



So Ordered.

Signed this 21 day of July, 2017.

Diane Davis  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

In re:

FOLTS HOME, *et al.*,<sup>1</sup>

Debtors.

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)  
) Case No. 17-60139  
) Chapter 11 (Main Case)  
) Case No. 17-60140  
)  
) Jointly Administered  
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)  
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**ORDER PURSUANT TO SECTIONS 105, 363 AND 365 OF THE  
BANKRUPTCY CODE (A) APPROVING SALE OF SUBSTANTIALLY ALL OF  
DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, OBLIGATIONS,  
INTERESTS AND ENCUMBRANCES; (B) APPROVING ASSUMPTION AND  
ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES;  
(C) AUTHORIZING DEBTORS TO CONSUMMATE TRANSACTIONS RELATED  
THERE TO; AND (D) GRANTING RELATED RELIEF**

This matter coming before the Court on the motion (Docket No. 18, the "Sale Motion") of debtors Folts Home and Folts Adult Home, Inc. ("FAH") (collectively, the "Debtors"), for entry of this order ("Sale Order"): (i) approving the sale of substantially all assets of the Debtors free and clear of all liens, claims, interests and encumbrances, (ii) approving the assumption and

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Folts Home (2183) and Folts Adult Home, Inc. (7237).

assignment of certain executory contracts and unexpired leases, (iii) authorizing the Debtors to consummate transactions related thereto, and (iv) granting related relief (collectively, the “Sale Transaction”); and the Court having entered (i) an Order on March 27, 2017 (Docket No. 82, the “Bidding Procedures Order”) authorizing an Auction<sup>2</sup> of the Purchased Assets (as defined in the Purchase Agreement dated as of June 1, 2017 by and between Debtors and Cedarcare Holdings LLC (“Buyer”) annexed hereto as **Exhibit 1** (“Purchase Agreement”)) and approving certain bidding procedures for the Purchased Assets, and (ii) a Stipulation and Order on April 12, 2017 (Docket No. 108) amending certain sale-related dates and deadlines stated in the Bidding Procedures Order (the “Amended Bidding Procedures Order”); and the Debtors having held an Auction of the Purchased Assets on June 6, 2017; and upon the Declaration of Jeffrey R. Manning in Support of Debtors’ Asset Sale under Section 363 of the Bankruptcy Code and in Summary of the June 6, 2017 Auction Sale dated June 13, 2017 (Docket No. 162-1); and Buyer having been determined by the Debtors, in consultation with the United States Department of Housing and Urban Development, to have submitted the highest and best bid for the Purchased Assets at the Auction; and a hearing to approve the Sale Transaction having been held on June 20, 2017 in Utica, New York (the “Sale Hearing”); and all interested parties having been afforded an adequate opportunity to be heard with respect to the Sale Motion; and the Court having reviewed and considered: (i) the Sale Motion, (ii) the objections thereto, if any, and (iii) the arguments of counsel made and the evidence presented at the Sale Hearing, including, without limitation the testimony of (a) Jeffrey R. Manning of CohnReznick Capital Markets Securities LLC, investment banker to the Debtors, and (b) Anthony E. Piana, DDS, the Chairman of the Board of Directors of Folts Home and the Vice Chairman of the Board of Directors of

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<sup>2</sup> Capitalized terms used but not defined in this Sale Order shall have the meanings ascribed to them in the Sale Motion, the Bidding Procedures Order and the Amended Bidding Procedures Order.

FAH; and it appearing that the relief requested in the Sale Motion and approval of the sale of the Purchased Assets to the Buyer and the assumption and assignment of the executory contracts and unexpired leases to be identified by the Buyer within five days prior to the Closing (the “Assumed Contracts”) is in the best interests of the Debtors, their estates, creditors and other parties in interest; and upon the records of the Sale Hearing and the above-referenced jointly administered cases (collectively, “Case”); and after due deliberation thereon; and good cause appearing therefor;

IT IS HEREBY FOUND AND DETERMINED THAT:<sup>3</sup>

A. This Court has jurisdiction and authority to hear and determine the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this Case and the Sale Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief sought herein are sections 105, 363 and 365 of title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*, as amended, the “Bankruptcy Code”, and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

C. This Sale Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Sale Order. This Sale Order shall be effective immediately upon its entry and the parties may consummate the Sale Transaction pursuant to the terms and conditions of this Sale Order and the Purchase Agreement.

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<sup>3</sup> Findings of Fact shall be construed as conclusions of law, and conclusions of law should be construed as findings of fact when appropriate. *See* Fed. R. Bank. P. 7052. Any statements of this Court from the bench at the Sale Hearing shall constitute additional findings of fact and conclusions of law as appropriate and are expressly incorporated by reference in this Sale Order.

D. The Bidding Procedures Order and Amended Bidding Procedures Order approved, among other things, certain notice and bidding procedures for the Auction and the Sale Hearing. The Bidding Procedures Order and the Amended Bidding Procedures Order provided that they were immediately effective upon entry and such Orders are final and non-appealable orders and remain in full force and effect.

E. As evidenced by the Certificates of Service filed with the Court and the record of this Case, proper, timely, adequate and sufficient notice of the Sale Motion, the Auction and the Sale Hearing has been provided to all parties in interest in this Case in accordance with sections 102(1) and 363(b) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9006, 9007, 9008 and 9014. The Debtors' service of the Notice of Assumption and Assignment provided due and proper notice of the assumption and assignment of the Assumed Contracts set forth therein (and related Cure Amounts, if any) to each non-debtor party to such Assumed Contracts. The Debtors further provided due and proper notice of the Sale Transaction to any known claimant or potential claimant under any environmental law, to the extent such notice was required, and such notice was sufficient and appropriate under the circumstances. No other or further notice of the Sale Motion, the Sale Hearing, the Sale Transaction or the entry of this Sale Order is necessary or shall be required.

F. A reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities.

G. On June 6, 2017, the Debtors and their agent conducted the bid process and Auction in accordance with the Bidding Procedures Order and Amended Bidding Procedures Order, which process was non-collusive, fair and reasonable, and conducted in good faith within the meaning of section 363(m) of the Bankruptcy Code. The Buyer acted in good faith in all

respects of its participation in the bid process and Auction. Neither the Debtors nor the Buyer have engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code or cause the application of, or implicate, section 363(n) of the Bankruptcy Code to the consummation of the Sale Transaction. The Auction afforded a full, fair and reasonable opportunity for any Qualified Bidder to make an offer for the Purchased Assets.

H. At the Auction, the Buyer entered the highest and best bid, offering the sum of \$16,600,00.00 cash, without adjustments (the “Purchase Price”), for substantially all of the Purchased Assets in accordance with the terms of the Purchase Agreement. Accordingly, the Buyer was determined to be the Successful Bidder. The Purchase Price constitutes fair value for the Purchased Assets.

I. The Debtors have articulated a sufficient business justification under the standard set forth in *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983), and have otherwise demonstrated a sufficient basis and the existence of compelling circumstances requiring them to sell the Purchased Assets on the terms set forth herein and assume and assign the Assumed Contracts to the Buyer pursuant to sections 363 and 365 of the Bankruptcy Code. Such actions are appropriate exercises of the Debtors’ reasonable business judgment and are in the best interests of the Debtors, their creditors and their estates.

J. The Buyer, Debtors and their professionals have complied with the Bidding Procedures Order and the Amended Bidding Procedures Order in all material respects and in good faith. As demonstrated by the evidence presented at the Sale Hearing, the Debtors (i) afforded interested potential purchasers a full, fair and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offers to acquire the Purchased Assets, (ii) provided potential purchasers, upon request, sufficient information to enable them to make an

informed judgment on whether to bid on the Purchased Assets, and (iii) considered all Qualified Bids submitted on or before the Bid Deadline. Additionally, the Debtors have, under the circumstances, adequately and appropriately marketed the Purchased Assets through, *inter alia*, the dissemination of information regarding the Purchased Assets to interested purchasers. All potential bidders, including the Buyer, who entered into a confidentiality agreement with the Debtors, were provided access to the Debtors' electronic data room and other diligence materials on an equal and identical basis.

K. The offer of the Buyer, including the form and the total consideration to be realized by the Debtors, (i) is the highest and best offer received by the Debtors, (ii) is fair and reasonable, (iii) is in the best interests of the Debtors, their creditors and their estates, (iv) constitutes full and adequate consideration and reasonably equivalent value for the Purchased Assets, and (v) constitutes reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act and fair consideration under the Uniform Fraudulent Conveyance Act. The Debtors' determination that the Buyer's offer constitutes the highest and best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtors' reasonable business judgment.

L. The Debtors have demonstrated compelling circumstances and a sufficient and sound business purpose and justification for the Sale Transaction prior to, and outside of, a plan of reorganization. There is a substantial risk of deterioration in value if the Sale Transaction is not consummated as soon as possible and creditors' recoveries would be significantly diminished.

M. The Buyer is a purchaser in good faith, as that term is used in the Bankruptcy Code, and is entitled to the protection of section 363(m) of the Bankruptcy Code with respect to

the Sale Transaction. The Sale Transaction was negotiated and entered into in good faith, based upon arm's-length negotiations and without collusion or fraud of any kind. The Purchase Price to be paid by the Buyer was not controlled by an agreement among potential bidders. The transactions contemplated hereunder may not be avoided, and no damages may be assessed against the Buyer or any other party under section 363(n) of the Bankruptcy Code or any other applicable law.

N. The Debtors have good and marketable title in and to the Purchased Assets and, subject only to the entry of this Sale Order and receipt of the approvals and consents required by the Purchase Agreement, have the full power and authority to execute all documents contemplated thereby, and the sale of the Purchased Assets by the Debtors has been duly and validly authorized by all necessary action of the Debtors. No consents or approvals other than those provided for in the Purchase Agreement or this Sale Order are required for the Debtors to consummate the transactions described in this Sale Order.

O. The terms of the Buyer's offer are fair and reasonable and the transactions contemplated in this Sale Order are in the best interests of the Debtors' estates.

P. The Buyer would not consummate the transactions contemplated hereby, thus adversely affecting the Debtors, their estates, and their creditors, if either (i) the sale of the Purchased Assets and the assignment of the Assumed Contracts to the Buyer were not free and clear of all defenses, Claims, Liens and Obligations (each as defined in the Purchase Agreement) of any kind or nature whatsoever to the greatest extent permitted under sections 105, 363 and 365 of the Bankruptcy Code and other applicable law, whether such defenses, Claims, Liens and Obligations (collectively, the "Interests") are known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, recorded or unrecorded, contingent or non-contingent,

liquidated or unliquidated, matured or unmatured, noticed or unnoticed, perfected or unperfected, allowed or disallowed, disputed or undisputed, whether accruing prior to or subsequent to the commencement of the Case, whether imposed by agreement, understanding, law, equity or otherwise, relating to, accruing or arising at any time prior to the Closing (as defined in the Purchase Agreement), except the Assumed Liabilities (as defined in the Purchase Agreement), or (ii) the Buyer would, or in the future could, be liable for or subject to any such Interests, including, but not limited to, any claims against the Debtors based upon successor or vicarious liability or otherwise.

Q. The Debtors hereby sell the Purchased Assets free and clear of all Interests of any kind or nature whatsoever, to the greatest extent permitted under sections 105, 363 and 365 of the Bankruptcy Code and other applicable law, whether such Interests are known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, recorded or unrecorded, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, noticed or unnoticed, perfected or unperfected, allowed or disallowed, disputed or undisputed, whether accruing prior to or subsequent to the commencement of the Case, whether imposed by agreement, understanding, law, equity or otherwise, relating to, accruing or arising at any time prior to the Closing, except for the Assumed Liabilities, because, in each case, one or more of the standards set forth in section 363(f) of the Bankruptcy Code have been satisfied. Those non-debtor parties with interests in the Purchased Assets who did not object, or who withdrew their objections, to the Sale or the Sale Motion are deemed to have consented to the Sale pursuant to sections 363(f)(2) and 365 of the Bankruptcy Code. Except as otherwise set forth herein, those non-debtor parties with interests in the Purchased Assets who did object fall within one or more of the other subsections of Bankruptcy Code section 363(f) and 365. Accordingly, except as set



forth in this Sale Order, all persons having Interests of any kind or nature whatsoever against or in any of the Purchased Assets shall be forever barred, estopped and permanently enjoined from pursuing or asserting such Interests against the Purchased Assets, the Buyer or any of its assets, property, successors or assigns.

R. The Buyer is not a successor to, or otherwise liable for, the liabilities, debts or obligations of Debtors under any theory of law or for any purpose, and all creditors of Debtors and parties who received notice in the Case are enjoined from taking action against Buyer or the Purchased Assets, other than as specifically set forth in the Purchase Agreement with respect to the Assumed Liabilities. Without in any way limiting the foregoing, the Buyer shall not be deemed a successor employer under the Worker Adjustment and Retraining Notification (WARN) Act, any similar state or local law or any collective bargaining agreement or other labor or employment agreement.

S. At the Closing, the Debtors may assume the Assumed Contracts, identified prior to Closing, and assign each of them to the Buyer or its designee pursuant to sections 363 and 365 of the Bankruptcy Code and this Sale Order notwithstanding any anti-assignment clause or other similar provision in the Assumed Contracts, as provided by section 365(f) of the Bankruptcy Code. The assumption and assignment of the Assumed Contracts is in the best interests of the Debtors and their estates, creditors and other parties in interest, representing the reasonable exercise of sound and prudent business judgment by the Debtors. The Buyer and the Debtors have provided evidence of adequate assurance of future performance by the Buyer under the Assumed Contracts.

T. The cure amount for the Assumed Contracts, if any, is set forth in the Notice of Assumption and Assignment (collectively, the “Cure Amounts”), and are the sole amounts

necessary to cure all monetary defaults and pay all actual pecuniary losses with respect to the Assumed Contracts under sections 365(b)(1)(A) and (B) and 365(f)(2)(A) of the Bankruptcy Code. The Buyer shall pay the Cure Amounts for the Assumed Contracts.

U. Pursuant to section 365 of the Bankruptcy Code, upon payment of the Cure Amounts, the Buyer shall have (i) cured and/or provided adequate assurance that it will cure any monetary default under any of the Assumed Contracts, and (ii) provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default under any of the Assumed Contracts.

V. The conditions of section 363(f) of the Bankruptcy Code have been satisfied in full. The transfer of the Purchased Assets to the Buyer shall be a legal, valid and effective transfer of the Purchased Assets and shall vest the Buyer at Closing with all right, title and interest of the Debtors in and to the Purchased Assets, free and clear of all Interests of any kind or nature whatsoever, to the greatest extent permitted under sections 105, 363 and 365 of the Bankruptcy Code and other applicable law, whether such Interests are known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, recorded or unrecorded, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, noticed or unnoticed, perfected or unperfected, allowed or disallowed, disputed or undisputed, whether accruing prior to or subsequent to the commencement of the Case, whether imposed by agreement, understanding, law, equity or otherwise, relating to, accruing or arising at any time prior to the Closing, except for the Assumed Liabilities.

W. The transfer of the Purchased Assets free and clear of all Interests will not result in any undue burden or prejudice to the holders of such Interests, as all such Interests shall attach to the net proceeds of the sale of the Purchased Assets received by the Debtors in the order of

their priority, with the same validity, force and effect which they now have against the Purchased Assets and subject to any claims and defenses the Debtors may possess with respect thereto. All persons having or holding Interests of any kind or nature whatsoever against or in the Purchased Assets shall be forever barred, estopped and permanently enjoined from pursuing or asserting such Interests in or against the Buyer, any of its assets, property, successors or assigns or against the Purchased Assets.

X. The Buyer is purchasing only the Purchased Assets and is not assuming any obligations other than the Assumed Liabilities identified in the Purchase Agreement, if any.

Y. The transactions contemplated under this Sale Order do not amount to a consolidation, merger or *de facto* merger of either the Buyer or the Debtors and/or their estates, particularly as there is no substantial continuity between the Buyer and the Debtors, no continuity of enterprise between the Buyer and the Debtors and the Buyer is not a mere continuation of either the Debtors or their estates.

Z. Given all of the circumstances of the Case and the Purchase Price to be received from the Buyer under this Sale Order, the proposed Sale of the Purchased Assets to the Buyer constitutes a reasonable and fair exchange of consideration and reasonable and sound exercise of the Debtors' business judgment, and should be approved.

AA. All findings of fact and conclusions of law announced by the Court at the Sale Hearing are incorporated herein.

BB. Time is of the essence in consummating the Sale. In order to maximize the value of the Purchased Assets, it is essential that the Sale occur promptly. Accordingly, there is cause to waive the stays contemplated by Bankruptcy Rules 6004(h) and 6006(d).

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

**General Provisions**

1. The Sale Motion is GRANTED, as set forth herein.
2. All objections to the Sale Motion or to the relief granted herein that have not been withdrawn, waived or settled as announced to the Court at the Sale Hearing or by stipulation filed with the Court, and all reservations of rights included therein, are hereby denied and overruled on the merits, except as expressly provided herein.
3. Notice of the Sale Hearing was good, sufficient, fair and adequate under the circumstances, provided to all parties in interest entitled to receive notice and complied in all respects with 11 U.S.C. § 102(1) and Bankruptcy Rules 2002, 6004 and 6006.
4. The provisions of 11 U.S.C. § 363(n) have not been violated.

**Approval of the Sale Transaction**

5. The Buyer is hereby designated as the Successful Bidder for the Purchased Assets. The Purchase Agreement is approved in its entirety. The sale of the Purchased Assets and the assumption and assignment of the Assumed Contracts to the Buyer, pursuant to the terms of the Purchase Agreement, is approved pursuant to sections 105, 363 and 365 of the Bankruptcy Code, and the Debtors and the Buyer and their affiliates, officers, directors, employees and agents are hereby authorized and directed to take such actions as are necessary to consummate and implement the Sale Transaction as contemplated in the Purchase Agreement and this Sale Order.
6. The Debtors, as well as their affiliates, officers, directors, employees and agents, are hereby authorized and directed to execute and deliver all agreements, instruments and

documents that may be reasonably necessary or desirable to consummate the Sale Transaction and effectuate the provisions of the Purchase Agreement and this Sale Order and to take such further actions as may reasonably be requested by the Buyer for the purpose of selling, assigning, transferring, granting, conveying, conferring and delivering to the Buyer, or transferring to the Buyer's possession, any or all of the Purchased Assets and Assumed Contracts, or as may be necessary or appropriate to make effective the transactions contemplated by the Purchase Agreement and this Sale Order, all without further order of this Court.

**Transfer of the Purchased Assets**

7. Pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors are hereby authorized to fully assume, perform under, consummate and implement the Purchase Agreement, together with such additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and to take all further actions as may reasonably be requested by Buyer for the purpose of assigning, transferring, granting conveying and conferring the Purchased Assets to Buyer, or as may be necessary or appropriate to the performance of the obligations contemplated by the Purchase Agreement and this Sale Order.

8. The transfer of the Purchased Assets shall be deemed for all purposes to constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law and no damages may be assessed against the Buyer or any other party pursuant to section 363(n) of the Bankruptcy Code.

9. The Purchased Assets shall be transferred to Buyer and upon the Closing shall be free and clear of all Interests of any kind or nature whatsoever, whether such Interests are known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, recorded or

unrecorded, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, noticed or unnoticed, perfected or unperfected, allowed or disallowed, disputed or undisputed, whether accruing prior to or subsequent to the commencement of the Case, whether imposed by agreement, understanding, law, equity or otherwise, relating to, accruing or arising at any time prior to the Closing, and all such Interests of any kind or nature whatsoever shall attach to the net cash proceeds of the Sale Transaction in the order of their priority, with the same validity, force and effect that they now have as against the Purchased Assets, subject to any claims and defenses the Debtors may possess with respect thereto that were not previously waived. The Debtors will retain the sale proceeds in escrow, and will not distribute, disburse, or use the net proceeds absent further Order of this Court. Upon the Closing, the Buyer shall be vested with all of the rights, title and interest of the Debtors and their estates in and to the Purchased Assets.

10. Buyer is not a successor to, or otherwise liable for, the liabilities, debts or obligations of Debtors, any receivers of the Debtors, or any of their predecessors, under any theory of law or for any purpose, other than as specifically set forth in the Purchase Agreement with respect to the Assumed Liabilities.

11. Except with respect to the Assumed Liabilities set forth in the Purchase Agreement, all persons or entities holding Interests of any kind or nature with respect to the Purchased Assets are hereby barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing such Interests against the Buyer, its successors or assigns, or the Purchased Assets. This Sale Order is and shall be effective as a determination that all such Interests shall be and are, without further action by any person or entity, released with respect to the Purchased Assets as of the Closing.

12. All persons, utilities and corporations are hereby prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer all of their right, title and interest in the Purchased Assets to the Buyer as contemplated by the Purchase Agreement.

13. The terms and provisions of the Purchase Agreement, together with the terms and provisions of this Sale Order, shall be binding in all respects upon the Debtors, their estates, creditors and officers, and Buyer and its affiliates, successors and assigns, including any trustee that may be appointed in this Case (including if this Case is converted to Chapter 7 of the Bankruptcy Code) and any affected third parties, including, but not limited to, entities asserting claims against, or Interests in, the Debtors' estates or the Purchased Assets.

14. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of this Court, provided that any such modification, amendment or supplement is not material, and is agreed to by the Debtors and Buyer in writing.

15. This Sale Order, the Purchase Agreement and any other Transaction Document (as defined in the Purchase Agreement) shall not be amended, modified, discharged, rejected or otherwise affected by any Chapter 11 plan confirmed in this Case, any conversion of this Case, or any other order entered in this Case, unless expressly consented to by the Buyer in writing.

**Assumption and Assignment of Assumed Contracts to the Buyer**

16. Pursuant to sections 105(a) and 365 of the Bankruptcy Code, and subject to and conditioned upon the Closing, the Debtors' assumption and assignment to the Buyer of the Assumed Contracts is hereby approved, and the requirements of section 365(b)(1) of the Bankruptcy Code with respect thereto are hereby deemed satisfied. The Debtors and/or the

Buyer may exclude any contract from the list of Assumed Contracts at any time prior to the Closing. The Debtors shall notify each non-debtor party to any such excluded contract by written notice mailed within five (5) business days following the Closing.

17. The Debtors are hereby authorized and directed, in accordance with sections 105(a) and 365 of the Bankruptcy Code, to (a) assume and assign to the Buyer, effective upon the Closing, the Assumed Contracts free and clear of all Interests of any kind or nature whatsoever, and (b) execute and deliver to the Buyer such agreements, documents or other instruments as may be necessary to sell, assign, transfer, convey and deliver the Assumed Contracts to the Buyer.

18. The Assumed Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Buyer in accordance with their respective terms, notwithstanding any provision in any such Assumed Contract that prohibits, restricts or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the Assumed Contracts following such assignment to the Buyer.

19. All defaults or other obligations of the Debtors under any Assumed Contract (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) shall be deemed cured upon payment at the Closing, or as soon thereafter as practicable, of the Cure Amount with respect to each Assumed Contract.

20. Except for the obligation to pay the Cure Amounts and any obligations of the Buyer arising after Closing, each non-debtor party to an Assumed Contract hereby is forever barred, estopped and permanently enjoined from asserting against the Debtors or the Buyer, any



default, whether declared or undeclared, or known or unknown; or, against the Buyer, any counterclaim, defense, setoff or any other claim asserted or assertable against the Debtors, with respect to any Assumed Contract.

21. Any provision in an Assumed Contract that purports to prohibit or condition the assignment of such Assumed Contract or allow the non-debtor party to such Assumed Contract to terminate, recapture, impose any penalty, condition a renewal or extension, or modify or limit any term or condition upon the assignment of such Assumed Contract, is hereby deemed to be an unenforceable anti-assignment provision and shall be void and of no force and effect. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Buyer of the Assumed Contracts have been satisfied and, except as set forth in this Sale Order or in any other order issued by this Court, all counterparties to such Assumed Contracts shall be deemed to have consented to the assignment to Buyer as contemplated by section 365(c) of the Bankruptcy Code. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, the Buyer shall be fully and irrevocably vested with all rights, title, privilege and interest of the Debtors in and to the Assumed Contracts.

22. Upon the Closing, the Buyer shall be deemed to be substituted for the Debtors as a party to the applicable Assumed Contracts, and the Debtors shall be relieved from all liabilities with respect to such Assumed Contracts arising after the Closing.

23. Buyer's payment of the Cure Amount (if any) shall, with respect to each Assumed Contract, (a) effect a cure of all monetary defaults, (b) compensate the non-debtor party to such Assumed Contract for any actual pecuniary loss resulting from such defaults, and (c) together

with the assumption of the Assumed Contracts by the Buyer, constitute adequate assurance of future performance thereof.

24. The Buyer has provided adequate assurance of its future performance under the Assumed Contracts within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code.

25. The failure of the Debtors or Buyer to enforce at any time one or more of the conditions of any Assumed Contract shall not be a waiver of such term or conditions, or of the Debtors' and Buyer's right to enforce every term and condition of the Assumed Contract.

26. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, all parties to the Assumed Contracts are forever barred and enjoined from raising or asserting against the Buyer or the Purchased Assets any assignment fee, default, breach, claim or pecuniary loss, or condition to assignment, arising under or related to the Assumed Contracts existing as of the Closing Date or arising by reason of the Closing.

#### **Additional Provisions**

27. Buyer is a party in interest and shall have the ability to appear and be heard on all issues related to or otherwise connected to this Order, the various procedures contemplated herein, and any issues related to or otherwise connected to the Sale Transaction.

28. The Purchase Agreement between the Debtors and stalking horse bidder Upstate Service Group, LLC ("USG") dated as of February 13, 2017 is hereby terminated. The Debtors shall immediately return the USG Purchase Deposit in the amount of \$1,000,000.00 to USG. The return of the USG Chapter 11 Deposit in the amount of \$250,000.00 shall be the subject of a further order of this Court.

29. The Backup Bid for the Purchased Assets is a bid of \$16,475,000.00 from Personal Healthcare, LLC (the "Backup Bidder"). A copy of the purchase agreement between the Debtors and the Backup Bidder is attached hereto as **Exhibit 2**.

30. If for any reason the Buyer fails to consummate the Sale Transaction, then the Backup Bidder will be deemed to be the Buyer of the Purchased Assets for the amount of the Backup Bid and the Debtors and the Backup Bidder shall thereupon be authorized and directed to close the Sale Transaction, and the Debtors shall be authorized, but not required, to seek a further order of the Court to that effect.

