

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In re:)	
)	
Vanguard Healthcare, LLC, <i>et al.</i> ¹)	Case No. 16-03296
)	Chapter 11
Six Cadillac Dr., Suite 310)	Judge Mashburn
Brentwood, TN 37027)	
Debtors.)	Jointly Administered

**MOTION BY WHITEHALL OPCO, LLC TO (I) APPROVE (A) SALE PROCEDURES
FOR THE SALE OF SUBSTANTIALLY ALL OF WHITEHALL OPCO, LLC’S
ASSETS; (B) PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Whitehall OpCo, LLC one of the debtors in possession in Case No. 16-03322 (the “Debtor” or “Whitehall”), hereby moves this Court, pursuant to §§ 363 and 365 of Title 11, United States Code (the “Bankruptcy Code”), and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for, among other things, entry of an order authorizing and approving: (A) the sale procedures (the “Sale Procedures”), attached hereto as Exhibit A, for the sale of substantially all of Whitehall’s assets Assets², and setting a hearing for the sale of the Assets to the successful bidder free and clear of liens, claims, encumbrances, and interests (other than Permitted Encumbrances), including any tax claims and rights or claims based on any successor or transferee liability; and (B) Desired Contract Notice

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Vanguard Healthcare, LLC (9650); Vanguard Healthcare Services, LLC (7563); Vanguard Financial Services, LLC (3403); Aurora Australis, LLC (7099); Boulevard Terrace, LLC (8709); Elderscript Services, LLC (4179); Eldercare of Jackson County, LLC (7855); Glen Oaks, LLC (8238); Palace RBS, LLC (9601); Shady Lawn, LLC (7397); Vanguard of Ashland, LLC (8367); Vanguard of Church Hill, LLC (1049); Vanguard of Crestview, LLC (1046); Vanguard of Manchester, LLC (6203); Vanguard of Memphis, LLC (4623); Vanguard of Ripley, LLC (1050); Vicksburg Convalescent, LLC (7298); and Whitehall OpCo, LLC (6186).

² Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the APA or the Sale Procedures, as applicable.

attached hereto as Exhibit B for the assumption and assignment of certain executory contracts relating to Whitehall (the “Desired Contracts”).

JURISDICTION

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

BACKGROUND

2. On May 6, 2016, the Debtor commenced with this Court a voluntary case under Chapter 11 of the Bankruptcy Code, Case No. 16-03322, and on May 11, 2016, the Court entered an Order jointly administering the Chapter 11 cases of affiliated Debtors under this Case No. 16-03296 (Docket No. 38).

3. The Debtor is authorized to continue to operate its business and manage its properties as a debtor in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

4. The US Trustee appointed an Official Committee of Unsecured Creditors (the “Committee”) by Notice filed May 25, 2016 (Docket No. 89). The Committee has engaged the attorneys at Bass Berry & Sims to represent the Committee in these Chapter 11 cases.

5. Vanguard Healthcare, LLC, the parent entity of Whitehall, has marketed Whitehall for sale through the services of New Century Capital Partners. In January 2017, the Debtor entered into an asset purchase agreement submitted by Skyline Health Care, LLC (“Skyline APA”), but the Skyline APA was withdrawn by Skyline within the due diligence period. Although negotiations with Skyline continued after that date, Skyline has reduced its offer to a level that is below the minimum level required to satisfy the amounts to be paid to the Debtors’ secured creditor and landlord in order to obtain the consent of those parties regarding

the sale and further to satisfy the Debtors' business judgment that the Sale is worthwhile. By conducting a public auction without a stalking horse as proposed in this Motion, the Debtor is hopeful that the auction will generate sufficient interest to meet the minimum amounts required to close the Sale.

6. By this Motion, the Debtor seeks entry of an order authorizing and approving, pursuant to § 363(b) and (f) of the Bankruptcy Code, among other things, (i) approval of the Sale Procedures to govern the auction of the Assets, and (ii) the setting of a hearing for the sale of the Assets pursuant to the Proposed APA by and between Whitehall and the successful bidder, free and clear of liens, claims, encumbrances, and other interests (the "Sale"), and the assumption and assignment of certain executory contracts, pursuant to § 365 of the Bankruptcy Code, to a buyer as part of the Sale.

THE ASSET PURCHASE AGREEMENT

7. Whitehall's business (the "Business") is to own and operate a nursing home known as Whitehall of Boca Raton, located at 7300 Del Prado Circle South, Boca Raton, Florida (the "Facility"). The Facility has 154 beds and approximately 223 employees.

8. The Debtor has determined that it is in the best interest of their estates to pursue the auction of Whitehall's Assets and the Sale, as embodied in the form of the asset purchase agreement (the "APA") attached to the Sales Procedure, which contemplates that substantially all of Whitehall's Assets will be sold and transferred to the Successful Bidder (as defined below). The APA more particularly describes the Assets to be sold in the Sale as all of Whitehall's right, title and interest in and to the following assets pertaining to Whitehall or the Facility:

- (a) the real property and improvements on which the Facility is situated;

- (b) all furnishings, fixtures, equipment, computer hardware and other tangible personal property owned by Whitehall and used in the operation of the Facility wherever situated, to the extent assignable;
- (c) all vehicles owned by Whitehall and used in the operation of the Facility;
- (d) all Whitehall 's rights, benefits and interests under all contracts and agreements, including but not limited to, all occupancy agreements for the Residents of the Facility, related to the operation of the Business that are to be assumed by Buyer (collectively, the “Desired Contracts”);
- (e) all licenses and intangible rights related to the Business, to the extent transferable;
- (f) all books, records, documents and other writings used in connection with the operation of the Business of which Whitehall, its successors, agents or shareholders shall have a continuing right to make copies of all documents at the expense of the person making such copies;
- (g) all inventory of materials and supplies of Whitehall on hand;
- (h) all Medicare and Medicaid provider numbers and provider agreements, if the Successful Bidder, in its sole discretion, shall elect to accept them;
- (i) all payor agreements with insurance companies and/or managed care organizations, to the extent transferable if the Successful Bidder, in its sole discretion, shall elect to accept them;
- (j) the personal savings accounts, checking accounts and escrow accounts of the Facility’s residents in compliance with the applicable regulations and only after the posting by the Successful Bidder of the required surety bond program for these accounts;
- (k) all of Whitehall's right, title and interest in the name of Whitehall and any and all derivatives thereof and any other names used by Whitehall or to which Whitehall has any rights;
- (l) all rights under any patent, trademark, service mark, trade name or copyright, whether registered or unregistered, and any applications therefore, and all computer software specific to the Facility (including software licenses, documentation and related object and source codes to the extent owned by Whitehall and transferable), technologies, websites, domain names, licenses, methods, formulations, data bases, trade secrets, technology rights and licenses know-how, inventions and any other intellectual property or other proprietary rights of any kind or nature used or useful in the operation of the Business;
- (m) the goodwill of Whitehall in or arising from the operation of the Business

- (n) all prepaid expenses of Whitehall; and
- (o) all other assets, personal or mixed, tangible or intangible, used in connection with the operation of the Business other than the Excluded Assets defined in the APA.³

THE SALE PROCEDURES

9. The Debtors propose the Sale Procedures attached hereto as Exhibit A to govern the bidding and sale of the Assets.

10. Below are certain notable requirements and dates under the Sale Procedures, subject to adjustment as may be approved by the Debtors and the Committee:

(a) Bid Deadline: **[DATE], 2017, at noon (Central Time)**

(b) Qualified Bidders: Bidders that demonstrate the financial capability to consummate the Sale, whose bids meet all of the Bid Requirements described in the Sale Procedures and that the Debtor, in its discretion in consultation with Healthcare Financial Solutions, LLC (“HFS”) and the Committee determines are likely to consummate the Sale, if selected as the Successful Bidder, after taking into account all relevant legal, regulatory, and business considerations.

(c) Bid Requirements:

- i. Must include a copy of the APA that has been marked to show amendments and modifications to the APA, including price and terms, that are being proposed by the bidder
- ii. Purchase price of no less than \$30,000,000;
- iii. Provide for the payment at Closing of \$21,500,000 to HFS and \$7,200,000 to WHJ Limited Liability Partnership, the owner of the Debtor’s leased real property.
- iv. Be accompanied by a deposit in the form of a certified check or wire transfer of immediately available funds payable to the order of the Debtor in an amount equal to at least \$500,000.

³ This list is provided solely for the convenience of the Court. To the extent this Motion conflicts with any of the terms of the APA, as revised by the Successful Bidder, the APA shall control.

- (d) Auction: If one or more Qualified Bids are received by the Bid Deadline, the Debtor shall conduct the Auction of the Assets, commencing at 10:00 a.m. Central Time on **[DATE], 2017**, at the offices of Bradley Arant Boult Cummings LLP, 1600 Division Street, Suite 700, Nashville TN 37203. ;
- (e) Sale Hearing: The Debtor will seek approval (the “Sale Order”) from the Bankruptcy Court at a hearing to be held on **[DATE], 2017**, at 9:00 a.m. prevailing Central Time in the United States Bankruptcy Court for the Middle District of Tennessee, Nashville Division (the “Sale Hearing”) authorizing the Sale to the Successful Bidder (as defined in the Sale Procedures) on terms and conditions consistent with the Successful Bid (as defined in the Sale Procedures).

LEGAL STANDARDS

A. Sale of Assets under § 363(b)

11. Section 363(b)(1) of the Bankruptcy Code provides, in pertinent part, that the “trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). To obtain court approval to sell property under § 363(b), the Debtors must show a “sound business purpose” for the proposed action. *Stephens Indus, Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986); *see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). The “sound business purpose” test commonly considers four factors:

- (a) a sound business reason or emergency justifies a pre-confirmation sale;
- (b) adequate and reasonable notice of the sale was provided to interested parties;
- (c) the sale has been proposed in good faith; and
- (d) the purchase price is fair and reasonable.

See In re Barnhill's Buffet, Inc., No. 07-08948, 2008 Bankr. LEXIS 2864, at *7 (Bankr. M.D. Tenn. Feb. 28, 2008) (citing *In re Titusville Country Club*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991)).

12. Further, under Bankruptcy Rule 6004(f)(1), sales of property rights outside the ordinary course of business may be by private sale or public auction.

13. The Debtors marketed the Assets and believe that, pursuant to the Sale Procedures, the Debtors will obtain the highest or otherwise best offer for the Assets.

14. This Motion establishes a procedure for approval of a sale transaction that will preserve and maximize the value of the Facility, and further preserve and provide jobs for Whitehall's employees and enhance the interests of Whitehall's economic stakeholders.

15. Implementation of the Sale will best serve the interests of the Debtors' economic stakeholders, by paying down the HFS Loan Obligations (defined below) and reducing the administrative costs of maintaining the Facility. The economic benefits to the Debtor's estate are summarized as follows:

- a. HFS has agreed to release its lien in the Debtor's assets with a payment of \$21,500,000.00 from the sale proceeds, thus reducing the Debtors joint obligations on the HFS Loan Obligations, further defined below. The release of the HFS lien will allow the Debtor to apply funds collected from its account receivables to the payment of administrative and a portion of the general unsecured claims allowed against the Debtor.
- b. WHJ has agreed to reduce the lease purchase option from \$12,070,000 to \$9,000,000 and has further agreed to accept payment of the \$9,000,000 in a cash payment of \$7,200,000 payable at Closing and an unsecured, non-interest bearing promissory note in the amount of \$1,800,000 payable five years after Closing.
- c. The Debtor estimates that the sale will generate the following sources and uses of funds:

Purchase Price	\$30,000,000
Collection of AR	<u>\$1,700,000</u>
Total Sources	\$31,700,000

HFS Loan Obligations	(\$21,500,000)
Real Property Owner	(\$7,200,000)
Broker Commission	(\$600,000)
Payroll and other adjustments at Closing	<u>(\$231,000)</u>

Total Uses	(\$29,531,000)
Net Surplus	\$2,169,000

16. The Debtors have concluded that the Sale is the best means of preserving value, continuing the Business at the Facility as a going concern, and reducing the HFS Loan Obligations for the benefit of all creditors of the Debtors.

B. Sale Free and Clear of Liens Under § 363(f)

17. A sale of assets must satisfy the provisions of § 363(f) of the Bankruptcy Code for title to be passed to the buyer free and clear of liens, claims, encumbrances, and interests. Section 363(f) of the Bankruptcy Code provides:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

18. The Debtor is jointly and severally liable to HFS for the entire amount of the Loan Obligations (as that term is defined in the *Stipulated Final Order Authorizing Debtors' Limited Use Of Cash Collateral, Granting Adequate Protection, And Granting Related Relief* (Docket No. 168) ("Cash Collateral Order"), and, for purposes of this Motion, collectively the "HFS Loan Obligations", as are other of the Debtors. The Debtor, together with certain of its Debtor affiliates and certain other non-Debtor affiliates, is a party under both the Revolving

Loan Documents and the Term Loan Documents (as those terms are defined in the Cash Collateral Order, and, for purposes of this Motion, collectively the “HFS Loan Documents”).

19. As security for timely payment and performance of the HFS Loan Obligations, and pursuant to the HFS Loan Documents, prior to the filing of these Chapter 11 cases, HFS, in its capacities as Agents under the HFS Loan Documents, was granted and continues to hold valid and perfected first priority liens on and security interests in, among other things, all of the Debtor's property, both its real property and personal property, including all of the Assets (collectively “HFS Pre-Petition Liens”).

20. As provided and adjudicated in the Cash Collateral Order, HFS was granted and holds replacement liens and security interests in all of the Debtor's post-petition assets of the type and to the same extent provided in the HFS Loan Documents, which includes replacement liens and security interests in all of the Assets and all of the Debtor's other assets, including without limitation the Debtor's Accounts Receivable, as security for the HFS Loan Obligations owing to HFS (collectively, “HFS Replacement Liens”).

21. The Assets do not include, among other things, the Debtor's Accounts Receivable (amounts due, whether or not actually billed) for services provided up to the effective time of the legal transfer of the operations of the Business to the Successful Bidder (collectively, the “Whitehall Accounts Receivable”) and the Assets do not include the Debtor's bank accounts or cash deposits. The Debtor's Accounts Receivable, bank accounts, and cash deposits are expressly included, among other things, in the definition of Excluded Assets in the APA and shall not be sold to the Successful Bidder in the Sale.

22. HFS has agreed to consent to the sale of the Assets free and clear of any liens, thereby satisfying § 363(f)(2) of the Bankruptcy Code, in consideration of receipt of \$21,500,000.00 to be applied to the HFS Loan Obligations at Closing.

23. Thus, the sale of the Assets free and clear of liens, claims, encumbrances, and interests, including rights or claims based on any successor or transferee liability, except for the liabilities assumed by the Buyer, will satisfy the statutory prerequisites of § 363(f) of the Bankruptcy Code. Accordingly, the Assets should be transferred to the Buyer free and clear of all liens, claims, encumbrances, and interests, except for Desired Contracts, with such liens, claims, encumbrances, and interests to be transferred to and attach to the net sale proceeds of the Assets.

C. Good Faith Buyer Under § 363(m)

24. The Debtors will seek an Order approving the Successful Bidder as being entitled to the protections of a good faith purchaser under § 363(m) of the Bankruptcy Code.

25. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

26. The APA represents substantial value to the Debtors and provides fair consideration for the Assets. Moreover, the Debtor will not pursue potential bidders that hold any interests in the Debtors or are otherwise affiliated with the Debtors, their officers, or directors.

27. Accordingly, the Debtors anticipate that Successful Bidder will be acting in good faith and be entitled to the protections afforded under § 363(m).

D. Assumption and Assignment of Executory Contracts Under § 365

28. The APA provides that the Debtor will assign the Desired Contracts to the Successful Bidder that are designated in Exhibit 3.8 of the APA.

29. Pursuant to Local Rule 9013-1 or 9075-1, if necessary, the Debtor or its noticing agent will serve a notice, substantially in the form attached as Exhibit B (the “Desired Contract Notice”), on all parties to the Desired Contracts after the Successful Bidder has provided notice of the Desired Contracts to Debtors. The Desired Contract Notice will provide, among other things: (i) notice of this Motion, (ii) notice of the proposed assumption and assignment of the Desired Contracts; and (iii) notice of the proposed cure amounts for the Desired Contracts.

30. One category of agreements that have already been assumed are the Medicare provider agreements with the Centers of Medicare & Medicaid Services pursuant to authority in the Medicare statute, 42 U.S.C. § 1395, et seq., (the “Provider Agreement”), which were previously assumed by the Debtor by Court Order entered September 12, 2016 (Docket No. 487). The Provider Agreement will be transferred to the Successful Bidder.

31. The Debtor proposes certain procedures for the resolution of any disputes regarding the assumption and assignment of any Desired Contracts to the Buyer (the “Assumption and Assignment Procedures”). The Assumption and Assignment Procedures are set forth in the Desired Contract Notice.

32. Notwithstanding the Desired Contract Notice, pursuant to Section 3.8 of the APA, the Successful Bidder shall have the right to remove any Desired Contracts on or before seven (7) days before Closing as defined in the APA.

E. Transaction Fee Payment to New Century Capital Partners

33. By agreement dated February 24, 2017 (“Engagement Letter”) by and between the Debtor and New Century Capital Partners (“NCCP”), NCCP was engaged to act as a financial adviser, which included services in completing the sale of the Debtor’s assets.

34. The Court approved the Debtor’s retention of NCCP as its financial advisor pursuant to an order dated March 8, 2017 (Docket No. 1135) (the “NCCP Order”). Among other things, the NCCP Order provides that the Debtor shall pay NCCP a “Transaction Fee” in cash, by wire transfer, equal to two percent (2%) of the gross purchase price for any sale transaction.

35. NCCP has assisted and will continue to assist the Debtor in the procurement of the Sale of the Assets herein and thus is entitled to the payment of the 2% “Transaction Fee” as provided in the Engagement Letter and the NCCP Order. Without limitation, NCCP will be responsible for soliciting potential bidders and assisting the Debtor with evaluating any bids.

F. Consumer Privacy Ombudsman Under §363(b)(1)

36. Section 363(b)(1) of the Bankruptcy Code provides that if the Debtors “in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals [and] such policy is in effect on the date of the commencement of the case,” then the Debtors “may not sell . . . personally identifiable information to any person unless” the sale is “consistent with such policy” or a “consumer privacy ombudsman” is appointed. 11 U.S.C. § 363(b)(1). The term “personally identifiable information,” defined in § 101(41A) of the Bankruptcy Code, means private information about a debtor’s customers that “if disclosed, will result in contacting or identifying

[an] individual physically or electronically” (e.g., name, address, telephone number, social security number, credit card account number, birth date). *Id.* § 101(41A).

37. Section 332 of the Bankruptcy Code governs the appointment of a consumer privacy ombudsman and provides that the Court “shall order the United States trustee to appoint, not later than 5 days before the commencement of the [sale] hearing, 1 disinterested person ... to serve as the consumer privacy ombudsman in the case and shall require that notice of such hearing be timely given to such ombudsman.” *Id.* § 332(a). The consumer privacy ombudsman “may appear and be heard at [the sale] hearing and shall provide to the [C]ourt information to assist the [C]ourt in its consideration of the facts, circumstances, and conditions of the proposed sale . . . of personally identifiable information.” *Id.* § 332(b).

38. The Debtor currently maintains certain privacy policies that govern the use of personally identifiable information in conducting their business operations. In particular, the Debtor has policies to comply with the requirements of the privacy rule of the Health Insurance Portability and Accountability Act (“HIPAA”). *See* 45 C.F.R. Parts 160, 162, and 164.

39. HIPAA establishes guidelines for the disclosure of private health information (“PHI”) and bars health care providers from disclosing PHI of individuals in certain instances. Among the exceptions to the HIPAA privacy rule are disclosures of PHI as part of a covered entity’s “health care operations.” *See* 45 C.F.R. §§ 164.502(a)(ii), 164.506(c)(1). “Health care operations” under HIPAA include the “sale, transfer, merger, or consolidation of all or part of a covered entity with another covered entity, or an entity that following such activity will become a covered entity and due diligence related to such activity.” *See id.* § 164.501(6)(iv).

40. The Debtor anticipates that any Successful Bidder will be a covered entity under HIPAA. The sale of any PHI as part of the Sale is authorized under HIPAA and otherwise

consistent with the Debtors' policies regarding the privacy of such information. Accordingly, the Court can approve the Sale without the appointment of a consumer privacy ombudsmen.

WHEREFORE the Debtors respectfully request entry of an order granting the relief requested herein in the form of the Proposed Order filed with this Motion and such other and further relief as is just.

Respectfully Submitted:

By: /s/ William L. Norton III
William L. Norton, III (#010075)
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EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In re:)	
)	
Vanguard Healthcare, LLC, <i>et al.</i> ¹)	Case No. 16-03296
)	Chapter 11
Six Cadillac Dr., Suite 310)	Judge Mashburn
Brentwood, TN 37027)	
Debtors.)	Jointly Administered

SALE PROCEDURES REGARDING SALE OF WHITEHALL

Set forth below are the sale procedures (the “Sale Procedures”) to be employed with respect to the sale (the “Sale”) of substantially all of the assets (“Assets”) of Whitehall OpCo, LLC one of the debtors in possession in Case No. 16-03322 (the “Debtor” or “Whitehall”). The Assets and the terms and conditions upon which the Debtor contemplates consummating its Sale, subject to the Sale Procedures herein, are more particularly described in the form of the asset purchase agreement (the “APA”), a copy of which is attached hereto as Exhibit A and also posted at www.BMCGroup.com/vanguardhealthcare. The Sale of the Assets under the APA is subject to approval by the Bankruptcy Court under § 363(f) of the Bankruptcy Code and Rule 6004 of the Federal Rules of Bankruptcy Procedure.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Vanguard Healthcare, LLC (9650); Vanguard Healthcare Services, LLC (7563); Vanguard Financial Services, LLC (3403); Aurora Australis, LLC (7099); Boulevard Terrace, LLC (8709); Elderscript Services, LLC (4179); Eldercare of Jackson County, LLC (7855); Glen Oaks, LLC (8238); Palace RBS, LLC (9601); Shady Lawn, LLC (7397); Vanguard of Ashland, LLC (8367); Vanguard of Church Hill, LLC (1049); Vanguard of Crestview, LLC (1046); Vanguard of Manchester, LLC (6203); Vanguard of Memphis, LLC (4623); Vanguard of Ripley, LLC (1050); Vicksburg Convalescent, LLC (7298); and Whitehall OpCo, LLC (6186).

I. **The Sale Hearing**

The Debtor will seek approval from the Bankruptcy Court at a hearing to be held on [DATE], 2017, at 9:00 a.m. prevailing Central Time in the United States Bankruptcy Court for the Middle District of Tennessee, Nashville Division (the “Sale Hearing”) authorizing the Sale to the Successful Bidder (as defined below) on terms and conditions consistent with the Successful Bid (as defined below). The proposed form of the order is attached hereto as Exhibit B (the “Sale Order”).

II. **Participation Requirements**

In order to participate in the bidding process, each person or entity should deliver the following materials to the Debtor:

A statement setting forth the Potential Bidder’s (as defined below) financial capacity and intention to provide a bid equal to or greater than the amount under the APA, which may include (i) the most current audited, if any, and latest unaudited financial statements of the Potential Bidder, (ii) if the Potential Bidder is an entity formed for the purpose of purchasing the Assets, (x) financials of the equity holder(s) of the Potential Bidder or such other form of financial disclosure acceptable to the Debtor, and/or (y) the written commitment acceptable to the Debtor from a lender of the Potential Bidder’s ability to be responsible for the Potential Bidder’s obligations in connection with purchasing the Assets, or (iii) other demonstration of the financial capacity of the Potential Bidder (collectively the “Financials”).

Each person or entity that delivers such materials to the Debtor in a form reasonably acceptable to the Debtor is hereinafter referred to as a “Potential Bidder.”

A “Qualified Bidder” is a Potential Bidder whose Financials (or the Financials of its equity holder(s), if applicable) demonstrate the financial capability to consummate the Sale, whose bid meets all of the Bid Requirements described below and that the Debtor, in its discretion in consultation with Healthcare Financial Solutions, LLC (“HFS”) and Official Committee of Unsecured Creditors (the “Committee”) determine is likely to consummate the Sale, if selected as

the Successful Bidder, after taking into account all relevant legal, regulatory, and business considerations. For all decisions herein in consultation with another party, the business judgment of the Debtor will be the determining factor in the event of a disagreement among the parties.

Within two (2) business days after the Debtor receives from a Potential Bidder the appropriate materials needed for a decision to be made, the Debtor shall notify the Potential Bidder in writing, whether the Potential Bidder is a Qualified Bidder.

III. **Bid Deadline**

The deadline for submitting bids by a Qualified Bidder shall be [DATE], 2017, at noon (Central Time) (the “Bid Deadline”)

Prior to the Bid Deadline, a Qualified Bidder that desires to make a bid shall deliver (i) one written copy of its bid, and (ii) a copy of the APA that has been marked to show amendments and modifications to the APA, including price and terms, that are being proposed by the Qualified Bidder (a “Marked Agreement”), to the Debtor’s counsel, William L. Norton, III (BRADLEY, 1600 Division St., Suite 700, Nashville, Tennessee 37203, (615) 252-2397, bnorton@bradley.com) and such other person as the Qualified Bidder may be directed. The Debtor’s counsel shall provide copies of each bid to counsel for HFS and the Committee.

IV. **Qualified Bids and Deposit**

A “bid” should include the following:

- A. Provide for a purchase price of no less than \$30,000,000.
- B. Constitute a good-faith, bona fide offer to purchase the Assets on terms that are substantially similar to the terms of the APA;
- C. State that the Qualified Bidder is financially capable of consummating the

transactions contemplated by the Marked Agreement and maintains financial and other information that will allow the Debtor to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transactions contemplated by the Marked Agreement, including, without limitation, such financial and other information setting forth adequate assurance of future performance under Bankruptcy Code § 365;

- D. Not request or entitle the Qualified Bidder to any transaction or break-up fee, expense reimbursement, or similar type of payment;
- E. Fully disclose the identity of each entity that will be bidding for the Assets or otherwise participating in connection with such bid and the complete terms of any such participation;
- F. State that, if such Qualified Bidder submits the Successful Bid or Back-Up Bid (each as defined herein), such Qualified Bidder's offer is irrevocable until the closing of the purchase of the Assets; provided, however, that if the offer of such Qualified Bidder is deemed to be the Back-Up Bid, the Qualified Bidder's offer is irrevocable until the earlier of 5:00 p.m. prevailing Central Time on the date that is (a) the Outside Back-Up Date (as defined herein) or (b) the closing of the Sale with the Successful Bidder (as defined herein);
- G. Evidence that the Qualified Bidder has received debt and/or equity funding commitments, or has financial resources readily available and sufficient in the aggregate to finance the purchase of the Assets, which evidence is reasonably satisfactory to the Debtor;
- H. Include evidence of authorization and approval from the Qualified Bidder's board of directors or comparable governing body with respect to the submission, execution, delivery, and closing of the Marked Agreement;
- I. Provide for the payment at Closing of \$21,500,000 to HFS and \$7,200,000 to the owner of the Debtor's leased real property; and
- J. Be accompanied by a deposit (the "Good Faith Deposit") in the form of a certified check or wire transfer of immediately available funds payable to the order of the Debtor in an amount equal to at least \$500,000.

Each of the foregoing are collectively referred to herein as the "Bid Requirements", provided the Debtor may, in consultation with the Committee and HFS, waive any portion of the

above requirements if they are reasonably satisfied that the Qualified Bidder is capable of closing the proposed sale. A timely bid received from a Qualified Bidder that meets the Bid Requirements set forth above will be considered a Qualified Bid if the Debtor, in consultation with HFS and the Committee reasonably believes that such bid would be consummated if selected as the Successful Bid (as defined below).

Prior to the Auction, the Debtor shall evaluate the Qualified Bids and identify the Qualified Bid that is, in the Debtor's reasonable business judgment in consultation with HFS and the Committee, the highest or otherwise best bid (the "Starting Bid"). No later than twenty-four (24) hours prior to the start of the Auction, the Debtor shall notify HFS, the Committee, and other Qualified Bidders as to which Qualified Bid is the Starting Bid.

The Sale of the Assets shall be in accordance with certain representations, warranties, and covenants as set forth in the APA. Except as otherwise provided in the APA, and subject to approval of the Bankruptcy Court at the Sale Hearing, all of the Debtor's right, title, and interest in and to the Assets shall be sold free and clear of all liens, claims, and encumbrances and successor liability in accordance with § 363(f) of the Bankruptcy Code, which such liens, claims, or encumbrances to attach to the proceeds of the Sale of the Assets.

Each bidder shall be deemed to acknowledge and represent that it has had an opportunity to inspect and examine the Assets, and to conduct any and all due diligence related thereto prior to making its offer, that it relied solely upon its own independent review, investigation, and/or inspection of any documents and materials in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Debtor or the Assets, the completeness of any information provided in connection therewith, or the Auction, except as

expressly stated in these Sale Procedures or, as to the Successful Bidder, in its own Marked Agreement.

V. **Auction**

If one or more Qualified Bids are received by the Bid Deadline, the Debtor shall conduct the auction of the Assets (the “Auction”). If no Qualified Bids are received the Debtor shall cancel and not hold an Auction. The Auction, if any, shall commence at 10:00 a.m. Central Time on [DATE], 2017, at the offices of Bradley Arant Boult Cummings LLP, 1600 Division Street, Suite 700, Nashville TN 37203.

