.01(l))*
- Exhibit D: Deposit Escrow Agreement *(See Section 2.03)*
- Exhibit E: Allocation of Purchase Price *(See Section 2.04)*
- Exhibit F: Operations Transfer Agreement *(see Section 7.02(h))*

## **DISCLOSURE SCHEDULES**

- Schedule 3.01(d): Governmental and Non-Governmental Approvals Required
- Schedule 3.01(f): Material Adverse Changes
- Schedule 3.01(h): Liens and Encumbrances
- Schedule 3.01(k): Maintenance, Condition of Improvements
- Schedule 3.01(l)(2): Defaults and Counterclaims under Leases and Contract Rights
- Schedule 3.01(l)(4): Leases and Contract Rights In Excess of One Year Without 30-day Cancellation Right, Capitalized Leases, Leases with Purchase Options in Favor of Third Parties, and Volume Discounts and Rebates
- Schedule 3.01(l)(6) Contract Rights or Leases with Affiliates of Seller or its Principals
- Schedule 3.01(m): Legal or Regulatory Violations
- Schedule 3.01(n): Litigation and Administrative Proceedings
- Schedule 3.01(p): Past Due Taxes and Assessments
- Schedule 3.01(s) Rent Roll
- Schedule 3.01(w): Employment Related Claims
- Schedule 3.01(x)(6): Employee Information

Exhibit A: Legal Description of Land

**Legal Description of Land**

**Legal Description:**

Lot 1 of the Map of Bell Oaks Plat No. 1, as said Map appears of record in the Office of the Judge of Probate of Montgomery County, Alabama, in Plat Book 33 at Page 68.

Exhibit B: Excluded Assets

**Excluded Assets**

1. Cash
2. Mortgage escrows and reserves maintained by Seller's lender or its servicer
3. Accounts receivable arising prior to the Closing Date
4. Prepaid expenses

Exhibit C: Contract Rights and Leases

**Contract Rights and Leases**

1. Bagby Elevator – elevator service contract
2. Boswell Property – lawn maintenance company
3. Xerox – copier contract
4. Terminix – pest control service

Exhibit D: Deposit Escrow Agreement

**DEPOSIT ESCROW AGREEMENT**

THIS DEPOSIT ESCROW AGREEMENT made and entered into as of \_\_\_\_\_, 2017, by and between **FIRST AMERICAN TITLE INSURANCE COMPANY** (“**Escrow Agent**”), **OAKS PARTNERS TWO, LLC**, a Georgia limited liability company (“**Seller**”), and **ELEVATION PROPERTIES, LLC**, a Florida limited liability company (“**Purchaser**”).

W I T N E S S E T H:

WHEREAS, Purchaser and Seller have entered into an Asset Purchase Agreement dated \_\_\_\_\_, 2017 (the “**Purchase Agreement**”), for the transfer of “Bell Oaks Apartments” located at 3160 Bell Oaks Circle, Montgomery, Alabama 36116 (the “**Facility**”) and;

WHEREAS, upon execution of the Purchase Agreement, Purchaser shall deposit with Escrow Agent the amount of ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00) (the “**Initial Deposit**”); and

WHEREAS, following the expiration of the Inspection Period (as defined in the Purchase Agreement), Purchaser shall deposit with the Escrow Agent the additional sum of Fifty Thousand and 00/100 Dollars (\$50,000.00) (the “**Additional Deposit**”); and

WHEREAS, the Initial Deposit and the Additional Deposit are collectively referred to as the “**Earnest Money**”; and

WHEREAS, the parties hereto desire to enter into this Agreement to set forth the terms upon which such Earnest Money will be disbursed or handled.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Escrow Agent shall act as escrow agent pursuant to the terms and conditions of this Agreement.
2. Escrow Agent shall deposit the Earnest Money in a non-interest bearing account.
3. (a) Under the circumstances described in Section 10.01(a) of the Purchase Agreement, Escrow Agent shall deliver the Earnest Money to Seller upon the receipt of written direction by Seller for such disbursement, provided that a copy of the instructions to Escrow Agent shall also be sent to Purchaser simultaneously with the notice to Escrow Agent. Escrow Agent shall withhold disbursement of the Earnest Money for a period of five (5) business days after receipt of such notice of disbursement, and if Escrow Agent receives written notice from Purchaser within said five (5) business day period countermanning the prior notice of

disbursement, then Escrow Agent shall withhold such disbursement until both Seller and Purchaser jointly issue written disbursement instructions to Escrow Agent.