31. The Backup Bidder shall not be required to pay any additional sum as a Deposit under the terms of the Amended Bidding Procedures. Once the Buyer, or the Buyer's designated operator of the Facilities, is appointed as receiver, the Backup Bidder's Deposit shall be reduced to \$600,000.00. If at any time the Backup Bidder is named the Successful Bidder, the Backup Bidder shall restore its full deposit to \$1,000,000.00 within three business days, and immediately proceed to Closing.

32. USG shall be paid a Break-Up Fee in the amount of \$150,000.00 from the proceeds of the Purchase Price at the Closing.

33. To the greatest extent available under applicable law, the Buyer shall be authorized but not required, as of the Closing, to operate under any license, permit, registration and governmental authorization or approval of the Debtors with respect to the Purchased Assets and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to the Buyer as of the Closing.

34. The Buyer, or the Buyer's designated operator of the Facilities, upon this Sale Order becoming final and no longer subject to any timely filed appeal, or motion for

reconsideration or stay, shall submit the appropriate application to the NYS Department of Health (“DOH”) in support of the Debtors’ request that it be appointed as the temporary receiver of the Facilities pending the Closing; notwithstanding the foregoing, Buyer, or the Buyer’s designated operator of the Facilities, may submit its application to the DOH seeking to be appointed temporary receiver immediately following the entry of this Order.

35. Immediately following the NYS Department of Health’s appointment of Buyer, or Buyer’s designated operator of the Facilities, as the temporary receiver of the Facilities, the Debtors shall file a motion pursuant to 11 U.S.C. § 543(d) seeking to advise the Court of the newly-appointed receiver, and excuse the newly-appointed temporary receiver from compliance with 11 U.S.C. §§ 543 (a), (b) and (c).

36. Nothing in this Sale Order shall transfer or authorize assumption and assignment of the Medicare provider agreement between Folts Home or FAH and the Secretary of the United States Department of Health and Human Services or the Medicaid provider agreement between Folts Home or FAH and the New York State Department of Health (collectively, the “Provider Agreements”) to the Successful Bidder or the Backup Bidder or deem the Provider Agreements Assumed Contracts, absent further order of this Court.

37. To the extent Buyer desires to take assignment of either or both of the Provider Agreements, Debtors shall timely file the appropriate motion or notice with the Court seeking such relief prior to Closing.

38. The Buyer shall have no liability or responsibility for any liabilities or other obligations of the Debtors arising under or related to the Purchased Assets prior to the Closing or any liabilities calculable by reference to the Purchased Assets, or relating to continuing or other conditions existing on or prior to the consummation of the Sale Transaction, which liabilities,

debts and obligations are hereby extinguished insofar as they may give rise to liability, successor or otherwise, against the Buyer.

39. On and after the Closing, except to the extent such Interest is an Assumed Liability pursuant to the Purchase Agreement, each person or entity asserting any Interest in the Purchased Assets is hereby directed to execute such documents and take all other actions as may be reasonably requested by the Debtors or Buyer to release such Interest, as it may have been recorded or otherwise exist. Notwithstanding the foregoing, the failure of any person or entity to comply with the foregoing sentence shall in no way limit the release, discharge and termination of any Interest in the Purchased Assets as otherwise provided by this Sale Order.

40. If any person or entity that has filed financing statements, mortgages, mechanics' liens, lis pendens or other documents or agreements evidencing any Interest in the Purchased Assets (except with respect to those Interests that are Assumed Liabilities pursuant to the Purchase Agreement) shall not have delivered to the Debtors prior to Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction or other releases of such Interests, then, only with regard to the Purchased Assets being acquired by the Buyer pursuant to this Sale Order, the Buyer is hereby authorized to file, register or otherwise record a certified copy of this Sale Order (and file any UCC-3 termination statements) which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of such Interests. This Sale Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state or local government agency, department or office.

41. Each and every federal, state and local government agency or department and all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds and other similar persons may accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by this Sale Order.

42. The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to implement the terms and provisions of this Sale Order.

43. All persons or entities that are presently, or on the Closing Date (as defined in the Purchase Agreement) may be, in possession of some or all of the Purchased Assets are hereby directed to surrender possession of the Purchased Assets to the Buyer on the Closing Date.

44. Article 6 of the Uniform Commercial Code governing Bulk Sale Transfers and comparable state statutes are not applicable to the sale of the Purchased Assets to the Buyer.

45. The Debtors are authorized and directed, upon and in connection with the Closing of the Sale, to change their corporate names, consistent with applicable law, to comply with this Sale Order.

46. No later than three (3) business days after the Closing, the Debtors shall notify the Bankruptcy Court of the Closing and, in response thereto, the Bankruptcy Court shall modify the caption for the Debtors' cases to be as follows:

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In re:

FH-LIQUIDATION, INC., *et al.*,<sup>4</sup>

Debtors.

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Case No. 17-60139  
Chapter 11 (Main Case)  
Case No. 17-60140

Jointly Administered

47. This Court shall retain jurisdiction to (a) enforce and implement the terms and provisions of this Sale Order, all amendments or modifications thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith; (b) compel delivery of the Purchased Assets to the Buyer; (c) compel delivery of the Purchase Price to the Debtors; (d) compel specific performance of the Debtors' and the Buyer's obligations under the Purchase Agreement and this Sale Order; (e) resolve any disputes arising under or related to the Purchase Agreement or this Sale Order; (f) interpret, implement and enforce the provisions of this Sale Order; (g) determine any disputes relating to or concerning the receipt, use, application or retention of the proceeds from the sale of the Purchased Assets or the authority of the Debtors to enter into the Purchase Agreement or to convey the Purchased Assets; (h) determine all disputes concerning any alleged Interests in the Purchased Assets, including the extent, validity, enforceability, priority, and nature of all such alleged Interests; (i) adjudicate any and all issues relating to the Assumed Contracts; and (j) determine and/or adjudicate any disputes concerning any of the injunctive provisions set forth herein.

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<sup>4</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer identification number, are: FH-Liquidation, Inc. (2183) and FAH-Liquidation, Inc. (7237).

48. The Buyer is deemed a buyer in good faith of the Purchased Assets and thus entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code, regardless of whether this Sale Order is modified on appeal or reversed.

49. The Sale Transaction contemplated by this Sale Order is not subject to avoidance pursuant to section 363(n) of the Bankruptcy Code.

50. The Debtors and the Buyer are hereby authorized and directed to take all actions reasonably necessary to effectuate the transactions contemplated by, and the provisions of, this Sale Order, all without the necessity of any further order of the Bankruptcy Court.

51. The provisions of Bankruptcy Rules 6004(h) and 6006(d) shall not apply to stay consummation of the Sale Transaction, and the Debtors and the Buyer are hereby authorized to consummate Sale Transaction subject to the terms of the Purchase Agreement upon entry of this Sale Order.

52. Any appeal seeking to enjoin or stay consummation of the Sale Transaction shall be subject to the appellant depositing or posting a bond in an amount equal to the Purchase Price, pending the outcome of the appeal.

53. The failure specifically to include any particular provisions of the Buyer's offer or the Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Purchase Agreement and Sale Transaction evidenced thereby are hereby authorized and approved in their entirety, as it may be amended or supplemented in accordance with its terms and this Sale Order.

54. This Sale Order: (a) shall be binding in all respects upon all creditors of, and holders of equity interests in, the Debtors (whether known or unknown), any holders of Interests, all non-Debtor parties to the Assumed Contracts, the Buyer and all successors and assigns of the



Buyer, the Debtors and their affiliates, the Debtors' current and past receivers, and any subsequent trustees appointed in the Case or upon a conversion to chapter 7 under the Bankruptcy Code; and (b) the Purchase Agreement shall not be subject to rejection. Nothing contained in any chapter 11 plan confirmed in this Case, or in any related confirmation order, disclosure statement, or order approving disclosure statement shall conflict with or derogate from the provisions of this Sale Order except as expressly provided for herein, this Sale Order and the transactions being in contemplation of, in furtherance of and in connection with such chapter 11 plan.

###

**EXHIBIT 1**

Purchase Agreement with Successful Bidder  
Cedarcare Holdings, LLC

**PURCHASE AGREEMENT**

AGREEMENT made as of the 1st day of June, 2017, by and between Folts Home, a New York not-for-profit corporation ("**Folts Home**"), Folts Adult Home, Inc., a New York not-for-profit corporation ("**FAH**" and, together with Folts Home, jointly referred to herein as "**Sellers**" or "**Debtors**", and each, individually, a "**Debtor**" or "**Seller**"), and Cedarcare Holdings LLC, a New York limited liability company ("**Purchaser**").

**WITNESSETH:**

WHEREAS, Folts Home is the owner and established operator of that certain skilled nursing facility operating as a 163-bed skilled nursing facility located at 100-122 North Washington Street, Herkimer, New York 13350 (the "**Nursing Home**") and owns all of the real property and the personal property associated with the Nursing Home; and

WHEREAS, FAH is the owner and established operator of that certain adult care facility operating as an 80-bed adult care facility located at 104 North Washington Street, Herkimer, New York 13350 (the "**Adult Home**") and owns all of the real property and the personal property associated with the Adult Home; and

WHEREAS, upon each of the described properties owned by Folts Home or FAH are real estate, buildings and improvements comprising a facility which provides skilled nursing care and related services and adult care and related services pursuant to Article 28 of the Public Health Law of the State of New York ("**Article 28**") of the Public Health Law of the State of New York (each of the foregoing described facilities are referred to as a "**Facility**" and, collectively as the "**Facilities**"); and

WHEREAS, the Facilities are currently being operated by receivers HomeLife at Folts, LLC and HomeLife at Folts-Claxton, LLC (collectively, the "**Current Receivers**") that were duly appointed by the New York State Department of Health ("**DOH**") pursuant to Receivership Agreements executed by the DOH, Folts Home, FAH and the Current Receivers; and

WHEREAS, Sellers and the Current Receivers are parties to an Asset Purchase Agreement dated April 17, 2014, which expired on March 1, 2017 (the "**HomeLife APA**"), pursuant to which the Current Receivers proposed to purchase all assets comprising the Facilities. The HomeLife APA does not contain a specified purchase price and closing of the sale transaction is expressly conditioned upon the Current Receivers obtaining consents from the United States Department of Housing and Urban Development ("**HUD**"), the DOH, the New York Office of the Attorney General and the New York State Supreme Court to the proposed transaction; and

WHEREAS, the Current Receivers did not perform under the HomeLife APA, and did not obtain the required consents from the designated government authorities prior to the expiration date of the HomeLife APA; and

WHEREAS, the Sellers filed voluntary petitions for relief commencing cases under chapter 11 of the Bankruptcy Code bearing Case Nos. 17-60139 and 17-60140 (the "**Bankruptcy Cases**") with the United States Bankruptcy Court for the Northern District of New York (the "**Bankruptcy Court**") pursuant to which they intend to sell substantially all of their assets comprising the Facilities pursuant to Sections 105 and 363 of the Bankruptcy Code; and

WHEREAS, in accordance with the terms of this Purchase Agreement (“*Agreement*”), the Purchaser desires to purchase all of the Sellers’ right, title and interest in and to the real estate, business and operations of the Facilities, and all of the other assets used in connection with the operation of the Facilities as more specifically set forth herein and any Assumed Contracts (as defined below) (collectively, with the Facilities, the “*Purchased Assets*”); and

WHEREAS, the parties acknowledge that the Purchaser or the persons or entities designated by the Purchaser to operate the Facilities (the “*Operating Designee(s)*”) must seek the approval of the DOH and receive the CON (as hereinafter defined); however, the receipt of the CON shall not be a condition of Closing as long as Purchaser or Purchaser’s designated operator of the Facilities is appointed as receiver of the Facilities prior to the Closing Date (the “*New Receiver*”) or Purchaser or an affiliate of Purchaser is appointed as receiver for its own account as of the Closing Date pursuant to Section 9.2; and

WHEREAS, on the terms and subject to the conditions set forth in this Agreement, Purchaser desires to purchase from Sellers, and Sellers desire to sell to Purchaser, the Purchased Assets, in a sale approved by order of the Bankruptcy Court authorizing a sale free and clear of all (a) claims, covenants and interests of any kind and nature whatsoever (collectively, the “*Claims*”), (b) any and all mortgages, pledges, security interests, licenses, conditional and installment sale agreements, rights of way, options, rights of first refusal, restrictions, conditions, covenants, liens, claims, liabilities, rights of setoff, rights of recoupment, charges, hypothecations and encumbrances whatsoever (collectively, “*Liens*”), and (c) all debts, liabilities, successor liability, rights of setoff, rights of recoupment, obligations and contractual rights and claims, claims of any federal or state agency with jurisdiction over enforcement and compliance with state and local healthcare laws, rules and regulations, claims arising under any *qui tam* or “whistle blower” action, including but not limited to any action brought pursuant to the False Claims Act or the federal Anti-Kickback statute (collectively, the “*Obligations*”) to the greatest extent permitted under sections 105, 363 and 365 of the Bankruptcy Code and applicable law; whether such Claims, Liens or Obligations are known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, recorded or unrecorded, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, noticed or unnoticed, perfected or unperfected, allowed or disallowed, disputed or undisputed, whether accruing prior to or subsequent to the commencement of the Bankruptcy Cases, whether imposed by agreement, understanding, law, equity or otherwise, relating to, accruing or arising at any time prior to the Closing; and

WHEREAS, Purchaser also desires to assume, and Sellers desire to assign and transfer to Purchaser, the Assumed Liabilities (as hereinafter defined).

NOW, THEREFORE, in consideration of the foregoing and their respective representations, warranties, covenants and undertakings herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sellers and Purchaser hereby agree as follows:

1. PURCHASE AND SALE OF ASSETS

1.1. Purchased Assets. Subject to the terms and conditions of this Agreement, on the Closing Date (as defined in Section 3), the Sellers shall sell to Purchaser all of the Sellers’

right, title and interest in, to and under the Purchased Assets, on an “as-is, where-is, with-all-faults” basis, free and clear of all Liens, Claims and Obligations of every kind and nature including, without limitation, the following assets:

(a) fee simple title to the real estate (including the buildings and improvements) comprising the Facilities as described above, and further defined and described in Schedule 1.1(a) hereto (the “**Real Property**”);

(b) all of Sellers’ rights under any Real Estate Leases listed on Schedule 1.1(b) (the “**Real Estate Leases**”);

(c) all furniture, fixtures, furnishings, machinery, servers, equipment, supplies (including all of the Sellers’ inventory), artwork, and all other tangible property owned by Sellers or currently located at the Facilities or used by Sellers in the conduct of their businesses, including, without limitation, the items listed on Schedule 1.1(c), together with any vehicles, if any, owned by Sellers, and any capital assets owned by Sellers;

(d) all of Sellers’ rights and interests under executory contracts and agreements and unexpired leases designated by Purchaser in its sole discretion and listed on Schedule 1.1(d) hereto, subject to any applicable restrictions on assignment of provider agreements in which case any such agreements shall be assumed by the Sellers and assigned to Purchaser (collectively, the “**Assumed Contracts**”);

(e) all of Seller’s accounts receivables, reimbursement amounts, universal settlement proceeds, amounts paid with respect to reimbursement rate changes, rights to payment and claims of every kind and nature and the proceeds thereof (but not including those accounts receivable that arose from services provided by the Current Receivers) (the “**Accounts Receivable**”);

(f) the names Folts Home and Folts Adult Home-Claxton;

(g) all permits, licenses, approvals, franchises, notices, registrations and authorizations issued by any governmental authority necessary or desirable to operate the Facilities (and pending applications for the foregoing) (collectively, “**Permits**”), including those Permits listed on Schedule 1.1(g), excluding only such Permits to the extent not legally transferable;

(h) copies of all books and records of the Facilities (the “**Business Records**”), title to which will vest in the Purchaser or Operating Designee(s) upon such person’s obtaining a Certificate of Need (a “**CON**”) from the DOH, but access to which will be granted to the Purchaser or Operating Designee(s) as applicable prior to the Closing Date;

(i) any and all computer applications, software, electronic medical records programs, and website, whether owned or licensed, whether for general business usage (e.g., accounting, word processing, graphics, spreadsheet analysis, etc.) or specific, unique-to-the-business usage and all computer operating, security or programming software, owned or licensed by Sellers;

(j) all telephone numbers, fax numbers, email addresses and internet domain names as set forth on Schedule 1.1(j);

(k) Resident Records, upon satisfaction by Purchaser and Sellers, at Purchaser's sole expense, of all applicable requirements relating to the confidentiality and transferability of such Resident Records and their maintenance and storage, which satisfaction is an affirmative requirement of this Agreement and all employee personnel records for past and current employees to the extent existing. "**Resident Records**" means any documents containing information concerning medical, health care or behavioral health services provided to, or the medical, health care or behavioral health of, any individual, or that are otherwise subject to regulation under applicable law, title to which will vest in the Purchaser or Operating Designee upon such person's obtaining a CON. Sellers and Purchaser shall execute a Medical Records Transfer and Custody Agreement with regard to the Resident Records at Closing;

(l) all plans and surveys, including without limitation, those related to utilities, easements and roads, "as built" plans, plants, specifications, landscaping, engineers' drawings and architectural renderings and similar items owned by the Sellers and in the Sellers' possession or reasonable control relating to the Facilities;

(m) all insurance proceeds and insurance proceeds receivable arising from any claim made under Sellers' insurance policies with respect to the Purchased Assets but excluding insurance proceeds and proceeds receivable in respect of tort liabilities such as medical malpractice claims and other Excluded Liabilities;

(n) all rights of Sellers under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with employees, transferred employees and agents of Sellers or with third parties to the extent relating to the Sellers' businesses or the Purchased Assets;

(o) all rights of Sellers under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers, service providers and contractors other than any warranties, representations and guarantees pertaining to any Excluded Assets;

(p) all other assets of every kind and nature (tangible or intangible, known or unknown, liquidated or unliquidated) located at the Facilities or used or useful in conjunction with the operation of the Facilities;

(q) all security, vendor, utility or other deposits belonging to Sellers, to the extent they are not Excluded Assets;

(r) claims and entitlements of any kind belonging to the Sellers; and

(s) Medicare and Medicaid provider agreements only to the extent expressly assumed by the Purchaser at the Closing.

1.2. Excluded Assets. Notwithstanding anything to the contrary in this Agreement or any document or instrument delivered pursuant hereto, the Purchased Assets do not include any of the following properties and assets of Sellers (the "**Excluded Assets**"), none of which shall be conveyed to Purchaser:

- (a) all contracts, leases or agreements other than the Assumed Contracts (the “*Excluded Contracts*”);
- (b) any accounts receivable that arise from services provided by the Current Receivers and any funds that may be left at the end of the receivership of the Current Receivers after payment of DOH and other creditors of the Current Receivers;
- (c) related party and insider debts and/or accounts receivable;
- (d) all personal property of the persons residing at the Facilities (the “*Residents*”) other than deposits being held for the Resident’s benefit;
- (e) all tax refunds, if any, due the Sellers;
- (f) all actions arising under Chapter 5 of the Bankruptcy Code with respect to the Purchased Assets;
- (g) all funds deposited with the United States District Court for the Northern District of New York in connection with the interpleader action captioned *FRNC, LLC et al. v. HomeLife at Folts, LLC et al.*, Case No. 6:15-cv-00812 (GLS-TWD); and
- (h) all funds in any escrow, sinking fund or reserve account held by or for the benefit of the United States Department of Housing and Urban Development (“*HUD*”) in conjunction with the mortgage or mortgages held by HUD which encumber the Facilities.

1.3. Assumption of Liabilities. Subject to the terms and conditions of this Agreement and on the basis of the representations, warranties, covenants and agreements herein contained, as of the Closing Date, Purchaser shall assume, and Purchaser shall hereafter pay, perform and discharge when due, only the following liabilities of Sellers as listed below (collectively, the “*Assumed Liabilities*”):

- (a) all cure obligations which must be paid to counterparties to the Assumed Contracts pursuant to section 365(b)(1) of the Bankruptcy Code [except to the extent such cure obligations conflict with Sections 1.4(b) and/or 1.4(j) of this Agreement];
- (b) all liabilities under the Assumed Contracts first arising after the Closing Date;
- (c) all liabilities under the Permits assumed by Purchaser first arising after the Closing Date; and
- (d) notwithstanding anything to the contrary set forth herein, as provided in paragraph 15 of the Order Pursuant to Sections 363 and 105 of the Bankruptcy Code: (A) (1) Setting Deadlines and Approving Requirements and Procedures for Interested Parties to Submit Competing Bids for Substantially All Assets; (2) Approving Form of Purchase Agreement; (3) Scheduling an Auction; (4) Setting Hearing Date to Approve Sale of Assets to Successful Bidder; and (5) Approving Procedures with Respect to the Assumption and

Assignment of Certain Executory Contracts and Unexpired Leases; and (B) Approving Form and Manner of Notice (Bankruptcy Case No. 17-60140, Docket No. 82) (“**Bid Order**”), Purchaser shall have until the Closing to exclude any executory contract or unexpired lease from the annexed schedule of Assumed Contracts, and Purchaser shall have no liability whatsoever with respect to any such executory contract or unexpired lease excluded prior to Closing and such contract shall be one of the Excluded Contracts hereunder.

1.4. Excluded Liabilities. Except as specifically provided in Section 1.3, Purchaser shall not assume or be deemed to assume, and shall have no responsibility or obligation with respect to, any liabilities, Liens, Claims against or Obligations of, Sellers, Current Receivers, or of any predecessor or other affiliate of Sellers or Current Receivers, of any kind or nature, whether such liabilities, Claims, Liens or Obligations are known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, recorded or unrecorded, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, noticed or unnoticed, perfected or unperfected, allowed or disallowed, disputed or undisputed, whether accruing prior to or subsequent to the commencement of the Bankruptcy Cases, whether imposed by agreement, understanding, law, equity or otherwise, relating to, accruing or arising at any time prior to the Closing (the “**Excluded Liabilities**”). The Excluded Liabilities shall include (but shall not be limited to):

(a) any liabilities in respect of or relating to or otherwise arising, whether before, on, or after the Closing Date, out of, or in connection with the Excluded Assets;

(b) any claims for federal or state retroactive adjustments, unpaid assessments, or recoupment amounts, to the extent applicable to periods ending on or before the earlier of the Closing Date or the date the New Receiver is appointed, including those arising in connection with Sellers’ or any other receiver’s Medicare and Medicaid provider numbers, managed care, private pay and related participation or any other third party healthcare payor program.

(c) all accounts payable and loans payable arising before the earlier of the date the New Receiver is appointed or the Closing Date;

(d) any other liabilities or obligations related to the Purchased Asset and/or the ownership or operation of the Facilities, arising from or relating to any period prior to the date the New Receiver is appointed or the Closing Date, whichever is earlier;

(e) any and all liabilities arising from employment of employees by Sellers, the Current Receivers, or any predecessors thereof prior to the Closing Date, including COBRA claims, relating to the termination of employment of any employee employed prior to the earlier of the date the New Receiver is appointed or the Closing Date, and any other obligation of every kind or description owing to employees arising out of their employment at the Facilities prior to the Closing Date, including, but not limited to, any benefit accruals, wage claims, liabilities for discrimination claims or contract claims, and retiree benefits and any withdrawal liability under ERISA Section 4204 or related statutes;

(f) the Excluded Contracts;



(g) any gain on sale and any recapture that may be recognized under the Medicare or the New York Medicaid Program and other third party payor programs based upon the consummation of the transactions contemplated herein;

(h) any liabilities of Sellers to any person related or affiliated with the Sellers;

(i) the liabilities of Sellers relating to the retention of professionals with respect to the Bankruptcy Case and the transactions contemplated herein;

(j) any reimbursement, overpayment liabilities and obligations (including interest and penalties thereon) of Sellers to Medicaid or Medicare or any other person or entity arising out of or related to payment for services rendered prior to the appointment of the New Receiver or the Closing Date, whichever is earlier, including those liabilities or obligations arising out of an audit (or similar procedure then in effect) or any kind of review of information submitted or claim made by or on behalf of Sellers, including with in connection with (i) cost reports; (ii) net available monthly income; (iii) case mix index adjustments; or (iv) MDS submissions; and

(k) all other liabilities (interpreted in the broadest sense) of Sellers that are not Assumed Liabilities.

## 2. PURCHASE PRICE.

2.1 In exchange for the Purchased Assets, Purchaser agrees to pay to Sellers the following consideration (the "**Total Consideration**");

(a) The sum of Sixteen Million Six Hundred Thousand Dollars (\$16,600,000.00) (the "**Purchase Price**"), subject to any adjustments or credits set forth in this Agreement, payable as follows:

(i) A good faith deposit equal to ten percent (10%) in the event Purchaser is determined to be the successful bidder at the auction payable by bank, cashier's or certified check or wire transfer to the order of Sellers (the "**Purchase Deposit**"), upon close of the auction, which Purchase Deposit shall be refundable to Purchaser only if this Agreement fails to Close due to a Seller breach ("**Seller Default Event**") or if this Agreement is terminated because Purchaser is not the successful bidder; and

(ii) The balance of the Purchase Price less the Purchase Deposit, subject to any adjustments set forth in this Agreement, by bank, cashier's or certified check(s) or wire transfer to the order of Sellers or by wire transfer to an account designated by Sellers to Purchaser at Closing.

2.2 The Purchase Price shall be allocated among the Purchased Assets at Closing as designated by the Bankruptcy Court, provided that no less than Five Million Dollars (\$5,000,000.00) shall be allocated to the Nursing Home assets. Upon the entry of a Final Sale Order (as hereinafter defined) approving the sale of the Purchased Assets to Purchaser, the Purchase Deposit shall become non-refundable (subject to Section 12.6 hereof) and may be retained by the Sellers as liquidated damages, and not as a penalty, in the event of a breach of this Agreement by the

Purchaser, or in the event that Purchaser fails to Close as required by this Agreement, as the Sellers' sole and exclusive damages.