The Auction shall be conducted in accordance with the following procedures (the “Auction Procedures”):

- A. the Auction shall be conducted openly;
- B. only the Qualified Bidders shall be entitled to bid at the Auction;
- C. the Qualified Bidders shall appear in person or through duly-authorized representatives at the Auction;
- D. only such authorized representatives of each of the Qualified Bidders, the Debtor, HFS, the Committee, and their respective advisors shall be permitted to attend the Auction;
- E. bidding at the Auction shall begin at the Starting Bid;
- F. unless otherwise disclosed in advance of the bidding by counsel for the Debtor, subsequent bids at the Auction, shall be made in minimum increments of \$100,000;
- G. each Qualified Bidder shall be informed of the terms of the previous bids;
- H. the bidding shall be transcribed to ensure an accurate recording of the bidding at the Auction;
- I. each Qualified Bidder shall be required to confirm on the record at the Auction that it has not engaged in any collusion with respect to the bidding or the Sale;

- J. absent irregularities in the conduct of the Auction, the Bankruptcy Court shall not consider bids made after the Auction is closed;
- K. at the auction, the Assets shall not be sold piecemeal or in parts or parcels, but collectively, provided, however, that a Qualified Bidder is not required to propose to purchase the identical Assets as set forth in the APA as long as the value offered by such Qualified Bidder's bid is greater than that offered by any other Qualified Bidder as determined by the Debtor in the exercise of its reasonable business judgment and in consultation with its advisors, HFS, and the Committee; and
- L. the Auction shall be governed by such other reasonable procedures as may be announced by the Debtor, after consultation with its advisors, HFS, and the Committee, from time to time on the record at the Auction.

All Qualified Bidders at the Auction will be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to jury trial in connection with any disputes relating to the Auction or, the Sale of the Assets, and the construction and enforcement of the APA or the Marked Agreement.

The Auction shall continue in one or more rounds until there is only one offer that the Debtor in consultation with HFS and the Committee shall identify as the highest or otherwise best bid (the "Successful Bid"). The Qualified Bidder having submitted the Successful Bid shall be deemed the "Successful Bidder." The Debtor and the Successful Bidder shall, as soon as commercially reasonable and practicable, complete and sign all agreements, contracts, instruments, or other documents evidencing and containing the terms upon which the Successful Bid was made. If an Auction is held, the Debtor shall be deemed to have accepted a Qualified Bid only when such bid is declared the Successful Bid at the Auction and definitive documentation has been executed in respect thereof. Such acceptance is conditioned upon approval by the Bankruptcy Court of the Successful Bid and the entry of an order approving such Successful Bid.

If an Auction is conducted, the party with the second highest or otherwise best Qualified Bid, as determined by the Debtor in the exercise of its reasonable business judgment and in consultation with its advisors, HFS, and the Committee, shall be required to serve as a back-up bidder (the “Back-Up Bidder”) and keep such bid (the “Back-Up Bid”) open and irrevocable until the end of business on the date following the Closing of the Sale with the Successful Bidder.

Potential Bidders or Qualified Bidders shall not be allowed any break-up, termination, or similar fee. Moreover, neither the tendering of a bid nor the determination that a bid is a Qualified Bid shall entitle a Potential Bidder or Qualified Bidder to any break-up, termination, or similar fee and all Potential Bidders and Qualified Bidders are deemed to have waived any right to seek a claim for substantial contribution or any other payment from any of the Debtors in these jointly administered cases or their estates.

VI. Acceptance of Successful Bid

The Debtor shall present to the Bankruptcy Court at the Sale Hearing the Successful Bid that the Debtor, in its business judgment, determines, in consultation with its advisors, HFS, and the Committee, would provide the highest or best offer for the Assets and is in the best interests of the Debtor and its creditors. At the Sale Hearing, certain findings will be sought from the Bankruptcy Court, including that (i) the Successful Bidder was selected in accordance with these Sale Procedures, and (ii) consummation of the Sale as contemplated by the Successful Bid will provide the highest or otherwise best value for the Assets and is in the best interests of the Debtor and its estate in these Chapter 11 cases.

In the event that, for any reason, the Successful Bidder fails to close the Sale contemplated by its Successful Bid, then the Debtor shall be authorized to close with the Back-up Bidder without further notice or hearing.

Except as otherwise provided in this paragraph with respect to the Successful Bidder and the Back-up Bidder, the Good Faith Deposits of all Qualified Bidders required to submit such a deposit under the Bidding Procedures shall be returned upon or within two business days after entry of the Sale Order. The Good Faith Deposit of the Successful Bidder shall be held until the closing of the Sale and applied in accordance with the Successful Bid. The Good Faith Deposit of the Back-Up Bidder shall be retained in escrow until two business days after the Closing of the Sale. If the Closing does not occur, the disposition of Good Faith Deposits shall be as provided in the Successful Bid and Back-Up Bid, as applicable.

Respectfully Submitted:

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Asset Purchase Agreement

WHITEHALL OPCO, LLC

AND

May __, 2017

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Asset Purchase Agreement

This Asset Purchase Agreement ("Agreement"), is entered into as of April __, 2017, between _____, a _____ limited liability company, or an entity to which it assigns its interests under this Agreement ("Buyer"), and Whitehall OpCo, LLC, a Tennessee limited liability company ("Seller").

WITNESSETH:

WHEREAS, the business of Seller (the "Business") is to own and operate a nursing home known as Whitehall of Boca Raton, located at 7300 Del Prado Circle South, Boca Raton, Florida (the "Facility"), which Seller currently leases from WHJ Limited Liability Partnership, a Japanese limited liability partnership ("WHJ"), pursuant to a Lease Agreement originally dated as of December 31, 2012 (the "Lease," as assigned and amended);

WHEREAS, Buyer desires to purchase substantially all of the assets of Seller used in the Business, and Seller desires to sell such assets to Buyer, including such assets as Buyer will acquire from WHJ upon exercise of its option to purchase contained in the Lease, all as more fully set forth below; and

NOW, THEREFORE, for and in consideration of the premises, and the agreements, covenants, representations and warranties hereinafter set forth, and other good and valuable consideration, the receipt and adequacy all of which are forever acknowledged and confessed, the parties hereto hereby agree as follows:

ARTICLE 1 DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply:

"Accounts Receivable" means (a) all trade accounts receivable and other rights to payment from residents, patients and customers of Seller and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of goods shipped or products sold or services rendered to residents, patients and customers of Seller, (b) all other accounts or notes receivable of Seller and the full benefit of all security for such accounts or notes and (c) any claim, remedy or other right related to any of the foregoing.

"Affiliate" means with respect to Buyer and/or Seller, any entity that controls, is controlled by, or is under common control with either party all as more fully set forth in the rules and regulations of the Securities and Exchange Commission under the Securities Act of 1933, as amended.

"Assets" means all of Seller's right, title and interest in and to the following assets pertaining to Seller or the Facility:

- (a) the real property and improvements on which the Facility is situated described in Appendix 1A (the "Real Property");
- (b) all furnishings, fixtures, equipment, computer hardware and other tangible personal property owned by Seller and used in the operation of the Facility wherever situated, to the extent assignable, including without limitation the items listed in Appendix 1B (the "FF&E");
- (c) all vehicles owned by Seller and used in the operation of the Facility, including without limitation the vehicles listed in Appendix 1C;
- (d) all of Seller's rights, benefits and interests under all contracts and agreements, including but not limited to, all Occupancy Agreements for the Residents of the Facility, related to the operation of the Business of Seller that are to be assumed by Buyer (collectively, the "Contracts"), including without limitation any real estate leases described in Exhibit 3.8 hereof, however Buyer specifically will not assume any Union Contracts or Collective Bargaining Agreements;
- (e) all licenses and intangible rights related to the Business of Seller, to the extent transferable;
- (f) all books, records, documents and other writings used in connection with the operation of Seller's Business of which Seller, its successors, agents or shareholders shall have a continuing right to make copies of all documents at the expense of the person making such copies;
- (g) all inventory of materials and supplies of Seller on hand at the Effective Time, subject to §§ 2.7 and 3.12;
- (h) all Medicare and Medicaid provider numbers and provider agreements, if Buyer, in its sole discretion, shall elect to accept them;
- (i) all payor agreements with insurance companies and/or managed care organizations, to the extent transferable if Buyer, in its sole discretion, shall elect to accept them;
- (j) The personal savings accounts, checking accounts and escrow accounts of the Facility's residents in compliance with the applicable regulations and only after the posting by the Purchaser of the required surety bond program for these accounts;

- (k) All of Seller's right, title and interest in the name of the Seller and any and all derivatives thereof and any other names used by Seller or to which Seller has any rights.
- (l) All rights under any patent, trademark, service mark, trade name or copyright, whether registered or unregistered, and any applications therefore, and all computer software specific to the Facility (including software licenses, documentation and related object and source codes to the extent owned by Seller and transferable), technologies, websites, domain names, licenses, methods, formulations, data bases, trade secrets, technology rights and licenses know-how, inventions and any other intellectual property or other proprietary rights of any kind or nature used or useful in the operation of the Nursing Home Business (the "Intellectual Property") including, without limitation, the Intellectual Property set forth on Exhibit 1B;
- (m) The goodwill of Seller in or arising from the operation of the Nursing Home and/or the Nursing Home Business
- (n) all prepaid expenses of Seller (subject to Section 2.3(e)); and
- (o) all other assets, personal or mixed, tangible or intangible, used in connection with the operation of Seller's Business other than the Excluded Assets.

"Assumed Liabilities" means those liabilities of Seller specifically assumed by Buyer pursuant to the Undertaking or otherwise specifically assumed by Buyer pursuant to the provisions of this Agreement.

"Benefit Plans" means pension, profit-sharing, stock bonus, deferred compensation, or other tax-qualified or nonqualified retirement plans; welfare benefit plans, including group health, life, disability, or similar plans; fringe benefit, cafeteria, flexible benefit, or educational assistance plans; executive compensation, bonus, or incentive plans; severance plans; vacation, holiday, sick-leave, personal time, paid-time-off, or other employee compensation-related plans, procedures, programs, payroll practices, policies, agreements, commitments, contracts, or understandings under which any of the benefits described above are provided to any of the employees of the Facility; or any trusts or other agreements related thereto;

"Best Efforts" means the efforts that a prudent Person desirous of achieving a result would use in similar circumstances to achieve that result as expeditiously as possible, provided, however, that a Person required to use Best Efforts under this Agreement will not be thereby required to take actions that would result in a material adverse change in the benefits to such

Person of this Agreement and the Contemplated Transactions or to dispose of or make any change to its Business, expend any material funds or incur any other material burden.

"Buyer" means _____, a _____ limited liability company, or its assigns

"Business" has the meaning set forth in the Recitals.

"COBRA" means Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, 26 U.S.C. § 162 et seq.

"Closing" and **"Closing Date"** are defined in § 2.12.

"Code" means the Internal Revenue Code of 1986, as amended.

"Contract" is defined in the definition of "Assets" above.

"Contemplated Transactions" means all of the transactions contemplated by this Agreement.

"Environmental Laws" is defined in § 3.27.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Excluded Asset" is defined in § 2.3.

"Excluded Liabilities" is defined in § 2.5.

"Exhibit Volume" means the volume of Exhibits referred to in this Agreement prepared and delivered by Seller.

"FF&E" is defined in the definition of "Assets" above.

"Facility" has the meaning set forth in the Recitals.

"Final Closing Statement" is defined in § 2.10.

"GAAP" means generally accepted accounting principles for financial reporting in the United States, applied on a basis consistent with the basis on which the Seller Financial Statements were prepared.

"Governing Documents" means, with respect to any particular entity, (a) if a corporation, the articles or certificate of incorporation and the bylaws; (b) if a general partnership, the partnership agreement and any statement of partnership; (c) if a limited

partnership, the limited partnership agreement and the certificate of limited partnership; (d) if a limited liability company, the articles of organization and operating agreement; (e) if another type of Person, any other charter or similar document adopted or filed in connection with the creation, formation or organization of the Person; (f) all equity holders' agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of any Person or relating to the rights, duties and obligations of the equity holders of any Person; and (g) any amendment or supplement to any of the foregoing.

"Governmental Authorization" means any consent, license, registration or permit issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

"Governmental Body" means any:

- (a) nation, state, county, city, town, borough, village, district or other jurisdiction;
- (b) federal, state, local, municipal, foreign or other government;
- (c) governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers);
- (d) multinational organization or body;
- (e) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or
- (f) official of any of the foregoing.

"Hazardous Substance" is defined in § 3.27.

"Hired Employees" is defined in § 2.11.

"Immigration Act" means the Immigration & Nationality Act of 1990 (8 U.S.C. § 101 et seq.).

"Inspection Period" means the period ending on *[insert date which should be no more than 30 days from signing]*, 2017.

"Inventory" means the inventory of Seller.

"**IRS**" means the Internal Revenue Service.

"**Knowledge**" shall have the meaning set forth in Section 3.38.

"**Operations Transfer Assignment**" or "**OTA**" means an Operations Transfer Assignment in substantially the form of that attached hereto as Exhibit 1.

"**Ordinary Course of Business**" An action taken by a Person will be deemed to have been taken in the "Ordinary Course of Business" only if that action:

- (a) is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal, day-to-day operations of such Person; and
- (b) does not require authorization by the board of directors or shareholders of such Person (or by any Person or group of Persons exercising similar authority) and does not require any other separate or special authorization of any nature.

"**Pension Plan**" and "**Pension Plans**" means any "employee pension benefit plan" listed in Exhibit 3.28.

"**Person**" means any individual, corporation, partnership, joint venture, association, joint stock company, trust or unincorporated organization.

"**Real Property**" is defined in the definition of "Assets" above.

"**Seller**" means Whitehall OpCo, LLC, a Tennessee limited liability company.

"**Seller Financial Statements**" is defined in § 3.3.

ARTICLE 2

SALE AND TRANSFER OF ASSETS

2.1. Sale and Transfer of Assets.

Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, but effective as of the Effective Time, Seller shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase and acquire from Seller, free and clear of any Encumbrances other than Permitted Encumbrances, the Business of the Facility as a going concern and all of Seller's right, title and interest in and to the Assets.

2.2. Assets Free and Clear; Undertaking.

The Assets shall be sold free and clear of all liabilities, liens and encumbrances except those liabilities of Seller expressly assumed or agreed to be discharged by Buyer as set forth herein. Except as provided herein, Buyer shall not assume any other liability or obligation of Seller fixed or contingent, disclosed or undisclosed. Seller agrees to satisfy, when due, all of its liabilities, indebtedness and obligations not assumed by Buyer pursuant to this Agreement, Buyer will pay, perform and discharge in due course in accordance with their terms all obligations, indebtedness and liabilities of the Facility or Seller assumed by it hereunder; provided, however, that Buyer shall be entitled to contest in good faith any of such obligations, indebtedness or liabilities by appropriate legal proceedings.

2.3. Excluded Assets.

Seller is not selling and Buyer is not purchasing or assuming obligations with respect to the following (collectively the "Excluded Assets"):

- (a) Seller's bank accounts, cash, cash reserves, cash deposits (other than patient/resident prepayments and patient/resident funds held in trust by Seller which will be transferred by Seller to Buyer at Closing) and escrows, and all other cash equivalent items.
- (b) Seller's business and fiscal records and other records that Seller is required by law to retain in its possession, described on Appendix 2.3B; however, after Closing, Buyer or Buyer's representatives will have access upon reasonable prior notice during normal business hours to such portions of such business and fiscal records and other records related to the prior operations of the Facility as may be necessary for the continued operations of the Facility by Buyer.
- (c) Seller's Accounts Receivable (amounts due, whether or not actually billed) for services provided up to the Effective Time (as hereinafter defined).
- (d) All prepaid expenses (said prepaid expenses shall be prorated as of the Closing Date and Buyer shall pay to Seller the portion thereof attributable to periods from and after the Closing Date).
- (e) The additional items on Schedule 2.3(e).

2.4. Consideration for Sale and Transfer.

The Buyer has begun its "Due Diligence" with respect to the Assets (as further described in § 2.9) and upon execution and delivery of this Agreement by both parties, Buyer shall deposit _____ Thousand Dollars (\$_____) in cash with Bradley Arant Boult Cummings LLP ("BABC"), and the parties direct BABC to retain such

deposit as escrow agent, to be applied against the Cash Purchase Price at Closing (The "Deposit"), pursuant to the terms of the Escrow Agreement attached hereto as Appendix 2.4A. The Deposit shall be refundable to Buyer only if (i) Buyer has given written notice to the Seller and Escrow Agent, prior to the expiration of the Inspection Period, which is 45 days from the commencement date of this Agreement, that it does not wish to proceed with the Transaction due to matters learned during the Inspection Period which would materially adversely affect the value of the Assets, in its sole and absolute discretion, (ii) the Seller fails to perform all of its obligations pursuant to this Agreement in all material respects, or (iii) the failure of any of the conditions precedent to Buyer's obligation to close as of the last date provided for herein for Closing, including but not limited to that all representations, warranties and covenants of Seller in this Agreement are true and correct as of the Closing Date. In consideration for the sale of the Assets to Buyer, the purchase price for the Assets shall be _____ Million and No/100 Dollars (\$_____) (the "Cash Purchase Price"), which Buyer shall deliver, by cashier's check or by wire transfer of immediately available funds, subject to the prorations and adjustments set forth in this Agreement, to Seller.

2.5. Excluded Liabilities.

Except for the Assumed Liabilities, Buyer shall not assume and under no circumstances shall Buyer be obligated to pay or assume, and none of the assets of Buyer shall be or become liable for or subject to, any liability, indebtedness, commitment, or obligation of Seller, whether known or unknown, fixed or contingent, recorded or unrecorded, currently existing or hereafter arising or otherwise (collectively, the "Excluded Liabilities"), including, without limitation, the following Excluded Liabilities:

- (a) liability for any and all claims by or on behalf of Seller's employees relating to periods prior to the Closing including, without limitation, liability for any pension, profit-sharing, stock bonus, deferred compensation, group health, or any other employee benefit plans; liability for any Equal Employment Opportunity Commission ("EEOC") claim (or comparable state law claim), Americans with Disabilities Act claim (or comparable state law claim), Family and Medical Leave Act claim (or comparable state law claim), wage and hour claim, unemployment compensation claim, or workers' compensation claim; and any liabilities or obligations to former employees of Seller or qualified beneficiaries of Seller's group health plans under Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") (including any liabilities or obligations of Buyer to any such former employees or qualified beneficiaries of Seller who are not hired by Buyer as described in Treas. Reg. § 4.4980B-9) (provided, however, that this clause (a) shall not apply to any and all employee benefits constituting Assumed Liabilities pursuant to the Undertaking);

- (b) all suits, claims, indemnities, judgments, stipulation agreements, mortgages, taxes, contingent liabilities and other obligations of Seller, including, without limitation, any and all investment tax credit recapture, depreciation recapture; recapture or prior period adjustments under Medicare, Blue Cross and Medicaid or any other health care reimbursement or payment intermediary or other person or entity on account of any overpayment or duplicate payment (including, if applicable, any penalty or interest), and all impositions of income tax and other taxes for all time periods prior to and including the Effective Time;
- (c) all suits, claims, indemnities, judgments, stipulation agreements, contingent liabilities and other obligations of Seller based upon any malpractice, tort or breach of contract claim asserted by any patient, former patient, employee or any other party that is based upon acts or omissions or events for all time periods prior to and including the Effective Time; and
- (d) all suits, claims, indemnities, judgments, stipulation agreements, contingent liabilities and other obligations of Seller attributable to any time periods prior to the Effective Time arising out of any contract, whether or not such contract is assigned to Buyer, or any accounts payable of Seller.

The parties agree and expressly understand that Buyer is not responsible for and is not assuming any liabilities or obligations of the Seller or relating to the Assets except for the specific obligations listed in this Agreement relating to periods following Closing, and Seller will hold Buyer harmless from same.

2.6. Allocation of Purchase Price.

- (a) Tax Purposes. The parties agree that the consideration paid pursuant to § 2.4 shall be allocated among the Assets in accordance with the values set forth on Exhibit 2.6 attached hereto. The parties hereto make this allocation with the knowledge and understanding that it will be used by them for all purposes including tax, reimbursement and other purposes. Each party hereto agrees that it will report the transaction in accordance with such allocation, including under Section 1060 of the Internal Revenue Code of 1986, as amended (the "Code"), and that it will not take a position inconsistent with such allocation except with the written consent of the other party hereto. Each party agrees to cooperate with the other so that the information shown on Form 8594 filed with the IRS by such party will be consistent with the information on the other party's Form 8594. At least ten (10) days prior to closing the Parties agree to arrive at an allocation of purchase price. If the Parties cannot arrive at a mutually agreeable allocation the Parties agree to select an independent accounting service to choose an allocation that is most beneficial to both Parties.

2.7. [Intentionally Omitted]

2.8. Proration of Real Estate Closing Adjustments.

At the Closing, the parties shall calculate the proration of expenses related to ownership or operation of Real Property between the parties through the Effective Time, and, as appropriate, adjust the Cash Purchase Price accordingly pursuant to a Closing Statement in customary form setting forth the debits and credits applicable to each party. With respect to ad valorem taxes and utility charges, the following provisions shall apply:

Property Taxes. Ad valorem taxes and special assessments against the Real Property shall be prorated at Closing based on the tax bills for the tax year of the Closing. In the event the real estate tax bill for the current year has not yet been received by Seller, taxes assessed upon the Real Property for the current calendar year shall be prorated based on the previous year's tax rate, which amount Seller and Buyer agree is a reasonable estimate of the taxes for the current year.

Utilities. Utility charges shall not be prorated but, rather, instructions shall be given to the utility companies by Seller (with a duplicate copy of such instruction being provided concurrently to Buyer) to read the meters on the date of Closing and to issue separate statements thereafter. Utility deposits will be credited to Seller and assigned to Buyer at Closing. In the event that any provider of utilities shall refuse to timely issue separate statements in the manner aforesaid, or refuse to timely transfer any utility deposits, applicable utility charges shall be adjusted in the manner of other accounts payable.

Post Closing. If any charges or expenses are unavailable at the Closing, a readjustment shall be made within ten (10) days following the availability of accurate bills and figures. Taxes prorated at Closing shall be re-prorated between the parties promptly upon the receipt of the real estate tax bill for the current year and Buyer shall refund to Seller any amount overpaid by Seller or Seller shall pay to Buyer the amount of any deficiency in the proration.

2.9. Due Diligence Period.

Buyer shall have from the date of execution and delivery of this Agreement by all parties until 5:00 p.m. Central Time on *[insert date which should be no more than 30 days from signing]*, 2017 (the "Due Diligence Period") to conduct such due diligence investigation as may be deemed appropriate by Buyer. To facilitate Buyer's due diligence investigation, Buyer has identified certain items of diligence, as are listed on a due diligence checklist attached as Schedule 2.9 (the "Due Diligence Checklist"). Seller shall promptly deliver to Buyer (a) all items on the Due Diligence Checklist in the possession of Seller which have previously been prepared by Seller, and (b) all items in the possession of Seller reasonably requested by Buyer which may assist Buyer in obtaining new or updated similar items (such as environmental studies,

appraisals, feasibility studies, insurance reviews, and title insurance policies). Buyer may add to the Due Diligence Checklist during the Due Diligence Period by delivering either (x) an amended written Due Diligence Checklist, or (y) a request for additional information, which may be by email or fax, to the Seller from time to time. Buyer may, at its discretion, prior to the expiration of the Due Diligence Period, terminate this Agreement by notice to Seller if Buyer objects to any information contained in any of such Exhibits or to any information obtained by Buyer pursuant to this Agreement, and receive a full refund of the Deposit. Buyer shall have the right to terminate this Agreement during the Due Diligence Period by delivering written notice to Seller and Escrow Agent pursuant to Section 11.12 of this Agreement at any time before the end of the Due Diligence Period in the event Buyer discovers matters during the Due Diligence Period which Buyer reasonably may have a material adverse effect on the value of the Assets or the reputation of the Facility, in its sole and absolute discretion. If such notice is timely received by Seller, the Deposit shall promptly be fully refunded to Buyer. If no such notice is sent by Buyer and received by Seller before the end of the Due Diligence Period, Buyer shall be obligated to close, subject to satisfaction of each of the conditions set forth in ARTICLE 8 hereof, and if any such condition is not satisfied the Deposit shall promptly be fully refunded to Buyer. The Deposit shall become non-refundable at the end of the Due Diligence Period, except as otherwise set forth herein or in the Escrow Agreement. In conducting due diligence, Buyer shall preserve the confidentiality of the transaction contemplated herein and shall use its reasonable best efforts to avoid disrupting normal operations of the Facility.

2.10. Closing Statement.

At Closing, Buyer shall prepare and deliver to Seller a final closing statement ("Final Closing Statement") as of the Closing Date. Seller and its representatives shall be provided access to the books and records of Buyer as necessary to verify the accuracy of such calculations. Upon the request of either party, a revised post-closing Closing Statement shall be prepared to reflect any post-closing adjustments made pursuant to the terms of this Agreement.

Employees of Seller shall provide reasonable assistance to employees of Buyer in preparing the Final Closing Statement and any closing financial statements per normal fiscal period closing procedures.

2.11. Employee Matters.

- (a) Except as set forth on Exhibit 2.11(a), as of the date hereof, (i) there is no pending or, to Seller's knowledge, threatened employee strike, work stoppage or labor dispute against or involving the Business and none has occurred, (ii) to Seller's knowledge, no union representation question exists respecting any employees of Seller, no demand has been made for recognition by a labor organization by or with respect to any employees of

Seller, no union organizing activities by or with respect to any employees of Seller are taking place, and none of the employees of Seller are represented by any labor union or organization, (iii) no collective bargaining agreement exists or is currently being negotiated by Seller, (iv) there is no unfair practice claim against Seller before the National Labor Relations Board, and (v) there are no pending or, to Seller's knowledge, threatened complaints or charges before any Governmental Authority regarding employment discrimination, safety or other employment-related charges or complaints, wage and hour claims, unemployment compensation claims, workers' compensation claims or the like.

- (b) Exhibit 2.11(b) contains a list of all of the employees of the Business (the "Employees"), their current salary or wage rates, bonus and other compensation, benefit arrangements, accrued sick days, vacation days and holidays, periods of service, departments and job titles or other summary of the responsibilities of such Employees as of the date noted therein. Exhibit 2.11(b) also indicates whether such Employees are part-time, full-time or on a leave of absence and the type of leave. The Seller and each Benefit Plan have properly classified individuals providing services as independent contractors or Employees, as the case may be.
- (c) Seller hereby covenants with Buyer to terminate the employment of each of the Hired Employees hired by Buyer immediately prior to the Effective Time. Buyer hereby covenants with Seller to offer employment to substantially all employees of the Facility effective on the Closing Date. Any such employment of a Hired Employee by Buyer shall be on terms which require said Hired Employee to perform comparable services, in a comparable position, and at the same base salary as such Hired Employee received with the Facility prior to the Effective Time. Seller or any of its Affiliates shall have the right to employ or offer to employ any former employee of the Facility who declines to accept employment with Buyer or who Buyer elects not to offer employment. Buyer reserves the right not to hire any Employee for any lawful reason whatsoever, including the fact that the employee is at-will. Nothing herein shall be deemed to affect or limit in any way normal management prerogatives of Buyer with respect to employees, create or grant to any employees third-party beneficiary rights or claims of any kind or nature, or alter any employment-at-will relationship between the Buyer and the employees. Seller and Buyer acknowledge and agree that the provisions of this Section 2.11 are designed to ensure that Seller is not required to give notice to the employees of the Facility of the "closure" thereof under the Worker Adjustment and Retraining Notification Act of 1988, as amended or under any comparable state law..