(b) Under the circumstances described in Section 10.01(b) of the Purchase Agreement, Escrow Agent shall deliver the Earnest Money to Purchaser upon the receipt of written direction by Purchaser for such disbursement, provided that the instructions to Escrow Agent shall also be sent to Seller simultaneously with the notice to Escrow Agent. Escrow Agent shall withhold disbursement of the Earnest Money and accrued interest for a period of five (5) business days after receipt of such notice of disbursement, and if Escrow Agent receives written notice from Seller within said five (5) business day period countermanding the prior notice of disbursement, then Escrow Agent shall withhold such disbursement until both Purchaser and Seller jointly issue written disbursement instructions to Escrow Agent.

(c) Escrow Agent shall deliver the Earnest Money and any and all accrued interest, and close the escrow established by this Escrow Agreement in accordance with any other written instructions issued jointly by Seller and Purchaser.

(d) Notwithstanding anything to the contrary contained herein, Escrow Agent shall comply with the unilateral instructions of Purchaser regarding the disposition of the Earnest Money if the Purchaser terminates this Agreement prior to the expiration of the Inspection Period (as defined in the Purchase Agreement).

(e) Seller and Purchaser each agree to exercise good faith in sending any written instructions to Escrow Agent with regard to the delivery of Earnest Money and any such written instructions shall be in accordance with the terms and conditions of the Purchase Agreement. Seller and Purchaser each agree promptly upon request of the other to sign written instructions to the Escrow Agent to direct Escrow Agent to distribute the Earnest Money in accordance with the Purchase Agreement.

4. In the absence of bad faith on its part, Escrow Agent may conclusively rely on a notice of instruction that is furnished to Escrow Agent that conforms to requirements of this Escrow Agreement.

5. The parties shall evenly share payment of Escrow Agent's escrow fee.

6. In performing any of its duties hereunder, Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses except for willful default or breach of trust, and it shall accordingly not incur any such liability with respect to any action taken or omitted in reliance upon any instrument, including any written notice or instruction provided for in this Escrow Agreement, not only as to its due execution and the validity and effectiveness of its provisions, contained therein, but which Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons and to conform with the provisions of this Escrow Agreement. In the event any party disputes a proposed disbursal by Escrow Agent and Escrow Agent is unable to resolve the dispute, Escrow Agent may tender the Earnest Money into a court in Richland County, South Carolina that Escrow Agent deems to be

of competent jurisdiction which shall discharge Escrow Agent of all further duties and liabilities hereunder or under the Purchase Agreement.

7. Seller and Purchaser hereby agree to indemnify and hold harmless Escrow Agent against any and all losses, claims, and counsel fees and disbursements which may be imposed upon Escrow Agent or incurred by Escrow Agent hereunder, except those arising from willful default or breach of trust by Escrow Agent in the performance of its duties hereunder, including any litigation arising from this Agreement or involving the subject matter hereof.

8. All notices required or permitted under this Agreement shall be in writing and shall be deemed to have been properly given if sent (a) by registered or certified mail, return receipt requested, postage prepaid, (b) by reputable overnight courier delivery service, or (c) by email (followed by a copy mailed or delivered as aforesaid), addressed as set forth below to the persons entitled to receive the same or to such other addresses as may be specified by written notice and delivered in accordance herewith. Any such notice, request, or other communication shall be considered given or delivered, as the case may be, on the date of deposit in the United States mail as provided above in the case of (a) above, on the date of delivery to the overnight courier delivery service in the case of (b) above, or on the date of email transmission in the case of (c) above:

To Escrow Agent: First American Title Insurance Company  
Six Concourse Parkway, Suite 2000  
Atlanta, Georgia 30328  
Attn: Carmen Rice  
Email: crice@firstam.com  
Facsimile: (866) 735-3071  
Phone: (770) 390-6534

