

## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (the “*Agreement*”), dated as of December 19, 2017, (the “*Effective Date*”) is executed by Derek A. Pierce, acting solely in its capacity as court-appointed receiver under the Receivership Order (as defined below) (the “*Seller*”), and Agemark Acquisition LLC, a North Carolina, limited liability company (the “*Purchaser*”).

### RECITALS

WHEREAS, Waterford Place ALF, LLC (the “*Borrower*”) is the owner and operator of a licensed 32-unit (licensed for 50 beds) specialty care assisted living facility known as “*Manor House at Waterford Place*” (hereafter referred to as the “*Facility*”), which is located on an approximately 5.02 acre tract of land at 3920 Antoinette Drive, Montgomery, Alabama 36111 (the “*Land*”, and together with the Facility, “*Project*”);

WHEREAS, Borrower leased the Facility from The Medical Clinic Board of the City of Montgomery - 1976 East (the “*Issuer*”) pursuant to a Lease Agreement dated as of May 1, 2015 (the “*Lease Agreement*”);

WHEREAS, the Issuer assigned the Lease Agreement to BOKF, N.A. d/b/a Bank of Oklahoma (the “*Indenture Trustee*”);

WHEREAS, pursuant to that certain Trust Indenture, dated as of May 1, 2015 (the “*Indenture*”), between the Issuer and the Indenture Trustee, the Issuer issued \$9,050,000 in aggregate principal amount of The Medical Clinic Board of the City of Montgomery -1976 East First Mortgage Revenue Bonds (Waterford Place ALF, LLC Project), Series 2015A (the “2015A Bonds”) and \$700,000 in aggregate principal amount of The Medical Clinic Board of the City of Montgomery - 1976 East First Mortgage Revenue Bonds (Waterford Place ALF, LLC Project), Taxable Series 2015B (the “2015B Bonds,” with the 2015A Bonds, the “*Bonds*”);

WHEREAS, Borrower and the Indenture Trustee are parties to a Land Use Restriction Agreement dated as of May 1, 2015 (the “*LURA*”) providing that the Facility would be occupied at least partially by individuals of low or moderate income within the meaning of Section 142(d) of the Internal Revenue Code of 1986;

WHEREAS, the obligations due and owing under the Lease Agreement and Indenture are secured by, among other things, that certain Mortgage and Security Agreement, dated as of May 1, 2015 (the “*Security Deed*” and together with the Indenture, Lease Agreement, LURA and all other related documents, the “*Bond Documents*”), granted by Borrower to Issuer;

WHEREAS, the Securities and Exchange Commission filed a complaint in the United States District Court for the District of New Jersey (the “*Court*”), commencing a case styled as *Securities and Exchange Commission v. Dwayne Edwards, et. al.*, case number 17.CIV.393 (ES

(SCM) (the “*Receivership Proceeding*”), in order to, among other things, seek appointment of Derek A. Pierce as receiver over the “*Receivership Entities*”<sup>1</sup>;

WHEREAS, the license to operate the Facility is held by Affinity Living Group, LLC, the current manager of the Facility, due to the Alabama Department of Public Health previously requiring that the license be transferred from the Borrower to the manager of the Facility to facilitate continued Facility operations (“*License Holder*”);

WHEREAS, pursuant to the *Order Appointing Receiver* (the “*Receiver Order*”), the Court authorized, directed, and empowered the Receiver to take and assume all the powers, authorities, rights, privileges possessed by the officers, directors, managers, managing members, and general and limited partners of the Receivership Entities under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754, 959, and 1692, and Fed.R.Civ.P. 66, including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Entities own, possess, have a beneficial interest in, or control directly or indirectly (the “*Receivership Estate*”). The Receivership Estate shall not include property owned by residents of the Facility;

WHEREAS, pursuant to the Receiver Order, the Court authorized, directed, and empowered the Receiver to sell some or all of the Receivership Estate through the use of auction procedures to be approved by the Court;

WHEREAS, the parties hereto desire to enter into this Agreement, pursuant to which Purchaser will purchase from Seller, and Seller will sell, convey, transfer and assign to Purchaser, the Purchased Assets (as defined herein);

WHEREAS, Seller and Purchaser desire to enter into this Agreement in order for Purchaser to serve as a “*stalking horse purchaser*” in Seller’s auction of the Receivership Estate; and

WHEREAS, subject to the terms of this Agreement, the Receiver Order, and the Bidding Procedures Order and Sale Order (each as defined below), Seller desires to sell to Purchaser and Purchaser desires to purchase from Seller free and clear of all Liens (as defined below) other than the Permitted Liens (as defined below) the Purchased Assets.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants, and agreements set forth in this Agreement, each of Seller and Purchaser, intending to be legally bound, agrees as follows:

---

<sup>1</sup> The Receivership Entities include: Waterford Place ALF, LLC; Oxtown Court at Waterford Place, LLC; and Manor House at Waterford Place, LLC.

## ARTICLE I. CONVEYANCE AND ACQUISITION

**Section 1.01.** Agreement to Convey and Acquire. Subject to a Sale Order and the terms and conditions set forth in this Agreement, on the Closing Date (as defined in Section 3.01 of this Agreement), Seller shall sell, contribute, convey, assign, transfer, and deliver to Purchaser, free and clear of all liens, claims, encumbrances, pledges, options, charges, security interests, deeds of trust, mortgages, conditional sales agreements, or other rights of third parties (collectively, the “**Liens**”), other than Permitted Liens, and Purchaser shall purchase, acquire, and take assignment and delivery from Seller, for the consideration and in the manner specified in this Agreement, all rights, titles, and interests of any kind and nature in and to all of the properties, assets, and rights of every kind and nature of Seller and Borrower, including (a) the real property described in Exhibit A to this Agreement, (b) substantially all tangible and intangible assets of the Facility described in Exhibit A and the operation thereof, including but not limited to (i) land, improvements, furniture, fixtures, and equipment, (ii) usual and customary inventory for the continued operations of the Facility (iii) resident and prospect lists, (iv) resident records and business records, (v) originals or copies of all books, records, and computer data, including any and all computer operating systems in which such information is or may be stored, (vi) all licenses and permits (to the extent transferrable in accordance with applicable laws), (vii) resident trust accounts, (viii) resident security deposits, and (ix) any other assets of any nature whatsoever that are related to or used in connection with the business of the Facility and/or regulatory requirements of the Facility, including Facility specific domain names and uniform resource locators (URL’s), collateral materials, marketing and sales databases, so called “hot boards” and sales leads all as more particularly described on Schedule 1.01 to this Agreement (collectively, the “**Purchased Assets**”) other than the Excluded Assets (as defined in Section 1.02 of this Agreement). At Closing (as defined in Section 3.01 of this Agreement), Seller shall provide (a) a bill of sale, in form substantially similar to that attached to this Agreement as Exhibit B (the “**Bill of Sale**”), conveying all of Seller’s and Borrower’s rights, titles, and interests in and to all of the Purchased Assets described therein, and (b) a receiver’s deed, substantially in the form attached to this Agreement as Exhibit C (the “**Receiver’s Deed**”), conveying all of Seller’s and Borrower’s rights, titles, and interests in and to the land, improvements, and fixtures included in the Purchased Assets, and (c) an assignment of intangible property, substantially in the form similar to that attached hereto as Exhibit D (the “**Assignment of Intangibles**”), and (d) an assignment of any existing leases and contracts, Purchaser approves and elects to assume in substantially in the form attached to this Agreement as Exhibit E (the “**Assignment of Contracts and Leases**”), assigning to Purchaser all of those elected and assumed leases and contracts identified therein which are in effect on the Closing Date.

**Section 1.02.** Excluded Assets. Notwithstanding anything in this Agreement to the contrary, the Purchased Assets shall not include any of the assets described in the list of excluded assets set forth on Schedule 1.02 to this Agreement (collectively, the “**Excluded Assets**”).

**Section 1.03.** Initial Bid. Purchaser’s initial Bid for the Purchased Assets shall be *Three Million Six Hundred Seventy Five Thousand Dollars* (\$3,675,000) (the “**Initial Bid**”).

**Section 1.04.** Payment of Purchase Price at Closing. If Purchaser is the Successful Bidder at the Auction (as defined in Section 2.01 of this Agreement), on the Closing Date, Purchaser shall transfer the amount of the Successful Bid (the "**Purchase Price**"), plus or minus prorations as set forth in Article XI of this Agreement, to Seller in immediately available funds, as set forth more fully in Section 3.02(d) of this Agreement.

**Section 1.05.** Assumed Liabilities. Notwithstanding any provision of this Agreement to the contrary, Seller acknowledges and agrees that Purchaser is only assuming the liabilities and obligations set forth on Schedule 1.05 to this Agreement ("**Assumed Liabilities**"). Seller shall retain and discharge in ordinary course all liabilities and obligations of Seller which are accrued prior to Closing.

**Section 1.06.** Liabilities Not Assumed by Purchaser. Purchaser shall not be the successor to the Seller or Borrower, and Purchaser shall not assume or incur any liability, expense, or obligation of any kind associated with (a) the Project with respect to time periods on or before the Closing Date, (b) operation of the Project prior to the Closing Date, (c) the Project for acts or omissions or business activities occurring prior to the Closing Date, (d) claims against or liabilities that relate to any of the Excluded Assets, or (e) liabilities for accrued but unbilled or unpaid taxes (including but not limited to real estate, personal property, ad valorem and similar non-income tax) imposed on or with respect to the Purchased Assets for any period prior to the Closing Date.

**Section 1.07.** Good Faith Deposit. Within two (2) business days of the execution of this Agreement, Purchaser shall pay to Seller a good faith deposit in the amount of **Five Thousand Dollars** (\$5,000) ("**Purchaser's Initial Deposit**") by wire transfer of immediately available funds to counsel for the Receiver. Notwithstanding any other provision herein, Purchaser's Initial Deposit is non-refundable, and shall immediately constitute property of the Receivership Estate. On or before January 23, 2018, Purchaser shall pay to Seller an additional good faith deposit in the amount **Twenty-Five Thousand Dollars** (\$25,000) ("**Purchaser's Additional Deposit**," and together with Purchaser's Initial Deposit, "**Purchaser's Deposit**"). Purchaser's Deposit shall be held in a separate escrow account under the custody and control of Fidelity National Title Insurance Company (the "**Title Company**" or "**Escrowee**") pursuant to the Escrow Agreement attached hereto as **Exhibit F**. The provisions of this **Error! Reference source not found.** will be incorporated into the Bidding Procedures Order described in ARTICLE II, and such Bidding Procedures Order shall provide that the Purchaser's Deposit shall not be deemed to constitute property of the Receivership Estate, and the Receivership Estate shall have no interest of any kind (equitable or otherwise) in the Purchaser's Deposit unless and until such deposit is actually unconditionally paid or payable to Seller in accordance with this Agreement. If the Closing occurs, then the Purchaser's Deposit shall be paid to Seller, as part of the Purchase Price, in accordance with Section 3.02(d) of this Agreement.

**Section 1.08.** Bid Process. If Purchaser is the Successful Bidder at the Auction and the Court approves the sale contemplated by this Agreement, but the Closing does not occur, the Purchaser's Deposit shall become nonrefundable and shall be released from escrow to the Seller and shall become property of the Receivership Estate, only if (a) Purchaser fails to close the transactions contemplated by this Agreement on the Closing Date



in accordance with ARTICLE IX of this Agreement after all conditions contained in ARTICLE IX of this Agreement have been satisfied or (b) Purchaser fails to satisfy each of the conditions to Seller's obligation to close set forth in ARTICLE X of this Agreement on the Closing Date. Purchaser's Deposit shall be released from escrow to Purchaser if any of the following events occur: (i) any of the conditions to Closing set forth in ARTICLE IX of this Agreement are not satisfied as of the Closing, (ii) this Agreement is terminated pursuant to Section 5.01(b)(ii), 13.01(i), 14.01(i), 16.01(a)(i), 16.01(a)(ii), 16.01(a)(iii) by Purchaser due to Seller's default, 16.01(b), or 16.01(c) of this Agreement, (iii) purchaser is not the Successful Bidder or Back Up Bidder at the Auction, (iv) Purchaser is the Successful Bidder at the Auction, but the Court does not approve the sale of the Purchased Assets to Purchaser, (v) the Court has not approved the Sale on or before one hundred twenty (120) days after the end of the Effective Date and Purchaser terminates this Agreement in writing as a result of such failure, or (vi) Purchaser has terminated the Agreement pursuant to Section 16.16 of this Agreement.