3. **CLOSING.** Subject to the satisfaction (or waiver, as applicable) of all conditions included in this Agreement, the closing of the purchase and sale of the Purchased Assets and the Assumed Liabilities, and the assumption and assignment of the Assumed Contracts, as contemplated hereunder (the "**Closing**") shall take place no later than sixty (60) days following (i) the entry of the Final Sale Order and (ii) the first to occur of (a) the appointment of Purchaser or an affiliate of Purchaser as the New Receiver, (b) the appointment of Purchaser or an affiliate of Purchaser as receiver under Section 9.2 hereof, or (c) receipt of the CON. The Closing will be held at the offices of Sellers' counsel on such date, or such other date and time as the parties shall mutually agree which is materially within the time constraints set forth above. The date on which the Closing occurs is referred to herein as the "**Closing Date**".

3.1 **Sellers' Closing Deliverables.** At the Closing, Sellers shall deliver or cause to be delivered to Purchaser:

(a) bargain and sale Deeds transferring title to the real properties upon which the Facilities are located (the "**Deeds**");

(b) a duly executed Bill of Sale for the Purchased Assets, substantially in the form attached hereto as **Exhibit B**;

(c) a duly executed Assignment and Assumption Agreement, in form and substance reasonably satisfactory to Sellers, which provides for the assignment by the Sellers and the assumption by the Purchaser of all of the Assumed Liabilities and Assumed Contracts, substantially in the form attached hereto as **Exhibit C**;

(d) a certified copy of the final and non-appealable order of the Bankruptcy Court authorizing and approving the sale of the Purchased Assets to Purchaser free and clear of Liens, Claims and Obligations to the greatest extent permitted under Sections 105 and 363 of the Bankruptcy Code and applicable law, and approving the assumption and assignment of the Assumed Contracts to Purchaser pursuant to Section 365 of the Bankruptcy Code, subject to Purchaser's ability to remove any executory contract or unexpired lease from the list of Assumed Contracts prior to the Closing, as set forth in Paragraph 1.3(d), which order shall not be subject to a timely filed appeal or motion to rehear or reargue and shall not have been stayed, vacated or otherwise rendered ineffective (the "**Final Sale Order**"). The Final Sale Order shall be in form and content reasonably acceptable to Purchaser in its absolute discretion and shall contain, among other terms, the following provisions:

(i) that the terms and conditions of the sale of the Purchased Assets to Purchaser are approved;

(ii) that the sale of the Purchased Assets to Purchaser is free and clear, other than for Assumed Liabilities, of any and all Liens, Claims and Obligations of any type or nature whatsoever pursuant to section 363(f) of the Bankruptcy Code whether such Claims, Liens or Obligations are known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, recorded or unrecorded, contingent or non-contingent, liquidated or unliquidated,

matured or unmatured, noticed or unnoticed, perfected or unperfected, allowed or disallowed, disputed or undisputed, whether accruing prior to or subsequent to the commencement of the Bankruptcy Cases, whether imposed by agreement, understanding, law, equity or otherwise, relating to, accruing or arising at any time prior to the Closing;

(iii) that Sellers hold good and marketable title to the Purchased Assets and have the authority to transfer the Purchased Assets to Purchaser;

(iv) that the Total Consideration constitutes fair value for the Purchased Assets;

(v) that Purchaser acted in good faith in all respects and that Purchaser and its assignees and designees are entitled to the protections of section 363(m) of the Bankruptcy Code;

(vi) that notice of the transactions contemplated hereby was good and sufficient and was provided timely to all parties in interest in the Bankruptcy Case who are entitled or required to receive notice pursuant to the Federal Rules of Bankruptcy Procedure, the local rules of the Bankruptcy Court, or other applicable law;

(vii) that Sellers are authorized to assume and assign to Purchaser each of the Assumed Contracts; *provided, however*, that Purchaser shall have sole responsibility of paying the cure obligations required to be paid in accordance with section 365(b)(1)(A) of the Bankruptcy Code and Section 1.3 of this Agreement except to the extent such cure obligations conflict with Sections 1.4(b) and/or 1.4(j) of this Agreement;

(viii) that Sellers are authorized and directed to consummate the sale of the Purchased Assets and to execute and deliver all agreements, instruments and documents reasonably necessary or desirable to consummate the sale of the Purchased Assets and to effectuate the provisions of the Final Sale Order;

(ix) that the sale process conducted by Sellers and/or their agent was non-collusive, fair and reasonable and was conducted in good faith;

(x) that Purchaser and Sellers did not engage in any conduct which would allow the transactions contemplated by this Agreement to be set aside pursuant to section 363(n) of the Bankruptcy Code;

(xi) that Purchaser is not a successor to, or otherwise liable for, the liabilities, debts or obligations of Sellers under any theory of law or for any purpose, other than as specifically set forth in this Agreement with respect to the Assumed Liabilities;

(xii) that, pursuant to section 105 of the Bankruptcy Code, all creditors of Sellers are enjoined from taking any actions against Purchaser or the Purchased Assets except in connection with Assumed Liabilities expressly assumed by Purchaser herein;

(xiii) that Purchaser shall not be deemed a successor employer to Sellers for purposes of any liability arising under the WARN Act, any similar state or local law, or any collective bargaining agreement or other labor or employment agreement;

(xiv) that the Final Sale Order is binding upon any successors to Sellers, including any trustee that may be appointed in the Bankruptcy Case (including if such case is converted to a case under Chapter 7 of the Bankruptcy Code); and

(xv) the Final Sale Order, this Agreement and any other Transaction Document shall not be amended, discharged or modified, rejected or otherwise affected by any Chapter 11 plan confirmed in these Bankruptcy Cases, any conversion of the Bankruptcy Cases, or any other order entered in the Bankruptcy Cases, unless expressly consented to by the Purchaser in writing.

(e) all documents necessary or desirable to transfer, to the extent Purchaser desires such transfer, the Medicare and Medicaid provider agreements to Purchaser and managed care contracts, and in connection therewith, Sellers shall ensure that the Current Receivers promptly execute and deliver any and all documents necessary or desirable to effectuate any such transfer of the Medicare and Medicaid provider agreements and managed care contracts to Purchaser.

(f) all other instruments of conveyance and transfer executed by Sellers, in form and substance reasonably acceptable to Purchaser, as may be necessary or desirable to convey the Purchased Assets and Assumed Contracts to Purchaser free and clear of all Liens, Claims and Obligations including certificates of title for vehicles, if any;

(g) an officer's certificate, dated as of the Closing Date, executed by duly authorized officers of the Sellers certifying that the conditions set forth in Section 10 have been satisfied;

(h) duly executed certificates from each Seller pursuant to Internal Revenue Code Section 1.1445-2(b) that such Seller is not a foreign person within the meaning of Internal Revenue Code Section 1445;

(i) duly executed counterparts of any other customary bills of sale, endorsements, consents, assignments and other good and sufficient instruments of conveyance and assignment as Sellers and Purchaser and their respective counsel shall deem reasonably necessary or desirable to vest in Purchaser all rights, title and interest in, to and under the Purchased Assets, Assumed Contracts and Assumed Liabilities, as well as physical possession of all the Purchased Assets;

(j) copies of the Business Records;

(k) written approval, if required pursuant to sections 510 and 511 of the New York Not-For-Profit Corporation Law, duly issued by the New York State Office of the Attorney General and, if necessary, the New York State Supreme Court for the County of Herkimer, approving the sale of the Purchased Assets to Purchaser;

(l) a closing settlement statement in form and substance satisfactory to the parties hereto, regarding certain Closing matters, including any adjustments to the Purchase Price, executed by Sellers;

(m) consents to assignments from third parties relating to any Assumed Contracts that require such consents;

(n) legal, valid and binding UCC-3 termination statements, mortgage discharges, or other documentation (in form and substance reasonably satisfactory to Sellers, Purchaser and their respective counsel), in recordable form, sufficient to release any Lien against the Purchased Assets or to terminate any recordation or filing in respect thereof; and

(o) such other documents or order as may be deemed required or desirable by Purchaser to ensure and memorialize that the Purchased Assets are being transferred and that Purchaser or its Operating Designee(s) will be operating free and clear of any Liens, Claims and Obligations including those relating to or arising from the operation of any operator or receiver of the Facilities prior to the Closing Date or the commencement of the operations of the New Receiver.

3.2 Purchaser's Closing Deliverables. At the Closing, Purchaser shall deliver or cause to be delivered to Sellers:

(a) the Purchase Price, in cash, less the amount of the Purchase Deposit and any interest on the Deposit;

(b) a duly executed Assignment and Assumption Agreement, in form and substance reasonably satisfactory to Sellers, which provides for the assignment by the Sellers and the assumption by the Purchaser of all of the Assumed Liabilities and Assumed Contracts;

(c) duly executed counterparts of the instruments set forth in Section 3.1, as applicable;

(d) an officer's certificate, dated as of the Closing Date, executed by duly authorized officers of the Sellers certifying that the conditions set forth in Section 11 have been satisfied;

(e) checks, payable to, and in form satisfactory to, the applicable recipients, for all deed stamps, title and survey fees, recording fees and similar charges in connection with the Closing except to the extent exempted pursuant to Section 1146 of the Bankruptcy Code;

(f) satisfactory evidence of (i) the appointment of the New Receiver, (ii) the appointment of Purchaser or an affiliate of the Purchaser as receiver for its own account as of the Closing Date, or (iii) approval of the CON(s) for the Purchaser; and

(g) such other documents as Sellers' counsel may reasonably request that are necessary to evidence or consummate the transactions contemplated by this Agreement.

4. ADJUSTMENTS.

4.1 Provided that the Purchaser closes the transaction and the Facilities have been operated by an affiliate of Purchaser as the New Receiver, there shall be no adjustments at Closing. The period of time between the appointment of the New Receiver and the Closing (or the earlier termination of this Agreement) shall be referred to as the "New Receivership Period". If Closing occurs without Purchaser having operated the facilities as New Receiver, then at or before the Closing, the Purchase Price shall be adjusted by the parties to account for the following (as of midnight of the night immediately preceding the Closing Date) such that the costs, expenses and payments for such items will be adjusted in the customary manner between Sellers and Purchaser:

(a) real estate, school and similar taxes (and any payments in lieu of taxes) attributable to the Facilities;

(b) water and sewer taxes or charges attributable to the Facilities;

(c) telephone, gas, water, electric and any other utility charges;

(d) prepayments for resident charges for periods after the Closing Date; and

(e) such other items customarily requiring adjustment in connection with similar transactions.

4.2 All such adjustments shall be agreed to by the parties at or prior to the Closing or at such other time as the parties may agree. In the event an error is made in the calculation of any of the foregoing adjustments, the parties hereto shall promptly, upon the discovery of such error (provided that such error is discovered and notice thereof given within 90 days following the Closing Date), further adjust the Purchase Price to correct such error and make appropriate payment within ten days of the date such adjustment is agreed upon.

5. ACCOUNTS RECEIVABLE.

5.1 (a) At Closing, all of the accounts receivable (i.e., amounts earned or due, whether or not actually billed) and any other amounts due to New Receiver as a result of operating the Facilities prior to the Closing, other than any Excluded Assets, shall be the property of the New Receiver. Likewise, all moneys received after the Closing Date from Residents, Medicare, Medicaid and other reimbursements, or from any other source with respect to care rendered, or as a result of the New Receiver operating the Facilities prior to the Closing Date, including any rent revenue, shall be the property of the New Receiver to be treated and disbursed accordingly.

(b) Any bills received after the Closing Date by the Purchaser which are required to be paid by Debtors' estates, or any other person under this Agreement or otherwise, shall be delivered to the Sellers within five business days of Purchaser's receipt.

(c) All accounts receivable collected during the New Receivership Period shall be held by the New Receiver and applied as set forth in the applicable agreement appointing the New Receiver.

5.2 Sellers, the New Receiver and the Purchaser after Closing shall have the right to protest, contest, appeal and seek to adjust the Facilities' third-party reimbursement rates and/or challenge Medicare or Medicaid rate audit proceedings for periods prior to the Closing Date and to maintain any such actions which are pending as of the Closing Date. To the extent that any such proceedings result in an increase in the Facilities' rate(s), the proceeds shall be forwarded as designated by the Purchaser and shall be the sole property of the Purchaser except that, to the extent any such proceeds relate to the period of the Current Receivers, such proceeds shall be the property of Sellers. Any person receiving any such funds shall be solely responsible for paying any assessment thereon. Nothing herein shall obligate any person to prosecute or continue any proceeding(s) described above.

5.3 The provisions of Sections 5.1-5.3 shall survive the Closing.

6. REPRESENTATIONS OF SELLERS. Sellers hereby represent and warrant to Purchaser as follows:

6.1 Corporate Organization. Each Seller is a New York not-for-profit corporation, duly organized, validly existing and in good standing under the laws of the State of New York. Subject to any necessary authority from the Bankruptcy Court, each Seller has all requisite power and authority and all necessary approvals, permits, licenses and authorizations to own its properties and assets and to conduct the business now conducted.

6.2 Authority. Pursuant and subject to the terms of the Final Sale Order and subject to entry of such order, each Seller has all requisite power and authority to execute and deliver this Agreement, the Deeds, the Bill of Sale, the Assignment and Assumption Agreement and all other documents to be delivered by Sellers and to consummate the transactions herein (collectively, the "**Transaction Documents**"). This Agreement and all other Transaction Documents are valid and binding agreements of Sellers enforceable in accordance with their respective terms, subject to receipt of the Requisite Approvals and entry of the Final Sale Order.

6.3 Title. Sellers have good and marketable title to the Purchased Assets and, as of the Closing, the Purchased Assets shall be free and clear of all Liens, Claims and Obligations.

6.4 Environmental Matters. The operation of the Facilities and the Purchased Assets is in compliance in all material respects with environmental laws, including obtaining, maintaining, timely applying for renewal of and complying with all permits required to comply with environmental laws; and there are no facts, circumstances or conditions existing at any of the Facilities or Purchased Assets reasonably likely to result in remedial action or the imposition of any material liability pursuant to environmental laws or regulations. Sellers shall deliver copies of existing environmental reports, if any, to Purchaser.

7. REPRESENTATIONS OF PURCHASER. Purchaser hereby represents and warrants to Sellers as follows:

7.1 Authority.

(a) Purchaser has all requisite power and authority to execute and deliver this Agreement and the Assignment and Assumption Agreement and to consummate the transactions to be effected on its part hereby.

(b) This Agreement and the Assignment and Assumption Agreement and all of the Transaction Documents to be delivered by Purchaser have been duly authorized, executed and delivered by Purchaser and approved by all requisite corporate action of Purchaser. This Agreement and the Assignment and Assumption Agreement are valid and binding agreements of Purchaser enforceable in accordance with their terms.

(c) Subject to the receipt of the Requisite Approvals, Purchaser's execution, delivery and performance of this Agreement and the Assignment and Assumption Agreement do not and will not conflict with or constitute a breach of or default under the provisions of any material indenture, agreement or other instrument to which Purchaser is a party or by which Purchaser's respective properties may be bound, or the provisions of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award of any court, government or governmental agency or instrumentality having applicability to Purchaser or Purchaser's property, or by which Purchaser or Purchaser's properties may be bound.

7.2 Status of Purchaser.

(a) Purchaser (or any of its shareholders, members, partners, officers, directors, or owners) has never been convicted of: (i) any offense related to the delivery of an item or service under the Medicare or Medicaid programs; (ii) a criminal offense relating to neglect or abuse of patients or residents in connection with the delivery of a long term care or health care item or service; (iii) fraud, theft, embezzlement or other financial misconduct in connection with the delivery of a long term care or health care item or service; or (iv) obstructing an investigation of any crime.

(b) Purchaser (or any of its shareholders, members, partners, officers, directors, or owners) has never been required to pay any civil monetary penalty under 42 U.S.C. § 1128A regarding false, fraudulent or impermissible claims caused by Purchaser which may result in payments under, or payments to induce a reduction or limitation of long term care or health care services to beneficiaries of, any state or federal health care program.

(c) Purchaser (or any of its shareholders, members, partners, officers, directors, or owners) has never been excluded from participation in the Medicare or Medicaid programs or state long term care or health care programs.

(d) Purchaser (or any of its shareholders, members, partners, officers, directors, or owners) has no knowledge that he or it is the subject of any ongoing investigation or proceeding that could lead to any of the events set forth in items (a) through (c) above.

7.3 DOH Approval. Purchaser knows of no reason that DOH or any other governmental authority would reject or delay Purchaser's application(s) for the Requisite Approvals, nor has any such application by Purchaser (or any of its shareholders, members, partners, officers,



directors or owners) ever been denied, or approval revoked. Purchaser (or any of its shareholders, members, partners, officers, directors or owners) has never been excluded from participation in any federal or state health care program.

7.4 Due Organization; Authority. Purchaser or its Operating Designee(s), if applicable, is, or at Closing will be, a duly organized limited liability company, validly existing and in good standing under the laws of the State of its formation with full corporate power and authority to perform its obligations under this Agreement and the Assignment and Assumption Agreement.

7.5 Insurance. As of the Closing, Purchaser or its Operating Designee(s) shall have appropriate insurance coverage in place for the business (but not retroactive coverage which shall be the obligation of the Sellers, the Current Receivers or the New Receiver, as applicable) consistent with what would be maintained under ordinary industry business practices.

7.6 Capitalization of Purchaser. If Purchaser assigns this Agreement or any portion thereof pursuant to Section 17 hereof, as of the date of such assignment and as of Closing, and after giving effect to the subject transaction, such assignee(s) shall have sufficient working capital, or shall have available to it (or them) to operate the Facilities.

7.7 The aforesaid representations shall be true as of the date of the Closing as though made on such date.

8. COVENANTS OF SELLERS. Sellers hereby covenant and agree with Purchaser as follows:

8.1 Conveyance. At the Closing, pursuant and subject to entry of and the terms of the Final Sale Order, Sellers shall convey the Purchased Assets to Purchaser free and clear of Liens, Claims and Obligations.

8.2 Conduct of Business Pending Closing. Subject to the provisions of paragraph 8.2(f) below, from and after the date of this Agreement and until the earlier of the date the New Receiver commences its operation of the Facilities or the Closing Date, unless this Agreement shall have been terminated, except as otherwise consented to or directed by Purchaser in writing:

(a) the Facilities will be operated in material compliance with all laws and in the usual, regular and ordinary manner consistent with good industry practice;

(b) Sellers shall not sell and shall not permit the Current Receivers or any other person to make any other disposition or abandonment of the Purchased Assets or any portion thereof, except in the ordinary course of business;

(c) all properties used or useful in the operation of the Facilities shall be maintained and kept in good condition, repair and working order, ordinary wear and tear excepted;

(d) insurance shall be maintained with respect to the Purchased Assets and the operation of the Facilities in accordance with good practice, which shall include the obligation of the Current Receivers or any other owner or operator of the Facilities except the New Receiver (which can purchase or cause to be purchased retro coverage covering the period of its

operation of the Facilities) to purchase tail coverage for any claims-made policies covering any claims made through the applicable statute of limitations for bringing any such claims;

(e) books of record and accounts shall be maintained in accordance with good practice and all requirements; and

(f) Each Seller shall use its best efforts to ensure that the Current Receivers or any operator of the Facilities except New Receiver has timely filed or shall file (including after the Closing Date) all required cost reports which shall be accurate and complete, and shall make all information available to Purchaser, New Receiver, or any other applicable affiliate of Purchaser to file any cost reports for any calendar year in which the New Receiver, any entity affiliated with Purchaser, or the Purchaser is the operator of the Facilities in whole or in part.

### 8.3 Intentionally Omitted.

8.4 Cooperation with Purchaser. Sellers shall assist and cooperate with Purchaser upon Purchaser's reasonable request in regard to Purchaser's Application (as hereinafter defined) and all other applications for the Requisite Approvals.

8.5 Other Approvals. Sellers shall take all necessary actions to provide and/or obtain any Attorney General and/or Supreme Court notice or approval for the transactions contemplated herein that may be required by the New York State Not-for-Profit Corporation Law.

9. COVENANTS OF PURCHASER. Purchaser hereby covenants and agrees with Sellers as follows:

9.1 Applications for Requisite Approvals and CON. Within ninety (90) days following the entry of the Final Sale Order, Purchaser or the Operating Designee(s), at its sole cost and expense, will promptly prepare and submit to the DOH and/or the Public Health and Planning Council and to all other governmental agencies having jurisdiction over the establishment, transfer and operation of health care facilities, and shall diligently prosecute, an application or applications for CON establishment approval to operate the Facilities (the "**Application**"). If the Closing has not yet occurred, Purchaser shall provide Sellers with copies, within three days of submission or receipt as applicable, of all such applications, submissions, documents, and other communications with the applicable governmental agencies.

9.2 Operations. Upon entry of a Final Sale Order, if Purchaser or its affiliate has not already been appointed as the New Receiver, the Parties shall immediately seek entry of an order requiring the DOH to appoint Purchaser or an affiliate of the Purchaser as receiver for its own account using a form of receivership for its own account similar to other such agreements the DOH has negotiated and executed with other affiliates of the Purchaser. In connection with the appointment of Purchaser or an affiliate of Purchaser as the New Receiver, there shall be no requirement to post a bond or undertaking.

9.3 Employees. Purchaser, its Operating Designee(s) or the New Receiver, as applicable, shall offer or shall continue the employment of substantially all of Sellers' employees (or those otherwise engaged by the New Receiver at the Facilities), as of the Closing Date, so as to comply with all of the requirements of the Workers Adjustment Retraining Notification Act, 29

U.S.C. § 2101, *et seq.*, if applicable, and all state and local counterparts to it (collectively, the “*WARN Act*”) and shall retain a sufficient number of employees to prevent Sellers from being in violation of the WARN Act.

9.4 Access to Records. Purchaser will preserve, for no fewer than four years from the Closing Date, and will provide to Sellers, any Creditors’ Committee, and their respective professionals and other professionals of Debtors’ estates, with prompt and reasonable access to books and records conveyed to Purchaser, will permit inspection and copying of such books and records as necessary for administration of Debtors’ estates and will make its employees reasonably available to facilitate such access. Purchaser shall not be required to incur substantial expenses in connection with the matters described in this paragraph.

10. CONDITIONS PRECEDENT TO THE OBLIGATIONS OF PURCHASER. The obligations of Purchaser to close hereunder are subject to the fulfillment at, or prior to, the Closing Date, of all of the following conditions precedent:

10.1 Requisite Approvals. It shall be a condition of Closing that one of the following shall have occurred: (a) Purchaser or an affiliate of Purchaser shall have been appointed as the New Receiver, (b) Purchaser or an affiliate of Purchaser shall have been appointed as receiver under Section 9.2 hereof, or (c) Purchaser or its Operating Designee shall have obtained a CON or permanent license without contingencies to operate the Nursing Home as a 163-bed skilled nursing facility and the Adult Home as an 80-bed adult residential care facility (all of the foregoing are, collectively, the “*Requisite Approvals*”).

10.2 Entry of the Final Sale Order. The Bankruptcy Court shall have entered the Final Sale Order and such order shall not have been stayed by or appealed to any court and shall be a final order.

10.3 HomeLife APA. The HomeLife APA shall have terminated, expired or been rejected by the Sellers and no longer be in effect.

10.4 No Legal Prohibition. No injunction, temporary restraining order, judgment or other order of any court or governmental agency or instrumentality shall have been issued or have been entered which would be violated by the consummation of the transactions contemplated herein; and, unless waived, no suit, action or other proceeding brought by the United States or the State of New York, or any agency or instrumentality of the United States or the State of New York, shall be pending in which it is sought to restrain or prohibit the effectuation of this Agreement or the consummation of the transactions contemplated herein.

10.5 Operation of Facilities. Folts Home shall be operating as a 163-bed skilled nursing facility and FAH shall be operating as an 80-bed adult residential care facility in material compliance with all laws at the earlier of the commencement of the operations of the New Receiver or the Closing, whichever occurs first.

10.6 Bring Down. Sellers’ representations and warranties set forth in Article 6 hereof shall be true and correct in all material respects as of the Closing, as though made on and as of such date.

10.7 Litigation. No injunction, temporary restraining order, judgment or other order of any court or governmental agency or instrumentality shall have been issued or have been entered which would be violated by the consummation of the transactions contemplated herein; and, unless waived, no suit, action or other proceeding brought by the United States or the State of New York, or any agency or instrumentality of the United States or the State of New York, shall be pending in which it is sought to restrain or prohibit the effectuation of this Agreement or the consummation of the transactions contemplated herein.

10.8 Approvals. The DOH shall have duly authorized the operation of the Facilities by Purchaser or the Operating Designee, the New Receiver, or a receiver appointed under Section 9.2 hereof, the Sellers shall have obtained the written approval by the Attorney General and/or Supreme Court if and as may be required by the New York State Not-for-Profit Corporation Law.

10.9 Notices. Notice of the transactions contemplated hereby was good and sufficient and was provided timely to all parties in interest in the Bankruptcy Case who are entitled or required to receive notice pursuant to the Federal Rules of Bankruptcy Procedure, the local rules of the Bankruptcy Court, or other applicable law

11. CONDITIONS PRECEDENT TO THE OBLIGATIONS OF SELLERS. The obligations of Sellers hereunder are subject to the fulfillment at or prior to the Closing of all of the following conditions precedent, unless such fulfillment is waived by the Purchaser:

11.1 Final Sale Order. The Final Sale Order shall be a final order.

11.2 HomeLife. The HomeLife APA shall have terminated, expired or been rejected by the Sellers and no longer be in effect.

11.3 Bring Down. Purchaser's representations and warranties set forth in Article 7 hereof shall be true and correct in all material respects as of the date of the Closing, as though made on and as of such date.

11.4 Litigation. No injunction, temporary restraining order, judgment or other order of any court or governmental agency or instrumentality shall have been issued or have been entered which would be violated by the consummation of the transactions contemplated herein; and, unless waived, no suit, action or other proceeding brought by the United States or the State of New York, or any agency or instrumentality of the United States or the State of New York, shall be pending in which it is sought to restrain or prohibit the effectuation of this Agreement or the consummation of the transactions contemplated herein.

11.5 Good Standing. Purchaser shall be in good standing under the laws of the State of its formation.

11.6 Approvals. The DOH shall have duly authorized the operation of the Facilities by Purchaser or the Operating Designee, the New Receiver, or a receiver appointed under Section 9.2 hereof, the Sellers shall have obtained the written approval by the Attorney General and/or Supreme Court if and as may be required by the New York State Not-for-Profit Corporation Law, and both parties shall have obtained all other required approvals from government agencies concerning the transactions proposed under this Agreement.