To Seller: Oaks Partners Two, LLC  
Two Buckhead Plaza  
3050 Peachtree Road NW, Suite 355  
Atlanta, Georgia 30305  
Attention: Christopher F. Brogdon  
Email: cfbrogdon@winterhavenhomesinc.com

with a copy to: Holt, Ney, Zatzoff & Wasserman, LLP  
100 Galleria Parkway, Suite 1800  
Atlanta, Georgia 30339  
Attention: Gregory P. Youra, Esq.  
Email: gyoura@honzw.com

To Purchaser: Elevation Financial Group, LLC  
507 N. New York Avenue, Suite 300  
Winter Park, Florida 32789  
Attn: Kenneth D. Najour, CFO

Exhibit D-3

Email:knajour@elevationfinancialgroup.com  
Facsimile: (407) 215-0061  
Phone: (407) 215-1350

with a copy to:

Elevation Financial Group, LLC  
507 N. New York Avenue  
Suite 300  
Winter Park, Florida 32789  
Attn: Stuart A. Heaton, COO  
Email:sheaton@elevationfinancialgroup.com  
Facsimile: (407) 215-0061  
Phone: (407) 215-1350

9. All terms used herein with an initial capital letter shall have the same meaning ascribed thereto in the Purchase Agreement, unless otherwise provided herein.

10. The terms and conditions of this Agreement shall be construed under the laws of the State of Alabama.

11. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, legal representatives and assigns.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the undersigned have caused this Deposit Escrow Agreement to be executed by their duly authorized representatives, effective as of the day and year first written above.

**ESCROW AGENT:**

**FIRST AMERICAN TITLE INSURANCE COMPANY**

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

**SELLER:**

**OAKS PARTNERS TWO, LLC,**  
a Georgia limited liability company

By: \_\_\_\_\_  
Name: Christopher F. Brogdon  
Title: Manager

**PURCHASER:**

**ELEVATION PROPERTIES, LLC,**  
a Florida limited liability company

By: Elevation Financial Group, LLC, a Florida  
limited liability company  
Its: Manager

By: \_\_\_\_\_  
T. Chris King, Manager

Exhibit E: Allocation of Purchase Price

**Allocation of Purchase Price**

**INTENTIONALLY LEFT BLANK**

Exhibit F: Operations Transfer Agreement

**Operations Transfer Agreement**

**THIS OPERATIONS TRANSFER AGREEMENT** (this “**Agreement**”) is entered into effective as of the [CLOSING DATE], by and between **OAKS PARTNERS TWO, LLC**, a Georgia limited liability company (“**Seller**”), and **ELEVATION PROPERTIES, LLC**, a Florida limited liability company (“**Purchaser**”), for the purpose of certain procedures to be followed after the Closing of the purchase and sale of “Bell Oaks Apartments” located at 3160 Bell Oaks Circle, Montgomery, Alabama 36116, (the “**Facility**”). Any capitalized terms used herein and not otherwise expressly defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement dated for reference purposes only as of \_\_\_\_\_, 2017, between Purchaser and Seller for the Facility.

1. Payroll. Seller will total all payroll hours through midnight of the day prior to the Closing Date (the “**Effective Time**”). Seller will prepare payroll checks and distribute same to employees on the next regularly scheduled pay date. Seller shall also pay to each Hired Employee, in accordance with the requirements of all applicable law and Seller’s employee handbook, any and all vested vacation time earned by, each Hired Employee as of the Effective Time. Seller will prepare accrued vacation checks and distribute same to the Hired Employees on the next regularly scheduled pay date.
2. Accounts Payable. All accounts payable invoices received by the Facility after Closing pertaining to goods or services received by the Facility through the day before the Effective Time shall be submitted to Seller on a weekly basis, and Seller shall be responsible for timely payment of all such accounts payable. Purchaser shall be responsible for payment of all accounts payable relating to goods and services received by the Facility on and after the Effective Time. The parties agree to allocate the amount of any account payable which includes services both before and after the Effective Time. The basis of the allocation shall be that Seller shall be responsible for the portion allocated to all time periods through the day before the Effective Time and Purchaser shall be responsible for the portion allocated to the time period commencing on the Effective Time.
3. Resident Accounts Receivable. As used herein, the term “**Payment**” or “**Payments**” shall mean any moneys that are received by the Facility, Seller or Purchaser from a resident, or on behalf of a resident, including without limitation, cash, checks, Social Security benefits, the Veteran’s Administration, managed care companies or health maintenance organizations, and any other third party payment (which includes payment from governmental and non-governmental payors).
  - a. Collection of Receivables. Purchaser shall have responsibility for the billing and collection of Payments on account of services rendered or goods sold by Purchaser on or after the Effective Time. Seller shall remain responsible for billing and collection of Payments on account of services rendered or goods sold