**Section 1.09. Regulatory Approvals.** Purchaser will file within three (3) Business Days after the later to occur of (i) the date that Seller delivers to Purchaser all documents required to be delivered by Seller to Purchaser pursuant to this Section 1.09 or (ii) the date the Court approves the sale contemplated by this Agreement, (a) a change of ownership license application to operate a specialty care assisted living facility to operate the Facility as a specialty care assisted living facility licensed by the Alabama Department of Public Health (the "***New License***"), (b) a notice of change of ownership/control with the State Health Planning and Development Agency in order to obtain the necessary certificate of need ("***CON***") program approval for the transaction ("***CON Approval***"); additionally, Purchaser shall file applications for any Ancillary Permits and Approvals as and when permitted or required under the laws of the applicable issuing authority. Seller will reasonably cooperate with Purchaser in connection with such filings, and License Holder has agreed pursuant to the attached Transfer Agreement to cooperate with Purchaser in connection with the filing for the New License. Purchaser will provide Seller with a copy of its filed application for the New License and submitted notification to obtain CON Approval within one (1) business day after its receipt of a request therefor from Seller. Purchaser shall diligently proceed to secure the New License, CON Approval and any Ancillary Permits and Approvals and shall (i) from time to time, upon request of Seller, advise Seller of the status of Purchaser's efforts to secure the New License, CON Approval and any Ancillary Permits and Approvals, (ii) promptly advise Seller once Purchaser has received confirmation of the date on which the New License will be issued and the date the New License will go into effect as well as the date on which the CON Approval will be obtained upon confirmation thereof and the date such CON Approval is received and effective, and (iii) promptly upon receipt of a request therefor from Seller, shall provide Seller with copies of the document(s) evidencing the New License, CON Approval, or other approval thereof from the relevant agency. For purposes hereof, "***Ancillary Permits and Approvals***" shall mean significant ancillary permits or licenses required for the operation of the Facility from and after the Closing Date in the manner in which it is currently conducted as listed on **Schedule 1.09** of this Agreement. "***Regulatory Approvals***" shall mean the New License, CON Approval and any Ancillary Permits and Approvals, collectively.

**ARTICLE II.  
ACTIONS IN RECEIVERSHIP PROCEEDING**

**Section 2.01.** Auction. In accordance with the Bidding Procedures Order (as defined in Section 2.02 of this Agreement), Seller will sell the Purchased Assets (a) at a public auction (the "**Auction**") utilizing the procedures described in 28 U.S.C. §§ 2001, 2002, and 2004 and as more specifically set forth in the sale procedures set forth in the Bidding Procedures Order, and (b) the Sale Order. Purchaser and Seller are entering into five (5) separate asset purchase agreements for properties described as Manor House of Rome, Manor House of Savannah, Manor House of Waterford Place, Manor House of Douglas and Manor House of Montgomery (the "**Portfolio of Properties**"). Seller shall conclude the Auction of the Portfolio of Properties at or near the same time to enable Purchaser to make the election described in Section 16.16 of this Agreement.

**Section 2.02.** Bidding Procedures. Within two (2) Business Days following the Effective Date, Seller will file a motion (the "**Sale Motion**") with the Court, in form and substance approved by Purchaser, for entry of an order (the "**Bidding Procedures Order**") approving the transaction contemplated by this Agreement and the procedures for bidding at the Auction, substantially in the form attached as Exhibit G to this Agreement (the "**Bidding Procedures**").

(a). Seller shall deliver or cause to be delivered to Purchaser for review and comment, as soon as commercially reasonable and in any event not less than one (1) Business Day prior to filing, all documents to be filed on behalf of Seller with the Court, including all motions, proposed orders, applications, petitions, schedules, and supporting papers prepared by Seller (including forms of orders and notices to interested parties) that relate to the transactions contemplated in this Agreement, prior to the filing of such documents. All motions, applications, petitions, schedules, and supporting papers prepared by Seller and relating (directly or indirectly) to the transactions contemplated by this Agreement to be filed on behalf of Seller after the Effective Date must be in form and substance acceptable to both Purchaser and Seller.

(b). The Bidding Procedures Order shall not be changed, modified or amended without the written consent of Purchaser.

(c). Seller agrees it will promptly take such actions as are reasonably necessary to obtain entry of the Bidding Procedures Order and, if Purchaser is the Successful Bidder at the Auction, the Regulatory Approvals and Sale Order.

(d). The Bidding Procedures Order, in a form and substance agreed to by Purchaser shall be entered by the Court within forty-five (45) days of the Effective Date.

(e). The Auction shall occur within ninety (90) days of the Effective Date.

(f). The Sale Order shall be entered by the Court in a form and substance agreed to by Purchaser within one hundred twenty (120) days of the Effective Date.

**Section 2.03.** Other Bids. Purchaser acknowledges that, pursuant to the Bidding Procedures Order, Seller will solicit bids from one or more other prospective purchasers for the sale of some or all of the Purchased Assets in accordance with the procedures set forth in the Bidding Procedures Order. The winning bidder at the Auction will be the successful bidder ("**Successful Bidder**").

**Section 2.04.** Breakup Fee. Seller agrees that in the event that Purchaser bids at the auction but is not the Successful Bidder at the Auction and Seller sells all or substantially all of the Purchased Assets to another bidder unrelated to Purchaser, Purchaser shall be entitled to a breakup fee in an amount equal to *One Hundred Forty Seven Thousand Dollars* (\$147,000) (the "**Breakup Fee**") as a limited bid protection in consideration of Purchaser's willingness to bid at the Auction, and reimbursement for, the significant efforts and funds expended by Purchaser in connection with the possible acquisition of the Purchased Assets; provided, however, that Seller's obligation to pay the Breakup Fee shall be limited to the proceeds from a sale of some or all of the Purchased Assets to another purchaser unrelated to Purchaser, whether as part of the Auction or some other transaction or sale. The Bidding Procedures Order entered by the Court shall provide that (i) the Breakup Fee shall be paid to Purchaser at any closing of a sale of some or all of the Purchased Assets to a purchaser; (ii) if the Indenture Trustee or any subsequent Indenture Trustee credit bids or purchases the assets at the Auction or otherwise for any or substantially all of the Purchased Assets, then the Indenture Trustee or any successor Indenture Trustee agrees to pay the Breakup Fee to Purchaser at closing regardless of the amount of proceeds actually paid to the Seller; and (iii) that the Indenture Trustee or any subsequent Indenture Trustee consents to and agrees to the payment by the Seller of the Breakup Fee to Purchaser from the proceeds of its collateral.

**Section 2.05.** Waiver of Challenge Rights. If, for any reason Purchaser is not the Successful Bidder, at the Auction or otherwise does not ultimately acquire the Purchased Assets, Purchaser agrees that, in consideration for the payment of the Breakup Fee and other consideration provided under this Agreement, the Sale Motion, and Bidding Procedures Order, and provided that the terms of the Bidding Procedures Order were complied with, it shall not challenge, attempt to prevent, hinder, delay, or frustrate Seller's transfer of any or all of the Purchased Assets to another transferee, and Purchaser irrevocably waives any and all rights to same. Purchaser acknowledges that the Receivership Estate will be irreparably harmed by the Purchaser's failure to comply with this Section 2.05 of the Agreement and agrees that Seller shall be entitled to equitable relief against Purchaser in the form of an injunction, specific performance, or otherwise with respect to its rights under Section 2.05 of the Agreement.

### ARTICLE III. CLOSING, ITEMS TO BE DELIVERED, THIRD PARTY CONSENTS, AND FURTHER ASSURANCES

**Section 3.01.** Closing. The closing (the "**Closing**") of the sale and purchase of the Purchased Assets shall take place after the later to occur of (a) forty-five (45) days after the Court's entry of an order in the Receivership Proceeding approving the sale of the Purchased Assets to the Purchaser in accordance with the Bidding Procedures Order and outcome of the Auction (the "**Sale Order**"), or (b) April 30, 2018 (such date of the Closing is

hereinafter referred to as the “**Closing Date**”). The Closing shall be scheduled at a time and location agreed upon by Seller and Purchaser. The Closing Date may be extended by mutual written consent of both Seller and Purchaser. The Closing shall occur through an escrow established with Escrowee in accordance with Escrowee’s escrow instructions satisfactory to Purchaser and Seller (the “**Closing Escrow**”), and shall be held at the offices of Escrowee, or at such other place agreed to by Seller and Purchaser. Upon creation of the Closing Escrow, the payment of funds and delivery of all documents required pursuant to this Agreement shall be made through the Closing Escrow.

**Section 3.02.**      Items to Be Delivered at Closing. At the Closing, the following events shall occur:

(a).      Bill of Sale. Seller will deliver the Bill of Sale, fully executed by Seller, conveying to Purchaser all of Seller’s rights, titles, and interests in, to, and under all personal property included in the Purchased Assets, free and clear of all Liens, material claims, charges, security interests, and encumbrances.

(b).      Receiver’s Deed. Seller will deliver the Receiver’s Deed, fully executed by Seller and Purchaser, conveying to Purchaser all of Seller’s rights, titles, and interests in, to, and under the land, improvements, and fixtures included in the Purchased Assets, free and clear of all Liens other than the Permitted Liens.

(c).      Assignment of Contracts and Leases. Seller will deliver the Assignment of Contracts and Leases, fully executed by Seller and Purchaser, by which Seller shall assign to Purchaser all of Seller’s and Borrower’s interest in the contracts and leases identified therein (the “**Assigned Contracts**”). To the extent consent is required for any Assigned Contracts, Purchaser shall have the obligation to obtain any such consents and approvals.

(d).      Payment. On the Closing Date, Purchaser shall pay the Purchase Price, plus or minus prorations as set forth in Article XI of this Agreement, in immediately available funds, by release of the Purchaser’s Deposit and by payment of the balance of the Purchase Price by wire transfer of immediately available funds to an account designated in writing by Seller.

(e).      Allocation of Purchase Price. At Closing, Seller and Purchaser will allocate the Purchase Price in accordance with the provisions of section 1060 of the Internal Revenue Code. Not less than ten (10) days prior to Closing, Purchaser shall deliver to Seller Purchaser’s determination of the allocation of the Purchase Price. Unless Seller, not less than five (5) days prior to Closing objects in writing showing its rationale with detailed, valid valuation principles for why said allocation is improper, Seller shall be deemed to have agreed to Purchaser’s allocation. Notwithstanding the foregoing, the allocations contemplated by this Section 3.02(e) shall not be binding on Seller or any third party for any other purpose, including, without limitation, proceedings in the Receivership Proceeding.

(f).      Closing Certificates and Documents.

(i) Seller shall deliver to Purchaser a certificate executed by a duly authorized representative of Seller certifying as to the matters set forth in Section 9.01 of this Agreement; and

(ii) Purchaser shall deliver to Seller a certificate executed by a duly authorized representative of Purchaser certifying as to the matters set forth in Section 10.011 of this Agreement.

(g). Execution and Delivery of Agreements. Seller and Purchaser shall execute and deliver such other instruments, documents, or agreements (in each case, in a form reasonably satisfactory to each such party) that are reasonably required in order to properly and orderly consummate, give effect to, and close the transactions contemplated by this Agreement. Simultaneously with such delivery, all such steps shall be taken as may be required to put the Purchased Assets in actual possession and operating control of Purchaser.

(h). Release of Indenture Trustee's Liens and Security Interests. On the Closing Date, but only after confirmation of receipt of the Purchase Price, the Seller will take such actions as are necessary to cause the Indenture Trustee's liens on and security interests in the Purchased Assets to be released and to release any other mortgages, liens, pledges, security interests, charges, claims, restrictions, and other encumbrances, if any, evidencing the Indenture Trustee's liens on or security interests in the Purchased Assets. The Sale Order shall provide that the Indenture Trustee shall release any and all Liens it may have with respect to the Purchased Assets at the Closing with all such Liens to attach to the sale proceeds in the same order of validity, priority, and enforceability.

(i). Release of Regulatory Agreement. On the Closing Date, but only after confirmation of receipt of the Purchase Price, Seller will obtain (a) a fully executed Release and Discharge of Land Use Restriction Agreement executed by Seller and the Indenture Trustee (the "*Land Use Restriction Agreement Release*") in the form attached hereto as Exhibit "H", and (b) instruct the Title Company to record the Land Use Restriction Agreement Release simultaneous with or just prior to the recording of the Receiver's Deed.

**Section 3.03.** Further Assurances. Seller from time to time after the Closing, at no cost to Seller, upon Purchaser's request, will execute, acknowledge, and deliver to Purchaser such other instruments of conveyance and transfer and will take such other actions as Purchaser may reasonably require in order to vest more effectively the Purchased Assets in Purchaser and to implement the transactions contemplated by this Agreement. Seller reserves the right to seek approval on an expedited basis of the Court with respect to any request from Purchaser under this Section 3.03 of the Agreement.

