Stephen A. McCartin (TX 13374700)
Mark C. Moore (TX 24074751)
FOLEY GARDERE
Foley & Lardner LLP
2021 McKinney Avenue, Suite 1600
Dallas, TX 75201
Telephone: (214) 999-3000
Facsimile: (214) 999-4667
smccartin@foley.com
mmoore@foley.com

COUNSEL TO DEBTORS
AND DEBTORS-IN-POSSESSION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:	§	**Chapter 11**
	§	
PREFERRED CARE INC., *et. al.*	§	**Case No.: 17-44642-mxm11**
	§	
Debtors.	§	**Jointly Administered**
	§	

MOTION FOR ORDER (A) GRANTING AUTHORITY TO: (I) TRANSFER THE OPERATIONS AND RELATED ASSETS OF 5 NEW MEXICO FACILITIES FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; (II) ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) REJECT AND TERMINATE THE REAL PROPERTY LEASES; (B) APPROVING THE FORM OF OPERATIONS TRANSFER AGREEMENT; AND (C) APPROVING TRANSITION AGREEMENT

[THE NEW MEXICO 5 TRANSFER MOTION]

A HEARING WILL BE CONDUCTED ON THIS MATTER ON SEPTEMBER 26, 2018 AT 1:30 PM.

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-ONE (21) DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THIS NOTICE; OTHERWISE THE COURT MAY TREAT THE

PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

Certain of the debtors referred to herein as the Omega 5 Debtors (defined below), as debtors and debtors in possession (collectively, the "**Debtors**")[1] hereby file this *Motion for Order (A) Granting Authority to (I) Transfer the Operations and Related Assets of 5 New Mexico Facilities Free and Clear of All Liens, Claims, Encumbrances, and Interests, (II) Assume and Assign Certain Executory Contracts and Unexpired Leases, and; (III) Reject and Terminate the Real Property Leases; (B) Approving the Form of Operations Transfer Agreement; and (C) Approving the Transition Agreement* (the "**Motion**"), requesting entry of an order pursuant to 11 U.S.C. §§ 105, 363, 365, and 1146 and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure:

(a) authorizing the transfer of the operations and Assets[2] to the Purchaser of the Omega 5 Facilities (defined below) free and clear of liens, claims, encumbrances, and interests;

(b) approving the *Operations Transfer Agreements* (each an "**OTA**" and collectively, the "**OTAs**"), substantially in the form attached hereto as **Exhibit A**, by and between the Omega 5 Debtors and the Purchaser of the Facilities;

(c) approving the assumption and assignment of the Assumed Contracts to the Purchaser;

(d) approving the rejection and termination of the real property leases associated with each of the Omega 5 Facilities;

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[1] A list of all of the Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, is attached hereto. This Motion is being filed by those entities referred to herein as the "Omega 5 Debtors."

[2] The OTAs contemplate the transfer of all of the Assets of each respective Omega 5 Debtor owned or used in connection with the operations of the applicable Omega 5 Facility—except those listed specifically as Excluded Assets—to the Purchaser. As set forth below, the Debtors' pre-closing accounts receivable are Excluded Assets under the OTA. The OTA attached hereto for which the Debtors seek approval is a form OTA. Debtors will separately file the final OTA(s), substantially in that form, for each respective Omega 5 Debtor (or, in the event they are all substantially similar, a single final form OTA) no later than seven (7) days before the hearing set for September 26, 2018 (the "**Sale Hearing**"), and make such OTAs available free of charge on the Debtors' informational website.

(e) approving the Transition Agreement and First Amendment to the Transition Agreement (together, the "**Transition Agreement**") attached hereto as **Exhibit B** by and between the Debtors and Omega (defined in the First Amended Transition Agreement); and

(f) granting related relief, including relief related to the proposed Cure Costs associated with the Assumed Contracts.

I.
EXECUTIVE SUMMARY

1. Eight (8) Preferred Care debtor affiliated partnerships[3] (referred to herein as the "**Omega Debtors**") operate eight (8) skilled nursing facilities in the State of New Mexico (the "**Omega Facilities**"). The Omega Debtors lease the Omega Facilities from affiliates of Omega Healthcare Investors, Inc. (referred to collectively herein as "**Omega**").

2. Five (5) of the Omega Debtors (the "**Omega 5 Debtors**")[4] have negotiated the terms of the OTAs for the transfer of the operations and the sale of the assets used in the operations of their Facilities (referred to herein as the "**Omega 5 Facilities**") to affiliates of Genesis Healthcare, Inc. (singularly or collectively, the "**Purchaser**"). The Purchaser was identified through an extensive search conducted by Omega at the request of the Debtors with the assistance of the Debtors' financial advisor, Focus Management Group USA, Inc.[5] In the

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[3] Bloomfield Health Facilities, L.P. ("**Bloomfield**"); Clayton Health Facilities, L.P. ("**Clayton**"); Espanola Health Facilities, L.P. ("**Espanola**"); Raton Health Facilities, L.P. ("**Raton**"); Gallup Health Facilities, L.P. ("**Red Rocks**"); Silver City Health Facilities, L.P. ("**Silver City**"); Lordsburg Health Facilities, L.P. ("**Sunshine Haven**"); SF Health Facilities, L.P. ("**Santa Fe**"); and SF Health Facilities-Casa Real, L.P. ("**Casa Real**").

[4] The Omega 5 consist of Bloomfield, Clayton, Casa Real, Red Rocks, and Silver City.

[5] Omega's involvement in the transfer process was critical because of its extensive industry knowledge and economic interest in the Omega 5 Facilities. Omega was incentivized to identify a new operator with the financial resources and other capabilities required for the seamless transfer and continued operation of the Omega 5 Facilities. Furthermore, due to the requirements of § 365 of the Bankruptcy Code and the existence of the leases with Omega (the "**Omega Leases**"), Omega's consent is required to extend the deadline to assume or reject the leases on the Omega 5 Facilities. Section 365(d)(4)(A) requires the Debtors to assume or reject the Omega Leases one hundred and twenty (120) days after the bankruptcy filings, and allows the Court to extend that deadline by ninety (90) days for cause. No further extensions are allowed without the lessor's consent. The 210 days provided for in section 365(d)(4)(A) expired on June 11, 2018. Omega agreed to extend that deadline an additional ninety-one (91) days to September 10, 2018 as

Debtors' opinion, the Purchaser is the only viable potential new operator that is (a) capable of taking over the operations of the Omega 5 Facilities within a timetable that will maximize the value of the Debtors' estates and (b) approved by Omega.

3. The Omega 5 Debtors request this Court's approval of the Transition Agreement with Omega, attached hereto as **Exhibit B**, which provides in part, (i) for the Omega 5 Debtors to terminate and reject their current leases with Omega of the Omega 5 Facilities (and other non-debtor facilities) as part of a process designed to transfer the operations and related assets of the Omega 5 Facilities (and other non-debtor facilities) to the Purchaser, and (ii) for the Debtors to close the New Mexico Facility operated by Espanola (the "**Espanola Facility**").

4. The Purchaser has entered or will enter into a new or amended lease arrangement for the Omega 5 Facilities (and the three Arizona facilities) with Omega and affiliates of Omega simultaneously with the transfer of the operations of those facilities to the Purchaser. Accordingly, the Omega 5 Debtors propose to sell and assign the right to operate the Omega 5 Facilities, as well as to transfer the Assets used in connection with the operation of the Omega 5 Facilities, to the Purchaser.

5. Generally, the OTAs and related agreements provide that:

a. the Omega 5 Debtors shall terminate and reject the leases associated with each of the Omega 5 Facilities (the "**Lease Terminations**"). The Purchaser will then enter into a new or amended lease arrangement with Omega for the Omega 5 Facilities;

b. the Omega 5 Debtors shall sell and transfer the operations and related assets for the Omega 5 Facilities, including all inventory, supplies, and other assets necessary for the operation of each Facility, to the Purchaser;

c. the Omega 5 Debtors shall assume and assign certain contracts and

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reflected in the *Stipulation and Agreed Order* entered at Docket No. 767. Omega has consented to a further extension into October only to allow for the transfers provided for herein. Approval of that extension shall be sought in a motion to approve a stipulation and agreed order.

unexpired leases related to operation of the Omega 5 Facilities to the Purchaser; and

d. the Purchaser shall employ at least 70% of the employees at each Omega 5 Facility.

6. The Debtors believe that the value of the Assets being transferred pursuant to the OTAs is *de minimis*; substantially all of the personal property utilized in the day-to-day operations of the Omega 5 Facilities actually belongs to the lessors, not the Omega 5 Debtors.[6] The Debtors' only valuable assets—receivables generated prior to the closing of the transfer—will be retained as Excluded Assets[7] under the OTAs and applied to the outstanding balance of the line of credit and/or debtor-in-possession financing facility (the "**DIP Facility**") with Wells Fargo Bank, N.A. ("**Wells Fargo**") as they are collected. The Omega 5 Debtors are borrowers under the Wells Fargo line of credit and DIP Facility and have pledged all or substantially all of their assets to secure the indebtedness owed thereby.

7. As further discussed below, the Debtors believe the transfer of the Omega 5 Facilities to the Purchaser pursuant to the OTAs constitutes the best transaction available for the transfer of the Omega 5 Facilities, maximizes the value of such Debtors' estates, and is in the best interests of such Debtors' stakeholders, including the residents of the Omega 5 Facilities. Accordingly, the Debtors request the Court approve the OTAs in substantially in the form attached hereto, authorize the Debtors to transfer of the Omega 5 Facilities and related Assets through the transactions contemplated by the OTAs, and authorize the Debtors to take all actions reasonably necessary or desirable to implement the transactions.

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[6] Pursuant to sections 8.3, 11.1, and 11.2 of the Omega Leases, all items of furniture, fixtures, supplies and equipment which are necessary or reasonably appropriate to operate the Omega 5 Facilities in compliance with applicable legal and insurance requirements or otherwise in compliance with industry standards, and which are owned by the Omega 5 Debtors, become the property of Omega upon the expiration or earlier termination of the leases.

[7] Any capitalized terms not specifically defined herein shall have the meaning assigned to them in the OTAs.

II.
JURISDICTION AND VENUE

8. This Court has jurisdiction to consider the 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 is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

9. The statutory predicates for the relief requested herein are §§ 105, 363, and 365 of the Bankruptcy Code,[8] and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

III.
BACKGROUND

A. The Preferred Care Group

10. The partnerships referred to herein as the "**Preferred Care Group**" operate one hundred and eight (108) skilled nursing, assisted and independent living, and mental health facilities (the **"Facilities"**) in twelve (12) states with approximately 11,400 rentable beds. There are currently approximately 9,200 residents in the Preferred Care Group Facilities. The Preferred Care Group constitutes one of the largest nursing home groups in the United States.

11. Each of the partnerships is a Texas limited partnership that is structured such that a Texas limited liability company functions as the 1% general partner and Mr. Thomas Scott is the 99% limited partner. Twenty-one (21) of the partnerships operate twenty-one (21) skilled nursing facilities in Kentucky (the "**Kentucky Facilities**"), and twelve (12) of the partnerships operate twelve (12) skilled nursing facilities in New Mexico (the "**New Mexico Facilities**"). The New Mexico Facilities include the Omega Facilities. The remaining seventy-five (75)

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[8] The term "**Bankruptcy Code**" shall mean 11 U.S.C. §§ 101 *et seq.*, and all references to "§" shall mean the Bankruptcy Code unless otherwise noted.

partnerships operate facilities in nine (9) other states across the country.

12. On November 13, 2017 (the "**Petition Date**"), the limited partnerships operating the Kentucky and New Mexico Facilities filed voluntary petitions for relief under the Bankruptcy Code. Preferred Care Inc., a holding company for numerous wholly owned, non-debtor subsidiaries owned by Mr. Thomas Scott,[9] also filed a voluntary petition on the Petition Date, and the resulting bankruptcy cases (the "**Chapter 11 Cases**") were procedurally consolidated under Case No. 17-44642.

13. The Debtors continue to operate and to manage their business as "debtors-in-possession" pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases pursuant to section 1104 of the Bankruptcy Code.

14. Additional details concerning the Debtors and the circumstances leading to the commencement of these Chapter 11 Cases can be found in the *Declaration of Alan Weiner in Support of First-Day Motions* (the "**Weiner Declaration**") [Docket No. 22].

B. Real Property Leases

15. The Omega 5 Debtors lease the real and personal property utilized in the operations of the Omega 5 Facilities. The remaining seven (7) New Mexico Facilities, including the remaining three (3) Omega Facilities, are not being transferred to the Purchaser. The Espanola Facility is being shut down pursuant to the terms and conditions of the Transition Agreement.

[9] Preferred Care Inc. does not own any interest in, nor participate in the management of, the limited partnerships that own and operate the facilities in the Preferred Care Group.

C. Asserted Liens and Priorities

16. The New Mexico Debtors have granted liens and security interests on certain of their assets to various parties. In order to analyze the asserted liens and their priorities for purposes of this Motion, the following chart is helpful:

Debtor(s)	Operations	Asserted Liens & Priorities[10]
New Mexico Debtors		
a) "Omega Debtors"	Eight (8) facilities in New Mexico leased from Omega.	1st — Wells Fargo 2nd — Omega[11] 3rd — FSF DIP, LLC
b) "Remaining Debtors"	Four (4) facilities in New Mexico, two (2) leased from Kading affiliates, and two (2) leased from Thomas Scott affiliates.	1st — Wells Fargo 2nd — FSF DIP, LLC

IV.
PROPOSED SALE AND TRANSFER OF THE OMEGA FACILITIES

17. Throughout these bankruptcy cases, the Debtors have maintained their intention to transfer their operations at the Kentucky and New Mexico Facilities to new operators in order to protect the interests of their residents and prevent those facilities from closing down. Everything the Debtors have done or attempted to do in these bankruptcy cases—procuring debtor-in-possession financing from both Wells Fargo Bank, N.A. and the Back-Up DIP Lender, stabilizing their operations post-filing, and settling significant threatened litigation with various parties-in-interest—has been designed to allow for an orderly, responsible transfer of the

[10] The liens listed are those for which UCC-1 financing statements were filed as of the Petition Date or that have been subsequently granted by the Debtors with the approval of the Bankruptcy Court. Except as otherwise prohibited by the Wells Fargo and/or Back-Up DIP Orders, the Debtors reserve the right to dispute the validity, enforceability, and/or priority of all pre-petition liens.

[11] Omega and/or its affiliates filed UCC-1 financing statements against the Omega Debtors on or about March 23, 2015, prior to Wells Fargo's UCC-1 filed in March 2017. Omega agreed to subordinate its pre-petition security interests to those of Wells Fargo.

facilities to new operators.

18. This Motion is the second of at least two motions designed to effectuate such transfers in as expeditious a manner as possible in these Chapter 11 Cases. The first, which sought approval to transfer the Debtors' twenty-one (21) Kentucky Facilities, was granted by order entered on July 28, 2018 at Docket No. 937. Transferring the Omega 5 Facilities is the second step toward completing the goal set at the beginning of these Chapter 11 Cases and will, subject to Purchaser's negotiations with the State of New Mexico, ensure the continued operation of the Omega 5 Facilities for the benefit of the residents while also relieving the Omega 5 Debtors of continuing rental obligations pursuant to the leases associated with the Omega 5 Facilities.

A. The Operations Transfer Agreement

19. Attached hereto as **Exhibit A** is the form of OTA negotiated with the Purchaser for the Omega 5 Facilities. The individual OTAs, when executed in final form, shall be filed separately and be made available free of charge on the Debtors' informational website at www.jndla.com/cases/preferred (however, in the event the OTAs are substantially similar, the Debtors will file the final form OTA and make it available). The Debtors request that the Court approve the OTAs substantially in the form attached hereto.

20. Generally, the OTAs provide that:

a. the Omega 5 Debtors shall execute and effectuate the Lease Terminations. The Purchaser will then enter into a new lease arrangement with Omega for the Omega Facilities;

b. the Omega 5 Debtors shall sell and transfer the operations and related assets for the Omega Facilities, including, to the extent such personal property is the property of Kentucky Debtors upon termination of the leases, all inventory, supplies, and other assets necessary for the operation of each Omega 5 Facility, to the Purchaser;

c. the Omega 5 Debtors shall assume and assign certain contracts and unexpired leases related to operation of the Omega 5 Facilities to the Purchaser; and

d. the Purchaser shall employ at least 70% of the employees at each Omega 5 Facility.

21. The Debtors and Omega have entered into the Transition Agreement (as amended by the First Amendment to the Transition Agreement (collectively, the "**Transition Agreement**") attached hereto as Exhibit B, which contains the agreement between Omega and the Debtors for the payment of rent and the transfer of operations of the facilities leased by both the Debtors and non-debtors. The Debtors request that the Court approve the Transition Agreement.[12]

B. Benefit to the Estates.

22. The Transition Agreement and the OTAs are in the best interest of the Debtors, who believe that the OTAs represent the best transaction available for the sale and transfer of their operations and Assets. The proposed transfers will allow the Omega 5 Debtors to avoid: (1) significant future rent obligations, (2) sizable potential claims from the Omega 5 Debtors' residents if the Omega 5 Facilities were shut down, and (3) significant lease rejection claims of Omega. Specifically, the OTAs require that all existing leases with respect to the Omega 5 Facilities be rejected and terminated.

[12] Nothing herein shall be deemed or construed as consent by Omega with respect to the Omega 5 Debtors' right to assume leases to which the Omega 5 Debtors are parties, which right to assume has expired.

V.
RELIEF REQUESTED AND BASIS THEREFOR

23. By this Motion, pursuant to sections 105, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9014, the Omega 5 Debtors seek an order that:

a. authorizes a transfer of the Assets to the Purchaser free and clear of all liens, claims, interests, and encumbrances including, without limitation, any claims arising under doctrines of successor liability;

b. approves the assumption and assignment of the Assumed Contracts to the Purchaser;

c. approves the termination and rejection of the leases by and between the Omega 5 Debtors and Omega;

d. waives any fourteen (14)-day stay imposed by Bankruptcy Rules 6004 and 6006; and

e. grants such other and further relief as is just and proper.

24. At the Sale Hearing, the Omega 5 Debtors will:

a. demonstrate that the transfer of their operations and the Assets to the Purchaser is a sound exercise of their business judgment, after arms' length negotiations, that is in the best interest of the estates;

b. demonstrate that the Lease Terminations are in the best interests of the estates due to the avoidance of ongoing rental obligations and potential sizeable rejection damages claims;

c. propose to transfer the operations and to sell all of their rights, title, and interests in the Assets free and clear of all liens, claims, encumbrances, and interests to the Purchaser. The Omega 5 Debtors will also propose to assume and assign the Assumed Contracts (defined in the OTAs) to the Purchaser; and,

d. provide adequate assurance of future performance for the Assumed Contracts.

25. Accordingly, the Omega 5 Debtors request that the Motion be approved in all respects, including approval of the OTAs in substantially the form attached hereto.

A. The OTAs and Transition Agreement Represent The Exercise of Sound Business Judgment by the Debtors And Should Be Approved.

26. Section 363 of the Bankruptcy Code authorizes a debtor to sell assets of the estate other than in the ordinary course of business and provides, in relevant part: "[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate ...."[13]

27. Courts approve proposed sales of property pursuant to § 363 if the transaction represents the reasonable business judgment of the debtor.[14] If a valid business justification exists for the sale, as it does in these Chapter 11 Cases, a debtor's decision to sell property out of the ordinary course of business enjoys a strong presumption "that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in an honest belief that the action taken was in the best interests of the company."[15] Therefore, any party objecting to the Omega 5 Debtors' proposed transfer must make a showing of "bad faith, self-interest or

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[13] 11 U.S.C. § 363(b)(1).

[14] *See Inst. Creditors of Cont'l. Air Lines, Inc. v. Cont'l. Air Lines, Inc. (In re Cont'l. Air Lines)*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty … there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business."); *In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010) ("A sale of assets under § 363 … is subject to court approval and must be supported by an articulated business justification, good business judgment, or sound business reasons."); *In re Delaware & Hudson Rv. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (holding that a court must be satisfied that there is a "sound business reason" justifying the preconfirmation sale of assets); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that the elements necessary for approval of a section 363 sale in a Chapter 11 case are "that the proposed sale is fair and equitable, that there is a good business reason for completing the sale and the transaction is in good faith"); *see also Comm. of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d Cir. 1983); *Stephens Indus. Inc. v. McClung*, 789 F.2d 386, 391 (6th Cir. 1986).