by Seller prior to the Effective Time. Seller shall retain title to all accounts receivable on account of services rendered or goods sold prior to the Effective Time. Purchaser shall have no liability for uncollectible receivables and shall not be obligated to bear any expense as a result of such activity on behalf of Seller. In the event Seller or Purchaser has any questions concerning the accounting or crediting of any Payments hereunder, Seller or Purchaser shall make specific inquiry to the other, and the requested party shall respond within five (5) business days.

- b. Aging. On the Closing Date, Seller will prepare and supply to Purchaser a detailed aged listing of all resident accounts receivable that are due Seller for services rendered before the Effective Time. Subject to the terms hereof, Purchaser will allow Facility bookkeepers previously employed by Seller to assist in the preparation of this aging.
  - c. Application of Payments. Any payments received by Seller or Purchaser from or on behalf of residents with outstanding balances as of the Effective Time will be applied as designated by such resident. If the period for which such payments are made is not indicated by the resident making the payment, and the parties are unable to agree as to the periods to which such payments relate, all such non-designated payments will first be applied to any post Effective Time balances, with the excess, if any, applied to the extent of any balances due for services rendered by Seller prior to the Effective Time. If the Closing Date is other than the first day of the month, resident rents for such month shall be prorated between Seller and Purchaser.
  - d. Seller Recovery of Receivables. Nothing herein shall be deemed to limit in any way Seller's rights and remedies to recover accounts receivable due and owing Seller by Purchaser or third parties under the terms of this Agreement or applicable law.
  - e. Misapplication of Payments. If the parties mutually determine that any Payment hereunder was misapplied by the parties, or upon such a determination by a certified public accountant engaged by either party, the party which erroneously received said Payment shall remit the same to the other within five (5) business days after said determination is made.
  - f. Access to Financial Records. For a period of sixty (60) days after the Effective Time, Purchaser and Seller shall, upon reasonable notice and during normal business hours, have the right to inspect (or to have representatives inspect) all cash receipts and other books and records (including bank statements) related to or concerning the Facility of the other respective party, and to make copies thereof, in order to confirm the other party's compliance with the obligations imposed on it under this Section 3.
4. Good Faith Cooperation. Seller and Purchaser shall fully cooperate and work with each other in good faith to resolve any other accounting issues that may arise.

5. Access Rights. For the period of 60 days following Closing, after providing advance notice to Purchaser in each instance, Seller shall have reasonable access during business hours to such resident contracts, services documentation, account documentation, remittance advice documentation, and other documents and records as reasonably necessary to facilitate billing and collection of Seller's receivables. All expenses relating to billing or collection of accounts receivable by Seller or on behalf of Seller shall be the responsibility of Seller.
  
6. Access to Records.
  - (a) (a) On the Closing Date, Seller shall, to the extent permitted by applicable law, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), allow all of the resident records and records of all current employees that are in Seller's possession or control to remain at the Facility and Purchaser shall assume the obligations to retain the records in accordance with the applicable state and federal laws and regulations.
  
  - (b) (b) Subsequent to the Closing Date, Purchaser shall, to the extent permitted by applicable law, including, without limitation, HIPAA, allow Seller and its agents and representatives to have reasonable access to (upon reasonable prior notice and during normal business hours) the books and records and supporting material of the Facility relating to any period prior to the Closing Date, to the extent reasonably requested by Seller, which access shall not unreasonably disrupt Purchaser's operations, which access to books and records shall include the right to make copies of such books and records, at Seller's expense, all to the extent reasonably necessary to enable Seller to investigate and defend malpractice, employee or other claims, to file or defend tax returns, to verify accounts receivable collections due Seller, and to perform similar matters.
  