- (d) As the Closing Date is not anticipated to be the same day as the end of a normal payroll period for Seller, Seller shall retain the liability for paying to the Employees which Buyer elects to hire (the "Hired Employees") all compensation accrued up to the Effective Time, including, without limitation, payroll taxes due with respect to such compensation. From the Effective Time and thereafter Buyer shall assume the liability for paying to the Hired Employees any benefits accrued up to the Effective Time, including, without limitation, Seller's existing obligations and liabilities to pay the Hired Employees for any paid time off, personal leave or vacation time (collectively, the "Time Off Pay") which have accrued prior to the Effective Time, and payroll taxes related to such items, as those amounts become due and in accordance with the benefit policies in place immediately prior to the Effective Time. For all Hired Employees, Seller shall pay Buyer at Closing an amount equal to Ninety Percent (90%) of any and all vested, earned and unused Time Off Pay and Ninety Percent (90%) of all vested, earned and unused sick leave ("Sick Leave Benefits") earned by Hired Employees as of the Effective Time, which amounts (as of December 31, 2016) are set forth on Schedule 2.11(d). In addition to the above amounts, Buyer shall receive a similar credit for the amount of payroll taxes which will be due with respect to such items. Nothing in this Agreement shall create any rights in favor of any person not a party hereto, including the employees of the Facility, or constitute an employment agreement or condition of employment for any employee.
- (e) Seller shall retain the liability for paying to any Employees which Buyer elects not to hire (the "Non-Hired Employees") all compensation or benefits accrued up to the Effective Time, including, without limitation, payroll and accrued vacation, and sick and other paid time off, and Seller shall terminate or obtain the release of any severance agreements with any of the Non-Hired Employees and fully pay and discharge any 401(k) matching contribution obligations with respect to Non-Hired Employees as of the Effective Time, and the credits described in subsection (d) above shall be adjusted accordingly. At least twenty (20) days prior to the Closing Date, Buyer shall provide to Seller a list of all such Employees which Buyer will not hire as of the Closing Date.
- (f) Seller shall be solely responsible for any and all liability arising directly or indirectly under the WARN Act, as a result of the transactions contemplated by this Agreement. Prior to the Closing, Seller will not temporarily or permanently close or shut down any "single site of employment" or any "facility" or any "operating unit," department or service within a single site of employment, as such terms are used in the WARN Act. Seller represents that it has not had any such closures or shutdowns within the period of at least ninety (90) days before the

Closing. After the Closing, Buyer shall retain that number of employees as shall be necessary to avoid liability of Seller under the WARN Act. Seller agrees that it will not take any voluntary action, including the termination of its Benefit Plans, the effect of which would be, or might reasonably be expected to be, the imposition upon Buyer of COBRA liability for current or former employees of Seller not hired by Buyer. Additionally, Seller shall retain any and all liabilities under Section 4980B of the Code and Sections 601 through 608 of ERISA with respect to all former employees of Seller and Non-Hired Employees. Seller shall indemnify, defend, and hold harmless Buyer from and against any and all liabilities, damages, costs, and expenses with respect to any liability assessed upon or incurred by Buyer that is the responsibility of Seller under this § 2.11.

- (g) Seller and Buyer shall comply with the provisions of the OTA as to the transition of Hired Employees from the employment of Seller to the employment of Buyer as of the Closing Date.

2.12. Closing.

The sale, purchase, and other activities provided for herein (the "Closing") shall take place as of the last day of the month during which the date that is thirty (30) days after the conclusion of the due diligence period occurs (the "Closing Date"), effective as of 12:01AM on the day after the date of the Closing, with the Closing to occur at such time (and date, if the Closing Date is not a Business Day) as the parties may agree, at the offices of Bradley Arant Boult Cummings LLP, in Nashville, Tennessee, or such other place as the parties may agree, or through escrow by mail. However, in the event Buyer has been unable to obtain reasonable assurances by the tenth (10th) day before the Closing Date that the licenses necessary to operate the Facility will be issued as of the Closing Date, after having used all reasonable good faith efforts in connection therewith, the Closing Date will be postponed to a date not to exceed thirty (30) days after the original Closing Date, to be mutually agreed upon by Buyer and Seller. In the event Buyer or Seller requires additional time to close (including for reasons of Buyer related to licensure, as noted above), Buyer shall have the right to adjourn Closing for thirty (30) days by depositing an additional One Hundred Thousand Dollars (\$100,000.00) with Escrow Agent for such 30 day extension, such additional deposit to be non-refundable and applied toward the Purchase Price at Closing, provided, however, that the extension may require the consent of Seller's Lender, which Seller will use its best efforts to obtain. The Closing and the risk of loss with respect to the Assets, and the legal transfer of the operations of the Business associated therewith, shall take place effective as of 12:01:01 a.m. Central Time on the day after the Closing Date (such effective time is herein referred to as the "Effective Time"), and all income and expense attributable to the ownership of the Assets and under Contracts and Assumed Liabilities (measured on an accrual

basis) to the Effective Time shall be for the account of Seller and thereafter for the account of Buyer.

2.13. Further Acts and Assurances.

Seller shall, at any time and from time to time at and after the Closing, upon request of Buyer, take any and all steps necessary to place Buyer in possession and operating control of the Assets and the Business to be transferred hereunder and will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be required for the better transferring and confirming to Buyer or to its successors or assigns, or for reducing to possession, any or all of the Assets.

2.14. Accounts Receivable; Application of Payments Received.

Notwithstanding anything contained herein to the contrary, Seller shall retain all Accounts Receivable accruing prior to the Effective Time, whether relating to Medicaid, Medicare or otherwise relating in any way to the Assets or Seller's operation thereof on or prior to the Effective Time. As used herein, the term "Payment" or "Payments" shall mean any moneys that are received by the Facility, Seller or Buyer from a Facility resident, or on account of a Facility resident, including without limitation, cash, checks, Social Security benefits, VA, Medicare, Medicaid and any other third party payment (which includes without limitation payment from governmental and non-governmental payors).

- (a) Application of Payments. Unless a Payment is specifically designated to apply to services or goods provided after the Effective Time, Buyer shall apply any Payments received for balances after the Effective Time to first reduce the pre-Effective Time balances of residents, and shall remit all such amounts collected to Seller within one (1) week of receipt for any amounts due for pre-Effective Time services for each particular resident. For the period of one (1) year following Closing, Buyer and Seller shall account for and remit to each other any Payments received by them as follows:
 - (i) Any Payment received by Buyer after the Effective Time relating to goods or services provided on or prior to the Effective Time will be forwarded to Seller within one (1) week of receipt by Buyer or the Assets.
 - (ii) Any Payment received by Seller after the Effective Time relating to goods or services provided after the Effective Time will be forwarded to the Buyer within one (1) week of receipt by Seller.

- (iii) In the event a Payment is received for services provided both prior to and after the Effective Time, Buyer and Seller shall remit to the appropriate party that portion of such Payment allocable to services provided on or prior to the Effective Time for Seller or following the Effective Time for Buyer, together with a copy of the applicable remittance advice for such resident, within one (1) week of receipt by such party.
 - (iv) If the accompanying remittance advice does not indicate the period to which a Payment relates or if there is no accompanying remittance advice, and the service date cannot otherwise be reasonably identified, then the Payment shall be deemed first to apply against current balances from such payor related to the identified resident and thereafter shall be applied to the oldest outstanding account receivable due from such payor related to the identified resident and shall be handled in the manner set forth in this Subsection (a).
 - (v) The Operations Transfer Agreement shall provide for the collection and transfer of Payments as set forth above, and the parties agree and acknowledge that Seller and Buyer shall use their best efforts to obtain such consents as may be required from, and execute and deliver such documents as may be reasonably requested by, their respective lenders with lien rights regarding such Payments (or the accounts into which such Payments are received), so as to allow the collection and transfer of Payments as contemplated above.
- (b) Remittance Advices. Buyer and Seller shall each forward to the other via facsimile or other electronic means approved by the receiving party any and all remittance advices, explanation of benefits, denial of payment notices and all other correspondence related to the other party's time of operation of the Assets within two (2) Business Days following the receipt of such documents. Furthermore, for a period of one hundred and eighty (180) days after the Closing, each party shall forward to the other a monthly cash receipts listing within ten (10) days following the end of each month.
- (c) Inspection. For a period of three hundred and sixty-five (365) days after the Closing, Buyer and Seller shall, upon reasonable notice and during normal business hours, have the right to inspect all cash receipts and other books and records (including bank statements) of the other respective party in order to confirm the other party's compliance with the obligations imposed on it under this Section. If 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 within five (5) Business Days after said determination is made.

- (d) Assistance Following Closing. Buyer agrees to make available to Seller following Closing, at no cost to Seller, certain persons who are currently employees of Seller in order for Seller to continue its normal business office functions. Such assistance shall include, but not be limited to, billing Seller's Accounts Receivable (including Medicare and Medicaid), paying Seller's payables using Seller's cash, reconciling Seller's bank statements, assisting in the preparation of Seller's final cost reports and financial statements, and assisting in the final distribution of assets and winding down of Seller's corporate entity.
- (e) Accounts Receivable and Bank Accounts. Notwithstanding any contrary or other provisions of this Agreement, including, but not limited to, the provisions of this §2.14, and notwithstanding any contrary provisions of the OTA, if requested by Seller's Lender (defined in §3.42 below), then the treatment of all accounts receivable generated at or relating to the Facility, all payments thereon, and all of Seller's bank accounts, including but not limited to the Deposit Accounts (defined in the OTA), will be the subject of, and will be controlled by the terms of, a separate written agreement or agreements which will be executed prior to the Closing Date by Seller, Buyer, and Seller's Lender, and any other parties determined necessary by Seller's Lender, in its sole discretion, and which shall be acceptable to Seller's Lender in form, content and detail. For the avoidance of doubt, the purpose of such agreement or agreements, if requested by Seller's Lender, is to ensure an orderly transition of the Facility and the collection of all accounts receivable, while respecting and maintaining Seller's and Buyer's respective interests and Seller's Lender's lien rights regarding such accounts receivable.

This Section 2.14 shall survive Closing.

2.15. Resident Trust Funds.

Seller hereby covenants that a true, correct and complete accounting of all resident trust funds held by Seller as of the Effective Time for residents of the Facility shall be provided at Closing. Seller shall transfer said funds to Buyer on the day of the Closing.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as follows:

3.1. Organization, Corporate Power and Qualification.

Seller consists of a limited liability company duly organized, validly existing and in good standing under the laws of the State of Tennessee and has full corporate power and authority and all authorizations, licenses and permits necessary to own, lease and operate its properties and assets and to carry on its Business as and where it is now being conducted, to enter into this Agreement, and subject to the written consent of Seller's Lender prior to the Closing Date, to consummate the transactions contemplated hereby. Seller is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned or leased by it or the nature of the business transacted by it makes such qualification necessary. Seller is qualified to do business in the states and foreign countries listed in Exhibit 3.1 of the Exhibit Volume that is a volume of all Exhibits referred to in this Agreement (the "Exhibit Volume"). No jurisdiction where Seller is not presently qualified as a foreign corporation has made any assertion that Seller's Business or ownership of property makes qualification as a foreign corporation in such jurisdiction necessary. A copy of Seller's charter and all amendments thereto as of the date hereof (certified by the Secretary of Seller), and a copy of Seller's bylaws and all amendments thereto, are included as Exhibit 3.1 of the Exhibit Volume and are true, accurate and complete as of the date hereof. Seller is not in default under or in violation of any provision of its charter or bylaws.

3.2. Subsidiaries, Affiliates, Affiliated Companies and Joint Venture.

Seller has no direct or indirect ownership interest in, by way of stock ownership or otherwise, any corporation, association or business enterprise.

3.3. Financial Statements.

Exhibit 3.3 consists of the balance sheet or sheets of the Facility as of December 31, 2014 and December 31, 2015, and the related profit and loss statement for the annual periods ending December 31, 2014, and December 31, 2015 (such unaudited financial statements being herein called "Seller Financial Statements").

The Seller Financial Statements are true, complete and accurate, have been based upon the information contained in the books and records of Seller and present fairly the assets, liabilities and financial condition of Seller as at the respective dates thereof and the results of its operations for the periods ended at the respective dates thereof, in each case prepared in conformity with GAAP applied on a consistent basis throughout the periods involved and with prior periods,

except that the Seller Financial Statements are unaudited, and do not contain “audit adjustments” or footnotes. The Seller Financial Statements do not contain any material inaccuracy and do not suffer from any material omissions in accordance with GAAP.

3.4. Absence of Undisclosed Liabilities.

Except as and to the extent reflected or reserved against in the Seller Financial Statements and except for commitments and obligations incurred in the Ordinary Course of Business accruing after the date of the most recent Seller Financial Statements, Seller as the date of the most recent Seller Financial Statements, had, or will have at Closing, no liabilities, claims or obligations (whether accrued, absolute, contingent, unliquidated or otherwise, whether or not known to Seller or any directors, officers or employees of Seller, whether due to become payable and regardless of when or by whom asserted).

3.5. Letters of Credit.

There are no outstanding letters of credit issued at the request of Seller to any suppliers or obligees of Seller with respect to the operations of Facility.

3.6. Absence of Certain Recent Changes.

Except as expressly provided in this Agreement or as set forth on Exhibit 3.6 in alphabetical order corresponding to the following subsections, since the date of the most recent Seller Financial Statements, and through the Effective Time, Seller has not and will use commercially reasonable efforts not to have:

- (a) except in the usual and Ordinary Course of its Business, consistent with past practice, and in an amount that is usual and normal incurred any indebtedness or other liabilities (whether accrued, absolute, contingent or otherwise), guaranteed any indebtedness or sold any of its assets;
- (b) suffered any damage, destruction or loss, whether or not covered by insurance, in excess of \$3,000;
- (c) suffered the resignation or other termination of any management personnel of Seller, or the loss of or other termination of a business relationship with any material customers or suppliers of Facility;
- (d) increased the regular rate of compensation payable by it to any employee, member, or any physician other than normal merit and cost of living increases granted in the Ordinary Course of Business; or increased such compensation by bonus, percentage, compensation service award or similar arrangement theretofore in effect for the benefit of any of its employees, and no such increase is required;

- (e) established or agreed to establish, amended or terminated any pension, retirement or welfare plan or arrangement for the benefit of its employees not theretofore in effect;
- (f) experienced any labor organizational efforts, strikes or complaints other than grievance procedures in the Ordinary Course of Business or entered into any collective bargaining agreements with any union;
- (g) except with respect to liens or encumbrances arising by operation of law, permitted or allowed any of the Assets to be subjected to any mortgage, pledge, lien, security interest, encumbrance, restriction or charge of any kind;
- (h) written down the value of any of the Assets, , except for write-downs and write-offs in the Ordinary Course of Business and consistent with past practice, none of which are material or revalued any of the Assets;
- (i) paid, discharged or satisfied any claims, liabilities or obligations (absolute, accrued, contingent or otherwise) other than in the usual and Ordinary Course of Business;
- (j) suffered any extraordinary losses, canceled any debts or waived any claims or rights of substantial value, whether or not in the usual and Ordinary Course of Business;
- (k) paid, lent or advanced any amount to, or sold, transferred or leased any properties or assets (real, personal or mixed, tangible or intangible) to, or entered into any agreement or arrangement with, any member of Seller or any of the officers or directors of Seller or of any "affiliate" or "associate" of any of its officers or directors (as such terms are defined in the rules and regulations of the Securities and Exchange Commission under the Securities Act of 1933, as amended), except for reimbursement of ordinary and reasonable business expenses related to the Business of the Facility and compensation to officers at rates not exceeding the rates of compensation as of the date of the most recent Seller Financial Statements;
- (l) amended, terminated or otherwise altered (whether by action or inaction) any contract, agreement or license of significant value pertaining to the Facility to which Seller is a party, except in the Ordinary Course of Business;

- (m) entered into a material transaction pertaining to the Facility other than in the Ordinary Course of Business or made any change in any method of accounting or accounting practice;
- (n) canceled, or failed to continue, insurance coverages pertaining to the Facility; or
- (o) agreed, whether in writing or otherwise, to take any action described in this § 3.6.

3.7. Title to Assets.

- (a) Except as disclosed in Exhibit 3.7(a) of the Exhibit Volume, Seller has, or will have at Closing, good and marketable title to all of the Real Property subject to no mortgage, pledge, lien, lease, conditional sales agreement, option, right of first refusal or to any other encumbrance or charge, including taxes, except Permitted Encumbrances and:
 - (i) assets sold or otherwise disposed of subsequent to the date hereof in the Ordinary Course of Business, to be disclosed to the Buyer;
 - (ii) liens in respect of taxes not yet due and payable or being contested in good faith by appropriate proceedings;
 - (iii) liens in respect of pledges or deposits under worker's compensation, unemployment insurance, social security and public liability laws and other similar legislation;
 - (iv) such imperfections of title and other encumbrances, if any, that do not in the aggregate materially detract from the value or interfere with the use of the Assets or otherwise materially impair the business operations of the Facility;
 - (v) building, zoning, land use and subdivision laws and regulations, provided they do not render title unmarketable;
 - (vi) easements for the installation or maintenance of public utilities serving the Assets; and
 - (vii) such non-monetary encumbrances with respect to the Assets which are shown on the title commitment or the survey but are not objected to by Buyer in accordance with Section 11.1 or which are otherwise deemed to be Permitted Encumbrances in accordance with this Agreement.

The term "Permitted Encumbrances" shall mean those items identified in Sections 3.7(a)(ii) through Section 3.7(a)(vii) herein.

(b) Other Representations Respecting Real Property.

- (i) Seller enjoys peaceful and undisturbed possession of the Real Property. Seller's use of the Real Property does not currently, and did not in the past, violate any existing zoning, building or use statutes, rules, ordinances or regulations of any federal, state, county or local entity, authority or agency the violation of which would have a material adverse effect on the Assets or the Business of Seller as it is presently conducted. Seller has not received any notice of any violation of any law, zoning ordinance or regulation affecting the Real Property and neither has received any notice of nor has any knowledge of or information as to any existing or threatened condemnation or other legal action of any kind involving the Real Property that may affect the value of the Real Property. The use of the Real Property, and the activities conducted thereon, have been, and are proper and in compliance with all material applicable laws, rules and regulations with proper permits and licenses and the property has in effect a valid certificate of occupancy;
- (ii) there are no contracts, leases or agreements in effect with respect to the Real Property of any kind or nature whatsoever, whether or not of record, with the exception of admission agreements and residential lease agreements entered into with patients and residents of the Facility in the Ordinary Course of Business;
- (iii) there are no building, use or deed restrictions relating to the Real Property that are not of public record. There are no latent structural defects in any buildings or improvements located on the Real Property;
- (iv) there are no unrecorded easements relating to the Real Property, or special assessments or proposed special assessments relating to the Real Property, and no federal, state or local taxing authority has asserted any tax deficiency, lien or assessment against the Real Property that has not been paid;
- (v) there are no outstanding accounts payable or choate or inchoate mechanics' liens or rights to claim a mechanic's lien in favor of any contractor, materialman, laborer or any other Person in connection with any portion of the Real Property;

- (vi) the land adjacent, abutting or contiguous to the Real Property is not used for the benefit of the Real Property for any purpose, including, but not limited to, storm drainage, utility service or access to the Real Property and such land is not in any way necessary for the operation or use of the Real Property. Seller has rights of ingress and egress from the Real Property that are adequate for the purposes for which the Real Property currently is used;
- (vii) all service utilities, including gas, water, electricity, telephone and sewer, are presently available and serving the Real Property in an adequate manner for its current use;
- (viii) no part of any Improvement encroaches on any real property not included in the Real Property, and there are no buildings, structures, fixtures or other Improvements primarily situated on adjoining property which encroach on any part of the Real Property;
- (ix) the Real Property for the Facility abuts on and has direct vehicular access to a public road or has access to a public road via a permanent, irrevocable, appurtenant easement benefiting such Land and comprising a part of the Real Property, is supplied with public or quasi-public utilities and other services appropriate for the operation of the Facility located thereon and is not located within any flood plain or area subject to wetlands regulation or any similar restriction; and
- (x) there is no existing or proposed plan to modify or realign any street or highway or any existing or proposed eminent domain proceeding that would result in the taking of all or any part of the Facility or that would prevent or hinder the continued use of the Facility as heretofore used in the conduct of the Business of Seller.

None of the encumbrances set forth in the title report impairs or materially interferes with the use or value of the Real Property or the Facility. The Real Property described on Appendix 1A constitutes all real property used in connection with the operation of the Facility.

- (c) Personal Property. The Assets consisting of owned personal property, including the Equipment and Furnishings listed on Appendix 1B are subject to no liens or encumbrances except the security interests of record set forth on Exhibit 3.7(c) of the Exhibit Volume. Seller agrees to remove all security interests reflected on Buyer's UCC search, if any, on

or before the Closing Date (except those approved by Buyer in writing) and to similarly remove any other security interests filed with respect to such assets between the date of such UCC search and the Closing Date. The bills of sale, warranty deed and the assignments and other instruments to be executed and delivered by the Seller at the Closing will be valid and binding and enforceable in accordance with their respective terms, and will effectively vest in Buyer good and marketable title to all the Assets.

3.8. Contracts.

Exhibit 3.8 of the Exhibit Volume contains a copy of each contract, lease, agreement and other instrument to which Seller is a party or is bound that involves an unperformed commitment or obligation (contingent or otherwise). Except as noted in such Exhibit, all such contracts, leases and agreements are in full force and effect, there has been no threatened cancellation thereof, there are no outstanding disputes thereunder, each is with unrelated third parties and was entered into on an arms-length basis in the Ordinary Course of Business and all will continue to be binding in accordance with their terms after consummation of the transactions contemplated hereby. Additionally, no purchase commitment of Seller is in excess of ordinary requirements of its Business or is at an excessive price. There are no contracts, leases, agreements or other instruments to which Seller is a party or is bound (other than insurance policies) that could either singularly or in the aggregate have an adverse effect on the value of the Assets. There are no employment agreements or other agreements to which Seller is a party or by which Seller is bound that contain any severance or termination pay liabilities or obligations pertaining to the Facility. All contracts, leases, agreements and other instruments regarding the Facility may be terminated by Buyer upon thirty (30) days' notice or less. Seller covenants and agrees that it shall pay all amounts due and otherwise discharge its duties under all contracts which are not assigned to Buyer, shall pay all amounts due vendors, suppliers and service providers for items and services received at the Assets before the Effective Time. Buyer shall provide notice to Seller at least forty (40) days before the Closing Date of those contracts of Seller which Buyer will not assume as of the Closing Date.

Except as described in Exhibit 3.8 or the other Schedules hereto (and except for purchase contracts and orders for inventory in the Ordinary Course of Business consistent with past practice), Seller is not, as of the date of this Agreement, a party to or bound by any:

- (a) material agreement or contract not made in the Ordinary Course of Business of the Facility;
- (b) employee collective bargaining agreement or other contract with any labor union as relates to the Facility;

- (c) covenant not to compete;
- (d) lease or similar agreement under which Seller is a lessor or sublessor of any material real property owned or leased by Seller or any portion of premises otherwise occupied by Seller as relates to the Facility;
- (e) (i) lease or similar agreement under which (A) Seller is lessee of, or holds or uses, any machinery, equipment, vehicle or other tangible personal property owned by a third party or (B) Seller is a lessor or sublessor of any tangible personal property owned by Seller, (ii) continuing contract for the future purchase of materials, supplies or equipment pertaining to the Facility, or (iii) management, service, consulting or other similar type of contract pertaining to the Facility;
- (f) license or other agreement relating in whole or in part to, trademarks (including, but not limited to, any license or other agreement under which Seller has the right to use any of the same owned or held by a third party);
- (g) agreement or contract under which Seller has borrowed or lent any money or issued any note, bond, indenture or other evidence of indebtedness or directly or indirectly guaranteed indebtedness, liabilities or obligations of others (other than (i) endorsements for the purpose of collection in the Ordinary Course of Business, (ii) agreements or contracts among Seller or among the Facility, and (iii) advances to employees of the Facility in the Ordinary Course of Business);
- (h) mortgage, pledge, security agreement, deed of trust or other document granting a lien on the Facility (including liens upon properties acquired under conditional sales, capital leases or other title retention or security devices but excluding operating leases) other than Permitted Encumbrances;
- (i) other agreement, contract, lease, license, commitment or instrument relating to the Facility to which Seller is a party or by or to which the Facility or any of its assets or business are bound or subject; or
- (j) any agreement, contract, understanding or business venture relating to the Facility with any physician, other provider or any other Person that violates the Medicare/Medicaid Fraud and Abuse amendments or any regulations thereunder adopted by the U.S. Department of Health and Human Services or other federal or state statutes or regulations.

3.9. Burdensome Agreements.

Except as is set forth in Exhibit 3.9 of the Exhibit Volume, Seller is not a party to, nor are the Assets subject to or bound or affected by, any provision of any order of any court or other agency of government or any indenture, agreement or other instrument or commitment that adversely affects the operations, earnings, assets, properties, liabilities, business or prospects of Seller or its condition, financial or otherwise.

3.10. Absence of Related Party Transactions.

Except as disclosed on Exhibit 3.10, neither Seller, nor any officer, director or affiliate of Seller, has any material direct or indirect financial or economic interest in any competitor or supplier of the Facility. Seller nor any shareholder of Seller is a party to any transaction or proposed transaction related to the Facility, including without limitation the leasing of property, or the furnishing of its services (except as employees of the Seller), with Seller, or any person or entity affiliated with Seller, including (without limitation) any shareholder (or family member) thereof; and Seller has not directly or indirectly entered into any agreement or commitment pertaining to the Facility that could result in Seller becoming obligated to provide funds in respect of or to assume any obligation of any such affiliated person or entity. Except as set forth on Exhibit 3.10, there presently are no debts owing to Seller or any shareholder of Seller by, or any contractual agreements or understandings between Seller and, any member, director or officer of Seller, any member of their respective families, or any affiliate or associate of any of the foregoing individuals, as the term "affiliate" is defined for purposes of the Securities Act of 1933 and the rules and regulations thereunder, and none of the foregoing individuals or any affiliate or associate of them owns any property or rights, tangible or intangible (other than an equitable interest and except as those listed on Exhibit 3.10), used in or related to Seller's Business. Except for loans that will be repaid at Closing, neither Seller nor any shareholder of Seller is indebted to any member, officer, director or employee of Seller, or to any member of their respective families, or to any affiliate or associate of any of the foregoing individuals, in any amount whatsoever, other than for payment of salaries and compensation for services actually rendered to the Facility in the Ordinary Course of Business.

3.11. Defaults.

3.11.1. Except as disclosed in Exhibit 3.11 or events which would not have a material adverse effect on the Buyer, Seller is not in default under, nor has any event occurred that, with the lapse of time or action by a third party, could result in a default under any outstanding indenture, mortgage, contract, instrument or agreement pertaining to the Facility to which Seller is a party or by which the Facility may be bound including the Contracts, or under any provision of the Certificate of Limited Partnership or Agreement of Limited Partnership of Seller.

3.11.2. Subject to Buyer's obtaining the necessary regulatory approvals, the execution, delivery and performance of this Agreement will not violate any provision of, or result in the breach of, or constitute a default under, any law the violation of which would result in a significant liability to Buyer, or any order, writ, injunction or decree of any court, governmental agency or arbitration tribunal; constitute a violation of or a default under, or a conflict with, any term or provision of the Certificate of Limited Partnership or Agreement of Limited Partnership of Seller or any contract, commitment, indenture, lease, instrument or other agreement, or any other restriction of any kind to which Seller is a party or is bound; or cause, or give any party grounds to cause (with or without notice, the passage of time or both) the maturity of any liability or obligation of Seller, to be accelerated, or increase any such liability or obligation.

3.12. Inventory.

The Inventory consists of a quality and quantity usable and saleable in the Ordinary Course of Business of the Facility. The quality and quantity of the Inventory of the Facility on the Closing date will be in a manner consistent with prior practice and an amount customarily found in facilities such as the Facility, and will include at least a five (5) day supply of food and at least a seven (7) day supply of medical and pharmaceutical inventories and supplies.

3.13. Equipment.

The present quantity of all equipment of Seller is reasonable and warranted in the present course of the Business conducted by Seller. The only transactions related thereto since the date of the most recent Seller Financial Statements have been additions thereto in the Ordinary Course of Business. The quality and quantity of the FF&E of the Facility on the Closing Date will not be materially different from the FF&E on the date of this Agreement, as described on Appendix 1B.

3.14. Powers of Attorney.

Exhibit 3.14 lists any outstanding powers of attorney related to Seller and a summary statement of the terms thereof.

3.15. Guarantees.

Included as Exhibit 3.15 in the Exhibit Volume is a list and brief description of all guarantees, matters of suretyship and contingent liabilities of Seller.

3.16. Permits and Licenses.

Included as Exhibit 3.16 in the Exhibit Volume is a schedule of permits and licenses, listing and briefly describing each permit, license or similar authorization from each governmental authority issued with respect to the operation or ownership of properties by Seller together with the designation of the respective expiration dates of each, and also listing and briefly describing each association in which Seller is a member and each association or governmental authority by which Seller is accredited or otherwise recognized. All of such permits, licenses and authorizations will continue to be valid and in full force and effect in accordance with their respective terms until the consummation of the transactions contemplated hereby. To Seller's knowledge, Seller is not required to obtain any additional permits, licenses or similar authorizations (including, without limitation, any additional certificates of need) from any governmental authority for the proper conduct of the Facility's Business or to become a member of or accredited by any association or governmental authority other than those listed on Exhibit 3.16 in the Exhibit Volume. In addition:

- (a) no default has occurred in any material respect in the due observance or condition of any permit or license that has not been heretofore corrected;
- (b) Seller has not received any notice from any source to the effect that there is lacking any permit or license needed in any material respect in connection with the operation of the Facility;
- (c) Seller has not received any notice that the Facility is out of compliance with the terms of all such permits and licenses or that such permits or licenses will not be renewed upon expiration, or that any material conditions will be imposed in order to receive any such renewal, nor has Seller received any notice that it has not complied in all material respects with the terms of all permits and licenses.

Notwithstanding anything herein to the contrary, Buyer acknowledges that skilled nursing facilities such as the Facility are subject to periodic surveys by Governmental Bodies, and the results of such surveys can vary depending on, among other things, the individual conducting the survey and changes in the policies and focus of the surveyors. Accordingly, no guaranty, representation or warranty is made that the Assets or the business conducted thereon is in compliance with each and every governmental requirement, nor is there any guaranty that subsequent surveys will not find any deficiencies with the Assets.