[15] *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); *see also In re ASARCO, L.L.C.*, 650 F.3d 593, 601 (5th Cir. 2011) ("The business judgment standard in section 363 is flexible and encourages discretion."); *GBL Holding Co.v. Blackburn/Travis/Cole, Ltd.*, 331 B.R. 251, 254 (Bankr. N.D. Tex. 2005) ("Great judicial deference is given to the [t]rustee's exercise of business judgment" [in approving a proposed sale under section 363].).

gross negligence."[16]

28. In determining whether a proposed § 363(b)(1) sale satisfies the "business judgment standard," courts consider the following: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was given to interested parties; (c) whether the price is fair and reasonable; and (d) whether the parties have acted in good faith.[17]

a. First, the Omega 5 Debtors are entering into the OTAs and Transition Agreement after thorough consideration of all viable alternatives and have concluded that the transfer is supported by a number of sound business reasons. In particular, the Omega 5 Debtors submit that the facts described above support an expeditious transfer of their Assets to preserve value for the estates and provide a strong business justification for the transfer of their Assets. The Omega Debtors believe that the best way to maximize value to the estates and the creditors thereof is through the transfer to the Purchaser .

b. Second, the Omega 5 Debtors will provided notice of the Motion as required by the Court pursuant to the *Order Granting Motion for Order Establishing Notice Procedures and Approving Form Notice of Commencement of Cases* [Docket No. 61] (the "**Notice Procedures Order**"), which such notice constitutes adequate and reasonable notice to interested parties. Additionally, the Omega 5 Debtors have been in contact with parties who expressed interest in the Omega 5 Debtors' Assets and have informed these parties of the proposed transaction. The Omega 5 Debtors believe that a more extended process would yield no higher or better offers for the operations and Assets.

c. Third, the consideration to be received by the Omega 5 Debtors for their Assets as a going concern is the highest possible value.

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[16] *In re Integrated Res., Inc.*, 147 B.R. at 656 (citing *Smith v. Van Gorkom*, 488 A.2d 858, 872-73 (Del. 1985)); *see also Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D. N.Y. 1986) ("Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct.").

[17] *See, e.g., In re N. Am. Techs. Group, Inc.*, 2010 Bankr. LEXIS 5834, *7 (Bankr. E.D. Tex. Aug. 16, 2010) (citing *In re Condere*, 228 B.R. 615, 626 (Bankr. S.D. Miss. 1998)); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987). The Omega Debtors will show that the proposed transfer satisfies all these factors.

d. Fourth, the Omega 5 Debtors believe that the consideration to be obtained for the Assets pursuant to the OTAs is fair and reasonable. Further, the Omega 5 Debtors will show at the Sale Hearing that the proposed transfer to the Purchaser was negotiated in good faith. Each party will have been represented by counsel throughout the transaction.

29. For the foregoing reasons, the Omega 5 Debtors submit that the approval of the proposed OTAs and the Transition Agreement is appropriate and warranted under § 363 of the Bankruptcy Code.

B. The Transfer of the Assets Will Be Free and Clear of Liens, Claims, Encumbrances, and Interests.

30. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances in property of an entity other than the estate if:

a. applicable nonbankruptcy law permits a sale of such property free and clear of such interest;

b. such entity consents;

c. such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;

d. such interest is in *bona fide* dispute; or

e. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.[18]

Because section 363(f) of the Bankruptcy Code is drafted "in the disjunctive," satisfaction of any one of its five (5) requirements will suffice to permit the sale of the Assets "free and clear" of liens and interests.[19] The Court also may authorize the sale of a debtor's assets free and clear of

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[18] 11 U.S.C. § 363(f).

[19] *In re Nature Leisure Times, LLC*, 06-41357, 2007 WL 4554276, at *3 (Bankr. E.D. Tex. Dec. 19, 2007); *see also Michigan Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code section 363(f) is written in the disjunctive; holding that the court may approve the sale "free and clear" provided at least one of the subsections of Bankruptcy Code section 363(f) is met); *In re Dundee Equity Corp.*, No. 89-B-10233, 1992 WL 53743, at *4 (Bankr. S.D. N.Y. Mar. 6, 1992) ("[S]ection 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met."); *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D. N.Y. 1986).

any liens pursuant to section 105 of the Bankruptcy Code, even if section 363(f) did not apply.[20]

31. The Omega 5 Debtors believe that at least one of the tests in § 363(f) will be satisfied with respect to both secured liens asserted against such Debtors' Assets *and* other interests that may be alleged by other parties. The Omega 5 Debtors anticipate that the secured creditors will consent to the sale and transfer of operations and Assets pursuant to the OTA. In addition, absent any objection to this Motion, all such secured creditors will be deemed to have consented to the relief requested herein.

32. Accordingly, the Omega 5 Debtors request that the Assets be transferred free and clear of any liens, claims, encumbrances or other interests, including, without limitation, any claims arising under doctrines of successor liability.

C. The Purchaser Is Entitled to Protections as a Good-Faith Purchaser

33. This Court has upheld § 363 purchase agreements "negotiated, proposed, and entered into … in good faith, without collusion … [resulting from] arm's-length bargaining with … parties represented by independent counsel."[21] A sale to a good-faith purchaser cannot be avoided under § 363(m), unless the sale authorization was stayed pending appeal.[22] However, "[t]he trustee may avoid a sale … if the sale price was controlled by an agreement among

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[20] *See Matter of Selby Farms*, 15 B.R. 372, 375 (Bankr. S.D. Miss. 1981) ("The power of the Bankruptcy Court to sell property free and clear of liens has long been recognized." (citing *Van Huffel v. Harkelrode*, 284 U.S. 225, 227-28 (1931))); *In re Trans World Airlines. Inc.*, No. 01-0056, 2001 WL 1820325, at *3 (Bankr. D. Del. Mar. 27, 2001) ("Bankruptcy courts have long had the authority to authorize the sale of estate assets free and clear even in the absence of § 363(f)."); *see also Volvo White Truck Corp. v. Chambersberg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) ("Authority to conduct such sales [free and clear of liens] is within the court's equitable powers when necessary to carry out the provisions of Title 11.").

[21] *In re TriDimension Energy, L.P.*, 2010 Bankr. LEXIS 4838, *13 (Bankr. N.D. Tex. Nov. 19, 2010).

[22] *See* 11 U.S.C. § 363(m) ("The reversal or modification of an authorization under subsection (b) of this section of a sale … does not affect the validity of [the] sale … to an entity that purchased … the property in good faith….").

potential bidders…."[23] Additionally, for the sale to be considered in good-faith, consideration must: (1) be fair and reasonable; (2) be the highest and best offer for the property, and; (3) constitute reasonably equivalent value, fair value, and fair consideration.[24]

34. The Omega 5 Debtors will show at the Sale Hearing that they negotiated the OTAs at arm's-length, in good faith, to achieve the best offer for the Assets. The Omega 5 Debtors will show that the Purchaser was represented by counsel and is not an affiliate or insider of the Omega 5 Debtors or otherwise related to the Omega 5 Debtors. Moreover, no equity ownership or future compensation has been offered to the Omega 5 Debtors or any insider thereof. As such, the Omega 5 Debtors will show that the Purchaser is entitled to the protections of a good-faith Purchaser under § 363(m) of the Bankruptcy Code, and none of the applicable asset purchase agreement(s) constitutes an avoidable transaction pursuant to § 363(n).

35. Further, the Omega 5 Debtors submit that the OTAs will provide substantial value to the bankruptcy estate because it will facilitate an orderly transfer of operations, avoid any cessation of operations and displacement of residents, and avoid substantial potential claims of residents and lessors.

D. The Debtors May Enter into the OTAs with the Purchaser or Any Other Executed Agreement Related to or Associated with the Transaction.

36. In connection with a sale of substantially all of a debtor's assets, courts routinely approve entry into asset purchase or similar agreements.[25] Such agreements are approved if they

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23 *Id.* § 363(n).

24 *In re TriDimension Energy, L.P.*, 2010 Bankr. LEXIS 4838, at *13.

25 *See, e.g.*, *In re Tridimension Energy, L.P.*, 2010 WL 5209233, at *2 (Bankr. N.D. Tex. Oct. 29, 2010) (approving the debtor's proposed asset purchase agreement); *In re Enron Corp.*, No. 01-16034, 2002 WL 32154269, at *4 (Bankr. S.D. N.Y. Apr. 24, 2002).

are an exercise of the debtor's sound business judgment.[26] The Omega 5 Debtors will show that the OTAs have been negotiated at arm's length and that the Omega 5 Debtors utilized their business judgment in an attempt to maximize the recovery to their estates.

E. The Lease Terminations Are Authorized By Section 365 of the Bankruptcy Code.

37. Sections 365(a) and (b) of the Bankruptcy Code authorize a debtor-in-possession, subject to the court's approval, to assume or reject executory contracts or unexpired leases of the debtor.[27] Pursuant to the OTA, the Omega 5 Debtors are required to execute the Lease Terminations, which will reject and terminate the leases applicable to the Omega 5 Facilities effective upon the Closing of the OTA. Because the Omega 5 Debtors were unable to find a party willing to assume the leases associated with each of the Omega 5 Facilities as written, the Omega 5 Debtors must reject such leases. The Lease Terminations reflect a sound exercise of the Omega 5 Debtors' business judgment because they allow the proposed transfers to occur pursuant to the OTA.

F. Assumption And Assignment of Assumed Contracts Is Authorized By Section 365 of The Bankruptcy Code.

38. Sections 365(a) and (b) of the Bankruptcy Code authorize a debtor-in-possession to assume, subject to the court's approval, executory contracts or unexpired leases of the debtor.[28] In turn, section 365(b)(1) of the Bankruptcy Code codifies the requirements for

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[26] *See, e.g.*, *Tridimension Energy*, 2010 WL 5209233, at *2 (finding that "the Debtors have demonstrated a compelling and sound business justification" for approval of the proposed asset purchase agreement); *In re Decora Indus., Inc.*, No. 00-4459, 2002 WL 32332377, at *5 (Bankr. D. Del. May 17, 2002); *In re Arlco, Inc.*, 239 B.R. 261, 265 (Bankr. S.D. N.Y, 1999).

[27] *See generally* 11 U.S.C. § 365(a) and (b); *In re Pilgrim's Pride Corp.*, 467 B.R. 871, 877 (Bankr. N.D. Tex. 2012) (citing *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985) (stating that "[i]t is well established that 'the question whether a lease should be rejected ... is one of business judgment.'").

[28] *See generally* 11 U.S.C. § 365(a) and (b); *In re Idearc Inc.*, 423 B.R. 138, 162 (Bankr. N.D. Tex. 2009) (recognizing that, "[u]nder section 365 of the Bankruptcy Code, a debtor may assume an executory contract or unexpired lease"); *In re Jamesway Corp.*, 201 B.R. 73, 76 (Bankr. S.D. N.Y. 1996).

assuming an unexpired lease or executory contract of a debtor, providing as follows:

> (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee
>
> (A) cures or provides adequate assurance that the trustee will promptly cure, such default …;
>
> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provides adequate assurance of future performance under such contract or lease.[29]

39. In analyzing whether the assumption or rejection of an executory contract or unexpired lease pursuant to § 365(a) should be approved, courts apply the "business-judgment" test, which requires a determination that the requested assumption or rejection be "advantageous to the estate and the decision be based on sound business judgment."[30] In making this determination, courts generally will not second-guess a debtor's business judgment concerning the assumption of an executory contract.[31]

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[29] 11 U.S.C. § 365(b)(1).

[30] *In re McCommas LFG Processing Partners, LP*, 07-32219-HDH-11, 2007 WL 4234139, at *14 (Bankr. N.D. Tex. Nov. 29, 2007). *See, e.g., In re Group of Institutional Investors, Inc. v. Chicago, Milwaukee, St. Paul and Pac. R.R. Co.*, 318 U.S. 523, 550 (1943) ("The question [of assumption] is one of business judgment."); *In re Idearc, Inc.*, 423 B.R. at 162 ("Courts apply the 'business judgment test' [to a debtor's decision to assume and executory contract or lease], which requires a showing that the proposed course of action will be advantageous to the estate…."); *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098-99 (2d Cir. 1993) (holding that, when deciding whether to grant a motion to assume, a court must put itself in the trustee's position and determine whether such assumption would be a good decision or a bad one).

[31] *See In re McCommas LFG Processing Partners, LP*, 2007 WL 4234139, at *15 ("In the absence of a showing of bad faith or an abuse of business discretion, the debtor's business judgment will not be altered." (citing *NLRB v. Bildisco & Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir.), aff'd, 465 U.S. 513 (1984))). *See, e.g., In re Paolo Gucci*, 193 B.R. 411, 414 (S.D.N.Y. 1996); *Sharon Steel Corp. v. National Gas Fuel Distrib. Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 40 (3d Cir. 1989); *In re III Enter., Inc.*, 163 B.R. 453, 469 (Bankr. E.D. Pa. 1994) ("Generally, a court will give great deference to a debtor's decision to

40. Here, the Omega 5 Debtors' assumption and assignment of the Assumed Contracts to the Purchaser meets the business-judgment standard and satisfies the requirements of § 365 of the Bankruptcy Code. As discussed above, the transfer contemplated by this Motion will provide significant benefit to the Omega 5 Debtors and their estates. Because the Omega 5 Debtors cannot obtain the benefits of the transfer without the assumption and assignment of the Assumed Contracts, the assumption of these Assumed Contracts is undoubtedly a sound exercise of the Omega 5 Debtors' business judgment.

41. Further, a debtor-in-possession may assign an executory contract or an unexpired lease of the debtor if it assumes the agreement in accordance with § 365(a), and provides adequate assurance of future performance by the assignee, "whether or not there has been a default" under the agreement. 11 U.S.C. § 365(f)(2). Significantly, among other things, adequate assurance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned.[32] The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but it should be given "practical, pragmatic construction."[33]

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assume or reject an executory contract. A debtor need only show that its decision to assume or reject the contract is an exercise of sound business judgment – a standard which we have concluded many times is not difficult to meet.").

[32] *See, e.g.*, *In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D. N.Y. 1986) (stating that adequate assurance of future performance is present when the prospective assignee of a lease from the debtor has financial resources and has expressed willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding); *In re Old S. Coors*, 27 B.R. 923, 926 (Bankr. N.D. Miss. 1983) (finding that the assignees' "long and successful business experience and financial strength" satisfied the "reasonable standards of adequate assurance of future performance").

[33] *In re Liljeberg Enters, Inc.*, 304 F.3d 410, 438-39 (5th Cir. 2002) ("[T]o determine if the debtor in possession has provided 'adequate assurance of future performance'… courts must look to 'factual conditions,' including 'consider[ation of] whether the debtor's financial data indicated its ability to generate an income stream sufficient to meet its obligations, the general economic outlook in the debtor's industry, and the presence of a guarantee.") (internal citations omitted); *EBG Midtown South Corp. v. McLaren/Hart Environmental Eng'g. Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 592 (S.D.N.Y. 1992) (citations omitted), *aff'd*, 993 F.2d 300 (2d Cir. 1993).

42. Here, all monetary defaults that must be cured (the "**Cure Costs**") under § 365(b) as a pre-condition to the assumption and assignment of the Assumed Contracts will be cured prior to the proposed closing. At the Sale Hearing, the Omega 5 Debtors will demonstrate to the satisfaction of this Court that the Purchaser has sufficient assets to continue performance under any Assumed Contract. Therefore, the Sale Hearing will provide this Court and other interested parties with the opportunity to evaluate and, if necessary, challenge the ability of that offeror to provide adequate assurance of future performance under the Assumed Contracts. Accordingly, the Omega 5 Debtors submit that the assumption and assignment of the Assumed Contracts as set forth herein should be approved.

43. To assist in the assumption and assignment of the Assumed Contracts, the Omega 5 Debtors request that the Bankruptcy Court enter an order providing that anti-assignment provisions in the Assumed Contracts shall not restrict, limit, or prohibit the assumption and assignment of the Assumed Contracts and are deemed and found to be unenforceable anti-assignment provisions within the meaning of § 365(f) of the Bankruptcy Code. Section 365(f)(1) of the Bankruptcy Code permits a debtor-in-possession to assign unexpired leases and executory contracts free from such anti-assignment restrictions, providing, in pertinent part, that:

> [N]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection . . . .[34]

44. By operation of law, § 365(f)(1) invalidates provisions that prohibit, restrict, or condition assignment of an executory contract or unexpired lease.[35] Section 365(f)(3) goes

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[34] 11 U.S.C. § 365(f)(1).

[35] *See In re Pin Oaks Apartments*, 7 B.R. 364, 367 (Bankr. S.D. Tex. 1980) (finding that § 365(f)(1) grants the debtor "rights to assign a lease to a third party who becomes fully liable thereunder, notwithstanding any

beyond the scope of § 365(f)(1) by prohibiting enforcement of any clause creating a right to modify or terminate the contract or lease upon a proposed assumption or assignment thereof.[36]

45. Other courts have recognized that provisions that have the effect of restricting assignments also cannot be enforced.[37] Similarly, in *In re Mr. Grocer, Inc.*, the court noted that:

> [The] case law interpreting § 365(f)(1) of the Bankruptcy Code establishes that the court does retain some discretion in determining that lease provisions, which are not themselves ipso facto anti-assignment clauses, may still be refused enforcement in a bankruptcy context in which there is no substantial economic detriment to the landlord shown, and in which enforcement would preclude the bankruptcy estate from realizing the intrinsic value of its assets.[38]

Thus, the Omega 5 Debtors request that any anti-assignment provisions be deemed not to restrict, limit, or prohibit the assumption and assignment of the Assumed Contracts and be deemed and found to be unenforceable anti-assignment provisions within the meaning of section 365(f) of the Bankruptcy Code.

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contrary contractual provisions which restrict, prohibit or condition any such assignment"). *See, e.g., Coleman Oil Co., Inc. v. The Circle K Corp. (In re The Circle K Corp.)*, 127 F. 3d 904, 910-11 (9th Cir. 1997) ("[N]o principle of bankruptcy or contract law precludes us from permitting the Debtors here to extend their leases in a manner contrary to the leases' terms, when to do so will effectuate the purposes of section 365.").

[36] *See, e.g., In re Jamesway Corp.*, 201 B.R. 73 (Bankr. S.D. N.Y. 1996) (finding that § 365(f)(3) prohibits enforcement of any lease clause creating right to terminate lease because it is being assumed or assigned, thereby indirectly barring assignment by debtor; all lease provisions, not merely those entitled anti-assignment clauses, are subject to court's scrutiny regarding anti-assignment effect).

[37] *See In re Rickel Home Centers, Inc.*, 240 B.R. 826, 831 (D. Del. 1998) ("In interpreting Section 365(f), courts and commentators alike have construed the terms to not only render unenforceable lease provisions which prohibit assignment outright, but also lease provisions that are so restrictive that they constitute de facto anti-assignment provisions."); *see also In re U.L Radio Corp.*, 19 B.R. 537, 543 (Bankr. S.D. N.Y. 1982) ("Any lease provision, not merely one entitled 'anti-assignment clause,' would be subject to the court's scrutiny regarding its anti-assignment effect.").

[38] 77 B.R. 349, 354 (Bankr. D. N.H. 1987).

G. Proposed Notice of the Cure Costs Associated with the Assumed Contracts is Reasonable Under the Circumstances.

46. Additionally, pursuant to § 365(b), all monetary defaults that must be cured (the "**Cure Costs**") as a pre-condition to the assumption and assignment of the Assumed Contracts will be cured prior to the proposed closing. The Debtors anticipate that the aggregate amount of the Cure Costs associated with the Assumed Contracts will be relatively small, if they exist at all.

47. To allow the counterparties to the Assumed Contracts (if any) to protect their rights and facilitate the transfer process, the Debtors propose to file and serve a "**Cure Amount Notice**" on the non-Debtor parties to the Assumed Contracts on or before September 7, 2018 that will (a) contain a calculation of the Cure Costs that the Debtors believe must be paid to cure all prepetition defaults under the Assumed Contracts and (b) provide notice of the intent to assume and assign such contracts to the Purchaser. If a cure amount of $0.00 is listed on the Cure Amount Notice, then the Debtors believe that there are no Cure Costs. If no Cure Amount Notice is filed, then the Debtors do not believe that any Assumed Contracts exist that will need to be cured. Unless the non-debtor party to an unexpired lease, license agreement or executory contract files and serves an objection (the "**Cure Amount Objection**") to its scheduled Cure Costs prior to the objection deadline for this Motion (currently **September 19, 2018**) upon counsel for the Debtor, the Debtors request that such non-debtor party be (i) forever barred from objecting to the Cure Costs and from asserting any additional cure or other amounts with respect to such unexpired lease, license agreement, or executory contract and the Debtors shall be entitled to rely solely on the Cure Costs; and (ii) be forever barred and estopped from asserting or claiming against the Debtors, their Estates, the Purchaser, or any other assignee of the relevant unexpired lease, or executory contract that any additional amounts are due or defaults exist, and from asserting any other objection to the assignment and/or assumption of such unexpired lease,

license agreement or executory contract.

48. If a Cure Amount Objection is timely filed, the Cure Amount Objection must set forth (a) the basis for the objection; and (b) the amount the party asserts as the Cure Costs. After receipt of the Cure Amount Objection, the Debtors shall attempt to reconcile any differences in the Cure Costs believed by the non-debtor party to exist. If the Debtors and the non-debtor party cannot consensually resolve the Cure Amount Objection then such Cure Amount Objection shall be adjudicated as part of the Sale Hearing or an amount sufficient to pay disputed cure amounts will be segregated by the Debtors pending resolution of such cure disputes.

49. The Debtors believe that the proposed notice outlined above will provide the non-Debtor parties to the Assumed Contracts more than sufficient opportunity to prosecute their rights with respect to the assumption and assignment of the Assumed Contracts. Accordingly, the Debtors request that the Court approve the assumption and assignment of the Assumed Contracts to the Purchaser.

