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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 THE DESERT SPRINGS FACILITY 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 LEASE; AND (B) APPROVING THE FORM OF OPERATIONS TRANSFER AGREEMENT;

[THE DESERT SPRINGS TRANSFER MOTION]

A HEARING WILL BE CONDUCTED ON THIS MATTER ON OCTOBER 25, 2018 AT 11:00 A.M.

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.

Desert Springs Health Facilities, L.P. ("**Desert Springs**" or "**Debtor**"), as debtor and debtor in possession hereby files this its *Motion for Order (A) Granting Authority to (I) Transfer the Operations and Related Assets of the Desert Springs Facility 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 Lease; and (B) Approving the Form of Operations Transfer 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[1] to the Purchaser (defined below) free and clear of liens, claims, encumbrances, and interests;

(b) approving the *Operations Transfer Agreement* (the "**OTA**"), substantially in the form attached hereto as **Exhibit A**, by and between Desert Springs and the Purchaser;

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

(d) approving the rejection and termination of the real property lease associated with the Desert Springs Facility;

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

I.
EXECUTIVE SUMMARY

1. Desert Springs operates the Desert Springs Nursing and Rehabilitation Center skilled nursing in Hobbs, New Mexico (the "**Facility**"). Desert Springs leases the Facility from Hacienda Care XXIV, L.P., an affiliate of Mr. Thomas Scott, an insider and principal of the

[1] The OTA contemplates the transfer of all of the Assets of the 5 Debtor owned or used in connection with the operations of the Desert Springs Facility-except those listed specifically as Excluded Assets-to the Purchaser. As set forth below, the Debtor pre-closing accounts receivable are Excluded Assets under the OTA. The OTA attached hereto for which the Debtor seeks approval is a form OTA. The Debtor will separately file the final OTA no later than seven (7) days before the hearing set for October 25, 2018 (the "**Sale Hearing**"), and will make such OTA available free of charge on the Debtors' informational website.

Debtor (referred to herein as "**Hacienda Care**").

2. The Debtor has negotiated the terms of an OTA for the transfer of the operations and the sale of the Assets used in the operations of the Facility to New Mexico Care Holdings, L.L.C., (the "**Purchaser**"). The Purchaser was identified through an extensive search conducted by Hacienda Care at the request of the Debtor, with the assistance of the Debtor's financial advisor, Focus Management Group USA, Inc.[2] In the Debtor's opinion, the Purchaser is the only viable available new operator that is (a) capable of taking over the operations of the Facility within a timetable that will maximize the value of the Debtor's estate and (b) approved by Hacienda Care. Hacienda Care is simultaneously selling the real property to Vista Pacific, Inc. (or its designee).

3. The Purchaser has entered or will enter into a new lease for the Facility with Hacienda Care (or the Purchaser of the real property from Hacienda Care) simultaneously with the transfer of the operations of the facility to the Purchaser. Accordingly, the Debtor proposes to sell and assign the right to operate the Facility, as well as to transfer the Assets used in connection with the operation of the Facility, to the Purchaser.

4. Generally, the OTA and related agreements provide that:

a. the Debtor shall terminate and reject the lease associated with each of the

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[2] Hacienda Care's involvement in the transfer process was critical because of its extensive industry knowledge and economic interest in the Facility. Hacienda Care was incentivized to identify a new operator with the financial resources and other capabilities required for the seamless transfer and continued operation of the Facility. Furthermore, due to the requirements of § 365 of the Bankruptcy Code and the existence of the real property lease with Hacienda Care (the "**Hacienda Care Lease**"), Hacienda Care's consent is required to extend the deadline to assume or reject the lease on the Facility. Section 365(d)(4)(A) requires the Debtor to assume or reject the Lease 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. Hacienda Care agreed to extend that deadline an additional ninety-one (91) days to September 10, 2018 as reflected in the *Stipulation and Agreed Order* entered at Docket No. 971. Hacienda Care consented to a further extension to November 2, 2018 to allow for the transfer provided for herein. The order approving that extension was entered at Docket No. 1098.

Facility (the "**Lease Termination**"). The Purchaser will then enter into a new lease with Hacienda Care (or the Purchaser of the real property from Hacienda Care)for the Facility;

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

c. the Debtor shall assume and assign certain contracts and unexpired leases related to operation of the Facility to the Purchaser; and

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

5. The Debtor believes that the value of the Assets being transferred pursuant to the OTA is *de minimis*. The Debtor's only valuable assets—receivables generated prior to the closing of the transfer—will be retained as an Excluded Asset[3] under the OTA 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 Debtor is a borrower under the Wells Fargo line of credit and DIP Facility and has pledged all or substantially all of its assets to secure that indebtedness.

6. The Debtor believes the transfer of the Facility to the Purchaser pursuant to the OTA constitutes the best transaction available for the transfer of the Facility, maximizes the value of such Debtor's estate, and is in the best interests of the Debtor's stakeholders, especially the residents of the Facility. Accordingly, the Debtor requests the Court approve the OTA in substantially in the form attached hereto, authorize the Debtor to transfer of the Facility and related Assets through the transaction contemplated by the OTA, and authorize the Debtor to take all actions reasonably necessary or desirable to implement the transaction.

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

II.
JURISDICTION AND VENUE

7. 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.

8. The statutory predicates for the relief requested herein are §§ 105, 363, and 365 of the Bankruptcy Code,[4] and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

III.
BACKGROUND

A. The Preferred Care Group

9. 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.

10. 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 Facility. The remaining seventy-five (75) partnerships

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[4] 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.

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

11. 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,[5] 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. These thirty four (34) debtors are collectively referred to as the "Debtors".

12. 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.

13. 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 Lease

14. Desert Springs leases the real property utilized in the operation of the Desert Springs Facility from Hacienda Care, an affiliate of Mr. Thomas Scott, a principal of the Debtor. Hacienda Care is selling the real property to Vista Pacific, Inc. simultaneously with the transfer of operations to the Purchaser.

C. Asserted Liens and Priorities

15. The Debtor has granted liens and security interests on substantially all of its assets to Wells Fargo Bank and FSF DIP, LLC to secure debtor-in-possession financing approved by this Court:

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[5] 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.

IV.
PROPOSED SALE AND TRANSFER OF THE FACILITY

16. 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 FSF DIP, LLC, 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 facilities to new operators.

17. This Motion is the third motion 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. Those Kentucky Facilities have now been transferred pursuant to that order. The second sought approval to transfer five (5) of the New Mexico Facilities, which is the second step toward completing the goal set at the beginning of these Chapter 11 Cases and will ensure the continued operation of those Facilities for the benefit of the residents, while also relieving the New Mexico Debtors of continuing rental obligations pursuant to the leases associated with the New Mexico Facilities. This Motion will transfer a sixth New Mexico Facility, that operated by Desert Springs, for the same benefits.

A. The Operations Transfer Agreement

18. Attached hereto as **Exhibit A** is the form of OTA negotiated with the Purchaser for the Facility. The OTA when executed will be made available free of charge on the Debtors'

informational website at www.jndla.com/cases/preferred. The Debtor requests that the Court approve the OTA substantially in the form attached hereto.

19. Generally, the OTA provides that:

a. the Debtor shall execute and effectuate the Lease Termination. The Purchaser will then enter into a new lease with Hacienda Care (or the Purchaser of the real property from Hacienda Care) for the Facility;

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

c. the Debtor shall assume and assign certain contracts and unexpired leases related to operation of the Facility to the Purchaser; and

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

B. Benefit to the Estate.

20. The OTA is in the best interest of the Debtor, who believes that the OTA represent the best transaction available for the sale and transfer of its operations and Assets. The proposed transfer will allow the Debtor to avoid: (1) significant future rent obligations, and (2) sizable potential claims from the Debtor's residents if the Facility were shut down.

V.
RELIEF REQUESTED AND BASIS THEREFOR

21. By this Motion, pursuant to sections 105, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9014, the Debtor seeks 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 lease by and between the Debtor and Hacienda Care;

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.

22. At the Sale Hearing, the Debtor 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 estate;

b. demonstrate that the Lease Termination is in the best interest of the estate due to the avoidance of ongoing rental obligations;

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

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

23. Accordingly, the Debtor requests that the Motion be approved in all respects, including approval of the OTA in substantially the form attached hereto.

A. The OTA Represents The Exercise of Sound Business Judgment by the Debtor And Should Be Approved.

24. 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 ...."[6]

25. Courts approve proposed sales of property pursuant to § 363 if the transaction represents the reasonable business judgment of the debtor.[7] If a valid business justification exists

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[6] 11 U.S.C. § 363(b)(1).

[7] *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

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."[8] Therefore, any party objecting to the Debtor's proposed transfer must make a showing of "bad faith, self-interest or gross negligence."[9]

26. 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.[10]

a. First, the Debtor is entering into the OTA after thorough consideration of all viable alternatives and has concluded that the transfer is supported by a

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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).

8 *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].).

9 *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.").

10 *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 Debtor will show that the proposed transfer satisfies all these factors.

number of sound business reasons. In particular, the Debtor submits that the facts described above support an expeditious transfer of its Assets to preserve value for the estate and provides a strong business justification for the transfer of its Assets. The Debtor believes that the best way to maximize value to its estate and its creditors is through the transfer to the Purchaser .

b. Second, the Debtor will provide 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**") and on additional parties, which such notice constitutes adequate and reasonable notice to interested parties. Additionally, the Debtor has been in contact with parties who expressed interest in the Debtor's Assets and has informed these parties of the proposed transaction. The Debtor believes that a more extended process would yield no higher or better offer for the operations and Assets.

c. Third, the consideration to be received by the Debtor for its Assets as a going concern is the highest possible value.

d. Fourth, the Debtor believes that the consideration to be obtained for the Assets pursuant to the OTA is fair and reasonable. Further, the Debtor 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.

27. For the foregoing reasons, the Debtor submits that the approval of the proposed OTA and 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.

28. 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.[11]

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.[12] The Court also may authorize the sale of a debtor's assets free and clear of any liens pursuant to section 105 of the Bankruptcy Code, even if section 363(f) did not apply.[13]

29. The Debtor believes that at least one of the tests in § 363(f) will be satisfied with respect to both secured liens asserted against such Debtor's Assets *and* other interests that may be alleged by other parties. The Debtor anticipates 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.

30. Accordingly, the Debtor requests 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.

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11 11 U.S.C. § 363(f).

12 *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).

13 *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.").

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

31. 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."[14] A sale to a good-faith purchaser cannot be avoided under § 363(m), unless the sale authorization was stayed pending appeal.[15] However, "[t]he trustee may avoid a sale … if the sale price was controlled by an agreement among potential bidders…."[16] 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.[17]

32. The Debtor will show at the Sale Hearing that it negotiated the OTA at arm's-length, in good faith, to achieve the best offer for the Assets. The Debtor will show that the Purchaser was represented by counsel and is not an affiliate or insider of the Debtor or otherwise related to the Debtor. Moreover, no equity ownership or future compensation has been offered to the Debtor or any insider of the Debtor. As such, the Debtor 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).

33. Further, the Debtor submits that the OTA will provide substantial value to the bankruptcy estate because it will facilitate an orderly transfer of operations, avoid any cessation

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

[15] *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….").

[16] *Id.* § 363(n).

[17] *In re TriDimension Energy, L.P.*, 2010 Bankr. LEXIS 4838, at *13.

of operations and displacement of residents, and avoid substantial potential claims of residents and lessors.

D. The Debtor May Enter into the OTA with the Purchaser and Any Other Agreement Related to or Associated with the Transaction.

34. In connection with a sale of substantially all of a debtor's assets, courts routinely approve entry into asset purchase or similar agreements.[18] Such agreements are approved if they are an exercise of the debtor's sound business judgment.[19] The Debtor will show that the OTA has been negotiated at arm's length and that the Debtor utilized its business judgment in an attempt to maximize the recovery to its estate.

E. The Lease Termination Is Authorized By Section 365 of the Bankruptcy Code.

35. 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.[20] Pursuant to the OTA, the Debtor is required to execute the Lease Termination, which will reject and terminate the lease applicable to the Facility effective upon the Closing of the OTA. Because the Debtor was unable to find a party willing to assume the lease associated with the Facility as written, the Debtor must reject the lease. The Lease Termination reflects a sound exercise of the Debtor's business judgment because it allows the proposed transfer to occur pursuant to the OTA.

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[18] *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).

[19] *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).

[20] *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.'").

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

36. 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.[21] In turn, section 365(b)(1) of the Bankruptcy Code codifies the requirements for 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.[22]

37. 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."[23] In making this

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21 *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).

22 11 U.S.C. § 365(b)(1).

23 *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*

determination, courts generally will not second-guess a debtor's business judgment concerning the assumption of an executory contract.[24]

38. Here, the Debtor's 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 Debtor and its estate. Because the Debtor 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 Debtor's business judgment.

39. 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.[25] The meaning of "adequate assurance of

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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).

[24] *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 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.").

[25] *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").

future performance" depends on the facts and circumstances of each case, but it should be given "practical, pragmatic construction."[26]

40. 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 Debtor 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 Debtor submits that the assumption and assignment of the Assumed Contracts as set forth herein should be approved.

41. To assist in the assumption and assignment of the Assumed Contracts, the Debtor requests 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,

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[26] *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).

> restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection . . . .[27]

42. By operation of law, § 365(f)(1) invalidates provisions that prohibit, restrict, or condition assignment of an executory contract or unexpired lease.[28] Section 365(f)(3) goes 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.[29]

43. Other courts have recognized that provisions that have the effect of restricting assignments also cannot be enforced.[30] 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.[31]

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27 11 U.S.C. § 365(f)(1).

28 *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 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.").

29 *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).

30 *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.").

31 77 B.R. 349, 354 (Bankr. D. N.H. 1987).

Thus, the Debtor requests 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.

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

44. 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 Debtor anticipates that the aggregate amount of the Cure Costs associated with the Assumed Contracts will be relatively small, if they exist at all.

45. To allow the counterparties to the Assumed Contracts (if any) to protect their rights and facilitate the transfer process, the Debtor proposes to file and serve a "**Cure Amount Notice**" on the non-Debtor parties to the Assumed Contracts on or before October 10, 2018 that will (a) contain a calculation of the Cure Costs that the Debtor believes 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 Debtor believes that there are no Cure Costs. If no Cure Amount Notice is filed, then the Debtor does 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 (**October 23, 2018**) upon counsel for the Debtor, the Debtor requests 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 Debtor shall be entitled to rely

solely on the Cure Costs; and (ii) be forever barred and estopped from asserting or claiming against the Debtor, its Estate, 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.

46. 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 Debtor shall attempt to reconcile any differences in the Cure Costs believed by the non-debtor party to exist. If the Debtor 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 Debtor pending resolution of such cure disputes.

47. The Debtor believes 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 Debtor requests 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.

48. 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."[32] 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

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

14 days after entry of the order, unless the court orders otherwise."[33]

49. The Debtor requests that any order approving this Motion (or authorizing a transaction that is deemed to be a transfer or sale of their Assets) be effective 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 Debtor respectfully submits that it is in the best interest of its estate to close the transfer as soon as possible after all closing conditions have been met or waived. Accordingly, Debtor requests that the Court eliminate the 14-day stays imposed by Bankruptcy Rules 6004 and 6006.

VI.
CONCLUSION

WHEREFORE, the Debtor respectfully requests that this Court enter an order granting the Motion and awarding the Debtor such other and further relief as this Court deems just and proper.

DATED: October 2, 2018

Respectfully submitted by:

/s/ Mark C. Moore

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COUNSEL TO DEBTOR AND DEBTOR-IN-POSSESSION

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

CERTIFICATE OF SERVICE

I hereby certify that, on October 2, 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

OPERATIONS TRANSFER AGREEMENT

This Operations Transfer Agreement (this "***Agreement***") is made and entered into as of October , 2018 by and between **Desert Springs Health Facilities, L.P.**, a Texas limited partnership (the "***Operator***") and **New Mexico Care Holdings, LLC**, a New Mexico limited liability company (the "***New Operator***").

RECITALS

A. Operator is the licensed operator of a 88 licensed bed skilled nursing facility known as Desert Springs Nursing & Rehabilitation (the "Trade Name"), located at 1701 N. Turner Street, Hobbs, New Mexico (the "***Facility***").

B. Operator currently Leases the Facility from Hacienda Care XXIV, L.P. ("***Owner***") pursuant to the terms of that certain Lease Agreement entered into on November 1, 2015, as amended (the "***Old Lease").***

C. The Old Lease shall terminate as of the Closing Date (as defined herein).

D. Pursuant to that certain Purchase and Sale Agreement dated as of August 16, 2018 (the "***PSA***") by and between Vista Pacific, Inc., (the "***Purchaser***"), Purchaser among other things, will purchase the real estate located at 1701 N. Turner Street, Hobbs, New Mexico, from Owner (the "***Seller***") (the "***Transaction***") and New Operator shall acquire the Facility operations from Operator, subject to the provisions §363 of the Bankruptcy Code, and pursuant to a Sale Order entered by the United States Bankruptcy Court for the Northern District of Texas ("Bankruptcy Court"), on the "***Transfer Date***" which shall be the "***Closing Date***" of the Transaction.

E. The parties which to provide for an orderly transition of operations of the Facility from Operator to New Operator as of 12:01 a.m. on the Closing Date.

F. Operator and New Operator are desirous of documenting the terms and conditions under which said transfer will occur.

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

AGREEMENT

1. Transfer of Certain Assets and Operations.

1.1 Operator hereby agrees to sell, transfer and convey to New Operator, as of the Closing Date, all of its right, title and interest in and to all inventory, including but not limited to office, foodstuffs, medical, disposables, linens, housekeeping, laundry, prescription medications, pharmaceutical inventories, and supplies at normal operating levels ("***Inventory***"), intangible personal property (as defined below) and tangible personal property owned by Operator which is related to or used in connection with the operation of the Facility ("***Personal Property")***. Such conveyance shall be accomplished by the execution and delivery to New Operator on the Closing

Date of a bill of sale in substantially the same form attached hereto as Exhibit A (the "Bill of Sale"). Operator shall not have any obligation to deliver the Personal Property to any location other than the Facility, it being understood and agreed that the presence of the Personal Property at the Facility on the Closing Date shall constitute delivery thereof. *For no additional consideration, Operator shall transfer and convey to New Operator on the Closing Date, in its "AS IS" condition, without representations or warranties of any kind, express or implied, the following vehicle: 2014 Ford, VIN# 1FDEE3FL6EDA26740 (the "Vehicle").* New Operator shall pay any sales or use tax which may be payable with respect to the Vehicle. The Vehicle shall be transferred free and clear of all claims, liens and encumbrances of any nature.

The conveyance by Operator to New Operator hereunder shall include (collectively, the "***Transferred Assets***"):

(i) Any contracts with vendors, providers and service contracts and equipment leases to which Operator is a party and have been expressly assumed by New Operator pursuant to Section 8 of this Agreement and further identified on Exhibit B attached hereto;

(ii) To the extent permitted by applicable laws and regulations, all transferable rights under all provider agreements and provider numbers with Medicare and Medicaid and any other third-party payor programs, including without limitation, agreements with health management organizations (HMOs) for Medicaid services;

(iii) All personnel records, property manuals, resident/patient charts and records, resident admission agreements and similar documents maintained by Operator, except employee manuals, training materials, policies, procedures and materials related thereto.

(iv) All existing agreements with residents and any and all patient funds, which agreements and trust funds shall be deemed assumed by New Operator only with respect to obligations accruing on and after the Closing Date;

(v) All federal, state or municipal licenses, certifications, accreditations, certificates, approvals, permits, variances, waivers, provider agreements and other authorizations certificates, to the extent assignable, which relate to the operation of the Facility;

(vi) All assignable guarantees and warranties in favor of Operator with respect to any real property and equipment at the Facility or other assets sold by Operator;

(vii) All other assignable intangible property not enumerated herein which is used by the Operator in connection with the operation of the Facility, including all service marks, trademarks, internet domain names, internet websites and URL's.;

(viii) All trade names associated with the Operator, including the name of the Facility as then known to the general public, and all goodwill associated therewith;

(ix) All customer lists and prospect lists;

(x) All computers, hardware and discs used in connection with the operation of the Facility;

(xi) All books and records with respect only to the operation of the Facility existing and physically located at the Facility as of the Closing Date; and

(xii) All telephone and facsimile numbers used in connection with the operation of the Operator's business and all brochures, pamphlets, flyers, mailers and other promotional materials related to the marketing and advertising of the business conducted at the Facility, and all goodwill of Operator associated with Operator's business. The items described in clauses (vi) through (xii) above are collectively referred to as "***Intangible Personal Property***";

1.2 Operator and New Operator agree to cooperate with each other to effect an orderly transfer of the operation of the Facility. Following the execution hereof, Operator shall, at New Operator's sole expense, use commercially reasonable efforts to cooperate with New Operator to furnish all requested documentation 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. New Operator shall promptly apply for issuance of the licenses to operate Facility in its own name.

1.3 Operator and New Operator 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. On and after the Closing Date, New Operator shall be solely responsible for caring for the residents of the Facility. 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.

1.4 Other than the Transferred Assets that are actually transferred to New Operator, and notwithstanding any other provision hereof or any schedule or exhibit hereto, and regardless of any disclosure to New Operator with respect thereto, Operator shall retain and shall be solely responsible for rejecting or paying, performing and discharging when due, all liabilities and obligations relating to all Excluded Assets and any Excluded Contracts (as defined herein) and all liabilities and obligations relating to the Transferred Assets, the Facility, Operator or its affiliates, that arise as a result of events occurring prior to the Closing Date, or, in the case of Excluded Contracts on or after the Closing Date (collectively, the "***Retained Liabilities***")

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

i. Operator's rights under this Agreement or any other agreement between the Operator and New Operator;

ii. all of 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;

iii. all refunds for taxes, fees, assessments and charges for the period prior to the Transfer Date;

iv. amounts of any nature which are or might be due to Operator for goods provided, services rendered, or any other transaction of any type prior to the Transfer Date;

v. refunds, rebates and dividends paid in respect of workers compensation or other insurance premiums paid by Operator prior to the Transfer Date, and refunds and additional recoveries by or payments to Operator from any person for services, provision of goods or supplies, or any other transactions prior to the Transfer Date;

vi. all refunds arising out of retrospective premium adjustments under insurance policies covering the Facility or operations thereof relating to the period prior to the Transfer Date;

vii. inventory disposed of in the ordinary course of business prior to the Transfer Date;

viii. any provider tax payments related to periods prior to the Transfer Date;

ix. any and all Medicaid and Medicare audit and case mix appeal rights and payments for periods prior to the Transfer Date;

x. any state Medicaid or Medicare reimbursements or adjustments for services rendered prior to the Transfer Date;

xi. the New Operator Excluded Contracts;

xii. equipment leased pursuant to any lease that is not an Assumed Contract;

xiii. Operator's financial records, corporate minute books and seals;

xiv. any insurance proceeds paid or payable to Operator for claims arising prior to the Transfer Date, except to the extent that New Operator is entitled under this Agreement to indemnification for any such claim;

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

xvi. all computer software, software licenses, time clocks and computer equipment on pharmacy carts; and

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

2. Transfer of Patient Trust Funds.

2.1 On the Closing Date, Operator shall provide to New Operator a true, correct and complete accounting (properly reconciled) of any patient trust funds held by Operator on the

Closing Date for patients at the Facility (collectively the "***Patient Trust Funds***") and a complete, accurate and updated census report of the residents at the Facility (the "***Resident Census***"). Such accounting of the Patient Trust Funds shall set forth the names of the residents for whom such Patient Trust Funds are held and the amounts held on behalf of each resident, correct and complete as of the Closing Date. On the Closing Date, Operator and New Operator will enter into an Assignment and Assumption of Admission Agreements in the form attached hereto as Exhibit D attached hereto.

2.2 Operator hereby agrees to transfer such Patient Trust Funds to New Operator those Patient Trust Funds to which Operator or the Facility is no longer entitled or permitted to hold. New Operator hereby agrees that it will accept such Patient Trust Funds in trust for the patients, in accordance with applicable statutory and regulatory requirements. Upon such acceptance, New Operator hereby agrees to issue a receipt to the Operator evidencing its acceptance and receipt of the Patient Trust Funds.

2.3 Operator shall indemnify, defend and hold harmless New Operator its officers and members, from and against all liabilities, claims and demands including, without limitation, reasonable attorney's fees, with respect to (i) the amount of the Patient Trust Funds, if any, transferred to New Operator which do not represent the full amount of the Patient Trust Funds shown to have been delivered to Operator as custodian, (ii) any Patient Trust Funds delivered, or claimed to have been delivered to Operator, but which were not delivered by Operator to New Operator, and (iii) claims which arise from actions or omissions of Operator with respect to the Patient Trust Funds prior to the Closing Date. New Operator shall indemnify, defend and hold harmless Operator from and against all liabilities, claims and demands including, without limitation, reasonable attorneys' fees, in the event a claim is made against Operator by a patient for his/her Patient Trust Funds based on New Operator's management of such Patient Trust Funds after such funds were transferred to New Operator pursuant to the terms hereof.

3. Cost Reports.

3.1 Operator shall timely prepare and file with the appropriate Medicare and Medicaid agencies its cost reports for the fiscal year ending immediately preceding the fiscal year in which the Closing Date occurs, and for any sub period and final cost reports in respect to its operation of the Facility identified with Operator as soon as practicable after the Closing Date, but in no event later than the date on which such final cost report is required to be filed by law under the terms of the Medicare and Medicaid Programs, and will provide the appropriate Medicare and Medicaid agencies with any information needed to support claims for reimbursement made by Operator either in said final cost report or in any cost reports filed for prior cost reporting periods, it being specifically understood and agreed that the intent and purpose of this provision is to ensure that the reimbursement paid to New Operator after it becomes the licensed operator of the Facility is not reduced or offset in any manner as a result of Operator's failure to timely file such final cost reports or such supporting documentation with respect to any past reimbursement claims including, without limitation, those included in the final cost reports. Operator shall promptly provide New Operator with copies of such reports and supporting documentation.

3.2 In the event any federal or state agencies or any entity acting on behalf of such agencies which has made payments to Operator for services performed on or prior to Closing Date makes any claim for reimbursement of overpayment occurring during such period, then Operator agrees to save, indemnify and hold harmless New Operator from and against any and all loss, damage, injury or expense incurred by New Operator arising out of or related to such claim.

3.3 Intentionally Omitted.

3.4 Intentionally Omitted.

3.5 Operator and New Operator agree to cooperate in providing the State of New Mexico with an appropriate statement concerning Medicaid liabilities and the respective obligations of the parties hereto if and to the extent required by law.