3.17. Assets Necessary to Business.

Seller presently has and at Closing will have and transfer to Buyer title to all property and assets, real, personal and mixed, tangible and intangible, and all leases, licenses and other agreements, necessary to permit Buyer to carry on the Business of the Facility as presently

conducted. Since the date of the most recent Seller Financial Statements, neither Seller nor the Facility has sold any of the Facility's Assets except sales of inventory in the Ordinary Course of Business.

3.18. Litigation, etc.

Except as set forth in Exhibit 3.18 of the Exhibit Volume, there is no litigation, arbitration, governmental claim, investigation or proceeding pending or, to Seller's knowledge, threatened against Seller or any shareholder of Seller with respect to the Facility at law or in equity, before any court, arbitration tribunal or governmental agency. No such proceeding set forth in Exhibit 3.18 concerns the ownership or other rights with respect to the Assets. To Seller's knowledge, there are no facts based on which material claims may be hereafter made against Seller or any shareholder of Seller pertaining to the Facility. Except as provided in § 2.5, any and all claims arising from incidents on or before the Effective Time shall be the sole responsibility of Seller and are specifically excluded from the liabilities to be assumed by Buyer hereunder. All claims and litigations against Seller are fully covered by insurance.

3.19. Court Orders, Decrees and Laws.

There is not outstanding or threatened any order, writ, injunction or decree of any court, governmental agency or arbitration tribunal against or affecting Seller, any shareholder of Seller or the Assets which would significantly interfere with the abilities to conduct the Business of the Facility. Seller is in compliance in all material respects with all applicable federal, state and local laws, regulations and administrative orders that are material to the Business conducted by Seller at Facility and Seller has received no notices of alleged violations thereof which remain uncured, except as disclosed in Exhibit 3.19 hereof. No governmental authorities are presently conducting proceedings against Seller with respect to the Facility and no such investigation or proceeding is pending or being threatened.

3.20. Taxes.

All federal, state and other tax returns of Seller as pertains to the Facility required by law to be filed have been timely filed or will be filed as of Closing, and Seller and any shareholder of Seller have paid or will pay at Closing all taxes (including taxes on properties, income, franchises, licenses, sales and payrolls) which have become due pursuant to such returns or pursuant to any assessment, except for any taxes and assessments of which the amount, applicability or validity is currently being contested in good faith by appropriate proceedings and with respect to which Seller has set aside on its books adequate reserves. All such tax returns have been prepared in compliance with all applicable laws and regulations, to Seller's knowledge, and are true and accurate in all respects. There are no tax liens on any of the Assets except those with respect to taxes not yet due and payable and except for any taxes and

assessments of which the amount, applicability or validity is currently being contested in good faith by appropriate proceedings and with respect to which Seller has set aside on its books adequate reserves.

3.21. Immigration Act.

Seller is in compliance with the terms and provisions of the Immigration Act in all material respects. For each employee (as defined in 8 C.F.R. 274a.1(f)) of the Facility for whom compliance with the Immigration Act by Seller is required, Seller has obtained and retained a complete and true copy of each such employee's Form I-9 (Employment Eligibility Verification Form) and all other records or documents prepared, procured or retained by Seller pursuant to the Immigration Act. There are no violations or potential violations of the Immigration Act by Seller as pertains to the Facility. Seller has not been cited, fined, served with a Notice of Intent to Fine or with a Cease and Desist Order, nor, to Seller's knowledge, has any action or administrative proceeding been initiated or threatened against Seller, by reason of any actual or alleged failure to comply with the Immigration Act.

3.22. Non-Foreign Status; Patriot Act.

Seller is not a "foreign person" as such term is defined in Section 1445(f) of the Internal Revenue Code of 1986, as amended. Seller is a "United States person" within the meaning of Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended. Seller is in compliance with the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (the "Order") and other similar requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury (OFAC) and in any enabling legislation or other Executive Orders or regulations in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "Orders"). Neither Seller nor any beneficial owner of Seller: (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "Lists"); (ii) is a Person who has been determined by competent authority to be subject to the prohibitions contained in the Orders; or (iii) is owned or controlled by, or acts for or on behalf of, any Person on the Lists or any other Person who has been determined by competent authority to be subject to the prohibitions contained in the Orders.

3.23. Program Compliance.

Neither Seller nor any shareholder of Seller is a party to, or the beneficiary of, any agreement, contract, understanding or business venture with any provider or referral source that violates the Medicare/Medicaid Fraud and Abuse amendments or any regulations thereunder adopted by the

U.S. Department of Health and Human Services or any regulations adopted by any other federal or state agency or that results in overutilization of health care services by patients.

3.24. HIPAA Matters.

- (a) Each business, entity or component of any entity owned or controlled by Seller that is a health plan, healthcare clearinghouse or healthcare provider, as such terms are defined in the Federal Privacy Regulations (collectively, the “Covered Entities”), is in material compliance with and has not violated the administrative simplification section of HIPAA, the Federal Privacy Regulations, the Federal Transaction Regulations or applicable state privacy laws.
- (b) A complete and accurate list of all Covered Entities and each Organized Health Care Arrangement (as defined in the Federal Privacy Regulations) in which a Covered Entity participates is attached hereto as Exhibit 3.24. Complete and accurate copies of each Covered Entity’s policies relating to the privacy of its patients’ Protected Health Information (as defined in the Federal Privacy Regulations) are attached hereto as Exhibit 3.24. An accurate copy of each Covered Entity’s privacy notice and any policy relating thereto, or the most recent draft thereof, has been furnished to Buyer.
- (c) Complete and accurate copies of all agreements (collectively, “Business Associate Agreements”) between a Covered Entity and a Business Associate (as defined in the Federal Privacy Regulations), together with a complete and accurate summary of the terms and conditions of any oral arrangements with Business Associates, have been furnished to Buyer. Neither Seller nor any Covered Entity is aware of any breach by a Business Associate of any Business Associate Agreement or any violation by a Business Associate of HIPAA, the Federal Transaction Regulations, the Federal Privacy Regulations, or the Federal Security Regulations.
- (d) To Seller’s knowledge, no patient has filed a HIPAA related complaint with Seller, the Business or any Governmental Authority.

3.25. Compliance Program.

Seller has provided to Buyer a copy of its current compliance program materials. Except as set forth on Exhibit 3.25, Seller (a) is not a party to a Corporate Integrity Agreement with the Office of Inspector General of the Department of Health and Human Services, (b) has no reporting obligations pursuant to any settlement agreement entered into with any Governmental Authority, (c) has not been the subject of any government payor program investigation conducted by any federal or state enforcement agency, (d) has not been a defendant in any qui

tam/False Claims Act or similar litigation, (e) has not been served with or received any search warrant, subpoena, civil investigative demand, contact letter, or telephone or personal contact by or from any federal or state enforcement agency (except in connection with medical services provided to third-parties who may be defendants or the subject of investigation into conduct unrelated to the operation of the Business or any other health care businesses conducted by Seller), and (f) has not received any written complaints or complaints through their telephonic hotlines from employees, independent contractors, vendors, physicians, or any other person that would indicate that Seller has in the past violated, or is currently in violation of, any law or regulation. Buyer has been provided with a description of each audit and investigation conducted by Seller pursuant to its compliance program with respect to the Business during the last three years. For purposes of this Agreement, the term “Compliance Program” refers to provider programs of the type described in the Compliance Program Guidance published by the Office of Inspector General of the Department of Health and Human Services.

3.26. Reimbursement Matters.

Copies of all Medicare and Medicaid Cost Reports filed by Seller either not audited by the fiscal intermediary or audited and not formally settled are listed on Exhibit 3.26(a) of the Exhibit Volume. A schedule setting forth the audit status of such Medicare Cost Reports is set forth in Exhibit 3.26(b) of the Exhibit Volume. The amounts set up as provisions for Medicare and Medicaid adjustments and adjustments by any other third party payors on the Seller Financial Statements are sufficient to pay any amounts for which Seller may be liable. Seller is aware of no basis for any claims against Seller by any third party payors other than routine Medicare and Medicaid audit adjustments.

3.27. Environmental Matters.

Except as disclosed on Exhibit 3.27:

- (a) All federal, state and local permits, licenses and authorizations required for the use and operation of the Real Property have been obtained and are presently in effect.
- (b) None of the Real Property has been used by Seller (and to the best of Seller's knowledge, by any other Person at any time) to handle, treat, store or dispose of any hazardous or toxic waste or substance (collectively “Hazardous Substance” as defined below), nor is any of the Real Property, including all soils, groundwaters and surface waters located on, in or under the Real Property, contaminated with pollutants or other substances which contamination may give rise to a clean-up obligation under any federal, state or local law, rule, regulation or ordinance, including, but not limited to, the federal Comprehensive Environmental Response,

Compensation and Liability Act, 42 USC 9601 et seq, and the common law.

- (c) All underground and aboveground tanks located in, on or under any Real Property are in a state of good condition and repair and have not leaked nor are they presently leaking any of the contents that they have held or presently hold. A list of all such tanks is set forth on Exhibit 3.27.
- (d) There are no outstanding violations or any consent decrees entered against Seller regarding environmental and land use matters, including, but not limited to, matters affecting the emission of air pollutants, the discharge of water pollutants, the management of hazardous or toxic substances or wastes, or noise.
- (e) There are no claimed, threatened or alleged violations with respect to any federal, state or local environmental law, rule, regulation, ordinance, permit, license or authorization, and there are no present discussions with any federal, state or local governmental agency concerning any alleged violation of environmental laws, rules, regulations, ordinances, permits, licenses or authorizations.
- (f) All operations conducted by Seller on the Real Property have been and are in compliance with all federal, state and local statutes, rules, regulations, ordinances, permits, licenses and authorizations relating to environmental compliance and control.
- (g) To the best of Seller's actual knowledge, no part of the Real Property has been designated by any governmental agency having jurisdiction as wetlands or as inhabited by an endangered species.

For purposes hereof, "Hazardous Substances" means any of the following: (i) any "hazardous waste," "solid waste," "hazardous material," "hazardous substance," "toxic substance," "pollutant," or "contaminant" as those or similar terms are defined or regulated under any Environmental Laws; (ii) any mold, mildew, fungus, or other potentially dangerous organisms ("Mold"); (iii) asbestos (whether or not friable) and asbestos-containing materials; (iv) any volatile organic compounds, including oil and petroleum products; (v) any substances that because of their quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to health, safety or welfare of any person or to the environment, including any polychlorinated biphenyls (PCBs), infectious medical wastes (including tissue, syringes, needles, blood samples or any material contaminated with bodily fluids of any type), toxic metals, etchants, pickling and plating wastes, explosives, reactive metals and compounds,

pesticides, herbicides, urea formaldehyde foam insulation and chemical, biological and radioactive wastes; (vi) radon gas; (vii) any other substance the presence of which on the Premises is prohibited by any Environmental Laws; and (viii) any other substance that by any Environmental Laws requires special handling or notification of any Governmental Authority in its collection, storage, treatment, or disposal. However, for the purposes of the covenants and indemnification obligations set forth in this Agreement, the term "Hazardous Substances" shall not include small quantities of materials, chemicals or substances normally used in connection with the use, management, operation, or ownership of the Facility provided that such materials, chemicals or substances are generated, produced, stored, handled, used transported and disposed in a safe and prudent manner in strict compliance with all Environmental Laws.

"Environmental Laws" means all laws, statutes, codes, ordinances, orders, interpretations, rules and regulations of any governmental authority relating to human health or the environment, including the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq. ("RCRA"); the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq. ("CERCLA"), the Toxic Substances Control Act, 15 U.S.C. Section 2601, et seq., the Federal Hazardous Materials Transportation Law, 49 U.S.C. Section 5101 et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Clean Air Act, 42 U.S.C. Section 7401 et seq., the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq., and all similar Florida laws that are applicable, as well as all regulations promulgated thereunder and any common law or any other rule of law of any governmental authority applicable to the Real Property and/or Facility and relating to human health or the environment.

3.28. Employee Benefit Plans.

Except as set forth in Exhibit 3.28 hereto:

- (a) Seller does not sponsor or participate in, nor within the last five (5) years has Seller sponsored or participated in, any pension, profit-sharing, stock bonus, deferred compensation, or other tax-qualified or nonqualified retirement plans; welfare benefit plans, including group health, life, disability, or similar plans; fringe benefit, cafeteria, flexible benefit, or educational assistance plans; executive compensation, bonus, or incentive plans; severance plans; vacation, holiday, sick-leave, paid-time-off, or other employee compensation-related plans, procedures, programs, payroll practices, policies, agreements, commitments, contracts, or understandings under which any of the benefits described above are provided to any of the employees of the Facility; or any trusts or other agreements related thereto (all collectively, the "Benefit Plans"). Seller has delivered to Buyer accurate and complete copies of all the Benefit Plans, including any related insurance contracts or any other funding instruments; all current

governmental rulings or letters issued in connection with any of the Benefit Plans; contracts with third-party administrators and other independent contractors currently involved with the administration of the Benefit Plans; and the summary plan descriptions, summaries of material modifications, and any other written communications with the participants and beneficiaries of the Benefit Plans. All returns, reports, disclosure statements, and premium payments with respect to the Benefit Plans have been timely filed, delivered, or paid, as applicable and as required by applicable law. For the purposes of this § 3.28, Seller shall refer to Seller and any entity required to be aggregated with Seller pursuant to the applicable provisions of the Internal Revenue Code (“Code”) and the Employee Retirement Income Security Act of 1974, as amended (“ERISA”).

- (b) With respect to such Benefit Plans, Seller does not currently and has not ever participated in or sponsored, contributed to, or had an obligation to contribute to any multiemployer plan, multiple employer plan, or single employer plan to which at least two or more of the contributing sponsors are not part of the same controlled group; sponsored or participated in any benefit plan that is self-insured or is a self-funded multiple employer welfare arrangement; participated in, engaged in, or been a party to any prohibited transaction for which there is no statutory, regulatory, or administrative exemption; had asserted against it any claim for any excise tax, interest, or penalty; or committed a breach of any responsibilities or obligations imposed upon fiduciaries under any law applicable to the Benefit Plans.
- (c) Each Benefit Plan that is a pension or other retirement plan and each related trust agreement, custodial agreement, annuity contract, or other funding instrument is and has been since its inception qualified and tax-exempt under the provisions of Sections 401(a) and 501(a) of the Code, respectively; each Benefit Plan that is a plan established under Sections 403(b) or 457 of the Code and each related trust agreement, annuity contract or other funding instrument is and has been since its inception in compliance with the requirements of Sections 403(b) or 457 of the Code, respectively; each Benefit Plan that is a nonqualified deferred compensation plan and each related trust agreement, insurance contract, or other funding instrument, is in compliance with the requirements of Section 409A of the Code. Each Benefit Plan is and has been since its inception in material compliance with its terms and, both as to form and in operation, with the requirements prescribed by any and all laws that are applicable to such Benefit Plan; does not have and has not had since its inception any unfunded accrued liability; has not experienced any reportable events; has not had any accumulated funding deficiencies or

liquidity shortfalls; does not have any liabilities required to be disclosed that have not been disclosed; has not been partially or fully terminated; and no governmental entity has instituted or threatened a proceeding to terminate any Benefit Plan or to appoint a new trustee for such Benefit Plan. Each Benefit Plan that is not an employee pension benefit plan is in material compliance with its terms and, both as to form and operation, with the requirements prescribed by any and all laws that are applicable to such Benefit Plan. Seller does not have any liability under any Benefit Plan for which Buyer has or will have any liability, contingent or otherwise, under Parts I or IV of ERISA, the Code, or other applicable laws. Seller has no knowledge of any noncompliance with applicable laws with respect to any Benefit Plan that would create any liability for Buyer.

- (d) No Benefit Plan is currently or has been within the last three (3) years under audit, inquiry, or investigation by the any governmental entity, and there are no outstanding issues with reference to the Benefit Plans pending before any governmental agency. Other than routine claims for benefits, there are no actions, mediations, audits, arbitrations, suits, claims, or investigations pending or threatened against or with respect to any of the Benefit Plans or their assets, and there are no threatened or pending claims by or on behalf of the Benefit Plans or by any employee of Seller alleging a breach of fiduciary duties or violations of law nor is there any basis for such claims.

3.29. Employee Relations.

- (a) Except as set forth in Exhibit 3.29 hereto, there has not been within the last three (3) years, there is not presently pending or threatened, and no event has occurred or circumstance exists that could provide the basis for any strike, slowdown, picketing, work stoppage, or employee grievance process, or any proceeding against or affecting the Facility relating to an alleged violation of any legal requirements pertaining to labor relations, including any charge, complaint, or unfair labor practices claim filed by an employee, union, or other person with the National Labor Relations Board or any comparable governmental body, organizational activity, or other labor dispute against or affecting Seller or its premises. With respect to the employees of the Facility, no collective bargaining agreement exists or is currently being negotiated by Seller; no application for certification of a collective bargaining agent is pending; no demand has been made for recognition by a labor organization; no union representation question exists; no union organizing activities are taking place; and none of the employees of Seller is represented by any labor union or organization.

- (b) Seller has complied in all material respects with all legal requirements relating to employment; employment practices; terms and conditions of employment; equal employment opportunity; nondiscrimination; immigration; wages; hours; benefits; payment of employment, social security, and similar taxes; occupational safety and health at the Facility. Seller is not liable for the payment of any compensation, damages, taxes, fines, penalties, interest, or other amounts, however designated, for failure to comply with any of the foregoing legal requirements. Except as set forth in Exhibit 3.29, there are no pending or threatened claims before the EEOC (or comparable state agency), complaints before Occupational Safety and Health Administration (or comparable state agency), wage and hour claims, unemployment compensation claims, workers' compensation claims, or the like.
- (c) Seller has provided, or during the Due Diligence Period will allow access, to Buyer to the personnel records of all of the Facility's employees and the salary or wage records for such employees including records reflecting sick or extended illness, paid-time-off, and vacation leave that is accrued or credited but unused or unpaid. Seller has provided to Buyer copies of each employment, consulting, independent contractor, bonus, or severance agreement to which Seller is a party. Exhibit 3.29 sets forth the employees who had an "employment loss," as such term is defined in the Worker Adjustment and Retraining Notification Act (the "WARN Act"), within the ninety (90) days preceding the Closing; in relation to the foregoing, Seller has not violated the WARN Act or any similar state or local legal requirements. Except as set forth in Exhibit 3.29, no officer, director, agent, employee, consultant, or independent contractor of Seller is bound by any agreement that purports to limit the ability of such officer, director, agent, employee, consultant, or independent contractor to engage in or continue or perform any conduct, activity, duties or practice relating to the Business of Seller.

3.30. Insurance; Malpractice.

Exhibit 3.30 of the Exhibit Volume is a list and brief description of all policies of fire, general liability, professional liability, product liability, environmental impairment liability, worker's compensation, health and other forms of insurance policies or binders currently in force insuring against risks of Seller. All insurance policies or binders of Seller are valid, outstanding and enforceable and will continue to be valid, binding and enforceable until the consummation of the transactions contemplated by this Agreement.

3.31. Labor Matters.

There are no collective bargaining agreements with any labor union to which Seller is a party or by which Seller is bound pertaining to employees at the Facility, and it is not currently negotiating with a labor union. To Seller's knowledge, no current or former employees of the Facility have ever petitioned for a representation election. Seller is in compliance with all applicable laws respecting employment and employment practices, terms and conditions of employment and wages and hours, and is not engaged in any unfair labor practice, except where such non-compliance would not have a material adverse effect on Buyer. There is no unfair labor practice complaint against Seller pending before the National Labor Relations Board as pertains to the Facility. There is no labor strike, dispute, slowdown or stoppage actually pending or, to its knowledge, threatened against or affecting Seller as pertains to the Facility. No grievance that might have a material adverse effect on the Facility or the conduct of its Business nor any such arbitration proceeding arising out of or under collective bargaining agreements is pending and no claim therefor exists. Seller has not experienced any Facility employee strikes during the last three years. Seller will advise Buyer of any such labor dispute, petition for representative election or negotiations with any labor union that shall arise before the Closing Date. Except as may be required by § 980B of the Code or applicable state health care continuation coverage statutes, Seller has no liability under any plan or arrangement that provides welfare benefits, including medical and life insurance, to any current or future retiree or terminated employee of the Facility.

3.32. Improper Payments.

Neither Seller nor any shareholder of Seller nor any officer or employee thereof have made any bribes, kickbacks or other improper payments on behalf of the Facility or received any such payments from vendors, suppliers or other persons contracting with the Facility.

3.33. Certain Representations With Respect to the Facility.

- (a) The Facility is licensed by the Florida Agency for Health Care Administration as a Skilled Nursing Facility authorized to operate one hundred fifty four (154) licensed nursing home beds in its existing facilities located in Boca Raton, Florida. Except as set forth in Exhibit 3.33(a)-1 of the Exhibit Volume, the Facility is presently in compliance with all the terms, conditions and provisions of such licenses. Exhibit 3.33(a)-2 of the Exhibit Volume provides a copy of each license.
- (b) The Facility has current contractual arrangements with the insurance payors listed on Exhibit 3.33(b) of the Exhibit Volume. A copy of such existing contracts are included as Exhibit 3.33(b) of the Exhibit Volume; and the Facility is presently in compliance with all of the terms, conditions and provisions of such contracts in all material respects.

- (c) The Facility is qualified for participation in the Medicare Program. A copy of the existing Medicare contracts are included as Exhibit 3.33(c) of the Exhibit Volume; and the Facility is presently in compliance with all of the terms, conditions and provisions of such contracts in all material respects.
- (d) The Facility is qualified for participation in the Medicaid program. A copy of existing Medicaid and related Managed Care Organization contracts are included as Exhibit 3.33(d) of the Exhibit Volume; and the Facility is presently in compliance with all the terms, conditions and provisions of such contracts.
- (e) Except as noted on Exhibit 3.33(b) of the Exhibit Volume, the Facility does not currently, and has not in the past ten (10) years, participated in the TriCare (formerly known as CHAMPUS) program.
- (f) Included as Exhibit 3.33(f) of the Exhibit Volume is a copy of the most recent fire marshal reports with respect to the Facility. Seller has no knowledge of any fire code violations at the Facility.
- (g) Except as set forth in Exhibits 3.33(f) and (g) of the Exhibit Volume, Seller has received no written notification that the Facility is in violation of local building codes, ordinances or zoning laws. To Seller's knowledge, the buildings in which the Facility is located complies with all state and local building codes, ordinances and zoning codes, except where such non-compliance would not have a material adverse effect on Buyer.
- (h) Included as Exhibit 3.33(h) to the Exhibit Volume is a copy of the surveys of the Facility by the Florida Agency for Health Care Administration for the two (2) years prior to the date hereof. Buyer has been provided with copies of all Statements of Deficiency and Plans of Correction pertaining to the Facility's operations for the past two (2) years.
- (i) Included as Exhibit 3.33(i) of the Exhibit Volume are the by-laws of the Medical Staff of the Facility, if any.
- (j) Included as Exhibit 3.33(j) is a schedule of the current status of the Facility's medical staff, if applicable, showing state licensure, and professional liability insurance coverage, which schedule includes expiration dates, of each physician or other licensed healthcare professional.
- (k) Seller has received no written notice and, to Seller's knowledge, Seller is not aware of any material violation concerning the Facility from any

Governmental Authority about a violation of any federal, state, county, or city statute, ordinance, code, rule, or regulation (including without limitation those relating to zoning and the requirements of Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181, et seq., The Provisions Governing Public Accommodations and Services Operated by Private Entities); although portions of the Improvements may have been "grandfathered" as it relates to passage of new codes and ordinances. The terms "Governmental Authority" and "Governmental Authorities" mean the United States of America, the State of Florida, the county in which the Facility is located, and any other political subdivision in which the Facility is located, and any agency, department, commission, board, bureau, property owners association, utility district, flood control district, improvement district, or similar district, or other instrumentality of any of them.

3.34. Books of Account; Reports.

The books of account and other financial Records of Seller pertaining to the Facility, all of which have been made available to Buyer to the extent requested by Buyer, are complete and correct and represent actual, bona fide transactions and have been maintained in accordance with sound business practices and the requirements of Section 13(b)(2) of the Exchange Act (regardless of whether Seller is subject to that Section or not), including the maintenance of an adequate system of internal controls. Seller has filed all reports and returns required by any law or regulation to be filed by it.

3.35. No Finders or Brokers.

Neither Seller nor any officer or director of Seller has engaged any finder or broker in connection with the transactions contemplated hereunder, except for New Century Capital Partners, Inc., and any fee or commission due to such broker shall be the sole responsibility of Seller.

3.36. Enforceability; Authority; No Conflict.

Seller has full power and authority to enter into this Agreement and to carry out the transactions contemplated herein, (i) subject to Seller's obtaining the written consent of Seller's Lender prior to the Closing Date, and (ii) subject to Buyer's obtaining the necessary regulatory approvals. The execution, delivery, and performance of this Agreement constitute the valid and binding agreement of Seller enforceable in accordance with its terms.

3.37. Consents and Approvals of Governmental Authorities.

No characteristic of the Facility or of the nature of its Business or operations requires any consent, approval or authorization of, or declaration, filing or registration with any governmental or regulatory authority in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, except for such approvals to be obtained by Buyer.

3.38. Knowledge; Miscellaneous.

As used in this Agreement, the term “to the knowledge of Seller” or any other reference to the knowledge of Seller (a) shall mean and apply to the actual knowledge of any current officer of Seller (the “Seller’s Knowledge Individuals”), and not to any other persons, (b) shall mean the actual (and not implied or constructive) knowledge of one or more of the Seller’s Knowledge Individuals, without any duty on Seller’s Knowledge Individuals to conduct any investigation or inquiry of any kind, and (c) shall not apply to or to be construed to apply to information or material which may be in the possession of Seller generally or incidentally, but which is not actually known to one or more of Seller’s Knowledge Individuals. Similarly, any reference to any written notice, claim, litigation, filing or other correspondence or transmittal to Seller set forth herein shall be limited to refer to only those actually received by or known to one or more of the Seller’s Knowledge Individuals in the limited manner provided in clauses (a) through (c) above.

Notwithstanding anything contained in this Agreement to the contrary, all of the representations and warranties which are made by Seller and set forth herein or in any of the documents or instruments required to be delivered by Seller hereunder, shall be subject to the following conditions and limitations: (a) there shall be no liability on the part of Seller for any breach of a representation or warranty arising from any matter or circumstance of which Buyer had knowledge at Closing; and (b) if prior to the time of Closing, during the course of Buyer’s inspections, studies, tests and investigations, or through other sources, Buyer gains knowledge of a fact or circumstance which, by its nature, indicates that a representation or warranty was or has become untrue or inaccurate, and such fact or circumstance was not intentionally withheld from Buyer by Seller with the intent to defraud Buyer and was not otherwise the result of a breach or default by Seller in the performance of any of its obligations under this Agreement, Buyer’s sole and exclusive right and remedy shall be to terminate this Agreement, in which event Seller shall permit the Escrow Agent to refund to Buyer the Deposit, whereupon this Agreement shall be deemed cancelled and the parties hereto shall be released of all obligations and liabilities under this Agreement, except those that are expressly stated to survive the cancellation or termination of this Agreement; and Buyer shall have no rights of action against Seller, in law or in equity, for damages or specific performance.

3.39. Solvency.

- (a) As noted in Section 3.42 of this Agreement Seller is currently subject to a bankruptcy proceeding.
- (b) Immediately after giving effect to the consummation of the Contemplated Transactions: (i) Seller will be able to pay its Liabilities as they become due in the usual course of its business; (ii) Seller will not have unreasonably small capital with which to conduct its present or proposed business; (iii) Seller will have assets (calculated at fair market value) that exceed its Liabilities; and (iv) taking into account all pending and threatened litigation, final judgments against Seller in actions for money damages are not reasonably anticipated to be rendered at a time when, or in amounts such that, Seller will be unable to satisfy any such judgments promptly in accordance with their terms (taking into account the maximum probable amount of such judgments in any such actions and the earliest reasonable time at which such judgments might be rendered) as well as all other obligations of Seller. The cash available to Seller, after taking into account all other anticipated uses of the cash, will be sufficient to pay all such debts and judgments promptly in accordance with their terms.

3.40. Disclosure.

No representation or warranty or other statement made by Seller in this Agreement, the Exhibits, the certificates delivered pursuant to § 8.1 or otherwise in connection with the Contemplated Transactions contains any untrue statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading.

3.41. “Life Care” Contracts.

Exhibit 3.41 includes a true and complete copy of each endowment, “life care,” or other lump sum monetary payment contract or agreement in connection with the use or occupancy of the Facility by any person. Except as specifically set forth in Exhibit 3.41, no person using or occupying any part of the Facility has paid any entrance fee, investment fee, endowment, “life care” fee, or other lump sum monetary payment in connection with his or her use or occupancy of the Facility. No person using or occupying any part of the Facility has been promised any special concessions or care except as fully set forth in contracts set forth in Exhibit 3.41. All contracts set forth in Exhibit 3.41 are compliant with all applicable rules and regulations regarding such contracts, except as specifically disclosed on Exhibit 3.41.