#### **ARTICLE IV. DOCUMENTS TO BE DELIVERED BY SELLER**

**Section 4.01.** Documents to be Delivered by Seller. Seller agrees to deliver to Purchaser within five (5) Business Days after the Effective Date, true and correct copies of

all of the following pertaining to the Purchased Assets, to the extent in Seller's possession or control:

- (a). Certificates of occupancy.
- (b). "As-built" surveys and plans and specifications for the improvements and any modifications or amendments thereto, and copies of any reports or studies (including engineering, soil boring and physical inspection reports of employees, principals, consultants, governmental authorities or insurance carriers) in Seller's possession or control in respect of the physical condition or operation of the Project or recommended improvements thereto.
- (c). Title Insurance Commitments.
- (d). The bill or bills issued for the three (3) most recent years for which bills have been issued for all real estate taxes and personal property taxes and a copy of any and all notices pertaining to real estate taxes or assessments. If any taxes or assessments for said years have been appealed, Seller shall provide Purchaser with copies of all petitions for appeal and evidence of full payment of the cost of any such appeals including the full payment of attorneys' fees and costs.
- (e). All certificates of insurance carried by Seller and the Receivership Entities together with copies of all claims and settlements on insurance policies within the past three (3) years.
- (f). All material existing and currently effective contracts affecting the Project ("**Property Contracts**").
- (g). All guaranties, warranties and other documents or instruments evidencing or relating to the Facility.
- (h). All contracts for construction, repair or capital replacement to be performed at the Facility or covering such work performed during the two (2) years immediately preceding the Closing Date.
- (i). A list of lawsuits, if any, pertaining to Seller, the Receivership Entities, or the Project.
- (j). A list of violations if any, issued by any governmental authority pertaining to the Project.
- (k). All other studies, reports, maps and documents related to the Project that are reasonably available to Seller, including, without limitation, engineering reports, title policies, underlying title documents, including Seller's vesting deed, surveys, environmental reports, environmental studies, remediation activities and environmental monitoring traffic circulation, operating methods, flood control and drainage plans, design renderings, shop drawings, feasibility studies, documents relating to any special

use, conforming use or zoning variance and all correspondence with governmental agencies and their personnel concerning the same, but excluding market analyses.

(l). Bank statements.

To the extent any of the materials or any other records at the Facility include medical or personal information regarding any of the residents and protected by Health Insurance Portability and Accountability Act of 1996 and all amendments thereto ("**HIPAA**"), Purchaser shall cause its agents, servants, employees, consultants, and contractors to respect the privacy thereof and to comply with all the applicable legal requirements including but not limited to HIPAA. This obligation shall survive termination of this Agreement.

Seller's obligation to deliver the most recent and current versions of the foregoing items listed in (a) through (l) above shall be continuous through date of Closing.

**ARTICLE V.  
TITLE AND SURVEY**

**Section 5.01.**      Title and Survey.

(a). Conditions of Title. At Closing, good and marketable fee simple title to the Project shall be conveyed by Seller to Purchaser by the Receiver's Deed, subject only to the Permitted Exceptions (as hereinafter defined).

(b). Title.

(i) Title Insurance Commitment. On or before the date that is five (5) days after the Effective Date, Seller shall deliver to Purchaser: (a) a commitment (the "**Commitment**") for an owners' policy of title insurance issued by Fidelity National Title Insurance Company (the "**Title Company**") showing title to the Project in Borrower, and (b) legible copies of all documents cited, raised as exceptions or noted in the Commitment (the "**Title Documents**").

(ii) Title Review. Purchaser shall have until the date that is five (5) Business Days before the last day of the Inspection Period (as hereinafter defined) (the "**Title Review Deadline**"), to notify Seller in writing (the "**Purchaser's Objection Notice**") of any objections to any material exception, item or issue in the Commitment, the Title Documents and/or any matters shown on the Survey (collectively, the "**Objectionable Exceptions**"). Seller shall have a period of three (3) Business Days after receipt of the Purchaser's Objection Notice in which to deliver written notice to Purchaser (the "**Seller's Title Responses**") of those matters, if any, which Seller will undertake to cure prior to Closing. If Seller is not willing to undertake the cure of Purchaser's objection to title, then Purchaser shall have the right, in its sole discretion, (A) to terminate this Agreement by written notice to Seller on or before the last day of the Inspection Period, in which event the Purchaser's Deposit and all interest, if any, earned thereon shall be returned to Purchaser and, except as specifically provided in this Agreement, neither party shall have any further rights or obligations to the other under this Agreement; or (B) consummate the transaction contemplated by this Agreement in

accordance with the terms of this Agreement, in which event Purchaser shall take title at the Closing subject to such objectionable terms.

(c). Title Policy. On the Closing Date, Seller shall, at Purchaser's expense, cause Title Company to issue to Purchaser an ALTA 2006 Owners' Policy of Title Insurance covering the Project (the "**Title Policy**") or irrevocable Commitment to issue same in the amount of the Purchase Price, showing fee simple title vested in Purchaser, and subject only to: (a) general taxes not yet due or payable, (b) any matters listed on Exhibit I attached (or to be attached) to this Agreement, and (c) matters created by, through or under Purchaser (collectively, the "**Permitted Exceptions**").

## ARTICLE VI. INSPECTION PERIOD

### Section 6.01. Inspection Period.

(a). Inspection Period. For purposes of this Agreement, "**Inspection Period**" means the period beginning on the Effective Date and ending at 5:00 p.m. (Prevailing Eastern time) on January 26, 2018.

(b). Basic Project Inspection. At all times prior to the Closing, including the Inspection Period and the period after the end of the Inspection Period and before Closing, Purchaser, their agents and representatives shall be entitled to inspect, examine, review, consider and investigate the Project and all matters relating thereto (the "**Basic Project Inspection**"), which will include, but shall not be limited to, the right to: (i) enter upon the Project to perform inspections and tests of the Project, including the inspection, evaluation and testing of the heating, ventilation and air-conditioning systems and all components thereof, the roof of the Facility, the parking lots, all structural and mechanical systems within the Facility, including the sprinkler systems, power lines and panels, air lines and compressors, automatic doors, tanks, pumps and plumbing, and all equipment, vehicles, and personal property; (ii) examine and copy any and all books, records, tax returns, correspondence, financial data, leases, and all other contracts, agreements, documents and matters, public or private, in the possession or control of Seller or its agents, relating to receipts and expenditures pertaining to the Project for the entire period of Borrower's ownership thereof, including the three (3) most recent full calendar years of operation; (iii) make investigations with regard to zoning, environmental, building, code and other legal requirements including an environmental "**Assessment**" as specified in Section 6.01(c) of this Agreement and/or an analysis of the presence of any asbestos, chlordane, formaldehyde or other Hazardous Materials (as hereinafter defined) in, under or upon the Project; (iv) make or obtain market studies and real estate tax analyses; and (v) analyze the financial feasibility of ownership of the Project.

(c). Assessment. During the Inspection Period, Purchaser and/or Purchaser's agent(s) shall have the right to employ one or more environmental consultants or other professionals to perform or complete a so-called "Phase I" and/or "Phase II" environmental inspection and assessment (each, an "**Assessment**") of the Project, and Seller hereby acknowledges and consents to such Assessment. Purchaser, its agents, consultants and/or professionals shall also have the right to undertake or complete a technical review of all



documentation, reports, plans, studies and information in possession or control of Seller, or Seller past or present environmental consultants, concerning or in any way related to the environmental condition of the Project. In order to facilitate the Assessment(s) and such technical review, Seller shall extend its full cooperation (but without third party expense to Seller) to Purchaser, its agents, consultants and professionals, which cooperation shall include providing access to all files and fully and completely answering all questions. Any Assessment may evaluate the present and past uses of the Project, and the presence on, in or under the Land (and on, in or under land sufficiently proximate to the Project) of any Hazardous Materials.

(d). Purchaser's Right to Terminate. Purchaser shall have the right, in its sole and absolute discretion, to terminate this Agreement for any reason whatsoever, or for no reason, by written notice to Seller on or before the last day of the Inspection Period. In such event, the Purchaser's Deposit shall be returned to Purchaser and, except as specifically provided in this Agreement, neither party shall have any further rights or obligations to the other under this Agreement.

(e). Seller Acknowledgement. Seller acknowledges and agrees that Purchaser will expend material sums of money in reliance on Seller obligations under this Agreement, in connection with negotiating and executing this Agreement, furnishing the Purchaser's Deposit, conducting the inspections contemplated by this Article VI and preparing for Closing, and that Purchaser would not have entered into this Agreement without the availability of the Inspection Period. The parties therefore agree that adequate consideration exists to support Seller's obligations under this Agreement, even before expiration of the Inspection Period. Notwithstanding anything to the contrary in this Agreement, the effect of any representations, warranties or undertakings made by Seller in this Agreement shall not be diminished, abrogated, or compromised by the Basic Property Inspection or any Assessment or other inspections, tests or investigations made by Purchaser.

(f). Duty to Repair; Indemnification. Purchaser hereby covenants and agrees that it shall cause all studies, investigations and inspections (including, without limitation, any Assessment) performed at the Project pursuant to this Article VI to be performed in a manner that does not unreasonably disturb or disrupt the residents of the Facilities. If, as a result of Purchaser's exercise of its rights under this Article VI, any damage occurs to the Project, then Purchaser shall promptly repair such damage, at Purchaser's sole cost and expense, so as to return the Project to substantially the same condition. Purchaser hereby indemnifies, protects, defends and holds Seller harmless from and against any and all losses, damages, causes of action, judgments, damages, costs and expenses that Seller actually suffers or incurs as a direct result of any damage caused at, to, in, or at the Project by the acts or omissions of Purchaser or its agents, consultants or professionals pursuant to this Article VI.

(g). Insurance. Prior to entering upon the property, Purchaser shall obtain and maintain, and shall cause each of Purchaser's agents to obtain and maintain, at Purchaser's agents' sole cost and expense, commercial general liability insurance coverage, including coverage for personal injury, bodily injury (including death), contractual liability and broad form property damage, in the amount of at least One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) general aggregate. Such insurance policy or policies shall

name Seller as an additional insured, and Purchaser shall provide proof of such insurance coverage, in a form reasonably acceptable to Seller, prior to entrance upon the Property.

**ARTICLE VII.  
REPRESENTATIONS AND WARRANTIES**

**Section 7.01.** Representations and Warranties of Seller. Seller, solely in its capacity as court appointed receiver and not in its corporate or any other capacity, represents and warrants to Purchaser as follows:

(a). Status and Good Standing. Seller is the lawfully appointed receiver for the Receivership Estate and, by virtue of the Receivership Order, is vested with full power and authority to enter into this Agreement.

(b). Purchased Assets. Seller has the right to transfer ownership of the Purchased Assets to Purchaser (other than the specialty care assisted living facility license held by License Holder, and which shall be transferred to the extent legally transferrable by License Holder to Purchaser in accordance with the Transfer Agreement attached hereto as Addendum I). Seller has the right to transfer ownership of, or in the case of personal property held under a lease or contract (subject to the terms of the lease of contract), an enforceable leasehold interest in, or right to use, the Purchased Assets (other than the specialty care assisted living facility license held by License Holder, and which shall be transferred to the extent legally transferrable by License Holder to Purchaser in accordance with the Transfer Agreement attached hereto as Addendum I).

(c). Authorization.

(i) The execution, delivery, and performance by Seller of this Agreement and the other agreements to be entered into by it pursuant to the terms of this Agreement, and the consummation by Seller of the transactions contemplated by this Agreement are within Seller's corporate powers and the powers granted to Seller under the Receivership Order, will be in accordance with the powers granted to Seller under the Sale Order, are not in contravention of the terms of Seller's documents of formation, and, subject to obtaining the Sale Order, and Regulatory Approvals, have been duly authorized and approved by all necessary parties, tribunals, or individuals from which such authorization and approval is required to consummate the transactions contemplated by this Agreement. Subject to obtaining the Sale Order, and Regulatory Approvals, no other corporate proceedings on the part of Seller are necessary to authorize the execution, delivery, and performance of this Agreement or any other agreement to be entered into by Seller pursuant to or in accordance with this Agreement.

(ii) This Agreement has been duly and validly executed and delivered by Seller. As of the Closing, the other agreements and instruments to be entered into or executed by Seller pursuant to the terms of this Agreement will have been duly and validly executed and delivered by Seller. Subject to obtaining the Bidding Procedures Order, Sale Order and Regulatory Approvals, this Agreement

constitutes, and upon execution and delivery by Seller, the other agreements to be entered into pursuant to and in accordance with this Agreement, will constitute, the legal, valid, and binding obligations of Seller enforceable against Seller, and the Receivership Estate in accordance with their respective terms (assuming the valid authorization, execution, and delivery of this Agreement and such other agreements by Purchaser).

(d). No Third Party Options. To Sellers Knowledge, there are no existing agreements, options, commitments, or rights with, of, or to any person to acquire any of the Purchased Assets or any interest in the Purchased Assets.