4. Employees.

4.1 Operator shall be responsible for the payment of PTO (as defined below), as of and including the Closing Date which shall be paid in accordance with applicable laws. From and after the Closing Date, New Operator shall be responsible for all benefits to the employees of the Facility in accordance with New Operator's personnel policies. New Operator acknowledges that Operator has provided New Operator with a list of all Facility employees and Operator shall permit New Operator, in cooperation and coordination with Operator, to meet with all employees of the Facility prior to the Closing Date and to advise them of New Operator's proposed plans with respect to the hiring of the employees of the Facility and the benefits which will be offered to the employees of the Facility after the Closing Date.

4.2 At Closing, New Operator will use it commercially reasonable efforts to offer employment on an "at-will" basis, to at least 70% of the employees of Operator who, as of the Closing Date, work at the Facility and have been employed on average for twenty (20) hours or more per week for a period of one month, provided such employees are lawfully employable in a skilled nursing facility and have current and valid licenses, registrations and permits where required. Such employees whose employment is offered to be continued by New Operator shall be referred to as the "Retained Employees," subject to the election of any such Retained Employee to accept such offer of employment and; provided, however, any such continued employment of a Retained Employee by New Operator shall be on terms which require at a minimum said Retained Employee to perform comparable services, in a comparable position and at substantially the same base salary as such Retained Employee enjoyed with the Facility prior to Closing; provided further, however, New Operator shall have the right to alter the job descriptions of any employee and to dismiss any employee whom New Operator deems, in its sole and absolute discretion, to be unsuitable for continued employment at the Facility subject to any employees who quit, resign or are terminated for cause. Operator or any of its affiliates shall have the right to employ or offer to employ (i) any Retained Employee who declines to continue employment with New Operator within the time period specified in New Operator's offer of employment to such Retained Employee, or (ii) any Retained Employee who is terminated or laid off from employment by New Operator. New Operator shall recognize each such Retained Employee's original hire date and shall continue to employ each such Retained Employee for a

period of no less than ninety (90) days following the Closing Date unless the employment of such Retained Employee is terminated in accordance with New Operator's personnel policies, as may be modified by New Operator from time to time, or as a result of such Retained Employee's resignation. As between Operator and New Operator, Operator shall be responsible for payment of payroll not yet paid as of 11:59 p.m. on the Closing Date. Notwithstanding any other provision of this Agreement, nothing contained herein shall (i) be deemed to be the adoption of, or an amendment to, any employee benefit plan, as that term is defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or otherwise limit the right of New Operator, Operator or their respective affiliates, to amend, modify or terminate any such employee benefit plan, (ii) give any third party, including employees of the Facility, any right to enforce the provisions of this Section 4.2 or (iii) obligate New Operator or any of its affiliates to (x) maintain any particular benefit plan or (y) retain the employment of any particular employee.

4.3 New Operator and Operator acknowledge and agree that the provisions of Section 4.2 are designed solely to ensure that 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 (the "***WARN Act***") or under any comparable state law. Accordingly, New Operator agrees to indemnify, defend and hold harmless the Operator from any liability which they may incur under the WARN Act or under comparable state law in the event of a violation by New Operator of its obligations thereunder including, without limitation, a violation which results from allegations that New Operator constructively terminated the employees of the Facility as a result of the terms and conditions of employment offered by New Operator; provided, however, that nothing herein shall be construed as imposing any obligation on New Operator to indemnify, defend or hold harmless Operator from any liability which they may incur under the WARN Act as a result of the acts or omissions of Operator prior to the Closing Date, including without limitation any liability which may result from the aggregation of the acts of Operator prior to the Closing Date and the acts of New Operator after the Closing Date, it being understood and agreed that New Operator shall only be liable for its own acts or omissions after the Closing Date. Nothing in this Section 4.3, however, shall create any rights in favor of any person not a party hereto, including the employees of Facility, or constitute an employment agreement or condition of employment for any employee of Operator or any affiliate of Operator who is a Retained Employee.

4.4 Operator agrees that the continued employment of the Retained Employees will be important to the viability of New Operator's operations at the Facility. Accordingly, Operator agrees that for a period of one (1) year after the Closing Date it will not directly or indirectly solicit the employment of any of such Retained Employees during the time that such Retained Employees are employed by New Operator, nor shall they take any action (i) to directly or indirectly interfere with their employment relationship with New Operator or (ii) to induce them in any manner to terminate their employment relationship with New Operator. Operator acknowledges and agrees that New Operator would not be fully compensated by damages in the event of a breach or threatened breach by Operator of this provision and accordingly agrees that New Operator shall be entitled, without the need to post a bond, to seek an injunction to restrain such violation or threatened violation of this Section 4.5. The provisions of this Section 4.5 shall survive the Closing Date for a period of one (1) year.

4.5 No later than the Closing Date, Operator will provide to New Operator either original employment files or true and complete copies thereof of employment files for all Retained Employees.

4.6 Except as disclosed in writing to New Operator by Operator, Operator represents and warrants that there are no pending and threatened employee and employment related claims, suits, charges, complaints and actions filed with any court or agency having jurisdiction of Operator, the Facility or any of their employees ("Employment Claims") as of the date of execution of this Agreement and that it is aware of no pending or threatened Employment Claims by Operator's employees. Operator acknowledges that New Operator does not and shall not assume under this Agreement or any related agreement, any liability for any pending or threatened Employment Claims. New Operator hereby disclaims any and all liability for all Employment Claims arising from or in connection with the employment of any of Operator's employees prior to the Transfer Date, and Operator hereby agrees to indemnify, defend and hold New Operator, its officers and members harmless for, from and against any and all Employment Claims arising from or in connection with the employment of any of Operator's employees prior to the Closing Date.

4.7 Operator shall remain solely liable for all Employee Liabilities (as defined hereinafter) relating to all Retained Employees which arise or are incurred prior to the Transfer Date, including without limitation, (a) payroll on and prior to the Transfer Date, which will be paid by Operator on or before the next regularly scheduled pay date following the Transfer Date, and (b) any Employee Liabilities relating to the termination of any employees on or prior to the Transfer Date provided, however, that any PTO (defined below) for all Retained Employees with respect to the period prior to the Transfer Date shall be paid in accordance with applicable laws. For the purposes of this Agreement, "Employee Liabilities" shall mean all wages, salaries, commissions, bonus payments, earned or accrued vacation, any other fringe benefits, severance pay (if any), any contributions required or costs associated with any employee welfare benefit plan as defined by Section 3(1) of ERISA (including any such contributions or costs relating to a dependent of any employee), any contributions required or costs associated with any employee pension benefit plan as defined by Section 3(2) of ERISA, any contributions required or costs associated with any non-qualified employee benefit plan, federal, state and/or local payroll taxes, unemployment insurance costs, any contributions required or costs associated with workers' compensation liabilities, any claims made by any employee arising out of or connected with his or her employment or the termination thereof and any other liabilities, claims or expenses resulting from any of the foregoing. Notwithstanding anything contained in this Agreement, Operator acknowledges that New Operator is not assuming any of Operator's obligations to its employees under Section 601, et seq. of ERISA and Section 4980B of the Internal Revenue Code ("COBRA") or otherwise.

5. Accounts Receivable, Provider Agreements and Cost Reports.

5.1 With respect to unpaid accounts receivable for services rendered by Operator prior to the Transfer Date and for services rendered by New Operator on and after the Transfer Date, Operator and New Operator agree to abide by the terms and conditions set forth on Exhibit E attached hereto and made a part hereof.

5.2 Operator shall deliver a true and complete accounting of all advanced deposits, security deposits or any other residents (collectively "***Resident Deposits***"), excluding for purposes of this Section 5.2, Patient Trust Funds, currently held by Operator or the Facility as of the Closing Date and shall deliver, or shall cause any party having custody of such Resident Deposits to deliver, such Resident Deposits to the New Operator to hold and administer. At the time of such transfer, New Operator shall issue a receipt to the Operator evidencing New Operator's receipt and acceptance of such Resident Deposits. For the period prior to the Closing Date, Operator shall be responsible for the maintenance, administration, and accounting of Resident Deposits relating to the Facility, and shall be liable for, and hereby indemnifies New Operator, its officers and members, from, any assessment, fines, costs and/or other liabilities arising from or related to its maintenance of the Resident Deposits, any advances, prepayments and/or deposits relating to any former residents of Facility and/or from its failure to transfer to the New Operator all of the Resident Deposits held by Operator or shown to have been delivered to Operator prior to the Closing Date. For the period on or after the Closing Date, New Operator shall be responsible for the maintenance, administration and accounting of Resident Deposits relating to the Facility, and except as otherwise herein provided in the preceding sentence, with respect to Operator's liability, shall be liable for, and hereby indemnifies Operator from, any assessments, fines, costs and/or other liabilities arising from or related to its maintenance of the Resident Deposits.

5.3 Notwithstanding anything contained in this Agreement, on the Closing Date, (and to the extent permitted under, and subject to, applicable law), for no additional consideration, and until such time that with respect to the Facility, New Operator is enrolled in its own name with its own Medicaid provider number in the New Mexico Medicaid program and is able to bill thereunder for services provided by New Operator at the Facility and until the issuance of the Medicare tie-in notice and the fiscal intermediary changes the electronic funds transfer account or special payment address to the New Operator, to the extent permitted by applicable laws or regulations, New Operator shall be entitled to bill under: (i) Operator's Medicare provider number in use at the Facility, and (ii) Operator's Medicaid provider number in use at the Facility. As of the Closing Date, Operator shall assign and New Operator has the absolute right to assume any and all of Operator's rights and interests in and to Operator's Medicare provider numbers and Medicare provider reimbursement agreements and Medicaid provider numbers and Medicaid provider reimbursement agreements. The parties agree that during the time period from the Transfer Date until New Operator shall complete its enrollment in the Medicare and Medicaid programs (the "Interim Period"), New Operator may, to the extent permitted by applicable law, rule or regulation, use and submit to the appropriate fiscal intermediary with respect to Medicare services and Medicaid services, invoices for services or Medicaid services rendered by New Operator following the Closing Date in the name and using the billing identification numbers of Operator. Operator agrees that any payments received for Medicare services rendered after the Closing Date by New Operator which may be received by Operator as a result of billing pursuant to this Section 5.3 during the Interim Period shall be remitted by Operator to New Operator in accordance with the terms of Exhibit E. The parties agree to promptly cooperate in good faith to provide for a transition in billing. New Operator shall indemnify and hold Operator harmless from and against any and all bills submitted by New Operator (using the name and billing identification numbers of Operator) during the Interim Period. New Operator agrees to use commercially reasonable efforts to diligently pursue Change of Operator ("CHOW") applications for Medicaid and Medicare. In the event the parties mutually determine that

any third-party payors or private pay Residents are entitled to a refund of payments, the portion thereof that relates to the period on and after the Closing Date shall be paid by New Operator and the portion thereof that relates to the period prior to the Closing Date shall be paid by Operator to such third party payor or private pay Resident. Operator agrees to cooperate with New Operator in the assignment of the Operator's Medicare provider agreements to New Operator and the issuance of new Medicaid provider agreements to New Operator, including completing those portions of Form 855A which confirm the change of ownership of the Facility and the assignment by Operator of Operator's Medicare provider agreements to New Operator and providing to New Operator or any governmental entity any information requested to effect the transfer of Operator's Medicare provider numbers or the issuance to New Operator of new Medicaid provider numbers and Medicaid provider reimbursement agreements.

5.4 New Operator shall provide Operator by the fifteenth (15^{th}) day of each month during the period commencing on the Closing Date and expiring on the sooner of (i) Receipt of Tie-In Notices (as defined in Exhibit E) or (ii) the date upon which Operator receives payment of all trade accounts receivable attributed to the operation of the Facility prior to the Closing Date (the "Post-Closing Accounts Receivable Adjustment Period"), with an accounting of all trade accounts receivable attributed to the operation of the Facility prior to the Closing Date and setting forth all amounts received by New Operator during the preceding month with respect to third-party payor receipts and the accounts receivable of Operator. New Operator shall deliver such accounting to the address for notices for Operator set forth in Section 11 below. During the Post-Closing Accounts Receivable Adjustment Period, Operator shall have the right upon reasonable advanced written notice to inspect all cash receipts of New Operator during weekday business hours in order to confirm New Operator's compliance with the obligations imposed on it under this Section 6. During the Post-Closing Accounts Receivable Adjustment Period, Operator shall provide New Operator with an accounting by the fifteenth (15^{th}) day of each month setting forth all amounts received by Operator during the preceding month which are payable to New Operator in accordance with the provisions of this Section 5.4. Operator shall deliver such accounting to the address for notices for New Operator set forth in Section 11 below. New Operator shall have the right upon reasonable advanced written notice to inspect all cash receipts of Operator during weekday business hours in order to confirm Operator's compliance with the obligations imposed on it under this Section 5 and Exhibit E. Notwithstanding any provision in this Section 5 to the contrary, each party's obligation to pay to the other party any revenue with respect to the Facility shall terminate upon the expiration of the Post-Closing Accounts Receivable Adjustment Period.