12. TERMINATION OF AGREEMENT.

12.1 Failure to Timely File Application. If neither Purchaser nor the Operating Designee(s) files the CON Application within 90 days from the entry of the Final Sale Order, then Sellers may terminate this Agreement, and the Deposit shall be released from escrow, together with any interest accrued thereon, and shall be paid to the Sellers as liquidated damages and not as a penalty as Sellers' sole and exclusive remedy.

12.2 Failure to Obtain Requisite Approvals. If at least one of the Requisite Approvals has not been obtained within 18 months of the entry of the Final Sale Order, then Sellers may terminate this Agreement and the Deposit shall be released from escrow, together with any interest accrued thereon, and shall be paid to the Sellers as liquidated damages and not as a penalty as Sellers' sole and exclusive remedy.

12.3 Purchaser's Failure to Close. If Purchaser has failed to close the transaction contemplated hereunder within the timeframe set forth in Section 3 for any reason other than a Seller Default Event, after providing Purchaser thirty days' notice of such failure and a thirty (30) day opportunity for Purchaser to cure, then the Sellers may terminate this Agreement and the Deposit shall be released from escrow, together with any interest accrued thereon, and shall be paid to the Sellers as liquidated damages and not as a penalty as Sellers' sole and exclusive remedy.

12.4 Other Breach by Purchaser. If Purchaser is at any time in material breach of any representation, warranty or covenant hereunder, which breach is not cured within (30) thirty days of Purchaser receiving notice of the breach along with the details thereof, then Sellers shall have the right to terminate this Agreement and the Deposit shall be released from escrow, together with any interest accrued thereon, and shall be paid to the Sellers as liquidated damages and not as a penalty as Sellers' sole and exclusive remedy.

12.5 Sellers' Default or Failure to Close. If there is a Seller Default Event and Sellers have failed to cure any such Seller Default Event(s) within thirty (30) days of Sellers receiving written notice thereof along with the details thereof, provided that such cure period will be available to Sellers only if the Seller Default Event is capable of being cured, then Purchaser may at its option, terminate this Agreement and receive a refund of the Deposit and any interest earned thereon or Purchaser shall at its own expense be entitled to bring an action for specific performance without posting a bond, but if Purchaser is unsuccessful or at any time determines to withdraw any action for specific performance Purchaser shall receive a refund of the Purchase Deposit and any interest earned thereon.

12.6 Casualty. Sellers shall bear the risk of a material casualty which occurs prior to the time the New Receiver is appointed or the Closing Date, whichever occurs first. If the New Receiver is appointed prior to the Closing Date, in the event of a material casualty, the Purchaser shall still have the obligation to Close but all insurance proceeds of every kind to the extent not already spent for the restoration of the Facilities or the continuation or protection of their business shall be paid to the Purchaser whenever received, even if the proceeds exceed the Purchase Price. If there is a casualty for which the Sellers bear the risk of loss, the Purchaser shall have the option of terminating this Agreement and the Purchase Deposit and any interest thereof shall be returned to the Purchaser.

12.7 Bidding Procedures. As used herein, “**Bidding Procedures**” shall mean the bidding procedures for the sale of the Purchased Assets established by the Bid Order as amended.

13. RESIDENT ACCOUNTS.

13.1 Deliveries at Closing. Upon the earlier of the appointment of the New Receiver or the Closing Date, Sellers shall cause to be delivered to the New Receiver or to the Purchaser, as applicable (i) a schedule of all resident funds held by the Current Receivers, with all such funds designated on a resident-by-resident basis; (ii) a check drawn on the Residents’ allowance account for the full amount of such account, which funds shall be deposited by in a new Residents’ allowance account to be maintained in accordance with legal requirements; (iii) a schedule of all bank accounts maintained on behalf of the Residents; (iv) all bankbooks and other assets belonging to Residents of the Facilities maintained in the custody of the Facilities, together with a schedule thereof listing such assets and the names of the Residents for whom they are being so held; and (v) a schedule of any remaining Resident security deposits and prepayments designated on a patient-by-patient basis (“**Resident Security Deposits**”), together with a check in the amount of such security deposits and unexpended prepayments (collectively, “**Resident Accounts**”). Sellers shall be responsible for any inaccuracy in the above.

13.2 Notices. Purchaser, the New Receiver or Operating Designee(s) affiliated with the Purchaser shall promptly give all notices required by law in connection with the aforesaid transfer of the Residents’ assets.

14. SURVIVAL. Except as specifically set forth herein to the contrary, none of the representations, warranties, covenants and agreements contained herein shall survive the Closing or any termination of this Agreement.

15. MERGER, AMENDMENT AND WAIVER. This Agreement contains the entire agreement of the parties hereto with respect to the transactions contemplated hereby. There are no other representations, warranties, agreements, undertakings or conditions, whether made by the parties hereto or by their agents, or by persons or entities purporting to be their agents, except as may be contained herein. The terms of this Agreement may be amended, modified or eliminated, and the observance or performance of any term, covenant, condition or provision herein may be omitted or waived (either generally or in a particular instance and either prospectively or retroactively) only by the written consent or consents of Sellers and Purchaser. A party hereto may, only by an instrument in writing, waive compliance for its benefit by the other party hereto with any term or provision of this Agreement on the other part of such other party to be performed or complied with. Such waiver by any party hereto of a breach of any term or provision of this Agreement shall not be construed as a waiver of any other or subsequent breach.

16. BINDING EFFECT. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and permitted assigns and designees.

17. ASSIGNMENT. Subject to the assignee’s agreement to be bound by all terms of this Agreement, and without releasing or discharging the Purchaser from any of the covenants,

warranties, obligations or agreements set forth herein and provided that an assignment shall not delay the granting of the Requisite Approvals or the CON, this Purchase Agreement may be assigned at any time to any entity or entities affiliated with the Purchaser.

18. NOTICES. Any notices to be given to the parties hereto shall be in writing, and, except as otherwise provided herein or as otherwise directed in writing by one of the parties hereto, shall be deemed provided to a party as of the date delivered or sent if delivered personally or sent by electronic mail (providing confirmation of transmission), on the next business day if sent by nationally recognized overnight courier, or on the third (3rd) business day following the date of mailing if delivered by registered or certified mail (postage prepaid; return receipt requested) to the parties at the addresses indicated below (or at such other address for such party as shall be specified by similar such notice):

If to Sellers:

Dr. Anthony Piana  
Chair, Board of Directors  
of Folts Home  
1334 State Route 169  
Little Falls, New York 13365

William Forster  
Chair, Board of Directors  
of Folts Adult Home, Inc.  
847 Jordanville Road  
Illion, New York 13357

With copies to:

Bond, Schoeneck & King, PLLC  
Attn: Stephen A. Donato, Esq.  
One Lincoln Center  
Syracuse, New York 13202  
Email: sdonato@bsk.com

If to Purchaser:

Cedarcare Holdings LLC  
c/o Cedar Holdings, LLC  
Attn: Mark Tress  
150 Airport Road, Suite 900  
Lakewood, NJ 08401  
Email: mark@cedarholdings.com

With copies to:

Novack Burnbaum Crystal LLP  
Attn: Edward H. Burnbaum, Esq.  
675 Third Ave., Flr. 8  
New York, NY 10017  
Email: eburnbaum@nbclaw.com

and

Phillips Lytle LLP  
Attn: Angela Z. Miller, Esq.  
One Canalside  
125 Main Street  
Buffalo, NY 14203  
Email: amiller@phillipslytle.com

19. NON-RECOURSE. Except for the Deposit, neither the Purchaser nor any past, present or future director, officer, employee, incorporator, member, partner, or stockholder of Purchaser shall have any liability for any obligations or liabilities of Purchaser under this Agreement or related documents or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby or thereby. The professionals and members, principals, trustees, partners and employees of the Sellers, shall have no personal liability to Purchaser or any other person under or with respect to this Agreement or related documents, under or with respect to any agreement or understanding related to this Agreement. The provisions of this section shall survive the Closing and shall survive any termination of this Agreement.

20. CONSUMER PRIVACY POLICIES. Purchaser agrees and undertakes immediately to adopt and thereafter to abide by the Sellers' and/or Current Receivers' existing policies for the protection of personally identifiable information about Residents of the Facilities or to use policies that comply with applicable provisions of law.

21. COUNTERPARTS. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page hereto by telecopier or by electronic mail in PDF format shall be as effective as delivery of a manually executed counterpart hereof.

22. BROKERS. The parties hereto represent to each other that they have not employed or entered into any agreement, arrangement or undertaking with any broker or finder in connection with this Agreement or the transactions contemplated thereby. Each party agrees to indemnify and save harmless the other party from and against any and all claims, losses, damages or expenses of any kind or character including reasonable attorney's fees for the breach of the foregoing representations and warranties set forth in this section founded upon the act of the party giving such indemnification. The provisions of this section shall survive the closing.

23. NEW YORK LAW TO GOVERN. Subject to the requirements of the Bankruptcy Code, HIPAA and other applicable federal law, this Agreement shall be construed in accordance with and shall be governed by and enforced under the laws of the State of New York applicable to agreements fully executed and performed therein, without regard to its conflict of laws principles. The parties further agree that the Bankruptcy Court for the Northern District of New York shall be the exclusive forum for any litigation arising under or in connection with this Agreement or the transaction contemplated hereunder, unless the Bankruptcy Court refuses or declines to hear such matter.

24. CONFIDENTIAL INFORMATION. Identifiable information and any information concerning the businesses and affairs of the Purchaser or the Sellers that is not generally available to the public as of the date of this Agreement (regardless of when the information was made



available to Sellers or Purchaser including, but not limited to, any information provided before the execution of this Agreement) shall be deemed "**Confidential Information**". Confidential Information shall not include any information that (a) is or subsequently becomes publicly available without the receiving party's breach of any obligation owed to the disclosing party; (b) became known to the receiving party from a source other than the disclosing party in a manner that did not involve the breach of an obligation of confidentiality owed to the disclosing party; or (c) is independently developed by the receiving Party. The receiving party may disclose Confidential Information in response to a valid order by a court or other governmental body, as otherwise required by law, or as necessary to establish the rights of any party under this Agreement, however, if reasonably possible, the receiving party shall give the disclosing party written notice of any such disclosure prior to making the disclosure such that the disclosing party may seek a protective order or other similar remedy.

25. CONSUMER CREDIT TRANSACTIONS. To the extent, if any, that the Purchased Assets or Assumed Contracts include consumer credit transactions subject to the Truth in Lending Act or consumer credit contracts, then, notwithstanding the Final Sale Order, Purchaser shall remain subject to all claims and defenses related thereto to the same extent as Purchaser would be subject to such claims and defenses had such interest been purchased at a sale which is not made under Section 363 of the Bankruptcy Code. Sellers are not aware of any consumer credit transactions subject to the Truth in Lending Act or consumer credit contracts within the Purchased Assets or Assumed Contracts. Sellers make no warranty or representation regarding such matters other than as to their own state of knowledge.

26. OPERATING EXPENSES. Unless otherwise reimbursed in the event of an alternate transaction, the New Receiver shall retain the right to assert an administrative expense claim for any Excess Operating Expenses incurred by the New Receiver during the New Receivership Period in the Debtors' Bankruptcy Cases, provided that such payments do not impair the ability of HUD to collect on its claims in the Bankruptcy Cases.

27. PUBLIC ANNOUNCEMENTS. No party hereto shall make any press release or public announcement concerning the transactions contemplated by this Agreement without the prior written approval of the other party hereto, unless a press release or public announcement is required by law, Order of the Bankruptcy Court, or by Sellers in conjunction with or in furtherance of the Bankruptcy Cases. If any such announcement or other disclosure is required by law or Order of the Bankruptcy Court, the disclosing party shall give the non-disclosing party prior notice of, and an opportunity to comment on, the proposed disclosure. Purchaser shall not be restricted from making any public announcements or issuing any press releases after the Closing.

28. RECITALS. The Whereas clauses are incorporated herein by reference as if fully restated herein.

29. ENTIRE AGREEMENT. This Agreement and the Transaction Documents contain the entire understanding among the parties hereto with respect to the transactions contemplated hereby and supersede and replace all prior and contemporaneous agreements and understandings, oral or written, with regard to such transactions. All Schedules hereto and any documents and instruments delivered pursuant to any provision hereof are expressly made a part of this Agreement as fully as though completely set forth herein.

30. BANKRUPTCY COURT APPROVAL. This Agreement is subject to the approval of the Bankruptcy Court and entry of the Final Sale Order.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the  
date and year first above written.

**SELLERS:**

**FOLTS HOME**

By: Anthony E. Piana  
Dr. Anthony E. Piana  
Chairman, Board of Directors

**FOLTS ADULT HOME, INC.**

By: \_\_\_\_\_  
William Forster  
Chairman, Board of Directors

**PURCHASER:**

**CEDARCARE HOLDINGS LLC**

By: \_\_\_\_\_  
Mark Tress, Member

By: \_\_\_\_\_  
Isidore Blier, Member

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the  
date and year first above written.

**SELLERS:**

**FOLTS HOME**

By: \_\_\_\_\_  
Dr. Anthony E. Piana  
Chairman, Board of Directors

**FOLTS ADULT HOME, INC.**

By: William Forster  
William Forster  
Chairman, Board of Directors

**PURCHASER:**

**CEDARCARE HOLDINGS LLC**

By: \_\_\_\_\_  
Mark Tress, Member

By: \_\_\_\_\_  
Isidore Blier, Member

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the date and year first above written.

**SELLERS:**

**FOLTS HOME**

By: \_\_\_\_\_  
Dr. Anthony E. Piana  
Chairman, Board of Directors

**FOLTS ADULT HOME, INC.**

By: \_\_\_\_\_  
James H. Morey  
Chairman, Board of Directors

**PURCHASER:**

**CEDARCARE HOLDINGS LLC**

By: \_\_\_\_\_  
Mark Tress, Member

By: \_\_\_\_\_  
Isidore Blier, Member

**LIST OF EXHIBITS AND SCHEDULES**

**Exhibits**

- Exhibit A - Escrow Agreement
- Exhibit B - Bill of Sale
- Exhibit C - Assignment and Assumption Agreement

**Schedules**

- Schedule 1.1(a) - Real Property
- Schedule 1.1(b) - Real Estate Leases
- Schedule 1.1(c) - Personal Property
- Schedule 1.1(d) - Assumed Contracts
- Schedule 1.1(g) - Permits
- Schedule 1.1(j) - Intangible Assets

**Exhibit A**  
**Escrow Agreement**

See attached.

DEPOSIT ESCROW AGREEMENT

THIS DEPOSIT ESCROW AGREEMENT is dated June 19, 2017 and is by and among Folts Home, a New York not-for-profit corporation ("Folts Home"), Folts Adult Home, Inc., a New York not-for-profit corporation ("FAH" and, together with Folts Home, referred to herein collectively as "Sellers" and each, individually, as a "Seller"), Cedar Holdings, LLC, a New York limited liability company (the "Purchaser") (each of the Sellers and the Purchasers, a "Party" and, collectively, the "Parties"), and Bond, Schoeneck & King, PLLC, as escrow agent (the "Escrow Agent").

WHEREAS, the Sellers filed voluntary petitions for relief commencing cases under chapter 11 of the Bankruptcy Code (the "Bankruptcy Cases") with the United States Bankruptcy Court for the Northern District of New York (the "Bankruptcy Court") pursuant to which they intend to sell substantially all of their assets comprising a residential health care facility and an adult care facility owned by Sellers (the "Facilities") pursuant to Sections 105 and 363 of the Bankruptcy Code;

WHEREAS, Purchaser and Sellers are concurrently herewith entering into a Purchase and Sale Agreement (the "Purchase Agreement"; terms defined in the Purchase Agreement having the same meaning when used herein) with respect to the sale of substantially all of the assets, including the Facilities, owned by Sellers (the "Facilities");

WHEREAS, Purchaser has agreed to deliver a good faith deposit to be held in escrow hereunder;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Purchaser and Sellers hereby appoint the Escrow Agent to receive, hold, administer and disburse the Escrow Fund (as hereinafter defined) in accordance with the terms and conditions of this Escrow Agreement, and the Escrow Agent agrees to act as escrow agent subject to the terms and conditions of this Escrow Agreement. Purchaser and Sellers acknowledge that the Escrow Agent represents the Sellers in connection with the Purchase Agreement and the Bankruptcy Cases and Purchaser and Sellers jointly and severally waive any objection and/or conflict of interest in the Escrow Agent acting as escrow agent under this Escrow Agreement and representing the Sellers in connection with the Purchase Agreement and the Bankruptcy Cases.

2. Concurrently herewith, Purchaser is causing the delivery to the Escrow Agent, and the Escrow Agent acknowledges receipt of, the sum of One Million Six Hundred Sixty Thousand Dollars (\$1,660,000.00) (the "Deposit"), shall be deposited by the Escrow Agent in an interest bearing account or accounts (such amount being hereinafter referred to as the "Escrow Fund"). The Escrow Agent shall bear no liability for any loss occasioned by investment of the Escrow Fund or by any failure to achieve the maximum possible yield from the Escrow Fund. Simultaneously with the execution and delivery of the Purchase Agreement and this



Escrow Agreement, Purchaser will deposit the Deposit with the Escrow Agent by wire transfer of immediately available funds in accordance with the wire transfer instructions attached hereto as Exhibit A.

3. The Escrow Fund shall be held by the Escrow Agent and shall only be released upon the earliest to occur of any of the following:

(a) If the Escrow Agent shall receive a written notice from the Purchasers stating that they (i) have elected to terminate the Purchase Agreement in accordance with the provisions set forth therein and (ii) is entitled, under the terms of the Purchase Agreement, to the Escrow Fund, then the Escrow Agent shall promptly deliver a copy of such notice to the Sellers. If the Sellers shall not object in a written notice delivered to the Escrow Agent within five business days thereafter, then the Escrow Agent shall deliver the Escrow Fund to the Purchaser.

(b) If the Escrow Agent shall receive a written notice from the Sellers stating that (i) the transactions contemplated under the Purchase Agreement failed to close and (ii) they are entitled, under the terms of the Purchase Agreement, to the Escrow Fund, then the Escrow Agent shall promptly deliver a copy of such notice to the Purchaser. If the Purchaser shall not object in a written notice delivered to the Escrow Agent within five business days thereafter, then the Escrow Agent shall deliver the Escrow Fund to the Sellers. If the Purchaser shall so object within such five business day period, then the Escrow Agent shall continue to hold the Escrow Fund in accordance with the terms hereof.

(c) At the Closing of the transactions contemplated by the Purchase Agreement, the Escrow Agent shall deliver the Escrow Fund to the Sellers.

(d) If the Escrow Agent shall receive (i) joint written instructions from Purchaser and Sellers or (ii) a certified copy of an order or directive from any court or governmental authority, then, in either such event, the Escrow Agent shall release the Escrow Fund to the Party designated therein.

4. Upon the distribution of the Escrow Fund in accordance with the terms set forth herein, this Agreement shall terminate and the Escrow Agent shall have no further liability or obligation hereunder.

5. Purchaser and Sellers and the Escrow Agent agree and acknowledge as follows:

(a) The duties and responsibilities of the Escrow Agent shall be limited to those expressly set forth in this Agreement and are ministerial in nature.

(b) The Escrow Agent shall have the right, but shall not be required, in the event of any dispute, to deposit the Escrow Fund with any court of competent jurisdiction and shall thereafter be released from all of its obligations hereunder. Escrow Agent shall be

reimbursed for all costs and expenses of such action, including reasonable attorneys' fees and disbursements, by the Party determined not to be entitled to the Escrow Fund.

(c) The Escrow Agent is authorized, in its sole discretion, to disregard any and all notices or instructions given by any of the Parties hereto or by any other person, firm or corporation, except such notices or instructions as hereinabove provided for and orders or process of any court entered or issued with or without jurisdiction. If the Escrow Fund is at any time attached, garnished or levied upon under any court order, or in the event that payment of the Escrow Fund shall be stayed or enjoined by any court order, or in the event that an order, judgment or decree shall be made or entered by any court affecting the Escrow Fund, or any part thereof, then and in any of such events, the Escrow Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree, which it believes to be binding upon it.

(d) The Escrow Agent shall not be liable to any person, firm or corporation, including any of the Parties hereto, by reason of any error of judgment, or for any act done, or omitted to be done, by it in good faith, or for any mistake of fact or law in connection with this Agreement and the performance thereof unless caused by, or arising out of, its own bad faith, gross negligence or willful misconduct.

(e) The Escrow Agent shall not be required to institute or defend any action or legal process involving any matter referred to herein which in any manner affects it or its duties or liabilities hereunder unless or until it has received full indemnity in an amount, and of such character, as it shall in its sole discretion require.

(f) Escrow Agent may resign at any time by giving 30 calendar days prior written notice of such resignation to Purchaser and Sellers. Purchaser and Sellers together (but not alone) may terminate the appointment of Escrow Agent hereunder upon prior written notice to Escrow Agent specifying the date upon which such termination shall have effect. In the event of such resignation or termination, Purchaser and Sellers shall within 10 days of such notice jointly appoint a successor Escrow Agent and Escrow Agent shall turn over to such successor Escrow Agent all funds held by it pursuant to the Escrow Agreement and shall execute all instruments evidencing such transfer as may be reasonably requested by Purchaser or Sellers. Upon receipt of the funds, the successor Escrow Agent thereupon shall be bound by all of the provisions hereof and Escrow Agent shall have no further obligation hereunder.

6. Purchaser and Sellers agree to complete the forms necessary to comply with the backup withholding and interest reporting regulations of the Internal Revenue Code of 1986, as amended, or any successor thereto, including, without limitation, Forms W-9, a separate copy of which is to be completed by Purchaser and Sellers and delivered to Escrow Agent contemporaneously with the execution and delivery of this Escrow Agreement.

7. If any term, condition or provisions of this Escrow Agreement, or any application thereof to any circumstance or party hereto, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Escrow Agreement or the application of such term, condition or provision to any other circumstance or party hereto (other

than those as to which it shall be invalid or enforceable) shall not be thereby affected, and each such term, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

8. This Escrow Agreement may be executed in any number of counterparts, each counterpart for all purposes being deemed an original, and all such counterparts shall together constitute only one and the same instrument.

9. All notices, instructions and other communications given hereunder or in connection herewith shall be in writing. Any such notice, instruction or communication shall be sent either (i) by registered or certified mail, return receipt requested, postage prepaid, or (ii) via a reputable nationwide overnight courier service, in each case to the addresses set forth below. Any such notice, instruction or communication shall be deemed to have been delivered four business days after it is sent by registered or certified mail, return receipt requested, postage prepaid, or one business day after it is sent via a reputable nationwide overnight courier service.

If to Purchaser: Viper Health, LLC  
c/o Cedar Holdings, LLC  
Attn: Mark Tress  
150 Airport Road, Suite 900  
Lakewood, NJ 08401  
Email: mark@cedarholdings.com

With a copy to: Novack Burnbaum Crystal LLP  
Attn: Edward H. Burnbaum, Esq.  
675 Third Ave., Flr. 8  
New York, NY 10017  
Email: eburnbaum@nbclaw.com

If to Sellers:	Dr. Anthony Piana Chair, Board of Directors of Folts Home 1334 State Route 169 Little Falls, New York 13365	William Forster Chair, Board of Directors of Folts Adult Home, Inc. 847 Jordanville Road Ilion, New York 13357
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With a copy to: Bond, Schoeneck & King, PLLC  
Attn: Stephen A. Donato, Esq.  
One Lincoln Center  
Syracuse, New York 13202  
Email: sdonato@bsk.com

If to the Escrow Agent: Bond, Schoeneck & King, PLLC  
Attn: Stephen A. Donato, Esq.  
One Lincoln Center  
Syracuse, New York 13202  
Email: sdonato@bsk.com

Any Party may give any notice, instruction or communication in connection with this Escrow Agreement using any other means (including personal delivery, electronic mail, facsimile or ordinary mail), but no such notice, instruction or communication shall be deemed to have been delivered unless and until it is actually received by the Party to whom it was sent. Any Party may change the address to which notices, instructions or communications are to be delivered by giving the other Parties to this Escrow Agreement notice thereof in the manner set forth in this Section 9.

10. This Agreement represents the entire agreement of the Parties hereto with respect to the matters set forth herein. This Agreement may only be amended or modified by an instrument in writing executed and delivered by each of the Parties hereto. The Escrow Agent shall not be bound by any amendment or modification unless it agrees thereto in writing.

11. Sellers and Purchasers jointly and severally shall reimburse and indemnify Escrow Agent for, and hold it harmless against, any and all loss, liability, costs or expenses in connection herewith, including reasonable attorneys' fees and disbursements, incurred without willful misconduct or gross negligence on the part of Escrow Agent arising out of or in connection with its acceptance of, or the performance of its duties and obligations under, this Agreement, as well as the reasonable costs and expenses of defending against any claim or liability arising out of or relating to this Agreement.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day above written.

**SELLERS**

**FOLTS HOME**

By: Anthony E. Piana  
Name: Dr. Anthony E. Piana  
Title: Chairman, Board of Directors

**FOLTS ADULT HOME, INC.**

By: \_\_\_\_\_  
Name: William Forster  
Title: Chairman, Board of Directors

**PURCHASER**

**CEDAR HOLDINGS, LLC**

By: \_\_\_\_\_  
Mark Tress, Member

By: \_\_\_\_\_  
Isidore Blier, Member

**ESCROW AGENT**

**BOND, SCHOENECK & KING, PLLC**

By: Camille W. Hill  
Name: Camille W. Hill  
Title: Member

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day above  
written.

**SELLERS**

**FOLTS HOME**

By: \_\_\_\_\_  
Name: Dr. Anthony E. Piana  
Title: Chairman, Board of Directors

**FOLTS ADULT HOME, INC.**

By: William Forster  
Name: William Forster  
Title: Chairman, Board of Directors

**PURCHASER**

**CEDAR HOLDINGS, LLC**

By: \_\_\_\_\_  
Mark Tress, Member

By: \_\_\_\_\_  
Isidore Blier, Member

**ESCROW AGENT**

**BOND, SCHOENECK & KING, PLLC**

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day above written.