H. Cause Exists To Eliminate Any Stay Imposed By The Bankruptcy Rules.

50. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property ... is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."[39] Bankruptcy Rule 6006 provides that an "order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."[40]

51. The Omega 5 Debtors request that any order approving this Motion (or authorizing a transaction that is deemed to be a transfer or sale of their Assets) be effective

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[39] Fed. R. Bankr. P. 6004(h).

[40] Fed. R. Bankr. P. 6006(d).

immediately, thereby waiving the 14-day stays imposed by Bankruptcy Rules 6004 and 6006. These waivers or eliminations of the 14-day stays are necessary for the transfer to close as expeditiously as possible. The Omega 5 Debtors respectfully submit that it is in the best interest of their estates to close the transfer as soon as possible after all closing conditions have been met or waived. Accordingly, Omega 5 Debtors request that the Court eliminate the 14-day stays imposed by Bankruptcy Rules 6004 and 6006.

VI.
CONCLUSION

WHEREFORE, the Omega 5 Debtors respectfully request that this Court enter an order granting the Motion and awarding the Omega 5 Debtors such other and further relief as this Court deems just and proper.

DATED: August 29, 2018

Respectfully submitted by:

/s/ Mark C. Moore

Stephen A. McCartin (TX 13374700)
Mark C. Moore (TX 24074751)
FOLEY GARDERE
Foley & Lardner LLP
2021 McKinney Avenue, Suite 1600
Dallas, TX 75201
Telephone: (214) 999-3000
Facsimile: (214) 999-4667
smccartin@foley.com
mmoore@foley.com

COUNSEL TO DEBTORS AND DEBTORS-IN-POSSESSION

CERTIFICATE OF SERVICE

I hereby certify that, on August 29, 2018 a true and correct copy of the foregoing document was served electronically by the Court's PACER system.

/s/ Mark C. Moore
Mark C. Moore

Debtors

Debtor	Last Four Digits of Federal Tax I.D. No.
Preferred Care Inc.	7040
New Mexico LP Debtors	
Bowling Green Health Facilities, L.P.	5787
Brandenburg Health Facilities, L.P.	6699
Cadiz Health Facilities, L.P.	7640
Campbellsville Health Facilities, L.P.	4207
Elizabethtown Health Facilities, L.P.	6127
Elsmere Health Facilities, L.P.	7843
Fordsville Health Facilities, L.P.	3299
Franklin Health Facilities, L.P.	7307
Hardinsburg Health Facilities, L.P.	3640
Henderson Health Facilities, L.P.	8067
Irvine Health Facilities, L.P.	7418
Morganfield Health Facilities, L.P.	8320
Owensboro Health Facilities, L.P.	8145
Paducah Health Facilities, L.P.	3350
Pembroke Health Facilities, L.P.	8209
Richmond Health Facilities - Kenwood, L.P.	8235
Richmond Health Facilities - Madison, L.P.	8216
Salyersville Health Facilities, L.P.	8263
Somerset Health Facilities, L.P.	8739
Springfield Health Facilities, L.P.	8310

Stanton Health Facilities, L.P.	8704
New Mexico LP Debtors	
Artesia Health Facilities, L.P.	5383
Bloomfield Health Facilities, L.P.	7640
Clayton Health Facilities, L.P.	3609
Desert Springs Health Facilities, L.P.	2707
Espanola Health Facilities, L.P.	2102
Gallup Health Facilities, L.P.	2562
Lordsburg Health Facilities, L.P.	1449
Pinnacle Health Facilities XXXIII, L.P.	1389
Raton Health Facilities, L.P.	6759
SF Health Facilities, L.P.	2323
SF Health Facilities-Casa Real, L.P.	0716
Silver City Health Facilities, L.P.	6972

EXHIBIT A

Form Operations Transfer Agreement

OPERATIONS TRANSFER AGREEMENT

This OPERATIONS TRANSFER AGREEMENT ("Agreement") is entered into as of [_____], 2018 ("Effective Date"), by and among Bloomfield Health Facilities, L.P. ("Existing Operator"), [_____] (, "New Operator"), and [_____] ("Landlord"). Landlord is executing this Agreement solely for the purposes of Section 7.

RECITALS

A. Existing Operator is the named tenant under that certain Amended and Restated Lease Agreement dated as of June 13, 2013 by and between Landlord and Existing Operator (the "Existing Lease")], pursuant to which Existing Operator is the licensed operator of Bloomfield Nursing and Rehabilitation located at 803 Hacienda Lane, Bloomfield, New Mexico, (the "Facility").

B. Existing Operator now desires to cease operating the Facility effective as of 12:01 a.m. MST on the Closing Date (as hereinafter defined) (the "Effective Time").

C. Pursuant to the terms of this Agreement, the New Operator desires to acquire, and the Existing Operator desires to transfer to the New Operator, the business and operations of the Facility and, in connection therewith, the Assets (as hereinafter defined).

D. Certain Affiliates of New Operator and certain Affiliates of Landlord are party to that certain Second Consolidated Amended and Restated Master Lease Agreement dated as of January 30, 2015 (as amended, the "Genesis-Omega Master Lease").

E. Simultaneously with the Closing, (i) Landlord, New Operator and certain of their respective Affiliates desire to enter into an amendment to the Genesis-Omega Master Lease (the "Genesis-Omega Master Lease Amendment") for the purposes of adding the Facility to the Genesis-Omega Master Lease and joining Landlord and New Operator as parties to the Genesis-Omega Master Lease.

F. Upon the Closing (i) the Existing Lease shall be terminated with respect to the Facility, (ii) the Genesis-Omega Master Lease Amendment shall become effective simultaneously therewith and (iii) the transactions contemplated by this Agreement shall be consummated.

G. Certain capitalized terms used herein have the meanings given to them on Exhibit A hereto.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree that:

SECTION 1
TRANSFER OF ASSETS; DELIVERIES UPON CLOSING DATE; CONDITIONS PRECEDENT TO OBLIGATIONS TO CLOSE

1.1 Transfer of Assets. At the Effective Time, and upon the terms and subject to the conditions of this Agreement, the Existing Operator shall transfer, convey, assign and deliver to the New Operator, and the New Operator shall acquire from the Existing Operator, free and clear of all Liens, other than Permitted Liens, all right, title and interest of the Existing Operator in and to the assets of Existing Operator that are owned or used by Existing Operator in connection with the operations of the Facility including, without limitation, the following (collectively, the "Assets"):

(a) all furniture, fixtures, furnishings and equipment owned by Existing Operator and used in operations of the Facility (collectively, the "FF&E");

(b) the Assumed Contracts (as defined in Section 5.12 below);

(c) to the extent Existing Operator's interest is assignable and/or transferable pursuant to applicable law and to the extent New Operator in its sole discretion elects to assume the same, all licenses, permits, approvals, certifications, certificates of need (or the equivalent), and Medicare and Medicaid provider numbers, which assumption is addressed further in Section 2.9 below;

(d) all architects and engineers plans and specifications relating to the Facility (to the extent in possession), telephone and facsimile numbers relating to the Facility (including all "800" numbers), all post office box addresses associated with the Facility; and

(e) any and all other items of tangible and intangible personal property owned or leased by Existing Operator and used solely in connection with the use, leasing and maintenance of the Facility (collectively, the "Personal Property"), and any goodwill of Existing Operator associated with the business operated at the Facility.

1.2 Excluded Assets. Notwithstanding anything to the contrary contained herein, the Assets shall not include the following items (collectively, the "Excluded Assets"):

(a) Existing Operator's rights under this Agreement or any other agreement between the Existing Operator and New Operator;

(b) all of Existing Operator's bank accounts, cash, cash equivalents, security deposits, securities and accounts receivable (including third party settlements), prepaid accounts, real estate and insurance escrows and inter-company accounts;

(c) all refunds for taxes, fees, assessments and charges for the period prior to the Effective Time;

(d) amounts of any nature which are or might be due to Existing Operator for goods provided, services rendered, or any other transaction of any type prior to the Effective Time;

(e) refunds, rebates and dividends paid in respect of workers compensation or other insurance premiums paid by Existing Operator prior to the Effective Time, and refunds and additional recoveries by or payments to Existing Operator from any person for services, provision of goods or supplies, or any other transactions prior to the Effective Time;

(f) all refunds arising out of retrospective premium adjustments under insurance policies covering the Facility or operations thereof relating to the period prior to the Effective Time;

(g) inventory disposed of in the ordinary course of business prior to the Effective Time;

(h) any provider tax payments related to periods prior to the Effective Time;

(i) any and all Medicaid and Medicare audit and case mix appeal rights and payments for periods prior to the Effective Time;

(j) any state Medicaid or Medicare reimbursements or adjustments for services rendered prior to the Effective Time;

(k) the New Operator Excluded Contracts;

(l) equipment leased pursuant to any lease that is not an Assumed Contract;

(m) Existing Operator's financial records, corporate minute books and seals;

(n) any insurance proceeds paid or payable to Existing Operator for claims arising prior to the Effective Time;

(o) all right, title and interest of Existing Operator in and to any trade names and all variations thereof connected with the Facility;

(p) all licenses, permits, approvals, certifications, and certificate of need rights that are not assignable or transferable pursuant to applicable law;

(q) all computer software, software licenses, time clocks and computer equipment on pharmacy carts; and

(r) all causes of action, including, but not limited to, causes of action under Chapter 5 of the Bankruptcy Code.

1.3 Assumed Liabilities. As of the Effective Time, New Operator shall not assume any liabilities or obligations of Existing Operator whatsoever, fixed or contingent, other than liabilities and obligations assumed by New Operator pursuant hereto with respect to the Assumed Contracts and the Assumed ETO to the extent such obligations and liabilities relate to periods after the Effective Time (collectively, the "Assumed Liabilities"). In no event shall the Assumed Liabilities include any obligations of Existing Operator relating to third party payor programs, including, without limitation, Medicare or Medicaid, arising, accruing, or relating to the time period on or before the Effective Time.

1.4 Closing. Subject to the terms and conditions of this Agreement, the transfer of the Assets and the operations of the Facility shall take place at a closing (the **"**Closing**"**) to be held in conjunction with the execution and delivery of this Agreement at the offices of Williams Mullen located at 200 South 10th Street, Suite 1600, Richmond, Virginia 23219, or at such other date or place as Existing Operator and New Operator may mutually agree upon in writing. Alternatively, the Closing may be effected via the electronic exchange of executed documents and closing deliverables. "Closing Date" shall mean the day on which the Closing occurs.

1.5 Existing Operator's Deliveries Upon Closing Date. Existing Operator shall deliver the following to New Operator on the Closing Date (collectively, the "Existing Operator Documents"):

(a) a duly executed assignment and assumption agreement substantially in the form attached hereto as Exhibit B (the "Assignment and Assumption Agreement");

(b) a duly executed bill of sale, in the form attached hereto as Exhibit C;

(c) such additional bills of sale and other appropriate instruments of assignment and conveyance, as to the Personal Property, in form mutually but reasonably satisfactory to New Operator and Existing Operator, dated as of the Closing Date, conveying all title to the Assets, including the Personal Property, free and clear of all liens, liabilities, security interests or encumbrances except as otherwise permitted herein;

(d) assignments of all intangible property used by the Existing Operator in the operation of the Facility including, without limitation, documents, chattel paper, instruments, contract rights, Resident trust accounts, good will, going concern value, general intangibles, the right to use the trade names and lists of phone numbers, arising from or in connection with Existing Operator's operation or use of any part of the Assets, and excluding all Excluded Assets;

(e) a duly executed non-competition agreement substantially in the form of Exhibit E attached hereto (the "Non-Competition Agreement"); **[NM FACILITIES ONLY]**

(f) a then current resident listing which shall include such information for the residents of the Facility as is reasonably acceptable to New Operator;

(g) to the extent not already delivered by Existing Operator, and to the extent available, originals or copies of all of the (A) Assumed Contracts, and (B) licenses and permits for the Facility, to the extent transferrable and included in the Assets;

(h) a certificate, in form and substance reasonably satisfactory to New Operator, duly executed by an officer of Existing Operator, dated the Closing Date, annexing and certifying as true and complete (A) a Certificate of Account Status of Existing Operator issued by the Texas Comptroller as of a recent date demonstrating that Existing Operator has paid all franchise taxes in the State of Texas to the extent then due and payable, and (B) evidence of the authority of Existing Operator to execute and deliver the Existing Operator Documents in order to effectuate the Closing;

(i) insurance certificates evidencing the insurance required in accordance with Section 2.22; and

(j) The accounting of patient funds required by Section 2.2 hereof.

1.6 New Operator's Deliveries Upon Closing Date. New Operator shall deliver the following to Existing Operator on the Closing Date (collectively, the "New Operator Documents"):

(a) the duly executed Assignment and Assumption Agreement;

(b) the duly executed Non-Competition Agreement;

(c) A certificate of an officer of New Operator, in form and substance reasonably satisfactory to Existing Operator, certifying that the conditions set forth in Sections 1.8(a) and 1.8(d) have been satisfied; and

(d) the Closing Statement.

1.7 Conditions Precedent to New Operator's Obligation to Close. The New Operator's obligation to consummate the transactions described in this Agreement, and to take the actions required to be taken by New Operator, at the Closing and following the Effective Time is subject to the satisfaction, at or prior to Closing, of each of the following conditions (any of which may be waived by New Operator, in whole or in part):

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

(b) Deliveries. At or prior to Closing, the New Operator shall have received the deliveries required under Section 1.5.

(c) No Injunction. There must not be in effect any injunction, judgment, order, decree, ruling, or charge under any action, suit or proceeding before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator that prohibits transfer of operations of, or the Assets used in connection with, the Facilities.

(d) Governmental Authorizations. At or prior to the Closing, the New Operator shall have obtained the consents and approvals set forth on Schedule 3.3.

(e) Termination of Existing Lease. At or prior to the Closing, the Existing Operator shall have delivered to the New Operator a duly executed termination agreement, terminating the Existing Lease as it relates to the Facility.

(f) Genesis-Omega Master Lease Amendment. At the Closing, Landlord and New Operator shall have entered into the Genesis-Omega Master Lease Amendment.

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

(h) Adverse Change. Except as otherwise provided in this Agreement, from the Effective Date until the Closing Date, there shall have been no material adverse change in the physical condition of the Assets (or any portion thereof), the condition of Existing Operator's licenses, permits and/or certificates, or the status of any Facility as a skilled nursing facility certified for participation in the Medicare and Medicaid programs, respectively.

(i) Liens. The Assets shall be free and clear of all Liens other than Permitted Liens.

(j) Survey Reports. All Survey Reports with respect to the Facility shall have been resolved in accordance with Section 2.14(a).

(k) Court Approval. Approval of this Agreement and the transactions contemplated thereby by the Court in any Bankruptcy Action.

1.8 Conditions Precedent to Existing Operator's Obligation to Close. The obligation of the Existing Operator to consummate the transactions described in this Agreement, and to take the actions required to be taken by Existing Operator, at the Closing and following the Effective Time is subject to the satisfaction, at or prior to Closing, of each of the following conditions (any of which may be waived by Existing Operator, in whole or in part):

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

(b) Deliveries. At or prior to Closing, the Transferring Parties shall have received the deliveries under Section 1.6.

(c) No Injunction. There must not be in effect any injunction, judgment, order, decree, ruling, or charge under any action, suit or proceeding before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator that prohibits transfer of operations of, or the Assets used in connection with, the Facility.

(d) Performance of Covenants. New Operator shall have performed or complied in all material respects with each of its agreements and covenants required by this Agreement to be performed or complied with by it prior to or at the Effective Time.

(e) Court Approval. Approval of this Agreement and the transactions contemplated thereby by the Court in any Bankruptcy Action.

SECTION 2
TRANSFER OF OPERATIONS

2.1 Cooperation. The parties hereto agree to cooperate with each other to effect an orderly transfer of the operation of the Facility. Following the execution hereof, Existing Operator shall cooperate with New Operator to furnish all requested documentation in Existing Operator's possession and to execute all documents and consents reasonably necessary for New Operator to obtain any required licenses, agreements, certificates and consents necessary to operate the Facility not already in possession of New Operator, from third parties and government program agencies.

2.2 Patient Funds; Advance Payments.

(a) On the Closing Date, and subject to adjustment within thirty (30) days following the Closing Date, Existing Operator shall provide New Operator with an accounting of all funds belonging to residents at the Facility, which are held by Existing Operator in a custodial capacity, and an accounting of all advance payments received by it pertaining to residents at the Facility (collectively, the "Funds/Payments"). Such accounting shall set forth the names of the residents for whom such Funds/Payments are held and the amounts held on behalf of each resident as of the Effective Time.

(b) On the Closing Date, and subject to adjustment within thirty (30) days following the Effective Date, Existing Operator shall transfer the Funds/Payments to a bank account designated in

writing by New Operator. New Operator hereby acknowledges receipt of and expressly assumes all of Existing Operator's financial and custodial obligations arising subsequent to the Effective Time with respect to the Funds/Payments, it being the intent and purpose of this provision that, as of the Closing Date, Existing Operator is relieved of all financial and custodial obligations with respect to such funds and that New Operator hereby assumes all such post-Closing obligations and is directly accountable to the residents with respect thereto.

(c) As of the Effective Time, New Operator shall assume custody of all trust accounts for residents of the Facility transferred by Existing Operator to New Operator and agree to treat such accounts in the fiduciary capacity required by law. New Operator agrees to indemnify and hold Existing Operator harmless from all liabilities, claims, and demands that may be asserted against Existing Operator in connection with New Operator's custody and treatment of such accounts from and after the Closing Date.

2.3 Final Cost Reports. Existing Operator shall prepare and file with the appropriate governmental authorities a final cost report for the Facility within the time frame required by law.

2.4 Employees of Existing Operator.

(a) Existing Operator shall terminate employment and all benefits of the Facility' employees as of 11:59 p.m. MST on the day prior to the Closing Date. Existing Operator shall be responsible for and shall pay all wages due to all of the employees through 11:59 p.m. MST on the day prior to the Closing Date. New Operator shall offer to rehire at least 70% of the employees who work at the Facility for at least twenty (20) hours per week with benefits similar to what New Operator provides to its current employees in similar capacities, provided, such employees meet New Operator's current hiring requirements. Those persons who receive and accept an offer of employment are referred to herein as the "Transitioned Employees". Notwithstanding the foregoing, New Operator shall not be obligated to hire any employee not approved by New Operator, including, without limitation, any employee who does not meet New Operator's current standards for employment. .

(b) New Operator and Existing Operator acknowledge and agree that the provisions of Section 2.4 are designed solely to ensure that Existing Operator is not required to give notice to the employees of the Facility of the "closure" thereof under the Worker Adjustment and Retraining Notification Act or under any comparable State law (collectively, the "WARN Act"). Nothing in Section 2.4 shall, however, create any rights in favor of any person not a party hereto, including the employees of the Facility, or constitute an employment agreement or condition of employment for any employee of Existing Operator or any affiliate of Existing Operator who is a Transitioned Employee. All Transitioned Employees shall be subject to the employment policies of New Operator after the Closing Date.

(c) To the extent that any WARN Obligations might arise with respect to the employees at the Facility solely as a consequence of New Operator's failure to offer employment to a minimum number of employees of Existing Operator that results in an employment loss (as defined in the WARN Act). to continue employment of a minimum number of employees of Existing Operator that results in an employment loss (as defined in the WARN Act) of fifty (50) or more employees within the applicable window under the WARN Act, New Operator shall be responsible for, and shall indemnify and hold harmless Existing Operator from and against any WARN liabilities, losses, or claims arising from New Operator's failure to continue to employ the requisite number of employees as required under the WARN Act.

(d) Schedule 2.4(c) lists all earned and accrued vacation, of all applicable Transitioned Employees ("ETO") as of the Closing Date. Existing Operator shall deliver to New Operator an updated

Schedule 2.4(c) within five (5) days prior to the Closing which shall include all ETO (a) as of the most recent pay period preceding such Closing Date, and (b) as of such Closing Date. Existing Operator shall be remain responsible for ETO of all Transitioned Employees after the Closing Date; Existing Operator shall be responsible for ETO of all employees other than Transitioned Employees. Existing Operator shall be responsible for paying or providing all applicable employees with all other benefits to be provided to such employees for all periods prior to the Closing Date. Existing Operator shall provide a schedule of all ETO with respect to the Transitioned Employees to New Operator within five (5) Business Days after Closing. Existing Operator shall make payment of all ETO to Transitioned Employees and all other employees with its next regularly scheduled payroll period.

(e) From and after the Closing Date, Existing Operator shall continue to be solely liable and responsible for, and New Operator shall incur no liability or responsibility with respect to, any "Continuation Coverage" (as that term is defined by Section 4980B of the Internal Revenue Code and Section 601, et seq. of ERISA ("COBRA")) for any employee or dependent of Existing Operator terminated at any time prior to the Closing Date. New Operator shall take no action which in any manner might encourage Transitioned Employees to exercise their COBRA rights against Existing Operator.

(f) Existing Operator acknowledges that no Employee Plans are considered part of the Assumed Liabilities, and any liabilities, claims or obligations with respect to such Employee Plans shall remain with the Existing Operator.