  - (c) (c) Seller shall, to the extent permitted by applicable law, including, without limitation, HIPAA, be entitled to remove the originals of any records delivered to Purchaser, for purposes of litigation involving a resident or employee to whom such record relates, if an officer of a court of competent jurisdiction or agency official certifies that such original must be produced in order to comply with applicable law or the order of a court of competent jurisdiction in connection with such litigation and Seller shall provide Purchaser with a complete copy of such records prior to its removal at Seller's reasonable cost and expense and as a condition precedent to receiving such original record. Any record so removed shall promptly be returned to Purchaser following its use.

7. No Assumption of Liabilities. Except for the liabilities expressly assumed by Purchaser herein, Purchaser shall not be obligated to pay, perform or otherwise be responsible for any liabilities, claims, obligations, judgments, orders or duties of any kind or nature whatsoever relating to the Facility and arising prior to the Effective Time, including any liability of Seller for taxes of any kind or nature related to the period prior to the Effective Time.
  
8. Miscellaneous. This Agreement and the right to utilize the records of the Facility contained herein shall be personal to Seller and may not be assigned, conveyed or transferred in any manner. This Agreement shall not be recorded. This Agreement shall survive Closing and shall not be merged therein. This Agreement may be executed in counterparts, and all counterparts shall be deemed one original document.

*[Signatures on Following Page]*

IN WITNESS WHEREOF, the parties hereto have duly executed this Operations Transfer Agreement to be effective as of the date first above written.

**PURCHASER:**

**ELEVATION PROPERTIES, LLC,**  
a Florida limited liability company

By: Elevation Financial Group, LLC, a Florida  
limited liability company  
Its: Manager

By: \_\_\_\_\_  
T. Chris King, Manager

**SELLER:**

**OAKS PARTNERS TWO, LLC,**  
a Georgia limited liability company

By: \_\_\_\_\_  
Name: Christopher F. Brogdon  
Title: Manager

**Schedule 3.01(d)**

**Governmental and Non-Governmental Approvals Required**

None.

**Schedule 3.01(f)**

**Material Adverse Changes**

None.

**Schedule 3.01(h)**

**Liens and Encumbrances**

None except as may be disclosed in the Title Commitment. Any such liens and encumbrances (except for Permitted Encumbrances) will be satisfied by Seller and cancelled of record at Closing.

**Schedule 3.01(k)**

**Maintenance, Condition of Improvements**

None, except for the items described below for which Purchaser is receiving a credit pursuant to Section 2.02 above.

**BUILDING:**

3136 - structural pier work needed (I would say 12-15 to stabilize) – about 15K

3130 – structural more piers needed (20'ish) - about 20K

3124 - structural more piers needed – (15-20) - 18K

3118 - structural more piers needed (20) - 20K

3112 - structural more piers needed (15) - 15K

3106 – worst one- structural pier work is extensive for this building - 30-40 needed (35K-40K)

Community Building (need 15-20 here as well) - 20K

**Schedule 3.01(l)(2)**

**Defaults and Counterclaims under Leases and Contract Rights**

None.

**Schedule 3.01(l)(4)**

**Leases and Contract Rights In Excess of One Year Without 30-day Cancellation Right, Capitalized Leases, Leases with Purchase Options in Favor of Third Parties, and Volume Discounts and Rebates**

Xerox Copier Contract.

**Schedule 3.01(1)(6)**

**Contract Rights or Leases with Affiliates of Seller or its Principals**

Seller has a management agreement with Saint Simons Healthcare, LLC, an affiliate of Seller. The management agreement will be terminated at Closing.

**Schedule 3.01(m)**

**Legal or Regulatory Violations**

None.

**Schedule 3.01(n)**

**Litigation and Administrative Proceedings**

Securities and Exchange Commission v. Christopher Freeman Brogdon et al. in the United States District Court, District of New Jersey, Civil Action No. 15-CV-8173.