(e). Validity of Contemplated Transactions. Subject to Seller obtaining the Sale Order from the Court, and the parties obtaining the Regulatory Approvals, delivery and performance of this Agreement by Seller does not and will not violate, conflict with, or result in the breach of any term, condition, or provision of, or require the consent of any other person under, (i) any applicable existing law, ordinance, or governmental rule or regulation to which Seller is subject, (ii) any applicable judgment, order, writ, injunction, decree, or award of any court, arbitrator, or governmental or regulatory official, body, or authority that is applicable to Seller, (iii) the charter documents of Seller, or (iv) any applicable mortgage, indenture, agreement, contract, commitment, lease, plan, governmental approval, or other instrument, document, or understanding, oral or written, to which Seller or Borrower is a party, by which Seller or Borrower may have rights, by which the Project may be bound or affected, or which gives any party the right to terminate, modify, accelerate, or otherwise change the existing rights or obligations of Seller. Subject to Seller obtaining the Sale Order from the Court, no authorization, approval, or consent of, and no registration or filing with, any governmental or regulatory official, body, or authority is required in connection with the execution, delivery, or performance of this Agreement by Seller. Receipt of the New License and CON Approval as well as the other Regulatory Approvals are the primary responsibility of Purchaser as set forth in Section 1.09 above.

(f). Sale Assets Complete and Lien Free. Pursuant to the Receivership Order, Seller has good and valid title to the Purchased Assets or in the case of real and personal property held under a lease or contract (subject to the terms of the lease or contract), an enforceable leasehold interest in, or right to use, the Purchased Assets and, subject to the terms and conditions of the Sale Order, and Regulatory Approvals, Seller will transfer the Purchased Assets at Closing free and clear of all Liens, material claims, charges, security interests, and encumbrances.

(g). Litigation. Aside from the Receivership Proceeding, to Seller's Knowledge, Seller and Borrower are not a party to or subject to the provisions of any claim, suit, action, judgment, order, writ, injunction, decree, or award of any court, arbitrator, or governmental or regulatory official, body, or authority that may adversely affect the transactions contemplated by this Agreement.

(h). Commissions. On or before the Closing, all commissions, fees and other third party expenses resulting from the Closing, including those of Seller's and Borrower's brokerage agent, shall be paid by Seller. For the avoidance of doubt, Seller shall be responsible to pay any and all commissions due to Mike Pardoll of Marcus & Millichap Real Estate Investment

Brokerage Company, and Purchaser shall have no responsibility for any such commissions fees or expenses.

(i). Leases. To Seller's Knowledge, the copies of the Leases delivered to Purchaser are true and correct copies of all such Leases and are in full force and effect and there are no other agreements, written or oral, with respect to the tenancies.

(j). Covenants and Zoning. Seller has not received written notice of (i) any material violations of any covenants or restrictions recorded in the public land records against the Project, or (ii) any material violations of any zoning codes or ordinances applicable to the Project.

(k). Condemnation. Seller has not received written notice of condemnation or eminent domain proceedings pending or, to Seller's Knowledge, threatened or contemplated against the Project, or any part thereof.

(l). Property Access. Seller has received no written notice of any federal, state, county, municipal, or other governmental plans to change the highway or roads adjacent to the Project or to restrict or change access from any such highway or road to the Project.

(m). Environmental Matters. To Seller's Knowledge, Seller's operation of the business and the Purchased Assets are and have been in compliance with all Environmental Laws, except where the failure to be in such compliance would not have a material adverse effect on the Business or the Purchased Assets. There is not now pending or, to Seller's Knowledge, threatened, any claim, investigation or enforcement action by any governmental authority (whether judicial, executive or administrative) concerning Seller's potential liability under environmental laws in connection with the operation of the business or the Purchase Assets. To Seller's Knowledge, there has not been a release or threatened release of any hazardous substance at, upon, in, under or from the Projects or the Purchase Assets at any time. To Seller's Knowledge, no portion of the real property has been used as a dump or landfill or a storage, recycling or disposal facility for any hazardous substance, other than for the storage and disposal of medical waste in connection with the ordinary course operation of the business.

(n). AS IS, WHERE IS. Except as otherwise provided in this Agreement, Seller is selling the Purchased Assets to Purchaser, and Purchaser is buying the Purchased Assets from Seller, on an "AS IS, WHERE IS" basis as of the Closing and in their condition as of the Closing with "ALL FAULTS", and Seller and its affiliates and their respective representatives do not make, have not made, and will not make any representation or warranty, express or implied, at law or inequity, with respect to any Purchased Asset or the transactions contemplated by this Agreement, except (a) as provided in this Agreement and (b) the warranties of title contained in the Receiver's Deed and Bill of Sale.

As used herein, "Seller's Knowledge" means the actual (as opposed to the imputed or constructive) knowledge solely of the Receiver following his review of the Project's books and records ("Seller's Knowledge Person"). Seller's Knowledge Person shall have no duty of investigation or inquiry beyond the books and records of the Receivership Estate, nor shall Seller's Knowledge Person have any personal liability for any misrepresentation or inaccuracy of any representation or warranty contained herein.

Seller's express representations in this Section 7.01 shall survive the Closing for a period of twelve (12) months (the "***Survival Period***"). All suits or actions for breach of any such representations or warranties herein, and any action relating to any such breach, shall be brought within the Survival Period, or shall forever be barred. Notwithstanding anything herein to the contrary, if Purchaser obtains actual knowledge that any of Seller's representations and warranties are untrue prior to the Closing, either by means of written notice from Seller or otherwise, and Purchaser proceeds to consummate this transaction, then each such representation and warranty shall be deemed automatically amended to conform to the knowledge of Purchaser as of the Closing, and Seller shall have no liability to Purchaser for such previously inaccurate representation or warranty.

**Section 7.02.** Representations and Warranties of Purchaser. Purchaser represents and warrants to Seller as follows:

(a). Valid Existence. Purchaser is a limited liability company duly organized, validly existing, and in good standing under the laws of the state of North Carolina.

(b). Corporate Power and Authority.

(i) The execution, delivery, and performance by Purchaser of this Agreement and the other agreements to be entered into by Purchaser pursuant to and in accordance with this Agreement and the consummation by Purchaser of the transactions contemplated by this Agreement are within Purchaser's corporate powers, are not in contravention of the terms of Purchaser's formation and governing documents, and have been duly authorized and approved as a valid corporate act pursuant to and in accordance with applicable law. No other company proceedings on the part of Purchaser are necessary to authorize the execution, delivery, and performance of this Agreement or any other agreement to be entered into by Purchaser pursuant to and in accordance with this Agreement.

(ii) This Agreement has been duly and validly executed and delivered by Purchaser. As of the Closing, the other agreements and instruments to be entered into or executed by Purchaser pursuant to and in accordance with the terms of this Agreement will have been duly and validly executed and delivered by Purchaser. This Agreement constitutes (and upon their execution and delivery by Purchaser, the other agreements to be entered into pursuant to and in accordance with this Agreement by Purchaser will constitute) the legal, valid, and binding obligations of Purchaser enforceable against Purchaser in accordance with their respective terms (assuming valid authorization, execution, and delivery of this Agreement by Seller).

(c). Validity of Contemplated Transactions. Except for Purchaser's obtaining the Regulatory Approvals necessary for the transactions contemplated by this Agreement, the execution, delivery, and performance of this Agreement by Purchaser does not and will not violate, conflict with, or result in the breach of any term, condition, or provision of, or require the consent of any other party to, (i) any existing law, ordinance, or governmental rule or regulation to which Purchaser is subject, (ii) any judgment, order,

writ, injunction, decree, or award of any court, arbitrator, or governmental or regulatory official, body, or authority that is applicable to Purchaser, or (iii) the charter documents of Purchaser. Except for Purchaser's obtaining the Regulatory Approvals necessary for the transactions contemplated by this Agreement, no authorization, approval, or consent of, and no registration or filing with, any governmental or regulatory official, body, or authority is required in connection with the execution, delivery, and performance of this Agreement by Purchaser.

(d). Sufficiency of Funds. Purchaser has unencumbered cash on hand or credit arrangements with financially responsible third parties, or a combination of the foregoing, in an aggregate amount sufficient to enable Purchaser to pay the Purchase Price and all other amounts payable by Purchaser in connection with this Agreement and the transactions provided for in this Agreement.

(e). Inspection Period. During the Inspection Period, Purchaser shall have the right to conduct such due diligence as Purchaser deems reasonably necessary in order to proceed with the Auction with the intent of purchasing the Purchased Assets in accordance with this Agreement. Upon the expiration of the Inspection Period, this Agreement shall become irrevocably binding on Purchaser in accordance with its terms, and any matters, conditions, circumstances, events, records, or other matters or information of any kind whatsoever discovered subsequently by Purchaser with respect to the Purchased Assets shall be deemed irrevocably waived and shall not entitle Purchaser to terminate this Agreement or fail to perform Purchaser's obligations under this Agreement.

## **ARTICLE VIII. AGREEMENTS PENDING CLOSING**

**Section 8.01.** Agreements of Seller Pending Closing. Seller covenants and agrees that, pending Closing and except as otherwise agreed to in this Agreement or in writing by Purchaser:

(a). No Adverse Action. Seller will take no action that would materially impair or damage any of the Purchased Assets.

(b). Required Approvals. At no out of pocket expense to Seller, Seller shall reasonably cooperate with Purchaser with respect to all filings that Purchaser elects to make in connection with the transactions contemplated under this Agreement.

(c). Vendor Discussions. After entry of the Sale Order, Seller shall permit Purchaser to engage in discussions and negotiations with Seller's vendors for the purpose of negotiating terms and contracts between Purchaser and such vendors in connection with the acquisition of the Purchased Assets.

(d). Employee Discussions. After entry of the Sale Order, in compliance with all applicable laws and Section 15.10 of this Agreement, Seller shall grant Purchaser and its representatives reasonable access to Seller's employees at the Facility for the purpose of exercising the option but not the obligation to hire, on a probationary basis, certain

employees of the Facility who satisfy the Purchaser's standard hiring practices, including licensing, background testing, reference checking and medical testing.

(e). Sale of Project; Negotiations. Seller shall not, directly or indirectly, sell or encumber all or any part of the Purchased Assets, initiate or participate in any discussions or negotiations for the sale or encumbrance of all or any part of the Purchased Assets, or enter into any agreement to do any of the foregoing prior to the Auction, other than in connection and consistent with the Bidding Procedures and Auction.

(f). Regular Course of Business. Seller shall use commercially reasonable efforts to (a) not enter into, without the prior consent of Purchaser, any agreements or leases other than in the ordinary course of business; and (b) keep in full force and effect present insurance policies through the Closing Date or other comparable insurance coverage.

(g). Delivery of Inventories and Supplies at Closing. At Closing, Seller shall deliver to Purchaser by leaving at the Facility the following: all the inventories of perishable food, nonperishable food, central supplies, linen, housekeeping and other supplies.

(h). Borrowing. Seller shall not create or permit to become effective any Lien upon the Purchased Assets other than Permitted Liens or a lien that will be discharged in full prior to or at Closing.

**Section 8.02. Agreements of Purchaser Pending Closing.** Purchaser covenants and agrees that, pending Closing and except as otherwise agreed to in this Agreement or in writing by Seller:

(a) Satisfaction of Conditions. Purchaser will use Purchaser's reasonable efforts to cause all of the conditions to the obligations of Purchaser under this Agreement to be satisfied on or before the Closing Date.

(b) Cooperation. Purchaser shall cooperate with Seller to cause all the conditions to the obligations of Purchaser under this Agreement to be satisfied within the time specified above and will not knowingly take any action that would result in a breach of any of Purchaser's representations and warranties under this Agreement.

## **ARTICLE IX.**

### **CONDITIONS PRECEDENT TO CLOSING OBLIGATIONS OF PURCHASER**

All obligations of Purchaser under this Agreement are subject to the fulfillment or satisfaction, prior to or at the Closing, of each of the following conditions precedent:

**Section 9.01. Representations and Warranties True as of Closing Date.** The representations and warranties of Seller contained in this Agreement or in any schedule shall be true on the Closing Date with the same effect as though such representations and warranties were made as of such date.

**Section 9.02.** Compliance with Agreement. Seller shall have performed and complied in all material respects with all agreements and conditions required by this Agreement to be performed or complied with by Seller prior to or at Closing.

**Section 9.03.** No Threatened or Pending Litigation. On the Closing Date, aside from the Receivership Proceeding, no other suit, action, or other proceeding, or injunction or final judgment, shall be threatened or be pending before any court or governmental body in which it is sought to restrain or prohibit the consummation of the transactions contemplated by this Agreement, and no investigation that might result in any such suit, action, or proceeding shall be pending or threatened.

**Section 9.04.** Documents. Seller shall have delivered to Purchaser true and complete copies of any order appointing Seller as receiver and granting Seller the power to consummate the transactions contemplated by this Agreement, or any other such related document as may be reasonably requested by Purchaser.