2.5 Accounts Receivable.

(a) New Operator shall assume responsibility for the billing for and collection of payments on account of services rendered by it at the Facility on and after the Closing Date. Existing Operator shall retain all rights in and title to billed and unbilled accounts receivable for services rendered at the Facility prior to the Closing Date (the "Existing Operator's Accounts Receivable") and shall retain full responsibility for the collection thereof. The Existing Operator's Accounts Receivable shall include all amounts due Existing Operator, whether billed or unbilled, prior to the Closing Date, for all services and ancillary services or products provided to any current or former residents at the Facility by Existing Operator prior to the Closing Date and any accounts receivable arising from the rate adjustments which relate to periods prior to the Closing Date even if such adjustments occur after the Closing Date.

(b) All third party payor payments that designate the dates of service or other identifying data on the remittance received by New Operator from and after the Closing Date shall relate to the period prior to the Closing Date or after the Closing Date, as the case may be, in connection with the account of the resident of the Facility for whom the payment is made in accordance with the dates of service or other identifying data indicated on the remittance, and New Operator shall remit to Existing Operator on or before the next to occur of tenth (10th) day or the twenty-fifth (25th) day of each calendar month after the Closing Date provided such date is at least five (5) Business Days following receipt of such payment by New Operator; provided, however, in the event payment is made without remittance advice (or where the remittance advice does not specify the dates of service) and within sixty (60) days of the Closing Date, such payment will be first applied to the appropriate Existing Operator's Accounts Receivable, unless Existing Operator has no then outstanding accounts receivable with respect to the applicable resident or patient for whom such payment is made, in which case such payment will be applied to New Operator's accounts receivable. In the event payment is made without remittance advice (or where the remittance advice does not specify the dates of service) and subsequent to the sixtieth (60th) day following the Closing Date, such payment will be applied to the New Operator's accounts receivable, unless Existing Operator properly and fully identified such payment to New Operator before Closing, as updated within thirty (30) days following the Closing Date for residents' and patients' ancillary charges for the month immediately preceding the Closing Date. Notwithstanding anything contained herein to the contrary,

advance payments received from private pay residents and patients billed by New Operator shall be retained by New Operator; provided such payments are for services received after the Effective Time. Any payments received by New Operator during the first fifteen (15) days after the Closing Date from or on behalf of private pay patients with outstanding balances as of the Closing Date which fail to designate the period to which they relate, will first be applied to Existing Operator's Accounts Receivable, with any excess applied to reduce any balances due for services rendered by New Operator after the Closing Date, and New Operator shall remit such amounts to Existing Operator on or before the next to occur of tenth (10th) day or the twenty-fifth (25th) day of each calendar month after the Closing Date provided such date is at least five (5) Business Days following receipt of such payment by New Operator. Following the fifteenth (15) day after the Closing Date, all non-designated payments received by New Operator from or on behalf of private pay patients with outstanding balances will first be applied to New Operator's accounts receivable, unless Existing Operator properly and fully identified such payment to New Operator before Closing, as updated within thirty (30) days following the Closing Date, and New Operator shall remit such amounts to Existing Operator on or before the next to occur of tenth (10th) day or the twenty-fifth (25th) day of each calendar month after the Closing Date provided such date is at least five (5) Business Days following receipt of such payment by New Operator.

(c) In addition, New Operator shall remit to Existing Operator on or before the next to occur of tenth (10th) day or the twenty-fifth (25th) day of each calendar month after the Closing Date, provided such date is at least five (5) Business Days following receipt of such payment by New Operator, any repayment or reimbursement received by New Operator arising out of cost reports filed for the cost reporting period ending prior to the Closing Date. Existing Operator agrees that any payment, whether received by New Operator from private pay residents and patients or as repayment or reimbursement arising out of cost reports, that pertain to services provided in the period commencing after the Effective Time shall be remitted by Existing Operator to New Operator on or before the next to occur of tenth (10th) day or the twenty-fifth (25th) day of each calendar month after the Closing Date, provided such date is at least five (5) Business Days following receipt of such payment by Existing Operator, to be applied and/or disbursed by New Operator in accordance with the terms of this Section.

(d) To the extent either party receives any proceeds from the accounts receivable of the other party, the parties acknowledge that the party receiving the payment belonging to the other party shall hold the payment in trust. Neither party shall have any right to offset with respect to such accounts receivable, and the party erroneously receiving the payment shall have no right, title or interest whatsoever in the payment and shall remit the same to the other on or before the next to occur of tenth (10th) day or the twenty-fifth (25th) day of each calendar month after the Closing Date provided such date is at least five (5) Business Days following receipt of such payment by the applicable party. For a period of six (6) months following the Closing Date, Existing Operator and New Operator shall provide each other with an accounting by the twenty-fifth (25^{th}) day of each month setting forth all amounts received by either of them during the preceding month with respect to accounts receivable. Nothing herein shall be deemed to limit in any way either party's rights and remedies to recover accounts receivable due and owing to it under the terms of this Agreement.

2.6 Payment of Operating Costs, Prorations and Deposits. Except as otherwise expressly provided herein, Existing Operator shall be responsible for, all claims or charges which are owed to third parties arising from Existing Operator's ordinary use, operation or control of the Facility, including payroll, taxes, insurance premiums, utilities, amounts due under executory obligations, amounts due to any third party vendors, including amounts due under any Assumed Contracts, and similar obligations for all periods prior to the Closing Date. New Operator, to the extent it utilizes the services provided by third parties, shall be responsible for, and shall pay on a timely basis, any claims or charges which are due to such third parties arising from the use, operation or control of the Facility from and after the Effective Time. Revenues and expenses pertaining to utility charges for the billing period in which this Agreement

is executed, prepaid expenses and like items of revenue or expense attributable to the Facility shall be prorated between Existing Operator and New Operator as of the Effective Time. All such prorations shall be made on the basis of actual days elapsed in the relevant accounting or revenue period and shall be based on the most recent information available to Existing Operator. Utility charges that are not metered and read on the Closing Date shall be estimated based on prior charges, and shall be re-prorated upon receipt of statements therefor. In general, such prorations shall be made so as to reimburse Existing Operator for actual prepaid expense items, and to charge Existing Operator for prepaid revenue items, to the extent that the same are attributable to periods after the Effective Time. To the extent any third party utility provider delivers final readings as of the Closing Date, the Existing Operator shall be responsible for paying such final invoice amount, which shall be reflected in the Closing Statement as a debit to Existing Operator.

2.7 Treatment of Prorations. The accounts of Existing Operator and New Operator created pursuant to the prorations provided for in the preceding Section 2.4 and Section 2.6 shall be netted against each other and paid to Existing Operator or New Operator, as applicable, on the Closing Date.

2.8 Future Settlement. All amounts owing from one party hereto to the other party hereto, excluding amounts in respect of Section 2.2 hereof, that require adjustment after the Closing Date, including without limitation, re-prorations according to Section 2.6 hereof, shall be settled three (3) months after the Closing Date. If, thereafter, a party hereto determines that any further adjustment is to be made, such party shall submit a statement to the owing party setting forth any and all such items and the calculation of the amounts due hereunder. Such statement shall be submitted with appropriate backup materials. If amounts are owing from New Operator to Existing Operator, New Operator shall have thirty (30) days from the date of receipt of such statement to tender payment to Existing Operator or to question or dispute in writing any item thereon. If amounts are determined to be owing from Existing Operator to New Operator, Existing Operator shall have thirty (30) days from the date of receipt of such statement to tender payment to New Operator or to question or dispute in writing any item thereon.

2.9 Medicare/Medicaid

(a) On the Closing Date, Existing Operator shall assign to New Operator its Medicare and Medicaid provider numbers and agreements in accordance with and as permitted by any and all applicable laws and orders, rules, requirements and regulations of the United States Department of Health and Human Services' Centers for Medicare & Medicaid Services ("CMS") and the state where the Facility is located subject to any and all other applicable federal or state statutes and regulations regarding the same. Existing Operator and New Operator acknowledge and agree that New Operator is not expected to have received "tie in" notice from CMS with respect to Existing Operator's Medicare or Medicaid provider agreement or a new Medicare or Medicaid provider agreement as of the Effective Time. Accordingly, prior to New Operator's receipt thereof, Existing Operator agrees that New Operator may begin to bill for its services under Existing Operator's Medicare and Medicaid provider numbers, as applicable, to the extent permitted as aforesaid, pending receipt of the tie in notices/new Medicare and Medicaid provider agreements, and the required provider numbers have been received by New Operator; provided, that, New Operator shall indemnify and hold Existing Operator and its Affiliates, directors, officers, limited partners and general partner harmless from any and all liabilities and claims related to New Operator's use of Existing Operator's Medicare and Medicaid provided numbers. Nothing set forth herein shall be deemed to limit in any way Existing Operator's right, title, and interest in its cash and accounts receivable for services rendered prior to the Closing Date, which cash and accounts receivable are property of the Existing Operator and shall be reimbursed or retained, as applicable, in accordance herewith.

(b) Existing Operator and New Operator understand that reimbursements from Medicare and/or Medicaid for items/services provided/rendered after the Closing Date may continue to be issued to

Existing Operator for a period of time. If and to the extent that they include payment for periods on and after the Closing Date and New Operator is entitled to such payments in accordance with the priority for such remittances as set forth in Section 2.5(b) of this Agreement, Existing Operator shall forward all such Medicare and/or Medicaid reimbursements within fifteen (15) Business Days to the account identified on Schedule 2.9 until such time as reimbursements are remitted directly to New Operator by Medicare and Medicaid. New Operator, in its reasonable discretion, may approve an alternative method of receiving such funds.

2.10 Transfer of Records; Access To Records. As of the Closing Date, Existing Operator shall transfer to New Operator the records of all Transitioned Employees and all then current residents in the Facility (the "Transferred Records") by leaving all such records at the Facility, provided, however, that Existing Operator shall be entitled to keep such copies of all Transferred Records as it may deem necessary and as permitted by law. From and after the Closing Date, New Operator shall be solely responsible for caring for the residents of the Facility in accordance with their contractual rights and in accordance with law. New Operator shall preserve the existence and maintain the confidentiality of the resident records transferred to New Operator pursuant to this Agreement in accordance with federal and state law including HIPAA. Subsequent to the Closing Date, New Operator shall allow Existing Operator and its affiliates, agents and representatives, at Existing Operator's sole cost and expense, to have reasonable access during regular business hours upon reasonable prior written notice and to make copies of, the Transferred Records, to the extent reasonably necessary to enable Existing Operator to investigate and defend malpractice, employee or other claims, to file or defend cost reports and tax returns, to verify accounts receivable collections due Existing Operator, and to perform similar matters. New Operator will maintain the Transferred Records, to the extent required by law, but in no event less than seven (7) years from the Closing Date with respect to resident records, and no less than six (6) years from the Closing Date with respect to other records

2.11 Deposits. All deposits, if any, held by a utility or other party to an executory contract shall remain the property of Existing Operator, and New Operator shall be required to post its own replacement security deposits, including, but not limited to, any security deposits required under any Assumed Contracts. Any such deposits remaining the property of Existing Operator as contemplated herein that are received by New Operator shall be forwarded to Existing Operator within 15 Business Days of New Operator's receipt of any such deposit.

2.12 Compliance with Laws. The parties shall comply in all material respects with all applicable laws, and with all applicable rules and regulations of all governmental authorities, in conjunction with the execution, delivery and performance of this Agreement and the transactions contemplated hereby.

2.13 Accounts Payable. New Operator agrees to assume all accounts payable for supplies and other goods or equipment ordered in the ordinary course of business and received at the Facility on and subsequent to the Effective Time, and for services rendered and performed on and subsequent to the Effective Time; provided, however, that New Operator does not assume and shall not be responsible for any accounts payable for any goods or services delivered or performed at the Facility pursuant to any Contract that is not as Assumed Contract.

2.14 Regulatory Inspections; Surveys.

(a) With respect to any Survey Report issued prior to the Closing Date, Existing Operator agrees that any citations and/or deficiencies are the responsibility of, and must be corrected and/or paid for, by Existing Operator. Existing Operator's responsibility will include correcting all non-compliances and/or citations, paying any and all fines, providing a plan of correction, providing and bearing the expense for all consultants, staff, materials, supplies and equipment necessary to complete the plan of

correction and achieve full compliance. In the event there is a cost incurred to resolve any conditions relating to the Facility or the Assets subject to and required by Governmental Authorities as a result of a Survey Report issued with respect to the Facility between the Effective Date and the Closing Date, including, without limitation, a survey and/or re-licensing inspection by a Governmental Authority arising from the transaction contemplated in this Agreement, Existing Operator shall have five (5) Business Days from the date such cost is determined to advise New Operator whether or not it is willing to pay such cost. The failure of Existing Operator to respond within said five (5) Business Day period shall be deemed to be an election by Existing Operator not to pay. If Existing Operator determines to pay less than all of the costs, New Operator shall have five (5) Business Days thereafter in which to advise Existing Operator in writing of New Operator's election (x) to pay any additional costs and proceed to Closing or (y) to terminate this Agreement in accordance with Section 8. The failure of New Operator to respond within said five (5) Business Day period shall be deemed to be an election by New Operator to terminate this Agreement. Existing Operator shall have the right to control the manner in which such conditions are resolved. New Operator shall not do anything to encourage a finding that there are any such conditions that must be resolved. In the event of a survey or investigation of the Facility by any Health Care Authority, Existing Operator and New Operator agree that the time for Closing shall be extended, if necessary, to receive the Survey Report related to such survey or investigation and to resolve, in accordance with this Section 2.14(a), any conditions relating to such Facility or the Assets subject to and required by such Health Care Authority as a result of such Survey Report.

(b) In connection with survey and re-licensing matters, Existing Operator and New Operator agree to cooperate fully with each other in preparing, filing, prosecuting, and taking any other actions with respect to any applications, requests, or actions that are or may be reasonable and necessary to obtain the consent of any governmental instrumentality.

(c) From and after the Closing Date, Existing Operator shall be responsible for the payment of all fines and penalties imposed by Governmental Authorities which fines and penalties arise in connection with any regulatory investigations, inspections or surveys occurring prior to the Effective Time or which are related to the operations of the Facility prior to the Effective Time. New Operator shall be responsible for the payment of all fines and penalties imposed by Governmental Authorities which fines and penalties arise in connection with any regulatory inspections or surveys occurring on or after the Effective Time and which are related to the operations of the Facility on or after the Effective Time. Existing Operator shall assist, as appropriate, New Operator in establishing any plans of correction or other responses to be submitted by New Operator after the Effective Time for surveys or inspections that relate to events or circumstances occurring both prior to and on or after the Effective Time within the time allowed for such submissions; however, New Operator's determination as to such plan of correction or other submission shall be controlling and New Operator shall be responsible for and bear all costs and expenses (including fines for any delays in submission) as a result of implementing such plan of correction or other submission.

2.15 Delivery of Inventories and Supplies. At Closing, Existing Operator shall deliver to New Operator by leaving at the Facility on the Closing Date such inventory and supplies in condition, quantity and quality sufficient to meet the regular and customary operating needs for operating in accordance with law and the previously established policies of Existing Operator at the Facility. Any business records being acquired by New Operator pursuant to this Agreement shall be delivered by leaving all such records at the Facility except to the extent electronic copies of such records have been provided to New Operator prior to the Closing Date.

2.16 Assumed Contracts. At Closing, Existing Operator shall assign to New Operator and New Operator shall accept assignment of (i) all Resident Contracts and (ii) all Assumed Contracts. New

Operator shall be obligated to pay all amounts arising under any Resident Contracts or Assumed Contracts pursuant to Section 2.6 hereof until such time as such Resident Contracts or Assumed Contracts are terminated. Payments under the Resident Contracts or Assumed Contracts shall be prorated through the Closing Date in accordance with the terms of Section 2.6 above.

2.17 Remittances, Mail and Other Communications. All remittances, mail and other communications relating to the operations of the Facility or the Resident Contracts or Assumed Contracts following the Closing Date received by Existing Operator or its affiliates at any time after the Closing Date relating to periods of operations on and after the Closing Date shall be promptly turned over to New Operator. All remittances, mail and other communications relating to the operations of the Facility or the Resident Contracts or Assumed Contracts prior to the Closing Date received by New Operator or its affiliates at any time after the Closing Date related to periods of operations prior to the Closing Date shall be promptly turned over to Existing Operator.

2.18 Obligations of New Operator. Any obligation this Agreement imposed upon New Operator shall not preclude New Operator from also imposing that obligation upon, or implementing that obligation through a management company; provided, however, that it is expressly understood and agreed that nothing contained in this sentence shall relieve New Operator from its liability for such obligations under this Agreement.

2.19 Excluded Liabilities. Except as specifically provided for in this Agreement, New Operator shall not assume any liabilities or obligations of Existing Operator whatsoever, fixed or contingent.

2.20 Managed Care Providers. To the extent permitted by such contracts and applicable law, Existing Operator agrees that New Operator may elect, in its sole discretion, to assume Existing Operator's managed care provider plans; provided that the applicable managed care providers acknowledge and agree that Existing Operator is released from its obligations under such managed care provider plans for all periods from and after that Closing Date. In the event that New Operator elects not the assume Existing Operator's managed care provider plans, to the extent permitted by such contracts and applicable law, Existing Operator agrees that New Operator may bill for its services under Existing Operator's managed care provider plans using Existing Operator's provider information from and after the Closing Date until such time as New Operator has obtained its own managed care provider plans. New Operator shall indemnify Existing Operator and its affiliates, directors, officers, limited partners and general partners for all liabilities in connection with its use of Existing Operator's managed care provider plans.

2.21 Non-Solicitation of Employees. From the Effective Date through the Closing Date and for a period of twelve (12) months after the Effective Time, Existing Operator shall not, nor shall Existing Operator assist others to, solicit or induce employees of the Facility (whether employed by such Facility as of the Closing Date or at some future date) to alter or terminate their relationships with such Facility (or the New Operator, post-Closing); provided, that, with respect to employees of the Facility immediately prior to the Closing Date (and not to future employees of such Facility after the Closing Date), the foregoing restriction shall not apply to non-Transitioned Employees. Nothing herein shall be construed to extend to the employees of the current management company, including regional and divisional employees.

SECTION 3
REPRESENTATIONS AND WARRANTIES OF NEW OPERATOR

New Operator hereby makes the representations and warranties indicated below to Existing Operator:

3.1 Authority, Validity and Binding Effect. New Operator has all necessary limited liability company power and authority to operate and lease the Facility and to carry on its business as it is now being conducted. New Operator is duly organized and in good standing under the laws of its jurisdiction of domestic organization. New Operator has all necessary limited liability company power and authority, as the case may be, to enter into this Agreement and to execute all documents and instruments referred to herein or contemplated hereby and all necessary action has been taken to authorize the individuals executing this Agreement on each of their behalf to do so. This Agreement has been duly validly executed and delivered by New Operator and is enforceable against New Operator in accordance with its terms, except as limited by bankruptcy, insolvency, fraudulent conveyance, moratorium, liquidation, reorganization or other similar laws affecting the enforcement of creditors' rights in general.

3.2 No Defaults. The execution and delivery of this Agreement and any documents contemplated hereby by New Operator, and the performance of its obligations hereunder and thereunder, do not and will not:

(a) conflict with or result in any material breach of the provisions of, or constitute a default under, the certificate of formation or operating agreement of New Operator;

(b) violate any material restriction to which New Operator is subject or, without the giving of notice, passage of time, or both, violate (or give rise to any right of termination, cancellation or acceleration under) any material license, authorization or permit or other material agreement or instrument to which New Operator is a party, which will not be satisfied or terminated prior to the Closing Date as a result of the transactions contemplated by this Agreement or result in the termination of any such instrument or termination of any provisions in such instruments that will result in the impairment of any of New Operator's rights under such instruments; and

(c) constitute a violation of any applicable material resolution, rule, regulation, law, statute or ordinance of any administrative agency or governmental authority, or of any judgment, decree, writ, injunction or order of any court to which New Operator is subject or by which its assets are bound, or any credit agreement or other financing arrangement to which New Operator, or any of its affiliates is a party.

3.3 Governmental Authorities. Except as disclosed in Schedule 3.3, New Operator is not required to submit any notice, report or other filing with any federal, state, municipal, foreign or other governmental or regulatory authority in connection with its execution or delivery of this Agreement or any of the New Operator Documents or the consummation of the transactions contemplated hereby and no consent, approval or authorization of any governmental or regulatory authority is required to be obtained by New Operator in connection with the execution, delivery and performance of this Agreement or the New Operator Documents or the consummation of the transactions contemplated hereby or thereby. To New Operator's Knowledge, there are no circumstances that exist that would prevent New Operator from obtaining the consents and approvals set forth on Schedule 3.3 in the ordinary course of business.

3.4 HIPAA. New Operator is a "Covered Entity" as defined under Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act ("HIPAA"). The transactions contemplated by this Agreement will not violate any applicable data privacy or security requirements under HIPAA or any privacy or security requirements (other than HIPAA Commitments) imposed by federal or state law on healthcare data, including state healthcare data breach notification laws and related state consumer protection laws.

3.5 Brokers. New Operator has not used a broker or finder in connection with the transactions contemplated hereby, and neither Existing Operator nor any Affiliate of Existing Operator has or shall have any liability or otherwise suffer or incur any Loss as a result of or in connection with any brokerage

or finder's fee or other commission of any Person retained by Existing Operator in connection with any of the transactions contemplated by this Agreement.