3.42. Consent of U.S. Bankruptcy Court and/or Seller’s Lender Required

- (a) Seller has informed Buyer, and Buyer acknowledges being informed, that Seller has filed for relief under Chapter 11 of the U.S. Bankruptcy Code pending in the U.S. Bankruptcy Court for the Middle District of Tennessee, Case No. 16-03318 (jointly administered in Case No. 16-03296), and that the Closing pursuant to this Agreement is conditioned on approval by the Bankruptcy Court.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants as follows:

4.1. Organization and Standing of Buyer.

Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of _____; has full power and authority to conduct its business as now being conducted; and is duly qualified to do in each jurisdiction in which the nature of the property owned or leased or the nature of the its business requires such qualification.

4.2. Authority; Binding Effect.

Buyer has the power to execute and deliver this Agreement and consummate the transactions contemplated hereby and has taken (or by the Closing Date will have taken) all action required by law, its Articles of Incorporation, Bylaws or otherwise to authorize such execution and delivery and the consummation of the transactions contemplated hereby. The execution, delivery, and performance of this Agreement constitutes the valid and binding agreement of Buyer enforceable in accordance with its terms (except as the same may be restricted, limited or delayed by applicable bankruptcy or other laws affecting creditors' rights generally and except as to the remedy of specific performance that may not be available under the laws of various jurisdictions) assuming that this Agreement has been duly authorized, delivered and executed by Seller and constitutes the valid and binding obligation, enforceable against Seller in accordance with its terms (except as enforceability against Seller may be restricted, limited or delayed to the same extent as referred to in the parenthetical phrase immediately above).

Neither the execution, delivery or performance of this Agreement by Buyer, nor compliance with the terms and provisions hereof, will result in any breach of the terms, conditions or provisions of, or conflict with or constitute a default under, or result in the creation of any lien, charge or encumbrance upon any Assets or assets of Buyer, or any material agreement by which Buyer is bound. Except as may be necessary with regard to licenses and permits, Buyer is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any government or governmental authority or other third party in order to consummate the transactions contemplated herein.

4.3. No Finders or Brokers.

Neither Buyer nor any partner, officer or director thereof has engaged any finder or broker in connection with the transactions contemplated hereunder.

4.4. Pending Litigation.

There are no proceedings pending or, to the knowledge of Buyer, threatened, against or affecting Buyer in any court or before any governmental authority or arbitration board or tribunal that involve the possibility of materially and adversely affecting the properties, business, prospects, profits or condition (financial or otherwise) of Buyer considered as a whole. Buyer will promptly notify Seller of any lawsuits, claims, proceedings or investigations that are commenced against either it or any Affiliate thereof, between the date of this Agreement and the Closing Date, that may relate to, or affect, the Assets, the Liabilities or the Real Property.

4.5. Court Orders, Decrees and Laws.

There is not outstanding or, to Buyer's knowledge, threatened any order, writ, injunction or decree of any court, governmental agency or arbitration tribunal against or affecting Buyer or any of its assets that would significantly interfere with its ability to conduct its business. To Buyer's knowledge, Buyer is in compliance with all applicable federal, state and local laws, regulations and administrative orders that are material the business of Buyer. No governmental authorities are presently conducting any investigation or proceeding against Buyer and, to Buyer's knowledge, no such investigation or proceeding is pending or being threatened.

4.6. Taxes.

All federal, state and other tax returns of Buyer required by law to be filed have been timely filed, and Buyer has paid or provided for all taxes (including taxes on properties, income, franchises, licenses, sales and payrolls) that have become due pursuant to such returns or pursuant to any assessment, except for any taxes and assessments of which the amount, applicability or validity is currently being contested in good faith by appropriate proceedings and with respect to which Buyer has set aside on its books reserves deemed to be adequate. The amounts set up as provisions for taxes on the Buyer Financial Statements are sufficient for the payment of all unpaid federal, state, county and local taxes accrued for or applicable to the period then ended and all periods prior thereto for which Buyer may be liable, except for any taxes and assessments of which the amount, applicability or validity is currently being contested in good faith by appropriate proceedings and with respect to which Buyer has set aside on its books reserves deemed to be adequate. There are no tax liens on any of the property of Buyer - except those with respect to taxes not yet due and payable and except for any taxes and assessments of which the amount, applicability or validity is currently being contested in good

faith by appropriate proceedings and with respect to which Buyer has set aside on its books reserves deemed to be adequate. Buyer has withheld from each payment made to employees the amount of all taxes (including, but not limited to, federal, state and local income taxes and Federal Insurance Contribution Act taxes) required to be withheld therefrom and all amounts customarily withheld therefrom, and have set aside all other employee contributions or payments customarily set aside with respect to such wages and have paid or will pay the same to, or have deposited or will deposit such payment with, the proper tax receiving officers or other appropriate authorities.

4.7. Labor Matters.

To Buyer's knowledge, Buyer is in compliance with all applicable laws and agreements respecting employment and employment practices, terms and conditions of employment and wages and hours, and is not engaged in any unfair labor practice. There is no labor strike, dispute, slowdown or stoppage actually pending or, to Buyer's knowledge, threatened against or affecting Buyer that materially adversely affects the business of Buyer taken as a whole. No grievance that might have a material adverse effect on Buyer or the conduct of its business considered as a whole is pending.

4.8. Consents and Approvals of Governmental Authorities.

No characteristic of Buyer or of the nature of its business or operations requires any consent, approval or authorization of, or declaration, filing or registration with any governmental or regulatory authority in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

4.9. Improper Payments.

To the knowledge of Buyer, neither Buyer nor any partner, officer or employee of Buyer has made any bribes, kickbacks or other improper payments on behalf of Buyer or received any such payments from vendors, suppliers or other persons contracting with Buyer.

4.10. Exchange Act Reports.

Buyer has timely filed all reports required to be filed by § 13 or 15(d) of the 1934 Act for the twelve (12) months preceding the date hereof. None of such reports contains any untrue statement of a material fact or omits to state a material fact required to be stated therein in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

4.11. Disclosure.

No representations and warranties by Buyer in this Agreement and no statement in this Agreement or any document or certificate furnished or to be furnished to Seller pursuant hereto contains or will contain any untrue statement or omits or will omit to state a fact necessary in order to make the statements contained therein not misleading. Buyer has disclosed to Seller all facts known to Buyer material to the assets, liabilities, business operations and property of Buyer. There are no facts known to Buyer not yet disclosed that would adversely affect the future operations of Buyer.

**ARTICLE 5
COVENANTS OF BUYER**

Buyer hereby covenants and agrees as follows:

5.1. Best Efforts to Secure Consents.

Buyer shall take the necessary corporate action and shall use its best efforts to secure before the Closing all necessary consents and approvals needed to satisfy all the conditions precedent to the obligations of Seller hereunder. Provided however, that in the event Buyer has been unable to obtain reasonable assurances by at least ten (10) days before the Closing Date that the licenses necessary to operate the Facility will be issued as of the Closing Date, after having used all reasonable good faith efforts in connection therewith, the Closing Date will be postponed to a date not to exceed thirty (30) days after the original Closing Date, to be mutually agreed upon by Buyer and Seller.

5.2. [Intentionally Omitted]

5.3. Information.

Buyer shall promptly provide to Seller upon reasonable request any information or documents reasonably necessary for Seller or its members to make an informed judgment as to the advisability of consummating the transactions contemplated hereby or to verify the representations and warranties herein. Until the Closing Date, Buyer shall notify Seller of any matter that may be materially adverse to Buyer and its subsidiaries considered as a whole and shall keep Seller fully informed of such events.

5.4. Corporate Action.

Buyer will take all necessary action and use its best efforts to obtain all consents, approvals and amendments of agreements required of it to carry out the transactions contemplated by this Agreement and to satisfy the conditions specified herein.

5.5. Handling of Documents.

With respect to information provided by Seller pursuant to this Agreement prior to the Closing, Buyer shall keep all such information confidential that is not in the public domain, except to the extent that such information becomes generally available to the public other than as a result of a disclosure directly or indirectly by Buyer, was known by Buyer on a non-confidential basis prior to disclosure to Buyer by Seller pursuant to this Agreement or becomes available to Buyer on a non-confidential basis from a source (other than Seller) that is entitled to disclose the same, and to exercise the same care in handling such information as it would exercise with similar information of its own.

5.6. Non-Disclosure.

Buyer will keep confidential and not disclose to any third party any information relating to the business of Seller, whether acquired by Buyer before or after the Closing Date, that Seller has not made generally available to the public. This provision shall survive Closing.

5.7. Buyer Assistance for Medicare Bad Debts.

- (a) Buyer acknowledges that there will exist certain Medicare Part A co-insurance receivables from services rendered by Seller prior to Closing, and Buyer agrees to assist Seller in seeking reimbursement from CMS for all such receivables which constitute Seller's "Bad Debt" (as defined below) as provided in this Agreement. After the Closing Date, Seller shall provide Buyer with reasonable and appropriate documentation regarding the Medicare bad debts incurred by Seller prior to the Closing Date (the "Seller Bad Debt").
- (b) Buyer shall timely prepare and file with CMS and the appropriate state agency for the Assets, its initial cost report for the fiscal year commencing with the fiscal year in which the Closing Date occurs, and Buyer shall include the Seller Bad Debt on the filing of its first post-closing Medicare cost report or subsequent cost reports if necessary.
- (c) Notices; Appeal; Receipts. Buyer shall notify Seller promptly of receipt of any notice of adverse audit adjustments, overpayment, recoupment, fine, penalty, late charge or assessment accruing in relation to the Seller Bad Debt. Buyer agrees to appeal at the request of, on behalf of, and at

the sole expense of Seller, any Medicare claims audit, cost report audit, overpayment, recoupment, fines, penalties, late charges and assessments accruing in relation to the Seller Bad Debt. Seller and Buyer shall each reasonably cooperate with the other respective party with respect to any such matters, including but not limited to timely providing any requested documentation within the other party's possession or control. Buyer is not responsible for (i) the actual results of any such appeal, or (ii) Seller's failure to provide information and/or documents necessary to process any such appeal. During the three (3) year period following the Closing Date, Buyer shall make a good faith effort to reconcile its cost report reimbursements and/or settlements with documentation Seller provides to Buyer regarding Seller Bad Debt and shall pay to Seller any and all reimbursements and/or settlements related to Seller Bad Debt pursuant to this Section 5.7. This Section shall survive Closing.

5.8. Continuing Covenants.

Buyer covenants and agrees that from and after the Effective Time it shall pay all amounts due and otherwise discharge its duties under all contracts assigned to Buyer, shall pay all amounts due vendors, suppliers and service providers for items and services received at the Assets on or after the Effective Time, and shall operate the Facility in accordance with all applicable laws. This provision shall survive Closing.

5.9. Seller's Post-Closing Access to Records.

For a period of seven (7) years following the Closing Date, upon reasonable notice, Buyer shall allow Seller and its agents and representatives to have reasonable access to, and to make copies of, the books, records and supporting materials relating to any period prior to the Closing Date, including the files and records related to the Facility, to enable Seller to investigate and defend any resident or employee claims, to file or defend reports and tax returns, to verify Accounts Receivable collections due Seller, and to conduct other matters as may be necessary for Seller in its sole discretion. In addition, Seller shall be entitled to remove any such record for purposes of litigation, arbitration of other proceeding, involving a resident or employee of the Facility to whom such record refers or other claims if the provision of an original record is reasonably necessary to provide evidence in same. Any record so removed shall be returned promptly following its use. Buyer agrees to maintain such books, records and other material relating to the operation of the Assets prior to the Closing Date, including, but not limited to, the files and records, resident records and records of resident funds related to the Facility, in the manner required by law. This provision shall survive Closing.

**ARTICLE 6
COVENANTS OF SELLER**

Seller hereby covenants and agrees as follows:

6.1. Access and Information.

Between the date of this Agreement and the Closing Date, Seller will provide to the Buyer and its officers, attorneys, accountants and other representatives, during normal business hours, or upon Buyer's reasonable request:

- (a) free and full access to the Facility, subject to prior approval of the Seller and upon at least one (1) business days prior notice, in order to conduct engineering, environmental and related third party inspections of the Facility;
- (b) free and full access to all of the agreements, commitments, books, records, accounts, tax returns, and documents of the Facility and permit Buyer to make copies thereof;
- (c) furnish the Buyer and its representatives with all information concerning the Business, properties and affairs of the Facility as Buyer reasonably requests;
- (d) cause the independent public accountants of Seller to make available to Buyer and its representatives all financial information relating to the Facility reasonably requested, including all working papers pertaining to audits and reviews made heretofore by such auditors;
- (e) furnish Buyer true and complete copies of all financial and operating statements of the Facility reasonably requested by Buyer; and
- (f) cause their employees and accountants to make disclosure of all material facts known to them affecting the financial condition and Business operations of the Facility and to cooperate fully with any audit, review, investigation or examination made by Buyer and its representatives, including, without limitation, delivering or making available to Buyer the following:
 - (i) The books and records of the Facility;
 - (ii) The reports of state and federal regulatory examinations pertaining to the Facility;
 - (iii) Leases, contracts and commitments between the Seller and any other person pertaining to the Facility;
 - (iv) All Contracts, written agreements or letters of intent relating to the Facility;

- (v) All licenses, permits, certificates of occupancy, variances, warranties, and guaranties in the possession of Seller or its agents pertaining to the Facility shall be delivered to Buyer;
- (vi) Listing of capital expenditures for the Facility for the prior three (3) years;
- (vii) Copies of the prior year's property tax and insurance invoices for the Facility;
- (viii) Aged receivables report of the Facility through the Effective Date of this Agreement and monthly receivables reports for the prior twenty-four (24) months;
- (ix) Copies of all insurance policies now in effect with respect to the Facility, copies of any claims under such policies;
- (x) All engineering and technical reports, soils tests, environmental audits or reports, plats, surveys and architectural, structural and mechanical plans and specifications relating to the Facility, to the extent in the possession of Seller or its agents;
- (xi) The tax statements for the prior three (3) years on the Real Property;
- (xii) Copies of any notices of violations of any federal, state, municipal or other health, fire, building, zoning, safety, environmental protection or other applicable codes, laws, rules, regulations or ordinances relating or applying to the Facility, if any;
- (xiii) Physical examination of the Real Property; and
- (xiv) Physical examination of the Equipment and Furnishings.

Buyer shall use its reasonable best efforts to avoid disrupting the normal operations of the Facility and to preserve the confidential nature of the transaction contemplated herein.

6.2. Conduct of Business.

Between the date hereof and the Closing Date, except as otherwise expressly approved in writing by Buyer, Seller shall conduct the Facility's Business only in the ordinary course thereof consistent with past practice and in such a manner that the representations and warranties contained in ARTICLE 3 of this Agreement shall be true and correct at and as of the Closing Date (except for changes contemplated, permitted or required by this Agreement) and so that the

conditions to be satisfied by Seller at the Closing shall have been satisfied. Seller will, consistent with conducting the Facility's Business in accordance with reasonable business judgment, preserve the Business of the Facility intact; use its best efforts to keep available to Buyer the services of the present employees of the Facility (except those dismissed for cause or those who voluntarily discontinue their employment) and preserve for Buyer the goodwill of the suppliers, residents, patients and others having business relations with the Facility, and to maintain census at rates similar to those existing at the time of execution of this Agreement. At the Closing, Seller will terminate any management agreements pertaining to the Facility, effective as of the Closing Date.

Between the date of this Agreement and the Closing, Seller shall:

- (a) conduct the Business of the Facility only in the Ordinary Course of Business;
- (b) except as otherwise directed by Buyer in writing, and without making any commitment on Buyer's behalf, use its Best Efforts to preserve intact its Facility's current business organization, keep available the services of its officers, employees and agents and maintain its relations and good will with suppliers, customers, landlords, creditors, employees, agents and others having business relationships with it;
- (c) confer with Buyer prior to implementing operational decisions of a material nature;
- (d) otherwise report periodically to Buyer, upon reasonable request of Buyer, concerning the status of the Facility's Business, operations and finances;
- (e) make no material changes in management personnel of the Facility without prior consultation with Buyer;
- (f) maintain the Assets in a state of repair and condition that complies with Legal Requirements and is consistent with the requirements and normal conduct of Facility's Business;
- (g) keep in full force and effect, without amendment, all material rights relating to Facility's Business;
- (h) comply with all Legal Requirements and contractual obligations applicable to the operations of the Facility's Business in all material respects;
- (i) continue in full force and effect the insurance coverage under the policies set forth in Exhibit 3.30 or substantially equivalent policies;

- (j) except as required to comply with ERISA or to maintain qualification under Section 401(a) of the Code, not amend, modify or terminate any Employee Plan without the express written consent of Buyer, and except as required under the provisions of any Employee Plan, not make any contributions to or with respect to any Employee Plan without the express written consent of Buyer, provided that Seller shall contribute that amount of cash to each Employee Plan necessary to fully fund all of the benefit liabilities of such Employee Plan on a plan-termination basis as of the Effective Time;
- (k) cooperate with Buyer and assist Buyer in identifying the Governmental Authorizations required by Buyer to operate the Facility from and after the Closing Date and either transferring existing Governmental Authorizations of Facility to Buyer, where permissible, or obtaining new Governmental Authorizations for Buyer;
- (l) upon request from time to time, execute and deliver all documents, make all truthful oaths, testify in any Proceedings and do all other acts that may be reasonably necessary or desirable in the opinion of Buyer to consummate the Contemplated Transactions, all without further consideration; and
- (m) maintain all books and Records of the Facility in the Ordinary Course of Business.

6.3. Personnel Matters.

During the period from and after the date hereof and through the Closing Date, Seller will afford to the officers, attorneys, accountants and other authorized representatives of Buyer access to all records concerning the employees of the Facility. In the event that Buyer informs Seller in writing that it does not intend to continue the employment of any particular employee of the Facility after the Effective Time, Seller will either promptly notify such employee that his employment will be terminated in accordance with Seller's normal severance procedures or terminate such employee prior to the Effective Time.

6.4. Compliance with Agreement.

Seller shall not undertake any course of action inconsistent with satisfaction of the conditions applicable to it set forth in this Agreement, and shall do all such acts and take all such measures as may be reasonably necessary to comply with the representations, agreements, conditions and other provisions of this Agreement. Seller shall give Buyer prompt written notice of any change in any information contained in the representations and warranties made in ARTICLE 3 hereof and on the Exhibits referred to therein (provided, however, that such notice shall not limit

Buyer's rights under § 9.1(c) hereof) and of any condition or event that constitutes a default of any covenant or agreement made in ARTICLE 6 or in any other section hereof.

6.5. Best Efforts to Secure Consents.

Seller shall take the necessary corporate and other action and shall use its best efforts to secure before the Closing Date all necessary consents and approvals required to carry out the transactions contemplated by the Agreement and to satisfy all other conditions precedent to the obligations of Buyer and Seller.

6.6. Assets Complete.

The assets of Seller as of the Closing Date will include all the equipment, inventory and other assets being presently used in the conduct of or related to the Business of the Facility except those sold, except Excluded Assets and those sold or otherwise consumed after the date hereof in the Ordinary Course of Business.

6.7. Unusual Events.

Until the Closing Date, Seller shall supplement or amend all relevant Exhibits in the Exhibit Volume with respect to any matter thereafter arising or discovered that, if existing or known at the date of this Agreement, would have been required to be set forth or described in such Exhibits; provided, however, that for the purposes of the rights and obligations of the parties hereunder, any such supplemental disclosure shall not be deemed to have been disclosed as of the date Seller delivers to Buyer the Exhibit Volume pursuant to § 9.1 of this Agreement or any other date, and shall not be deemed to amend or supplement any Exhibits or to prevent or cure any misrepresentation, breach of warranty or breach of covenant, unless agreed to in writing by Buyer.

6.8. Interim Financial Statements.

Within twenty (20) days after the end of each calendar month subsequent to the date of this Agreement and prior to the Closing Date, Seller shall deliver to Buyer an unaudited balance sheet of the Facility as at the end of such calendar month together with the related statement of operations. All such financial statements shall fairly present the financial position, results of operations and changes in financial condition during the periods indicated, in accordance with generally accepted accounting principles consistently applied, except that note information may be omitted in such statements, subject to normal year-end audit adjustments, but only if such adjustments are of a normal, recurring type and are not material in the aggregate.

6.9. Cost Reports; Reimbursement Matters.

Seller shall timely file all Medicare and Medicaid cost reports relating to periods ending prior to the Effective Time, including without limitation termination cost reports required to be filed as a result of the consummation of the transactions contemplated by this Agreement. Such cost reports shall be true, accurate and complete in all material respects. Seller shall furnish to Buyer accurate and complete copies of all such cost reports upon the filing thereof, including a copy of the detailed depreciation schedule used to file the terminating cost report by Seller. The proceeds and liabilities of cost reports for periods prior to the Effective Time, and any liabilities with respect to Excluded Receivables, shall accrue to and be the responsibility of Seller. In the event Seller or Buyer receives any retroactive payments from Medicare, Medicaid or others which payments are applicable to any period of time both before and after the Effective Time, the party receiving any such payment shall promptly forward to the other party hereto the portion of any such payment applicable to its period of operation of the Facility. In the event Medicare, Medicaid or any other third party payor deducts from amounts due Buyer, any amounts due such payors by Seller, Seller shall promptly reimburse Buyer for such amounts due Buyer. In the event Medicare, Medicaid or any other third party payor deducts from amounts due Seller, any amounts due such payors by Buyer, Buyer shall promptly reimburse Seller for such amounts due Seller. After Closing, Seller or Seller's accountant will have access upon reasonable prior notice during normal business hours to relevant books and records at the Facility relating to the filing of any post-closing Medicare and Medicaid cost reports, or responding to any inquiries regarding pre-closing Medicare and Medicaid cost reports.

6.10. Departmental Violations.

All notes or notices of violations of law or municipal ordinances, orders or requirements noted in or issued by the Departments of Buildings, Fire, Labor, Health, or any other State or Municipal Department having jurisdiction against or affecting the Business, property or assets of the Facility shall be complied with prior to the Closing Date. All such notes or notices, after the date hereof and prior to the Closing Date, shall be complied with by Seller prior to the Closing Date. Upon written request, Seller shall furnish Buyer with an authorization to make the necessary searches for such notes or notices.

6.11. Real Property Assessments.

If, on the Closing Date, the Business, property or assets of the Facility is or will be subject to any real property assessment or assessments that are or may become payable in annual installments, of which the first installment is then a charge or lien, or has been paid, then for the purposes of this Agreement all the unpaid installments of any such assessment, including those that are to become due and payable, shall be paid and discharged by Seller prior to the Closing Date.

6.12. Insurance Ratings.

Seller shall take all action reasonably requested by Buyer to enable it to succeed to the Workers' Compensation and Unemployment Insurance ratings, insurance policies, deposits and other interests of Seller and other ratings for insurance or other purposes established by Seller. Buyer shall not be obligated to succeed to any such rating, insurance policy, deposit or other interest, except as it may elect to do so.

6.13. Maintain Insurance Coverage.

From the date hereof until the Closing, Seller shall maintain and cause to be maintained in full force and effect the existing insurance on the Assets and the operations of the Facility and shall provide, upon request by Buyer, evidence satisfactory to Buyer that such insurance continues to be in effect and that all premiums due have been paid. Prior to Closing, Seller will obtain "tail" liability insurance coverage, which may be provided by the same insurer as currently provides the current liability insurance coverage for the Facility, converting the current liability insurance for the Facility to an "occurrence" basis policy, and covering one (1) year after Closing.

6.14. Special Medicare/Medicaid Indemnification.

Buyer and its affiliates and assignees shall indemnify and hold Seller harmless from any liability arising out of a Medicare or Medicaid recapture arising from or in any way related to the transaction contemplated by this Agreement or arising from the actions of Buyer or its affiliates, successors or assigns after the Closing seeking to step up the Medicare or Medicaid basis of the assets of the Facility; notwithstanding the foregoing, Buyer, its affiliates and assigns shall not be liable hereunder for future changes in Medicare and Medicaid rules or laws that would be applied retroactively.

6.15. Non-Disclosure.

Buyer will keep confidential and not disclose to any third party any information relating to the Business of Seller, whether acquired by Buyer before or after the Closing Date, that Seller has not made generally available to the public.

ARTICLE 7

CONDITIONS PRECEDENT TO THE OBLIGATIONS OF SELLER

All obligations of Seller that are to be discharged under this Agreement at the Closing are subject to the performance, at or prior to the Closing, of all covenants and agreements contained herein that are to be performed by Buyer at or prior to the Closing and to the fulfillment at, or prior to, the Closing, of each of the following conditions (unless expressly waived in writing by Seller at any time at or prior to the Closing):

7.1. Representations and Warranties True.

All of the representations and warranties made by Buyer contained in ARTICLE 4 of this Agreement shall be true as of the date of this Agreement, shall be deemed to have been made again at and as of the date of Closing, and shall be true at and as of the date of Closing in all material respects; Buyer shall have performed and complied in all material respects with all covenants and conditions required by this Agreement to be performed or complied with by them prior to or at the Closing; and Seller shall have been furnished with a certificate of the President or any Vice President of Buyer, dated the Closing Date, in such officer's capacity, certifying to the truth of such representations and warranties as of the Closing and to the fulfillment of such covenants and conditions.

7.2. Authority.

All action required to be taken by or on the part of Buyer to authorize the execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions contemplated hereby shall have been duly and validly taken by the Board of Directors of Buyer.

7.3. No Obstructive Proceeding.

No action or proceedings shall have been instituted against, and no order, decree or judgment of any court, agency, commission or governmental authority shall be subsisting against Seller, or the officers or directors of Seller, that seeks to, or would, render it unlawful as of the Closing to effect the transactions contemplated hereby in accordance with the terms hereof, and no such action shall seek damages in a material amount by reason of the transactions contemplated hereby. Also, no substantive legal objection to the transactions contemplated by this Agreement shall have been received from or threatened by any governmental department or agency.

7.4. Proceedings and Documents Satisfactory.

All proceedings in connection with the transactions contemplated hereby and all certificates and documents delivered to Seller pursuant to this Agreement shall be satisfactory in form and substance to Seller and its counsel acting reasonably and in good faith.

7.5. No Agency Proceedings.

There shall not be pending or, to the knowledge of Buyer, threatened, any claim, suit, action or other proceeding brought by a governmental agency before any court or governmental agency, seeking to prohibit or restrain the transactions contemplated by this Agreement or material damages in connection therewith.

7.6. Casualty Prior to Closing.

If at any time prior to the Closing Date any of the fixed assets of the Facility are missing or damaged in material amounts (materiality for such purposes meaning any loss in book value on the books of Seller in excess of \$100,000.00) and the Business of the Facility is materially interrupted or likely will be materially interrupted for a period in excess of sixty (60) days, except for damage or loss through use and wear in the Ordinary Course of Business, Buyer shall have the right, at its option, (a) to complete the purchase of the Facility pursuant to this Agreement and receive the greater of (i) insurance proceeds (if any) payable to Seller or Buyer as a result of such damage or loss or (ii) a payment equal to the net book value of the missing or damaged fixed assets from Seller or (b) in the alternative, to terminate this Agreement, in which event it shall have no further claim against Seller or to any insurance proceeds and neither Seller nor Buyer shall have any claim against the other, and Buyer shall receive back its deposits.

7.7. [Intentionally Omitted]

7.8. Failure of Condition Precedent.

If there is a failure of any of the conditions precedent to either party's obligation to close which is not due to a material breach of representation or other material default by the party in whose favor such condition runs, then the party in whose favor such condition runs shall have the right to terminate this Agreement by giving written notice thereof to the other party at or prior to the Closing Date, in which event neither party shall have any further obligations or liabilities to the other party hereunder except for the Surviving Obligations; provided, however, if the failure of any of the conditions precedent to either party's obligation to close is due to a material breach of a representation or other material default by the other party, then Section 9.4 shall control.

**ARTICLE 8
CONDITIONS PRECEDENT TO THE OBLIGATIONS OF BUYER**

All obligations of Buyer that are to be discharged under this Agreement at the Closing are subject to the performance, at or prior to the Closing, of all covenants and agreements contained herein that are to be performed by Seller at or prior to the Closing and to the fulfillment at or prior to the Closing of each of the following conditions (unless expressly waived in writing by Buyer at any time at or prior to the Closing):

8.1. Representations and Warranties True.

All of the representations and warranties of Seller contained in ARTICLE 3 of this Agreement shall be true as of the date of this Agreement, shall be deemed to have been made again at and as of the Closing, and shall be true at and as of the date of Closing in all material respects; Seller shall have performed or complied in all material respects with all covenants and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing; and Buyer shall be furnished with a certificate of the President of Seller, dated the Closing Date, in such person's corporate capacity certifying to the truth of such representations and warranties as of the time of the Closing and to the fulfillment of such covenants and conditions.

8.2. No Obstructive Proceeding.

No action or proceedings shall have been instituted against, and no order, decree or judgment of any court, agency, commission or governmental authority shall be subsisting against Buyer or the officers or directors of Buyer that seeks to, or would, render it unlawful as of the Closing to effect the transactions contemplated hereby in accordance with the terms hereof, and no such action shall seek damages in a material amount by reason of the transaction contemplated hereby. Also, no substantive legal objection to the transactions contemplated by this Agreement shall have been received from or threatened by any governmental department or agency.

8.3. Documents of Transfer.

Buyer shall have been furnished with all Closing documents required by this Agreement, including but not limited to the following documents from Seller:

- (a) Deed. A fully executed Special Warranty Deed conveying good and marketable fee simple title to the Real Property, free and clear of all liens, encumbrances, easements, and restrictions of every nature and description except as permitted by this Agreement.
- (b) Bill of Sale. A fully executed Bill of Sale with representations as to title, merchantability and fitness for purpose, conveying good and marketable fee simple title to the personal property portion of the Assets, free and clear of all liens, encumbrances, easements, and restrictions of every nature and description except as specially permitted by this Agreement.