**Section 9.05.** Auction Result. Purchaser shall have been the Successful Bidder at the Auction.

**Section 9.06.** Court Approval. The Court shall have entered a final non-appellable order, in a form substantially similar to the form of the Sale Order proposed in the Bidding Procedures (and acceptable to Purchaser), approving the sale of the Purchased Assets to Purchaser free and clear of all Liens except for the Assumed Liabilities and such Sale Order shall not be stayed and shall not have been modified or amended, without the consent of the Purchaser.

**Section 9.07.** New License and CON Approval. Purchaser shall have received the New License and CON Approval or Purchaser shall have obtained such written assurances from the Alabama Department of Public Health and/or State Health Planning and Development Agency, in form and substance reasonably acceptable to Purchaser, that the New License and CON Approval have been or will be issued by the relevant agency to Purchaser effective as of the Closing Date and that the Parties are authorized by each such applicable agency to proceed with the transactions contemplated hereunder.

**Section 9.08.** Portfolio Closings. Purchaser and/or Purchaser's respective assignees shall not have exercised their right to terminate as provided in Section 16.17 of this Agreement.

## **ARTICLE X.**

### **CONDITIONS PRECEDENT TO CLOSING OBLIGATIONS OF SELLER**

All obligations of Seller under this Agreement are subject to the fulfillment or satisfaction, prior to or at the Closing, of each of the following conditions precedent:

**Section 10.01.** Representations and Warranties True as of Closing Date. The representations and warranties of Purchaser contained in this Agreement or in any list, certificate, or document delivered by Purchaser to Seller pursuant to and in accordance with



the provisions of this Agreement shall be true on the Closing Date with the same effect as though such representations and warranties were made as of such date.

**Section 10.02.** Compliance with Agreement. Purchaser shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by Purchaser prior to or at Closing.

**Section 10.03.** No Threatened or Pending Litigation. On the Closing Date, aside from the Receivership Proceeding, no other suit, action, or other proceeding, or injunction or final judgment, shall be threatened or be pending before any court or governmental body in which it is sought to restrain or prohibit the consummation of the transactions contemplated by this Agreement, and no investigation that might result in any such suit, action, or proceeding shall be pending or threatened.

**Section 10.04.** Formation Documents. Purchaser shall have delivered to Seller true and complete copies of Purchaser's documents of formation and, if applicable, evidence of qualification to do business in the State of Alabama.

**Section 10.05.** Auction Result. Purchaser shall have been the Successful Bidder at the Auction.

**Section 10.06.** Court Approval. The conditions set forth in Section 9.06 shall have been satisfied.

## **ARTICLE XI. ADJUSTMENTS**

**Section 11.01.** General. Proration of rentals, revenues and other income, if any, from the Project and taxes, assessments, and other expenses, if any, affecting the Project shall be prorated as of 11:59 p.m. on the day prior to the Closing Date ("**Proration Date**"). It is agreed that the Closing Date shall be an income and expense date for Purchaser. There shall be no proration of any insurance premiums with respect to the Project, nor any assumption of insurance coverage by Purchaser, unless Purchaser so elects in writing. If any item of income or expense is not available on the Closing Date, said item shall be debited or credited to the appropriate party when said items become reasonably available and appropriate.

**Section 11.02.** Taxes. On or before the Closing Date, Seller shall pay all taxes and assessments, including without limitation all special assessments, on the Project which are due and payable prior to the Closing Date. Unpaid taxes and assessments on the Project shall be prorated on as of the Closing Date based upon 100% of the most recent ascertainable assessed valuation, tax multipliers and tax rate. Seller shall be liable for any back tax bill which may be imposed by taxing authorities related to the period prior to the Closing Date, which obligation of Seller shall survive Closing.

**Section 11.03.** Prepaid Rentals. Prepaid rentals in Seller's possession, including any tenant payments to Seller for such tenant's share of real property taxes and assessments, insurance premiums, common area maintenance and operation and utilities, that are received by Seller and are unexpended as of the Proration Date shall be credited to Purchaser as of the

Closing Date. Purchaser shall be credited and Seller shall be debited with an amount equal to all rent abatements and concessions for periods on and after the Closing Date pursuant to any of Leases executed prior to the Closing Date.

**Section 11.04.** Operating Expenses. All utility services charges for electricity, heat and air conditioning service, other utilities, shall be prorated on an accrual basis. Seller shall pay all such expenses that accrue prior to the Closing Date and Purchaser shall pay all such expenses accruing on and after the Closing Date. To the extent possible, Seller and Purchaser shall obtain billings and meter readings as of the Closing Date to aid in such prorations.

**Section 11.05.** Other Prorations. Seller and Purchaser shall make such additional adjustments as are normally made in connection with a purchase and sale of the type contemplated in this Agreement, in accordance with customary practice in Montgomery County, Alabama.

**Section 11.06.** Survival. The provisions of Section 11.02 and 11.04 of the Agreement shall survive the Closing, and the Sale Order shall so provide.

## **ARTICLE XII. CLOSING COSTS**

**Section 12.01.** Closing Costs. Purchaser shall bear the cost of the Title Policy, the cost of the closing escrow, the cost of the Survey, the state/local grantee tax, and the mortgage tax. Seller shall bear the cost of any recording fees with respect to the Receiver's Deed, the cost to record any instruments necessary to clear Seller's title and the grantor tax. All other costs and expenses in connection with the transaction contemplated by this Agreement shall be borne in accordance with Fidelity National Title Insurance Company's local custom. Each party shall pay its own attorneys' fees incurred with respect to the preparation and negotiation of this Agreement and the closing of the transaction contemplated hereby.

## **ARTICLE XIII. DAMAGE OR DESTRUCTION TO PROJECT**

**Section 13.01.** Damage or Destruction to Project. If between the Effective Date and the Closing Date, all or any portion of the Project is damaged or destroyed by fire or other casualty, Seller shall notify Purchaser in writing of such damage or destruction (the "Casualty Notice") and Purchaser, at its sole option, may elect to:

(i) terminate this Agreement, in which event the Purchaser Deposit shall be returned to Purchaser and, except as specifically provided in this Agreement, neither party shall have any further rights or obligations to the other under this Agreement; or

(ii) consummate the transaction contemplated by this Agreement, in which event Purchaser shall receive a credit against the Purchaser Price in an

amount equal to Purchaser's reasonable determination of the cost of restoring the Project.

**Section 13.02.** Casualty Election Date. Purchaser shall have until the date (the "*Casualty Election Date*") that is thirty (30) days after receipt of the Casualty Notice to elect whether to terminate or proceed with this Agreement. If Purchaser fails to notify Seller of its election on or before the Casualty Election Date, then Purchaser shall be deemed to have elected to terminate this Agreement.

#### **ARTICLE XIV. CONDEMNATION**

**Section 14.01.** Condemnation or Eminent Domain. If between the Effective Date and the Closing Date any condemnation or eminent domain proceedings are initiated which might result in the taking of any part of the Project, Seller shall notify Purchaser in writing of such proceedings (the "*Condemnation Notice*") and Purchaser, at its sole option, may elect to:

(i) terminate this Agreement, in which event the Purchaser's Deposit shall be returned to Purchaser and, except as specifically provided in this Agreement, neither party shall have any further rights or obligations to the other under this Agreement; or

(ii) consummate the transaction contemplated by this Agreement, in which event Seller shall assign to Purchaser at Closing all of Seller's right, title and interest in and to any award pertaining to the Project made in connection with such condemnation or eminent domain proceedings.

**Section 14.02.** Condemnation Election Date. Purchaser shall have until the date (the "*Condemnation Election Date*") that is thirty (30) days after receipt of the Condemnation Notice to elect whether to terminate or proceed with this Agreement. If Purchaser fails to notify Seller of its election on or before the Condemnation Election Date, then Purchaser shall be deemed to have elected to terminate this Agreement.

**Section 14.03.** Extension of Closing Date. If the Closing Date is a date prior to the Condemnation Election Date, the Closing Date shall be extended to a date twenty (20) days after the Condemnation Election Date.

#### **ARTICLE XV. ADDITIONAL AGREEMENTS**

**Section 15.01.** Intentionally deleted.

**Section 15.02.** Transfer of Medical Records. On the Closing Date, the parties agree that Seller shall transfer to Purchaser control of the medical records (which shall include x-rays and other films and reports, notes, lab test results, and any and all documents relating to patients) in possession of Seller or located at the Project (the "*Medical Records*"). On the Closing Date, the Purchaser shall become the custodian of the Medical Records and shall assume control, custody, and possession in accordance with applicable law.

**Section 15.03.** Maintenance of Medical Records; Indemnity. From and after receipt of the Medical Records pursuant to and in accordance with this Agreement, Purchaser covenants that Purchaser shall be solely responsible for maintaining the Medical Records so transferred and providing them upon the lawful request of a patient (or other third party) in accordance with all applicable laws, rules, and regulations. Purchaser covenants that Purchaser shall maintain the Medical Records for each patient for a period of not less than ten (10) years after the last date of service with respect to such patient. After the Closing Date, Seller shall have no obligation to maintain any Medical Records or respond to any requests for Medical Records, which obligation shall be the sole responsibility of Purchaser. Purchaser agrees to indemnify, defend, and hold harmless Seller for any and all claims by patients or other third parties arising out of or related to the transfer or maintenance of the Medical Records, including, without limitation, Purchaser's failure to comply with any laws or regulations relating to the Medical Records

**Section 15.04.** Compliance. As applicable, the parties acknowledge and recognize their status, responsibilities, and obligations as health care providers and covered entities, as those terms are defined in the privacy and security regulations issued under HIPAA and contained in 45 C.F.R. Parts 160 and 164 (the "**Regulations**"). The parties agree to comply with the Regulations as well as with all other federal and state laws and regulations, in the execution and operation of this Agreement.

**Section 15.05.** Access to Purchased Assets. Seller shall be entitled to retain copies of any or all of the books and records of the Purchased Assets following the Closing and to use the information contained in such books and records for all purposes relating, directly or indirectly, to the Receivership Proceeding and the winding up of the Receivership Estate. In addition to the foregoing, Purchaser shall afford Seller reasonable access, upon reasonable notice during normal business hours or at other reasonable times, to books and records included within the Purchased Assets, in order for Seller to administer and wind down the Receivership Estate.

**Section 15.06.** Transfer of Operations. Seller agrees to transfer operations of the Facility on the Closing Date to Purchaser. Seller agrees that it shall cooperate with Purchaser in the transition of operations of the Facility. Notwithstanding the foregoing, the Parties acknowledge and agree that neither Seller nor Borrower is the holder of the specialty care assisted living facility license for the Facility, however, Seller agrees to assist in the transfer of such license from License Holder to Purchaser to the extent transferrable as contemplated under the Transfer Agreement attached hereto and to the extent the Alabama Department of Public Health agrees to the issuance of the New License to Purchaser. Seller shall have no liability under this Agreement or obligation to indemnify Purchaser to the extent License Holder breaches the Transfer Agreement consistent with Section 16.16 below.

**Section 15.07.** Licensing Matters. In connection with survey and licensing matters, Seller and Purchaser agree to cooperate fully with each other in preparing, filing, prosecuting, and taking any other actions with respect to any applications, requests, or actions that are or may be reasonable and necessary to obtain the consent of any governmental instrumentality. In the event of a change of ownership survey by a governmental authority, Seller shall notify Purchaser immediately upon initiation of the survey and upon completion

of the survey exit conference of any issues cited and surveyor observations and recommendations. The Parties acknowledge and agree that this Section 15.07 is subject to the Parties acknowledgment in Section 15.06 above regarding the holder of the specialty care assisted living facility license as well as Section 16.16 below.

**Section 15.08.**      Intentionally Deleted.

**Section 15.09.**      Transfer of Records; Access to Records. As of the Closing Date, Seller shall transfer to Purchaser the records of all residents in the Facility (the “**Transferred Records**”) by leaving all such records at the Facility, provided, however, that Seller shall be entitled to keep such copies of all Transferred Records as it may deem necessary and as permitted by law. Notwithstanding the foregoing:

(a) Seller may remove from the Facility (i) the originals of the financial records which relate to its operations at the Facility, including all accounts payable and accounts receivable records; provided, however, Seller shall leave copies of such records at the Facility in order to facilitate the provisions of this Agreement, (ii) the originals of any proprietary materials related to its overall corporate operations; provided, however, Seller shall leave copies of its policies and procedure manuals, (iii) the originals of all performance improvement data, and (iv) legacy records stored either on-site or off-site.

i. Notwithstanding anything to the contrary in this Agreement, Seller and Purchaser agree that all information, records and data collected or maintained regarding Facility residents shall be confidential. From and after the Closing Date, Purchaser shall be solely responsible for caring for the residents of the Facility in accordance with their contractual rights and in accordance with law. Purchaser shall preserve the existence and maintain the confidentiality of the resident records transferred to Purchaser pursuant to this Agreement in accordance with federal and state law.

ii. Subsequent to the Closing Date, Purchaser shall allow Seller and its affiliates, agents and representatives, at Seller's sole cost and expense, to have reasonable access during regular business hours upon reasonable prior written notice and to make copies of, the Transferred Records, to the extent reasonably necessary to enable Seller to investigate and defend malpractice, employee or other claims, to file or defend cost reports and tax returns, to verify accounts receivable collections due Seller, and to perform similar matters.