3.6 Litigation. There are no claims, actions, suits, proceedings or investigations pending or to New Operator's Knowledge threatened by or against New Operator with respect to this Agreement, or in connection with the transactions contemplated hereby, and to New Operator's Knowledge, there is no other reason to believe there is a valid basis for any such claim, action, suit, proceeding or investigation.

SECTION 4
REPRESENTATIONS AND WARRANTIES OF EXISTING OPERATOR

Existing Operator hereby represents and warrants as follows to New Operator:

4.1 Authority, Validity and Binding Effect. Existing Operator has all necessary corporate power and authority to carry on its business as it is now being conducted. Existing Operator is duly organized under the laws of the State of Texas. Existing Operator has all necessary corporate power and authority to enter into this Agreement and to execute all documents and instruments referred to herein or contemplated hereby and all necessary action has been taken to authorize the individuals executing this Agreement to do so subject to Court approval. This Agreement has been duly and validly executed and delivered by Existing Operator and upon Court approval shall be enforceable against Existing Operator in accordance with its terms, except as limited by bankruptcy, insolvency, fraudulent conveyance, moratorium, liquidation, reorganization or other similar laws affecting the enforcement of creditors' rights in general.

4.2 No Defaults. The execution and delivery of this Agreement and any documents contemplated hereby by Existing Operator, and the performance of their obligations hereunder, does not and will not:

(a) conflict with or result in any material breach of the provisions of, or constitute a default under the certificate of formation or operating agreement of Existing Operator;

(b) violate) any material license, authorization or permit or other material agreement or instrument to which Existing Operator is a party, which will not be satisfied or terminated with respect to the Facility prior to the Closing Date as a result of the transactions contemplated by this Agreement or result in the termination of any such instrument or termination of any provisions in such instruments that will result in the impairment of any of Existing Operator's rights under such instruments; or

(c) subject to approvals in the Bankruptcy Action, constitute a violation of any applicable material resolution, rule, regulation, law, statute or ordinance of any administrative agency or governmental authority, or any judgment, decree, writ, injunction or order of any court to which Existing Operator is subject or by which its assets are bound, or any credit agreement or other financing arrangement to which Existing Operator is a party

4.3 HIPAA. Existing Operator is a "Covered Entity" as defined under HIPAA. The transactions contemplated by this Agreement will not violate any applicable data privacy or security requirements under HIPAA or any privacy or security requirements (other than HIPAA Commitments) imposed by federal or state law on healthcare data, including state healthcare data breach notification laws and related state consumer protection laws.

4.4 Health Care Matters.

(a) All material Medicare and Medicaid provider agreements, certificates of need, if applicable, certifications, governmental licenses, permits, regulatory agreements or other agreements and approvals, including certificates of operation, completion and occupancy, and state nursing facility licenses or other licenses required by Health Care Authorities (as defined below) for the legal use, occupancy and operation of the Facility (collectively, "Health Care Licenses") have been obtained by the party required to hold such Health Care Licenses and are in full force and effect, including approved provider status in any approved third-party payor program. Existing Operator owns and/or possesses, and holds free from restrictions or conflicts with the rights of others, all such Health Care Licenses.

(b) The Facility is duly licensed as a skilled nursing facility as required under the applicable laws of the state in which the Facility is located. Existing Operator has not applied to reduce the number of licensed or certified beds of the Facility or to move or transfer the right to any and all of the licensed or certified beds of the Facility to any other location or to amend or otherwise change the Facility and/or the number of beds approved by the state health department or equivalent (or any subdivision) or other applicable state licensing agency, and there are no proceedings or actions pending or contemplated to reduce the number of licensed or certified beds of the Facility.

(c) The Health Care Licenses (i) have not been (A) transferred to any other location or (B) pledged as collateral security unless such pledge will be released at Closing; and (ii) are not provisional, probationary, or restricted in any way.

(d) Existing Operator has not taken any action to rescind, withdraw, revoke, amend, modify, supplement or otherwise alter the nature, tenor or scope of any Health Care License or applicable provider payment program other than non-material alterations effected in the ordinary course of business.

(e) To Existing Operator's knowledge, Existing Operator (and the operation of the Facility) is in substantial compliance with the applicable provisions of the laws, ordinances, statutes, regulations, requirements of participation, orders, standards, policies, restrictions or rules of any Health Care Authority having jurisdiction over the Facility.

(f) To Existing Operator's knowledge, Existing Operator is in material compliance with the terms of its provider agreements for Medicare and Medicaid and any other applicable requirements for participation in the Medicare and Medicaid programs.

(g) To Existing Operator's knowledge, there are no written agreements with residents of the Facility or with any other persons or organizations that deviate in any material adverse respect from or that conflict with any statutory or regulatory requirements.

(h) To Existing Operator's knowledge, Existing Operator has instituted, and the Facility is operated in material compliance with, a compliance plan which follows applicable guidelines established by Health Care Authorities.

(i) Existing Operator is in material compliance with the Health Care Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, and the regulations promulgated under each.

(j) There is no pending or, to Existing Operator's Knowledge, threatened revocation, suspension, termination, probation, restriction, limitation or non-renewal affecting Existing Operator, the Facility or any provider agreement relating to the Facility with any third-party payor or Medicare or Medicaid.

(k) Existing Operator has delivered to New Operator true, correct and complete Resident Census Information for each Facility's last three (3) fiscal years and current year-to-date broken out by month.

(l) Neither Existing Operator nor any Facility has any contract or agreement with, or is currently providing services to any patient whose payor source is, the Department of Veterans Affairs or any division thereof for the provision of services to patients or residents at any Facility.

4.5 Governmental Authorities. Except as disclosed in Schedule 4.5, Existing Operator is not required to submit any notice, report or other filing with any federal, state, municipal, foreign or other governmental or regulatory authority in connection with its execution or delivery of this Agreement or any of the Existing Operator Documents or the consummation of the transactions contemplated hereby and no consent, approval or authorization of any governmental or regulatory authority is required to be obtained by Existing Operator in connection with the execution, delivery and performance of this Agreement or the Existing Operator Documents or the consummation of the transactions contemplated hereby or thereby.

4.6 Taxes. To Existing Operator's Knowledge, all Taxes have been paid in full to the extent due and payable, all Tax Returns required to be filed in connection therewith have been filed, and Existing Operator is not delinquent in the payment of any Tax, assessment or governmental charge in connection with the operation of any Facility and as of the Closing Date, will have no Tax deficiency or claim outstanding or assessed against it in connection with the operation of any Facility.

4.7 Contracts. Schedule 4.7 attached hereto includes, without limitation, a list as of the Effective Date of all outstanding contracts or agreements that New Operator has agreed to assume and, to which New Operator has agreed to be bound after the Closing Date, (the "Contracts").

4.8 Related Matters.

(a) No labor has been performed or material furnished for the Facility for or on behalf of Existing Operator, in any material amounts, for which Existing Operator has not heretofore fully paid, or for which any mechanics' or materialmans' lien or liens, or any other lien, can be lawfully claimed by any person, party or entity.

(b) There are no parties (other than Existing Operator) in possession of the Facility or the Assets, or any portion thereof, other than Existing Operator.

4.9 Environmental Matters. Existing Operator has received no written notice of any violation of any Environmental Law, nor is there any pending, or to Existing Operator's knowledge, threatened, litigation or proceeding before any court of any governmental or administrative agency, concerning the violation of any Environmental Law .

4.10 Assets. All of the tangible Assets are in Existing Operator's possession or control and located at or on the Facility. The FF&E which are material to the operation of the Facilities are in good repair and working order, subject to normal wear and tear, and adequate and suitable for the purposes for which they are presently being used.

4.11 Survey Reports. True and complete copies of all Survey Reports in Existing Operator's possession obtained in the previous three (3) years have been provided to New Operator.

4.12 Capital Expenditures. Except as disclosed in Schedule 4.13, as of the Effective Date, Existing Operator does not have any outstanding contracts for capital expenditures relating to the Facility, nor does it have any agreement, obligations or commitments for future capital expenditures relating to the Facility, including, without limitation, additions to property, plant, equipment or intangible capital assets.

4.13 Absence of Notices. , Existing Operator has not received any written notice that (a) any material provider or supplier of Existing Operator intends to discontinue, substantially alter prices or terms to, or significantly diminish its relationship with the Facility as a result of the transaction contemplated hereby or otherwise or (b) any of the managerial employees intend to terminate his or her employment at any Facility on account of the transactions contemplated hereby or otherwise.

4.14 Resident Records. All resident records and other relevant records of the Facility shall be retained and maintained by Existing Operator at the Facility through the Closing Date.

4.15 Insurance. All insurance coverage for fire, liability, worker's compensation, title and other forms of insurance owned or held by Existing Operator and applicable to the Assets or the business at the Facility are in full force and shall be maintained through the Closing Date.

4.16 Litigation. Except as disclosed in Schedule 4.17, there are no actions, suits, arbitrations, regulatory proceedings or other litigation, proceedings or governmental investigations pending or, to Existing Operator's Knowledge, threatened against or affecting Existing Operator or any of its officers, directors, employees or members related to the Facility.

4.17 Compliance with Laws. Existing Operator has not received any written notice that the operation of the Facility is not in compliance in all material respects with all Laws applicable to the operations conducted at the Facility.

4.18 Employees.

(a) Schedule 4.21(a) is a true and complete list of all employees of Existing Operator. Existing Operator is not a party to (i) any material employment agreement or similar arrangement, other than written agreements or arrangements that may be terminated at any time upon no more than ninety (90) days' prior notice without penalty or (ii) any material employment agreement that causes an employee to be other than an "at will" employee.

(b) Existing Operator is not (i) a party to, involved in, subject to an order by a Governmental Authority arising out of or, to Existing Operator's Knowledge, threatened by, any labor or employee dispute involving an unfair labor practice charge or (ii) currently a party to or negotiating any collective bargaining agreement, and Existing Operator has not experienced any work stoppage by reason of employee action during the last three years.

4.19 Employee Benefit Plans. Except as disclosed in Schedule 4.22, neither Existing Operator nor any of its ERISA Affiliates is a party to, participates in, has participated in, has any employees participating in, or has any liability or contingent liability with respect to an Employee Plan. "Employee Plans" means (i) any "employee welfare benefit plan" or "employee pension benefit plan" or "multiemployer plan" as those terms are respectively defined in sections 3(1), 3(2) and 3(37) of the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder ("ERISA"); or

(ii) any retirement or deferred compensation plan, incentive compensation plan, stock plan, unemployment compensation plan, vacation pay, severance pay, bonus or benefit arrangement, insurance or hospitalization program or any other fringe benefit arrangements for any current or former employee, director, consultant or agent, whether pursuant to contract, arrangement, custom or informal understanding, written or unwritten, which does not constitute an "employee benefit plan" (as defined in section 3(3) of ERISA).

4.20 Disclosure. No representation or warranty by Existing Operator in this Agreement and no statement contained in the schedules attached hereto or any certificate or other document furnished or to be furnished to New Operator pursuant to this Agreement contains or will contain, as of the effective date of such disclosure, any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein, as of the effective date of such disclosure, in light of the circumstances in which they are made, not misleading.

SECTION 5
COVENANTS OF EXISTING OPERATOR

From the Effective Date and until the Closing and to the extent thereafter as contemplated herein, except as otherwise consented to or approved by New Operator in writing, Existing Operator covenants and agrees as set forth below. Where a provision includes an undertaking by New Operator, Existing Operator covenants and agrees as well.

5.1 Regular Course of Business. Existing Operator shall (a) operate the Facility in a manner substantially consistent with Health Care Requirements, applicable Law and past practices; (b) use commercially reasonable efforts to comply in all material respects with the provisions of all Laws applicable to the operation of the Facility, including, without limitation, compliance with requirements of all government programs; (c) use its commercially reasonable efforts to maintain (except for expiration due to lapse of time), all Tenant Leases and the Contracts to be assumed by New Operator hereunder without change except as expressly provided herein; (d) not enter into, any agreements or leases which would be binding upon New Operator (d) keep in full force and effect present insurance policies through the Closing Date or other comparable insurance coverage; and (e) use its commercially reasonable efforts to maintain in good standing all Health Care Licenses and other licenses necessary to operate the Facility..

5.2 Absence of Certain Changes or Events. Except for increases and changes made in the ordinary course of business or pursuant to written contractual obligations in effect and in existence as of the Effective Date and disclosed to New Operator on Schedule 5.2 hereof, as to the employees of the Facility, and any agents and Affiliates of Existing Operator, there will not be any of the following: any new bonus, percentage compensation, service award or other like benefit, or any increase in the compensation payable or to become payable by Existing Operator to any of such employees in the ordinary course of business; or any change in the method of calculating any presently existing bonus, percentage compensation, service award or other like benefit, granted, made or accrued to or to the credit of any of such employees or agents of Existing Operator.,.

5.3 Full Access and Disclosure.

(a) Except as prohibited by law or as provided in this Agreement, upon reasonable notice and subject to reasonable conditions such as the condition that a representative of Existing Operator accompany New Operator, Existing Operator shall afford to New Operator, and its counsel, accountants and other authorized representatives reasonable access during business hours to the Assets, the Facility, books and records, in any way relating to the Assets and/or the Facility, including, but not limited to, the

roofs, all equipment (fixed and movable), heating and cooling systems, and any and all vehicles, financial data and records, operating data and other information reasonably requested, including the most recent financial statements, cost reports, inspection reports, plans of correction current room rates (including dates and amounts of increases), census data and resident mix, payroll information, Medicaid reports, employment agreements, personnel policies, occupancy agreements with residents, leases, and all contracts, agreements, and other documents relating to outside contractors, vendors, consultants, or other outside parties relating to the Facility and to which the Facility or Existing Operator is now or may become a party in order that New Operator may have full opportunity to make such reasonable investigations of the Assets or the Facility as it shall desire to make. Existing Operator shall furnish such additional financial and operating data and other information in accordance with this Section 5 and as New Operator and its representatives shall from time to time reasonably request. New Operator agrees to use discretion on any site visits which shall be conducted at times agreed upon by the parties to avoid disrupting the Facility, their employees and their patients. To the extent that any resident records and other relevant records of the Facility used or developed in connection with the business conducted at such Facility are maintained by or in any computer equipment or software owned by Existing Operator, Existing Operator shall work with New Operator prior to the Closing to electronically copy the information stored in such computer equipment or software so that New Operator shall have access to the information in usable form at the Closing.

(b) From the Effective Date up through and including the date that is thirty (30) days from the Effective Date (the "Due Diligence Period"), if Existing Operator determines, in its sole and absolute discretion, that it does not desire to accept the Assets or the operations of the Facilities, New Operator shall have the right to give written notice to Existing Operator electing to terminate this Agreement, provided such notice is delivered to Existing Operator prior to 11:59 p.m. on the last day of the Due Diligence Period. The foregoing provision shall not restrict the New Operator from performing further due diligence relating to the Facilities at any time prior to the Closing Date.

(c) All such inspections and investigations by New Operator and its authorized representatives described above shall be completed at New Operator's risk without any liability to Existing Operator, except to the extent caused by Existing Operator's gross negligence or willful misconduct. Subject to the foregoing sentence, in addition to any other indemnification obligations set forth under this Agreement, New Operator hereby agrees to indemnify and hold harmless Existing Operator against any damages or injuries associated with completion of such inspections or investigations, which undertaking shall survive the termination of this Agreement or the conveyance of the Assets by Existing Operator to New Operator, as applicable, for the period of six (6) months.

5.4 Satisfaction of Conditions. Existing Operator shall use its commercially reasonable efforts to satisfy any condition set forth in Section 1.7 or Section 1.8 that is within its power and control to satisfy, including, without limitation using commercially reasonable effort to obtain, on or prior to the Closing, all consents, if any, necessary for Existing Operator to fulfill its obligations to consummate the transactions contemplated hereby.

5.5 Compliance with Laws. Existing Operator shall use its commercially reasonable efforts to comply in all material respects with all applicable Laws of any Governmental Authority, in conjunction with the execution, delivery and performance of this Agreement and the transactions contemplated hereby.

5.6 Further Documentation. Existing Operator agrees that, for a reasonable period of time following the Closing, upon request by New Operator, it will do, execute, acknowledge, and deliver, or cause to be done, executed, acknowledged, and delivered, all such further acts, deeds, assignments, transfers,

conveyances and assurances as may be reasonably required, without enlarging or extending any liability of Existing Operator beyond what is otherwise contemplated by this Agreement, to comply with its obligations hereunder.

5.7 Taxes. Existing Operator shall file federal, state, local, and, to the extent applicable, estimates and reports and pay all amounts then due, for all periods through and including the Closing Date to the extent necessary to transfer the Facility to New Operator in accordance with the terms of this Agreement.

5.8 No Disposition of Assets. Existing Operator shall not sell, lease or otherwise dispose of or distribute any of the Assets or properties related thereto or necessary for operation of any Facility other than obsolete Assets or in the ordinary course of business or as otherwise permitted by this Agreement.

5.9 Confidentiality. Existing Operator shall use its commercially reasonable efforts to keep confidential all information relating to the terms of this Agreement and all information relating to New Operator, its officers and directors (other than information which is a matter of public knowledge or which has heretofore been or is hereafter published in any publication for public distribution or filed as public information with any Governmental Authority or disclosed pursuant to an order, subpoena or demand of any Governmental Authority or as is necessary to be disclosed to lenders, Governmental Authorities, Existing Operator and its representatives and third parties in order to consummate the transaction contemplated herein, including, without limitation, any information that is included in any filings with the Court in connection with the Bankruptcy Action) and such information shall not at any time be used for the advantage of, or disclosed to third parties (including employees at the Facility) by Existing Operator or its representatives, to the detriment of Existing Operator or its officers and directors. This provision may be enforced by temporary and permanent injunction in addition to any other available remedies, it being understood that a breach of this provision will cause Existing Operator irreparable harm.

5.10 No Solicitation. Existing Operator agrees, it shall not, after the Effective Date and before the Closing Date, enter into any binding contract, option or other agreement relating to any acquisition of all or a substantial portion of the assets of, or any equity interest in Existing Operator or any business combination involving Existing Operator.

5.11 Survey Reports. Existing Operator shall provide to New Operator, promptly after receipt of the same, any Survey Reports including, without limitation, reports, waivers of deficiency, plans of correction, and any other investigation reports issued with respect to the Facility between the Effective Date and the Closing Date and received by Existing Operator in the ordinary course. Existing Operator shall notify New Operator upon the occurrence of any survey or investigation of the Facility, regardless of whether the applicable Health Care Authority has issued a formal report or finding (such notice may be done verbally to Natalie Holland, or such other representative as New Operator may designate from time to time, by telephone if promptly followed by written notification).

5.12 Supplemental Information.

(a) From time to time prior to the Closing, Existing Operator will promptly disclose in writing to New Operator any matter hereafter arising within Existing Operator's Knowledge which, if existing, occurring or known as of the Effective Date would have been required to be disclosed to New Operator or which would render inaccurate any of the representations, warranties or statements set forth in Section 4 hereof. No information provided to a party pursuant to this Section shall automatically constitute a breach of this Agreement nor shall it be deemed to cure any breach of any representation, warranty or covenant made in this Agreement.

(b) Existing Operator shall, from time to time prior to or at the Closing, by notice in accordance with the terms of this Agreement (provided that Existing Operator may deliver such notice by electronic mail), supplement or amend any schedules referred to in Section 4 of this Agreement or referenced herein with the consent of the New Operator as set forth below; provided that if any such notice is delivered within two (2) Business Days prior to the date scheduled for the Closing, then New Operator may, at its option, extend the date of the Closing to a date not later than five (5) Business Days after such notice is delivered and Existing Operator provides to New Operator all information possessed by Existing Operator regarding the matters identified in such supplement or amendment. No revised schedule shall become effective until approved by New Operator. The updating and amendment of any schedule shall not cure or constitute a waiver of any breach of any representation, warranty or covenant that occurred prior to the date of such amendment unless expressly consented to in writing by New Operator. If New Operator does not consent to such amendment and thus Existing Operator's representations and warranties were true and correct as of the Effective Date, but are not true and correct as of the Closing Date, and Existing Operator therefore determines that it cannot deliver the certificate required by Section 1.5(i), New Operator's sole remedy shall be to terminate this Agreement in accordance with Section 8.1(d), and Existing Operator shall have no further liability hereunder, so long as the Existing Operator is not otherwise in breach of this Agreement. Likewise if New Operator does not consent as set forth in this Section 5.12(b), and thus Existing Operator's representations and warranties were true and correct as of the Effective Date, but are not true as a result of such supplement or amendment, Existing Operator shall be entitled to terminate this Agreement in accordance with Section 8.1(e) and neither party shall have any further liability hereunder, provided that such party is not otherwise in breach of this Agreement. Notwithstanding anything to the contrary in this Section 5.12(b), to the extent that any update or amendment of any schedule by Existing Operator is necessary as a result of Existing Operator's operation of the applicable Facility in the ordinary course consistent with past practices, New Operator's consent to or approval of such updated or amended schedule shall not be unreasonably withheld, conditioned or delayed.

(c) Upon request, Existing Operator shall deliver to New Operator within fifteen (15) Business Days after the end of each calendar month following the Effective Date and up to the Closing Date the unaudited operating statement of the Facility for such calendar month.

(d) Upon request, Existing Operator shall deliver to New Operator within fifteen (15) days after the end of each calendar month following the Effective Date and up to the Closing Date updated Resident Census Information for the Facility relating to such calendar month.