**Schedule 3.01(p)**

**Past Due Taxes and Assessments**

Any outstanding real property or personal property taxes will be paid by Seller at closing.

**Schedule 3.01(s)**

**Rent Roll**

6/15/17 at 11:08:14.63

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**Bell Oaks  
Invoice Register  
For the Period From Jun 1, 2017 to Jun 30, 2017**

Filter Criteria Includes: Report order is by Customer Name.

Invoice/CM #	Date	Quote No	Name	Amount
4865	6/1/17		BARGAINER, JOE & MARY	750.00
5064	6/1/17		BARLOW, WILLIE JOE	600.00
5148	6/1/17		BROOKS, PAUL	600.00
5040	6/1/17		CALHOUN, JOHNNY	700.00
5280	6/1/17		COLEMAN, APRIL	240.00
5138	6/1/17		COTTRELL, ROSA	600.00
5291	6/1/17		FERRELL, ALICE	600.00
4520	6/1/17		GRAY, JOE & BETTYE	800.00
4920	6/1/17		GREEN, SYLVIA	700.00
5052	6/1/17		HAGGINS, RAYMOND	850.00
5256	6/1/17		HAWKINS, FRED & DOROTH	900.00
4788	6/1/17		HILL, CARRIE	700.00
4856	6/1/17		HINKLE, DAN & ERNESTINE	600.00
4884	6/1/17		HOGUE, LEE	700.00
5196	6/1/17		HORDGES, YOLANDA	600.00
4896	6/1/17		HUDDLESTON, ANNETTE	625.00
5112	6/1/17		HUTCHINSON, BELLE ZORA	800.00
5220	6/1/17		ISREAL, WILLIE	750.00
4812	6/1/17		JACKSON, HARRY	600.00
5184	6/1/17		JENKINS, ZETTIE	600.00
4800	6/1/17		JOHNSON, CHARLES	800.00
4848	6/1/17		JOHNSON, CREOLA	800.00
4908	6/1/17		LEE, BESSIE	800.00
5028	6/1/17		LEFRIDGE, GEORGE	700.00

6/16/17 at 11:08:14.76

Page: 2

**Bell Oaks  
Invoice Register  
For the Period From Jun 1, 2017 to Jun 30, 2017**

Filter Criteria Includes: Report order is by Customer Name.

<b>Invoice/CM #</b>	<b>Date</b>	<b>Quote No</b>	<b>Name</b>	<b>Amount</b>
5004	6/3/17		LOWERY, LOTTIE	800.00
4944	6/1/17		MAPSON, EMZELLA	575.00
4872	6/1/17		MARTIN, SHIRLEY	900.00
4932	6/1/17		MCKNIGHT, CURTIS	850.00
4980	6/1/17		NORMAN, JUDY & BRENDA	825.00
4476	6/1/17		OSGOOD, ALOMA	800.00
4624	6/1/17		PATTON, JANICE	800.00
5160	6/1/17		SNOW, BETH	800.00
5100	6/1/17		TOLBERT, IRMA	800.00
5088	6/1/17		TRAMMELL, DIANA	750.00
5076	6/1/17		WATKINS, GREIL STEVE	600.00
4992	6/1/17		WINDHAM, GWENDOLYN	700.00
4634	6/1/17		YOUNG, HERBERT	600.00
<b>Total</b>				<b>26,018.00</b>

**Schedule 3.01(w)**

**Employment Related Claims**

None.