- (c) Assignments. Fully executed assignments with all representations contemplated by this Agreement, assigning to the fullest extent legally assignable, the intangible property portion of the Assets, free and clear of all liens, encumbrances, easements, and restrictions of every nature and description except as specially permitted by this Agreement.
- (d) Lease Termination Agreement. Fully executed Lease Termination Agreement terminating the Lease.
- (e) Operations Transfer Agreement. Fully executed Operations Transfer Agreement (“OTA”) in the form attached hereto as Exhibit 1.
- (f) Closing Statement. A fully executed closing statement.
- (g) Closing Certificate. A fully executed closing certificate confirming that Seller has taken all necessary corporate and other action for the transaction which is the subject of this Agreement, including securing all necessary consents and approvals required to carry out the transactions contemplated by this Agreement and satisfying all other conditions precedent to the obligations of Seller pursuant to the terms of this Agreement, or otherwise.
- (h) Other Documents. Such other documents and instruments as Buyer, any lender to Buyer or the Title Insurance Company may reasonably request to accomplish the transaction which is the subject of this Agreement or to evidence compliance with the covenants and agreements of Seller contained in this Agreement.

8.4. Loan Agreements.

Seller shall have caused to be delivered to Buyer prior to the Closing a certificate of each lender, mortgagee or creditor who is a party to any payoff letters for loan agreements, notes, mortgages, deeds of trust, security agreements and other evidences of indebtedness of Seller pertaining to the Facility.

8.5. Non-Assignable Property Interests.

- (a) To the extent that any lease, contract, permit or other property interest that would otherwise constitute a part of the Assets is not capable of being assigned, transferred or subleased or if such assignment, transfer or sublease or attempted assignment, transfer or sublease would constitute a breach thereof or a violation of any law, decree, order, regulation or other governmental edict, neither this Agreement nor the Closing shall constitute an assignment, transfer or sublease thereof, or an attempted assignment, transfer or sublease thereof.
- (b) To the extent that any lease, contract, permit or other property interest constituting a part of the Assets is not capable of being assigned, transferred or subleased, from and after the Closing Date, and to the extent reasonably possible, Seller shall make all benefits of such non-assignable interests available to Buyer at no charge, cost or expense to Buyer. Without limiting the generality of the foregoing, it is specifically contemplated that the rights of Seller in the material contracts identified on Exhibit 8.5(b) may be transferred to Buyer by means of one or more subcontracts between Seller as contractor and Buyer as subcontractor, all as indicated on Exhibit 8.5(b) and all of which shall be executed and delivered by the parties thereto at the Closing.

8.6. Consents and Approvals.

Each of the parties to any agreement or instrument under which the transactions contemplated hereby would constitute or result in a default or acceleration of obligations shall have given such consent as may be necessary to permit the consummation of the transactions contemplated hereby without constituting or resulting in a default or acceleration under such agreement or instrument, and any consents required from any public or regulatory agency or organization having jurisdiction shall have been given. Also, Buyer shall have received releases, waivers of default and consents to assignment in form satisfactory to it from all parties to contracts and agreements to be assumed by Buyer hereunder.

8.7. [Intentionally Omitted]

8.8. No Adverse Change.

From the date of this Agreement until the Closing, the operations of the Facility shall have been conducted in the Ordinary Course of Business consistent with past practice and from the date of the Seller Financial Statements until the Closing; no event shall have occurred or have been threatened that has or would have a material and adverse effect upon the financial condition, assets, liabilities, operations, prospects or Business of the Facility; and Seller shall

have not sustained any loss or damage to the Facility's assets, whether or not insured, or union activity that affects materially and adversely its ability to conduct its Business.

8.9. Federal and State Approvals; Licensing.

Within ten (10) days of the execution of this Agreement, Buyer, or its affiliates, shall provide notice to Florida Agency for Health Care Administration for licensure of the Facility, and on or before the Closing Date Buyer shall have received such reissuance of the licenses, certificates and other regulatory approvals and provided numbers listed in Exhibit 3.16 in the Exhibit Volume as are otherwise necessary to operate the Business of the Facility, or evidence satisfactory to Buyer that such licenses, certificates and other regulatory approvals will be timely issued upon providing documentation to the Florida Agency for Health Care Administration that the Closing has occurred.

8.10. Due Diligence.

No material adverse change to the Assets or the Facility shall have occurred since the conclusion of the Due Diligence Period; provided however, a material adverse change shall not be deemed to exist if the event giving rise to such change was caused, directly or indirectly, by Buyer's breach of this Agreement.

8.11. [Intentionally Omitted]

8.12. Title Insurance.

Buyer shall have received a commitment for title insurance issued by a nationally recognized title insurance company acceptable to Buyer, pursuant to which such title insurance company commits to issue an ALTA Owner's Policy with extended coverage, insuring Buyer's title in and to all Real Property included in the Assets in the amount of the Cash Purchase Price allocated to such Real Property, subject only to such title exceptions as are expressly permitted hereunder in accordance with Section 11.1.

8.13. Delivery of Certain Documents.

At the Closing, Seller shall have delivered to Buyer copies of resolutions of the members and governors of Seller, certified (not more than thirty (30) days prior to the Closing Date) by the secretary of Seller, approving and authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

**ARTICLE 9
TERMINATION; PRE-CLOSING BREACH**

9.1. Optional Termination.

This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing Date, notwithstanding stockholder approval as follows:

- (a) By the mutual consent of Buyer and Seller; or
- (b) By Seller, if any of the conditions set forth in ARTICLE 7 shall not have met at least ten (10) days before the Closing Date; provided that Seller shall not be entitled to terminate this Agreement pursuant to this § 9.1(b) if Seller's breach of this Agreement has prevented the consummation of the transactions contemplated hereby; or
- (c) By Buyer, if any of the conditions provided in ARTICLE 8 hereof have not been met at least ten (10) days before the Closing Date; provided that Buyer shall not be entitled to terminate this Agreement pursuant to this § 9.1(c) if Buyer's breach of this Agreement has prevented the consummation of the transactions contemplated hereby.

Notwithstanding anything to the contrary set forth herein, the parties acknowledge and agree that all the Exhibits and Schedules referred to herein were not prepared or delivered to Buyer prior to or contemporaneously with the execution of this Agreement. By the end of the Due Diligence Period, Seller shall deliver to Buyer all the Exhibits and Schedules referred to herein, to be prepared in accordance with the relevant provisions of this Agreement. Buyer may terminate this Agreement by notice to Seller if any information contained in any of such Exhibits or Schedules, or any information obtained by Buyer pursuant to § 6.7 of this Agreement, shall establish that any representation or warranty of Seller contained in ARTICLE 3 of this Agreement or any information previously furnished to Buyer by Seller concerning Seller shall not be true and accurate in all material respects as of the date of the termination notice or in the opinion of Buyer, any of such Exhibits or Schedules shall disclose facts that shall be materially adverse concerning the financial condition, Business or operations of Seller.

9.2. Notice of Abandonment.

In the event of such termination by either Buyer or Seller pursuant to § 9.1 above, written notice shall forthwith be given to the other party hereto.

9.3. Termination.

In the event this Agreement is terminated as provided above, Buyer shall deliver to Seller all documents (and copies thereof in its possession) concerning Seller and its subsidiaries previously delivered by Seller to Buyer; and none of the parties nor any of their respective partners, members, directors, or officers shall have any liability to the other party for costs, expenses, loss

of anticipated profits, consequential damages, or otherwise, except for any deliberate breach of any of the provisions of this Agreement.

9.4. Default.

- (a) **Default by Seller.** If Seller defaults on any obligation hereunder, and such default continues for more than ten (10) days after written notice from Buyer, then Buyer, as the sole and exclusive remedy for Buyer may elect to either (a) terminate this Agreement and receive a refund of the Deposit and receive from Seller reimbursement for Buyer's actual, documented out-of-pocket expenses incurred in connection with this Agreement up to One Hundred Thousand Dollars (\$100,000.00) (whereupon this Agreement shall terminate and be of no further force and effect and neither party shall have any other obligation or liability to the other hereunder, except for those provisions which survive this Agreement and any transactions contemplated thereby, "Surviving Obligations"), or (b) pursue a suit for specific performance. Nothing contained in this Section 9.4(a) shall operate to limit Buyer's rights or remedies under this Agreement with respect to any breach of representation or warranty, covenant or obligation which is first discovered (or which first occurs) after the Closing Date, all of which shall instead be governed by the provisions of Article 10 hereof, which shall constitute the exclusive rights and remedies available to Buyer after the Closing Date.
- (b) **Default by Buyer.** If Buyer defaults on any obligation hereunder, and such default continues for more than ten (10) days after written notice from Seller, then Seller, as its sole and exclusive remedy against Buyer for such failure to close, may terminate this Agreement and retain the Deposit, as liquidated damages, whereupon this Agreement shall terminate and be of no further force and effect and neither party shall have any other obligation or liability to the other hereunder, except for Surviving Obligations. Nothing contained in this Section 9.4(b) shall operate to limit Seller's rights or remedies under this Agreement with respect to any breach of representation, warranty, covenant or obligation which is first discovered (or which first occurs) after the Closing Date.
- (c) **Surviving Obligations.** Nothing in this Section 9.4 shall limit, modify or abridge any Surviving Obligations.

**ARTICLE 10
INDEMNIFICATION**

10.1. Indemnification of Buyer by Seller.

Seller shall indemnify, defend and hold Buyer and its affiliates, and subsidiaries, and its and their respective employees, representatives, partners, officers and agents, harmless from and against any claims, losses, clawbacks by any third party payor, liability, obligations, lawsuits, deficiencies, damages or expense of whatever nature, whether known or unknown, accrued, absolute, contingent or otherwise including (without limitation) interest, penalties, attorneys' fees, costs of investigation and all amounts paid in defense or settlement of the foregoing, suffered or incurred by Buyer as a result of the occurrence of any of the following: (i) the Assets were subject to any liabilities or obligations of any kind, whether accrued, absolute, contingent or otherwise, that are not being specifically assumed by Buyer hereunder, including without limitation, liabilities for federal, state, local and other applicable taxes of every kind and description, and liabilities pursuant to Environmental Laws, whether or not said liabilities or obligations are disclosed in Exhibit 3.3 and/or Exhibit 3.27; (ii) Seller did not have title to all or any portion of the Assets; (iii) a breach of any obligation, representation, warranty, covenant or agreement made by Seller in this Agreement or any agreement referred to herein or because any representation or warranty by Seller contained herein, in any document furnished or required to be furnished pursuant to this Agreement by Seller to Buyer or any of its representatives, or any documents furnished to Buyer in connection with the Closing hereunder, shall be false; (iv) any litigation arising out of or based upon events or operative facts occurring prior to the Closing Date, in connection with the Assets, whether or not disclosed in Exhibit 3.18; (v) any employee benefits, including pension or retirement benefits, and any severance payments to the employees of Seller that are or may be assessed as a result of the transactions contemplated by this Agreement, payable to or on behalf of the employees of Seller as of the Closing Date, or due through the consummation of this Agreement; and (vi) costs and expenses (including reasonable attorneys' fees) incurred by Buyer in connection with any demand, action, suit, proceeding, assessment or judgment incident to any of the foregoing.

10.2. Buyer's Indemnification of Seller.

Buyer shall indemnify, defend and hold Seller and its employees, representatives, officers, directors and agents, harmless from and against any claims, losses, liability, obligations, lawsuits, deficiencies, damages or expense of whatever nature, whether known or unknown, accrued, absolute, contingent or otherwise including (without limitation) interest, penalties, attorneys' fees, costs of investigation and all amounts paid in defense or settlement of the foregoing, suffered or incurred by seller as a result of the occurrence of any of the following: (i) the Assets were subject to any liabilities or obligations of any kind, whether accrued, absolute, contingent or otherwise, which are being specifically assumed by Buyer hereunder; (ii) a breach of any obligation, representation, warranty, covenant or agreement made by Buyer in this Agreement or any agreement referred to herein or because any representation or warranty by Buyer contained herein, in any document furnished or required to be furnished pursuant to this

Agreement by Buyer to Seller or any of its representatives, or any documents furnished to Seller in connection with the Closing hereunder, shall be false in any material respect; (iii) any damage to the Assets by Buyer or its representatives, agents, vendors, consultants, contractors or other service providers during any inspections, investigations or activities by or on behalf of Buyer on, near, or related to the Assets, except to the extent that any such expense, loss or damage solely arises from Seller's (1) gross negligence or willful misconduct during any such entry or (2) the discovery of any pre-existing condition at the Facility; (iv) any litigation arising out of or based upon events or operative facts occurring on or subsequent to the Closing Date, in connection with the Assets; and (v) costs and expenses (including reasonable attorneys' fees) incurred by Seller in connection with any demand, action, suit, proceeding, assessment or judgment incident to any of the foregoing.

10.3. [Intentionally Omitted]

10.4. [Intentionally Omitted]

10.5. Representation, Cooperation and Settlement.

- (a) Each party agrees to give prompt notice to the other(s) of any claim against the other(s) that might give rise to a claim based on the indemnity contained in this ARTICLE 10, stating the nature and basis of the claim and the amount thereof.
- (b) In the event any claim, action, suit or proceeding is brought against a party (the "Indemnified Party") with respect to which the other party (the "Indemnifying Party") may have liability under the indemnity contained in this ARTICLE 10, the Indemnified Party shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting from such claim, provided that Buyer shall not be required to permit Seller to assume the defense of any third party claim that if not first paid, discharged, or otherwise complied with would result in an interruption or cessation of the conduct of the Seller's Business or any material part thereof. Failure by the Indemnifying Party to notify the Indemnified Party of its election to defend any such claim or action by a third party within thirty (30) days after notice thereof shall have been given by the Indemnified Party, shall be deemed a waiver of any such election. If the Indemnifying Party assumes the defense of such claim or litigation resulting therefrom, the obligations of the Indemnifying Party hereunder as to such claim shall include taking all steps reasonably necessary in the defense or settlement of such claim or litigation resulting in the defense or settlement of such claim or litigation resulting therefrom, including the retention of counsel satisfactory to the Indemnified Party, and holding the Indemnified Party harmless from and against any and all damage resulting

from, arising out of, or incurred with respect to any settlement approved by the Indemnifying Party or any judgment in connection with such claim or litigation resulting therefrom. The Indemnifying Party shall not, in the defense of such claim or litigation, consent to the entry of any judgment (other than a judgment of dismissal on the merits with costs) nor enter into any settlement, except with the written consent of the Indemnified Party, that does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party a release from all liability in respect to such claim or litigation.

- (c) If the Indemnifying Party shall not assume the defense of any such claim by a third party or litigation resulting therefrom, the Indemnified Party may defend against such claim or litigation in such manner as it deems appropriate. The Indemnifying Party shall, in accordance with the provisions hereof, promptly reimburse the Indemnified Party for the amount of any settlement reasonably entered into by the Indemnified Party and for all damage incurred by the Indemnified Party in connection with the defense against or settlement of such claim or litigation.

10.6. [Intentionally Omitted]

10.7. Survival.

The provisions of this ARTICLE 10 shall survive the Closing.

ARTICLE 11
MISCELLANEOUS

11.1. Survey, Title, Environmental Report and Termite Inspection.

- (a) Survey. Promptly after execution of this Agreement, Buyer shall cause an as-built survey of the Real Property and surveyor's certificate, in form sufficient to remove the survey exception from the title insurance binder as more specifically provided in § 11.1(b) hereof, to be prepared by a licensed surveyor acceptable to Buyer, to be completed no later than ten (10) days prior to the end of the Due Diligence Period. The survey shall be made in accordance with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys for a Class A survey. Such survey shall incorporate an exact description of the Real Property Assets, shall be dated not more than thirty (30) days prior to the Closing Date, shall show the total area of the Real Property Assets in square feet, easements, if any, dimensions and locations of improvements, striped parking spaces and unlined parking areas, driveways, location of adjoining streets and rights of way, building setback lines, and such other details as may be required

by Buyer. Once prepared and approved by Buyer, the survey description will replace Appendix 1A and will become a part of this Agreement identified as Appendix 1A.

- (b) Title Commitment. Immediately after execution of this Agreement, Buyer shall apply to a title insurance company acceptable to Buyer for a title insurance binder in the amount of \$2,700,000.00 that shall constitute the commitment of such company to insure the title to the Real Property in the name of Buyer. The title commitment shall bind the Title Company to issue to Buyer an Owner's Policy of Title Insurance (the "Title Policy") issued on the standard ALTA form used in the State of Florida, insuring good and indefeasible title to the Real Property in Buyer, subject only to the Permitted Encumbrances (as defined herein) and the standard printed exceptions appearing in the standard ALTA form of Owner's Policy of Title Insurance used in the State of Florida; provided, however, that: (a) the exception relating to restrictions against the Real Property shall be endorsed as evidenced by the Title Company to specify only such restrictions as may be included in the Permitted Exceptions; (b) at Buyer's election and expense, the exception relating to discrepancies, conflicts or shortages in area or boundary lines, or any encroachment or any overlapping of improvements that a survey might show shall be modified to delete such exception, except as to shortages in area; (c) the exception relating to ad valorem taxes shall except only to standby fees and taxes owing for the current and subsequent years; (d) there shall be no general exception for visible and apparent easements or roads and highways or similar items (with any specific exception to be specifically referenced to and shown on the Survey and identified by any applicable recording data); and (e) there shall be no exception for parties in possession.
- (c) Review of Title. Buyer shall have ten (10) business days from the date it has received all of the following: the title insurance binder; copies of all documents referenced in title exceptions disclosed therein; the survey; and the UCC Search; but in any event no later than ten (10) days prior to the end of the Due Diligence Period, within which to review same. If any title defects or other matters objectionable to Buyer, other than Permitted Encumbrances, are disclosed by any of the items listed in the previous sentence, Buyer shall give Seller written notice of same prior to the expiration of such ten (10) business day period. Seller shall be allowed a reasonable time, not in excess of thirty (30) days, within which to cure such defects; provided, however, that in no event shall Seller's cure period extend beyond the Closing Date without the express written consent of Buyer. If the defects are not timely cured to Buyer's satisfaction, Buyer may waive such defects and proceed to close, or Buyer may terminate this Contract by written notice to Seller.

- (d) Title at Closing. At Closing, such title insurance binder, as approved by Buyer, shall be modified as provided in § 11.1(b) above and any other matters to which Buyer has objected, to show title to the Real Property Assets vested in Buyer, and to update the effective date of such title insurance binder to the Closing Date.
- (e) Environmental Report. Promptly after execution of this Agreement, Buyer shall obtain a “Phase I environmental review” (the “Environmental”) of the Real Property from an Environmental Engineering Firm acceptable to Buyer and Seller.
- (f) Termite and Insect Inspection. Promptly after execution of this Agreement, Seller shall cause an updated termite and insect inspection of the Real Property and improvements to be prepared by a licensed pest control contractor, a copy of which is attached hereto as Exhibit 11(f) (the “TI Inspection”).
- (g) Copies. Copies of all reports and documents to be obtained by a party pursuant to this ARTICLE 11 shall be delivered to the other party promptly upon receipt.

11.2. Condemnation.

If, prior to Closing, any governmental or similar authority shall institute eminent domain or similar proceedings or take any steps preliminary thereto (including the giving of any direct or indirect notice of intent to institute any such proceeding) with respect to the Facility which materially and adversely affect the Facility, Buyer may terminate this Agreement upon written notice to Seller prior to Closing, receive the refund of its good faith deposit, and the parties shall have no further obligations hereunder. If Buyer elects to proceed to Closing, Buyer shall either receive a credit at Closing equal to the condemnation proceeds received by Seller or receive an assignment of the condemnation proceeds from Seller.

11.3. Risk of Loss.

- (a) Material Damage. “Material Damage” is defined as damage to the Facility of a nature such that the cost of restoring the improvements located on such Real Property to its condition prior to the fire or other casualty, as determined by Seller or as otherwise determined in accordance with this Agreement, will exceed an amount equal to One Hundred Thousand Dollars (\$100,000.00), whether or not such damage is covered by insurance.
- (b) Procedure. If, prior to Closing, the Facility shall be destroyed or sustain Material Damage as mutually determined by Seller and Buyer as a result

of fire or other casualty, then, at Buyer's option exercised in the manner provided hereunder, the following shall occur with respect to such Facility:

- (i) This Agreement shall terminate, provided that Buyer gives notice of such election at or prior to Closing, but in any event within ten (10) days following receipt by Buyer of notice of the occurrence of any such event; or
- (ii) If Buyer does not timely make the election to terminate provided in Subparagraph (i) immediately above and all other conditions precedent to Buyer's obligation to close have been satisfied, the purchase and sale transaction contemplated by this Agreement shall close with a reduction in the cash portion of the Cash Purchase Price equal to the amount of the applicable insurance deductible (or the full amount of the cost to restore the Facility if such loss is an uninsured loss), and concurrently with the Closing, Seller and any other named insured shall assign to Buyer, in form satisfactory to Buyer, all claims arising under any policy of insurance covering such casualty, and Seller shall have no further liability to Buyer with respect to such damage.
- (c) Damage Other Than Material Damage. In the event of any damage to the Facility in an amount less than Material Damage, the purchase and sale transaction contemplated by this Agreement shall close in accordance with and subject to the conditions of paragraph (ii) above.

11.4. Expenses.

All expenses of the preparation of this Agreement and of the transactions contemplated hereby, including, without limitation, counsel fees, accounting fees, investment adviser's fees, broker's fees, and related expenses and disbursements, shall be borne by the respective parties incurring such expense, whether or not such transactions are consummated. Notwithstanding the foregoing, Seller shall pay the costs of the Florida State Real Estate Transfer Tax and the Sales Tax on the sale of assets, the costs of the real estate survey, the cost of the termite inspection, and , and the cost of any updated environmental study, and Buyer shall pay the costs of the title insurance policy concerning the sale of the assets, and the costs of the title insurance policy concerning any loan obtained by the Buyer.

11.5. Non-Solicitation.

For a period of two (2) years from and after the Closing Date, neither Seller nor any shareholder or Affiliate of Seller ("Seller Restricted Person") shall directly or indirectly induce or

solicit, or directly or indirectly aid or assist any other person or entity to induce or solicit, current employees, salesmen, agents, consultants, distributors, representatives, advisors, customers, patients (or their family members), residents (or their family members) or suppliers of Seller to terminate their employment or business relations with Seller and/or the Facility, nor for a period of two (2) years from and after the Closing Date, shall any Seller Restricted Person employ any Hired Employees, salesmen or agents of Seller. Nothing contained in this paragraph shall prevent any Seller Restricted Person from hiring any individual who responds, without personal inducement or solicitation, to a general advertisement of employment opportunities. In the event of a breach or threatened breach of this section, Buyer shall be entitled to an injunction restraining such breach; but nothing herein shall be construed as prohibiting Buyer from pursuing any other remedy available to Buyer as a result of such breach or threatened breach. Buyer and Seller acknowledge and agree that since a remedy at law for any breach or attempted breach of the provisions of this Section 11.5 shall be inadequate, Buyer shall be entitled to specific performance and injunctive or other equitable relief in case of any such breach or attempted breach, in addition to whatever other remedies may exist at law. All parties hereto also waive any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief. The provisions of this Section 11.5 shall be deemed to be valid to the extent of any lesser area and for any lesser duration permitted by law if the area and duration set forth herein is deemed to be too broad by a court of competent jurisdiction. The invalidity or non-enforceability of this Section 11.5 in any respect shall not affect the validity or enforceability of this Section in any other respect or of any other provisions of this Agreement.

11.6. Prohibition on Use of Name; Consent.

Neither Seller, nor any shareholder, parent, subsidiary, or affiliate of same, nor any person controlling, controlled by, or under common control with same, shall on any date after the Closing use the words “Whitehall of Boca Raton” or any similar names in the conduct of a trade or business competitive with or similar to the Business being sold to Buyer hereunder. At the Closing, Seller will deliver to Buyer a written consent duly executed evidencing its consent without charge to the use by Buyer (and any affiliate or successor or assignee thereby) of the name “Whitehall of Boca Raton” and any variants thereof. Seller knows of no other person or business using or having the right to use the foregoing names or variants thereof, and no other person otherwise using the foregoing name or variant thereof has ever tried to restrain Seller from using such names or variants.

11.7. [Intentionally Omitted]

11.8. [Intentionally Omitted]

11.9. [Intentionally Omitted].

11.10. Cooperation by Buyer.

In the event Seller is required to defend against any action, suit or proceeding arising out of a claim pertaining to the Business or operations of Seller, Buyer shall provide such assistance and cooperation, including, without limitation, witnesses and documentary or other evidence as may reasonably be requested by Seller in connection with its defense. Seller shall reimburse Buyer for its reasonable out-of-pocket expenses incurred in providing such assistance and cooperation.

11.11. Cooperation by Seller.

In the event Buyer is required to defend against any action, suit or proceeding arising out of a claim pertaining to a liability assumed by Buyer pursuant to this Agreement relating to the Business or operations of Seller, Seller shall provide such assistance and cooperation, including without limitation, witnesses and documentary or other evidence, as may reasonably be requested by Buyer in connection with its defense. Buyer shall reimburse Seller for its reasonable out-of-pocket expenses incurred in providing such assistance.

11.12. Notices.

All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered in person or mailed by certified mail or registered mail (postage prepaid), sent by reputable overnight courier service (charges prepaid) or sent via facsimile:

To Seller:

Whitehall OpCo, LLC
6 Cadillac Drive, Suite 310
Brentwood, Tennessee 37027
Attention: President

With a copy to:

Bradley Arant Boult Cummings LLP
1600 Division Street, Suite 700
Nashville, Tennessee 37203
Attention: Michael D. Brent, Esq.

To Buyer:

With a copy to:

or to such other address as either Seller or Buyer may designate by notice to the other.

11.13. Entire Agreement.

This Agreement and the Appendices, Exhibits, schedules and documents delivered pursuant hereto constitute the entire contract between the parties hereto pertaining to the subject matter hereof (except for Buyer's obligations under any confidentiality agreements executed by Buyer, which shall continue to apply) and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether written or oral, of the parties, and there are no representations, warranties or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the parties to be bound thereby.

11.14. Governing Law.

The validity and construction of this Agreement shall be governed by the laws of the State of Tennessee.

11.15. Waiver of Trial by Jury.

To the extent permitted by applicable law, each party hereby unconditionally and irrevocably waives all right of jury in any action, proceeding or counterclaim arising out of or in connection with this Agreement, or to any matter arising hereunder.

11.16. Legal Fees and Costs.

In the event either party elects to incur legal expenses to enforce or interpret any provision of this Agreement, the prevailing party will be entitled to recover from the other party such legal expenses, including, without limitation, reasonable attorneys' fees, costs and necessary disbursements, in addition to any other relief to which such party shall be entitled.

11.17. Time.

Time is of the essence for purposes of each and every provision of this Agreement, except that if the Buyer has provided the appropriate agency with all filings required for the License

Transfer, and said transfer has not occurred due to no fault of the Buyer, the Parties agree to a reasonable adjournment of the closing to effectuate the transfer of the CHOW.

11.18. Section Headings.

The headings contained in this Agreement are for reference only and shall not limit or control the meaning of any provision of this Agreement.

11.19. Waiver.

Any waiver of any term or condition of this Agreement, or of the breach of any covenant, representation or warranty contained herein, in any one instance, shall not operate as or be deemed to be or construed as a further or continuing waiver of any other breach of such term, condition, covenant, representation or warranty, nor shall any delay or omission on the part of any party hereto in exercising any right hereunder shall operate as a waiver of such right or any other right under this Agreement.

11.20. Nature and Survival of Representations.

All statements contained in any certificate delivered by or on behalf of any of the parties to this Agreement pursuant hereto in connection with the transactions contemplated hereby shall be deemed to be representations and warranties made by the respective parties hereunder. The covenants, representations and warranties made by the parties each to the other in this Agreement or pursuant hereto and all provisions of this Article 11 shall survive the transactions contemplated hereby.

11.21. Exhibits.

All Exhibits, Appendices, schedules and documents referred to in or attached to this Agreement are integral parts of this Agreement as if fully set forth herein and all statements appearing therein shall be deemed to be representations. All items disclosed hereunder shall be deemed disclosed only in connection with the specific representation to that they are explicitly referenced.

11.22. Assignment.

Seller shall not assign this Agreement without first obtaining the written consent of the Buyer. Buyer shall have the unilateral right to assign this Agreement to one or more entities created by (or with the consent of) Buyer, and Buyer or such assignee shall have the right to collaterally assign the rights of Buyer respecting remedies in the event of breaches of Seller's representations, warranties and covenants and rights of indemnification hereunder to any lender. The parties acknowledge that the rights to acquire the Real Property and/or furnishings, fixtures and equipment may be assigned to a separate entity than the other operating assets and intangible

assets associated with the Facility, and in such instance the obligations of Seller under this Agreement related to the operations of the Facility may be the subject of the OTA. Furthermore, Buyer shall have the right to collaterally assign the rights of Buyer respecting remedies in the event of breaches of Seller's representations, warranties and covenants and rights of indemnification hereunder to Buyer's lender.