(e) Existing Operator shall notify New Operator promptly of its receipt of any written notice of the violation of any Environmental Law.

(f) Existing Operator shall give New Operator prompt written notice of any actual or any threatened or contemplated condemnation of any part of the Facility of which it receives notice.

5.13 Assumed Contracts. Existing Operator shall give notice to all parties under the Assumed Contracts in order to obtain from such parties any consent required to be obtained to assign such Assumed Contract to the New Operator on or prior to the Closing Date. Existing Operator shall be responsible for all costs and expenses under such Assumed Contracts prior to the Closing Date. The "Assumed Contracts" shall include all Contracts and Leases other than the New Operator Excluded Contracts.

SECTION 6
COVENANTS OF NEW OPERATOR

New Operator covenants and agrees with Existing Operator that:

6.1 Confidentiality. New Operator shall use its commercially reasonable efforts to keep confidential all information relating to the terms of this Agreement, all information relating to the Assets, Existing Operator, its officers and directors, and all financial statements, drawings, designs, customer and supplier lists relating to Existing Operator received by it (other than information which is a matter of public knowledge or which has heretofore been or is hereafter published in any publication for public distribution or filed as public information with any Governmental Authority or disclosed pursuant to an order, subpoena or demand of any Governmental Authority or as is necessary to be disclosed to lenders, Governmental Authorities, New Operator, and their respective representatives and third parties in order to consummate this transaction, including, without limitation, any information that is included in any filings with the Court in connection with the Bankruptcy Action) and such information shall not at any time be used for the advantage of, or disclosed to third parties (including employees at the Facility) by New Operator or its representatives to the detriment of Existing Operator or its officers and directors. This provision may be enforced by temporary and permanent injunction in addition to any other available remedies, it being understood that a breach of this provision will cause Existing Operator irreparable harm.

6.2 Compliance with Laws. New Operator shall comply in all material respects with all applicable Laws of any Governmental Authority, in conjunction with the execution, delivery and performance of this Agreement and the transactions contemplated hereby.

6.3 Assumption of and Compliance with the Contracts. New Operator shall review the Tenant Leases, Contracts and Leases during the Due Diligence Period and, on or prior to the expiration of the Due Diligence Period, shall give notice to Existing Operator indicating which of the Tenant Leases, Contracts and Leases that New Operator shall not assume at Closing (the "New Operator Excluded Contracts").

6.4 Consents, Etc. New Operator shall take reasonable steps and make all filings required by governmental bodies and other regulatory authorities, and use all reasonable efforts to obtain all Health Care Licenses and other permits, approvals, authorizations, certifications, and consents of all third parties required to consummate the transactions contemplated by this Agreement. Without limitation, promptly as practicable after the expiration of the Due Diligence Period (provided that Existing Operator cooperates with New Operator in the filing of such applications and provides, in a timely manner, all Existing Operator documents to New Operator necessary for New Operator to file such applications), New Operator shall file applications to obtain the requisite licenses to operate the Facility. Each party shall furnish promptly to each other all information that is not otherwise available to the other party and that such party may reasonably request in connection with any such filing.

6.5 Satisfaction of Conditions. New Operator shall use its commercially reasonable efforts to satisfy any condition set forth in Section 1.7 or Section 1.8 that is within its power and control to satisfy, including, without limitation using commercially reasonable effort to obtain, on or prior to the Closing, all consents, if any, necessary for New Operator to fulfill its obligations to consummate the transactions contemplated hereby.

SECTION 7
INDEMNIFICATION

7.1 Agreement to Defend. In the event any action, suit, proceeding or investigation of the nature specified in Section 7.2, Section 7.3, or Section 7.4 hereof is commenced, whether before or after a Closing, all of the parties hereto agree to cooperate and use their best efforts to defend against and

respond thereto. No party shall have any obligation to indemnify the other party with respect to any claim for indemnification arising out of or based on fraud, knowing and intentional misrepresentations or knowing and intentional breaches by the party seeking indemnification or any of its officers, employees, directors or agents.

7.2 Indemnification by Existing Operator and Landlord. Existing Operator and Landlord shall, jointly and severally, indemnify, protect, defend, exculpate and hold New Operator and its Affiliates, members, partners, directors, shareholders, officers, employees and agents (collectively, the "New Operator Indemnified Parties") harmless from and against, and agree promptly to defend New Operator Indemnified Parties from and reimburse New Operator Indemnified Parties for, any and all Losses (the "New Operator Indemnified Losses") which New Operator Indemnified Parties may at any time suffer or incur, or become subject to, as a result of or in connection with:

(a) Any and all obligations of Existing Operator of any nature whatsoever, including, without limitation, all liabilities and obligations with respect to claims, damages, suits, proceedings or injury, related to or arising out of Existing Operator's ownership or operation of the Assets or the Facility prior to Closing, whether such obligation accrues before or after the Closing Date, except the Assumed Liabilities;

(b) Any breach or inaccuracy of any of the representations or warranties made by Existing Operator in or pursuant to this Agreement or in any instrument, certificate or affidavit delivered by Existing Operator at the Closing, or from any misrepresentation in or omission from this Agreement or any Exhibit, Schedule, certificate, or other executed document furnished or to be furnished to New Operator hereunder;

(c) Any breach by Existing Operator under this Agreement;

(d) Any general liability or professional liability claim with respect to the Facility related to or arising out of Existing Operator's ownership of the Assets or operation of such Facility prior to Closing, whether such obligation accrues before or after the Closing Date; and

(e) Any and all claims, including any suit, action, or other proceeding brought by applicable Governmental Authorities or other third party payors against New Operator, the Assets or the Facility (A) arising from the ownership and operation thereof by Existing Operator prior to Closing or (B) as to any overpayments or other claims made to Existing Operator by third parties including, without limitation, overpayments made with respect to Medicaid, Medicare and any other third-party payor program.

7.3 Indemnification by New Operator. New Operator shall indemnify, protect, defend, exculpate and hold Existing Operator, and its members, partners, directors, officers, employees and agents (collectively, the "Existing Operator Indemnified Parties") harmless from and against, and agree promptly to defend Existing Operator Indemnified Parties from and reimburse Existing Operator Indemnified Parties for, any and all Losses (the "Existing Operator Indemnified Losses") which Existing Operator Indemnified Parties may at any time suffer or incur, or become subject to, as a result of or in connection with:

(a) Any and all obligations of New Operator of any nature whatsoever, including, without limitation, all liabilities and obligations with respect to claims, damages, suits, proceedings or injury, related to or arising out of the ownership of the Assets or operation of the Facility after Closing, whether such obligation accrues before or after the Closing Date, except such obligations as may be expressly assumed or retained by Existing Operator herein;

(b) Any breach or inaccuracy of any of the representations or warranties made by New Operator in or pursuant to this Agreement or in any instrument, certificate or affidavit delivered by New Operator at the Closing, or from any misrepresentation in or omission from this Agreement or any Exhibit, Schedule, certificate, or other executed document furnished or to be furnished to Existing Operator hereunder;

(c) Any failure by New Operator to carry out, perform, satisfy and discharge those Assumed Liabilities assumed by New Operator, or any of its other covenants, agreements, undertakings, liabilities or obligations under this Agreement or in any instrument, certificate or affidavit delivered by New Operator at the Closing; and

(d) Any and all claims, including any suit, action, or other proceeding brought by any Governmental Authority against Existing Operator arising from the ownership and operation of the Facility by New Operator after Closing.

7.4 Notification of Claims.

(a) A party entitled to be indemnified pursuant to Section 7.2 or 7.3 (the "Indemnified Party") shall notify the party liable for such indemnification (the "Indemnifying Party") in writing of any claim or demand which the Indemnified Party has determined has given or could give rise to a right of indemnification under this Agreement, as soon as possible after the Indemnified Party becomes aware of such claim or demand; provided, however, that the Indemnified Party's failure to give such notice to the Indemnifying Party in a timely fashion shall not result in the loss of the Indemnified Party's rights with respect thereto except to the extent the Indemnified Party is prejudiced by the delay. Subject to the Indemnifying Party's right to defend in good faith third party claims as hereinafter provided, the Indemnifying Party shall satisfy its obligations under this Section 5 within thirty (30) days after the receipt of written notice thereon from the Indemnified Party, it being agreed that the Indemnifying Party need not satisfy such obligations during any period in which the Indemnifying Party is defending in good faith an applicable third party claim in the manner described herein below.

(b) If the Indemnified Party shall notify the Indemnifying Party of any claim or demand pursuant to Section 7.4(a), and if such claim or demand relates to a claim or demand asserted by a third party against the Indemnified Party which the Indemnifying Party acknowledges is a claim or demand for which it must indemnify or hold harmless the Indemnified Party under Section 7.2 or 7.3, the Indemnifying Party shall have the right to either (i) pay such claim or demand or (ii) employ counsel reasonably acceptable to the Indemnified Party to defend any such claim or demand asserted against the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any such claim or demand at its own expense. The Indemnifying Party shall notify the Indemnified Party in writing, as promptly as possible (but in any case before the due date for the answer or response to a claim) after the date of the notice of claim given by the Indemnified Party to the Indemnifying Party under Section 7.4(a) of its election to defend in good faith any such third party claim or demand. So long as the Indemnifying Party is defending in good faith any such claim or demand asserted by a third party against the Indemnified Party, the Indemnified Party shall not settle or compromise such claim or demand. The Indemnified Party shall make available to the Indemnifying Party or its agents all records and other materials in the Indemnified Party's possession reasonably required by it for its use in contesting any third party claim or demand. The Indemnified Party shall have no obligation to defend any such claim or demand regardless of whether the Indemnifying Party elects to do so.

(c) No Indemnified Party may settle or compromise any claim or consent to the entry of any judgment with respect to which indemnification is being sought hereunder without the prior written consent of the Indemnifying Party, unless (i) the Indemnifying Party fails to assume and maintain the

defense of such claim pursuant to Section 7.4(b) or (ii) such settlement, compromise or consent includes an unconditional release of the Indemnifying Party from all liability arising out of such claim and does not contain any equitable order, judgment or term which in any manner affects, restrains or interferes with the business of the Indemnifying Party or any Affiliate of the Indemnifying Party. An Indemnifying Party may not, without the prior written consent of the Indemnified Party, settle or compromise any claim or consent to the entry of any judgment with respect to which indemnification is being sought hereunder unless such settlement, compromise or consent includes an unconditional release of the Indemnified Party from all liability arising out of such claim and does not contain any equitable order, judgment or term that in any manner affects, restrains or interferes with the business of the Indemnified Party or any of the Indemnified Party's Affiliates.

(d) If the Existing Operator Indemnified Parties desire to seek indemnification under Section 7.3 with respect to any breach of a representation or warranty or covenant or claim, suit or demand that the Existing Operator Indemnified Parties believe will give rise to an indemnification claim (an "Existing Operator Claim"), the Existing Operator Indemnified Parties shall give notice of such Existing Operator Claim to New Operator (an "Existing Operator Claim Notice"), which notice shall describe in reasonable detail the nature of the Existing Operator Claim and the amount of such Existing Operator Claim (the "Existing Operator Claim Amount"). New Operator shall respond to any Existing Operator Claim Notice (an "Existing Operator Claim Response") within twenty (20) Business Days (the "Existing Operator Claim Response Period") after the date that the Existing Operator Claim Notice is received. Any Existing Operator Claim Notice or Existing Operator Claim Response shall be given in accordance with the notice requirements hereunder, and any Existing Operator Claim Response shall specify whether or not the Existing Operator Claim described in the related Existing Operator Claim Notice is disputed (an "Existing Operator Claim Dispute Notice"). If New Operator fails to give an Existing Operator Claim Response within the Existing Operator Claim Response Period or does not dispute the Existing Operator Claim described in an Existing Operator Claim Notice, then the Existing Operator Claim shall be deemed to be accepted and, if New Operator does not pay the Existing Operator Claim prior to the end of the Existing Operator Claim Response Period, the Existing Operator Indemnified Parties may pursue whatever legal remedies may be available to recover the Existing Operator Claim Amount as to which the Existing Operator Indemnified Parties are seeking indemnification.

(e) In the event that any Existing Operator Claim is subject to an Existing Operator Claim Dispute Notice such Existing Operator Claim shall become an "Unresolved Existing Operator Claim". New Operator and the Existing Operator Indemnified Parties shall attempt in good faith to mutually agree upon the validity and amount of the Unresolved Existing Operator Claim pursuant to discussions between senior representatives of the parties who have authority to settle the same. Such discussions shall commence between the parties not more than ten (10) Business Days following delivery of the Existing Operator Claim Dispute Notice and shall not last for more than ten (10) Business Days following the date of commencement of such discussions. In the event that the parties mutually agree upon the amount of the Unresolved Existing Operator Claim pursuant to such discussions (the "Resolved Existing Operator Claim") and the New Operator does not pay the amount of the Resolved Existing Operator Claim to the Existing Operator Indemnified Parties within five (5) Business Days thereafter, the Existing Operator Indemnified Parties may pursue whatever legal remedies may be available to recover the amount of the Resolved Existing Operator Claim. If through negotiation the parties are unable to agree upon the validity and amount of the Unresolved Existing Operator Claim within thirty (30) calendar days after the commencement of the negotiations, the dispute shall be referred to litigation in accordance with Section 7.11. In the event that a final and non-appealable judgment of a court of competent jurisdiction upholds all or a portion of the amount of an Unresolved Existing Operator Claim (the "Existing Operator Judgment Claim") and the New Operator does not pay the amount of the Existing Operator Judgment Claim to the Existing Operator Indemnified Parties within five (5) Business Days

after the judgment becomes final and non-appealable, the Existing Operator Indemnified Parties may pursue whatever legal and/or equitable remedies may be available to recover such Existing Operator Judgment Claim amount. In the event that an Unresolved Existing Operator Claim is referred to litigation in accordance with Section 7.11, the losing party in such litigation shall pay all expenses connected with such litigation.

(f) If the New Operator Indemnified Parties desire to seek indemnification under Section 7.2 with respect to any breach of a representation or warranty or covenant or claim, suit or demand that the New Operator believes will give rise to an indemnification claim (a "New Operator Claim"), the New Operator Indemnified Parties shall give notice of such New Operator Claim to the Existing Operator (a "New Operator Claim Notice"), which notice shall describe in reasonable detail the nature of the New Operator Claim and the amount of such New Operator Claim (the "New Operator Claim Amount"). The Existing Operator shall respond to any New Operator Claim Notice (a "New Operator Claim Response") within twenty (20) Business Days (the "New Operator Claim Response Period") after the date that the New Operator Claim Notice is received. Any New Operator Claim Notice or New Operator Claim Response shall be given in accordance with the notice requirements hereunder, and any New Operator Claim Response shall specify whether or not the New Operator Claim described in the related New Operator Claim Notice is disputed (a "New Operator Claim Dispute Notice"). If the Existing Operator fails to give a New Operator Claim Response within the New Operator Claim Response Period or does not dispute the New Operator Claim described in a New Operator Claim Notice, then the New Operator Claim shall be deemed to be accepted and the New Operator may pursue whatever legal and/or equitable remedies may be available to recover the New Operator Claim Amount as to which the New Operator is seeking indemnification.

(g) In the event that any New Operator Claim is subject to a New Operator Claim Dispute Notice such New Operator Claim shall become an "Unresolved New Operator Claim". The New Operator Indemnified Parties and the Existing Operator shall attempt in good faith to mutually agree upon the validity and amount of the Unresolved New Operator Claim pursuant to discussions between senior representatives of the parties who have authority to settle the same. Such discussions shall commence between the parties not more than ten (10) Business Days following delivery of the New Operator Claim Dispute Notice and shall not last for more than ten (10) Business Days following the date of commencement of such discussions. In the event that the parties mutually agree upon the amount of the New Operator Claim pursuant to such discussions, the Existing Operator shall pay the New Operator Indemnified Parties the amount agreed. If the matter is not resolved directly through negotiation within thirty (30) calendar days after the commencement of the negotiations, the dispute shall be referred to litigation in accordance with Section 9.11. In the event that the court upholds all or a portion of the New Operator Claim, the Existing Operator shall be obliged to pay the amount of such New Operator Claim as is directed by the court. In the event that the validity of a New Operator Claim is referred to the court, the losing party in such litigation shall pay all expenses connected with such litigation.

7.5 Survival. All of the representations and warranties of the parties contained in this Agreement shall survive the Closing and continue in full force and effect for a period of eighteen (18) months following the Closing; provided that the representations and warranties set forth in Sections 4.1, 4.2, 4.4, 4.6 or 4.19 shall survive until ninety (90) days after the expiration of the applicable statute of limitations with respect to the matters covered thereunder.

7.6 Exclusive Remedy. Subject to Section 8 and any rights to obtain injunctive relief or specific performance, the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising out of or based on fraud, knowing and intentional misrepresentations or knowing and intentional breaches by the party seeking indemnification or any of its officers, employees, directors or agents) for any breach of any representation, warranty, covenant,

agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement shall be pursuant to the indemnification provisions set forth in this Section 7.

SECTION 8
TERMINATION AND ABANDONMENT

8.1 Method of Termination. This Agreement may be terminated and the transactions herein contemplated may be abandoned at any time on or before the Closing:

(a) by mutual written consent of all of the parties hereto;

(b) by Existing Operator, if New Operator shall have materially breached or failed to perform any of its representations, warranties, covenants or agreements set forth in this Agreement, which breach or failure is incapable of being cured, or is not cured, by New Operator within thirty (30) calendar days following receipt of written notice from the Existing Operator of such breach or failure; provided that Existing Operator agrees that Existing Operator shall have no right to terminate, or permit the termination of, this Agreement without the prior written consent of Landlord (which consent may be withheld in its sole discretion) and that any such purported termination without the consent of Landlord shall be void and of no force or effect;

(c) by the New Operator, if the Existing Operator shall have materially breached or failed to perform any of its representations, warranties, covenants or agreements set forth in this Agreement, which breach or failure is incapable of being cured, or is not cured, by the Existing Operator within thirty (30) calendar days following receipt of written notice from the New Operator of such breach or failure;

(d) by New Operator pursuant to Sections 2.14(a), 5.4(b) or 5.12 hereof; or

(e) by Existing Operator pursuant to Section 5.12.

8.2 Procedure Upon Termination. In the event of termination and abandonment pursuant to Section 8.1 hereof, this Agreement shall terminate and shall be abandoned, without further action by any of the parties hereto. If this Agreement is terminated for any reason:

(a) Each of the parties will return all documents and other material of any other party relating to the transactions contemplated hereby to the party furnishing the same. New Operator shall destroy all electronic copies of Existing Operator's resident records, employee records or other relevant records made by or provided to New Operator pursuant to this Agreement. All information received by any party hereto with respect to the business of any other party (other than information which is a matter of public knowledge or which has heretofore been or is hereafter published in any publication for public distribution or filed as public information with any Governmental Authority, including, without limitation, any information that is included in any filings with the Court in connection with the Bankruptcy Action) shall be kept confidential and shall not at any time be used for the advantage of, or disclosed to third parties by, such party to the detriment of the party furnishing such information; and

(b) Other than on the basis of a breach of this Agreement prior to its termination, no party hereto shall have any liability or further obligation to any other party to this Agreement other than under the provisions of Sections 5.3, 5.9 and 6.1 hereof.

8.3 Remedies for Default.

(a) If this Agreement is terminated pursuant to Section 8.1, all obligations of the parties hereunder shall terminate, except for the obligations set forth or referenced in this Section 8, which shall survive the termination of this Agreement, and except that no such termination shall relieve any party from liability for any prior willful breach of this Agreement. If any of the conditions set forth in Section 1.7 or Section 1.8 of this Agreement have not been satisfied, the party for whose benefit such provisions exist may nevertheless elect to proceed with the consummation of the transactions contemplated hereby. If the conditions of Section 1.8 have been satisfied and Existing Operator shall not complete the Closing, and New Operator is not in default hereunder, then New Operator's sole remedies at law or in equity shall be to terminate this Agreement, after which the parties shall have no further rights hereunder, other than under the provisions of Sections 5.3, 5.9 and 6.1 hereof.

(b) In the event that after the expiration of the Due Diligence Period, without termination of this Agreement by New Operator, New Operator shall not complete the Closing, and Existing Operator is not in default hereunder, then Existing Operator's sole remedy shall be to terminate this Agreement, after which the parties shall have no further rights hereunder, other than under the provisions of Sections 5.3, 5.9 and 6.1 hereof.

SECTION 9
MISCELLANEOUS

9.1 Further Assurances. Each of the parties hereto agrees to execute and deliver any and all further agreements, documents or instruments reasonably necessary to effectuate this Agreement and the transactions referred to herein, contemplated hereby or reasonably requested by the other party to perfect or evidence their rights hereunder.