**SELLERS**

**FOLTS HOME**

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

Name: Dr. Anthony E. Piana

Title: Chairman, Board of Directors

**FOLTS ADULT HOME, INC.**

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

Name: ~~James H. Morey~~

Title: Chairman, Board of Directors

**PURCHASER**

**CEDAR HOLDINGS, LLC**

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

Mark Tress, Member

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

Isidore Blier, Member

**ESCROW AGENT**

**BOND, SCHOENECK & KING, PLLC**

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

Name:

Title:

**EXHIBIT A**

**Escrow Agent Wire Instructions**

BOND, SCHOENECK & KING, PLLC IOLTA Escrow Account  
One Lincoln Center Syracuse, NY 13202  
315.218.8104 (Mark Childs)

ABA#: 021313103

Bank: Citizens Bank, 833 Broadway, Albany, New York 12207

Account#: 4001354216

Account Name: BOND Schoeneck & King, PLLC IOLTA Escrow Account

SWIFT#: CTZIUS33 (for international wires only)

Client Name: Folts Home

Client Number: 69974

Attention: Steve Donato

Matter Number: 818020



**Exhibit B**  
**Bill of Sale**

See attached.

**BILL OF SALE**

This BILL OF SALE (“Bill of Sale”) is made as of \_\_\_\_\_, 2017, by FOLTS HOME, a New York not-for-profit corporation (“Folts Home”) and FOLTS ADULT HOME, INC., a New York not-for-profit corporation (“FAH” and, together with Folts Home, jointly referred to herein as “Sellers”), in favor of CEDARCARE HOLDINGS LLC, a New York limited liability company (“Purchaser”). Capitalized terms not otherwise defined in this Bill of Sale shall have the meanings specified in the Purchase Agreement (as defined below).

WHEREAS, Sellers and Purchaser entered into that certain Purchase Agreement dated June 1, 2017 (the “Purchase Agreement”) pursuant to which Sellers have agreed to sell, and Purchaser has agreed to acquire, the Purchased Assets; and

WHEREAS, on \_\_\_\_\_, 2017, the United States Bankruptcy Court for the Northern District of New York entered an Order (the “Bankruptcy Sale Order”) authorizing and approving, among other things, the sale, assignment and transfer to Purchaser all of Sellers’ right, title and interest in, to and under the Purchased Assets, free and clear of all Liens, Claims, and Obligations (each as defined in the Purchase Agreement) to the maximum extent permissible pursuant to sections 105, 363 and 365 of the Bankruptcy Code and other applicable law; and

WHEREAS, Sellers desire to effectuate the sale, assignment and transfer to Purchaser of all of the Purchased Assets by the execution and delivery of this Bill of Sale.

NOW, THEREFORE, for the consideration set forth in the Bankruptcy Sale Order and the Purchase Agreement, including but not limited to the Purchase Price, the premises and mutual agreements set forth herein, and therein and other good and valuable consideration, the receipt and sufficiency of which Sellers hereby acknowledge, Sellers hereby agree as follows:

1. Pursuant to the terms of the Bankruptcy Sale Order and the Purchase Agreement, Sellers do hereby sell, convey, transfer, assign and deliver to Purchaser, and its successors and assigns, all of the Sellers’ right, title and interest in and to Purchased Assets, free and clear of all Liens, Claims and Obligations of every kind and nature including, without limitation, the following assets:

- (a) fee simple title to the Real Property;
- (b) all of Sellers’ rights under any Real Estate Leases;
- (c) all furniture, fixtures, furnishings, machinery, servers, equipment, supplies (including all of the Sellers’ inventory), artwork, and all other tangible property owned by Sellers or currently located at the Facilities or used by Sellers in the conduct of their businesses, including, without limitation, the items listed on Schedule 1.1(c) of the Purchase Agreement, together with any vehicles, if any, owned by Sellers, and any capital assets owned by Sellers;
- (d) all of Sellers’ rights and interests under the Assumed Contracts;

- (e) all of Seller's rights and interests under the Accounts Receivable;
- (f) the names Folts Home and Folts Adult Home-Claxton;
- (g) all permits, licenses, approvals, franchises, notices, registrations and authorizations issued by any governmental authority necessary or desirable to operate the Facilities (and pending applications for the foregoing) (collectively, "Permits"), including those Permits listed on Schedule 1.1(g) of the Purchase Agreement, excluding only such Permits to the extent not legally transferable;
- (h) copies of all the Business Records, title to which will vest in the Purchaser or Operating Designee(s) upon such person's obtaining a Certificate of Need ("CON") from the New York State Department of Health ("DOH") but access to which will be granted to the Purchaser or Operating Designee(s) as applicable prior to the Closing Date;
- (i) any and all computer applications, software, electronic medical records programs, and website, whether owned or licensed, whether for general business usage (e.g., accounting, word processing, graphics, spreadsheet analysis, etc.) or specific, unique-to-the-business usage and all computer operating, security or programming software, owned or licensed by Sellers;
- (j) all telephone numbers, fax numbers, email addresses and internet domain names as set forth on Schedule 1.1(j) of the Purchase Agreement;
- (k) Resident Records, upon satisfaction by Purchaser and Sellers, at Purchaser's sole expense, of all applicable requirements relating to the confidentiality and transferability of such Resident Records and their maintenance and storage, which satisfaction is an affirmative requirement of the Purchase Agreement and all employee personnel records for past and current employees to the extent existing. "Resident Records" means any documents containing information concerning medical, health care or behavioral health services provided to, or the medical, health care or behavioral health of, any individual, or that are otherwise subject to regulation under applicable law, title to which will vest in the Purchaser or Operating Designee upon such person's obtaining a CON;
- (l) all plans and surveys, including without limitation, those related to utilities, easements and roads, "as built" plans, plants, specifications, landscaping, engineers' drawings and architectural renderings and similar items owned by the Sellers and in the Sellers' possession or reasonable control relating to the Facilities;
- (m) all insurance proceeds and insurance proceeds receivable arising from any claim made under Sellers' insurance policies with respect to the Purchased Assets but excluding insurance proceeds and proceeds receivable in respect of tort liabilities such as medical malpractice claims and other Excluded Liabilities;

(n) all rights of Sellers under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with employees, transferred employees and agents of Sellers or with third parties to the extent relating to the Sellers' businesses or the Purchased Assets;

(o) all rights of Sellers under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers, service providers and contractors other than any warranties, representations and guarantees pertaining to any Excluded Assets;

(p) all other assets of every kind and nature (tangible or intangible, known or unknown, liquidated or unliquidated) located at the Facilities or used or useful in conjunction with the operation of the Facilities;

(q) all security, vendor, utility or other deposits belonging to Sellers, to the extent they are not Excluded Assets;

(r) claims and entitlements of any kind belonging to the Sellers; and

(s) Medicare and Medicaid provider agreements only to the extent expressly assumed by the Purchaser at the Closing.

2. Sellers hereby warrant that they have unencumbered and marketable title to the Purchased Assets, and that the sale, conveyance and assignment of the Purchased Assets to Purchaser is and shall be rightful.

3. Sellers do hereby covenant that, from time to time after delivery of this Bill of Sale, at the Purchaser's request and without further consideration, Sellers shall do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, any and all such further acts, instruments and other things or writings reasonably requested by the Purchaser in order to evidence and effectuate the conveyance of the Purchased Assets pursuant to this Bill of Sale.

4. Notwithstanding anything to the contrary herein, the Sellers are executing and delivering this Bill of Sale in accordance with, and subject to, all of the terms and provisions of the Purchase Agreement and the Bankruptcy Sale Order, which terms and provisions shall be incorporated herein by reference.

5. Nothing contained in this Bill of Sale shall be construed to expand, diminish or affect any statements, certifications, representations, warranties, covenants, agreements or indemnifications made by the Purchaser or the Sellers in the Purchase Agreement, none of which shall be deemed to have been merged into this Bill of Sale. The terms and conditions of this Bill of Sale shall be governed and construed in accordance with the laws of the State of New York. Capitalized terms used herein without specific definition shall have the meanings respectively ascribed thereto in the Purchase Agreement.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the undersigned has caused this Bill of Sale to be executed on the day and year first above written.

**FOLTS HOME**

By: \_\_\_\_\_  
Dr. Anthony E. Piana  
Chairman, Board of Directors

**FOLTS ADULT HOME, INC.**

By: \_\_\_\_\_  
William Forster  
Chairman, Board of Directors

STATE OF NEW YORK        )  
  ) SS.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared DR. ANTHONY E. PIANA, the Chairman of the Board of Directors of FOLTS HOME, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same of his/her own free will and for the purpose therein expressed in his/her capacity on behalf of FOLTS HOME and that by his/her signature on the instrument, the individual, or the entity upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK        )  
  ) SS.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared WILLIAM FORSTER, the Chairman of the Board of Directors of FOLTS ADULT HOME, INC., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same of his/her own free will and for the purpose therein expressed in his/her capacity on behalf of FOLTS ADULT HOME, INC. and that by his/her signature on the instrument, the individual, or the entity upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**Exhibit C**  
**Assignment and Assumption Agreement**

See attached.

### ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017 by and between FOLTS HOME, a New York not-for-profit corporation ("Folts Home") and FOLTS ADULT HOME, INC., a New York not-for-profit corporation ("FAH" and, together with Folts Home, jointly referred to herein as "Assignors") and CEDARCARE HOLDINGS LLC, a New York limited liability company ("Assignee"). Assignor and Assignee are sometimes referred to herein individually as "Party" and collectively as the "Parties." All capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to such terms in that certain Purchase Agreement, dated June 1, 2017, by and among Assignors and Assignee (the "Purchase Agreement") and the Bankruptcy Sale Order, as defined herein.

WHEREAS, on \_\_\_\_\_, 2017, the United States Bankruptcy Court for the Northern District of New York entered an Order (the "Bankruptcy Sale Order") authorizing and approving, among other things, the sale, assignment and transfer to Purchaser all of Sellers' right, title and interest in, to and under the Purchased Assets, free and clear of all Liens, Claims and Obligations (each as defined in the Purchase Agreement) to the maximum extent permissible pursuant to sections 105, 363 and 365 of the Bankruptcy Code and applicable law; and

WHEREAS, pursuant to the Bankruptcy Sale Order and Purchase Agreement, Assignees agreed to assume certain contracts listed on Schedule A of this Agreement, and Assignor's obligations arising thereunder after the date hereof together with all of such Assignors' claims or rights now existing or hereafter arising thereunder, subject only to Assignee's satisfaction of the Cure Amounts established pursuant to the Notice of Assumption and Assignment served by Debtors on counterparties to the assumed contracts (the "Assumed Contracts") and certain of Assignors' other duties and obligations arising after the date hereof with respect to the Purchased Assets (collectively, the "Assumed Liabilities").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms of the Purchase Agreement, the Parties hereto hereby act and agree as follows:

1. Assignment and Assumption. Assignors hereby assign to Assignee all the rights of Assignors under the Assumed Contracts [including, but not limited to the Medicare and Medicaid Provider Agreements,] and Assignee accepts and assumes the Assumed Contracts, and hereby assumes, undertakes, and agrees to pay, perform, fulfill and discharge, from and after the date hereof, the liabilities and obligations of Assignors under the Assumed Contracts first arising after the date hereof, and agrees to pay, perform and discharge, as and when due the Assumed Liabilities accruing on and after the Closing in accordance with the terms and conditions thereof.-Except for the Assumed

Liabilities, the Assignee is not assuming and is not liable for any other liabilities, debts or obligations of the Assignors whatsoever.

2. Payment of Amounts Due. Assignors hereby authorize and direct all obligors under the Assumed Contracts to deliver any warrants, checks, drafts or payments to be issued or paid to Assignors pursuant to the Assumed Contracts to Assignee; and Assignors further authorize Assignee to receive such warrants, checks, drafts or payments from such obligors and to endorse Assignee's name on them and to collect all funds due or to become due under the Assumed Contracts.

3. Notice and Consent. Notice of the assignment under this Agreement shall be given by Assignors to all parties to the Assumed Contracts or to such parties' duly authorized agents. Assignors hereby represent and warrant that they have the full right and authority to execute this document and such execution is binding upon them and their respective successors and assigns. Assignors further represent and warrant that either no consent is required to effectuate this assignment or, if any consent(s) are required, that Assignors have obtained such consent(s).

4. Further Assurances. Assignors and Assignee at the request of the other and without further consideration, hereby agree to execute and deliver after the date of this Agreement such other instruments or documents and to take such additional actions as may be reasonably requested by the other Party in order to effect or complete the assumption contemplated hereby.

5. Consummation of Purchase Agreement. This Agreement is intended to evidence the consummation of the assignment by Assignors and assumption by the Assignee of the Assumed Contracts and the Assumed Liabilities of the Assignors contemplated by the terms of the Bankruptcy Sale Order and the Purchase Agreement. Assignors and Assignee by their execution of this Agreement each hereby acknowledges and agrees that neither the representations and warranties nor the rights and remedies of any party under the Bankruptcy Sale Order and Purchase Agreement shall be deemed to be enlarged, modified or altered in any way by this Agreement. Any inconsistencies or ambiguities between this Agreement and the Bankruptcy Sale Order and the Purchase Agreement shall be resolved in favor of the Bankruptcy Sale Order and the Purchase Agreement.

6. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the conflict of law principles thereof, except to the extent that the laws of such State are superseded by the Bankruptcy Code. This Agreement (a) shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, (b) may be executed in two or more counterparts, including an electronic copy delivered by email, each of which shall be deemed an original but all of which together shall constitute one



and the same document, and (c) may be modified or amended only by written agreement executed by each of the Parties hereto.

**[Signature Page Follows]**

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed on their behalf by their duly authorized representatives as of the day and year first above written.

**ASSIGNORS:**

**FOLTS HOME**

By:

\_\_\_\_\_  
Dr. Anthony E. Piana  
Chairman, Board of Directors

**FOLTS ADULT HOME, INC.**

By:

\_\_\_\_\_  
William Forster  
Chairman, Board of Directors

**ASSIGNEE:**

**CEDARCARE HOLDINGS LLC**

By:

\_\_\_\_\_  
Mark Tress, Member

By:

\_\_\_\_\_  
Isidore Blier, Member

**Schedule A**

**Assumed Contracts**

**Schedule 1.1(a)**  
**Real Property**

ALL THOSE TRACTS OR PARCELS OF LAND, situate in the Village of Herkimer, County of Herkimer and State of New York and being designated as the following Nine (9) Tax Parcel Nos.:

- 1) 120.25-2-50.1:
  - a) being part of the premises conveyed by Quit Claim Deed from Folts Home, f/k/a The Folts Mission Institute to Folts Foundation, Inc. dated February 25, 1993 and recorded in the Herkimer County Clerk's Office on February 25, 1993 in Liber 802 of Deeds, page 399;
  - b) and being the same premises conveyed by Quit Claim Deed from Folts Foundation, Inc. to Folts Home dated February 13, 2017 and recorded in the Herkimer County Clerk's Office on February 15, 2017 as Instrument # RP2017-879.
- 2) 120.25-2-54:
  - a) being the premises conveyed by Warranty Deed from Kathleen M. Sprague to Folts Home, Inc. dated September 30, 1996 and recorded in the Herkimer County Clerk's Office on September 30, 1996 in Liber 835 of Deeds, page 396.
- 3) 120.25-2-55.1:
  - a) being part of the premises conveyed by Quit Claim Deed from Folts Home, f/k/a The Folts Mission Institute to Folts Foundation, Inc. dated February 25, 1993 and recorded in the Herkimer County Clerk's Office on February 25, 1993 in Liber 802 of Deeds, page 399;
  - b) and being the same premises conveyed by Quit Claim Deed from Folts Foundation, Inc. to Folts Home dated February 13, 2017 and recorded in the Herkimer County Clerk's Office on February 15, 2017 as Instrument # RP2017-879.
- 4) 120.25-2-57.1:
  - a) being the premises conveyed by Deed from George P. Folts and Elizabeth M. Folts to The Folts Mission Institute dated January 10, 1893 and recorded in the Herkimer County Clerk's Office on January 10, 1893 in Liber 145 of Deeds, page 225;
  - b) and being the premises conveyed by Warranty Deed from Elizabeth M. Folts to The Folts Mission Institute dated June 9, 1894 and recorded in the Herkimer County Clerk's Office on June 9, 1894 in Liber 147 of Deeds, page 509;
  - c) and being the premises conveyed by Warranty Deed from Elizabeth M. Folts to The Folts Mission Institute dated May 11, 1897 and recorded in the Herkimer County Clerk's Office on May 12, 1897 in Liber 159 of Deeds, page 460;
  - d) and being the premises conveyed by Warranty Deed from Elizabeth M. Folts to The Folts Mission Institute dated April 19, 1898 and recorded in the Herkimer County Clerk's Office on April 19, 1898 in Liber 166 of Deeds, page 186;
  - e) and being the lands bequeathed to The Folts Mission Institute by the Last Will and Testament of Elizabeth M. Folts recorded in the Herkimer County Clerk's Office on August 7, 1901 in Liber 175 of Deeds, page 220;
  - f) and being the premises conveyed by Warranty Deed from Florence H. Curtis as Executrix and Trustee of the Estate of Iola B. Haslehurst to Folts Mission Institute dated August

1, 1922 and recorded in the Herkimer County Clerk's Office on August 1, 1922 in Liber 260 of Deeds, page 51;

g) and being the premises conveyed by Warranty Deed from The Woman's Home Missionary Society of the Methodist Episcopal Church to Folts Mission Institute dated April 20, 1939 and recorded in the Herkimer County Clerk's Office on May 28, 1940 in Liber 337 of Deeds, page 176;

h) and being the premises conveyed by Quit Claim Deed from I.W.J. McClain to Folts Mission Institute dated October 28, 1941 and recorded in the Herkimer County Clerk's Office in Liber 345 of Deeds, page 433;

i) and being the premises conveyed by Deed from Charlotte E. Simms and C. Harry Snell to Folts Home dated June 18, 1943 and recorded in the Herkimer County Clerk's Office on June 18, 1943 in Liber 350 of Deeds, page 400;

j) and being the premises conveyed by Warranty Deed from Ruth A. Arlington to Folts Home dated July 20, 1971 and recorded in the Herkimer County Clerk's Office on August 25, 1971 in Liber 616 of Deeds, page 479;

k) and being part of the premises conveyed by Deed from Sarah R. Moore, individually, and as General Guardian of the person and property of David R. Moore and Dana E. Moore, infants, to Folts Home dated January 11, 1973 and recorded in the Herkimer County Clerk's Office on January 11, 1973 in Liber 625 of Deeds, page 847;

l) and being the premises conveyed by Warranty Deed from Gerald B. Heneka and Mary Jane Heneka to Folts Home dated March 15, 1973 and recorded in the Herkimer County Clerk's Office on March 15, 1973 in Liber 626 of Deeds, page 786;

m) and being the premises conveyed by Warranty Deed from John H. Moore to Folts Home dated May 14, 1973 and recorded in the Herkimer County Clerk's Office on May 15, 1973 in Liber 627 of Deeds, page 800;

n) and being the premises conveyed by Warranty Deed from Mary A. Marsh to Folts Home dated August 30, 1985 and recorded in the Herkimer County Clerk's Office on September 18, 1985 in Liber 702 of Deeds, page 493;

o) and being part of the premises conveyed by Quit Claim Deed from Folts Home, f/k/a The Folts Mission Institute to Folts Foundation, Inc. dated February 25, 1993 and recorded in the Herkimer County Clerk's Office on February 25, 1993 in Liber 802 of Deeds, page 399;

p) excepting therefrom 0.253 acres of land conveyed by deed from Folts Foundation, Inc. to Folts Apartments Inc. dated June 1, 1997 and recorded in the Herkimer County Clerk's Office on June 24, 1997 in Liber 842 of Deeds at page 648.

5) 120.25-2-57.2:

a) being part of the premises conveyed by Quit Claim Deed from Folts Home, f/k/a The Folts Mission Institute to Folts Foundation, Inc. dated February 25, 1993 and recorded in the Herkimer County Clerk's Office on February 25, 1993 in Liber 802 of Deeds, page 399;

b) and being part of the premises conveyed by Deed from Folts Home to Folts Adult Home, Inc. dated June 1, 1997 and recorded in the Herkimer County Clerk's Office on June 24, 1997 in Liber 842 of Deeds, page 638;

c) and being part of the premises conveyed by Quit Claim Deed from Folts Foundation, Inc. to Folts Adult Home, Inc. dated June 1, 1997 and recorded in the Herkimer County Clerk's Office on June 24, 1997 in Liber 842 of Deeds, page 643.

- 6) 120.25-2-58:
  - a) being the premises conveyed by Warranty Deed from Hubbard Heel Company, Inc. to Folts Home dated September 1, 1965 and recorded in the Herkimer County Clerk's Office on September 1, 1965 in Liber 577 of Deeds, page 216;
  - b) and being part of the premises conveyed by Quit Claim Deed from Folts Home, f/k/a The Folts Mission Institute to Folts Foundation, Inc. dated February 25, 1993 and recorded in the Herkimer County Clerk's Office on February 25, 1993 in Liber 802 of Deeds, page 399;
  - c) and being part of the premises conveyed by Quit Claim Deed from Folts Foundation, Inc. to Folts Adult Home, Inc. dated June 1, 1997 and recorded in the Herkimer County Clerk's Office on June 24, 1997 in Liber 842 of Deeds, page 643.
  
- 7) 120.25-2-59:
  - a) being part of the premises conveyed by Warranty Deed from Jonell Manufacturing Corp. to Folts Home dated January 21, 2002 and recorded in the Herkimer County Clerk's Office on January 22, 2002 in Liber 903 of Deeds, page 162.
  
- 8) 120.25-2-60.2:
  - a) being part of the premises conveyed by Warranty Deed from Jonell Manufacturing Corp. to Folts Home dated January 21, 2002 and recorded in the Herkimer County Clerk's Office on January 22, 2002 in Liber 903 of Deeds, page 162.
  
- 9) 120.25-2-85:
  - a) being the premises conveyed by Warranty Deed from The Penn Traffic Company to Folts Home, Inc. dated March 14, 1997 and recorded in the Herkimer County Clerk's Office on April 4, 1997 in Liber 840 of Deeds, page 325;
  - b) and being the premises conveyed by Quit Claim Deed from Folts Home to Folts Adult Home, Inc. dated June 1, 1997 and recorded in the Herkimer County Clerk's Office on June 24, 1997 in Liber 842 of Deeds, page 638;
  - c) and being the premises conveyed by Quit Claim Deed from The Village of Herkimer to Folts Adult Home, Inc. dated June 17, 1997 and recorded in the Herkimer County Clerk's Office on June 24, 1997 in Liber 842 of Deeds, page 635.

**Schedule 1.1(b)**  
**Real Estate Leases**

1. Ground Lease dated December 16, 1998, between Folts Adult Home, Inc. (landlord) and Faxchil Realty, Inc. (tenant); Addendum No. 1 to Ground Lease dated February 8, 1999; Memorandum of lease recorded in Herkimer County Clerk's Office on March 11, 1999.
2. Parking Lease dated December 22, 1998, between Faxchil Realty, Inc. (landlord) and Folts Adult Home, Inc. (tenant); Addendum No. 1 to Parking Lease dated December 22, 1998; Addendum No. 2 to Parking Lease dated February 8, 1999; Memorandum of Lease filed in Herkimer County Clerk's Office on March 11, 1999.
3. Parking Lease Agreement dated November 26, 2008, between Folts Adult Home, Inc. (landlord) and Faxton-St. Luke's Healthcare (tenant).

**Schedule 1.1(c)**  
**Personal Property**

Final Schedule to be provided at Closing.



**Schedule 1.1(d)**  
**Assumed Contracts**

List of Assumed Contracts, if any, to be provided at Closing

**Schedule 1.1(g)**  
**Permits**

List of Permits, if any, to be provided at Closing

**Schedule 1.1(j)**  
**Intangible Assets**

The following telephone and fax numbers:

1. Telephone Number: (315) 866-6964
2. Facsimile Number: (315) 866-6760

and any other telephone numbers, fax numbers, email addresses and/or domain names owned by Sellers.

**EXHIBIT 2**

Purchase Agreement with Backup Bidder  
Personal Healthcare, LLC

**PURCHASE AGREEMENT**

AGREEMENT made as of the 6th day of June, 2017, by and between Folts Home, a New York not-for-profit corporation ("**Folts Home**"), Folts Adult Home, Inc., a New York not-for-profit corporation ("**FAH**") and, together with Folts Home and FAH, jointly referred to herein as "**Sellers**" or "**Debtors**", and each, individually, a "**Debtor**" or "**Seller**", and Personal Healthcare, LLC, a New York limited liability company ("**Purchaser**").