11.23. Binding on Successors and Assigns.

Subject to § 11.22, this Agreement shall inure to the benefit of and bind the respective heirs, administrators, successors and assigns of the parties hereto. Nothing expressed or referred to in this Agreement is intended or shall be construed to give any person other than the parties to this Agreement or their respective successors or permitted assigns any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein, it being the intention of the parties to this Agreement that this Agreement shall be for the sole and exclusive benefit of such parties or such successors and assigns and not for the benefit of any other person.

11.24. Parties in Interest.

Nothing in this Agreement is intended to confer any right on any person other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to modify or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over against any party to this Agreement.

11.25. Amendments.

This Agreement may be amended, but only in writing, signed by the parties hereto, at any time prior to the Closing, before or after approval hereof by the members of Seller, with respect to any of the terms contained herein, but after such member approval, no amendment shall be made that reduces the consideration per share paid each such member without the further approval of such members.

11.26. Drafting Party.

The provisions of this Agreement, and the documents and instruments referred to herein, have been examined, negotiated, drafted and revised by counsel for each party hereto and no implication shall be drawn nor made against any party hereto by virtue of the drafting of this Agreement.

11.27. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall comprise one and the same instrument. Any such counterparts may be delivered by facsimile or e-mail (in .pdf format), and all such counterparts so delivered shall be treated as original documents for all purposes.

11.28. Reproduction of Documents.

This Agreement and all documents relating thereto, including without limitation, consents, waivers and modifications that may hereafter be executed, the Exhibits and documents delivered at the Closing, and financial statements, certificates and other information previously or hereafter furnished to Buyer may be reproduced by Buyer by any photographic, photostatic, microfilm, microcard, miniature photographic or other similar process and Buyer may destroy any original documents so reproduced. Seller agrees and stipulates that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by Buyer in the Ordinary Course of Business) and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

11.29. Press Releases.

Buyer and Seller shall cooperate with each other in releasing information concerning this Agreement and the transactions contemplated hereby. Each of the parties to this Agreement shall furnish to the others drafts of all releases prior to publication. Nothing contained in this Agreement shall prevent any party to this Agreement at any time from furnishing any information to any governmental body or agency.

11.30. Certain References.

References herein only to Seller shall mean also the "Facility" as the text and meaning of this Agreement may require. References herein only to the "Facility" shall mean also Seller as the text and meaning of this Agreement may require.

11.31. Waiver of Special, Exemplary, Punitive and Consequential Damages.

Each party hereby irrevocably waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any claim, action or proceeding referred to in this Agreement any special, exemplary, punitive or consequential damages. The foregoing sentence shall survive the Closing or the termination of this Agreement for any reason. Each party acknowledges that it knowingly and voluntarily makes these waivers.

11.32. "As Is".

Except as otherwise expressly provided in this Agreement, Seller has not made (and Buyer has not relied upon), any promise, representation or warranty, express or implied, regarding the Assets, the Facilities, the Seller, the Excluded Assets, the Hired Employees or any other matter, whether made by Seller, on Seller's behalf or otherwise. Buyer acknowledges and agrees that Buyer (a) has entered into this Agreement with the intention of making and relying solely upon its own investigation or that of third parties with respect to the physical, environmental, economic and legal condition of the Assets and (b) is not relying upon any statements, representations or warranties of any kind by Seller or anyone acting or claiming to act on Seller's behalf. Without limiting the foregoing, except as otherwise expressly provided in this Agreement, Seller makes no warranty of merchantability or fitness for any purpose with respect to the Assets, and the Assets are sold "AS IS, WHERE IS", with all faults. All of the provisions of this Section 11.32 shall survive the Closing or the earlier termination of this Agreement.

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

By_____

Its_____

Name_____

WHITEHALL OPCO, LLC

By_____

Its_____

Name_____

APPENDICES

- 1A Real Property
- 1B Equipment and Furnishings
- 1C Vehicles
- 2.3B Excluded Records
- 2.3F Additional Excluded Items
- 2.4A Form of Deposit Escrow Agreement

LIST OF EXHIBITS

Number	Description
1A	Operations Transfer Agreement
1B	Intellectual Property
2.6	Asset Valuation
2.9	Due Diligence Checklist
2.11 (a)	Employee Matters—Labor Actions
2.11 (b)	Employee Matters—Employee List and Compensation
3.1	States and Foreign Countries in which Seller is Qualified to do Business; Copies of Seller's Articles of Organization and Operating Agreement
3.3	Seller Financial Statements
3.6	Exceptions to Absence of Recent Changes Representation
3.7 (a)	Recent title report respecting Seller's real property
3.7 (c)	Recent UCC report on Seller's other assets
3.8	Leases and Contracts of Seller and Exceptions
3.9	List of Burdensome Agreements
3.10	Related Party Transactions
3.11	Exceptions to No Default Representation
3.14	Powers of Attorney
3.15	Guarantees
3.16	Permits and licenses
3.18	Litigation
3.19	Court Orders, Decrees etc.
3.24	HIPAA List of Covered Entities and Organized Health Care Arrangements
3.25	Compliance Program Copies
3.26 (a)	Copies of Open Medicare and Medicaid Cost Reports
3.26 (b)	Schedule Setting Forth Audit Status of Medicare Cost Reports
3.27	Environmental Matters
3.28	List of Employee Benefit Plans
3.29	Employee Relations
3.30	List of Insurance Policies
3.33 (a)-1	Exceptions to License Compliance Representation
3.33 (a)-2	Copy of Licenses
3.33 (b)	Blue Cross Contract
3.33 (c)	Medicare contract
3.33 (d)	Medicaid contract
3.33 (f)	Fire Marshal Reports
3.33 (g)	Building Code Violations

3.33 (h)	Health Department Surveys
3.33 (i)	Medical Staff Bylaws
3.33 (j)	Status of Medical Staff
3.41	“Life Care” Contracts
8.5 (b)	Non-Assignable Property Interests
11(f)	Termite Inspection

Exhibit 1A

OPERATIONS TRANSFER AGREEMENT

This Operations Transfer Agreement is made, effective as of 12:01AM Central Time, _____, 2017, between _____, a _____, or its permitted assigns ("Buyer"), and Whitehall OpCo, LLC, a Tennessee limited liability company ("Seller").

WHEREAS, Buyer and Seller have entered into an Asset Purchase Agreement dated as of _____, 2017 (the "APA"), with respect to the assets pertaining to a nursing home known as Whitehall of Boca Raton, located at 7300 Del Prado Circle South, Boca Raton, Florida (the "Facility");

WHEREAS, Seller is the holder of the license for the Facility, and the owner of certain of the other assets associated with the Facility;

1.1 Timing. The closing under the APA shall occur on _____, 2017, (the "Closing Date") and be effective as of 12:01:01 a.m. Central Time on _____, 2017 (the "Effective Date"). On the Effective Date, Seller shall surrender possession of the Facility to Buyer, effective as of 12:01:01 a.m. Central Time on _____, 2017.

1.2 Deliveries at Closing. Seller shall deliver the following to Buyer at the Closing:

1.2.1 Assignments of all patient/resident records, employee records (to the extent such records are in the possession or control of Seller), records of inspection of the Facility by local, state and federal agencies, and other documents and business and operational records necessary for the operation of the Facility, all plans, blueprints, construction information, surveys and similar documents in the possession of Seller or located at the Facility, all to the extent such items have not been previously delivered to Buyer.

1.2.2 An acknowledgment of closing, acknowledging that Seller is no longer the licensed operator of the Facility. Buyer has previously made application for a license in its own name, to be issued by the Florida Agency for Health Care Administration, effective as of _____, 2017.

1.2.3 An accounting of patient/resident trust funds and the funds held for such patients/residents.

1.3 Buyer's Deliveries at Closing. Buyer shall deliver the following to Seller at the Closing:

1.3.1 Executed counterpart of acknowledgment of closing.

1.3.2 An acknowledgement of receipt of the accounting of patient/resident trust funds and the funds held on behalf of such patients/residents.

ARTICLE II TRANSFER OF OPERATIONS

2.1 Cooperation. Seller agrees to cooperate with Buyer and its management company, and Buyer and its management company agree to cooperate with Seller, to effect an orderly transfer of the operation of the Facility to Buyer, including the transfer of all rights associated with all licenses and certifications regarding the Facility, to the extent transferable, and shall file any certificates or other documents deemed necessary to acknowledge that Buyer is obtaining a license in its own name, to be issued by the Florida Agency for Health Care Administration, effective as of _____, 2017.

2.2 Transfer of Patient/Resident Trust Funds. Seller shall provide to Buyer a true, correct and complete accounting (properly reconciled) of any patient/resident trust funds and an inventory of all patients/residents' property held by Seller on the Closing Date, and deliver a check for such funds and the property to Buyer. Buyer hereby agrees that it will accept such funds and property in trust for the patients/residents, in accordance with applicable statutory and regulatory requirements.

2.3 Books and Records. To the extent such records are in the possession or control of Seller, Seller shall deliver to Buyer patient and resident records, employee and employment records, financial and accounting records for the last three years in form and content sufficient for Buyer to take over the operation of the Facility, and provide care.

2.4 Accounts Receivable. Effective as of the Effective Date, Seller and Buyer agree that Buyer will be allowed to use Seller's existing Medicare, Medicaid and other payor program agreements (collectively, "Program Agreements"), National Provider Identifier number ("NPI"), and Program Agreement numbers for purposes of billing and collecting Buyer's accounts receivable (the "Receivables"). In order to assist in the billing and collection of such Receivables, and periodically track Receivables, Seller agrees to permit Buyer access to any website of CMS, any carrier or fiscal intermediary (a "Fiscal Intermediary"), or any state Medicaid agency, including use of Seller's user-identification and password. Pursuant to the terms of the APA, Seller has assigned and transferred to Buyer, to the fullest extent permitted by law, all right, title, benefit, privileges and interest in, to, and under the Program Agreements and NPI number, to the extent transferable to Buyer (however, notwithstanding the foregoing, Buyer has not assumed and shall not be deemed to have assumed and shall not be responsible for any liability or obligation of Seller under Seller's Program Agreements or NPI number relating to the operation of the Facilities with respect to periods prior to the Effective Date). In connection with the permission described herein, Seller agrees to take reasonable steps to assist Buyer in processing Medicare or Medicaid claims and obtaining Medicare or Medicaid payments. Seller shall provide Buyer: (a) copies of all remittance advice documentation and explanation of benefits relating to all Receivables related to the Facilities promptly upon receipt, and (b) reasonable access, during business hours, to such account documentation, remittance advice documentation, explanation of benefits or other documents, records or other related information as reasonably necessary to facilitate billing and collection of Receivables of Buyer relating to the Facility.

2.5 Accounts Receivable Collections. Seller, solely for the purpose of enabling Buyer to collect the Receivables generated from services provided by Buyer after the Effective Date, not less than forty-five (45) days following Closing Buyer shall grant signatory power and the sole power to issue instructions relating to those certain bank accounts set forth on Exhibit A attached hereto (collectively, the “Deposit Accounts”) into which deposits for any Receivables and other rights of payment for goods and services provided by the Facility are made and all outstanding checks and deposits in transit relating to Receivables and other rights of payment for goods and services provided by the Facility shall be deposited. Seller shall ensure that Seller, and its employees, agents or affiliates shall not have signatory power or the power to issue instructions relating to the Deposit Accounts following Closing. Seller shall execute and deliver any additional documents or agreements, including but not limited to any additional documents or agreements required by any bank or financial institution necessary to effectuate this provision. Seller agrees to cause all payments relating to any Receivables and payments by Medicare, Medicaid and other state and federal healthcare programs to be deposited promptly into the Deposit Accounts. To the extent any payments are made with respect to any Receivables for the Facility by the use of any electronic funds transfer or wire transfer method of payment currently in place with Medicare, any Fiscal Intermediary, Medicaid or other payor on account of services rendered at the Facility, Seller agrees to cause all such payments to be made into the Deposit Accounts, and shall provide Buyer with any account codes or passwords reasonably necessary for Buyer to access all data and information related to such funds transfers. Notwithstanding anything herein to the contrary, all rights granted to Buyer hereunder are expressly subject to Section 2.14, including without limitation Section 2.14(e), of the APA and Section 2.7 hereinafter.

2.6 Accounts Receivable Liens. Notwithstanding the foregoing, the parties acknowledge that Seller is a party to that certain Credit Agreement (as defined in Section 3.42 of the APA) dated as of July 31, 2012, as amended, by and among certain lenders thereto, Healthcare Financial Solutions, LLC, as agent for such lenders, and Seller and other borrowers thereto (the “2012 Credit Agreement”), and that Seller’s Receivables are pledged, and/or liens and restrictions have been granted with respect to the accounts into which such Receivables are received, to secure the 2012 Credit Agreement. The parties further acknowledge that Buyer may be or become a party to a credit or loan agreement which will require Buyer to pledge its Receivables, and/or grant liens and restrictions with respect to the accounts into which such Receivables will be received. Seller and Buyer shall use their best efforts to obtain such consents as may be required from, and execute and deliver such documents as may be reasonably requested by, their respective lenders, so as to allow the collection of Receivables as contemplated above.

2.7 Accounts Receivable Generation and Deposit Accounts. Notwithstanding any contrary or other provisions of this Operations Transfer Agreement, and notwithstanding any contrary provisions of the APA, if requested by Seller's Lender (defined in Section 3.42 of the APA), then the treatment of all accounts receivable generated at or relating to the Facility, all payments thereon, and all of Seller's bank accounts, including but not limited to the Deposit Accounts, will be the subject of, and will be controlled by the terms of, a separate written agreement or agreements which will be executed prior to the Closing Date by Seller, Buyer, and Seller's Lender, and any other parties determined necessary by Seller's Lender, in its sole discretion, and which shall be acceptable to Seller's Lender in form, content and detail. For the

avoidance of doubt, the purpose of such agreement or agreements, if requested by Seller's Lender, is to ensure an orderly transition of the Facility and the collection of all accounts receivable, while respecting and maintaining Seller's and Buyer's respective interests and Seller's Lender's lien rights regarding such accounts receivable.

ARTICLE III EMPLOYEE MATTERS

3.1 Group Health Insurance. As of the Closing Date, all Hired Employees who were eligible to participate in group health insurance coverage sponsored by Seller shall be eligible for participation in a group health plan (as defined for purposes of Internal Revenue Code Section 4980B) established and maintained by Buyer for the general benefit of employees and their dependents, and all such Hired Employees shall, if permissible under the plan of Buyer, be covered without a waiting period and without regard to any pre-existing condition unless they are under a waiting period with Seller at the time of Closing, in which case they shall be required to complete their waiting period while under the group plan of Buyer. Buyer and Seller acknowledge and agree that it is the intent of this provision that neither Seller nor its affiliates shall be required to provide continued health coverage under ERISA or Section 4980B of the Code to any Hired Employees or to any qualified beneficiary (as defined for purposes of Section 4980B of the Code) with respect to any such Hired Employees.

3.2 Employee Benefits. As of the Closing Date, all Hired Employees shall cease to accrue benefits under the employee benefit plans, programs and policies of Seller, and Seller shall take all such action as may be necessary to effect such cessation. Buyer shall give credit to Hired Employees for purposes of eligibility to participate and to vest under the Employee Benefit Plans, and employee programs and policies (including, without limitation, pension, savings, medical and other plans, programs and policies) in which the Hired Employees participate after the Closing Date, for service by Hired Employees prior to the Closing Date, to the extent such service was taken into account for each such purpose by Seller under each corresponding Employee Benefit Plan or employee program or policy.

3.3 Survival. This Article III shall survive the Closing.

ARTICLE IV TRANSFER OF VENDOR CONTRACTS

On or before [_____,] 2017, Buyer may elect, in its sole and absolute discretion, to provide Seller with a written notice identifying any Contracts which Buyer does not wish to assume ("Contract Notice") as of the Effective Time. At the Effective Time, Buyer shall assume all Contracts. Seller shall cause those Contracts indicated in the Contract Notice given pursuant to the preceding sentence to terminate as of the Closing Date. All such other Contracts shall be deemed to be "Assumed Contracts" for all purposes hereunder. If any consent is needed to assign any of the Assumed Contracts to Buyer, Seller and Buyer shall each

use their commercially reasonable efforts to obtain such consent, provided that they shall not be required to incur any material fees to obtain such consent. If such consent has not been obtained on or prior to the Closing Date, this Agreement shall not be construed as an assignment or attempted assignment thereof if such assignment would constitute a breach thereof. For the absence of doubt, in no event shall Buyer be permitted to assume any mortgage or debt of Seller.

ARTICLE V

MISCELLANEOUS

5.1 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.

5.2 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, postage prepaid, return receipt requested or (c) sent by national overnight courier service, each addressed to the notice addresses set forth in the APA.

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

5.4 Governing Law. This Agreement shall be governed in accordance with the laws of the State of Florida.

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

By: _____

Title: _____

WHITEHALL OPCO, LLC

By: _____

Title: _____

Exhibit 2.9

DUE DILIGENCE CHECKLIST

FINANCIAL

- Monthly and fiscal year-end historical financial statements for the last two fiscal year-ends. (Copy of any audited/reviewed/compiled/financial statements)
- The current interim financial statements and any prior year comparatives.
- For each of the last two fiscal years, any documents that relate to any detail of any expenses or income that would be considered non-recurring in nature with any supporting documentation that substantiates or relates to the non-recurring nature of these items.
- General ledgers and trial balances for the last two fiscal years.
- The most recent monthly income statement, cash flow and balance sheet projections for the 12 month period beginning as of the close of your most recent interim period
- Projections prepared and documentation relating to assumptions
- Contact information with respect to 20 largest vendors
- All Facility Contracts
- List of facility expenses
- Accounts payable aging for each of the past six months, the last fiscal year-end and current interim period. Any reconciliations of the aging to the general ledger and financial statements for each of these periods.
- Schedule of fixed assets and capital improvements. Reconciliations of fixed asset schedule to the general ledger and balance sheet.
- Any documents relating to description of major improvements/additions to real property in the last five years.
- Schedule of inventory. Any reconciliation of inventory to the general ledger and financial statements.
- Capital budget for 12/31/15.

ACCOUNTS RECEIVABLE

- accounts receivable summary agings by payor source for the most recent fiscal year-end, current interim period and prior year comparative interim period. Also, for the most recent interim period, accounts receivable report and reconciliations to the aging, general ledger and balance sheet
- Reconciliations of the current accounts receivable agings to both the general ledger and the balance sheet.
- Medicare, Medicaid & Commercial Insurance remittance advices/EOB 's for the past three months & patient files.
- accounts receivable aging for the past six months.
- Any accounts receivable roll-forward schedules, documents relating to write offs of *AIR* for the past 6-months write-offs/adjustments , contractual allowances, billings and ending *AIR* reconciled to the general ledger.
- Reconciliations of month-end *AIR* per rollforward to the general ledger for the most recent month.
- Reconciliations of month-end *AIR* per rollforward to the summary *AIR* aging for the most recent month.

ADMINISTRATIVE AND OTHER ITEMS

- Correspondence related to changes or modification in bed complement.
- Census/patient day data (by month) for the past twelve months by payor, including occupancy percentage.
- Contracts and agreements including physician, managed care, ancillary services, purchased services and leases, etc.
- Schedule of intangible and intellectual property.

MEDICARE/MEDICAID

- Medicare and Medicaid cost reports; final and tentative settlement notices for the last two years; correspondence related to interim payment rates or PIP (quarterly reports); denial letters, summary of settlement estimates for due to/from amounts for current and all open prior years; "Notice of Provider Reimbursement" and intermediary adjustments for most recently settled cost reports; most recent Medicare RUG rates and, etc.
- Copies of most recent Medicare RUG rates and Medicaid payment rate letters supporting both current and prior payment rates.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In re:)	
)	
Vanguard Healthcare, LLC, <i>et al.</i> ¹)	Case No. 16-03296
)	Chapter 11
Six Cadillac Dr., Suite 310)	Judge Mashburn
Brentwood, TN 37027)	
)	Jointly Administered
Debtors.)	
)	Hearing: [DATE], 2017

**ORDER AUTHORIZING AND APPROVING SALE OF ASSETS OF WHITEHALL
OPCO FREE AND CLEAR OF ALL INTERESTS,**

This matter is before the Court on the motion (the “**Motion**”) filed on April ___, 2017, by Whitehall OpCo, LLC (the “**Debtor**”) for entry of an order authorizing and approving certain sale procedures for the sale of the Assets² (the “**Sale**”) free and clear of all interests of any kind or nature whatsoever (excluding the Assumed Liabilities and Permitted Encumbrances) pursuant to that certain asset purchase agreement (the “**APA**”), in substantially the form filed following the Auction at Docket No. [___], by and between Debtor Whitehall OpCo, LLC (the “**Debtor**” or

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Vanguard Healthcare, LLC (9650); Vanguard Healthcare Services, LLC (7563); Vanguard Financial Services, LLC (3403); Aurora Australis, LLC (7099); Boulevard Terrace, LLC (8709); Elderscript Services, LLC (4179); Eldercare of Jackson County, LLC (7855); Glen Oaks, LLC (8238); Palace RBS, LLC (9601); Shady Lawn, LLC (7397); Vanguard of Ashland, LLC (8367); Vanguard of Church Hill, LLC (1049); Vanguard of Crestview, LLC (1046); Vanguard of Manchester, LLC (6203); Vanguard of Memphis, LLC (4623); Vanguard of Ripley, LLC (1050); Vicksburg Convalescent, LLC (7298); and Whitehall OpCo, LLC (6186).

² All capitalized terms not otherwise defined herein shall have the meanings ascribed in the APA and the Motion, as applicable. To the extent of any inconsistency between the Motion and the APA with respect to defined terms, the APA shall govern.

“**Whitehall**”) and [SUCCESSIONAL BIDDER] (together with any entity to which it assigns its interests under the APA, the “**Buyer**”); (b) approving a procedure for the assumption and assignment of the Desired Contracts. The Debtor has determined, after an extensive marketing effort and pursuant to the Sales Procedures previously approved by the Court [Docket No. ____], that the Buyer has made the highest or otherwise best offer for the Assets. Adequate and sufficient notice of the Motion, the hearing before the Court on [DATE], 2017 (the “**Hearing**”) and of any other related transactions has been given in the manner directed by the Court. The Court has reviewed and considered (a) the Motion and all relief related thereto, (b) the objections thereto, and (c) the evidence presented in support of the relief requested by the Debtor at the Hearing, and agrees that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted in this Order; and the relief requested in the Motion is in the best interests of the Debtor and the other Debtors, their estates and creditors and other parties-in-interest. Accordingly, and upon the record of the Hearing and all other pleadings and proceedings in these Chapter 11 cases, including the Motion; and after due deliberation thereon and good and sufficient cause appearing therefor, the Court hereby FINDS AND DETERMINES THAT:

Jurisdiction, Final Order and Statutory Predicates

A. This Court has jurisdiction to hear and determine 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)(2). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief requested in the Motion are §§ 105(a), 363 and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

Notice of the Sale

C. Notice of the Motion was provided pursuant to Bankruptcy Rule 2002(a)(2) and Local Rule 9013-1 to all known parties in interest, including (i) the Office of the United States Trustee; (ii) the Internal Revenue Service; (iii) the Official Committee of Unsecured Creditors and its counsel (the “**Committee**”) (iv) counsel for secured creditor Healthcare Financial Solutions, LLC (assignee of General Electric Capital Corporation) (“**HFS**”), (v) all other parties who are known to possess or assert a lien, claim, encumbrance or interest in or upon any of the Assets; (vi) all applicable United States, state and local regulatory or taxing authorities, recording offices or any governmental entity which have a reasonably known interest in the Assets; and (vii) all parties on the most current matrix for the Debtor. Additionally notice was provided to all potential purchasers previously identified or solicited by the Debtor and its professionals.

D. Notice of the sale of the assets of the Debtor and the Hearing was reasonably calculated to provide all interested parties with timely and proper notice of the Sale and Hearing.

E. As evidenced by the certificate of service previously filed with the Court, proper, timely, adequate and sufficient notice of the Sale Procedures, the Hearing, and the transactions contemplated thereby, including without limitation, the assumption and assignment of the Desired Contracts to the Buyer, was provided in accordance with Bankruptcy Rule 2002(a)(2) and Local Rule 9013-1 and the orders previously entered by this Court, §§ 105(a), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9008. The notices were good, sufficient and appropriate under the circumstances, and no other or further notice of the Motion, the Hearing, the Sale or the assumption and assignment of the Desired Contracts to the Buyer is or shall be required.

F. A reasonable opportunity to object and be heard with respect to the Sale and the Motion and the relief requested therein has been afforded to all interested persons and entities.

Good Faith of the Buyer

G. The APA was negotiated, proposed and entered into by the Debtor and the Buyer without collusion, in good faith and from arms'-length bargaining positions.

H. The Buyer is not an "insider" or "affiliate" of the Debtor or any of the other Debtors as those terms are defined in the Bankruptcy Code.

I. The Buyer is purchasing the Assets in good faith and is a good faith buyer within the meaning of § 363(m) of the Bankruptcy Code. The Buyer proceeded in good faith in connection with all aspects of the Sale, including: (i) neither inducing nor causing the Debtor's or the other Debtors' Chapter 11 filings; (ii) disclosing all payments to be made by the Buyer in connection with the Sale; and (iii) submitting its bid for the purchase of the Assets and/or participating in the Auction of the Assets pursuant to the Sales Procedures previously approved by the Court. Accordingly, the Buyer is entitled to all of the protections afforded under § 363(m) of the Bankruptcy Code.

J. No other entity or group of entities has offered to purchase the Assets for greater economic value to the Debtor's estate than the Buyer. The Debtor's and the other Debtors' determination that the APA constitutes the highest and best offer for the Assets is a good, valid and sound exercise of the Debtor's and the other Debtors' business judgment.

No Fraudulent Transfer

K. The consideration provided by the Buyer pursuant to the APA (i) is fair and reasonable, (ii) is the highest or otherwise best offer for the Assets, and (iii) constitutes reasonably equivalent value (as those terms are defined in each of the Uniform Fraudulent Transfer Act,

Uniform Fraudulent Conveyance Act and § 548 of the Bankruptcy Code) and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia. Approval of the Motion and the APA, and the consummation of the transactions contemplated thereby, is in the best interests of the Debtor and the other Debtors, their estates, creditors and other parties-in-interest.

L. There is no continuity of enterprise between the Buyer and the Debtor. The Sale does not amount to a consolidation, merger or de facto merger of the Buyer and the Debtor.

HFS Liens

M. The Debtor is jointly and severally liable to HFS for the entire amount of the Loan Obligations (as that term is defined in the Cash Collateral Order (defined below), and, for purposes of this Order, collectively the “**HFS Loan Obligations**”, as are other of the Debtors. The Debtor, together with certain of its Debtor affiliates and non-Debtor affiliates, is a party under both the Revolving Loan Documents and the Term Loan Documents (as those terms are defined in the Cash Collateral Order (defined below), and, for purposes of this Order, collectively the “**HFS Loan Documents**”).

N. As security for timely payment and performance of the HFS Loan Obligations, and pursuant to the HFS Loan Documents, prior to the filing of these Chapter 11 cases, HFS, in its capacities as Agents under the HFS Loan Documents, was granted and continues to hold valid and perfected first priority liens on and security interests in, among other things, all of the Debtor’s property, both its real property and personal property, including all of the Assets (collectively “**HFS Pre-Petition Liens**”).

O. As provided and adjudicated in the Court’s *Stipulated Final Order Authorizing Debtors’ Limited Use Of Cash Collateral, Granting Adequate Protection, And Granting Related*

Relief [Docket No. 168] (the “**Cash Collateral Order**”), the Debtors agree that HFS was granted and holds replacement liens and security interests in all of the Debtors’ post-petition assets of the type and to the same extent provided in the HFS Loan Documents which includes replacement liens and security interests in all of the Assets and all of the Debtor’s other assets, including without limitation the Debtor’s Accounts Receivable, as security for the HFS Loan Obligations owing to HFS (collectively, “**HFS Replacement Liens**”).

P. The Assets do *not* include, among other things, the Debtor’s Accounts Receivable (amounts due, whether or not actually billed) for services provided up to the Effective Time of the legal transfer of the operations of the Debtor’s Business to the Buyer (collectively, the “**Whitehall Accounts Receivable**”) and the Assets do not include the Debtor’s bank accounts or cash deposits. The Debtor’s Accounts Receivable, bank accounts, and cash deposits are expressly included, among other things, in the definition of Excluded Assets in the APA and shall not be sold to the Buyer in the Sale.

Q. The Debtor and the Buyer agreed that notwithstanding any contrary or other provision in the APA, the treatment of all accounts receivable generated at or relating to the Facility, all payments thereon, and all of Debtor’s bank accounts, including but not limited to the Deposit Accounts will be the subject of, and may be controlled by the terms of, a separate written agreement or agreements which will be executed prior to the Closing Date by the Debtor and the Buyer, and any other parties determined necessary by the Debtor, in its sole discretion, (the “**Whitehall Collections Agreement**”).

R. As further agreed by the Debtor and the Buyer in Section 2.14(e) of the APA, the purpose of the Whitehall Collections Agreement is to ensure an orderly transition of the Facility from the Debtor to the Buyer and the collection of accounts receivable, while recognizing and

maintaining the Debtor's and the Buyer's respective interests. Section 2.14 of the APA shall survive Closing.