### Schedule 3.01(x)(6)

### Employee Information

Client ID:		EMPLOYEE DATA REPORT							Report Date Range: By Pay Date			
Pay Group:		Oaks Partners, LLC							6/1/2017 - 6/16/2017			
		DBA: Bell Oaks Retirement Community										
Location Code	Deperl. Code	EE Number	Employee Name	Street	City	State	ZIP	Hire Date	Hourly Rate	Pay Type	Vacation Balance	Status
Bell Oaks	905000	1050	Clark, Dina	2973 Double Bridge Ferry Road	ECLECTIC	AL	36024	6/23/2014	15.3840	Salary	80.00	Active
Bell Oaks	860000	1061	Cleveland, Donald	Oaks Street	MONTGOMERY	AL	36108	8/1/2016	11.0000	Hourly	0.00	Active
Bell Oaks	830000	1065	Green, Pamela D.	426 Burgwyn Road	MONTGOMERY	AL	36105	5/18/2017	11.0000	Hourly	0.00	Active
Bell Oaks	850000	1064	Nails, John	1575 Silk Oak Avenue	TITUSVILLE	FL	32798	12/16/2016	17.0222	Salary	0.00	Active
Bell Oaks	850000	1043	Pouncy, Thomas	3705 Princess Ann Street	Montgomery	AL	36109	6/17/2013	14.9994	Salary	80.00	Active
Bell Oaks	708000	4	Tetter, Elnora M.	78 Pugh Rd.	Mathews	AL	36052	1/1/2008	12.0000	Hourly	120.00	Active
Bell Oaks	805000	1060	Tiffany, Linda B.	1328 Cedar Bay Road	JACKSONVILLE	FL	32218	2/1/2016	59.1323	Salary	0.00	Active
<b>REPORT TOTAL</b>											<b>280.00</b>	

**FIRST AMENDMENT TO AGREEMENT OF PURCHASE AND SALE**

THIS FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT (this "Amendment") is entered into effective as of August 31, 2017 by and between OAKS PARTNERS TWO, LLC, a Georgia limited liability company (hereinafter referred to as "Seller"), and SERENITY APARTMENTS AT BELL OAKS, LLC, a Florida limited liability company as assignee of ELEVATION PROPERTIES, LLC, a Florida limited liability company (hereinafter referred to as "Purchaser").

Recitals

- A. Seller and Purchaser are parties to that Asset Purchase Agreement dated as of July 11, 2017 (the "Agreement"), for the purchase and sale of the Property. Unless otherwise defined herein, capitalized terms shall have the meaning assigned to them in the Agreement.
- B. Purchaser and Seller desire to modify certain terms of the Agreement, and the parties have agreed to execute this Amendment to reflect such modification to the Agreement.

Agreement of the Parties

NOW THEREFORE, for and in consideration of the above recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, it is agreed that:

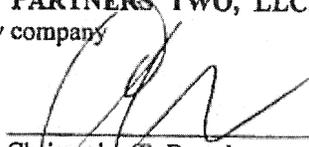
- 1. Incorporation of Recitals. The recitals set forth above are incorporated herein by reference as if set forth fully herein.
- 2. Closing. Section 7.01 of the Agreement is hereby amended to reflect that the parties agree that the Closing Date (as defined therein) shall be September 15, 2017. All provisions contained in said Section 7.01 not pertaining to the Closing Date shall remain in effect as written therein.
- 3. Effect of Amendment. Except as modified in this Amendment, there are no changes to the Agreement, and the Agreement as herein modified remains in full force and effect as of the date hereof and is hereby ratified by the parties in all respects. The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of either party for any default under the Agreement, nor constitute a waiver of any provision of the Agreement. In the event of a conflict between the Agreement and this Amendment, the terms of this Amendment shall control.
- 4. Counterparts. This Amendment may be executed by the parties hereto individually or in combination or in one or more counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument. Scanned and emailed or facsimile signatures shall be deemed original and binding on the parties.

*[Remainder of this page intentionally left blank]*

Seller and Purchaser have executed this Amendment as of the date set forth above.

**SELLER:**

**OAKS PARTNERS TWO, LLC**, a Georgia limited liability company

By: 

Name: Christopher F. Brogdon

Title: Manager

**PURCHASER:**

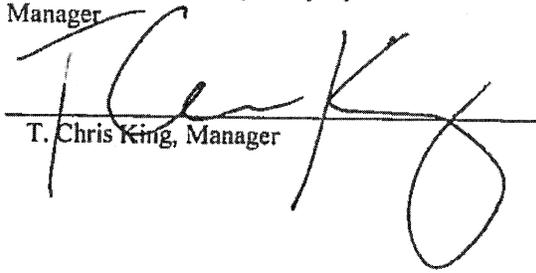
**SERENITY APARTMENTS AT BELL OAKS, LLC**, a Florida limited liability company

By: **ELEVATION REAL PROPERTY FUND VI, LLC**, a Florida limited liability company