**WITNESSETH:**

WHEREAS, Folts Home is the owner and established operator of that certain skilled nursing facility operating as a 163-bed skilled nursing facility located at 100-122 North Washington Street, Herkimer, New York 13350 (the "**Nursing Home**") and owns all of the real property and the personal property associated with the Nursing Home; and

WHEREAS, FAH is the owner and established operator of that certain adult care facility operating as an 80-bed adult care facility located at 104 North Washington Street, Herkimer, New York 13350 (the "**Adult Home**") and owns all of the real property and the personal property associated with the Adult Home; and

WHEREAS, upon each of the described properties owned by Folts Home or FAH are real estate, buildings and improvements comprising a facility which provides skilled nursing care and related services and adult care and related services pursuant to Article 28 of the Public Health Law of the State of New York ("**Article 28**") of the Public Health Law of the State of New York (each of the foregoing described facilities are referred to as a "**Facility**" and, collectively as the "**Facilities**"); and

WHEREAS, the Facilities are currently being operated by receivers HomeLife at Folts, LLC and HomeLife at Folts-Claxton, LLC (collectively, the "**Current Receivers**") that were duly appointed by the New York State Department of Health ("**DOH**") pursuant to Receivership Agreements executed by the DOH, Folts Home, FAH and the Current Receivers; and

WHEREAS, Sellers and the Current Receivers are parties to an Asset Purchase Agreement dated April 17, 2014, which expired on March 1, 2017 (the "**HomeLife APA**"), pursuant to which the Current Receivers proposed to purchase all assets comprising the Facilities. The HomeLife APA does not contain a specified purchase price and closing of the sale transaction is expressly conditioned upon the Current Receivers obtaining consents from the United States Department of Housing and Urban Development ("**HUD**"), the DOH, the New York Office of the Attorney General and the New York State Supreme Court to the proposed transaction; and

WHEREAS, the Current Receivers have not performed under the HomeLife APA to date, and have not obtained the required consents from the designated government authorities; and

WHEREAS, the Sellers have filed voluntary petitions for relief commencing cases under chapter 11 of the Bankruptcy Code (the "**Bankruptcy Cases**") with the United States Bankruptcy Court for the Northern District of New York (the "**Bankruptcy Court**") pursuant to which they

intend to sell substantially all of their assets comprising the Facilities pursuant to Sections 105 and 363 of the Bankruptcy Code; and

WHEREAS, in accordance with the terms of this Agreement, the Purchaser desires to purchase all of the Sellers' right, title and interest in and to the real estate, business and operations of the Facilities, and all of the other assets used in connection with the operation of the Facilities (collectively, with the Facilities, the "***Purchased Assets***"); and

WHEREAS, the parties acknowledge that the Purchaser or the persons or entities designated by the Purchaser to operate the Facilities (the "***Operating Designee(s)***") must seek the approval of the DOH and receive the CON (as hereinafter defined); however, the receipt of the CON shall not be a condition of Closing as long as Purchaser or an affiliate of Purchaser is appointed as receiver of the Facilities prior to the Closing Date (the "***New Receiver***") or Purchaser or an affiliate of Purchaser is appointed as receiver for its own account as of the Closing Date pursuant to Section 9.2; and

WHEREAS, on the terms and subject to the conditions set forth in this Agreement, Purchaser desires to purchase from Sellers, and Sellers desire to sell to Purchaser, the Purchased Assets (including the Assumed Contracts), in a sale authorized by the Bankruptcy Court free and clear of all Liens (as hereinafter defined) pursuant to sections 105, 363 and 365 of the Bankruptcy Code; and

WHEREAS, Purchaser also desires to assume, and Sellers desire to assign and transfer to Purchaser, the Assumed Liabilities (as hereinafter defined).

NOW, THEREFORE, in consideration of the foregoing and their respective representations, warranties, covenants and undertakings herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sellers and Purchaser hereby agree as follows:

## 1. PURCHASE AND SALE OF ASSETS

1.1. Purchased Assets. Subject to the terms and conditions of this Agreement, on the Closing Date (as defined in Section 3), the Sellers shall sell to Purchaser all of the Sellers' right, title and interest in, to and under the Purchased Assets, on an "as-is, where-is, with-all-faults" basis, free and clear of all Liens of every kind and nature including, without limitation, the following assets:

(a) fee simple title to the real estate (including the buildings and improvements) comprising the Facilities as described above, and further defined and described in Schedule 1.1(a) hereto (the "***Real Property***");

(b) all of Sellers' rights under any Real Estate Leases listed on Schedule 1.1(b) (the "***Real Estate Leases***");

(c) all furniture, fixtures, furnishings, machinery, equipment, supplies (including all of the Sellers' inventory), artwork, and all other tangible property owned by Sellers or located at the Facilities or used by Sellers in the conduct of their businesses, including, without limitation, the items listed on Schedule 1.1(c), together with any vehicles, if any, owned by Sellers, and any capital assets owned by Sellers;

(d) all of Sellers' rights and interests under executory contracts and agreements and unexpired leases designated by Purchaser in its sole discretion and listed on Schedule 1.1(d) hereto, subject to any applicable restrictions on assignment of provider agreements in which case any such agreements shall be assumed by the Sellers and assigned to Purchaser (collectively, the "**Assumed Contracts**");

(e) all of Seller's accounts receivables, rights to payment and claims of every kind and nature and the proceeds thereof (but not including those accounts receivable that arose from services provided by the Current Receivers) (the "**Accounts Receivable**");

(f) the names Folts Home and Folts Adult Home-Claxton;

(g) all permits, licenses, approvals, franchises, notices, registrations and authorizations issued by any governmental authority necessary or desirable to operate the Facilities (and pending applications for the foregoing) (collectively, "**Permits**"), including those Permits listed on Schedule 1.1(g), excluding only such Permits to the extent not legally transferable;

(h) copies of all books and records of the Facilities (the "**Business Records**"), title to which will vest in the Purchaser or Operating Designee(s) upon such person's obtaining a Certificate of Need (a "**CON**") from the DOH, but access to which will be granted to the Purchaser or Operating Designee(s) as applicable prior to the Closing Date;

(i) any and all computer applications, software, owned or licensed, whether for general business usage (e.g., accounting, word processing, graphics, spreadsheet analysis, etc.) or specific, unique-to-the-business usage and all computer operating, security or programming software, owned or licensed by Sellers;

(j) all telephone numbers, fax numbers, email addresses and internet domain names as set forth on Schedule 1.1(j);

(k) Resident Records, upon satisfaction by Purchaser and Sellers, at Purchaser's sole expense, of all applicable requirements relating to the confidentiality and transferability of such Resident Records and their maintenance and storage, which satisfaction is an affirmative requirement of this Agreement. "**Resident Records**" means any documents containing information concerning medical, health care or behavioral health services provided to, or the medical, health care or behavioral health of, any individual, or that are otherwise subject to regulation under applicable law, title to which will vest in the Purchaser or Operating Designee upon such person's obtaining a CON. Sellers and Purchaser shall execute a Medical Records Transfer and Custody Agreement with regard to the Resident Records at Closing;

(l) all plans and surveys, including without limitation, those related to utilities, easements and roads, "as built" plans, plants, specifications, landscaping, engineers' drawings and architectural renderings and similar items owned by the Sellers and in the Sellers' possession or reasonable control relating to the Facilities;

(m) all insurance proceeds and insurance proceeds receivable arising from any claim made under Sellers' insurance policies with respect to the Purchased Assets but excluding insurance proceeds and proceeds receivable in respect of tort liabilities such as medical malpractice claims and other Excluded Liabilities;

(n) all rights of Sellers under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with employees, transferred employees and agents of Sellers or with third parties to the extent relating to the Sellers' businesses or the Purchased Assets;

(o) all rights of Sellers under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers, service providers and contractors other than any warranties, representations and guarantees pertaining to any Excluded Assets;

(p) all other assets of every kind and nature (tangible or intangible, known or unknown, liquidated or unliquidated) located at the Facilities or used or useful in conjunction with the operation of the Facilities;

(q) all security, vendor, utility or other deposits belonging to Sellers, to the extent they are not Excluded Assets; and

(r) claims and entitlements of any kind belonging to the Sellers.

1.2. Excluded Assets. Notwithstanding anything to the contrary in this Agreement or any document or instrument delivered pursuant hereto, the Purchased Assets do not include any of the following properties and assets of Sellers (the "**Excluded Assets**"), none of which shall be conveyed to Purchaser:

(a) all contracts, leases or agreements other than the Assumed Contracts (the "**Excluded Contracts**");

(b) any accounts receivable that arise from services provided by the Current Receivers and any funds that may be left at the end of the receivership of the Current Receivers after payment of DOH and other creditors of the Current Receivers;

(c) related party and insider debts and/or accounts receivable;

(d) all personal property of the persons residing at the Facilities (the "**Residents**");

(e) all tax refunds, if any, due the Sellers;



(f) all actions arising under Chapter 5 of the Bankruptcy Code with respect to the Purchased Assets;

(g) all funds deposited with the United States District Court for the Northern District of New York in connection with the interpleader action captioned *FRNC, LLC et al. v. HomeLife at Folts, LLC et al.*, Case No. 6:15-cv-00812 (GLS-TWD); and

(h) all funds in any escrow, sinking fund or reserve account held by or for the benefit of the United States Department of Housing and Urban Development (“*HUD*”) in conjunction with the mortgage or mortgages held by HUD which encumber the Facilities.

1.3. Assumption of Liabilities. Subject to the terms and conditions of this Agreement and on the basis of the representations, warranties, covenants and agreements herein contained, as of the Closing Date, Purchaser shall assume, and Purchaser shall hereafter pay, perform and discharge when due, only the following liabilities of Sellers as listed below (collectively, the “*Assumed Liabilities*”):

(a) all cure obligations which must be paid to counterparties to the Assumed Contracts pursuant to section 365(b)(1) of the Bankruptcy Code except to the extent such cure obligations conflict with Sections 1.4(b) and/or 1.4(j) of this Agreement;

(b) all liabilities under the Assumed Contracts first arising after the Closing Date; and

(c) all liabilities under the Permits assumed by Purchaser first arising after the Closing Date.

1.4. Excluded Liabilities. Except as specifically provided in Section 1.3, Purchaser shall not assume or be deemed to assume, and shall have no responsibility or obligation with respect to, any liabilities of, or claim against, Sellers, Current Receivers, or of any predecessor or other affiliate of Sellers or Current Receivers, of any kind or nature, whether absolute, accrued, contingent or otherwise and whether due or to become due and whether or not asserted, and whether or not known or unknown or currently existing or hereafter arising, and however arising (the “*Excluded Liabilities*”). The Excluded Liabilities shall include:

(a) any liabilities in respect of or relating to or otherwise arising, whether before, on, or after the Closing Date, out of, or in connection with the Excluded Assets;

(b) any claims for retroactive adjustments or unpaid assessments to the extent applicable to periods ending on or before the earlier of the Closing Date or the date the New Receiver is appointed, including those arising in connection with Sellers’ or any other receiver’s Medicare and Medicaid provider numbers and related participation or any other third party healthcare payor program.

(c) all accounts payable and loans payable arising before the earlier of the date the New Receiver is appointed or the Closing Date;

(d) any other liabilities or obligations related to the Purchased Asset and/or the ownership or operation of the Facilities, arising from or relating to any period prior to the date the New Receiver is appointed or the Closing Date, whichever is earlier;

(e) any and all liabilities arising from employment of employees by Sellers or the Current Receivers prior to the Closing Date, including COBRA claims, relating to the termination of employment of any employee employed prior to the earlier of the date the New Receiver is appointed or the Closing Date, and any other obligation of every kind or description owing to employees arising out of their employment at the Facilities prior to the Closing Date, including, but not limited to, any benefit accruals, wage claims, liabilities for discrimination claims or contract claims, and retiree benefits;

(f) the Excluded Contracts;

(g) any gain on sale and any recapture that may be recognized under the Medicare or the New York Medicaid Program and other third party payor programs based upon the consummation of the transactions contemplated herein;

(h) any liabilities of Sellers to any person related or affiliated with the Sellers;

(i) the liabilities of Sellers relating to the retention of professionals with respect to the Bankruptcy Case and the transactions contemplated herein;

(j) any reimbursement, overpayment liabilities and obligations (including interest and penalties thereon) of Sellers to Medicaid or Medicare or any other person or entity arising out of or related to payment for services rendered prior to the appointment of the New Receiver or the Closing Date, whichever is earlier, including those liabilities or obligations arising out of an audit (or similar procedure then in effect) or any kind of review of information submitted or claim made by or on behalf of Sellers, including with in connection with (i) cost reports; (ii) net available monthly income; (iii) case mix index adjustments; or (iv) MDS submissions; and

(k) all other liabilities (interpreted in the broadest sense) of Sellers that are not Assumed Liabilities.

## 2. PURCHASE PRICE.

2.1 In exchange for the Purchased Assets, Purchaser agrees to pay to Sellers the following consideration (the "**Total Consideration**"):

(a) The sum of Sixteen Million Four Hundred Seventy-Five Thousand Dollars (\$16,475,000.00) (the "**Purchase Price**"), subject to any adjustments or credits set forth in this Agreement, payable as follows:

(i) One Million Dollars (\$1,000,000.00) payable by bank, cashier's or certified check or wire transfer to the order of Sellers (the "**Purchase Deposit**"), upon signing of this Agreement, which Purchase Deposit shall be refundable to Purchaser only if this Agreement fails to Close due to a Seller Breach or if this Agreement is terminated because Purchaser is not the successful bidder; and

(ii) Fifteen Million Four Hundred Seventy-Five Thousand Dollars (\$15,475,000.00), subject to any adjustments set forth in this Agreement, by bank, cashier's or certified check(s) or wire transfer to the order of Sellers or by wire transfer to an account designated by Sellers to Purchaser at Closing.

(b) Purchaser was determined to be the Backup Bidder for the Purchased Assets at the Auction held on June 6, 2017 at the offices of Sellers' counsel. Cedarcare Holdings, LLC ("Cedarcare") was determined to be the Successful Bidder for the Purchased Assets. Purchaser and the Sellers have agreed that, upon the appointment of Cedarcare, or its designated operator, as the temporary receiver of the Facilities pursuant to Cedarcare's purchase agreement, Sellers shall refund to Purchaser a portion of the Purchase Deposit in the amount of Four Hundred Thousand Dollars (\$400,000.00) and shall so direct the Escrow Agent appointed under the terms of the Escrow Agreement executed in connection herewith. If the sale transaction with Cedarcare closes in accordance with the terms of the Cedarcare Purchase Agreement, the balance of the Purchase Deposit shall be returned to Purchaser pursuant to section 2.1(a)(i) of this Agreement.

(c) In the event Cedarcare is unable to close the sale transaction and Purchaser is named the Successful Bidder for the Purchased Assets, then Purchaser shall replenish the Purchase Deposit up to \$1,000,000.00 within three business days after receiving notice from Sellers, and proceed to Closing.

2.2 The Purchase Price shall be allocated among the Purchased Assets at Closing as designated by the Bankruptcy Court, provided that no less than Five Million Dollars (\$5,000,000.00) shall be allocated to the Nursing Home assets. Upon the entry of a Final Sale Order (as hereinafter defined) approving the sale of the Purchased Assets to Purchaser, the Purchase Deposit shall become non-refundable (subject to Section 12.6 hereof) and may be retained by the Sellers as liquidated damages, and not as a penalty, in the event of a breach of this Agreement by the Purchaser, or in the event that Purchaser fails to Close as required by this Agreement, as the Sellers' sole and exclusive damages.

3. CLOSING. Subject to the satisfaction (or waiver, as applicable) of all conditions included in this Agreement, the closing of the purchase and sale of the Purchased Assets and the Assumed Liabilities, and the assumption and assignment of the Assumed Contracts, as contemplated hereunder (the "**Closing**") shall take place no later than sixty (60) days following (i) the entry of the Final Sale Order and (ii) the first to occur of (a) the appointment of Purchaser or an affiliate of Purchaser as the New Receiver, (b) the appointment of Purchaser or an affiliate of Purchaser as receiver under Section 9.2 hereof, or (c) receipt of the CON. The Closing will be held at the offices of Sellers' counsel on such date, or such other date and time as the parties shall mutually agree which is materially within the time constraints set forth above. The date on which the Closing occurs is referred to herein as the "**Closing Date**".

3.1 Sellers' Closing Deliverables. At the Closing, Sellers shall deliver or cause to be delivered to Purchaser:

(a) bargain and sale Deeds transferring title to the real properties upon which the Facilities are located (the “*Deeds*”);

(b) a duly executed Bill of Sale for the Purchased Assets, substantially in the form attached hereto as **Exhibit B**;

(c) a duly executed Assignment and Assumption Agreement, in form and substance reasonably satisfactory to Sellers, which provides for the assignment by the Sellers and the assumption by the Purchaser of all of the Assumed Liabilities and Assumed Contracts, substantially in the form attached hereto as **Exhibit C**;

(d) a certified copy of the final and non-appealable order of the Bankruptcy Court authorizing and approving the sale of the Purchased Assets to Purchaser free and clear of any and all mortgages, liens, claims, liabilities, charges and encumbrances whatsoever (collectively, “*Liens*”) pursuant to Sections 105 and 363 of the Bankruptcy Code and approving the assumption and assignment of the Assumed Contracts to Purchaser pursuant to Section 365 of the Bankruptcy Code, which order shall not have been stayed, vacated or otherwise rendered ineffective (the “*Final Sale Order*”). The Final Sale Order shall contain, among other terms, the following provisions:

(i) that the terms and conditions of the sale of the Purchased Assets to Purchaser are approved;

(ii) that the sale of the Purchased Assets to Purchaser is free and clear, other than for Assumed Liabilities, of any and all liabilities and Liens of any type or nature whatsoever pursuant to section 363(f) of the Bankruptcy Code;

(iii) that Sellers hold good and marketable title to the Purchased Assets and have the authority to transfer the Purchased Assets to Purchaser;

(iv) that the Total Consideration constitutes fair value for the Purchased Assets;

(v) that Purchaser acted in good faith in all respects and that Purchaser and its assignees and designees are entitled to the protections of section 363(m) of the Bankruptcy Code;

(vi) that notice of the transactions contemplated hereby was good and sufficient and was provided timely to all parties in interest in the Bankruptcy Case who are entitled or required to receive notice pursuant to the Federal Rules of Bankruptcy Procedure, the local rules of the Bankruptcy Court, or other applicable law;

(vii) that Sellers are authorized to assume and assign to Purchaser each of the Assumed Contracts; *provided, however*, that Purchaser shall have sole responsibility of paying the cure obligations required to be paid in accordance with section 365(b)(1)(A) of the Bankruptcy Code and Section 1.3 of this Agreement except to the extent such cure obligations conflict with Sections 1.4(b) and/or 1.4(j) of this Agreement;

(viii) that Sellers are authorized and directed to consummate the sale of the Purchased Assets and to execute and deliver all agreements, instruments and documents reasonably necessary or desirable to consummate the sale of the Purchased Assets and to effectuate the provisions of the Final Sale Order;

(ix) that the sale process conducted by Sellers and/or their agent was non-collusive, fair and reasonable and was conducted in good faith;

(x) that Purchaser and Sellers did not engage in any conduct which would allow the transactions contemplated by this Agreement to be set aside pursuant to section 363(n) of the Bankruptcy Code;

(xi) that Purchaser is not a successor to, or otherwise liable for, the liabilities, debts or obligations of Sellers under any theory of law or for any purpose, other than as specifically set forth in this Agreement with respect to the Assumed Liabilities;

(xii) that, pursuant to section 105 of the Bankruptcy Code, all creditors of Sellers are enjoined from taking any actions against Purchaser or the Purchased Assets except in connection with liabilities expressly assumed by Purchaser herein;

(xiii) that Purchaser shall not be deemed a successor employer to Sellers for purposes of any liability arising under the WARN Act, any similar state or local law, or any collective bargaining agreement or other labor or employment agreement; and

(xiv) that the Final Sale Order is binding upon any successors to Sellers, including any trustee that may be appointed in the Bankruptcy Case (including if such case is converted to a case under Chapter 7 of the Bankruptcy Code);

(e) all documents necessary or desirable to transfer the Medicare and Medicaid provider agreements to Purchaser in accordance with the provisions of this Agreement and, in connection therewith, Sellers shall use their best efforts to ensure that the Current Receivers promptly execute and deliver any and all documents necessary or desirable to effectuate the transfer of the Medicare and Medicaid provider agreements to Purchaser.

(f) all other instruments of conveyance and transfer executed by Sellers, in form and substance reasonably acceptable to Purchaser, as may be necessary or desirable to convey the Purchased Assets to Purchaser free and clear of all Liens, including certificates of title for vehicles, if any;

(g) an officer's certificate, dated as of the Closing Date, executed by duly authorized officers of the Sellers certifying that the conditions set forth in Section 10 have been satisfied;

(h) duly executed certificates from each Seller pursuant to Internal Revenue Code Section 1.1445-2(b) that such Seller is not a foreign person within the meaning of Internal Revenue Code Section 1445;

(i) duly executed counterparts of any other customary bills of sale, endorsements, consents, assignments and other good and sufficient instruments of conveyance and assignment as Sellers and Purchaser and their respective counsel shall deem reasonably necessary or desirable to vest in Purchaser all rights, title and interest in, to and under the Purchased Assets, Assumed Contracts and Assumed Liabilities, as well as physical possession of all the Purchased Assets;

(j) copies of the Business Records;

(k) written approval, if required pursuant to sections 510 and 511 of the New York Not-For-Profit Corporation Law, duly issued by the New York State Office of the Attorney General and, if necessary, the New York State Supreme Court for the County of Herkimer, approving the sale of the Purchased Assets to Purchaser;

(l) a closing settlement statement in form and substance satisfactory to the parties hereto, regarding certain Closing matters, including any adjustments to the Purchase Price, executed by Sellers;

(m) consents to assignments from third parties relating to any Assumed Contracts that require such consents;

(n) legal, valid and binding UCC-3 termination statements or other documentation (in form and substance reasonably satisfactory to Sellers, Purchaser and their respective counsel), in recordable form, sufficient to release any Lien against the Purchased Assets or to terminate any recordation or filing in respect thereof; and

(o) such other documents or order as may be deemed required or desirable by Purchaser to ensure and memorialize that the Purchased Assets are being transferred and that Purchaser or its Operating Designee(s) will be operating free and clear of any Liens including those relating to or arising from the operation of any operator or receiver of the Facilities prior to the Closing Date or the commencement of the operations of the New Receiver.

3.2 Purchaser's Closing Deliverables. At the Closing, Purchaser shall deliver or cause to be delivered to Sellers:

(a) the Purchase Price, in cash, less the amount of the Purchase Deposit and any interest on the Deposit;

(b) a duly executed Assignment and Assumption Agreement, in form and substance reasonably satisfactory to Sellers, which provides for the assignment by the Sellers and the assumption by the Purchaser of all of the Assumed Liabilities and Assumed Contracts;

(c) duly executed counterparts of the instruments set forth in Section 3.1, as applicable;

(d) an officer's certificate, dated as of the Closing Date, executed by duly authorized officers of the Sellers certifying that the conditions set forth in Section 11 have been satisfied;

(e) checks, payable to, and in form satisfactory to, the applicable recipients, for all conveyance or transfer taxes, deed stamps, title and survey fees, recording fees and similar charges in connection with the Closing except to the extent exempted pursuant to Section 1146 of the Bankruptcy Code;

(f) satisfactory evidence of (i) the appointment of the New Receiver, (ii) the appointment of Purchaser or an affiliate of the Purchaser as receiver for its own account as of the Closing Date, or (iii) approval of the CON(s) for the Purchaser; and

(g) such other documents as Sellers' counsel may reasonably request that are necessary to evidence or consummate the transactions contemplated by this Agreement.

#### 4. ADJUSTMENTS.

4.1 Provided that the Purchaser closes the transaction and the Facilities have been operated by an affiliate of Purchaser as the New Receiver, there shall be no adjustments at Closing. The period of time between the appointment of the New Receiver and the Closing (or the earlier termination of this Agreement) shall be referred to as the "New Receivership Period". If Closing occurs without Purchaser having operated the facilities as New Receiver, then at or before the Closing, the Purchase Price shall be adjusted by the parties to account for the following (as of midnight of the night immediately preceding the Closing Date) such that the costs, expenses and payments for such items will be adjusted in the customary manner between Sellers and Purchaser:

(a) real estate, school and similar taxes (and any payments in lieu of taxes) attributable to the Facilities;

(b) water and sewer taxes or charges attributable to the Facilities;

(c) telephone, gas, water, electric and any other utility charges;

(d) prepayments for resident charges for periods after the Closing Date; and

(e) such other items customarily requiring adjustment in connection with similar transactions.

4.2 All such adjustments shall be agreed to by the parties at or prior to the Closing or at such other time as the parties may agree. In the event an error is made in the calculation of any of the foregoing adjustments, the parties hereto shall promptly, upon the discovery of such error (provided that such error is discovered and notice thereof given within 90 days following the Closing Date), further adjust the Purchase Price to correct such error and make appropriate payment within ten days of the date such adjustment is agreed upon.

5. ACCOUNTS RECEIVABLE.

5.1 (a) At Closing, all of the accounts receivable (i.e., amounts earned or due, whether or not actually billed) and any other amounts due to New Receiver as a result of operating the Facilities prior to the Closing, other than any Excluded Assets, shall be the property of the New Receiver. Likewise, all moneys received after the Closing Date from Residents, Medicare, Medicaid and other reimbursements, or from any other source with respect to care rendered, or as a result of the New Receiver operating the Facilities prior to the Closing Date, shall be the property of the New Receiver to be treated and disbursed accordingly.

(b) Any bills received after the Closing Date by the Purchaser which are required to be paid by Debtors' estates, or any other person under this Agreement or otherwise, shall be delivered to the Sellers within five business days of Purchaser's receipt.

(c) All accounts receivable collected during the New Receivership Period shall be held by the New Receiver and applied as set forth in the applicable agreement appointing the New Receiver.

5.2 Sellers, the New Receiver and the Purchaser after Closing shall have the right to protest, contest, appeal and seek to adjust the Facilities' third-party reimbursement rates and/or challenge Medicare or Medicaid rate audit proceedings for periods prior to the Closing Date and to maintain any such actions which are pending as of the Closing Date. To the extent that any such proceedings result in an increase in the Facilities' rate(s), the proceeds shall be forwarded as designated by the Purchaser and shall be the sole property of the Purchaser except that, to the extent any such proceeds relate to the period of the Current Receivers, such proceeds shall be the property of Sellers. Any person receiving any such funds shall be solely responsible for paying any assessment thereon. Nothing herein shall obligate any person to prosecute or continue any proceeding(s) described above.

5.3 The provisions of Sections 5.1-5.3 shall survive the Closing.

6. REPRESENTATIONS OF SELLERS. Sellers hereby represent and warrant to Purchaser as follows:

6.1 Corporate Organization. Each Seller is a New York not-for-profit corporation, duly organized, validly existing and in good standing under the laws of the State of New York. Subject to any necessary authority from the Bankruptcy Court, each Seller has all requisite power and authority and all necessary approvals, permits, licenses and authorizations to own its properties and assets and to conduct the business now conducted.

6.2 Authority. Pursuant and subject to the terms of the Final Sale Order and subject to entry of such order, each Seller has all requisite power and authority to execute and deliver this Agreement, the Deeds, the Bill of Sale, the Assignment and Assumption Agreement and all other documents to be delivered by Sellers and to consummate the transactions herein (collectively, the "*Transaction Documents*"). This Agreement and all other Transaction



Documents are valid and binding agreements of Sellers enforceable in accordance with their respective terms, subject to receipt of the Requisite Approvals and entry of the Final Sale Order.

6.3 Title. Sellers have good and marketable title to the Purchased Assets and, as of the Closing, the Purchased Assets shall be free and clear of all Liens.