5.5 Operator's Cost Reports. If required by law, Operator shall timely prepare and file with CMS and the State Medicaid agency its cost reports for the fiscal year ending immediately preceding the fiscal year in which the Transfer Date occurs, and for any stub period and final cost reports up to the Transfer Date in respect to its operation of the Facility which are required to be filed by law under the terms of the Medicare and Medicaid programs. New Operator agrees to include Operator's Medicare bad debts that are written off by Operator after the Closing Date ("Bad Debts") on New Operator's cost reports and New Operator shall promptly reimburse Operator any monies received by it for such bad debts and will provide the appropriate agencies with any information reasonably required or necessary to support claims for reimbursement made by Operator either in such final cost

reports or in any cost reports filed for prior or subsequent cost reporting periods. Operator shall promptly provide New Operator with copies of such reports and supporting documentation. In the event Operator fails to timely, accurately or completely file any cost report for the Facility, after being given at least ten (10) business days' prior written notice by New Operator to do so and Operator still fails to file then, New Operator shall have the right, but not the responsibility, and Operator hereby irrevocably appoints New Operator as its agent and attorney in-fact for such purpose, to prepare, file, and otherwise process such cost reports for Operator's name and behalf and at Operator's expense or New Operator may bring an action against Operator to compel Operator to complete and file such costs reports and Operator hereby agrees to waive any defense to such action and to pay all of New Operator's reasonable attorneys' fees and expenses of such action. If New Operator elects to prepare, file, complete, correct and/or process any such report, it shall do so without any legal liability for any errors or omissions therein, and Operator hereby forever releases, waives, and discharges New Operator from any liability, known or unknown, for its handling of any cost report hereunder, except to the extent that any of the foregoing arises out of the gross negligence or willful misconduct of New Operator. Operator shall use its reasonable efforts to have its debtor-in-possession lender, Wells Fargo, release its lien on the accounts receivable generated after the Closing Date. Operator, at the request of New Operator or New Operator's accounts receivable lender shall provide New Operator and/or New Operator's accounts receivable lender with a a collateral assignment of this Agreement, reasonably requested by New Operator's accounts receivable lender and use commercialy reasonable efforts to negotiate post-closing documents with terms that are mutually agreeable to Operator and New Operator's accounts receivable lender related to New Operator's Accounts Receivable (defined below). For the purposes of this Section 5.5, "New Operator's AR" shall mean present and future Accounts (as defined in the Uniform Commercial Code) and any books and records relating thereto, in each case arising from or related to services delivered at the Facility on or after the Operation Transfer Date and any proceeds thereof.

6. Prorations.

6.1 All revenues and all expenses pertaining to Assumed Operating Contracts, as defined in Section 8, for the billing period in which the Closing Date occurs, real and personal property taxes and prepaid expenses attributable to the Facility shall be prorated between Operator and New Operator as of the Closing Date. In general, such prorations shall be made so as to reimburse Operator for prepaid expense items, and to charge Operator for prepaid revenue items, to the extent that the same are attributable to the period on or after the Closing Date. The intent of this provision shall be implemented by New Operator remitting to Operator any invoices that describe goods or services provided to or expenses incurred by the Facility prior to the Closing Date and by New Operator assuming responsibility for the payment of any invoices that describe goods or services provided to or expenses incurred by the Facility on and after the Closing Date.

6.2 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 Operator. Utility charges which are not metered and read on the Closing Date shall be estimated based on prior charges, and shall be reprorated upon receipt of statements therefor.

Utility deposits made prior to the Closing Date shall be released to the Operator unless reimbursed by New Operator.

6.3 All amounts owing from one party hereto to the other party hereto that require adjustment after the Closing Date shall be settled within forty-five (45) days of Closing Date or, in the event the information necessary for such adjustment is not available within said forty-five (45) day period, then as soon thereafter as practicable.

6.4 With respect to the earned or accrued vacation, ("PTO") for all Retained Employees with respect to the period ending immediately prior to the Closing Date, Operator shall be liable for such PTO due which are owed to Retained Employees. Retained Employees shall receive from the Operator on or after the Closing Date (as required by state law) an amount equal to such PTO. From and after the Closing Date, any PTO which begin to accrue for the Retained Employees on or following the Closing Date (or on such later date as an individual becomes a Retained Employee) and pursuant to the policies and procedures of New Operator and to which the Retained Employees may be entitled shall be the obligation and liability of New Operator. Any earned and accrued bonuses due from Operator to Retained Employees shall be paid in the normal course of business.

7. Access to Records.

7.1 On the Closing Date, Operator shall deliver to the New Operator originals of all of the records of the Facility, including, but not limited to, patient, medical and financial records and employee records and other relevant records used or developed in connection with the business conducted at the Facility including, but not limited to, all licenses, agreements, records, reports and information reasonable necessary to continue care for any residents remaining at the Facility after the Closing Date; provided, however, that nothing herein shall be construed as precluding Operator from removing from the Facility on the Closing Date (i) a copy of the financial records which relate to its operations at the Facility and (ii) all original records and copies related to its overall corporate operations and which are not required to be retained by New Operator by applicable state or federal licensing or operating laws or regulations; and provided, further, that Operator shall give New Operator access to any information in any such removed records as New Operator may demonstrate to the reasonable satisfaction of Operator is necessary for the efficient operation of the Facility by New Operator.

7.2 Subsequent to the Closing Date, New Operator shall allow Operator, Owner and Owner's lender and their respective agents and representatives to have reasonable access to (upon reasonable prior notice and during normal business hours), and to make copies of, the books and records and supporting material of the Facility relating to the period prior to the Closing Date, to the extent reasonably necessary to enable them to investigate and defend malpractice, employee or other claims, to file or defend cost reports and tax returns and to verify accounts receivable collections due Operator.

7.3 Operator shall be entitled to remove the originals of any records delivered to New Operator, for purposes of litigation involving a patient or employee to whom such record relates, if an officer of or counsel for Operator certified that such original must be produced in order to comply with applicable law or the order of a court of competent jurisdiction in connection with

such litigation. Any record so removed shall promptly be returned to the New Operator following its use.

7.4 New Operator agrees to maintain such books, records and other material comprising records of the Facility's operations prior to the Closing Date that have been received by New Operator from Operator or otherwise, including, but not limited to, patient records and records of patient funds, to the extent and for the term required by law and shall allow Operator a reasonable opportunity to remove such documents, at Operator's expense, at such time after such record retention period as may be required by law as New Operator shall decide to dispose of such documents.

7.5 Operator and New Operator acknowledge and agree that the definition of "health care operations" set forth in Section 164.501 of the Health Insurance Portability and Accountability Act of 1996 ("***HIPAA***") permits the parties to use and disclose individually identifiable resident and employee health information in order to assure a smooth transition of facility operations. Operator and New Operator agree to comply with, and to cause their respective employees, subcontractors and agents to comply with, applicable state and federal laws and regulations relating to the security, protection and privacy of individually identifiable health care information, including, without limitation, the regulations promulgated pursuant to HIPAA, and any amendments to those regulations that may occur from time to time. New Operator agree that their respective employees, subcontractors, and agents shall maintain the confidentiality of resident and employee records and medical information, in accordance with applicable state and federal laws, rules and regulations. New Operator and Operator and their respective employees, subcontractors, or agents agree not to disclose protected health information to any third party except where permitted or required by law or where the resident or employee expressly approves such disclosure in writing. The obligations under this Section 7 shall survive the termination of this Agreement, whether by rescission or otherwise as amended and the regulations issued in connection therewith.

7.6 Should New Operator choose to continue to use computer software currently being used at the Facility being used at the Facility (i.e. Point Click Care etc.) New Operator shall enter into contractual arrangements with the applicable software providers to initiate licenses to continue to use licenses and corresponding accounts, at its sole cost and expense. However, New Operator shall provided access to Operator's PCC electronic medical records of current residents on the Transfer Date for a period of up to sixty (60) days after the Transfer Date if necessary to accomplish the transfer of necessary data Prior to the Transfer Date, designated agents from New Operator and Transferor will have calls to discuss post-closing transition options for Facility records and the parties agree to work to achieve a solution that is optimal for both parties and the parties will work cooperatively to develop a plan to put New Operator's operating systems in place at the Facility in order to insure an orderly transition of the operations the Facility. Each party will use its commercially reasonable efforts to coordinate logistics relating to the implementation of New Operator's operating systems at the Facility and the transfer of applicable date from Operator's operating systems.

8. Operating Contracts. Within fifteen (15) days after execution of this Agreement, Operator shall provide to New Operator with a list of all vendor, services and other Facility level operating contracts for the Facility, and a copy of each contract identified on that list if requested, and

estimated cure costs, if any. Within 15 days' prior to the Closing Date, Operator shall use its best efforts to set the cure amount for all contracts, and within 10 days prior to Closing Date. New Operator will notify Operator which Facility Contracts, New Operator will assume which when designated by New Operator shall be set forth in writing to Operator and attached hereto as Exhibit B (the "***Assumed Operating Contracts***") and the parties shall execute the Assignment and Assumption Agreement for such Assumed Contracts in form and substance attached hereto as Exhibit C. Notwithstanding anything contained in this Agreement, New Operator is under no obligation to assume any of the contracts. Effective as of the Closing Date, New Operator shall assume the Assumed Operating Contracts pursuant to an order of the Bankruptcy Court under 11 U.S.C. §365. In no event shall New Operator be responsible for any cure costs unless otherwise expressly agreed to by New Operator, in writing New Operator shall not assume any obligations under any of Operator's contracts not listed on Exhibit B or any obligations or liabilities arising under any of the Assumed Operating Contracts that accrued prior to the Closing Date. Operator's contracts not listed on Exhibit B are referred to in this Agreement as the "***Excluded Contracts***".

9. Indemnification.

9.1 Operator Indemnity. Operator agrees to indemnify, defend, protect and hold harmless New Operator and its respective officers, directors, members, shareholders, tenants, successors and assigns, and the officers, directors, members, shareholders, successors and assigns of the constituent entities of the New Operator (collectively, the "***Operator Indemnified Parties***") from and against any and all costs, liabilities and expenses including, without limitation, reasonable attorney's fees, which it may incur as a result of (i) a breach of Operator of its obligations under this Agreement, (ii) arising out of the acts or omissions of Operator under the Assumed Operating Contracts prior to the Closing Date, or related to periods prior to the Closing Date, (iii) Terminated Operating Contracts of Operator not assumed by the New Operator, whether the same relate to the period prior to or after the Closing Date, (iv) the ownership or operation of the Facility prior to the Closing Date, (v) the Excluded Assets and/or Excluded Contracts; .

9.2 New Operator Indemnity. New Operator agrees to indemnify, defend and hold harmless Operator, Owner and Owner's lenders and their respective officers, directors, members, shareholders, successors and assigns, and the officers, directors, members, shareholders, tenants, successors and assigns of the constituent entities of Operator (collectively, the "***New Operator Indemnified Parties***") from and against any and all costs, liabilities and expenses including, without limitation, reasonable attorneys' fees, which it may incur as a result of (i) a breach by New Operator of its obligations under this Agreement, (ii) the acts or omissions of New Operator under the Assumed Operating Contracts from and after the Closing Date or (iii) the operation of the Facility from and after the Closing Date.

9.3 (a) Procedure. If the facts giving rise to any claim for indemnification hereunder shall involve any actual claim or demand by any third person against a party entitled to indemnification hereunder (an "**Indemnified Party**"), the indemnifying party shall be entitled to notice of and entitled (without prejudice to the right of any Indemnified Party to participate at its own expense with counsel of its own choosing) to defend or prosecute such claim at its own expense and through counsel of its own choosing, provided such counsel is reasonably satisfactory to the Indemnified Party, if it gives written notice of its intention to do so no later

than the time by which the interests of the Indemnified Party would be materially prejudiced as a result of its failure to have received such notice; provided, however, that if the defendants in any action shall include both the indemnifying party and the Indemnified Party and the Indemnified Party shall have reasonably concluded that counsel selected by the indemnifying party has a conflict of interest because of the availability of different or additional defenses to the Indemnified Party, the Indemnified Party shall have the right to select separate counsel to participate in the defense of such action on its behalf, at the expense of the indemnifying party. The Indemnified Party shall reasonably cooperate in the defense of such claim and shall make available to the indemnifying party pertinent information under its control relating thereto and reasonably necessary to be provided, but shall be entitled to be reimbursed, as provided in this Section 9.3, for all costs and expenses incurred by it in connection therewith. Where the Indemnifying Party is defending a claim, the Indemnifying Party shall not compromise or settle any action, claim or proceeding that does not include a complete release of the Indemnified Party or imposes any liability or obligation on the Indemnified Party without first obtaining the prior written consent of such Indemnified Party.

(b) Other Claims. In the event any Indemnified Party has a claim against any indemnifying party under Section 9.1 or 9.2 that does not involve a third party claim being asserted against or sought to be collected from such Indemnified Party, the Indemnified Party shall deliver notice of such claim with reasonable promptness to the indemnifying party. The failure by any Indemnified Party so to notify the indemnifying party shall not relieve the indemnifying party from any liability that it may have to such Indemnified Party under Section 9.1 or 9.2, except to the extent that the indemnifying party demonstrates that it has been materially prejudiced by such failure. If the indemnifying party does not notify the Indemnified Party within ten (10) calendar days following its receipt of such notice that the indemnifying party disputes its liability to the Indemnified Party under Section 9.1 or 9.2, such claim specified by the Indemnified Party in such notice shall be conclusively deemed a liability of the indemnifying party under Section 9.1 or 9.2 and the indemnifying party shall pay the amount of such liability to the Indemnified Party on demand or, in the case of any notice in which the amount of the claim (or any portion thereof) is estimated, on such later date when the amount of such claim (or such portion thereof) becomes finally determined.