9.2 Notices. All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be personally delivered, or sent by facsimile transmission (provided a copy is thereafter promptly mailed as hereinafter provided), or sent by overnight commercial delivery service (provided a receipt is available with respect to such delivery), or mailed by first-class registered or certified mail, return receipt requested, postage prepaid (and shall be effective when received, if sent by personal delivery or by facsimile transmission or by overnight delivery service, or on the third (3rd) day after mailing, if mailed):

If to Existing Operator, to:

Bloomfield Health Facilities, L.P.
5420 W. Plano Parkway
Plano, Texas 75093
Attn: Thomas D. Scott
Email: tom.scott@pcitexas.net
Fax: 972-931-3801

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

Robert J. Riek, General Counsel
5500 W. Plano Parkway, Suite 210
Plano, Texas 75093
Email: bob@rwtx.com
Fax: 972-767-6235

If to New Operator:

c/o Genesis Healthcare, Inc.
101 East State Street
Kennett Square, Pennsylvania 19348
Attn: Law Department
Email: Michael.Sherman@GenesisHCC.com
Fax: (484) 733-5449

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

Williams Mullen
200 South 10th Street, Suite 1600
Richmond, VA 23219
Attention: Beth G. Hungate-Noland
Fax: (804) 420-6507
Email: bhungate-noland@williamsmullen.com

or to such other person or address as any party hereto shall furnish to the other parties hereto in writing pursuant to this Section 9.2.

9.3 Payment of Expenses. In the event of any dispute or controversy arising out of this Agreement, including in connection with the interpretation of any term or condition of this Agreement, the prevailing party shall recover from the non-prevailing party all reasonable costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party.

9.4 Entire Agreement; Amendment; Waiver. This Agreement together with the other agreements referred to herein, constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements. This Agreement may not be modified or amended except in writing signed by the parties hereto. No waiver of any term, provision or condition of this Agreement, in any one or more instances, shall be deemed to be or be construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement. No failure to act shall be construed as a waiver of any term, provision, condition or rights granted hereunder.

9.5 Assignment. Neither this Agreement nor the rights, duties or obligations arising hereunder shall be assignable or delegable by either party hereto without the express prior written consent of the other party hereto.

9.6 Joint Venture; Third Party Beneficiaries. Nothing contained herein shall be construed as forming a joint venture or partnership between the parties hereto with respect to the subject matter hereof. The parties hereto do not intend that any third party shall have any rights under this Agreement.

9.7 Representation By Counsel. The parties hereto acknowledge that they have been represented by independent legal counsel of their choosing throughout all of the negotiations which preceded the execution of this Agreement, and that each party has executed this Agreement with the consent and on the advice of such independent legal counsel. This Agreement is a negotiated document. As a result, any rule of construction providing for any ambiguity in the terms of this Agreement to be construed against the draftsperson of this Agreement shall be inapplicable to the interpretation of this Agreement.

9.8 Captions. The section headings contained herein are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

9.9 Counterparts. This Agreement may be executed and delivered (including by facsimile transmittal, portable document format, or by similar electronic means, which for purposes of this Agreement shall be deemed to be an original signature) in one or more counterparts and all such counterparts taken together shall constitute a single original Agreement.

9.10 Governing Law. This Agreement shall be governed by the laws of the State of New Mexico as to, including, but not limited to, matters of validity, construction, effect and performance but exclusive of its conflicts of laws provisions.

9.11 Jurisdiction. Each party hereto consents to the jurisdiction of the courts of the State of New Mexico, or if it can acquire jurisdiction, in the United States District Court for the District of Delaware as to claims arising under or brought in connection with this Agreement and the transactions contemplated herein.

9.12 Waiver of Jury Trial. EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION BROUGHT ON OR WITH RESPECT TO THIS AGREEMENT, INCLUDING TO ENFORCE OR DEFEND ANY RIGHTS HEREUNDER, AND AGREES THAT ANY SUCH ACTION SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

9.13 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event on which the designated period of time begins to run shall not be included and the last day of the period so computed shall be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the next day which is not a Saturday, Sunday or a legal holiday. Further, unless otherwise specified, any reference to a specified number of days shall be deemed to refer to calendar days.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

[Signature Page to Operations Transfer Agreement]

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

EXISTING OPERATOR:

Bloomfield Health Facilities, L.P.
a Texas limited partnership

By: Bloomfield Health Facilities GP, LLC
its general partner

By: _____
Name: Robert J. Riek
Title: Manager

[Signatures Continue on Following Page]

[Signature Page to Operations Transfer Agreement]

NEW OPERATOR: **[_____]**,
a [_____]

By: _____
Name: _____
Title: _____

EXHIBIT A

Defined Terms

"Affiliate" means, as applied to any Person, any other Person directly or indirectly controlling, controlled by or under common control with, that Person. For the purposes of this definition, "control" (including with correlative meanings, the terms "controlling", "controlled by", and "under common control with") as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through ownership of voting securities or by contract or otherwise.

"Bankruptcy Action" shall mean the action pending in the Court styled as *In re Preferred Care Inc. et. al, Case No. 17-44642* and any other bankruptcy proceeding filed by or against Existing Operator.

"Business Day" shall mean any day other than a Saturday, Sunday or holiday on which national banking associations in the State of New York are authorized or required to be closed.

"Court" shall mean United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division and any other court in which a Bankruptcy Action arises following the Effective Date.

"Environmental Law" shall mean each and every applicable federal, state, local and foreign law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal, state, local and foreign governmental agency or other Governmental Authority, having or claiming to have authority with respect to human health and safety or the environment affecting the Facility, including, but not limited to, the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 *et seq*.) as amended, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 *et seq*.) as amended, the Clean Water Act (33 U.S.C. Section 1251 *et seq*.) as amended.

"Environmental Permit" shall mean any permit, license, approval, consent or other authorization required by or pursuant to any applicable Environmental Law.

"ERISA Affiliate" shall mean each trade or business (whether or not incorporated) which together with any of Old Operators is or ever was treated as a single employer under Section 414(b), (c), (m), (o) or (t) of the Internal Revenue Code of 1986, as amended.

"Existing Operator's Knowledge" shall mean any fact or matter that is known or should have been known by Existing Operator or Existing Operator's officers or directors without due inquiry.

(a) "Financial Statements" shall mean all financial statements of the Existing Operator or the Facility delivered to the New Operator by the Existing Operator and the operating statements delivered pursuant to Section 5.12(c).

In addition, after the Effective Date, the term "Financial Statements" shall include any and all interim Financial Statements delivered to New Operator prior to Closing.

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

"Hazardous Substance" shall mean any material or substance that (i) constitutes a hazardous substance, toxic substance or pollutant (as such terms are defined by or pursuant to any Environmental Law) or (ii) is regulated or controlled as a hazardous substance, toxic substance, pollutant or other regulated or controlled material, substance or matter pursuant to any Environmental Law.

"Health Care Authority" shall mean any Governmental Authority or quasi-Governmental Authority or any agency, intermediary, board, authority or entity concerned with the ownership, operation, use or occupancy of the Facility as a skilled nursing facility, long-term acute care facility or assisted living facility, if applicable.

"Health Care Requirements" shall mean, with respect to the Facility, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions or agreements, in each case, pertaining to or concerned with the establishment, construction, ownership, operation, use or occupancy of such Facility or any part thereof as a nursing facility, long-term acute care facility, assisted living facility or other health care facility, if applicable, and all material permits, licenses and authorizations and regulations relating thereto, including all material rules, orders, regulations and decrees of and agreements with Health Care Authorities as pertaining to such Facility.

"Law" shall mean any law, statute, regulation, ordinance, rule, order, decree, judgment, consent decree, settlement agreement or governmental requirement enacted, promulgated, entered into, agreed or imposed by any Governmental Authority.

"Lien" shall mean any mortgage, lien (except for any lien for Taxes not yet due and payable), charge, restriction, pledge, security interest, option, lease or sublease, claim, right of any third party, easement, encroachment or encumbrance.

"Loss" or "Losses" shall mean any and all liabilities, losses, costs, claims, damages (excluding consequential damages), penalties and expenses (including attorneys' fees and expenses and costs of investigation and litigation). In the event any of the foregoing are indemnifiable hereunder, the terms "Loss" and "Losses" shall include reasonable attorneys' fees and documented expenses and costs of investigation and litigation incurred by the indemnified party in enforcing such indemnity.

"New Operator's Knowledge" shall mean any fact or matter that is known or should have been known by New Operator or New Operator's officers or directors after reasonable due inquiry.

"Person" shall mean any individual, corporation, proprietorship, firm, partnership, limited partnership, trust, association or other entity.

"Resident Census Information" shall mean, with respect to the Facility, a true, correct and complete schedule (provided in accordance with Health Care Requirements related to privacy) that accurately and completely sets forth the occupancy status of such Facility, the average daily rate and other charges payable with respect thereto, the class of payment or reimbursement (i.e., private, third-party payor, Medicare and Medicaid), the average monthly census of such Facility, occupancy rates and any arrearages in payments.

"Survey Report" shall mean any and all survey reports, waivers of deficiencies, plans of correction and any other investigation reports issued with respect to the Facility.

"Taxes" shall mean all taxes, charges, fees, duties, levies or other assessments, including income, gross receipts, net proceeds, ad valorem, turnover, real and personal property (tangible and intangible), sales, use, franchise, excise, value added, stamp, leasing, lease, user, transfer, fuel, excess profits, occupational, interest equalization, windfall profits, severance, employee's income withholding, other withholding, unemployment and social security taxes, which are imposed by any Governmental Authority, and such term shall include any interest, penalties or additions to tax attributable thereto.

"Tax Return" shall mean any report, claim for refund, return or other information required to be supplied to a Governmental Authority in connection with any Taxes, including any schedule or attachment thereto and including any amendment thereof.

EXHIBIT B

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement is effective as of _____, 2018 (the "Effective Date"), and is between Bloomfield Health Facilities, L.P., a Texas limited partnership ("Existing Operator"), and _____., _____ ("New Operator").

A. Existing Operator and New Operator are parties to an Operations Transfer Agreement ("Agreement") dated as of _____, 2018.

B. Existing Operator has agreed to assign to New Operator all of its right, title and interest in, to, and under those contracts identified on Exhibit A attached hereto for the Facility ("Assumed Contracts"), and that New Operator assumes Transferor's obligations with respect to such Assumed Contracts for each respective Facility in accordance with the Agreement.

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the parties hereto, intending to be bound, hereby agree as follows:

1. Existing Operator hereby assigns, transfers and conveys all of its right, title and interest in, to, and under the Assumed Contracts to New Operator.

2. New Operator hereby assumes all liabilities with respect to the Assumed Contracts, but only to the extent that such liabilities relate to the period after the Effective Date hereof.

[Execution page to follow]

EXHIBIT C

BILL OF SALE

This BILL OF SALE is made and entered into as of _____, 2018 between _____., a _____ ("New Operator"), and Bloomfield Health Facilities, L.P.,, a Texas limited partnership ("Existing Operator").

In consideration of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Existing Operator has transferred, assigned and conveyed, and by these presents does transfer, assign and convey unto New Operator any and all right, title and interest which Seller possesses in and to, all and singular, the Assets as defined in the Operations Transfer Agreement ("OTA") dated as of _____, 2018 between Existing Operator and New Operator.

By acceptance of this Bill of Sale, New Operator acknowledges that it is acquiring the Assets strictly on an as "AS IS" basis, and New Operator acknowledges and agrees that, except for those representations and warranties set forth in the OTA, neither Existing Operator, nor its agents, contractors or representatives have made any representations, warranties, promises, covenants, agreements or guarantees of any kind or character whatsoever, whether express of implied, oral or written, past, present or future, of, as to, concerning or with respect to the nature, quality or condition of the Assets. EXISTING OPERATOR EXRPESSLY DISCLAIMS ANY IMPLIED WARRANTIES INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESEPCT TO THE ASSETS.

TO HAVE AND TO HOLD, all and singular, the Assets hereby transferred, assigned and conveyed to New Operator, its successors and assigns, to and for its own use and benefit.

[SIGNATURE PAGE TO FOLLOW]

SCHEDULE 2.9

Account

EXHIBIT D

EXHIBIT B

First Amendment to Transition Agreement

FIRST AMENDMENT TO TRANSITION AGREEMENT

This First Amendment to Transition Agreement ("Amendment") is made and entered into this 28th day of August, 2018, (the "First Amendment Effective Date") by and between the Parties hereto.

RECITALS

A. The Parties have entered into that certain Transition Agreement, dated as of November 10, 2017 ("Agreement"), regarding the transition of certain leasehold interests of the Preferred Care Entities to the Omega Entities or their designees.

B. The Agreement has been neither assumed nor rejected by any of the Preferred Care Entities that are debtors in those certain bankruptcy proceedings pending in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the "Court"), styled *"In re: Preferred Care Inc., et al,"* Case No. 17-4464 (jointly administered) (the "Bankruptcy Proceedings").

C. The Parties wish to amend the Agreement, pursuant to Section 2.19 thereof, as provided herein.

THEREFORE, for Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree to amend the Agreement as follows:

1. Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed in the Agreement.

2. Article I is hereby amended to add the following definitions:

"NM Espanola Facility" means the skilled nursing facility that is the subject of the leasehold interest of Espanola Health Facilities, L.P.

"Genesis" means one or more affiliates of Genesis Healthcare LLC, a Delaware limited liability company

"NM 5 Facilities" means the skilled nursing facilities that are the subject of the leasehold interests of Bloomfield Health Facilities, L.P. SF Health Facilities–Casa Real, L.P., Clayton Health Facilities, L.P., Gallup Health Facilities, L.P., and Silver City Health Facilities, L.P.

"NM Raton and Lordsburg Facilities" means the skilled nursing facilities that are the subject of the leasehold interests of Raton Health Facilities, L.P. and Lordsburg Health Facilities, L.P.

3. Section 2.2 of the Agreement is hereby deleted in its entirety and replaced with the following:

2.2. Transition of Arizona Leases. Simultaneously with the surrender or transition of the operations of the NM 5 Facilities, the AZ Tenants agree to assign the AZ Leases to Genesis pursuant to an executed OTA(s) with Genesis, pursuant to a form of OTA mutually and reasonably agreeable by the AZ Tenants and Genesis; provided, however, if after the filing of a CHOW by an Omega New Operator, Genesis is either unwilling or unable to take the NM 5 Facilities in the time frame referenced in Section 2.8 hereof, then the AZ Lease facilities will continued to be leased by the AZ Tenants.

4. Section 2.3 of the Agreement is hereby deleted in its entirety and replaced with the following:

2.3 Transition of the NM 5 Leases. (a) On or before August 31, 2018, the subject NM Tenants will file a motion seeking to reject the leases of the NM 5 Facilities pursuant to Section 365 of the Bankruptcy Code, and the subject NM Tenants will have entered into or shall enter into an OTA(s) with Genesis to transfer operations of the NM 5 Facilities to Genesis, in a form mutually and reasonably agreeable by the subject NM Tenants and Genesis.

(b) On the Amendment Effective Date, the applicable Omega Landlords and NM Tenant shall cooperate in the marketing and sale of the NM Raton and Lordsburg Facilities, which sale(s) shall be facilitated by a broker designated by the Omega Landlords, and the sale(s) shall be consummated under terms and conditions within the sole discretion of the subject Omega Landlords.

(c) On the date of transfer of the NM 5 Facilities to Genesis, the subject NM Tenant shall commence the closure of the NM Espanola Facility.

5. The last sentence of Section 2.8 of the Agreement shall be deleted in its entirety and replaced with the following sentence:

"The NM Tenants agree to operate the NM 5 Facilities through the earlier to occur of (a) the occurrence of a transition date as set forth in an OTA between the takeout shading lessees of the NM 5 Facilities and Genesis, and (b) December 31, 2018."

6. Section 2.10 of the Agreement is hereby deleted in its entirety and replaced with the following:

2.10 AZ Leases Rent and Operations. The AZ Tenants shall continue paying Rent due under the AZ Leases through January 31, 2018; then, for the period February 1, 2018 through April 30, 2018, the AZ Tenants agree to pay Rent, less an amount equal to the actual losses incurred by the subject Preferred Care Entity operating any facility that is subject to any Oklahoma Lease, Texas Lease or NM Lease. Rent shall be due and owing (and has been paid) for the month of May, 2018, but no Rent shall be due and owing for the months of June, July, August

and September, 2018. Rent shall be paid commencing October 1, 2018 through the date that is the earlier to occur of (i) expiration or early termination of the AZ Leases in accordance with their terms, or (ii) termination of the AZ Leases upon transition of same to Genesis pursuant to OTAs.

7. As it relates to the NM Leases and NM Tenants only, this Amendment is subject to approval of the Bankruptcy Court.

8. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered, shall be deemed to be an original, but when taken together shall constitute one and the same amendment.

9. Except as expressly and specifically set forth herein, the Agreement remains in full force and effect. In the event of any discrepancy between the Agreement and this Amendment, the terms and conditions of this Amendment will control and the Agreement is deemed amended to conform hereto.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date above.

PREFERRED CARE ENTITIES

Preferred Care, Inc.

By: _____
Name: Robert J. Riek
Title: Vice President

AZ TENANTS

Pinnacle Health Facilities XXV, LP

By: Pinnacle Health Facilities GP II, LLC, its general partner

By: _____
Name: Robert J. Riek
Title: Manager

Pinnacle Health Facilities XXVI, LP

By: Pinnacle Health Facilities GP II, LLC, its general partner

By: _____
Name: Robert J. Riek
Title: Manager

NM TENANTS

Bloomfield Health Facilities, L.P.

By: Bloomfield Health Facilities GP, LLC, its general partner

By: _____
Name: Robert J. Riek
Title: Manager

SF Health Facilities–Casa Real, L.P.

By: SF Health Facilities GP-Casa Real, LLC, its general partner

By: _____
Name: Robert J. Riek
Title: Manager

Clayton Health Facilities, L.P.

By: Clayton Health Facilities GP, LLC, its general partner

By: _____
Name: Robert J. Riek
Title: Manager

Espanola Health Facilities, L.P.

By: Espanola Health Facilities GP, LLC, its general partner

By: _____
Name: Robert J. Riek
Title: Manager

Raton Health Facilities, L.P.

By: Raton Health Facilities GP, LLC, its general partner

By: _____
Name: Robert J. Riek
Title: Manager

Gallup Health Facilities, L.P.

By: Gallup Health Facilities GP, LLC, its general partner

By: _____
Name: Robert J. Riek
Title: Manager

Silver City Health Facilities, L.P.

By: Silver City Health Facilities GP, LLC, its general partner

By: _____
Name: Robert J. Riek
Title: Manager

Lordsburg Health Facilities, L.P.

By: Lordsburg Health Facilities GP, LLC, its general partner

By: _____
Name: Robert J. Riek
Title: Manager

OKLAHOMA TENANT

OKC Health Facilities, L.P.

By: OKC Health Facilities GP, LLC, its general partner

By: _____
Name: Robert J. Riek
Title: Manager

TEXAS TENANTS

Hamilton Health Facilities, L.P.

By: Hamilton Health Facilities GP, LLC, its general partner

By: _____
Name: Robert J. Riek
Title: Manager

Austin Health Facilities, L.P.

By: Austin Health Facilities GP, LLC, its general partner

By: _____
Name: Robert J. Riek
Title: Manager

OMEGA ENTITIES

AZ LANDLORDS

AVIV Foothills, L.L.C.

By: _____
Name: Vikas Gupta
Title: Senior Vice President - Acquisitions and Development

Sun-Mesa Properties, L.L.C.

By: _____
Name: Vikas Gupta
Title: Senior Vice President - Acquisitions and Development

NM LANDLORDS

N.M Bloomfield Three Plus One Limited Company

By: _____
Name: Vikas Gupta
Title: Senior Vice President - Acquisitions and Development

Alamogordo AVIV, L.L.C.

By: _____
Name: Vikas Gupta
Title: Senior Vice President - Acquisitions and Development

Clayton Associates, L.L.C.

By: _____
Name: Vikas Gupta
Title: Senior Vice President - Acquisitions and Development

N. M Espanola Three Plus One Limited Company

By: _____
Name: Vikas Gupta
Title: Senior Vice President - Acquisitions and Development

Raton Property Limited Company

By: _____
Name: Vikas Gupta
Title: Senior Vice President - Acquisitions and Development

Red Rocks, L.L.C.

By: _____
Name: Vikas Gupta
Title: Senior Vice President - Acquisitions and Development

N.M Silver City Three Plus One Limited Company

By: _____
Name: Vikas Gupta
Title: Senior Vice President - Acquisitions and Development

N.M Lordsburg Three Plus One Limited Company

By: _____
Name: Vikas Gupta
Title: Senior Vice President - Acquisitions and Development

OKLAHOMA LANDLORD

Oklahoma Warr Wind, L.L.C.

By: _____
Name: Vikas Gupta
Title: Senior Vice President - Acquisitions and Development

TEXAS LANDLORD

Karan Associates, L.L.C.