(b) Purchaser will maintain the Transferred Records, to the extent required by law, but in no event less than seven (7) years from the Closing Date with respect to resident records, and no less than six (6) years from the Closing Date with respect to other records (the “**Holding Period**”). Within thirty (30) days prior to the expiration of the Holding Period for such books and records, Seller may provide a written request to Purchaser to remove such books and records from the Facility, in which case Purchaser shall allow Seller a reasonable opportunity, following the expiration of the Holding Period, to remove such books and records from the Facility

at Seller's sole cost and expense. If no such written request is received by Purchaser prior to the expiration of the Holding Period, Purchaser may dispose of or destroy such books and records in its sole discretion.

**Section 15.10.**      Patient Funds; Advance Payments.

(a) Concurrent with the execution and delivery of this Agreement and subject to adjustment within thirty (30) days following the Closing Date, Seller shall provide Purchaser with an accounting of all funds belonging to residents at the Facility, which are held by Seller in a custodial capacity, and an accounting of all advance payments received by it pertaining to residents at the Facility (collectively, the "**Funds/Payments**"). Such accounting shall set forth the names of the residents for whom such Funds/Payments are held and the amounts held on behalf of each resident.

(b) Concurrent with the execution and delivery of this Agreement and subject to adjustment within thirty (30) days following the Closing Date, Seller shall, at the election of Purchaser, either (i) transfer the Funds/Payments to a bank account designated in writing by Purchaser or (ii) retitle all accounts of Seller in which the Funds/Payments are deposited at the time of the execution and delivery of this Agreement. Subject to completion of the transfer or retitling described in the immediately preceding sentence, Purchaser hereby acknowledges receipt of and expressly assumes all of Seller's financial and custodial obligations arising subsequent to the Closing with respect to the Funds/Payments received by Purchaser, it being the intent and purpose of this provision that, as of the Closing Date, Seller is relieved of all financial and custodial obligation with respect to such funds and that Purchaser hereby assumes all such post-Closing obligations and is directly accountable to the residents with respect thereto.

(c) Purchaser hereby assumes custody of all trust accounts for residents transferred by Seller to Purchaser and agrees to treat such accounts in the fiduciary capacity required by law. Purchaser agrees to indemnify, protect, defend and hold Seller harmless from all liabilities, claims, and demands that may be asserted against Seller in connection with Purchaser's treatment of such accounts from and after the Closing Date. Seller agrees to indemnify, protect, defend and hold Purchaser harmless from all liabilities, claims, and demands that may be asserted against Purchaser in connection with Seller's treatment of such accounts prior to the Closing Date.

**Section 15.11.**      Employees.

(a) As of the Closing Date, Seller shall terminate the employment of all employees providing services at the Facility (the "**Current Employees**"). No more than five (5) days prior to Closing, Seller shall provide Purchaser with (i) a list of the Current Employees, which list shall include the current base salaries of the Current Employees, and (ii) a detailed calculation of the Seller's Employment Expenses (as hereinafter defined). Purchaser shall not be bound by or assume any employment contracts to which Seller may be a party. Other than consistent with past practice, Seller shall not make any material changes in the compensation or benefits of the employees at the Facility prior to the Closing Date.

(b) Purchaser shall determine, in its sole discretion, which of the Current Employees shall be offered employment with Purchaser, pursuant to employment terms acceptable to Purchaser (hereinafter, the "*Retained Employees*"); provided, however, Purchaser shall offer employment to such members of the Current Employees on such terms and conditions that are sufficient to not give rise to liability under the Worker Adjustment and Retraining Notification Act of 1988. Nothing in this paragraph, however, shall create any right in favor of any person not a party hereto, including without limitation, the Current Employees, or constitute an employment agreement or condition of employment for any employee of Seller or any affiliate of Seller who is a Current Employee.

(c) On the Closing Date, Purchaser shall be provided with a payment (the "*Employee Accrual Payment*"), in cash or immediately available funds, of an amount equal to all of the accrued but unpaid vacation, holiday, sick pay and severance obligations, and all other accrued but unpaid payroll obligations including but not limited to all FICA, withholding, unemployment, workmen's compensation or other employment related taxes, as well as any insurance premium obligations of Seller with respect to the Current Employees, if applicable, that have accrued, been earned and unpaid as of the day prior to the Closing Date ("*Seller's Employment Expenses*"). Purchaser shall not be liable on account of any and all other pre-closing payroll liabilities and obligations with regard to any of the Current Employees and with regard to the Retained Employees, any and all other liabilities and obligations that shall have accrued prior to the Closing Date.

**Section 15.12.** Accounts Receivable. Five (5) Business Days before the Closing Date the Purchaser and Seller shall determine whether the Accounts Receivable will be purchased at Closing for a negotiated sum. In the event the parties agree that the Accounts Receivable will be purchased at Closing, the parties further agree to modify this Agreement to take into account the purchase of the Accounts Receivable.

## ARTICLE XVI. MISCELLANEOUS

### **Section 16.01.** Termination.

(a). Notwithstanding anything in this Agreement or elsewhere to the contrary, this Agreement may be terminated by written notice of termination at any time: (i) by a notice of termination from Purchaser pursuant to Article VI before the end of the Inspection Period, (ii) before the Closing Date by mutual consent of Seller and Purchaser or (iii) before the Closing Date by a party as a result of the other party's failure to meet the conditions precedent to Closing contained in this Agreement in a timely manner, but only if the defaulting party fails to meet such condition within ten (10) days after receipt of written notice of such failure from the non-defaulting party delivered in accordance with Section 16.05 of this Agreement.

(b). Purchaser or Seller may terminate this Agreement if the Court or any other court of competent jurisdiction shall have issued an order, decree, or ruling or taken any other action enjoining or otherwise prohibiting the transactions contemplated by this

Agreement and such order, decree, ruling, or other action shall have become final and nonappealable.

(c). Purchaser or Seller may terminate this Agreement if the Bidding Procedures Order is not entered by the Court within forty-five (45) days after the Effective Date.

**Section 16.02.** Expenses. Except as otherwise provided in this Agreement, each party to this Agreement shall pay its own costs and expenses incurred in connection with the negotiation and execution of this Agreement and each other agreement, document or instrument contemplated by this Agreement and the consummation of the transactions contemplated by this Agreement..

**Section 16.03.** Contents of Agreement; Parties in Interest. This Agreement sets forth the entire understanding of the parties with respect to the transactions contemplated by this Agreement. This Agreement shall not be amended or modified except by written instrument duly executed by each of the parties to this Agreement. Any and all previous agreements and understandings between or among the parties regarding the subject matter of this Agreement, whether written or oral, are superseded by this Agreement and of no further or other effect.

**Section 16.04.** Assignment; Binding Effect. Except for an assignment by the Purchaser to an affiliate, this Agreement may not be assigned prior to the Closing by any party without the prior written consent of all other parties to this Agreement; provided, that any such affiliate first agrees in writing to be bound by all of the terms, conditions, and provisions contained in this Agreement, and provided further that Purchaser shall remain primarily liable for its obligations under this Agreement, and provided further that the assignee is not another bidder on the Assets or on any assets of the Receivership Estate, the assignee is not an insider or affiliate of any party to the Receivership Proceeding, and the assignment is not made for the purpose of allowing two or more parties to collude in the purchase of the Assets. Subject to the foregoing, all of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the successors and permitted assigns of Seller and Purchaser.

**Section 16.05.** Notice. Any and all notices given in connection with this Agreement shall be deemed adequately given only if in writing and personally delivered, sent by first class registered or certified mail, postage prepaid, return receipt requested, sent by overnight national courier service, sent by facsimile, provided a hard copy is mailed on that day to the party for whom such notices are intended or sent by other means at least as fast and reliable as first class mail. A written notice shall be deemed to have been given to the recipient party on the earlier of (a) the date it shall be delivered to the address required by this Agreement, (b) the date of delivery shall have been refused at the address required by this Agreement, (c) with respect to notices sent by mail, the date as of which the postal service shall have indicated that the notice has been delivered to the address required by this Agreement, (d) with respect to a facsimile, the date on which the facsimile is sent. Any and all notices referred to in this Agreement, or which any party desires to give the other, shall be addressed as follows:



To Purchaser: Agemark Acquisition, LLC  
1270 25<sup>th</sup> Street Pl. SE  
P.O. Box 2568  
Hickory, North Carolina 28603-2568  
Attn.: Charles E. Trefzger, Jr.

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

Waldrep Law, LLP  
101 S. Stratford, Suite 210  
Winston-Salem, North Carolina 27104  
Attn.: Thomas W. Waldrep, Jr.

To Seller: Healthcare Management Partners, LLC  
Attn: Derek A. Pierce, as Receiver  
1033 Demonbreun Street, Ste. 300  
Nashville, Tennessee 37203

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

Waller Lansden Dortch & Davis, LLP  
Attn: Ryan K. Cochran  
511 Union Street, Suite 2700  
Nashville, Tennessee 37219

**Section 16.06.** Governing Law. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the state in which the Facility is located without regard to its conflicts of law principles.

**Section 16.07.** Jurisdiction; Venue. Any legal action or proceeding relating to any disputes between the parties to this Agreement arising under or relating to this Agreement or with respect to its subject matter shall be brought exclusively in the Court or if such action or proceeding may not be brought in such Court for jurisdictional purposes, exclusively in the federal or state court for the County where the Facility is located, and, by execution and delivery of this Agreement. Each of the Parties accepts for itself and its affiliates, generally and unconditionally, the jurisdiction of the Court. Each of the parties irrevocably waives any objection, including any objection to the laying of venue or based on the grounds of forum non-conveniens that such party may now or later have to the bringing of any such action nor proceeding in the Court.

**Section 16.08.** Waiver of Jury Trial. THE PARTIES TO THIS AGREEMENT HEREBY (A) IRREVOCABLY AND UNCONDITIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING OR COUNTERCLAIM OF ANY TYPE AS TO ANY MATTER ARISING DIRECTLY OR INDIRECTLY OUT OF OR WITH RESPECT TO THIS AGREEMENT OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT AND (B) AGREE THAT ANY PARTY MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN

EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED FOR AGREEMENT BETWEEN THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY OF ANY KIND WHATSOEVER BETWEEN THEM SHALL INSTEAD BE TRIED IN THE COURT BY A JUDGE SITTING WITHOUT A JURY.

**Section 16.09.** Schedules and Exhibits. All Schedules and Exhibits referred to in this Agreement are intended to be and are specifically made a part of this Agreement.

**Section 16.10.** Severability. Any provision of this Agreement that is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Agreement, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 16.11.** Entire Agreement. This Agreement, including the Schedules and Exhibits to this Agreement, constitutes the entire agreement between the parties with regard to the subject matter of this Agreement and the transactions contemplated by this Agreement. No other understanding, inducement, representation, or agreement shall be of any force or effect except as otherwise specifically provided for or referred to in this Agreement. This Agreement may not be altered or amended except in writing signed by all parties.

**Section 16.12.** Waiver. The failure of any party to insist upon strict compliance with any of the provisions of this Agreement by another party shall not constitute a waiver of such party's right to demand exact compliance with said provisions.

**Section 16.13.** Execution by Counterpart Originals. This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

**Section 16.14.** Survival. All warranties, representations, obligations, duties, undertakings, and agreements made in this Agreement by any party shall be true and correct as of the date of Closing and, to the extent not satisfied at Closing, shall survive Closing and the delivery of any bills of sale or documents of conveyance for a period of twelve (12) months from Closing, and shall not be merged with such bills of sale or documents of conveyance.

**Section 16.15.** Business Days. If any date herein set forth for the performance of any obligations of Seller or Purchaser or for the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday or legal holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday. As used herein, the term "legal holiday" means any state or Federal holiday for which financial institutions or post offices are generally closed in the state where the Project is located. When the period of time prescribed or allowed is delineated in Business Days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

**Section 16.16. Portfolio of Properties.** Purchaser intends to purchase the Portfolio of Properties. If Purchaser and/or its assigns is not the Successful Bidder (as defined in the Bidding Procedures) or the Court does not enter the Sale Order in favor of Purchaser and/or its assigns for the Portfolio of Properties, notwithstanding anything in this Agreement to the contrary, Purchaser shall have the right, in its sole and absolute discretion, to terminate this Agreement by written notice to the Seller before the close of the Auction, or upon the Court's failure to enter the Sale Order in favor of the Purchaser and/or its assigns. For avoidance of doubt, Purchaser may elect, in its sole and absolute discretion, to terminate, under Section 16.16 of this Agreement, its agreement to purchase any of one, two, three, four or five of the Portfolio of Properties or proceed to a Closing of any one, two, three, four or five of the Portfolio of Properties. If Purchaser exercises its right to terminate this Agreement as provided in Section 16.16 of the Agreement, Purchaser's Deposit shall be returned to Purchaser. If Purchaser exercises its right, as provided in Section 16.16 of this Agreement, to terminate the purchase agreement for any of the Portfolio Properties, Purchaser shall not be entitled to a Break Up Fee on any of the Portfolio of Properties. If Purchaser exercises its right to terminate this Agreement as Provided in Section 16.16 of this Agreement, neither party shall have any further rights or obligations to the other under this Agreement.