(c) Survival. Each party's respective indemnification obligations shall survive the termination, expiration or rescission of this Agreement and notwithstanding anything contained in this Agreement, the indemnifying party's indemnification obligations with respect to representations and warranties, shall survive for a period of two (2) years after the Closing Date provided, however, that all other indemnification obligations set forth in Sections 9.1 and 9.2 above, including without limitation, Operator's indemnification obligations with respect to Sections 9.1 (vi) and 9.1 (vii) and/or any indemnification obligations with respect to any claim, clawback, takeback, recapture or any action taken of a similar nature, made by any governmental payor with respect to any act or omission occurring prior to the Closing Date (whether such claim relates to the reimbursement of an overpayment, for fraud or otherwise, and any interest or penalties) shall survive for at least the term of the statute of limitations with respect to such claim plus an additional six months. If an Indemnified Party notifies the indemnifying party in writing of a claim prior to the expiration of the term of survival of such indemnification obligation such indemnifying party's obligation with respect to such claim shall survive as to such claim until the resolution of such claim.

10. Representations and Warranties.

10.1 By New Operator. New Operator hereby represents and warrants as follows:

(a) New Operator has or as of the Closing Date will have all necessary power and authority to operate the Facility, to purchase and own the Inventory, Intangible Personal Property, and Personal Property and to carry on its business as it is now being conducted. New Operator has all necessary 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 individual executing this Agreement to do so. This Agreement has been duly and validly executed and delivered by New Operator and is enforceable against New Operator in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy laws and general principals of equity.

(b) Unless otherwise expressly indicated in a specific representation or warranty contained herein, each representation and warranty of New Operator hereunder shall be true, complete and correct in all material respects as of the Closing Date with the same force and effect as though such representation or warranty was made on such date, and all representations and warranties shall survive the Closing Date for the period of two (2) years; provided, however, that if Operator notifies New Operator in writing of a claim prior to the expiration of such two (2) year period, such representation or warranty shall survive as to such claim until the resolution of the claim.

10.2 By Operator. Operator hereby represents and warrants as follows:

(a) Operator has all necessary power and authority to enter into this Agreement and to execute all documents and instruments referred to herein or contemplated hereby and to consummate the transactions provided for herein, including, but not limited to, the sale to New Operator of the Inventory, Intangible Personal Property, and Personal Property, and all necessary action has been taken to authorize the individual executing this Agreement to do so. This Agreement has been duly and validly executed and delivered by Operator and is enforceable against Operator in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy laws and general principles of equity.

(b) Unless otherwise expressly indicated in a specific representation or warranty contained herein, each representation and warranty of Operator hereunder shall be true, complete and correct in all material respects as of the date hereof and as of the Closing Date with the same force and effect as though such representation or warranty made on such date, and except as otherwise set forth in Section 9.3(c), all representations and warranties shall survive the Closing Date for a period of one (1) year; provided, however, that if New Operator notifies Operator in writing of a claim prior to the expiration of such one (1) year period, such representation or warranty shall survive as to such claim until the resolution of the claim.

(c) To the best knowledge of Operator there are no actions, suits or other legal proceedings or investigations pending, or the best of Operator's actual knowledge, proposed or threatened, against the Operator or Facility that will or might create a lien upon the Facility. Except as otherwise disclosed to New Operator in Schedule 10.2 (c) attached hereto, there is no pending action, arbitration, audit, hearing, investigation, litigation, mediation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any governmental body, or arbitrator or mediator (each, a "Proceeding")**:**

(i) That has been commenced by or against the Operator or the Facility or that otherwise relates to or may affect the business of, or any of the assets owned or used by or at, the Facility (including without limitation the Transferred Assets); or

(ii) That challenges, or that may have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the transactions contemplated by this Agreement.

(d) Except as expressly provided in this Agreement, New Operator shall not assume any claims, lawsuits, liabilities, obligations or debts of Operator ("Excluded Liabilities"), including without limitation: (i) malpractice or other tort claims to the extent based on acts or omissions of Operator occurring before the Closing Date, or claims for breach of contract to the extent based on acts or omissions of Operator occurring before the Closing Date; (ii) any accounts payable, taxes, or other obligation or liability of Operator to pay money incurred by Operator prior to the Closing Date; and (iii) any other obligations or liabilities incurred by Operator prior to the Closing Date.

(e) To Operator's knowledge, Operator has all licenses and authority to do business as a New Mexico skilled nursing Facility in accordance with applicable Medicare and Medicaid laws. Operator holds a valid and current license from the New Mexico Department of Health to operate the Facility.

(f) Operator has not received any written notice that it failed to comply with any applicable laws, settlement agreements, or other agreements or with any state or federal governmental body relating to or regarding the Facility or obligations of the Operator or the Facility (including all applicable environmental, health and safety laws, rules, regulations and requirements), and has and maintains all permits, licenses, authorizations, registrations, approvals and consents of governmental authorities and all certificates of need required for the operation of the Facility, all health facility licenses, Medicaid, Medicare certifications necessary for the operation of the Facility as currently conducted. With respect to the health facility license, Medicaid and Medicare certifications, to the best of Operator's knowledge, no condition exists that would result in the suspension, revocation, termination, of the Facility's participation or eligibility to participate in any Medicare, Medicaid, or other current payor program. No claim has

been filed or asserted or threatened against Operator or the Facility to the effect that any such governmental consent, participation or contract is not in full force and effect.

(g) Each and every item constituting the Transferred Assets is owned by Operator and will be transferred to New Operator on the Closing Date free and clear of all liens, claims and encumbrances or any kind or nature.

(h) To Operator's knowledge, no demand has been made for recognition by a labor organization by or with respect to any of Operator's employees, no union organizing activities by or with respect to any of Operator's employees are taking place, and none of the Operator's employees is represented by any labor union· or organization; (i) there is no unfair practice claim against Operator before the National Labor Relations Board pending or, threatened against or involving its business; (ii) Operator is in compliance in all material respects with all laws and contracts respecting employment and employment practices, labor relations, terms and conditions of employment, and wages and hours; (iii) Operator is not engaged in any unfair labor practices; (iv) there are no pending or, threatened complaints or charges before any governmental entity regarding employment discrimination, safety or other employment-related charges or complaints, wage and hour claims.

(i) All taxes that are due and owing by Operator with respect to the Facility, business operated at the Facility or the Transferred Assets have been paid current. There is not currently any pending tax proceedings against Operator nor are there any tax liens on any Transferred Assets which will not be satisfied as of the Closing Date. There is no proceeding, audit, dispute or claim now pending or, to Operator's knowledge, proposed or threatened against, or with respect to, Operator or any of the Transferred Assets in respect of any taxes except as disclosed to New Operator on Schedule 10.2 (i) attached hereto. There are no liens on any of the Transferred Assets with respect to unpaid taxes. Operator has withheld and timely paid all taxes required to have been withheld and paid and has complied with all information reporting and backup withholding requirements.

(j) The execution and delivery of the this Agreement, compliance with the provisions hereof, and/or the carrying out of the transactions contemplated hereby to be carried out by Operator will result not in (i) a breach or violation of (A) any material law or governmental rule or regulation applicable to Operator now in effect, (B) any provision of any of Operator's organizational documents, (C) any material judgment, settlement agreement, order or decree of any court, arbitrator, administrative agency or other governmental authority binding upon Operator, or (D) any material agreement or instrument to which Operator is a party or by which Operator or its respective properties are bound; or (ii) the creation of any lien, claim or encumbrance upon any properties or assets of Operator.

(k) (i) 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, the "Licenses") have been obtained by the Operator required to hold such Licenses, and are in full force and effect, including approved provider status in any approved third-party payor program. Operator owns and/or possesses, and holds free from restrictions or conflicts with the rights of others, all such Licenses and has operated or caused the Facility to be operated in such a manner that the Licenses shall remain in full force and effect.

(ii) The Facility is duly licensed as a skilled nursing facility as required under the applicable laws of the State of New Mexico. The licensed bed capacity of the Facility is 88 beds and the actual bed count operated at the Facility is 88 beds. 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.

(iii) To Operator's knowledge, Operator (and the operation of the Facility) are in compliance in all material respects with the applicable provisions of the applicable laws, standards, policies, restrictions or rules of any Health Care Authority having jurisdiction over the ownership, use, occupancy or operation of the Facility, including (aa) staffing requirements, (bb) health and fire safety codes including quality and safety standards, (iii) accepted professional standards and principles that apply to the provision of services at the Facility, (cc) federal, state or local laws, rules, regulations or published interpretations or policies relating to the prevention of fraud and abuse, (dd) insurance, reimbursement and cost reporting requirements, government payment program requirements and disclosure of ownership and related information requirements, (ee) requirements of applicable Health Care Authorities, including those relating to the Facility's physical structure and environment, licensing, quality and adequacy of nursing facility care, distributions of pharmaceuticals, rate setting, equipment, personnel, and operating policies, and (ff) any other applicable laws or agreements for reimbursement for the type of care or services provided with respect to the Facility.

(iv) To Operator's knowledge, Operator is in compliance in all material respects with the requirements for participation in the Medicare and Medicaid programs with respect to the Facility and operates the Facility has a current provider agreement under Title XVIII and/or XIX of the Social Security Act which is in full force and effect. The Facility has not been designated as a Special Focus Facility (as such term is defined by the Centers for Medicare and Medicaid Services Special Focus Facility Program).

(v) To Operator's knowledge, Operator is not a target of, participant in, or subject to any action, proceeding, suit, audit, investigation or sanction by any Health Care Authority or any other administrative or investigative body or entity or any other third party payor or any patient or resident (including whistleblower suits, or suits brought pursuant to federal or state False Claims Acts, and Medicare/Medicaid/State fraud/abuse laws) which may result, directly or indirectly or with the passage of time, in the imposition of a material fine, penalty, alternative, interim or final sanction, a lower rate certification, recoupment, recovery, suspension or discontinuance of all or part of reimbursement from any Health Care Authority, third-party payor, insurance carrier or private payor, a lower reimbursement rate for services rendered to eligible patients, or any other civil or criminal remedy, or which could reasonably be expected to have a material adverse effect on Operator, or the operation of the Facility, including the Facility's ability to accept or retain residents, or which could result in the appointment of a receiver or manager, or in the modification, limitation, annulment, revocation, transfer, surrender, suspension or other impairment of a License, or affect Operator's participation in the Medicare, Medicaid, or other third-party payor program, or any successor program thereto, at current rate certification, nor has any such action, proceeding, suit, investigation or audit been threatened.

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

(vii) Other than the Medicare, Medicaid, and Veterans Administration programs, Operator is not a participant in any federal, state or local program whereby any Governmental Entity or any intermediary, agency, board or other authority or entity may have the right to recover funds with respect to any Facility by reason of the advance of federal, state or local funds, including those authorized under the Hill-Burton Act (42 U.S.C. 291, et seq.). Operator has not received notice, or have knowledge, of any actual or alleged violation of applicable antitrust laws by Seller.

(viii) All private payor, Medicaid, Medicare, managed care company, insurance company and other third-party insurance accounts receivable of Operator are free of any liens and no such receivables have been pledged as collateral security for any loan or indebtedness other than pursuant to Operator's existing operating line of credit.

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

(xv) To Operator's knowledge, Operator is in compliance in all material respects with the Health Care Insurance Portability and Accountability Act of 1996, and the regulations promulgated thereunder.

(xvi) To Operator's knowledge, there is no threatened or pending revocation, suspension, termination, probation, restriction, limitation, or non-renewal affecting Operator, the Facility or provider agreement with any third-party payor, Medicare or Medicaid.

(xvii) To Operator's knowledge, (i) there are no current, pending or outstanding Medicare, Medicaid or other third-party payor programs reimbursement audits or appeals, (ii) there are no cost report years that are subject to audits, (iii) no cost reports remain "open" or unsettled, and (iv) there are no current or pending Medicare, Medicaid or other third-party payor programs recoupment efforts, in each case with respect to the Facility.

(xviii) To Operator's knowledge, the Facility and the use thereof complies in all material respects with all applicable local, state, and federal building codes, fire codes, and other similar regulatory requirements and no waivers of such physical plant standards exist at such Facility. All required permits and/or approvals for all repairs, replacements, refurbishments or improvements at the Facility were received by the Operator from the applicable governmental authority in connection with any work at the Facility. There is no pending or open improvement work at the Facility.

(xiv) True and complete copies of all survey reports, notices and waivers of deficiencies, plans of correction, and any other investigation reports issued with respect to the Facility, together with material correspondence with Health Care Authorities concerning the Facility (collectively, the "Survey Reports") for the last three (3) years have been provided to the New Operator.

(xx) Neither Operator nor the Facility has received any oral notice, to the knowledge of Operator, or written notice or communication from any governmental entity, accreditation body, professional association (including trade associations and industry organizations), landlord or resident of the areas neighboring the Facility alleging any violation of accreditation, professional, trade, industry, ethical or other applicable standards by Operator or the Facility.

(xxi) Neither Operator nor any of its affiliates have provided any incentives to contracted provider networks or providers that have violated any applicable law with respect to inducing, directly or indirectly, such contracted provider networks or providers to refer patients to the Facility. Operator and the Facility are, and at all relevant times have been, in compliance with all federal anti-kickback statutes, the Stark law, the federal False Claims Act and any state law prohibiting kickbacks or certain referrals relating or applicable to Medicare or any other state or federal health care programs. In addition, Operator, and the Facility are, and at all relevant times have been, in compliance with all applicable laws pertaining to (i) billings to insurance companies, health maintenance organizations and other managed care plans or otherwise related to insurance fraud and (ii) collection agencies and the performance of collection services.