Its: Manager

By: **ELEVATION FINANCIAL GROUP, LLC**, a Florida limited liability company

Its: Manager

By: 

T. Chris King, Manager

**SECOND AMENDMENT TO  
AGREEMENT OF PURCHASE AND SALE**

**THIS SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT** (this "Amendment") is entered into effective as of September 15, 2017 by and between **OAKS PARTNERS TWO, LLC**, a Georgia limited liability company (hereinafter referred to as "Seller"), and **SERENITY APARTMENTS AT BELL OAKS, LLC**, a Florida limited liability company as assignee of **ELEVATION PROPERTIES, LLC**, a Florida limited liability company (hereinafter referred to as "Purchaser").

**Recitals**

A. Seller and Purchaser are parties to that Asset Purchase Agreement dated as of July 11, 2017 as amended pursuant to that certain First Amendment to Agreement of Purchase and Sale dated August 31, 2017 (as amended, the "Agreement"), for the purchase and sale of the Property. Unless otherwise defined herein, capitalized terms shall have the meaning assigned to them in the Agreement.

B. Purchaser and Seller desire to modify certain terms of the Agreement, and the parties have agreed to execute this Amendment to reflect such modification to the Agreement.

**Agreement of the Parties**

**NOW THEREFORE**, for and in consideration of the above recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, it is agreed that:

1. **Incorporation of Recitals.** The recitals set forth above are incorporated herein by reference as if set forth fully herein.

2. **Closing.** Section 7.01 of the Agreement is hereby amended to reflect that the parties agree that the Closing Date (as defined therein) shall be on or before September 29, 2017 upon at least three (3) business days' prior written notice from Seller to Purchaser. All provisions contained in said Section 7.01 not pertaining to the Closing Date shall remain in effect as written therein.

3. **Effect of Amendment.** Except as modified in this Amendment, there are no changes to the Agreement, and the Agreement as herein modified remains in full force and effect as of the date hereof and is hereby ratified by the parties in all respects. The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of either party for any default under the Agreement, nor constitute a waiver of any provision of the Agreement. In the event of a conflict between the Agreement and this Amendment, the terms of this Amendment shall control.

4. **Counterparts.** This Amendment may be executed by the parties hereto individually or in combination or in one or more counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument. Scanned and emailed or facsimile signatures shall be deemed original and binding on the parties.

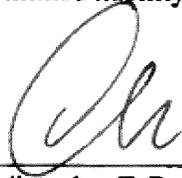
**[Signatures on Following Page]**

Seller and Purchaser have executed this Amendment as of the date set forth above.

Seller and Purchaser have executed this Amendment as of the date set forth above.

**SELLER:**

**OAKS PARTNERS TWO, LLC,**  
a Georgia limited liability company

By:   
Name: Christopher F. Brogdon  
Title: Manager

**PURCHASER:**

**SERENITY APARTMENTS AT BELL OAKS, LLC,**  
a Florida limited liability company

By: **ELEVATION REAL PROPERTY  
FUND VI, LLC,**  
a Florida limited liability company  
Its: Manager

By: **ELEVATION FINANCIAL GROUP, LLC,**  
a Florida limited liability company  
Its: Manager

By: \_\_\_\_\_  
T. Chris King, Manager

**SELLER:**

**OAKS PARTNERS TWO, LLC,**  
a Georgia limited liability company

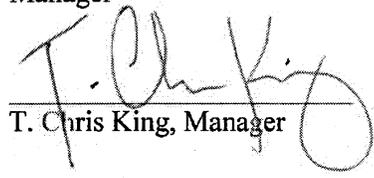
By: \_\_\_\_\_  
Name: Christopher F. Brogdon  
Title: Manager

**PURCHASER:**

**SERENITY APARTMENTS AT BELL OAKS, LLC,**  
a Florida limited liability company

By: **ELEVATION REAL PROPERTY  
FUND VI, LLC,**  
a Florida limited liability company  
Its: Manager

By: **ELEVATION FINANCIAL GROUP, LLC,**  
a Florida limited liability company  
Its: Manager

By:   
T. Chris King, Manager