**Section 16.17. No Personal Liability of Seller; Limitations on Seller's Representations and Warranties.** The Purchaser expressly acknowledges and agrees that:

(a). Seller enters into this Agreement solely in its capacity as court appointed receiver under the Receivership Order and pursuant to and in accordance with the Bidding Procedures Order and Sale Order (each when and if approved by the Court) and shall have no corporate, company, or personal liability for any cause of action arising out of or related to this Agreement.

(b). In the event of an actual or claimed breach of this Agreement by Seller, recourse may be had only against the assets of the Receivership Estate. No corporate, company, or personal assets of Seller may be subject to claim or levy.

**[Signature Pages Follow]**

**SELLER:**

**DEREK A. PIERCE, ACTING SOLELY IN HIS  
CAPACITY AS COURT-APPOINTED  
RECEIVER**

By: 

Name: Derek A. Pierce

PURCHASER:

AGEMARK ACQUISITION, LLC

By: 

Name: CHARLES E. TREPPER, JR.

Its: MANAGER

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

Lots 17, 18, 19, 20, 21, 21, 23, 24, 25, and 26, Block 10, according to the Map of Huntingdon Heights, a the same appears of record in the Office of the Judge of Probate of Montgomery County, Alabama, in Plat Book 7, at Page 57, as corrected by Plat recorded in Plat Book 9, at Page 1, in said Probate Office.

**EXHIBIT B**  
**BILL OF SALE**

### BILL OF SALE

THIS BILL OF SALE (this "**Bill of Sale**"), dated as of [ ] [ ], 2017, by and between the following parties:

ASSIGNOR: DEREK A. PIERCE, acting solely in his capacity as court-appointed receiver for the Property referenced herein.

ASSIGNEE: [ ]

This Bill of Sale is being delivered pursuant to that certain Asset Purchase Agreement dated as of [ ] [ ], 2017, by and between Assignor and Assignee (the "**Purchase Agreement**"), and is subject to all of the terms and conditions thereof. Any capitalized terms used but not otherwise defined herein shall have the meanings specified in the Purchase Agreement.

1. **Conveyance.** In consideration of receipt of payment of the Purchase Price as detailed in the Purchase Agreement, and other good and valuable consideration, the receipt, adequacy and sufficiency of which Assignor hereby acknowledges, Assignor hereby sells, conveys, assigns, transfers and delivers unto Assignee, its successors and assigns, all of its right, title and interest in the Personal Property located on, arising from or otherwise related to the real property referred to as [ ] and located at [ ] (collectively, the "**Subject Property**"), to have and to hold forever, except for that property listed on **Exhibit A**. This conveyance shall be effective as of 12:00:01 AM (prevailing Eastern time) as of the \_\_\_\_ day of \_\_\_\_\_ 2017 (the "**Effective Date**").

2. **Assumption.** Assignee hereby accepts the assignment of all of Assignor's right, title and interest in, and hereby assumes all of the obligations of Assignor under the Subject Property, first arising from and after the Effective Date.

3. **Appointment.** Assignor hereby constitutes and appoints Assignee its true and lawful attorney, with full power of substitution, in the name of Assignor or otherwise, and on behalf and for the benefit of Assignee: (a) to institute and prosecute, from time to time, in the name of Assignor or otherwise, any and all actions, suits and proceedings which Assignee deems proper to assert or enforce any claim, title, right, or actions, suits or proceedings in respect to the Subject Property; and (b) to execute such other documents and take such other action as may be necessary from time to time to carry out this Bill of Sale. Assignor hereby declares that the foregoing powers are coupled with an interest and shall be irrevocable.

4. **Cooperation.** Assignor covenants and agrees that it will at any time and from time to time, at the sole expense of Assignee, do, execute, acknowledge and deliver any and all other acts, deeds, assignments, transfers, certificates of title, conveyances, powers of attorney or other instruments that Assignee reasonably deems necessary or proper to carry out the assignment and conveyance intended to be made hereunder.

5. **No Modification of Purchase Agreement.** This Assignment is delivered pursuant to the Purchase Agreement and is subject in all respects to the provisions thereof and is not meant to alter, enlarge or otherwise modify the provisions of the Purchase Agreement. Without



limiting the generality of the foregoing, all representations and warranties made by Assignor in the Purchase Agreement, in this Bill of Sale, or in any agreement executed in connection with the transactions contemplated therein have been made by Assignor in sole and exclusive reliance upon the terms and conditions of the Receivership Order and Sale Approval Order, and Assignee shall have no recourse against Assignor in the event that any of Assignor's representations and warranties prove to have been materially false or misleading when made; provided, however, that (i) Assignee shall be entitled to bring claims against the Receivership Estate; (ii) Assignee and its successors and assigns shall be entitled to rely upon this Bill of Sale, the Receiver's Deed, and the Sale Approval Order as evidence of title to the Subject Property and shall be entitled, as the sole and exclusive remedy in the event that any of Assignor's representations and warranties prove to have been materially false or misleading when made, to seek such relief from the Court as shall be proper to enforce Assignee's claim of title and ownership to the Subject Property.

6. Binding Effect. This Bill of Sale shall be binding upon and inure to the benefit of and be enforceable by the successors and permitted assigns of Assignor and Assignee.

7. Law to Govern. This Bill of Sale shall be governed by and interpreted and enforced in accordance with the laws of the State of Alabama.

IN WITNESS WHEREOF, the Assignor has executed this Bill of Sale effective as of the date first above written.

**DEREK A. PIERCE, ACTING SOLELY IN HIS  
CAPACITY AS COURT-APPOINTED  
RECEIVER**

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

[\_\_\_\_\_]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**(BILL OF SALE)**

**EXCLUDED ASSETS**

1. Any and all claims and causes of action of the Receivership Entities and Receivership Estate, including, but not limited to, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, and the collection of debts. Any and all claims and causes of action relating to or arising out of the Bonds, Bond Documents, and issuance of the Bonds.

2. The Leased Personal Property described in Schedule 7.01(o).

3. Any and all cash, cash equivalents, bank accounts, deposit accounts, credits, prepaid expenses, deposits, deferred charges, advance payments, security deposits, prepaid items, funds, securities, investment accounts, accounts receivable, notes, notes receivable, mortgages, security interests, income, revenues derived from the Facility, insurance claims, insurance proceeds, other than amounts to be transferred to Purchaser in accordance with Section 15.09 of this Agreement.

**EXHIBIT C**  
**RECEIVER'S DEED**

STATE OF \_\_\_\_\_ )  
 )  
\_\_\_\_\_ COUNTY )

This instrument was prepared by:

Send Tax Notice to:

### **RECEIVER'S DEED**

#### **(Deed With Limited Covenants, Representations, or Warranties)**

THIS RECEIVER'S DEED is executed as of the \_\_\_\_ day of \_\_\_\_\_, 2017, by **DEREK A. PIERCE**, acting solely in his capacity as court-appointed receiver for the Subject Property referenced herein ("**Grantor**"), and [\_\_\_\_\_] ("**Grantee**"), whose address and principal place of business is [\_\_\_\_\_].

For good and valuable consideration in hand paid to Grantor by Grantee, the receipt and sufficiency of which are hereby acknowledged, Grantor by these presents does hereby, BARGAIN, SELL, TRANSFER and CONVEY to Grantee, without covenant, representation, or warranty of any kind or nature, express or implied, and without any and all warranties that might arise by common law and any covenants or warranties created by statute, as the same may be hereafter amended or superseded, all which are hereby expressly excluded and disclaimed, all of Grantor's right, title and interest in the property more particularly described on **Exhibit A** to this Receiver's Deed, which is attached hereto and incorporated herein, together with all of Grantor's right, title and interest in any and all improvements and fixtures thereon and thereto (collectively, the "**Subject Property**"), and all the rights and appurtenances pertaining thereto, including, but not limited to, any right, title and interest of Grantor in and to adjacent streets, alleys or rights-of-way, subject, however, to all liens, exceptions, easements, rights-of-way, covenants, conditions, restrictions, reservations, encroachments, protrusions, shortages in area, boundary disputes and discrepancies, matters of which could be discovered or would be revealed by, respectively, an inspection or current survey of the Subject Property, encumbrances impositions (monetary and otherwise), access limitations, licenses, leases, prescriptive rights, rights of parties in possession, rights of tenants, co-tenants, or other co-owners, and any and all other matters or conditions affecting the Subject Property, as well as standby fees, real estate taxes, and assessments on the Subject Property for the current year and prior and subsequent years, and subsequent taxes and assessments for prior years due to change in land usage or ownership, and any and all zoning laws, regulations, and ordinances of municipal and other governmental authorities affecting the Subject Property, and subject further to the recorded exceptions to title set forth on **Exhibit B** to this Receiver's Deed (collectively, the "**Permitted Encumbrances**").

Notwithstanding the foregoing and based solely upon that certain order dated \_\_\_\_\_, 2017 issued by the in the United States District Court for the District of New Jersey (the "**Court**"), in *Securities and Exchange Commission v. Dwayne Edwards, et al.*, case number 17.CIV.393 (ES (SCM)) approving the sale of the Subject Property to the Grantee (the "**Sale Approval Order**"), Grantor hereby represents and warrants that

**Grantor has the authority to deliver good and valid title to the Subject Property and that Grantor hereby transfers the Subject Property to Grantee free and clear of all mortgages, liens, pledges, security interests, and other encumbrances securing indebtedness. The representations and warranties made by Grantor in this paragraph and in the Purchase Agreement (as defined below) are the sole and exclusive representations and warranties made by Grantor with respect to the Subject Property and are made by Grantor in reliance upon the terms and conditions of the Sale Approval Order (the "Seller's Court-Ordered Representations and Warranties").**

FURTHER, GRANTEE, BY ITS EXECUTION AND ACCEPTANCE OF DELIVERY OF THIS RECEIVER'S DEED, ACKNOWLEDGES AND AGREES THAT EXCEPT FOR SELLER'S COURT-ORDERED REPRESENTATIONS AND WARRANTIES:

(i) EXCEPT AS SET FORTH IN THE PURCHASE AGREEMENT, GRANTOR HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, OF, AS TO, CONCERNING, OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY, OR CONDITION OF THE SUBJECT PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY, (B) THE INCOME, IF ANY, TO BE DERIVED FROM THE SUBJECT PROPERTY, (C) THE SUITABILITY OF THE SUBJECT PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE SUBJECT OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES, OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE OWNERSHIP, TITLE, POSSESSION, HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE SUBJECT PROPERTY, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE SUBJECT PROPERTY, (G) THE MANNER, QUALITY, STATE OF REPAIR, OR LACK OF REPAIR OF THE SUBJECT PROPERTY OR ANY PORTION THEREOF OR ANY IMPROVEMENTS THERETO, (H) THE EXISTENCE, QUALITY, NATURE, ADEQUACY, OR PHYSICAL CONDITION OF ANY UTILITIES SERVING THE SUBJECT PROPERTY, OR (I) ANY OTHER MATTER WITH RESPECT TO THE SUBJECT PROPERTY, AND SPECIFICALLY, THAT GRANTOR HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION, OR LAND USE LAWS, RULES, REGULATIONS, ORDERS, OR REQUIREMENTS, INCLUDING, WITHOUT LIMITATION, THE DISPOSAL OR EXISTENCE, IN OR ON THE SUBJECT PROPERTY, OF ANY HAZARDOUS MATERIALS;

(ii) GRANTEE HAS FULLY INSPECTED THE SUBJECT PROPERTY AND THAT, SUBJECT TO THE TERMS OF THE PURCHASE AGREEMENT AND THE SELLER'S COURT-ORDERED REPRESENTATIONS AND WARRANTIES, THE CONVEYANCE AND DELIVERY HEREUNDER OF THE SUBJECT PROPERTY IS "AS IS" AND "WITH ALL FAULTS", AND GRANTOR HAS NO OBLIGATION TO ALTER,

REPAIR, OR IMPROVE THE SUBJECT PROPERTY OR ANY PORTION THEREOF OR ANY IMPROVEMENTS THERETO; AND

(iii) NO WARRANTY HAS ARISEN THROUGH TRADE, CUSTOM, OR COURSE OF DEALING WITH GRANTOR, AND ALL STATUTORY, COMMON LAW, AND CUSTOMARY COVENANTS AND WARRANTIES, IF ANY, OF WHATEVER KIND, CHARACTER, NATURE, PURPOSE, OR EFFECT, WHETHER EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, ARE HEREBY EXPRESSLY, UNCONDITIONALLY, AND IRREVOCABLY WAIVED, DISCLAIMED, AND EXCLUDED FROM THIS RECEIVER'S DEED, NOTWITHSTANDING ANY CUSTOM OR PRACTICE TO THE CONTRARY, OR ANY STATUTORY, COMMON LAW, DECISIONAL, HISTORICAL, OR CUSTOMARY MEANING, IMPLICATION, SIGNIFICANCE, EFFECT, OR USE OF CONTRARY IMPORT OF ANY WORK, TERM, PHRASE OR PROVISION HEREIN.