(xxii) There is no corporate integrity agreement or other monitoring or compliance agreement required by the Office of Inspector General or any other governmental authority that is currently in place and affecting the Facility or Operator.

(xxiii) Operator is not a party to, does not participate in, has not participated in nor has any liability or contingent liability with respect to:

(a) 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 ERISA; or

(b) 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).

For purposes of this Agreement the following capitalized terms are defined as follows:

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

"Health Care Requirements" shall mean, with respect to the Facility, all applicable laws, judgments and contracts, in each case, pertaining to or concerned with the establishment, construction, ownership, operation, use or occupancy of the Facility or any part thereof as a nursing facility, long-term acute care facility, assisted living facility or other health care facility and all licenses and permits, including all applicable laws promulgated by judgments of and contracts with Health Care Authorities as pertaining to the Facility.

(l) Operator has no actual notice of, and has not received oral notice, to the knowledge of Operator, and has not received written notice that, any event has occurred or circumstance exists that (with or without notice or lapse of time) (a) may constitute or result in a material violation by the Facility or by Operator relating to the Facility, to comply with, any applicable law, or (b) may give rise to any material obligation on the part of the Facility or by Operator relating to the Facility, to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

(m) The Facility has not received, and Operator has not received with respect to the Facility, any written notice or other communication (whether oral or written) from any governmental body or any other third party or entity regarding (a) any actual, alleged, possible or potential violation of, or failure to comply with, any applicable laws, or (b) any actual, alleged, possible or potential obligation on the part of

the Facility or by Operator relating to the Facility, to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

(n) To Operator's knowledge: (i) Operator and the Transferrred Assets and the business have been at all times operated by Operator in compliance with all applicable Environmental Laws (as defined herein) and all permits required under Environmental Laws, (ii) other than in compliance with applicable Environmental Laws, there has been no generation, processing, production, storage, treatment, transport, Release (as defined herein) or disposal of any Hazardous Materials (as defined herein), in, on, under, about or from the Facility by or on behalf of Operator or Operator's employees, agents, licensees, contractors, invitees or guests, or any of their respective employees, agents, licensees, contractors, invitees or guests, (iii there have not been and are no above-ground or underground storage tanks or electrical equipment containing PCB's or any friable asbestos-containing materials on the Facility, and (v) Operator has not received from any governmental authority or any other person, any notice of violation, notice to comply, compliance schedule, administrative or judicial complaint or action, information request, order, enforcement action or lien with respect to alleged or alleging potential violations of or liabilities under Environmental Laws by or on behalf of Operator or relating to the Facility, or any section with respect to any actual or alleged violation of or liability under any Environmental Law or, other than in compliance with applicable Environmental Laws, any Release or alleged Release of a Hazardous Material by or on behalf of Operator or relating to the Facility. Operator has delivered to New Operator copies of all reports in their possession of environmental compliance audits, environmental assessments, environmental inspection reports, and correspondence with or submissions to governmental authorities under Environmental Laws, in each case in connection with the operation of Operator's business or the Facility.

(i) To Operator's knowledge, Operator (i) does not have any liability under any Environmental Law or agreement with any person with respect to the Facility, or (ii) is not responsible for any liability of any other person, including liability for defending, indemnifying, or holding harmless, under any Environmental Law or agreement, with respect to the Facility.

(ii) "**Environmental Laws**" shall mean all applicable laws and contracts that purport to regulate the generation, processing, production, storage, treatment, transport or Release of Hazardous Materials to the environment, or impose requirements, conditions or restrictions relating to environmental protection, management, planning, reporting or notice or public or employee health and safety.

(iii) "**Hazardous Material(s)**" shall mean any substance that is (i) defined as a hazardous substance, hazardous material, hazardous waste, biohazardous materials, pollutant, toxic substance, pesticide, contaminant or words of similar import under any Environmental Law, (ii) a petroleum product, byproduct or other hydrocarbon substance, including, without limitation, crude oil or any fraction thereof, (iii) hazardous, toxic, corrosive, flammable, explosive, infectious, radioactive, carcinogenic or a reproductive toxicant, or otherwise a threat to human health, including, without limitation, infectious or medical wastes, asbestos or asbestos containing materials, polychlorinated biphenyls, and lead or lead containing materials, or (iv) regulated pursuant to any Environmental Law.

(iv) "**Release**" shall mean any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, releasing or disposing into the environment (including, without limitation, the abandonment or discarding of barrels, containers and other receptacles containing any Hazardous Material).

As used in this Agreement, the term "to Operator's knowledge" and similar formulations, means the actual knowledge of Administrator, Cindy Westerman and the general partners, limited partners and/or officers of Operator with respect to the relevant fact or other matters at issue or should have had actual knowledge of such relevant fact or other matter assuming the diligent exercise of such individual's duties as a Administrator, general partner, limited partner and/or officer of Operator after reasonable investigation.

11. General Provisions

11.1 Bankruptcy Court Approval . Operator shall use its best efforts to gain approval by the Bankruptcy Court of the sale from Operator to New Operator, to the fullest extend required by Section 363 and other applicable provisions of the Bankruptcy Code and Rules by no later than October __, 2018. Immediately following the execution of this agreement, but in no event later than 3 business days following the execution of this Agreement, Operator shall file a Sale Motion in the form and substance satisfactory to New Operator, seeking entry of an order approving the sale of the assets to New Operator. ("Sale Motion"). Promptly after filing the Sale Motion, Operator shall use best efforts to obtain a hearing thereon at the earliest permissible date, but in no event shall such hearing be later than October __, 2018. Upon obtaining a hearing date, Operator shall give notice of the Sale Motion and the hearing thereon as and when required by applicable provisions of the Bankruptcy Code and order of the Bankruptcy Court. The Sale Motion and Sale Order shall be served upon all creditors and parties in interest, including but not limited to secured and unsecured creditors, priority claimants, taxing authorities, governmental agencies, regulatory authorities and current and former residents (for a period of three years prior to the date of this Agreement).

11.2 Condition Precedent to Closing.

(a) The following shall be conditions to Operator's obligations to consummate the transactions contemplated by this Agreement:

(i) The representations and warranties of New Operator set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date. On the Closing Date, Operator shall have received a certificate signed by an authorized officer of New Operator to that effect.

(ii) Operator shall have no obligation to consummate the transactions set forth herein unless and until the issuance of its license to operate the Facility as a skilled nursing the facility by the State of New Mexico Department of Health.

(iii) Operator shall have received a Certificate signed by an authorized officer of New Operator certifying that all conditions precedent have been satisfied as of the Closing Date and that New Operator has performed or complied

in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by the New Operator by the time of the Closing.

(b) The following shall be conditions to New Operator's obligations to consummate the transactions contemplated by this Agreement:

(i) The representations and warranties of Operator set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date. On the Closing Date, New Operator shall have received a certificate signed by an officer of Operator to that effect.

(ii) Operator shall have duly performed and complied in all material respects with all agreements, covenants and conditions as set forth in the Agreement on the Closing Date.

(iii) New Operator has received from New Mexico Department of Health, in New Operator's own name, in a reasonable enough time prior to the Closing Date, a written license to operate the Facility as a skilled nursing facility.

(iv) New Operator shall have received a Certificate signed by an authorized officer of Operator certifying that all conditions precedent have been satisfied as of the Closing Date and that Operator has performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by the Operator by the time of the Closing.

(v) No action shall have been commenced against Operator, which would prevent the closing of the transactions contemplated by this Agreement. No injunction or restraining order shall have been issued by any governmental authority, and be in effect, which restrains or prohibits any transaction contemplated hereby.

(vi) There shall not have occurred any Material Adverse Effect (as defined below), nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect. For the purposes of this subsection a "Material Adverse Effect" means any event, state of facts, circumstance, development, change, effect or occurrence (an "Effect") that is likely to (or in the case of a proceeding or claim, if determined against Operator or the Facility), materially or adversely affect the business, financial condition or results of operations of the business at the Facility, or Operator, but does not include general

changes to economic conditions or applicable laws affecting generally the industry or market for skilled nursing facilities that do not disproportionately affect the Facility or Operator.

(vii) Operator shall execute and deliver to New Operator the Bill of Sale to New Operator that confirms the conveyance of the Inventory, Personal Property and Intangible Personal Property.

(viii) Operator and New Operator shall execute the Assignment and Assumption Agreement wherein Operator assigns its rights and interests in any assumed contracts listed therein and any Patient Trust Funds and New Operator assumes the liability thereof.

(ix) New Operator shall have received copies of all the consents, approvals from third parties and circulation of all of the notices identified on **Schedule 11.2(b) (ix)** hereof.

(x) Operator shall have delivered to New Operator **Schedule 11.2(b)(x)** setting forth (i) a complete and accurate list of Facility violations, including F-tag or more severe violations, penalties, sanctions or other requirements imposed by the New Mexico Department of Health (the "Licensing Agency") or the Centers for Medicare & Medicaid Services ("CMS") pursuant to any notices received by the Facility within one hundred twenty (120) days prior to the Transfer Date and (ii) an indication of whether each such violation has been resolved or remains unresolved as of the Transfer Date.

(xi) The Facility shall not be Out of Compliance (as defined herein) as of the Closing Date and there shall be no Deficiency Events (as defined herein) as of the Closing Date.

(xii) The Facility shall not be a Special Focus Facility at any time prior to or on the Closing Date.

(xiii) Operator shall have delivered to New Operator duly executed counterparts to the transaction documents, including, but not limited to, the Assignment and Assumption Agreements and such other documents or instruments as New Operator reasonably requests are reasonably necessary to consummate the transactions contemplated by this Agreement.

(xiv) The Inventory, Personal Property and Intangible Personal Property shall be transferred to New Operator, on the Closing Date, free

and clear of all liens, security interests, charges, claims, restrictions or encumbrances of any kind.

(xv) Operator shall deliver to New Operator on the Closing Date, a termination of the Old Lease executed by Seller and Operator, in form and substance reasonably acceptable to New Operator.

(xvi) The occurrence concurrent with the closing under this Agreement, the closing by Seller and Purchaser under the PSA. Notwithstanding anything contained in this Agreement, in the event that the closing under the PSA does not occur for any reason or if the PSA is terminated prior to the Closing Date, for any reason whatsoever, this Agreement shall be deemed automatically terminated and neither party shall have any further obligation or liability to the party under this Agreement upon such termination.

(xvii) New Operator shall have the right to request from the New Mexico Taxation and Revenue Department tax clearance with respect to Operator's transfer of the Transferred Assets, confirming that Operator has no tax due. Notwithstanding anything contained in this Agreement: (x) if New Operator requests from the New Mexico Taxation and Revenue Department such tax clearance, New Operator's receipt of same, showing no tax due shall be deemed a condition precedent to New Operator's obligation to close this transaction, (y) in the event that New Operator does not receive from the New Mexico Taxation and Revenue Department confirmation by the Closing Date, that no tax is due from Operator, or if New Operator receives confirmation from the New Mexico Taxation and Revenue that in fact a tax is due and Operator does not intend to pay such tax, New Operator shall have the right to terminate this Agreement by giving written notice of termination to Operator.

(xviii) Entry by the Bankruptcy Court of a Final Sale Order consistent with this Agreement and free and clear of all liens, claims and encumbrances, expressly including a finding and making Section 363(m) of the Bankruptcy Code applicable to this Agreement and New Operator, and otherwise in a form and substance satisfactory to New Operator, in its sole discretion. For purposes of this section "Final Sale Order" means a sale order, ruling or other decree (or any revision, modification or amendment thereto) entered by the Bankruptcy Court which has not been reversed, vacated, stayed , modified or amended and as to which (i) no appeal , petition for review, re-argument, rehearing, reconsideration or certiorari has been taken and the time for any appeal, petition for review, re-argument, rehearing, reconsideration or certiorari has expired or (ii) such appeal or petition has been heard and dismissed or resolved and the time for further appeal or petition has expired and no further appeal or petition is pending.

Notwithstanding anything contained in this Agreement, this Agreement may be terminated, and the transactions contemplated by this Agreement abandoned at any time prior to any Closing: (a) by New Operator if any of the conditions set forth in Section 11.2 (b) have not been satisfied by Transferor and have not been waived by New Operator, or (b) by Operator if any of the conditions set forth in Section 11.2 (a) have not been satisfied by New Operator and have not been waived by Operator. In the event of termination by New Operator or Operator pursuant to this Section, written notice thereof shall forthwith be given to the other and the transactions contemplated by this Agreement shall be terminated, without further action by any party.