6.4 Environmental Matters. The operation of the Facilities and the Purchased Assets is in compliance in all material respects with environmental laws, including obtaining, maintaining, timely applying for renewal of and complying with all permits required to comply with environmental laws; and there are no facts, circumstances or conditions existing at any of the Facilities or Purchased Assets reasonably likely to result in remedial action or the imposition of any material liability pursuant to environmental laws or regulations. Sellers shall deliver copies of existing environmental reports, if any, to Purchaser.

7. REPRESENTATIONS OF PURCHASER. Purchaser hereby represents and warrants to Sellers as follows:

7.1 Authority.

(a) Purchaser has all requisite power and authority to execute and deliver this Agreement and the Assignment and Assumption Agreement and to consummate the transactions to be effected on its part hereby.

(b) This Agreement and the Assignment and Assumption Agreement and all of the Transaction Documents to be delivered by Purchaser have been duly authorized, executed and delivered by Purchaser and approved by all requisite corporate action of Purchaser. This Agreement and the Assignment and Assumption Agreement are valid and binding agreements of Purchaser enforceable in accordance with their terms.

(c) Subject to the receipt of the Requisite Approvals, Purchaser's execution, delivery and performance of this Agreement and the Assignment and Assumption Agreement do not and will not conflict with or constitute a breach of or default under the provisions of any material indenture, agreement or other instrument to which Purchaser is a party or by which Purchaser's respective properties may be bound, or the provisions of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award of any court, government or governmental agency or instrumentality having applicability to Purchaser or Purchaser's property, or by which Purchaser or Purchaser's properties may be bound.

7.2 Status of Purchaser.

(a) Purchaser (or any of its shareholders, members, partners, officers, directors, or owners) has never been convicted of: (i) any offense related to the delivery of an item or service under the Medicare or Medicaid programs; (ii) a criminal offense relating to neglect or abuse of patients or residents in connection with the delivery of a long term care or health care item or service; (iii) fraud, theft, embezzlement or other financial misconduct in connection with the

delivery of a long term care or health care item or service; or (iv) obstructing an investigation of any crime.

(b) Purchaser (or any of its shareholders, members, partners, officers, directors, or owners) has never been required to pay any civil monetary penalty under 42 U.S.C. § 1128A regarding false, fraudulent or impermissible claims caused by Purchaser which may result in payments under, or payments to induce a reduction or limitation of long term care or health care services to beneficiaries of, any state or federal health care program.

(c) Purchaser (or any of its shareholders, members, partners, officers, directors, or owners) has never been excluded from participation in the Medicare or Medicaid programs or state long term care or health care programs.

(d) Purchaser (or any of its shareholders, members, partners, officers, directors, or owners) has no knowledge that he or it is the subject of any ongoing investigation or proceeding that could lead to any of the events set forth in items (a) through (c) above.

7.3 DOH Approval. Purchaser knows of no reason that DOH or any other governmental authority would reject or delay Purchaser's application(s) for the Requisite Approvals, nor has any such application by Purchaser (or any of its shareholders, members, partners, officers, directors or owners) ever been denied, or approval revoked. Purchaser (or any of its shareholders, members, partners, officers, directors or owners) has never been excluded from participation in any federal or state health care program.

7.4 Due Organization; Authority. Purchaser or its Operating Designee(s), if applicable, is, or at Closing will be, a duly organized limited liability company, validly existing and in good standing under the laws of the State of its formation with full corporate power and authority to perform its obligations under this Agreement and the Assignment and Assumption Agreement.

7.5 Insurance. As of the Closing, Purchaser or its Operating Designee(s) shall have appropriate insurance coverage in place for the business (but not retroactive coverage which shall be the obligation of the Sellers, the Current Receivers or the New Receiver, as applicable) consistent with what would be maintained under ordinary industry business practices.

7.6 Capitalization of Purchaser. If Purchaser assigns this Agreement or any portion thereof pursuant to Section 17 hereof, as of the date of such assignment and as of Closing, and after giving effect to the subject transaction, such assignee(s) shall have sufficient working capital, or shall have available to it (or them) to operate the Facilities.

7.7 The aforesaid representations shall be true as of the date of the Closing as though made on such date.

8. COVENANTS OF SELLERS. Sellers hereby covenant and agree with Purchaser as follows:

8.1 Conveyance. At the Closing, pursuant and subject to entry of and the terms of the Final Sale Order, Sellers shall convey the Purchased Assets to Purchaser free and clear of Liens.

8.2 Conduct of Business Pending Closing. Subject to the provisions of paragraph 8.2(f) below, from and after the date of this Agreement and until the earlier of the date the New Receiver commences its operation of the Facilities or the Closing Date, unless this Agreement shall have been terminated, except as otherwise consented to or directed by Purchaser in writing:

(a) the Facilities will be operated in material compliance with all laws and in the usual, regular and ordinary manner consistent with good industry practice;

(b) Sellers shall not sell and shall not permit the Current Receivers or any other person to make any other disposition or abandonment of the Purchased Assets or any portion thereof, except in the ordinary course of business;

(c) all properties used or useful in the operation of the Facilities shall be maintained and kept in good condition, repair and working order, ordinary wear and tear excepted;

(d) insurance shall be maintained with respect to the Purchased Assets and the operation of the Facilities in accordance with good practice, which shall include the obligation of the Current Receivers or any other owner or operator of the Facilities except the New Receiver (which can purchase or cause to be purchased retro coverage covering the period of its operation of the Facilities) to purchase tail coverage for any claims-made policies covering any claims made through the applicable statute of limitations for bringing any such claims;

(e) books of record and accounts shall be maintained in accordance with good practice and all requirements; and

(f) Each Seller shall use its best efforts to ensure that the Current Receivers or any operator of the Facilities except New Receiver has timely filed or shall file (including after the Closing Date) all required cost reports which shall be accurate and complete, and shall make all information available to Purchaser, New Receiver, or any other applicable affiliate of Purchaser to file any cost reports for any calendar year in which the New Receiver, any entity affiliated with Purchaser, or the Purchaser is the operator of the Facilities in whole or in part.

8.3 Sale Orders. Sellers shall file with the Bankruptcy Court motions seeking to (i) approve the bidding procedures with regard to the sale of the Purchased Assets, form of this Agreement and the designation of Purchaser as the stalking horse bidder for the Purchased Assets; (ii) approve the sale of the Purchased Assets and the assumption and assignment of the Assumed Contracts, and (iii) approve any other orders required to consummate the sale of the Purchased Assets free and clear of all Liens as required herein.

8.4 Cooperation with Purchaser. Sellers shall assist and cooperate with Purchaser upon Purchaser's reasonable request in regard to Purchaser's Application (as hereinafter defined) and all other applications for the Requisite Approvals.

8.5 Other Approvals. Sellers shall take all necessary actions to provide and/or obtain any Attorney General and/or Supreme Court notice or approval for the transactions contemplated herein that may be required by the New York State Not-for-Profit Corporation Law.

9. COVENANTS OF PURCHASER. Purchaser hereby covenants and agrees with Sellers as follows:

9.1 Applications for Requisite Approvals and CON. Within ninety (90) days following the entry of the Final Sale Order, Purchaser or the Operating Designee(s), at its sole cost and expense, will promptly prepare and submit to the DOH and/or the Public Health and Planning Council and to all other governmental agencies having jurisdiction over the establishment, transfer and operation of health care facilities, and shall diligently prosecute, an application or applications for CON establishment approval to operate the Facilities (the "**Application**"). If the Closing has not yet occurred, Purchaser shall provide Sellers with copies, within three days of submission or receipt as applicable, of all such applications, submissions, documents, and other communications with the applicable governmental agencies.

9.2 Operations. Upon entry of a Final Sale Order, if Purchaser or its affiliate has not already been appointed as the New Receiver, the Parties shall immediately seek entry of an order requiring the DOH to appoint Purchaser or an affiliate of the Purchaser as receiver for its own account using a form of receivership for its own account similar to other such agreements the DOH has negotiated and executed with other affiliates of the Purchaser. In connection with the appointment of Purchaser or an affiliate of Purchaser as the New Receiver, there shall be no requirement to post a bond or undertaking.

9.3 Employees. Purchaser, its Operating Designee(s) or the New Receiver, as applicable, shall offer or shall continue the employment of substantially all of Sellers' employees (or those otherwise engaged by the New Receiver at the Facilities), as of the Closing Date, so as to comply with all of the requirements of the Workers Adjustment Retraining Notification Act, 29 U.S.C. § 2101, *et seq.*, if applicable, and all state and local counterparts to it (collectively, the "**WARN Act**") and shall retain a sufficient number of employees to prevent Sellers from being in violation of the WARN Act.

9.4 Access to Records. Purchaser will preserve, for no fewer than four years from the Closing Date, and will provide to Sellers, any Creditors' Committee, and their respective professionals and other professionals of Debtors' estates, with prompt and reasonable access to books and records conveyed to Purchaser, will permit inspection and copying of such books and records as necessary for administration of Debtors' estates and will make its employees reasonably available to facilitate such access. Purchaser shall not be required to incur substantial expenses in connection with the matters described in this paragraph.

10. CONDITIONS PRECEDENT TO THE OBLIGATIONS OF PURCHASER. The obligations of Purchaser to close hereunder are subject to the fulfillment at, or prior to, the Closing Date, of all of the following conditions precedent:

10.1 Requisite Approvals. It shall be a condition of Closing that one of the following shall have occurred: (a) Purchaser or an affiliate of Purchaser shall have been appointed as the New Receiver, (b) Purchaser or an affiliate of Purchaser shall have been appointed as receiver under Section 9.2 hereof, or (c) Purchaser or its Operating Designee shall have obtained a CON or permanent license without contingencies to operate the Nursing Home as a 163-bed skilled nursing facility and the Adult Home as an 80-bed adult residential care facility (all of the foregoing are, collectively, the “*Requisite Approvals*”).

10.2 Entry of the Final Sale Order. The Bankruptcy Court shall have entered the Final Sale Order and such order shall not have been stayed by or appealed to any court and shall be a final order.

10.3 The HomeLife APA shall have terminated, expired or been rejected by the Sellers and no longer be in effect.

10.4 No Legal Prohibition. No injunction, temporary restraining order, judgment or other order of any court or governmental agency or instrumentality shall have been issued or have been entered which would be violated by the consummation of the transactions contemplated herein; and, unless waived, no suit, action or other proceeding brought by the United States or the State of New York, or any agency or instrumentality of the United States or the State of New York, shall be pending in which it is sought to restrain or prohibit the effectuation of this Agreement or the consummation of the transactions contemplated herein.

10.5 Operation of Facilities. Folts Home shall be operating as a 163-bed skilled nursing facility and FAH shall be operating as an 80-bed adult residential care facility in material compliance with all laws at the earlier of the commencement of the operations of the New Receiver or the Closing, whichever occurs first.

11. CONDITIONS PRECEDENT TO THE OBLIGATIONS OF SELLERS. The obligations of Sellers hereunder are subject to the fulfillment at or prior to the Closing of all of the following conditions precedent, unless such fulfillment is waived by the Purchaser:

11.1 The Final Sale Order shall be a final order.

11.2 The HomeLife APA shall have terminated, expired or been rejected by the Sellers and no longer be in effect.

11.3 Purchaser’s representations and warranties set forth in Article 7 hereof shall be true and correct in all material respects as of the date of the Closing, as though made on and as of such date.

11.4 No injunction, temporary restraining order, judgment or other order of any court or governmental agency or instrumentality shall have been issued or have been entered which would be violated by the consummation of the transactions contemplated herein; and, unless waived, no suit, action or other proceeding brought by the United States or the State of New York, or any agency or instrumentality of the United States or the State of New York, shall be pending in which it is sought to restrain or prohibit the effectuation of this Agreement or the consummation of the transactions contemplated herein.

11.5 Purchaser shall be in good standing under the laws of the State of its formation.

11.6 The DOH shall have duly authorized the operation of the Facilities by Purchaser or the Operating Designee, the New Receiver, or a receiver appointed under Section 9.2 hereof, the Sellers shall have obtained the written approval by the Attorney General and/or Supreme Court if and as may be required by the New York State Not-for-Profit Corporation Law, and both parties shall have obtained all other required approvals from government agencies concerning the transactions proposed under this Agreement.

## 12. TERMINATION OF AGREEMENT.

12.1 Failure to Timely File Application. If neither Purchaser nor the Operating Designee(s) files the CON Application within 90 days from the entry of the Final Sale Order, then Sellers may terminate this Agreement, and the Deposit shall be released from escrow, together with any interest accrued thereon, and shall be paid to the Sellers as liquidated damages and not as a penalty as Sellers' sole and exclusive remedy.

12.2 Failure to Obtain Requisite Approvals. If at least one of the Requisite Approvals has not been obtained within 18 months of the entry of the Final Sale Order, then Sellers may terminate this Agreement and the Deposit shall be released from escrow, together with any interest accrued thereon, and shall be paid to the Sellers as liquidated damages and not as a penalty as Sellers' sole and exclusive remedy.

12.3 Purchaser's Failure to Close. If Purchaser has failed to close the transaction contemplated hereunder within the timeframe set forth in Section 3 for any reason other than default of Sellers, then the Sellers may terminate this Agreement and the Deposit shall be released from escrow, together with any interest accrued thereon, and shall be paid to the Sellers as liquidated damages and not as a penalty as Sellers' sole and exclusive remedy.

12.4 Other Breach by Purchaser. If Purchaser is at any time in material breach of any representation, warranty or covenant hereunder, which breach is not cured within (30) thirty days of Purchaser receiving notice of the breach along with the details thereof, then Sellers shall have the right to terminate this Agreement and the Deposit shall be released from escrow, together with any interest accrued thereon, and shall be paid to the Sellers as liquidated damages and not as a penalty as Sellers' sole and exclusive remedy.

12.5 Sellers' Default or Failure to Close. If Sellers default under the terms of this Agreement and have failed to cure any such default within thirty (30) days of Sellers receiving written notice thereof along with the details thereof, Purchaser may at its option, terminate this Agreement and receive a refund of the Purchase Deposit and any interest earned thereon or Purchaser shall at its own expense be entitled to bring an action for specific performance without posting a bond, but if Purchaser is unsuccessful or at any time determines to withdraw any action for specific performance Purchaser shall receive a refund of the Purchase Deposit and any interest earned thereon.

12.6 Casualty. Sellers shall bear the risk of a material casualty which occurs prior to the time the New Receiver is appointed or the Closing Date, whichever occurs first. If the New Receiver is appointed prior to the Closing Date, in the event of a material casualty, the Purchaser shall still have the obligation to Close but all insurance proceeds of every kind to the extent not already spent for the restoration of the Facilities or the continuation or protection of their business shall be paid to the Purchaser whenever received, even if the proceeds exceed the Purchase Price. If there is a casualty for which the Sellers bear the risk of loss, the Purchaser shall have the option of terminating this Agreement and the Deposit and any interest thereof shall be returned to the Purchaser.

### 13. RESIDENT ACCOUNTS.

13.1 Deliveries at Closing. Upon the earlier of the appointment of the New Receiver or the Closing Date, Sellers shall cause to be delivered to the New Receiver or to the Purchaser, as applicable (i) a schedule of all resident funds held by the Current Receivers, with all such funds designated on a resident-by-resident basis; (ii) a check drawn on the Residents' allowance account for the full amount of such account, which funds shall be deposited by in a new Residents' allowance account to be maintained in accordance with legal requirements; (iii) a schedule of all bank accounts maintained on behalf of the Residents; (iv) all bankbooks and other assets belonging to Residents of the Facilities maintained in the custody of the Facilities, together with a schedule thereof listing such assets and the names of the Residents for whom they are being so held; and (v) a schedule of any remaining Resident security deposits and prepayments designated on a patient-by-patient basis ("**Resident Security Deposits**"), together with a check in the amount of such security deposits and unexpended prepayments (collectively, "**Resident Accounts**"). Sellers shall be responsible for any inaccuracy in the above.

13.2 Notices. Purchaser, the New Receiver or Operating Designee(s) affiliated with the Purchaser shall promptly give all notices required by law in connection with the aforesaid transfer of the Residents' assets.

14. SURVIVAL. Except as specifically set forth herein to the contrary, none of the representations, warranties, covenants and agreements contained herein shall survive the Closing or any termination of this Agreement.

15. MERGER, AMENDMENT AND WAIVER. This Agreement contains the entire agreement of the parties hereto with respect to the transactions contemplated hereby. There are no other representations, warranties, agreements, undertakings or conditions, whether made by the

parties hereto or by their agents, or by persons or entities purporting to be their agents, except as may be contained herein. The terms of this Agreement may be amended, modified or eliminated, and the observance or performance of any term, covenant, condition or provision herein may be omitted or waived (either generally or in a particular instance and either prospectively or retroactively) only by the written consent or consents of Sellers and Purchaser. A party hereto may, only by an instrument in writing, waive compliance for its benefit by the other party hereto with any term or provision of this Agreement on the other part of such other party to be performed or complied with. Such waiver by any party hereto of a breach of any term or provision of this Agreement shall not be construed as a waiver of any other or subsequent breach.

16. BINDING EFFECT. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and permitted assigns and designees.

17. ASSIGNMENT. Subject to the assignee's agreement to be bound by all terms of this Agreement, and without releasing or discharging the Purchaser from any of the covenants, warranties, obligations or agreements set forth herein and provided that an assignment shall not delay the granting of the Requisite Approvals or the CON, this Purchase Agreement may be assigned at any time to any entity or entities affiliated with the Purchaser.

18. NOTICES. Any notices to be given to the parties hereto shall be in writing, and, except as otherwise provided herein or as otherwise directed in writing by one of the parties hereto, shall be deemed provided to a party as of the date delivered or sent if delivered personally or sent by electronic mail (providing confirmation of transmission), on the next business day if sent by nationally recognized overnight courier, or on the third (3rd) business day following the date of mailing if delivered by registered or certified mail (postage prepaid; return receipt requested) to the parties at the addresses indicated below (or at such other address for such party as shall be specified by similar such notice):

If to Sellers:

Dr. Anthony Piana  
Chair, Board of Directors  
of Folts Home  
1334 State Route 169  
Little Falls, New York 13365

James Morey  
Chair, Board of Directors  
of Folts Adult Home, Inc.  
876 Birch Island  
Tupper Lake, New York 12986

With copies to:

Bond, Schoeneck & King, PLLC  
Attn: Stephen A. Donato, Esq.  
One Lincoln Center  
Syracuse, New York 13202  
Email: sdonato@bsk.com

If to Purchaser:



Personal Healthcare, LLC  
Attn: Ephraim Zagelbaum, Managing Partner  
20 Wood Court  
Tarrytown, New York 10591  
E-Mail: Ephraim@phcare.com

With copies to:

Koss & Schonfeld, LLP  
Attn: Allen V. Koss, Esq.  
90 John Street, Suite 408  
New York, New York 10038  
E-mail: avk@kandsllp.com

19. NON-RECOURSE. Except for the Deposit, neither the Purchaser nor any past, present or future director, officer, employee, incorporator, member, partner, or stockholder of Purchaser shall have any liability for any obligations or liabilities of Purchaser under this Agreement or related documents or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby or thereby. The professionals and members, principals, trustees, partners and employees of the Sellers, shall have no personal liability to Purchaser or any other person under or with respect to this Agreement or related documents, under or with respect to any agreement or understanding related to this Agreement. The provisions of this section shall survive the Closing and shall survive any termination of this Agreement.

20. CONSUMER PRIVACY POLICIES. Purchaser agrees and undertakes immediately to adopt and thereafter to abide by the Sellers' and/or Current Receivers' existing policies for the protection of personally identifiable information about Residents of the Facilities or to use policies that comply with applicable provisions of law.

21. COUNTERPARTS. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page hereto by telecopier or by electronic mail in PDF format shall be as effective as delivery of a manually executed counterpart hereof.

22. BROKERS. The parties hereto represent to each other that they have not employed or entered into any agreement, arrangement or undertaking with any broker or finder in connection with this Agreement or the transactions contemplated thereby. Each party agrees to indemnify and save harmless the other party from and against any and all claims, losses, damages or expenses of any kind or character including reasonable attorney's fees for the breach of the foregoing representations and warranties set forth in this section founded upon the act of the party giving such indemnification. The provisions of this section shall survive the closing.

23. NEW YORK LAW TO GOVERN. Subject to the requirements of the Bankruptcy Code, HIPAA and other applicable federal law, this Agreement shall be construed in accordance with and shall be governed by and enforced under the laws of the State of New York applicable to agreements fully executed and performed therein, without regard to its conflict of laws principles. The parties further agree that the Bankruptcy Court for the Northern District of New York shall be the exclusive forum for any litigation arising under or in connection with this Agreement or the transaction contemplated hereunder, unless the Bankruptcy Court refuses or declines to hear such matter.

24. CONFIDENTIAL INFORMATION. Identifiable information and any information concerning the businesses and affairs of the Purchaser or the Sellers that is not generally available to the public as of the date of this Agreement (regardless of when the information was made available to Sellers or Purchaser including, but not limited to, any information provided before the execution of this Agreement) shall be deemed “*Confidential Information*”. Confidential Information shall not include any information that (a) is or subsequently becomes publicly available without the receiving party’s breach of any obligation owed to the disclosing party; (b) became known to the receiving party from a source other than the disclosing party in a manner that did not involve the breach of an obligation of confidentiality owed to the disclosing party; or (c) is independently developed by the receiving Party. The receiving party may disclose Confidential Information in response to a valid order by a court or other governmental body, as otherwise required by law, or as necessary to establish the rights of any party under this Agreement, however, if reasonably possible, the receiving party shall give the disclosing party written notice of any such disclosure prior to making the disclosure such that the disclosing party may seek a protective order or other similar remedy.

25. CONSUMER CREDIT TRANSACTIONS. To the extent, if any, that the Purchased Assets or Assumed Contracts include consumer credit transactions subject to the Truth in Lending Act or consumer credit contracts, then, notwithstanding the Final Sale Order, Purchaser shall remain subject to all claims and defenses related thereto to the same extent as Purchaser would be subject to such claims and defenses had such interest been purchased at a sale which is not made under Section 363 of the Bankruptcy Code. Sellers are not aware of any consumer credit transactions subject to the Truth in Lending Act or consumer credit contracts within the Purchased Assets or Assumed Contracts. Sellers make no warranty or representation regarding such matters other than as to their own state of knowledge.

26. OPERATING EXPENSES. Unless otherwise reimbursed in the event of an Alternate Transaction, the New Receiver shall retain the right to assert an administrative expense claim for any Excess Operating Expenses incurred by the New Receiver during the New Receivership Period in the Debtors’ Bankruptcy Cases, provided that such payments do not impair the ability of HUD to collect on its claims in the Bankruptcy Cases.

27. PUBLIC ANNOUNCEMENTS. No party hereto shall make any press release or public announcement concerning the transactions contemplated by this Agreement without the prior written approval of the other party hereto, unless a press release or public announcement is required by law, Order of the Bankruptcy Court, or by Sellers in conjunction with or in furtherance of the Bankruptcy Cases. If any such announcement or other disclosure is required by law or Order of the Bankruptcy Court, the disclosing party shall give the non-disclosing party prior notice of, and an opportunity to comment on, the proposed disclosure. Purchaser shall not be restricted from making any public announcements or issuing any press releases after the Closing.

28. ENTIRE AGREEMENT. This Agreement and the Transaction Documents contain the entire understanding among the parties hereto with respect to the transactions contemplated hereby and supersede and replace all prior and contemporaneous agreements and understandings, oral or written, with regard to such transactions. All Schedules hereto and any

documents and instruments delivered pursuant to any provision hereof are expressly made a part of this Agreement as fully as though completely set forth herein.

29. BANKRUPTCY COURT APPROVAL. This Agreement is subject to the approval of the Bankruptcy Court.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the  
date and year first above written.

**SELLERS:**

**FOLTS HOME**

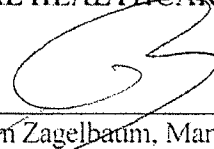
By: \_\_\_\_\_  
Dr. Anthony E. Piana  
Chairman, Board of Directors

**FOLTS ADULT HOME, INC.**

By: \_\_\_\_\_  
James H. Morey  
Chairman, Board of Directors

**PURCHASER:**

**PERSONAL HEALTHCARE, LLC**

By: \_\_\_\_\_  
  
Ephraim Zagelbaum, Managing Partner

**LIST OF EXHIBITS AND SCHEDULES**

**Exhibits**

- Exhibit A - Escrow Agreement
- Exhibit B - Bill of Sale
- Exhibit C - Assignment and Assumption Agreement

**Schedules**

- Schedule 1.1(a) - Real Property
- Schedule 1.1(b) - Real Estate Leases
- Schedule 1.1(c) - Personal Property
- Schedule 1.1(d) - Assumed Contracts
- Schedule 1.1(g) - Permits
- Schedule 1.1(j) - Intangible Assets

**Exhibit A**  
**Escrow Agreement**

See attached.

## ESCROW AGREEMENT

This Escrow Agreement (the "Escrow Agreement") is entered into as of June 27, 2017 by and among Folts Home, a New York not-for-profit corporation ("Folts Home"), Folts Adult Home, Inc., a New York not-for-profit corporation ("FAH" and, together with Folts Home, referred to herein collectively as "Sellers" and each, individually, as a "Seller"), Personal Healthcare, LLC, a New York limited liability company, on behalf of a limited liability company to be formed ("Backup Bidder"), and Bond, Schoeneck & King, PLLC, as escrow agent (the "Escrow Agent"). Sellers, Backup Bidder and Escrow Agent are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

WHEREAS, the Sellers have filed voluntary petitions for relief commencing cases under chapter 11 of the Bankruptcy Code (the "Bankruptcy Cases") with the United States Bankruptcy Court for the Northern District of New York (the "Bankruptcy Court") pursuant to which they intend to sell substantially all of their assets comprising the Facilities pursuant to Sections 105 and 363 of the Bankruptcy Code.

WHEREAS, on March 27, 2017, the Bankruptcy Court issued an Order which, in part, approved certain bid procedures for the sale of substantially all of the assets of the Sellers ("Bidding Procedures Order"), in accordance with which Amended Bidding Procedures were issued and filed in the Bankruptcy Cases under Docket No. 108-1, filed April 12, 2017 ("Amended Bidding Procedures").

WHEREAS, Backup Bidder has tendered a Purchase Agreement dated as of the date hereof (the "Purchase Agreement") whereby the Backup Bidder has agreed to purchase from Sellers substantially all of the assets of the residential health care facility and adult care facility owned by Sellers (the "Facilities").