S. All collections of the Whitehall Accounts Receivable collected after the Closing Date of the Sale shall be deposited in a separate Whitehall account held by Vanguard Financial Services (the "**Whitehall Segregated Account**").

Validity of Transfer

T. The Debtor has (i) all requisite authority to execute and deliver the APA and all other documents contemplated thereby, (ii) all requisite authority necessary to consummate the transactions contemplated by the APA and (iii) taken all requisite action necessary to authorize and approve the APA and the consummation of the transactions contemplated thereby. The Sale has been duly and validly authorized by all requisite action. No consents or approvals, other than those expressly provided for in the APA, are required for the Debtor to consummate the Sale, the APA or the transactions contemplated thereby.

U. The APA 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. Neither the Debtor nor the Buyer is fraudulently entering into the transactions contemplated by the APA.

V. The Debtor has good and marketable title to the Assets and is lawful owner of the Assets. Subject to the indefeasible payment in cash of the amount of \$21,500,000.00 to HFS (the "**HFS Payment**") and \$7,200,000 (the "**WHJ Payment**") to WHJ Limited Liability Partnership ("**WHJ**") and the execution of an unsecured, non-interest bearing note payable in the amount of \$1,800,000 payable by Vanguard Healthcare LLC ("**Vanguard**") to WHJ on the fifth year anniversary of the Closing Date as defined herein, and pursuant to § 363(f) of the Bankruptcy Code

with the consent of HFS and WHJ, the transfer of the Assets to the Buyer will be, as of the closing of the transactions contemplated by the APA and this Order (the “**Closing Date**”), a legal, valid and effective transfer of the Assets, which transfer vests or will vest the Buyer with all right, title, and interest of the Debtor to the Assets free and clear of (i) all liens, claims and encumbrances (including any right of first offer or refusal regarding HFS’s option to purchase any real property) relating to, accruing or arising any time prior to the Closing Date (collectively, the “**Liens**”) and (ii) all debts arising under, relating to or in connection with any act of the Debtor or claims (as that term is defined in § 101(5) of the Bankruptcy Code), liabilities, obligations, demands, guaranties, options, rights, contractual commitments, restrictions, interests and matters of any kind and nature, whether arising prior to or subsequent to the commencement of these cases, and whether imposed by agreement, understanding, law, equity or otherwise (including, without limitation, rights with respect to Claims (defined below) and Liens (x) that purport to give to any party (other than those counterparties to Desired Contracts expressly identified in the Exhibit 3.8 to the APA as being assumed and assigned or except as otherwise provided herein, and the Department of Health and Human Services for recoupment or setoff under the Provider Agreement) a right of setoff or recoupment against, or a right or option to effect any forfeiture, modification, profit sharing interest, right of first refusal, purchase or repurchase right or option, or termination of, the Debtor’s or the Buyer’s interests in the Assets, or any similar rights, or (y) in respect of taxes, restrictions, rights of first refusal, charges of interests of any kind or nature, if any, including, without limitation, any restriction of use, voting, transfer, receipt of income or other exercise of any attributes of ownership) (collectively, as defined in this clause (ii), “**Claims**”), relating to, accruing or arising any time prior to the Closing Date, with the exception of Assumed Liabilities, Permitted Encumbrances, or as expressly provided in this Order.

Section 363(f) Is Satisfied

W. The conditions of § 363(f) of the Bankruptcy Code have been satisfied in full; therefore, the Debtor may sell the Assets free and clear of any interest in the Assets.

X. The Debtor may sell the Assets free and clear of all Liens, Claims and other interests of any kind or nature whatsoever against the Debtor, its estate or any of the Assets (except the Assumed Liabilities, Permitted Encumbrances and except as otherwise provided in this Order) because, in each case, the standards set forth in § 363(f)(2) of the Bankruptcy Code has been satisfied. Those holders of Liens or Claims against the Debtor, its estate or any of the Assets who did not object or who withdrew their objections to the Sale or the Motion are deemed to have consented pursuant to § 363(f)(2) of the Bankruptcy Code.

Y. HFS's consent to the sale of the Assets to the Buyer free and clear of its Liens is specifically subject to (and this Order so provides) indefeasible payment in cash of the HFS Payment being made directly to HFS at, and as a condition of, Closing for application to the HFS Loan Obligations in accordance with the terms of the HFS Loan Documents. HFS agrees to this reduced payment in this instance only, based on the unique circumstances relating to Whitehall (continuing operating losses, etc.). HFS fully reserves all of its claims, rights and remedies, including without limitation, its objections to any argument that the HFS Loan Obligations somehow should be allocated among the various Debtors and non-Debtor borrowers.

Z. Nothing in this Order affects the continuation of the HFS Pre-Petition Liens or the HFS Replacement Liens on the property and assets of the Debtors other than the Debtor, and the HFS Pre-Petition Liens and the HFS Replacement Liens on such property and assets of the other Debtors shall continue in full force and effect in all respects.

**Compelling Circumstances for an Immediate Sale and Compromise Regarding
Available Assets to Whitehall Unsecured Creditors**

AA. Good and sufficient reasons for approval of the APA and the Sale have been articulated. The Sources and Uses Statement prepared by the Debtors' financial team reflects that there will be approximately \$_____ for distribution to Vanguard after (i) the HFS Payment, (ii) the WHJ Payment, and (iii) closing costs required under the APA to close the Sale. Any advances made to cover both pre-petition and post-petition operating expenses will be dealt with under the plan of reorganization that has been filed by the Debtors. With this agreement and the agreement of HFS to release its lien on all Whitehall Accounts Receivable, including proceeds thereof under the terms of this Order, the Debtor asserts that the relief requested in the Motion is in the best interests of the Debtor and the other Debtors, their estates, their creditors and other parties-in-interest.

BB. Given all of the circumstances of these Chapter 11 cases and the adequacy and fair value of the Cash Purchase Price under the APA, the proposed Sale constitutes a reasonable and sound exercise of the Debtor's business judgment and should be approved.

CC. The inclusion of patients' personally identifiable information in the Assets is consistent with the Debtor's pre-petition privacy policy because the transfer is necessary to the ongoing provision of health care services. Pursuant to § 363(b)(1)(A), the Debtor may sell patients' personally identifiable information.

DD. The consummation of the Sale and the assumption and assignment of the Desired Contracts is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, §§ 105(a), 363(b), 363(f), 363(m), and 365 thereof.

Adequate Assurance of Future Performance

EE. The Buyer has demonstrated adequate assurance of future performance with respect to the Desired Contracts pursuant to § 365(b)(1)(C) of the Bankruptcy Code.

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

General Provisions

1. The relief requested in the Motion, including the Sale, is granted and approved to the extent set forth in this Order.

2. Any objections to the Motion or the relief requested therein that have not been withdrawn, waived or settled by announcement to the Court during the Hearing, by the provisions of this Order, or by stipulation filed with the Court, including any and all reservations of rights included in such objections or otherwise (except the reservations of right and objections expressly preserved in this Order), are hereby denied and overruled with prejudice. Those parties who did not object or withdrew their objections to the Motion are deemed to have consented pursuant to § 363(f)(2) of the Bankruptcy Code to the Sale of the Assets in accordance with the terms of this Order.

Approval of the APA

3. The sale of the Assets and the consideration provided by the Buyer under the APA is fair and reasonable and shall be deemed for all purposes to constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law.

4. Pursuant to §§ 363(b) and (f) of the Bankruptcy Code, the Debtor is authorized and empowered to take any and all actions necessary or appropriate to (i) consummate the Sale pursuant to and in accordance with the terms and conditions of the APA, (ii) close the Sale as

contemplated in the APA and this Order, and (iii) execute and deliver, perform under, consummate, implement and fully close the APA, including the assumption and assignment of the Desired Contracts to the Buyer, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA and the Sale, including but not limited to the Whitehall Collections Agreement.

5. This Order shall be binding in all respects upon (i) the Debtor and the other Debtors, (ii) their estates, (iii) all creditors of, and holders of equity interests in, the Debtors, (iv) all holders of Liens, Claims or other interests (whether known or unknown) in, against or on all or any portion of the Assets, (v) the Buyer and all successors and assigns of the Buyer, (vi) the Assets and (vii) any trustees, if any, subsequently appointed in the Debtors' Chapter 11 cases or upon a conversion of these cases to cases under Chapter 7 under the Bankruptcy Code. This Order and the APA shall inure to the benefit of the Debtor and the other Debtors, their estates and creditors, the Buyer and the respective successors and assigns of each of the foregoing.

Transfer of the Assets and Release of HFS Lien In Whitehall Accounts Receivable

6. Pursuant to §§ 105(a), 363(b), and 363(f) of the Bankruptcy Code, and subject to the indefeasible cash payment of the HFS Payment directly to HFS at Closing, the Debtor is authorized to transfer the Assets to the Buyer on the Closing Date upon satisfaction and fulfillment of the conditions to Closing contained in the APA and this Order, and such transfer shall (i) constitute a legal, valid, binding and effective transfer of the Assets, (ii) vest the Buyer with title to the Assets and (iii) upon the Debtor's receipt of the Cash Purchase Price, be free and clear of all Liens, Claims and other interests of any kind or nature whatsoever (other than Assumed Liabilities, Permitted Encumbrances and as otherwise provided in this Order), and Claims, with such Liens, including mechanics, materialmen and subcontractor Liens and rights to receive

payment of trust funds, Claims and other interests to attach to the proceeds of the Sale in the order of their priority, with the same validity, force and effect which they now have as against the Assets. Upon the closing of the Sale (the “**Closing**”), the Buyer shall take title to and possession of the Assets subject only to the Assumed Liabilities, Permitted Encumbrances and any interests expressly provided for in this Order, and assuming that the Buyer is unaffiliated with the Debtor and any of the affiliates or principals of the Debtor as stated in Paragraph G of this Order, the Buyer specifically shall take title free and clear of any successor liability claim against Whitehall that could be asserted by the United States or the State of Tennessee, through any agency including but not limited to the U.S. Department of Justice, the U.S. Department of Health and Human Services or Florida Attorney General’s Office, against Buyer for (i) any legal claims under the False Claims Act, or other state or federal statute, or (ii) any state or federal administrative penalties, except as may be imposed by the Centers of Medicare & Medicaid Services under the Medicare provider agreement, pursuant to authority in the Medicare statute itself, 42 U.S.C. § 1395, et seq.

7. At Closing (and as a condition to the Closing), indefeasible payment in cash in the amount of the HFS Payment shall be paid directly to HFS, for application in accordance with the terms of the HFS Loan Documents, as part of the Cash Purchase Price paid by Buyer under Section 2.4 of the APA. It is hereby adjudicated that HFS is, and shall be, entitled to indefeasible retention of the full HFS Payment made to HFS at Closing as required by this Order. HFS’s consent to the sale of the Assets to Buyer free and clear of its Liens is specifically subject to the HFS Payment being made in cash directly to HFS at Closing. Effective upon (and only upon) HFS’s receipt of the HFS Payment, HFS shall release its lien in all Whitehall Accounts Receivable and proceeds

thereof (for which the Debtors will collect and hold for the benefit of unsecured creditors) and the Whitehall Segregated Account and the funds therein.

8. Except with respect to Assumed Liabilities, Permitted Encumbrances and any interests expressly provided for in this Order, all persons and entities that are in possession of some or all of the Assets on the Closing Date are directed to surrender possession of such Assets to the Buyer or its assignee at the Closing. The provisions of this Order authorizing the sale of the Assets free and clear of Liens, Claims and other interests of any kind or nature whatsoever (other than the Assumed Liabilities, Permitted Encumbrances and any interests expressly provided for in this Order) shall be self-executing, and neither the Debtor nor the Buyer shall be required to execute or file releases, termination statements, assignments, consents or other instruments in order to effectuate, consummate and implement the provisions of this Order.

9. The Debtor is hereby authorized to take any and all actions necessary to consummate the APA, including any actions that otherwise would require further approval by its members or any of the Debtor 's board of managers without the need of obtaining such approvals.

10. To the extent permitted by § 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Assets sold, transferred or conveyed to the Buyer on account of the filing or pendency of the Debtor 's Chapter 11 case or the consummation of the transactions contemplated by the APA. Each and every federal, state, and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA and this Order.

11. Notwithstanding anything contained in this Order or the APA to the contrary, nothing in this Order or the APA releases the Buyer from compliance with any applicable license,

permit, registration, authorization, or approval of or with respect to a governmental unit including but not limited to CMS as though such sale took place outside of bankruptcy. The Buyer shall continue to honor and comply with the terms and requirements of any such applicable license, permit, registration, authorization or approval.

12. Notwithstanding anything contained in this Order or the APA to the contrary, nothing in this Order or the APA shall authorize the transfer or assignment of any license if such transfer or assignment is prohibited by applicable nonbankruptcy law.

Prohibition of Actions Against the Buyer

13. Except for the Assumed Liabilities, Permitted Encumbrances, or as otherwise expressly provided for in this Order or the APA, the Buyer shall not have any liability or other obligation of the Debtor arising under or related to any of the Assets on account of the Sale.

14. After the Closing has occurred in accordance with the APA and this Order, the Buyer will have given substantial consideration under the APA for the benefit of the Debtor and the other Debtors, their estates and creditors. The consideration provided by the Buyer for the Assets under the APA is fair and reasonable, and accordingly the purchase may not be avoided under § 363(n) of the Bankruptcy Code.

Assumption and Assignment of Desired Contracts

15. As of the Hearing, the Buyer has not designated any contracts to be assumed other than the provider agreement with the U.S. Department of Health and Human Services (the “**Provider Agreement**”) (Docket No. 487). Nevertheless, pursuant to §§ 105(a) and 365 of the Bankruptcy Code, and subject to and conditioned upon the Desired Contract Notice and the Buyer’s assumption of the Desired Contracts on the terms set forth in the APA, the Debtor is hereby authorized and directed in accordance with §§ 365 of the Bankruptcy Code to (i) assume

and assign to the Buyer, effective upon the Closing Date, the Desired Contracts, as amended by Buyer, free and clear of all Claims, Liens or other interests of any kind or nature whatsoever and (ii) execute and deliver to the Buyer such documents or other instruments as may be necessary to assign and transfer the Desired Contracts to the Buyer, provided the assumption and assignment of the Provider Agreement shall be subject to compliance with all federal Medicare laws and regulations.

16. The Desired Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Buyer in accordance with their respective terms, notwithstanding any provision in any such Contract (including those of the type described in §§ 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts or conditions such assignment or transfer and, pursuant to § 365(k) of the Bankruptcy Code, the Debtor shall be relieved from any further liability with respect to the Desired Contracts after such assignment to and assumption by the Buyer.

17. All defaults or other obligations of any of the Debtor under the Desired Contracts arising or accruing prior to the Closing Date (without giving effect to any acceleration clauses or any default provisions of the kind specified in § 365(b)(2) of the Bankruptcy Code) shall be cured pursuant to the terms of the APA on the Closing Date or as soon thereafter as reasonably practicable.

18. Nothing in this Order, the Motion or in any notice or any other document is or shall be deemed an admission by the Debtor that any contract is an executory contract and/or unexpired lease or must be assumed and assigned pursuant to the APA or in order to consummate the Sale.

19. The failure of the Debtor or the Buyer to enforce at any time one or more terms or conditions of any Desired Contract shall not be a waiver of such term(s) or condition(s) or of the Debtor 's and Buyer's rights to enforce every term and condition of such Contract.

20. All parties to the Desired Contracts are forever barred and enjoined from raising or asserting against the Buyer any assignment fee, default, breach, Claim, pecuniary loss or condition to assignment arising under or related to the Desired Contracts existing as of the Closing Date or arising by reason of the Closing, except for any amounts that are Assumed Liabilities or as otherwise provided in this Order.

Payment of New Century Capital Partners

21. The Court previously approved the Debtor's retention of New Century Capital Partners as its financial advisor with respect to the Sale (Docket No. 1135) (the "NCCP Order"). Pursuant to § 328 of the Bankruptcy Code and the NCCP Order, the Debtor is authorized to pay to New Century Capital Partners a transaction fee in the amount of 2% of the Purchase Price payable at Closing.

Other Provisions

22. This Order and the APA shall be binding in all respects upon all creditors and equity-holders of the Debtor and any of the other Debtors, all non-debtor parties to the Desired Contracts, all successors and assigns of the Debtor and any of its affiliates and subsidiaries and any trustees, examiners, "responsible persons" or other fiduciaries appointed in the Debtors' bankruptcy cases or upon a conversion of such cases to cases under Chapter 7 of the Bankruptcy Code in accordance with the Bankruptcy Code and other applicable law. The APA shall not be subject to rejection or avoidance under any circumstances.

23. The APA may be modified, amended, or supplemented by the parties thereto in a writing signed by the parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estate and is consistent with the terms of this Order.

24. Nothing in this Order or the APA releases, nullifies, or enjoins the enforcement of any liability to a governmental unit under police and regulatory statutes or regulations that any entity would be subject to as the owner or operator of property after the Closing Date, and the Buyer reserves all rights and defenses with respect to any liability to a governmental unit under police and regulatory statutes or regulations that any entity would be subject to as the owner or operator of property after the date of entry of this Order.

25. The transactions contemplated by the APA are undertaken by the Buyer without collusion and in good faith, as that term is defined in § 363(m) of the Bankruptcy Code, and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale, unless such authorization and such Sale are duly stayed pending such appeal. The Buyer is a good faith buyer within the meaning of § 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of § 363(m) of the Bankruptcy Code.

26. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in (i) these Chapter 11 cases, (ii) any subsequent Chapter 7 cases into which these Chapter 11 cases may be converted or (iii) any related proceeding subsequent to entry of this Order, shall conflict with or derogate from the provisions of the APA (as modified by this Order) or the terms of this Order.

27. Notwithstanding anything to the contrary in the Motion, the APA, any notice of proposed assumption and assignment of contracts with respect to the Motion and APA, or this Order (including any provision that purports to be preemptory or supervening), nothing therein shall permit or otherwise effect a modification, sale, assignment, or any other transfer of (a) any insurance policies or related agreements that have been issued by ACE American Insurance

Company or any of its affiliates and successors at any time to (or to provide coverage to) any of the Debtors (or their predecessors) and/or (b) any rights, benefits, claims, rights to payments and/or recoveries under such policies or related agreements.

28. The failure to specifically include any particular provision of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA be authorized and approved in its entirety; *provided, however*, that this Order shall govern if there is any inconsistency between the APA (including an Operations Transfer Agreement between the Debtor and the Buyer, and all other ancillary agreements, including the Whitehall Collections Agreement) and this Order. Likewise, all of the provisions of this Order are non-severable and mutually dependent.

29. The Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the APA, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtor is a party or which has been assigned by the Debtor to the Buyer, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale, including, but not limited to, retaining jurisdiction to (i) compel delivery of the Assets to the Buyer, (ii) interpret, implement and enforce the provisions of this Order, (iii) interpret, implement and enforce the provisions of the Whitehall Collections Agreement and (iv) enter any orders under §§ 363 or 365 of the Bankruptcy Code with respect to the Desired Contracts.

30. To the extent that this Order is inconsistent with any prior order or pleading with respect to the Motion in these Chapter 11 cases, the terms of this Order shall govern.

31. Notwithstanding the foregoing or any other provision of this Order, nothing in this Order alters or affects the Cash Collateral Order, or any of the claims, Liens, or other rights granted

to or held by HFS against the Assets under the Cash Collateral Order or under the HFS Loan Documents, unless and until HFS receives indefeasible cash payment of the HFS Payment at Closing, as required by this Order.

This Order was signed and entered electronically as indicated at the top of the first page.

APPROVED FOR ENTRY:

/s/ William L. Norton III

William L. Norton III (TN 10075)

James B. Bailey (pro hac vice)

BRADLEY

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Nashville, TN 37203

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Attorneys for Debtors

EXHIBIT B
Desired Contract Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In re:)	
)	
Vanguard Healthcare, LLC, <i>et al.</i>)	Case No. 16-03296
)	Chapter 11
Six Cadillac Dr., Suite 310)	Judge Mashburn
Brentwood, TN 37027)	
Debtors.)	Jointly Administered

**NOTICE OF (I) INTENT TO ASSUME AND ASSIGN CERTAIN EXECUTORY
CONTRACTS, UNEXPIRED LEASES OF PERSONAL PROPERTY, AND UNEXPIRED
LEASES OF NONRESIDENTIAL REAL PROPERTY AND
(II) CURE AMOUNTS RELATED THERETO**

PLEASE TAKE NOTICE THAT:

1. Upon the motion of Whitehall OpCo, LLC ("Debtor"), dated April 24, 2017, to (I) *Approve (A) Sale Procedures for the Sale of All, or Substantially All, of Whitehall OpCo, LLC's Assets; (B) the Sale Transaction Pursuant to an Asset Purchase Agreement Free and Clear of Claims, Liens, Encumbrances, and Other Interests; (C) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (II) Provide Certain Related Relief* (the "Motion"), and pursuant to Local Rule 9013-1, notice of the Motion was provided scheduling a hearing (the "Sale Hearing") to approve the asset purchase agreement ("APA") that the Debtor determined to be the highest and best offer.

2. The APA contemplates, and the order approving the Motion (the "Sale Order"), shall authorize the assumption and assignment to the Buyer of certain contracts and leases pursuant to § 365 of title 11, United States Code (the "Bankruptcy Code"). Attached hereto as Exhibit 1 is a schedule containing contracts and leases that the Debtor may assume and assign to the Buyer (collectively, the "Desired Contracts"). You are receiving this Notice because you are a party to one or more of the Desired Contracts.

3. **EXHIBIT 1 CONTAINS A LIST OF DESIRED CONTRACTS THAT MAY BE ASSUMED. THE BUYER RESERVES THE RIGHT TO EXCLUDE ANY DESIRED CONTRACT FROM THE LIST OF DESIRED CONTRACTS TO BE ASSUMED AND ASSIGNED BY NO LATER THAN SEVEN (7) DAYS BEFORE THE CLOSING DATE (AS DEFINED IN THE APA).**

4. Please review the Cure Amount on Exhibit 1 to this Notice for your Desired Contract.

5. If you agree with the respective Cure Amount on Exhibit 1 and otherwise do not object to the Debtor's assumption and assignment of your contract, you are not required to take any further action. Objections, if any to the proposed assumption and assignment of the Desired Contracts (the "Contract Objections"), including objections to the Cure Amount, must be made in writing and filed with the United States Bankruptcy Court (the "Bankruptcy Court") so as to be received no later than _____, 2017 (the "Objection Deadline") by (i) the Debtor's counsel identified below (ii) attorneys for the Buyer, _____ and (iii) the attorneys for the Creditors Committee, Paul G. Jennings and Glenn B. Rose, Bass Berry & Sims, 150 Third Ave. South, Suite 2800, Nashville, TN 37201; (iv) and the Office of the United States Trustee, Attn Megan Silbert, 701 Broadway, Suite 318, Nashville, TN 37203.

6. If a timely Contract Objection is filed solely as to the Cure Amount (a "Cure Objection"), then the Desired Contract shall nevertheless be assumed and assigned to the Buyer as of the Closing Date (as hereinafter defined), the Debtor shall pay the undisputed portion of the Cure Amount on or as soon as reasonably practicable after the Closing Date, and the disputed portion of the Cure Amount shall be determined as follows and paid as soon as reasonably practicable following resolution of such disputed Cure Amount. To resolve the Cure Objection, the Debtor, the Buyer, and the objecting non-Debtor counterparty to the Desired Contract (the "Non-Debtor Counterparty") may meet and confer in good faith to attempt to resolve any such objection without Court intervention. If the Debtor determines that the Cure Objection cannot be resolved without judicial intervention, then the Cure Amount will be determined by the Court at the discretion of the Debtor either at the Sale Hearing or such other date as determined by the Court.

7. If a timely Contract Objection is filed that objects to the assumption and assignment on a basis other than the Cure Amount, the Debtor, the Buyer, and the objecting Non-Debtor Counterparty shall meet and confer in good faith to attempt to resolve any such objection without Court intervention. If the Debtor determines that the objection cannot be resolved without judicial intervention, then, at the discretion of the Debtor and the Buyer, the objection shall be determined by the Court at the Sale Hearing or such other date as determined by the Court. If the Court determines at such hearing that the Desired Contract should not be assumed and assigned, then such executory contract or lease shall no longer be considered a Desired Contract.

8. If the Debtor, the Buyer, and the Non-Debtor Counterparty resolve any Contract Objection, they shall enter into a written stipulation (the "Assumption Resolution Stipulation"), which stipulation is not required to be filed with or approved by the Court and shall not be assigned to the Buyer.

9. Unless an Objection is filed and served before the Objection Deadline, you shall be deemed to have consented to the assumption and assignment of your Desired Contract(s) and the Cure Amount(s) for your Desired Contract(s), and you shall be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts against the Debtor, their estates, or the Purchaser.

10. The Debtor's decision to assume and assign the Desired Contracts is subject to Bankruptcy Court approval and consummation of the Sale, and, absent such consummation, each of the Desired Contracts will not be assumed or assigned to the Buyer and shall in all respects be subject to further administration by the Court under the Bankruptcy Code. All Desired Contracts will be assumed and assigned to the Buyer on the date (the "Assumption Effective Date") that is the later of (i) the Closing Date, if no Contract Objection, has been timely filed, or (ii) if a Contract Objection, has been filed either (a) the date of the Assumption Resolution Stipulation, or (b) the date of a Bankruptcy Court order authorizing the assumption and assignment to the Buyer of the Desired Contract. Until the Assumption Effective Date, assumption and assignment thereof is subject to the Buyer's rights to modify the designation of Desired Contracts as set forth above.

11. The Sale Hearing will be held in Courtroom One of the United States Bankruptcy Court for the Middle District of Tennessee, 701 Broadway, Nashville, TN, on May __, 2017, at 9:00 a.m. (prevailing Central Time). The Sale Hearing may be adjourned without notice by an announcement of the adjourned date at the Sale Hearing.

12. This Notice is subject to the full terms and conditions of the Motion and the APA, which shall control in the event of any conflict. The Debtor encourages parties in interest to review such documents in their entirety and consult an attorney if they have questions or want advice. Copies of the Motion and the APA are available for inspection by contacting counsel for the Debtor.

DATED: Nashville, Tennessee
April __, 2017

/s/ William L. Norton III
William L. Norton, III (#010075)
James B. Bailey (pro hac vice)
BRADLEY
1600 Division Street, Suite 700
Nashville, Tennessee 37203
Telephone: (615) 252-2397
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Attorneys for Debtor

EXHIBIT 1

- 1 -

PROPOSED ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In re:)
)
Vanguard Healthcare, LLC, *et al.*¹) Case No. 16-03296
) Chapter 11
Six Cadillac Dr., Suite 310) Judge Mashburn
Brentwood, TN 37027)
) Jointly Administered
Debtors.)
Hearing: _____

**ORDER APPROVING PROCEDURES FOR SALE OF SUBSTANTIALLY ALL OF THE
DEBTOR'S ASSETS FREE AND CLEAR OF LIENS**

This is before the Court upon the Motion of Whitehall OpCo, LLC ("Whitehall") to *Approve (A) Sale Procedures for the Sale of Substantially All of Whitehall OpCo, LLC's Assets; and (B) Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* (Docket No. _____) (the "Sale Motion"). It appearing to the satisfaction of the Court upon the statements of counsel and the record at the expedited hearing held on May ___, 2017, that the proposed sale proceedings are appropriate under the circumstances of this Chapter 11 case, it is hereby ORDERED

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Vanguard Healthcare, LLC (9650); Vanguard Healthcare Services, LLC (7563); Vanguard Financial Services, LLC (3403); Aurora Australis, LLC (7099); Boulevard Terrace, LLC (8709); Elderscript Services, LLC (4179); Eldercare of Jackson County, LLC (7855); Glen Oaks, LLC (8238); Palace RBS, LLC (9601); Shady Lawn, LLC (7397); Vanguard of Ashland, LLC (8367); Vanguard of Church Hill, LLC (1049); Vanguard of Crestview, LLC (1046); Vanguard of Manchester, LLC (6203); Vanguard of Memphis, LLC (4623); Vanguard of Ripley, LLC (1050); Vicksburg Convalescent, LLC (7298); and Whitehall OpCo, LLC (6186).

1. The form of the Sale Procedures attached hereto as Exhibit A, and the form of the Desired Contract Notice attached hereto as Exhibit B, both of which are adopted and incorporated herein by reference, are approved.

2. Pursuant to the Sale Procedures, the following deadlines have been approved by the Court:

- a. The deadline for submitting bids shall be _____, 2017 at noon.
- b. If Qualified Bids are recieved, the Auction will take place at 10:00 a.m. Central Time on _____, **2017**, at the offices of Bradley Arant Boult Cummings LLP, 1600 Division Street, Suite 700, Nashville TN 37203.
- c. If an Auction is held, a hearing to approve the Successful Bid will be held on _____, **2017** at 9:00 am, Courtroom One, 701 Broadway, Nashville, TN 37203.

This Order was signed and entered electronically as indicated at the top of the first page.

APPROVED FOR ENTRY:

/s/ William L. Norton III
William L. Norton III (TN 10075)
James B. Bailey (pro hac vice)
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