11.3 Survey Deficiencies and Out of Compliance Issues. In the event a survey by any Health Care Authority occurs prior to the Closing Date, and the results of such survey are delivered before or after the Closing Date, Operator shall be fully responsible for the cost of (a) any applicable fines and (b) any cited Life Safety Code deficiencies at any of the Facilities that are required to be remedied (collectively "Deficiency Events"). If any Deficiency Events shall occur prior to the Closing Date or if any Facility is Out of Compliance (as defined below) prior to the Closing Date, the New Operator and Operator agree to cooperate and use reasonably commercial efforts to resolve by the Closing Date the Deficiency Events or the issues causing the Facility to be Out of Compliance. With regard to deficiencies that pre-date the Closing Date, Operator shall cooperate with New Operator to develop a plan of correction reasonably necessary to achieve compliance (a "Plan of Correction"), and Operator shall bear the expense of (i) developing any Plan of Correction, and (ii) all consultants, materials and supplies necessary to implement the aspects of any Plan of Correction that pre-date the Closing Date. In this regard, Operator and New Operator shall rely on internal staff of such New Operator to the fullest extent possible in developing any such Plan of Correction. New Operator has no obligation to close the transaction contemplated herein if the Facility is Out of Compliance, nor does New Operator have any obligation to assist Operator in bringing the Facility into compliance so that it is no longer Out of Compliance. For the purposes of this Agreement, the term "Out of Compliance" means that Operator has received prior to the Closing Date notice of (A) a finding by a governmental entity of one or more deficiencies at the Facility at a "level G" or above in its most recent standard or complaint survey or any prior survey that has not been corrected such that the Facility is found to be in "substantial compliance" with applicable Health Care Requirements by the applicable governmental entity; (B) a finding by a governmental entity that the Facility has deficiencies that have caused or are likely to cause serious harm, injury, impairment or death if not immediately rectified to resident health and safety that has not found to have been corrected by the applicable governmental entity; or (C) a denial of the Facility's right to admit patients or to receive Medicare or Medicaid payments or reimbursements for existing patients or for new admissions, at the Facility, including, without limitation, any denial of payment for new admissions. Notwithstanding anything contained in this Agreement, New Operator shall have no obligation to close the transaction contemplated herein if the Facility is Out of Compliance, nor does New Operator have any obligation to assist Operator in bringing a Facility into compliance so that it is no longer Out of Compliance. The provisions of this Section 11.3 shall survive the Closing.

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

11.5 Notices. All notices to be given by either party to this Agreement to the other party hereto shall be in writing, and shall be (a) given in person, (b) deposited in the United States mail, certified or registered, post-age prepaid, return receipt requested, (c) sent by national overnight courier service, or (d) by email:

each addressed as follows:

(a) If to Operator:

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

With a Copy to:

Robert J. Riek
General Counsel
5500 W. Plano Parkway, Suite 210
Plano, Texas 75093
Fax: (972) 767-6235
Email:bob.riek@pcitexas.net

(b) If to New Operator:

New Mexico Care Holdings, LLC
c/o Invigorate Healthcare, Inc.
5200 N. Palm Ave., Suite 107
Fresno, CA 93704
Email: brandon@invigorate.healthcare

With a Copies to:

James N. Eimers
Attorney & Counselor at Law
Fountaingrove Corporate Centre
3510 Unocal Place, Suite 200
Santa Rosa, CA 95403-0918
Email: jim@eimerslaw.com

And

Elizabeth Green
Partner

BakerHostetler LLP
200 S Orange Ave suite 2300
Orlando, Florida 32801
Email: egreen@bakerlaw.com

Any such notice personally delivered shall be deemed delivered when actually received, any such notice deposited in the United States mail, registered or certified, return receipt requested, with all postage prepaid, shall be deemed to have been given three (3) business days after deposit in the mail, any notice deposited with an overnight courier service for deliver shall be deemed delivered on the business day following such deposit, and if sent by email then upon written or electronic communication from the recipient acknowledging receipt or receipt by the party giving the notice of a "read receipt" confirmation. Any party to whom notices are to be sent pursuant to this Agreement may from time to time change its address for further communications thereunder by giving notice in the manner prescribed herein to all other parties hereto.

11.6 Access to Information and Cooperation. Operator agrees that, subject to limitations expressed otherwise herein, until the Closing Date, New Operator (i) is entitled through its officers, employees and representatives (including its legal advisors, accountants and other advisors) to make such investigation of the properties, businesses, and operations of the Facility and such examination of the books and records of the Facility, the Transferred Assets as it reasonably requested and to make extracts and copies of such books and records, and (ii) has, after reasonable prior notice to Operator and so long as such access did not unreasonably interfere with the business operations of the Facility, had reasonable access during normal business hours to the Facility and to make such reasonable investigation of the properties (including, without limitation, the Transferred Assets), business and operations of the Operator and its affiliates with which it is under common control to the extent relating to the Facility (including to conduct a physical inventory of the inventory) and, regarding the Facility, the right to conduct property condition inspections and other investigations, as applicable. Any investigation and examination has been conducted during regular business hours upon reasonable advance notice and under reasonable circumstances and subject to restrictions under applicable law. Operator has caused its officers, employees, consultants, agents, accountants, attorneys, and other representatives to cooperate with New Operator and New Operator's representatives in connection with such investigation and examination, and the New Operator and its representatives have cooperated with Operator and its representatives and have used their commercially reasonable efforts to minimize any disruption to the business and operations of the Facility.

11.7 Notice of Certain Events.

(a) At all times prior to the Closing Date, Operator agrees that it shall promptly notify New Operator in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (x) has had, or could reasonably be expected to have,

individually or in the aggregate, a material adverse change, (y) has resulted in, or could reasonably be expected to result in, any representation or warranty made by Transferor hereunder not being true and correct or (z) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Section 11.2 (b) hereof to be satisfied;

(ii) any notice or other communication from any person alleging that the consent of such person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any notice or other communication from any governmental authority in connection with the transactions contemplated by this Agreement; and

(iv) any actions commenced or, to Operator's knowledge, threatened against, relating to or involving or otherwise affecting the business or operations of the Facility, the Transferred Assets that relates to the consummation of the transactions contemplated by this Agreement.

(b) New Operator's receipt of information pursuant to this Section 11.7 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Operator in this Agreement and shall not be deemed to amend or supplement the disclosure schedules to this Agreement.

12. Payment of Expenses. Each party hereto shall bear its own legal, accounting and other expenses incurred in connection with the preparation and negotiation of this Agreement and the consummation of the transaction contemplated hereby, whether or not the transaction is consummated.

13. 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 of this Agreement. No failure to act shall be construed as a waiver of any term, provision, condition or rights granted hereunder.

14. 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, which shall not be unreasonably withheld or delayed. However, the rights, if any, under this Agreement may be freely assigned to Owner's lenders (for avoidance of doubt, it is agreed that such assignment shall not constitute Owner's lenders having assumed any obligations under this Agreement).

15. 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 (other than Owner's lenders) shall have any rights under this Agreement.

16. Intentionally Omitted.

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

18. Counterparts. This Agreement may be executed in one or more counterparts and all such counterparts taken together shall constitute a single original Agreement.

19. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW MEXICO.

20. Intentionally Omitted.

21. 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, legal Jewish or Christian holiday, in which event the period shall run until the next day which is not a Saturday, Sunday or a legal Jewish or Christian holiday.

22. Waiver of Trial by Jury. 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.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereby execute this Agreement as of the day and year first set forth above.

OPERATOR:

Desert Springs Health Facilities, L.P.,
a Texas limited partnership

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

By:_____
Robert J. Riek, Manager

NEW OPERATOR:

New Mexico Care Holdings, LLC,
a New Mexico limited liability company

By: _____
Brandon Bigelow, CEO

EXHIBIT A

BILL OF SALE
(INVENTORY, PERSONAL PROPERTY, AND INTANGIBLE PERSONAL PROPERTY)

BILL OF SALE

Date: _____

Seller: _____

Seller's Mailing Address:

_____

_____

Buyer:_____

Buyer's Mailing Address:

_____
_____

Consideration:

_____ and other good and valuable consideration, the receipt and sufficiency of which is acknowledged.

Transferred Properties:

The Inventory, the Personal Property, and the Intangible Personal Property, defined by that certain Operations Transfer Agreement dated as of September ___, 2018 between the parties, all of which is located on or near the skilled nursing facility known as _____, _____, Texas.

Exceptions to Transfer and Warranty:

Normal wear and tear excepted.

Except as otherwise provided in the Operations Transfer Agreement, the Inventory, the Personal Property, and the Intangible Personal Property (collectively, the "Transferred Properties") are conveyed AS IS.

Seller hereby repreesnts and warrants to Buyer that Seller is the absolute owner of said Trnasferred Properties, that said Transferred Properties is free and clear of all liens, charges and

encumbrances, and that Seller has full right, power and authority to sell said Transferred Assets and to make this Bill of Sale.

Seller, for valuable consideration, sells, transfers, and delivers the Transferred Properties to Buyer, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Buyer and Buyer's heirs, successors, and assigns forever. When the context requires, singular nouns and pronouns include the plural.

_____, a Texas _____

By: _____

_____, _____

By: _____

_____, _____

STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on _____, 2018, by _____.

Notary Public, State of Texas

My commission expires: _____

EXHIBIT B

ASSUMED OPERATING CONTRACTS

EXHIBIT C

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is entered into effective this ___ day of _____, 2018, by and among _____, a Texas _____ (the "Assignor"), and _____, , ("Assignee").

W I T N E S S E T H:

WHEREAS, Assignee and Assignor are parties to that certain Operations Transfer Agreement dated of even date herewith (the "Transfer Agreement"); and

WHEREAS, on even date herewith, Assignor has executed a Bill of Sale whereby Assignor has sold, transferred and conveyed to Assignee the Inventory, the Personal Property, and the Intangible Personal Property (as defined in the Transfer Agreement); and

WHEREAS, Assignee desires to assume only the Assumed Operating Contracts of Assignor (as defined in the Transfer Agreement and set forth on Exhibit B thereto);

NOW, THEREFORE, for and in consideration of these premises, the mutual covenants and undertakings and for other good and valuable consideration, the full receipt and sufficiency of which are hereby expressly acknowledged and confessed, the parties hereto agree as follows:

1. Assignment and Assumption. Assignor hereby transfers and assigns all of its right, title and interest in and to the Assumed Operating Contracts and Assignee hereby accepts such transfer and assignment and assumes all obligations in connection with the Assumed Operating contracts, arising or first becoming due and payable after the date hereof.

2. Conflicts. This Agreement is made subject to and with the benefit of the respective representations, warranties, covenants, terms, conditions, limitations and other provisions of the Transfer Agreement.

3. Defined Terms. Capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Transfer Agreement.

4. Amendment. This Agreement may be amended, modified or supplemented only by an instrument in writing executed by the party against which enforcement of the amendment, modification or supplement is sought.

5. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

6. GOVERNING LAW. THE VALIDITY, INTERPRETATION AND PERFORMANCE OF THIS AGREEMENT AND ANY DISPUTE CONNECTED HEREWITH SHALL BE

GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE STATE OF TEXAS.

7. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, assigns and legal representatives.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the date first above written.

ASSIGNOR:

_____, a Texas _____
By: _____
_____, _____

ASSIGNEE:

_____
a

By: _____

EXHIBIT D

ASSIGNMENT AND ASSUMPTION OF ADMISSION AGREEMENTS

This ASSIGNMENT AND ASSUMPTION OF ADMISSION AGREEMENTS (this "Agreement") is dated as of _____, 2018 (the "Operations Transfer Date"), by and between _____., a _____ ("Assignor") and _____, a _____ ("Assignee"), with reference to the following facts:

Concurrently herewith Assignee is undertaking operational and financial responsibility for the skilled nursing facility known as "_____" located at _____ (the "Facility"). In connection therewith, Assignor has agreed to assign, transfer and convey to Assignee, to the extent assignable or transferable, all of Assignor's right, title and interest in and to the Resident Admission Agreements (as that term is defined in Section ___ of that Operations Transfer Agreement (the "OTA") dated _____ between Assignor, as Operator, and Assignee, as New Operator).

NOW, THEREFORE, in consideration of the foregoing and TEN AND NO/100 DOLLARS ($10.00) and other good and valuable consideration in hand paid by Assignee to Assignor, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby assign, transfer and convey to Assignee, and Assignee hereby assumes any and all obligations and liabilities under, all of the Resident Admission Agreements.

Assignor remains liable for all liabilities and obligations of Assignor relating to the Resident Admission Agreements which accrued prior to the Closing Date and Assignor shall indemnify, defend, protect and hold Assignee harmless from and against all liabilities and obligations of Assignor relating to the Resident Admission Agreements which accrued prior to the Closing Date.

Assignee assumes all liabilities and obligations of Assignor relating to the Resident Admission Agreements which accrue on or after the Closing Date, and Assignee shall indemnify, defend, protect and hold Assignor harmless from and against all liabilities and obligations relating to the Resident Admission Agreements which accrue on or after the Closing Date.

This Agreement shall be governed by the laws of the State of New Mexico. This Agreement may be executed in one or more counterparts, each of which shall be deemed and original, but all of which when taken together shall constitute one agreement.

[***Signatures on following page***]

IN WITNESS WHEREOF, the undersigned have executed this Assignment and Assumption Agreement as of the date first above written.

ASSIGNOR:

By: _____
Name:
Its:

ASSIGNEE:

By: _____
Name:
Title:

Exhibit E

Transition Procedures for Administration of Accounts Receivable

1. Accounts Receivable. Operator shall retain its right, title and interest in and to all unpaid accounts receivable (and the proceeds thereof) with respect to the Facility which relate to the period prior to the Transfer Date ("Operator Accounts Receivable"), including, but not limited to, any accounts receivable arising from rate adjustments which relate to the period prior to the Transfer Date even if such adjustments occur after the Transfer Date and Operator shall remain liable for any overpayments made to Operator prior to the Transfer Date for which payment is due to Medicaid or any other third party payor after the Effective Date.