WHEREAS, in accordance with the Bidding Procedures Order and the Amended Bidding Procedures, a sale of substantially all the assets of the Sellers took place at the offices of Bond Schoeneck & King on June 6, 2017, at which Personal Healthcare, LLC, was determined to be the Backup Bidder.

WHEREAS, the Bidding Procedures Order and the Amended Bidding Procedures require that Backup Bidder deposit the sum of One Million Dollars (\$1,000,000.00) (the "Deposit") with the Escrow Agent to be held by the Escrow Agent and released in accordance with the terms of this Escrow Agreement.

NOW, THEREFORE, it is agreed that in consideration of the mutual covenants and payments contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties each agree as follows:

1. **Appointment of Escrow Agent.** Sellers and Backup Bidder hereby appoint the Escrow Agent to receive, hold, administer and disburse the Escrow Funds (as hereinafter defined) in accordance with the terms and conditions of this Escrow Agreement, and the Escrow Agent agrees to act as escrow agent subject to the terms and conditions of this Escrow Agreement. Backup Bidder and Sellers acknowledge that the Escrow Agent represents the Sellers in connection



with the Purchase Agreement and the Bankruptcy Cases and Backup Bidder and Sellers jointly and severally waive any objection and/or conflict of interest in the Escrow Agent acting as escrow agent under this Escrow Agreement and representing the Sellers in connection with the Purchase Agreement and the Bankruptcy Cases.

**2. Deposit with Escrow Agent.**

(a) Creation of Escrow. Simultaneously with the execution and delivery of the Purchase Agreement and this Escrow Agreement, Backup Bidder will deposit the Deposit with the Escrow Agent by wire transfer of immediately available funds in accordance with the wire transfer instructions attached hereto as Exhibit A. Escrow Agent shall deposit and hold the Purchase Deposit in an interest bearing account at a bank of Escrow Agent's choosing (the "Escrow Account"), which Backup Bidder and Sellers hereby acknowledge is acceptable and satisfactory.

(b) Treatment of Escrow Earnings. Any interest or other amounts earned on or derived from the Deposit shall be considered the property of Sellers for federal income tax purposes (the Deposit and any interest or other amounts earned thereon are referred to herein as the "Escrow Funds"). The Parties shall report such earnings consistently therewith and, except as required by applicable law, shall not take any position inconsistent therewith on any tax return or in any administrative or judicial proceeding. Notwithstanding anything herein to the contrary, the Parties agree that, except for federal income tax purposes, the Escrow Funds shall not be considered property of the Sellers (whether in connection with the Bankruptcy Cases or otherwise) unless and until the Escrow Agent is authorized to release and accordingly releases the Escrow Funds to the Sellers pursuant to the terms of this Escrow Agreement.

(c) Administration of Escrow Funds. The Escrow Agent shall hold the Escrow Funds and shall administer the same in accordance with the terms of this Escrow Agreement.

(d) No Creditor Liens. The Escrow Funds shall not be subject to lien or attachment by any creditor of any Party hereto and shall be used solely for the purposes set forth in this Escrow Agreement.

**3. Disbursement of Escrow Funds from Escrow Account.** After the execution of the Purchase Agreement, the Escrow Funds shall be held and disbursed by the Escrow Agent as follows:

(a) Upon the appointment of Cedarcare Holdings, LLC ("Cedarcare"), or its designated operator, as the temporary receiver of the Facilities pursuant to Cedarcare's Purchase Agreement, Escrow Agent shall disburse to Backup Bidder a portion of the Escrow Funds in the amount of Four Hundred Thousand Dollars (\$400,000.00).

(b) In the event Cedarcare is unable to close the sale transaction and Backup Bidder is named the Successful Bidder for the Purchased Assets, then Backup Bidder shall replenish the Escrow Funds up to \$1,000,000.00 within three business days after receiving notice from Sellers.

(c) If the Backup Bidder (i) is not the Successful Bidder for the Facilities, and (ii) the Debtor consummates an Alternative Transaction (as defined in the Purchase Agreement), the Escrow Agent shall, notwithstanding anything herein to the contrary and notwithstanding any prior disbursements of any portion of the Escrow Funds pursuant to the terms of this Escrow Agreement, pay to Backup Bidder (via Backup Bidder's counsel), in accordance with the wire transfer instructions attached hereto as Exhibit B, the balance of the Escrow Funds.

(d) Upon consummation of the sale of the Facilities to the Backup Bidder pursuant to the Purchase Agreement (the "Closing"), Escrow Agent shall release the Deposit and any interest earned thereon to Sellers and said Deposit and interest earned thereon shall be a credit against the Purchase Price payable by Backup Bidder at the Closing.

(e) Upon termination of the Purchase Agreement pursuant to Sections 12.5 (Seller Breach) or 12.6 (Casualty) of the Purchase Agreement, the Escrow Agent shall pay the Backup Bidder the Deposit and any interest earned thereon (via Backup Bidder's counsel) in accordance with the wire transfer instructions attached hereto as Exhibit B.

(f) Upon termination of the Purchase Agreement for any reason other than as set forth in Section 3(d) above, the Escrow Agent shall release the Deposit and any interest earned thereon to Sellers.

(g) Upon receipt by Escrow Agent of a certified copy of a final and non-appealable order or judgment of a court of competent jurisdiction directing delivery of all or any portion of the Deposit (and any interest earned thereon) in the manner and to the recipients specified therein, the Escrow Agent shall disburse the Deposit (and any interest earned thereon) in accordance with such order or judgment.

(h) Sellers and Backup Bidder agree and acknowledge that none of them shall, at any time or for any reason, have the right to withdraw Escrow Funds except in accordance with the terms of this Escrow Agreement.

(i) Notwithstanding anything herein to the contrary, if there is a disagreement between the parties concerning the payment of the Escrow Funds, the Parties agree and acknowledge that the Escrow Agent may deposit the Escrow Funds into Bankruptcy Court or a court of competent jurisdiction, and seek an order directing the payment of the Escrow Funds. The Backup Bidder expressly agrees that Escrow Agent shall continue to represent the Sellers in any such action, and shall pursue Sellers' claims to the Escrow Funds.

**4. Limitation of Escrow Agent's Liability.**

(a) The Escrow Agent shall be obligated only for the performance of such duties as are specifically set forth in this Escrow Agreement and it shall not be subject to, nor required to comply with, any agreement other than this Escrow Agreement, even though reference thereto may be made herein, or to comply with any direction or instruction other than those contained herein or delivered in accordance with this Escrow Agreement. The Escrow Agent shall incur no liability with respect to any action taken or suffered by it in reliance upon any notice, direction, instruction, consent, statement or other documents believed by it to be genuine and duly authorized, nor for other action or inaction. The Escrow Agent shall not be responsible for the validity or sufficiency of this Escrow Agreement, the recitals contained herein, or any other agreement referred to herein. In all questions arising under the Escrow Agreement, the Escrow Agent may rely on the advice of counsel, and for anything done, omitted or suffered in good faith by the Escrow Agent based on such advice the Escrow Agent shall not be liable to anyone. The Escrow Agent shall not be required to take any action hereunder involving any expense unless the payment of such expense is made or provided for in a manner reasonably satisfactory to it. The duties and obligations of the Escrow Agent shall be determined solely by the express provisions of this Escrow Agreement and the Escrow Agent shall not be liable to any person

or entity except for the performance of such duties and obligations of the Escrow Agent as are specifically set forth in this Escrow Agreement, and no implied covenants or obligations shall be read into this Escrow Agreement against the Escrow Agent. The Escrow Agent's duties hereunder shall be limited to the disposition of the Escrow Funds in accordance with the terms hereof.

(b) Neither the Escrow Agent nor any of its members, contractors or employees shall be liable to anyone for any action taken or omitted to be taken in good faith by it or any of its partners, contractors or employees hereunder. In no event shall the Escrow Agent be liable for indirect, punitive, special or consequential damages.

(c) The Escrow Agent may rely conclusively and shall be protected in acting upon any notice that is believed by the Escrow Agent to be genuine and to be signed or presented by the proper person or persons. The Escrow Agent shall exercise the same degree of care toward the Escrow Funds as it would exercise toward its own similar property and shall not be held to any higher standard of care under this Escrow Agreement. The Escrow Agent shall in no event be liable to Sellers or Backup Bidder for any mistakes of fact or error of judgment, or for any acts or omissions of any kind by the Escrow Agent, excepting any liability that is determined in a final, binding and non-appealable judgment of any court of competent jurisdiction to have resulted from any deliberate action or omission of bad faith or gross negligence or a breach by the Escrow Agent of this Escrow Agreement.

(d) Backup Bidder and Sellers hereby agree to, jointly and severally, indemnify and defend Escrow Agent and hold it harmless from and against any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expenses, fees or charges of any character or nature, which it may incur or which it may be threatened by reason of its acting as Escrow Agent under this Escrow Agreement, and in connection therewith, to indemnify the Escrow Agent against any and all expenses, including attorney's fees and the cost of defending any action, suit or proceeding or resisting any claim. If the Parties hereto shall be in disagreement about the interpretation of this Escrow Agreement, or about their rights and obligations hereunder, or the propriety of any action contemplated by the Escrow Agent hereunder, any Party hereto may, at its discretion, file an action in a court of competent jurisdiction to resolve such disagreement. Escrow Agent shall be jointly and severally indemnified by Backup Bidder and Sellers for all costs, including attorney's fees, in connection with any such action, and shall be fully protected in suspending all or a part of its activities under this Escrow Agreement until a final judgment, order or decree in the action is received.

5. **Resignation of Escrow Agent.** The Escrow Agent may resign upon not less than fifteen (15) days' notice to Backup Bidder and Sellers. If the Parties do not appoint a successor Escrow Agent within this fifteen (15) day period, the Escrow Agent may petition in any court of competent jurisdiction to appoint a successor, and pending such appointment, shall not be obligated or required to take any action hereunder.

6. **Costs and Expenses.** Any costs and expenses incurred by the Escrow Agent in connection with the performance and administration of the Escrow Account (including any fees incurred in connection with the establishment or maintenance of such account or wire fees as incurred and any legal fees and costs incurred in connection with any dispute hereunder) shall be paid for by Sellers.

7. **Termination.** This Escrow Agreement shall terminate upon the release by the Escrow Agent of all of the Escrow Funds in accordance with this Escrow Agreement; provided, however, that the provisions of Section 4 hereof shall survive termination of this Escrow Agreement or the resignation of the Escrow Agent.

8. **Notices.** All notices, instructions and other communications given hereunder or in connection herewith shall be in writing. Any such notice, instruction or communication shall be sent either (i) by registered or certified mail, return receipt requested, postage prepaid, or (ii) via a reputable nationwide overnight courier service, in each case to the addresses set forth below. Any such notice, instruction or communication shall be deemed to have been delivered four business days after it is sent by registered or certified mail, return receipt requested, postage prepaid, or one business day after it is sent via a reputable nationwide overnight courier service.

If to Backup Bidder: Personal Healthcare, LLC  
Attn: Ephraim Zigelbaum, Managing Partner  
20 Wood Court Tarrytown, New York 10591  
Email: Ephraim@phcare.com

With a copy to: Koss & Schonfeld, LLP  
Attn: Allen V. Koss, Esq.  
90 John Street, Suite 408  
New York, New York 10038  
Email: avk@kandsllp.com

If to Sellers:	Dr. Anthony Piana Chair, Board of Directors of Folts Home 1334 State Route 169 Little Falls, New York 13365	James Morey Chair, Board of Directors of Folts Adult Home, Inc. 876 Birch Island Tupper Lake, New York 12986
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With a copy to: Bond, Schoeneck & King, PLLC  
Attn: Stephen A. Donato, Esq.  
One Lincoln Center  
Syracuse, New York 13202  
Email: sdonato@bsk.com

If to the Escrow Agent: Bond, Schoeneck & King, PLLC  
Attn: Stephen A. Donato, Esq.  
One Lincoln Center  
Syracuse, New York 13202  
Email: sdonato@bsk.com

Any Party may give any notice, instruction or communication in connection with this Escrow Agreement using any other means (including personal delivery, electronic mail, facsimile or ordinary mail), but no such notice, instruction or communication shall be deemed to have been delivered unless and until it is actually received by the Party to whom it was sent. Any Party may change the address to which notices, instructions or communications are to be delivered by giving the other Parties to this Escrow Agreement notice thereof in the manner set forth in this Section 8.

9. General.

(a) Governing Law and Venue. This Escrow Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without regard to conflict of law provisions therein. Any and all disputes arising out of this Escrow Agreement shall be filed and maintained in the Bankruptcy Court, unless the Bankruptcy Court refuses or declines to hear such matter in which case any such disputes shall be filed and maintained in a court of competent jurisdiction in Herkimer County, New York.

(b) Counterparts. This Escrow Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The delivery by a Party of a telecopy, PDF or facsimile signature to this Escrow Agreement shall have the same effect as the delivery of an original signature.

(c) Entire Agreement; Amendment. This Escrow Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter of this Escrow Agreement and supersedes all prior agreements or understandings, written or oral, between the Parties with respect to the subject matter hereof. This Escrow Agreement may be amended only with the written consent of all of the Parties hereto.

(d) Waivers. No waiver by any Party hereto of any condition or of any breach of any provision of this Escrow Agreement shall be effective unless in writing. No waiver by any Party of any such condition or breach, in any one instance, shall be deemed to be a further or continuing waiver of any such condition or breach or a waiver of any other condition or breach of any other provision contained herein.

(e) Remedies Cumulative. The rights and remedies herein are cumulative and not exclusive of other rights and remedies which may be granted or provided by law.

(f) Force Majeure. None of the Parties hereto shall be responsible for delays or failures in performance resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses (provided that the Parties hereto will maintain reasonable measures to protect against any such viruses), power failures, earthquakes or other such disasters.

(g) Successors and Assigns. This Escrow Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns; provided, however, that no Party hereto shall have the right to assign its rights and interests or delegate any of its duties or obligations hereunder (by operation of law or otherwise) without the prior written consent of each other Party hereto. Notwithstanding the foregoing, nothing in this Section 9(g) is intended to or shall limit or restrict the Escrow Agent's ability to resign in accordance with Section 5 hereof.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the Parties have executed or caused this Escrow Agreement to be executed as of the date first set forth above.

**SELLERS**

**FOLTS HOME**

By: Anthony E. Piana  
Name: Dr. Anthony E. Piana  
Title: Chairman, Board of Directors

**FOLTS ADULT HOME, INC.**

By: \_\_\_\_\_  
Name: William Forster  
Title: Chairman, Board of Directors

**BACKUP BIDDER**

**PERSONAL HEALTHCARE, LLC,**  
on behalf of a limited liability company to be formed

By: \_\_\_\_\_  
Name: Ephraim Zigelbaum  
Title: Member

**ESCROW AGENT**

**BOND, SCHOENECK & KING, PLLC**

By: Camille W. Hill  
Name: Camille W. Hill  
Title: Member

**IN WITNESS WHEREOF**, the Parties have executed or caused this Escrow Agreement to be executed as of the date first set forth above.

**SELLERS**

**FOLTS HOME**

By: \_\_\_\_\_  
Name: Dr. Anthony E. Piana  
Title: Chairman, Board of Directors

**FOLTS ADULT HOME, INC.**

By: William Forster  
Name: William Forster  
Title: Chairman, Board of Directors

**BACKUP BIDDER**

**PERSONAL HEALTHCARE, LLC,**  
on behalf of a limited liability company to be formed

By: \_\_\_\_\_  
Name: Ephraim Zagelbaum  
Title: Member

**ESCROW AGENT**

**BOND, SCHOENECK & KING, PLLC**

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

IN WITNESS WHEREOF, the Parties have executed or caused this Escrow Agreement to be executed as of the date first set forth above.

**SELLERS**

**FOLTS HOME**

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

Name: Dr. Anthony E. Piana

Title: Chairman, Board of Directors

**FOLTS ADULT HOME, INC.**

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

Name: ~~James H. Morey~~

Title: Chairman, Board of Directors

**BACKUP BIDDER**

**PERSONAL HEALTHCARE, LLC,**  
on behalf of a limited liability company to be formed

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

Name: Ephraim Zigelbaum

Title: Member

**ESCROW AGENT**

**BOND, SCHOENECK & KING, PLLC**

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

Name:

Title:



**Exhibit B**  
**Bill of Sale**

See attached.

**Exhibit C**  
**Assignment and Assumption Agreement**

See attached.

**Schedule 1.1(a)**  
**Real Property**

ALL THOSE TRACTS OR PARCELS OF LAND, situate in the Village of Herkimer, County of Herkimer and State of New York and being designated as the following Nine (9) Tax Parcel Nos.:

- 1) 120.25-2-50.1:
  - a) being part of the premises conveyed by Quit Claim Deed from Folts Home, f/k/a The Folts Mission Institute to Folts Foundation, Inc. dated February 25, 1993 and recorded in the Herkimer County Clerk's Office on February 25, 1993 in Liber 802 of Deeds, page 399;
  - b) and being the same premises conveyed by Quit Claim Deed from Folts Foundation, Inc. to Folts Home dated February 13, 2017 and recorded in the Herkimer County Clerk's Office on February 15, 2017 as Instrument # RP2017-879.
  
- 2) 120.25-2-54:
  - a) being the premises conveyed by Warranty Deed from Kathleen M. Sprague to Folts Home, Inc. dated September 30, 1996 and recorded in the Herkimer County Clerk's Office on September 30, 1996 in Liber 835 of Deeds, page 396.
  
- 3) 120.25-2-55.1:
  - a) being part of the premises conveyed by Quit Claim Deed from Folts Home, f/k/a The Folts Mission Institute to Folts Foundation, Inc. dated February 25, 1993 and recorded in the Herkimer County Clerk's Office on February 25, 1993 in Liber 802 of Deeds, page 399;
  - b) and being the same premises conveyed by Quit Claim Deed from Folts Foundation, Inc. to Folts Home dated February 13, 2017 and recorded in the Herkimer County Clerk's Office on February 15, 2017 as Instrument # RP2017-879.
  
- 4) 120.25-2-57.1:
  - a) being the premises conveyed by Deed from George P. Folts and Elizabeth M. Folts to The Folts Mission Institute dated January 10, 1893 and recorded in the Herkimer County Clerk's Office on January 10, 1893 in Liber 145 of Deeds, page 225;
  - b) and being the premises conveyed by Warranty Deed from Elizabeth M. Folts to The Folts Mission Institute dated June 9, 1894 and recorded in the Herkimer County Clerk's Office on June 9, 1894 in Liber 147 of Deeds, page 509;
  - c) and being the premises conveyed by Warranty Deed from Elizabeth M. Folts to The Folts Mission Institute dated May 11, 1897 and recorded in the Herkimer County Clerk's Office on May 12, 1897 in Liber 159 of Deeds, page 460;
  - d) and being the premises conveyed by Warranty Deed from Elizabeth M. Folts to The Folts Mission Institute dated April 19, 1898 and recorded in the Herkimer County Clerk's Office on April 19, 1898 in Liber 166 of Deeds, page 186;
  - e) and being the lands bequeathed to The Folts Mission Institute by the Last Will and Testament of Elizabeth M. Folts recorded in the Herkimer County Clerk's Office on August 7, 1901 in Liber 175 of Deeds, page 220;
  - f) and being the premises conveyed by Warranty Deed from Florence H. Curtis as Executrix and Trustee of the Estate of Iola B. Haslehurst to Folts Mission Institute dated August

1, 1922 and recorded in the Herkimer County Clerk's Office on August 1, 1922 in Liber 260 of Deeds, page 51;

g) and being the premises conveyed by Warranty Deed from The Woman's Home Missionary Society of the Methodist Episcopal Church to Folts Mission Institute dated April 20, 1939 and recorded in the Herkimer County Clerk's Office on May 28, 1940 in Liber 337 of Deeds, page 176;

h) and being the premises conveyed by Quit Claim Deed from I.W.J. McClain to Folts Mission Institute dated October 28, 1941 and recorded in the Herkimer County Clerk's Office in Liber 345 of Deeds, page 433;

i) and being the premises conveyed by Deed from Charlotte E. Simms and C. Harry Snell to Folts Home dated June 18, 1943 and recorded in the Herkimer County Clerk's Office on June 18, 1943 in Liber 350 of Deeds, page 400;

j) and being the premises conveyed by Warranty Deed from Ruth A. Arlington to Folts Home dated July 20, 1971 and recorded in the Herkimer County Clerk's Office on August 25, 1971 in Liber 616 of Deeds, page 479;

k) and being part of the premises conveyed by Deed from Sarah R. Moore, individually, and as General Guardian of the person and property of David R. Moore and Dana E. Moore, infants, to Folts Home dated January 11, 1973 and recorded in the Herkimer County Clerk's Office on January 11, 1973 in Liber 625 of Deeds, page 847;

l) and being the premises conveyed by Warranty Deed from Gerald B. Heneka and Mary Jane Heneka to Folts Home dated March 15, 1973 and recorded in the Herkimer County Clerk's Office on March 15, 1973 in Liber 626 of Deeds, page 786;

m) and being the premises conveyed by Warranty Deed from John H. Moore to Folts Home dated May 14, 1973 and recorded in the Herkimer County Clerk's Office on May 15, 1973 in Liber 627 of Deeds, page 800;

n) and being the premises conveyed by Warranty Deed from Mary A. Marsh to Folts Home dated August 30, 1985 and recorded in the Herkimer County Clerk's Office on September 18, 1985 in Liber 702 of Deeds, page 493;

o) and being part of the premises conveyed by Quit Claim Deed from Folts Home, f/k/a The Folts Mission Institute to Folts Foundation, Inc. dated February 25, 1993 and recorded in the Herkimer County Clerk's Office on February 25, 1993 in Liber 802 of Deeds, page 399;

p) excepting therefrom 0.253 acres of land conveyed by deed from Folts Foundation, Inc. to Folts Apartments Inc. dated June 1, 1997 and recorded in the Herkimer County Clerk's Office on June 24, 1997 in Liber 842 of Deeds at page 648.

5) 120.25-2-57.2:

a) being part of the premises conveyed by Quit Claim Deed from Folts Home, f/k/a The Folts Mission Institute to Folts Foundation, Inc. dated February 25, 1993 and recorded in the Herkimer County Clerk's Office on February 25, 1993 in Liber 802 of Deeds, page 399;

b) and being part of the premises conveyed by Deed from Folts Home to Folts Adult Home, Inc. dated June 1, 1997 and recorded in the Herkimer County Clerk's Office on June 24, 1997 in Liber 842 of Deeds, page 638;

c) and being part of the premises conveyed by Quit Claim Deed from Folts Foundation, Inc. to Folts Adult Home, Inc. dated June 1, 1997 and recorded in the Herkimer County Clerk's Office on June 24, 1997 in Liber 842 of Deeds, page 643.

- 6) 120.25-2-58:
  - a) being the premises conveyed by Warranty Deed from Hubbard Heel Company, Inc. to Folts Home dated September 1, 1965 and recorded in the Herkimer County Clerk's Office on September 1, 1965 in Liber 577 of Deeds, page 216;
  - b) and being part of the premises conveyed by Quit Claim Deed from Folts Home, f/k/a The Folts Mission Institute to Folts Foundation, Inc. dated February 25, 1993 and recorded in the Herkimer County Clerk's Office on February 25, 1993 in Liber 802 of Deeds, page 399;
  - c) and being part of the premises conveyed by Quit Claim Deed from Folts Foundation, Inc. to Folts Adult Home, Inc. dated June 1, 1997 and recorded in the Herkimer County Clerk's Office on June 24, 1997 in Liber 842 of Deeds, page 643.
  
- 7) 120.25-2-59:
  - a) being part of the premises conveyed by Warranty Deed from Jonell Manufacturing Corp. to Folts Home dated January 21, 2002 and recorded in the Herkimer County Clerk's Office on January 22, 2002 in Liber 903 of Deeds, page 162.
  
- 8) 120.25-2-60.2:
  - a) being part of the premises conveyed by Warranty Deed from Jonell Manufacturing Corp. to Folts Home dated January 21, 2002 and recorded in the Herkimer County Clerk's Office on January 22, 2002 in Liber 903 of Deeds, page 162.
  
- 9) 120.25-2-85:
  - a) being the premises conveyed by Warranty Deed from The Penn Traffic Company to Folts Home, Inc. dated March 14, 1997 and recorded in the Herkimer County Clerk's Office on April 4, 1997 in Liber 840 of Deeds, page 325;
  - b) and being the premises conveyed by Quit Claim Deed from Folts Home to Folts Adult Home, Inc. dated June 1, 1997 and recorded in the Herkimer County Clerk's Office on June 24, 1997 in Liber 842 of Deeds, page 638;
  - c) and being the premises conveyed by Quit Claim Deed from The Village of Herkimer to Folts Adult Home, Inc. dated June 17, 1997 and recorded in the Herkimer County Clerk's Office on June 24, 1997 in Liber 842 of Deeds, page 635.

**Schedule 1.1(b)**  
**Real Estate Leases**

1. Ground Lease dated December 16, 1998, between Folts Adult Home, Inc. (landlord) and Faxchil Realty, Inc. (tenant); Addendum No. 1 to Ground Lease dated February 8, 1999; Memorandum of lease recorded in Herkimer County Clerk's Office on March 11, 1999.
2. Parking Lease dated December 22, 1998, between Faxchil Realty, Inc. (landlord) and Folts Adult Home, Inc. (tenant); Addendum No. 1 to Parking Lease dated December 22, 1998; Addendum No. 2 to Parking Lease dated February 8, 1999; Memorandum of Lease filed in Herkimer County Clerk's Office on March 11, 1999.
3. Parking Lease Agreement dated November 26, 2008, between Folts Adult Home, Inc. (landlord) and Faxton-St. Luke's Healthcare (tenant).

**Schedule 1.1(c)**  
**Personal Property**

See attached.

**Schedule 1.1(d)**  
**Assumed Contracts**

1. Municipal Services Agreement dated March 1, 1999.



**Schedule 1.1(g)**  
**Permits**

List of Permits, if any, to be provided at Closing

**Schedule 1.1(j)**  
**Intangible Assets**

The following telephone and fax numbers:

1. Telephone Number: (315) 866-6964
2. Facsimile Number: (315) 866-6760

and any other telephone numbers, fax numbers, email addresses and/or domain names owned by Sellers.