By: _____
Name: Vikas Gupta
Title: Senior Vice President - Acquisitions and Development

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:	**§**	**Chapter 11**
	§	
PREFERRED CARE INC., *et al.*,	**§**	**Case No.: 17-44642**
	§	
Debtors.	**§**	**Jointly Administered**
	§	

ORDER (A) GRANTING AUTHORITY TO: (I) TRANSFER THE OPERATIONS AND RELATED ASSETS OF 5 NEW MEXICO FACILITIES FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; (II) ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) REJECT AND TERMINATE THE REAL PROPERTY LEASES; (B) APPROVING THE FORM OF OPERATIONS TRANSFER AGREEMENT; AND (C) APPROVING THE TRANSITION AGREEMENT

This matter has come before the Court on the *Motion for Order (A) Granting Authority to (I) Transfer the Operations and Related Assets of 5 New Mexico Facilities Free and Clear of All Liens, Claims, Encumbrances, and Interests, (II) Assume and Assign Certain Executory Contracts and Unexpired Leases, and; (III) Reject and Terminate the Real Property Leases; (B)*

Approving the Form of Operations Transfer Agreement; and (C) Approving the Transition Agreement [Docket No. __] (the "**Motion**").[1] The Motion was filed by five (5) limited partnerships (the "**Omega 5 Debtors**" or "**Movants**") which operate five (5) skilled nursing homes in New Mexico (the "**Omega 5 Facilities**"). The Omega 5 Debtors are debtors and debtors-in-possession in the bankruptcy cases jointly administered in Case No. 17-44642. The Movants have requested, pursuant to sections 363, 365, and 1146 of Title 11 of the United States Code (the "**Bankruptcy Code**") and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), the entry of this order (the "**Sale Order**"):

(a) authorizing the sale and transfer of the operations of the Omega 5 Facilities and assets necessary for the operations of the Omega 5 Facilities (defined more fully in the OTAs as the "**Assets**"), free and clear of liens, claims, encumbrances, and interests;

(b) approving the *Operations Transfer Agreements* (individually and collectively, the "**OTA**") the proposed form of which was attached to the Motion, by and between the Omega 5 Debtors and the Purchaser of the Omega 5 Facilities;

(c) approving the assumption and assignment of the Assumed Contracts;

(d) approving the rejection and termination of the real property leases associated with each of the Omega 5 Facilities (the "**Lease Terminations**"); and

(e) approving the Transition Agreement and First Amendment to Transition Agreement (collectively, the "**Transition Agreement**") between the Debtors and Omega; and

(f) granting related relief, including relief related to the proposed Cure Costs associated with the Assumed Contracts.

[1] Capitalized terms not defined herein shall carry the meanings ascribed to them in the Motion or the OTAs, as applicable.

On September __, 2018, the Court conducted a hearing on the Motion (the "**Sale Hearing**"), and, having considered: (a) the Motion and the relief requested therein and transactions contemplated thereby; (b) all objections, if any, to the Motion; and (c) all matters brought to the Court's attention at the Sale Hearing, including the arguments of counsel; and having taken judicial notice of the materials on file in the above-enumerated Chapter 11 Cases, the Court has determined that the Movants have established just cause for the relief granted herein. Accordingly;

THE COURT HEREBY FINDS AND DETERMINES THAT:[2]

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought in the Motion are sections 105(a), 363(b), (f), and (m), 365, and 1146(c) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014.

3. The Omega 5 Debtors have Medicare Provider Agreements with the U.S. Department of Health and Human Services' Centers for Medicare & Medicaid Services ("**CMS**") (collectively, the "**Provider Agreements**"). The Omega 5 Debtors are subject to Medicare statutes, regulations, procedures and policies.

[2] This Sale Order constitutes the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. All findings of fact and conclusions of law announced by the Court at the hearing shall be deemed additional findings of fact and conclusions of law in this matter and are incorporated herein. When appropriate, all findings of fact shall be construed as conclusions of law, and all conclusions of law shall be construed as findings of fact.

4. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just cause for delay and that the Sale Order shall be effective and enforceable immediately upon entry based upon the representations and facts presented.

5. The Motion has been served on the parties listed on the *Certificate of Service* filed at Docket No. ___, as well as all parties having filed a Notice of Appearance in the Chapter 11 Cases and/or registered to receive electronic service.

6. The Court finds that the scope and manner of the service provided by the Movants was proper, timely, adequate, and sufficient, in accordance with Bankruptcy Code §§ 363 and 365, Bankruptcy Rules 2002, 2002(i), 6004, 6006, and 9014, and in compliance with all prior orders of the Court related to the Assets, including the *Order Granting Motion for Order Establishing Notice Procedures and Approving Form Notice of Commencement of Cases* [Docket No. 61] (the "**Notice Procedures Order**"). No further notice of the Motion or the Sale Hearing was required. The Court further finds that a reasonable opportunity to object or to be heard regarding the relief requested in the Motion has been afforded to all creditors and parties in interest.

7. The Movants have the full power and authority to execute the Transition Agreement and OTAs and all other documents that are: 1) referenced in or contemplated by the Transition Agreement and OTAs or 2) necessary or appropriate to effectuate the transfers of the Omega 5 Debtors' operations and Assets. All actions contemplated by the Transition Agreement and OTAs have been duly and validly authorized, and the Movants have the full power and authority to consummate the transactions contemplated by the Transition Agreement and OTA. No further consents or approvals, other than entry of this Sale Order, are required for the

Movants to consummate the Transition Agreement and OTAs, except as specifically provided for in this Sale Order.

8. The relief sought by the Movants in the Motion, including, but not limited to, the authorization of the sale and transfer of the operations and Assets of the Omega 5 Facilities, approval of the Transition Agreement and OTAs, approval of the assumption and assignment of the Assumed Contracts; and approval of the Lease Terminations, is, at this time, in the best interests of the Movants, their bankruptcy estates, their creditors and their interest holders.

9. The Movants have demonstrated both (i) good, sufficient, and sound business purpose and justification for the subject transaction and (ii) compelling circumstances for approval of the Transition Agreement and OTAs pursuant to Bankruptcy Code §§ 363(b), and (f) and 365.

10. The OTAs were proposed and entered into by the Movants and the Purchaser in good faith. The consideration set forth in the OTAs constitutes fair value for the Assets. Neither the Movants nor the Purchaser have engaged in any conduct that would cause or permit the OTAs to be avoided under Bankruptcy Code § 363(n). The Purchaser is not an "insider" of the Omega 5 Debtors, as that term is defined in Bankruptcy Code § 101. The Purchaser has no connections, is not affiliates or an insider of, nor does it have any undisclosed agreements with either the Omega 5 Debtors, or any of their insiders or affiliates.

11. The Purchaser is a good faith transferee of the Assets under Bankruptcy Code § 363(m) and, as such, is entitled to all of the protections afforded thereby. The Purchaser has acted in good faith within the meaning of Bankruptcy Code § 363(m) and will rely on entry of this Sale Order and this good faith determination in consummating and closing the transactions.

12. The OTAs was not entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession or the District of Columbia.

13. The consideration provided for the Assets (i) is fair and reasonable, (ii) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and applicable non-bankruptcy law, and (iii) is the highest and best value available under the circumstances.

14. Omega affiliates, the lessors under leases with the Omega 5 Debtors, would not have agreed to terminate the leases with the Omega 5 Debtors and to release claims against the Movants if the Purchaser had not agreed to the OTAs and entered into new leases for the Omega 5 Facilities. The Purchaser would not have agreed to the OTAs if it was not to be made pursuant to § 363(f) and §365 of the Bankruptcy Code, free and clear of all claims, liens encumbrances and other interests of any kind or nature whatsoever or if the Purchaser would, or in the future could, be liable for any of the claims, liens, encumbrances or other interests against the Omega 5 Debtors or the Assets. Pursuant to § 363(f) of the Bankruptcy Code, the Purchaser is entitled to know that the Assets are not infected with latent claims that will be asserted against the Purchaser after the Closing.

15. As of the Closing as contemplated in the OTAs (the "**Closing**"), the transfer of the Assets to the Purchaser will be a legal, valid and effective transfer of the Assets and will vest the Purchaser with all right, title and interest of the Omega 5 Debtors in the Assets, free and clear of any and all liens (statutory or otherwise), pledges, mortgages, deeds of trust, security interests, claims, reclamation claims, charges, hypothecations, assignments, licenses, liabilities, beneficial interests, options, rights of first or last refusal, options to purchase, priority or other security agreements or preferential arrangements of any kind or nature, rights of rescission (statutory or

otherwise), causes of action, covenants, restrictions, easements, rights of setoff, defects in title or other encumbrances of any kind, whether legal or equitable, secured or unsecured, material or immaterial, contingent or non-contingent, arising out of or in connection with or in any way related to the Omega 5 Debtors, the Assets, or the operation of the business of the Omega 5 Debtors prior to Closing, including any claim as defined in § 101(5) of the Bankruptcy Code, whether arising prior to or subsequent to the commencement of this case (but not on or subsequent to the Closing Date), and whether imposed by agreement, law, equity or otherwise, including, without limitation, any claims arising under doctrines of successor liability with respect to the Assets (collectively, the "**Claims**"), except as specifically provided in paragraphs 38-42 of this Sale Order. The Claims are hereinafter referred to as the "**Interests**."

16. The Movants are authorized to transfer the Assets free and clear of the Interests because one or more of the standards set forth in Bankruptcy Code § 363(f) has been satisfied with respect to each such interest. Any objection of a secured creditor or other holder of an Interest that timely objected to the transfer of the Assets is overruled, as one or more of the other subsections of Bankruptcy Code § 363(f) is met with respect to such party.

17. The Assumed Contracts are an integral part of the Assets and are included in the OTA. All Cure Costs, if any, under the Assumed Contracts will be paid by the Omega 5 Debtors within 30 days of the entry of this Sale Order. The Purchaser has demonstrated adequate assurance of future performance under the Assumed Contracts.

18. The Closing under the OTAs is conditioned upon entry of this Sale Order, and the assumption and assignment of the Provider Agreements is subject to the Medicare statutes, regulations, procedures and policies.

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

19. The Motion is GRANTED as set forth herein and the transfer of the Assets and the assumption and assignment of the Assumed Contracts to the Purchaser is hereby authorized as set forth in this Sale Order.

20. All objections to the Motion, if any, that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled on the merits.

A. Approval of the Transition Agreement and Operations Transfer Agreements

21. The Transition Agreement and OTAs, all exhibits and schedules thereto, and all of the terms and conditions thereof are hereby approved.

22. Pursuant to Bankruptcy Code §§ 363(b), and (f), and 365, the Movants, as debtors-in-possession, are authorized to consummate the transfer of the Assets, pursuant to and in accordance with the terms and conditions of the OTAs, including, without limitation, to convey the Assets to the Purchaser and to assume and assign the Assumed Contracts to the Purchaser. The terms of the OTAs are approved in all respects.

23. Without the need for any additional order of this Court, the Movants and their employees and agents are authorized to execute and deliver, and empowered to perform under, consummate and implement the Transition Agreement and OTAs, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the transactions, and to take all further actions as may be reasonably requested by the Purchaser or otherwise required under the Transition Agreement and OTAs, including without limitation the requirements set forth in Sections 2.5, 2.9, and 2.21 of the OTAs related to administration of accounts receivable (the "**Accounts Receivable Procedures**").

24. Without the need for any additional order of this Court, the Debtors are authorized and directed to comply with the provisions of the Accounts Receivable Procedures set forth in Sections 2.5, 2.9, and 2.21 of the OTAs, including without limitation, recognition of the ownership interest of Purchaser in funds that are proceeds of Purchaser's accounts receivable generated after the Closing Date, and the transfer of the amount of such funds to Purchaser in accordance with the Accounts Receivable Procedures.

B. Approval of the Lease Terminations

25. The Lease Terminations are hereby approved pursuant to 11 U.S.C. § 365. The leases associated with each of the Omega 5 Facilities shall be rejected and terminated as of the Closing Date.

26. With respect to each lease applicable to the Omega 5 Debtors, the Motion constitutes a separate contested matter as contemplated by Bankruptcy Rule 9014. This Sale Order shall be deemed a separate order with respect to the rejection and termination of each such lease associated with the Omega 5 Facilities.

C. Transfer of the Assets Free and Clear of Interests

27. The Omega 5 Debtors are authorized to transfer the Assets to Purchaser in accordance with the terms of the OTAs. The Omega 5 Debtors shall transfer the Assets to the Purchaser on the Closing Date, in accordance with the OTAs, and such transfer shall constitute a legal, valid, binding and effective transfer of the Assets and shall vest the Purchaser with good title and all right, title and interest in the Assets in accordance with the OTAs free and clear of all Interests, except as specifically provided in paragraphs 38-42 of this Sale Order. The Assets shall include all of the Omega 5 Debtors' Transferred Records, which shall remain with the applicable Omega 5 Facility and be owned by the Purchaser on and after the Closing Date.

28. Pursuant to §§ 105(a) and 363(f) of the Bankruptcy Code, the transfer of the Assets to the Purchaser shall be, and hereby is, free and clear of any and all Interests, rights and encumbrances whatsoever, except as may otherwise be set forth explicitly in the OTAs or this Sale Order.

29. Except as expressly permitted by the OTAs or this Sale Order, all persons and entities holding or asserting Interests arising under or out of, in connection with, or in any way relating to the Omega 5 Debtors, the Assets, the operation of the Omega 5 Debtors' businesses prior to the Closing Date or the transfer of the Assets to the Purchaser, are hereby forever barred, estopped and permanently enjoined from asserting such Interests against the Purchaser or any of the Assets. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Omega 5 Debtors to transfer the Assets to the Purchaser in accordance with the terms of the OTAs and this Sale Order.

30. This Sale Order is and shall be effective as a determination that, upon transfer of the Assets to the Purchaser, pursuant to the OTAs, all Interests in, against or relating to any of the Assets conveyed to the Purchaser have been and hereby are terminated and declared to be unconditionally released, discharged and terminated, except as specifically provided in paragraphs 38-42 of this Sale Order. This Sale Order is and shall be binding upon and shall govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, insurance companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or

state of title in or to any of the Assets; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the OTAs, except as provided in paragraphs 38-42 of this Sale Order.

D. Assumption and Assignment of Assumed Contracts

31. The Omega 5 Debtors are hereby authorized and directed, pursuant to Bankruptcy Code §§ 105(a), 363 and 365 to assume, then transfer and assign the Assumed Contracts (as defined more fully in the OTA) to the Purchaser, subject to the terms of the OTAs, which shall vest the Purchaser with all right, title and interest in and to the Assumed Contracts, free and clear of all Interests which have, or could have been, asserted by the Omega 5 Debtors or their creditors in connection with their bankruptcy cases, except as specifically provided in paragraphs 38-42 of this Sale Order.

32. Within 30 days of the entry of this Sale Order, the Omega 5 Debtors shall pay in accordance with the OTAs and pursuant to § 365(b)(1)(B) of the Bankruptcy Code, the Cure Costs set forth in the Exhibit A attached to Docket No. ____ (the "**Cure Cost Notice**"), if any, rendering the Assumed Contracts current in payment and performance. All defaults of the Debtors under the Designated Contracts arising or accruing prior to Closing shall be deemed cured and all other requirements of § 365(b) shall be deemed satisfied upon payment of the cure amounts, if any, listed on the Cure Cost Notice.

33. The Purchaser and the Omega 5 Debtors have provided adequate assurance of future performance under the Assumed Contracts and the proposed assumption and assignment of these contracts and leases satisfies the requirements of the Bankruptcy Code, including, *inter alia*, §§ 365(b)(1) and (3) and 365(f), to the extent applicable. Any counterparty to any Assumed

Contract that did not object to the proposed assumption and assignment of its agreement is hereby deemed to have consented to the assumption and assignment contemplated herein and any Cure Costs proposed by the Omega 5 Debtors.

34. On the Closing Date, the Assumed Contracts will be assigned to the Purchaser, subject to the terms of the OTAs, and will remain valid and binding and in full force and effect in accordance with their respective terms for the benefit of the Purchaser, notwithstanding any provision in such contracts or leases, or under applicable law (including those described in Bankruptcy Code §§ 365(b)(2), (f)(1), and (3)) that prohibits, restricts, or conditions such assignment or transfer, or that terminates or modifies, or permits a party other than the Omega 5 Debtors to terminate or modify such contracts or leases on account of such assignment or transfer pursuant to Bankruptcy Code § 365(f).

35. Except as otherwise provided herein, pursuant to § 365(k), upon Closing and payment of the Cure Costs by the Debtors, the Debtors are relieved of any liability for any claims of any kind arising from any of the Assumed Contracts assigned to the Purchaser, and any counterparty to any such contract or lease is hereby forever barred and estopped from asserting any default existing prior to the Closing Date against the Omega 5 Debtors, their estates, or the Purchaser, except as specifically provided in paragraphs 38-42 of this Sale Order.

36. The Omega 5 Debtors are further authorized to undertake any and all actions necessary or appropriate to consummate the proposed assignment of the Assumed Contracts to the Purchaser, as specified in the Motion and the OTA.

E. Additional Provisions

37. Notwithstanding anything in this Sale Order or the OTAs, the Omega 5 Debtors shall assume the Provider Agreements and shall assign the relevant Provider Agreement(s) to the

Purchaser, effective on the Closing Date and subject to the Omega 5 Debtors' payments to the United States of America (the "**United States**") as specified below.

38. Notwithstanding anything in this Sale Order or the OTAs, the Provider Agreements shall be automatically assigned to the Purchaser upon a change in ownership pursuant to 42 C.F.R. § 489.18(c), and upon assignment, the Provider Agreements shall be subject to all applicable Medicare statutes, regulations, policies, procedures and rules, and shall be subject to the terms and conditions under which the Provider Agreements were originally issued, including, but not limited to, the repayment of all pre-assignment Medicare overpayments and all other monetary liabilities, regardless of whether yet determined by CMS.. The Provider Agreements and Purchaser shall be subject to compliance with applicable health and safety standards pursuant to all Medicare statutes, regulations, policies, procedures and rules.

39. Notwithstanding anything in this Sale Order or the OTAs, the Omega 5 Debtors and the Purchaser shall submit all cost reports pursuant to all Medicare statutes, regulations, policies, procedures and rules. Should the Omega 5 Debtors fail to comply with their obligations of this paragraph, the United States shall be entitled to suspend payments to the Purchaser under the applicable Provider Agreement in accordance with Medicare statutes, regulations, policies, procedures and rules until such time as the required cost reports are filed by the Omega 5 Debtors or the Purchaser. The Omega 5 Debtors shall cooperate with the Purchaser in the filing of the required cost reports.

40. Nothing in this Sale Order as so ordered by the Court or the OTAs shall relieve or be construed to relieve the Omega 5 Debtors or any Purchaser from complying with all Medicare statutes, regulations, policies, procedures and rules, including, but not limited to, the requirement

that the Omega 5 Debtors and any Purchaser apply for and obtain CMS approval of a change of ownership by the filing of Form CMS-855A.

41. Nothing in this Sale Order or the OTAs shall constitute a compromise or waiver by the United States of its ability to take any affirmative or defensive action in these bankruptcy proceedings that is not inconsistent with this Sale Order. The United States shall retain its authority under the Medicare statutes, regulations, procedures, policies and rules to review, approve, deny, or pay Medicare claims made by the Omega 5 Debtors or any Purchaser in the ordinary course of business. Nothing in this Sale Order or the OTAs shall impair or affect the United States' right, claim, defense or ability to recoup, set off, or otherwise recover Medicare overpayments or other monetary liabilities from the Omega 5 Debtors or from any Purchaser in accordance with the Medicare Statues, regulations, procedures, policies and rules.

42. The transactions are undertaken by the Purchaser in good faith, as that term is used in Bankruptcy Code § 363(m). Accordingly, the reversal or modification of the authorization provided herein to consummate the transfer shall not affect the validity of the sale of the Assets to the Purchaser, unless such authorization is duly stayed prior to the Closing Date. The Purchaser is a transferee in good faith of the Assets and, upon the Closing Date, is entitled to all of the protections afforded by Bankruptcy Code § 363(m).

43. The failure to specifically reference any particular provision of the OTAs in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the OTAs be authorized and approved in their entirety.

44. The Transition Agreement and OTAs and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of this

Court, provided that such modification, amendment, or supplement shall not have a material adverse effect on the Movants' bankruptcy estates.

45. The provisions of this Sale Order are non-severable and mutually dependent.

46. In the event of any inconsistency between the terms and provisions of this Sale Order and the OTAs, the terms and provisions of this Sale Order shall control. To the extent this Sale Order does not include, or otherwise address, any provision contained in both the Motion and the OTAs and where such provision in the Motion and the OTAs are inconsistent, the OTAs shall govern. In the event of any inconsistency between the terms and provisions of paragraphs 38-42 of this Sale Order on the one hand, and the terms and provisions of any other paragraph in this Sale Order, the OTAs, and any related transaction documents or exhibits on the other hand, the terms and provisions of paragraphs 38-42 of this Sale Order shall control.

47. Subject to paragraphs 38-42 of this Sale Order, this Court shall retain jurisdiction to: (i) enforce and implement the terms and provisions of the OTAs (including any breach of the OTAs), all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith in all respects; and (ii) determine (by motion and without the necessity for an adversary proceeding, where appropriate) any proceeding, dispute or controversy arising out of or related to this Sale Order, the OTAs or any related transaction documents.

48. Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d), there is no stay pursuant to Bankruptcy Rule 6004(h) or 6006(d) and this Sale Order shall be effective and enforceable immediately upon entry.

###END OF ORDER###

Respectfully submitted by:

/s/ Stephen A. McCartin

Stephen A. McCartin (TX 13374700)
Mark C. Moore (TX 24074751)
FOLEY GARDERE
Foley & Lardner LLP
2021 McKinney Avenue, Suite 1600
Dallas, TX 75201
Telephone: (214) 999-3000
Facsimile: (214) 999-4667
smccartin@foley.com
mmoore@foley.com

COUNSEL TO DEBTORS
AND DEBTORS-IN-POSSESSION