New Operator will have all rights to accounts receivable (and the proceeds thereof) with respect to the Facility allocable to periods on and after the Transfer Date ("New Operator Accounts Receivable"). Neither Operator nor any of Operator's creditors shall have any right to, interest in or claim against any New Operator Accounts Receivable. To the extent Operator or any of Operator's creditors obtains possession thereof, it shall hold the same solely as custodian for the benefit of New Operator.

2. Application of Receipts. Payments received on or after the Transfer Date from third party payors, such as Medicaid, Medicare, VA and private pay providers, shall be handled as follows:

2.1 If such payments either specifically indicate on the accompanying remittance advice, or if the parties agree, that they relate to the period prior to the Transfer Date, they shall be retained by or, if applicable, forwarded to Operator, along with the applicable remittance advice; and

2.2 If such payments indicate on the accompanying remittance advice, or if the parties agree, that they relate to the period on or after the Transfer Date, they shall be retained by or, if applicable, forwarded to New Operator.

2.3 If such payments indicated on the accompanying remittance advice, or if the parties agree, that they relate to periods both prior to and after the Transfer Date, the portion thereof which relates to the period on and after the Transfer Date shall be retained by or, if applicable, forwarded to New Operator and the balance shall be retained or, if applicable, forwarded to Operator.

2.4 If such payments do not indicate on an accompanying remittance advice the period to which they relate, they will first be applied to any post-Transfer Date balances, and retained by or, if applicable, forwarded to New Operator, with the excess, if any, applied to the extent of any balances due for

services rendered by Operator prior to the Transfer Date.

2.5 Any payments received during the first fifteen (15) days after the Transfer Date from or on behalf of private pay patients with outstanding balances as of the Transfer Date which fail to designate the period to which they relate, will first be applied to reduce the patient's pre- Transfer Date balances, with any excess applied to reduce any balances due for services rendered by New Operator after the Transfer Date. Thereafter all non-designated payments will first be applied to any post-Transfer Date balances, with the excess, if any, applied to the extent of any balances due for services rendered by Operator prior to the Transfer Date.

2.6 Nothing herein shall be deemed to limit in any way Operator's rights and remedies to recover accounts receivable due and owing Operator under the terms of this Agreement.

2.7 In the event the parties mutually determine that any payment hereunder was misapplied by the parties, the party which erroneously received said payment shall remit the same to the other as provided for herein.

3. Inspection Rights. New Operator and Operator shall have the right to inspect all cash receipts of the other in order to confirm compliance with the obligations imposed under this Exhibit E. New Operator and Operator shall have the right to inspect cash receipts, accounts receivable billings and remittances of the other in order to confirm their respective right to cash receipts under this Exhibit E.

4. Control Account.

4.1 Operator Accounts Receivable under Medicare or Medicaid are deposited into a control account (the "Government Receivables Account") at Wells Fargo Bank, National Association ("Wells Fargo") and swept daily by Wells Fargo and applied to the indebtedness of the Preferred Care Group under its line of credit with Wells Fargo.

4.2 The parties acknowledge that New Operator will use the Operator's Medicare and/or Medicaid provider numbers for New Operator Accounts Receivable under Medicare and/or Medicaid (collectively, "Government Receivables"), and that the Government Receivables representing New Operator Accounts Receivable will be paid to the account currently designated for Operator's Medicare and/or Medicaid provider numbers and swept by Wells Fargo until New Operator receives acknowledgement of the ownership change from Medicare and/or Medicaid, as the case may be (the "tie-in notices"). On the Transfer Date, Operator shall provide New Operator with its NPI number and cooperate with Medicaid to provide access to the Medicaid portal to enable New

Operator to submit billings and receive remittance advice for Medicaid Receivables payable on or after the Transfer Date and until New Operator receives the tie-in notices (the "Transition Period").

4.3 The deposit of funds in the Government Receivables Account will not alter any person's right to or interest in or create a claim against such funds that does not otherwise exist. However, funds deposited in the Operator's Government Receivables Account are swept by Wells Fargo and applied to the outstanding indebtedness of the Preferred Care Group under Wells Fargo line of credit. Operator shall determine the allocation of all Post Date collections pursuant to the terms and provisions of this Agreement and pay funds to New Operator consistent with this Exhibit E.

4.4 As soon (i) as practicable, and in any event, on or before Friday of each week, Operator will determine the amount of the prior week's deposits that represent payments of New Operator Accounts Receivable, and (ii) pay that amount that to the Operator on or before Friday of each week.

4.5 All remittance advices from government payors to Operator shall be sent to New Operator within twenty-four (24) hours of receipt.

4.6 The parties shall reconcile amounts due to New Operator from Operator, and amounts due from New Operator to Operator, twice per month.

4.7 Deposits in the Government Receivables Account under Operator's Medicare and/or Medicaid provider numbers will terminate once tie-in notices are issued by Medicare or Medicaid (collectively, "Receipt of Tie-In Notices"), as the case may be, such that New Operator Accounts Receivable from that government payor will thereafter be deposited directly into to an account owned only by New Operator. For each government payor, New Operator will promptly provide Wells Fargo and Operator written notice when this condition is met.

5. Cooperation. Operator will cooperate with New Operator in order to implement the procedures outlined in this **Exhibit E.**

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 THE DESERT SPRINGS FACILITY 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 LEASE; AND (B) APPROVING THE FORM OF OPERATIONS TRANSFER 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 The Desert Springs Facility 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 Lease; and*

(B) Approving the Form of Operations Transfer Agreement [Docket No. __] (the "**Motion**").[1] The Motion was filed by Desert Springs Health Facilities, L.P. (the "**Desert Springs**" or "**Debtor**") which operates the Desert Springs Nursing and Rehabilitation Center in Hobbs, New Mexico (the "**Facility**"). The Debtor is a debtor and debtor-in-possession in the bankruptcy cases jointly administered in Case No. 17-44642. The Debtor has 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 Facility and assets necessary for the operations of the Facility (defined more fully in the OTAs as the "**Assets**"), free and clear of liens, claims, encumbrances, and interests;

(b) approving the *Operations Transfer Agreements* (the "**OTA**") the proposed form of which was attached to the Motion, by and between the Debtor and the Purchaser of the Facility;

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

(d) approving the rejection and termination of the real property leases associated with the Facility (the "**Lease Termination**"); and

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

On October __, 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

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

judicial notice of the materials on file in the above-enumerated Chapter 11 Cases, the Court has determined that the Debtor has 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 Debtor has a Medicare Provider Agreement with the U.S. Department of Health and Human Services' Centers for Medicare & Medicaid Services ("**CMS**") (collectively, the "**Provider Agreements**"). The Debtor is subject to Medicare statutes, regulations, procedures and policies.

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

[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.

Cases and/or registered to receive electronic service.

6. The Court finds that the scope and manner of the service provided by the Debtor 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 Debtor has the full power and authority to execute the OTA and all other documents that are: 1) referenced in or contemplated by the OTA or 2) necessary or appropriate to effectuate the transfers of the Debtor's operations and Assets. All actions contemplated by the OTA have been duly and validly authorized, and the Debtor has the full power and authority to consummate the transactions contemplated by the OTA. No further consents or approvals, other than entry of this Sale Order, are required for the Debtor to consummate the OTA, except as specifically provided for in this Sale Order.

8. The relief sought by the Debtor in the Motion, including, but not limited to, the authorization of the sale and transfer of the operations and Assets of the Facility, approval of the OTA, approval of the assumption and assignment of the Assumed Contracts; and approval of the Lease Termination, is, at this time, in the best interests of the Debtor, its bankruptcy estate, its creditors and its interest holders.

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

10. The OTA was proposed and entered into by the Debtor and the Purchaser in good faith. The consideration set forth in the OTA constitutes fair value for the Assets. Neither the Debtor nor the Purchaser have engaged in any conduct that would cause or permit the OTA to be avoided under Bankruptcy Code § 363(n). The Purchaser is not an "insider" of the Debtor, as that term is defined in Bankruptcy Code § 101. The Purchaser has no connections, is not affiliated or an insider of, nor does it have any undisclosed agreements with either the Debtor, or any of its 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 OTA 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 Asset (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. Hacienda Care XXIV, L.P. ("Hacienda Care"), the lessor under lease with the Debtor, would not have agreed to terminate the lease with the Debtor if the Purchaser had not agreed to the OTA and entered into a new lease for the Facility. The Purchaser would not have

agreed to the OTA 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 Debtor 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 OTA (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 Debtor 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 Debtor, the Assets, or the operation of the business of the Debtor 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 36-40 of this Sale Order. The Claims are hereinafter referred to as the "**Interests**."

16. The Debtor is 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 Debtor 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 OTA is conditioned upon entry of this Sale Order, and the assumption and assignment of the Provider Agreement is subject to the Medicare statutes, regulations, procedures, policies, and rules.

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 Operations Transfer Agreement

21. The OTA, 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 Debtor, as debtor-in-possession, is authorized to consummate the transfer of the Assets, pursuant to and in accordance with the terms and conditions of the OTA, 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 OTA are approved in all respects.

23. Without the need for any additional order of this Court, the Debtor and its employees and agents are authorized to execute and deliver, and empowered to perform under, consummate and implement the OTA, 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 OTA, including without limitation the requirements of the OTA related to administration of accounts receivable (the "**Accounts Receivable Procedures**").

24. Without the need for any additional order of this Court, the Debtor is authorized and directed to comply with the provisions of the Accounts Receivable Procedures set forth in the OTA, 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 Termination

25. The Lease Termination is hereby approved pursuant to 11 U.S.C. § 365. The lease associated with the Facility shall be rejected and terminated as of the Closing Date.

C. Transfer of the Assets Free and Clear of Interests

26. The Debtor is authorized to transfer the Assets to Purchaser in accordance with the terms of the OTA. The Debtor shall transfer the Assets to the Purchaser on the Closing Date, in accordance with the OTA, 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 OTA free and clear of all Interests, except as specifically provided in paragraphs 36-40 of this Sale Order. The Assets shall include all of the Debtor's Transferred Records, which shall remain with the Facility and be owned by the Purchaser on and after the Closing Date.

27. 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 OTA or this Sale Order.

28. Except as expressly permitted by the OTA 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 Debtor, the Assets, the operation of the Debtor's 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 Debtor to transfer the Assets to the Purchaser in accordance with the terms of the OTA and this Sale Order.

29. This Sale Order is and shall be effective as a determination that, upon transfer of the Assets to the Purchaser, pursuant to the OTA, 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 36-40 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 OTA, except as provided in paragraphs 36-40 of this Sale Order.

D. Assumption and Assignment of Assumed Contracts

30. The Debtor is 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 OTA, 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 Debtor or its creditors in connection with their bankruptcy cases, except as specifically provided in paragraphs 36-40 of this Sale Order.

31. Within 30 days of the entry of this Sale Order, the Debtor shall pay in accordance with the OTA 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 Debtor 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.

32. The Purchaser and the Debtor 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 Debtor.

33. On the Closing Date, the Assumed Contracts will be assigned to the Purchaser, subject to the terms of the OTA, 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 Debtor to terminate or modify such contracts or leases on account of such assignment or transfer pursuant to Bankruptcy Code § 365(f), except as specifically provided in paragraphs 36-40 of this Sale Order.

34. Except as otherwise provided herein, pursuant to § 365(k), upon Closing and payment of the Cure Costs by the Debtor, the Debtor is 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 Debtor, its estates, or the Purchaser, except as specifically provided in paragraphs 36-40 of this Sale Order.

35. The Debtor is 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

36. Notwithstanding anything in this Sale Order or the OTA, the Debtor 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 Debtor's payments to the United States of America (the "**United States**") as specified below.

37. Notwithstanding anything in this Sale Order or the OTA, 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 and/or Medicaid 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 and/or Medicaid statutes, regulations, policies, procedures and rules.

38. Notwithstanding anything in this Sale Order or the OTA, the Debtor and the Purchaser shall submit all cost reports pursuant to all Medicare statutes, regulations, policies, procedures and rules. Should the Debtor fail to comply with its 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 and/or Medicaid statutes, regulations, policies, procedures and rules until such time as the required cost reports are filed by the Debtor or the Purchaser. The Debtor shall cooperate with the Purchaser in the filing of the required cost reports.

39. Nothing in this Sale Order as so ordered by the Court or the OTA shall relieve or be construed to relieve the Debtor or any Purchaser from complying with all Medicare statutes, regulations, policies, procedures and rules, including, but not limited to, the requirement that the Debtor and Purchaser apply for and obtain CMS approval of a change of ownership by the filing of Form CMS-855A.

40. Nothing in this Sale Order or the OTA 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 Debtor or Purchaser in the ordinary course of business. Nothing in this Sale Order or the OTA 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 Debtor or from Purchaser in accordance with the Medicare statues, regulations, procedures, policies and rules.

41. 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).

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

43. The OTA 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 Debtor's bankruptcy estate.

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

45. In the event of any inconsistency between the terms and provisions of this Sale Order and the OTA, 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 OTA and where such provision in the Motion and the OTA are inconsistent, the OTA shall govern. In the event of any inconsistency between the terms and provisions of paragraphs 36-40 of this Sale Order on the one hand, and the terms and provisions of any other paragraph in this Sale Order, the OTA, and any related transaction documents or exhibits on the other hand, the terms and provisions of paragraphs 36-40 of this Sale Order shall control.

46. Subject to paragraphs 36-40 of this Sale Order, this Court shall retain jurisdiction to: (i) enforce and implement the terms and provisions of the OTA (including any breach of the OTA), 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 OTA or any related transaction documents.

47. 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
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