Further, by its execution and acceptance of delivery of this Receiver's Deed, Grantee hereby acknowledges and agrees that Grantee and anyone claiming by, through, or under Grantee, hereby fully releases Grantor, its employees, officers, directors, representatives, and agents from any and all claims, costs, losses, liabilities, damages, expenses, demands, actions or causes of action that it may now have or hereafter acquire, whether direct or indirect, known or unknown, suspected or unsuspected, liquidated or contingent, arising from or related to the Subject Property in any manner whatsoever, including without limitation any circumstance in which Seller's Court-Order Representations and Warranties prove to have been materially false or misleading when made. This covenant releasing Grantor shall be a covenant running with the Subject Property and shall be binding upon Grantee, its successors and assigns. Notwithstanding the foregoing, Grantee and its successors and assigns shall be entitled to rely upon this Receiver's Deed and upon the Sale Approval Order as evidence of title to the Subject Property and shall be entitled, as the sole and exclusive remedy in the event that any of Seller's Court-Ordered Representations and Warranties prove to have been materially false or misleading when made, to seek such relief from the Court as shall be proper to enforce Grantee's claim of title and ownership of the Subject Property.

TO HAVE AND TO HOLD the Subject Property together with all and singular the rights and appurtenances thereto in any wise belonging, unto Grantee, its successors and assigns forever, without covenants, representation, or warranty whatsoever (except as set forth in the Purchase Agreement and the Seller's Court-Ordered Representations and Warranties), subject, however, to the Permitted Encumbrances.

The fact that certain encumbrances, limitations, or other matters or conditions may be mentioned, disclaimed, or excepted in any way herein, whether specifically or generally, and whether in the body hereof or any exhibit hereto, shall not be a covenant, representation, or warranty of Grantor as to any encumbrances, limitations, or any other matters or conditions not mentioned, disclaimed, or excepted. Notwithstanding anything herein to the contrary, however, nothing herein shall be construed or deemed as an admission by Grantor or Grantee to any third party of the existence, validity, enforceability, scope, or location of any encumbrances, limitations, or other matters or conditions mentioned, disclaimed, or excepted in any way herein, and nothing shall be construed or deemed as a waiver by Grantor or Grantee of its respective

rights, if any, but without obligation, to challenge or enforce the existence, validity, enforceability, scope or location of same against third parties.

Grantee hereby assumes the responsibility of payment of all ad valorem taxes, standby fees, and general and special assessments of whatever kind and character affecting the Subject Property which are payable, or which may become payable, for any period on or after the effective date of this Receiver's Deed, including, without limitation, taxes or assessments becoming due by reason of a change in usage or ownership, or both, of the Subject Property for so long as Grantee continues to own the Subject Property.

Except as expressly set forth in this Receiver's Deed, there are no third party beneficiaries to this Receiver's Deed. The covenants, promises and agreements continued in this Receiver's Deed are solely for the benefit of the Grantor and Grantee.

This Receiver's Deed is executed pursuant to that certain Asset Purchase Agreement between Grantor and Grantee dated as of [\_\_\_\_\_] [\_\_\_\_], 2017 (as amended, supplemented, or otherwise modified from time to time, the "**Purchase Agreement**"), and subject to the terms and scope of the Receivership Order and the Sale Approval Order described in the Purchase Agreement, all of which Grantee has had full and free opportunity to review with legal counsel of its own choosing.

*[signature pages to follow]*



[GRANTOR'S SIGNATURE PAGE TO RECEIVER'S DEED]

GRANTOR:

**DEREK A. PIERCE**, ACTING SOLELY IN HIS  
CAPACITY AS COURT-APPOINTED  
RECEIVER

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

STATE OF TENNESSEE    )  
  )  
COUNTY OF DAVIDSON    )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that **DEREK A. PIERCE**, acting in his capacity as court-appointed receiver for the Subject Property described in this instrument, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as receiver and with full authority, executed the same voluntarily for and as the act of the receiver, as aforesaid.

Given under my hand and official seal this the \_\_\_\_ day of \_\_\_\_\_, 2017.

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

[GRANTEE'S SIGNATURE PAGE TO RECEIVER'S DEED]

GRANTEE:

[insert grantee]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of [\_\_\_\_], a [\_\_\_\_], is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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

EXHIBIT A TO RECEIVER'S DEED  
(Description of Subject Property)

Lots 17, 18, 19, 20, 21, 21, 23, 24, 25, and 26, Block 10, according to the Map of Huntingdon Heights, a the same appears of record in the Office of the Judge of Probate of Montgomery County, Alabama, in Plat Book 7, at Page 57, as corrected by Plat recorded in Plat Book 9, at Page 1, in said Probate Office.

EXHIBIT B TO RECEIVER'S DEED  
(Additional Permitted Encumbrances)

**[To be inserted in accordance with Section 5.01(b)(ii)]**

**EXHIBIT D**  
**ASSIGNMENT OF INTANGIBLES**

**ASSIGNMENT OF INTANGIBLE PROPERTY**  
**AND OTHER RIGHTS**

FOR VALUE RECEIVED, Derek A. Pierce, acting solely in his capacity as Court-Appointed Receiver ("Borrower") ("Assignor"), hereby conveys, assigns, transfers, and sets over onto \_\_\_\_\_, a \_\_\_\_\_ ("Assignee"), all of Assignor's and Borrower's right, title and interest in the Books and Records, Contact Information and the Intangible Property. All capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in that certain Asset Purchase Agreement dated as of \_\_\_\_\_, \_\_\_\_\_, 2017, by and between Assignor and \_\_\_\_\_ ("\_\_\_\_\_"), and assigned by \_\_\_\_\_ to Assignee.

This Assignment of Intangible Property and Other Rights, (this "Assignment") shall be binding upon and shall inure to the benefit of Assignor, Assignee and their respective successors and assigns.

IN WITNESS WHEREOF, Assignor has executed this Assignment on this \_\_\_\_ day of \_\_\_\_\_, 2017, and shall be effective as of said date.

Derek A. Pierce, acting solely in its capacity  
as Court-Appointed Receiver

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

Its: \_\_\_\_\_

**EXHIBIT E**  
**ASSIGNMENT OF LEASES AND CONTRACTS**

**ASSIGNMENT OF LEASES AND CONTRACTS**

Derek A. Pierce, acting, solely in his capacity as court-appointed receiver (the "Borrower") ("Assignor"), in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS in hand paid and other good and valuable consideration, the receipt of which is hereby acknowledged, hereby assigns, transfers, sets over and conveys to \_\_\_\_\_, a(n) \_\_\_\_\_ ("Assignee"), all of Assignor's and Borrower's right, title and interest in and to: (i) those leases and guarantees thereof set forth on **Exhibit A** attached hereto and made a part hereof (collectively, "Leases"), together with any security deposits tendered to Assignor under the Leases, and (ii) those service contracts and other agreements listed on **Exhibit B** attached hereto and made a part hereof, including, but not limited to, the Resident Agreements (collectively, "Contracts"), all pertaining to the real property and improvements thereon commonly known as Manor House at Waterford Place.

Assignor represents and warrants to Assignee that:

- (a) Borrower is the sole owner of: (i) all of the landlord's right, title and interest in and to the Leases, and (ii) all of the owner's right, title and interest in and to the Contracts; and
- (b) No part of the rents reserved in the Leases have been previously assigned and no part of such rents, for any period subsequent to the date hereof, has been collected in advance of the due date thereof.

All capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in that certain Asset Purchase Agreement dated as of August \_\_, 2017 by and between Assignor and \_\_\_\_\_.

Assignee accepts the foregoing assignment and assumes and agrees to be bound by and to perform all of the obligations, covenants, terms and conditions to be performed under the Leases and Contracts to the extent arising on or after the date hereof.

This Assignment of Leases and Contracts (this "Assignment") shall be binding upon and inure to the benefit of Assignor, Assignee and their respective successors and assigns.

This Assignment may be executed in two or more counterpart copies, all of which counterparts shall have the same force and effect as if all parties hereto had executed a single copy of this Assignment. For purposes of this Assignment, any signature transmitted by facsimile or e-mail shall be considered to have the same legal and binding effect as any original signature.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;

SIGNATURES PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties have caused this Assignment to be executed as of the date first written above.

**ASSIGNOR:**

DEREK A. PIERCE, ACTING SOLELY IN HIS  
CAPACITY AS COURT-APPOINTED  
RECEIVER

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

Name: Derek A. Pierce

**ASSIGNEE:**

[NAME],a(n)

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**EXHIBIT A**  
**[TO EXHIBIT E - ASSIGNMENT OF LEASES AND CONTRACTS]**

**Leases and Guarantees**

1. Phase II Dishmachine Lease Agreement, dated 9/16/16, by and between Ecolab, Inc. and Manor House Waterford PL, LLC for dishmachine equipment.

**EXHIBIT B**  
**[TO EXHIBIT E - ASSIGNMENT OF LEASES AND CONTRACTS]**

**Contracts and Other Agreements**

[Insert any]

**EXHIBIT F**  
**ESCROW AGREEMENT**



# Fidelity National Title

## ESCROW AGREEMENT AS TO EARNEST MONEY DEPOSIT

File No. \_\_\_\_\_

WHEREAS, \_\_\_\_\_, the Seller, hereto by Agreement dated the 19 day of December, 2017 has agreed to sell to Agomark Acquisition LLC, the Purchaser, the premises for the consideration therein stated, a copy of which Agreement is made a part hereof.

AND the parties have requested FIDELITY NATIONAL TITLE INSURANCE COMPANY ("Company") to receive the earnest money deposit and any extension or other fees as defined in the Agreement to be held in escrow by Company in a federally insured banking or savings institution money market account and to be applied at settlement in accordance with the agreement.

IT IS UNDERSTOOD and agreed that Company is acting as a stakeholder only, is merely responsible for the safekeeping of the funds, and shall not be required to determine questions of fact or law. Should the Agreement, in accordance with the terms thereof, be cancelled and terminated, and the liabilities of the parties thereto ended, Company shall return the funds upon written instructions received from all parties hereto. In the event of a dispute, Company is authorized to pay the funds into court.

In the event that costs or expenses are incurred by the Company because of litigation or otherwise, arising out of the holding of the funds, the Company shall be entitled to reimburse itself out of the funds for any reasonable costs and expenses. The Company assumes no liability for interest on the funds held.

THIS AGREEMENT, and the General Conditions of Escrow attached hereto, constitutes the entire agreement between Fidelity National Title Insurance Company and all parties hereto concerning the funds. Effective as of this 19 day of December, 2017.

\_\_\_\_\_  
(Seller)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Tax ID #)

**Fidelity National Title Insurance Company**

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

Its: \_\_\_\_\_

4849-2535-9960.5

By: [Signature]  
(Purchaser)

CHARLES R. TREFZGER, Jr.  
(Print Name)

20-3435427  
(Tax ID #)

ESCROW AGREEMENT AS TO EARNEST MONEY DEPOSIT

File No. \_\_\_\_\_

Page 2

**General Conditions of Escrow**

Except as specifically modified by the written settlement instruction executed by all parties and accepted by the Escrow Agent, these General Conditions of Escrow shall apply to this escrow or settlement, and the property received hereunder.

1. Escrow Agent: Fidelity National Title Insurance Company is herein referred to as Escrow Agent.
2. Deposit of Funds: All checks, money orders or drafts will be processed for collection in the normal course of business. Escrow Agent may commingle funds received by it in escrow with escrow funds of others, and may, without limitation, deposit such funds in its custodial or escrow accounts with any reputable trust company, bank, savings bank, savings association, or other financial services entity, including any affiliate of Escrow Agent. It is understood that Escrow Agent shall be under no obligation to invest the funds deposited with it on behalf of any depositor, nor shall it be accountable for any earnings or incidental benefit attributable to the funds which may be received by Escrow Agent while it holds such funds. Deposits held by Escrow Agent shall be subject to the provisions of applicable state statutes affecting unclaimed property.
3. Limitations of Liability: Without limitation, Escrow Agent shall not be liable for any loss or damage resulting from the following (Note that this paragraph shall not be construed to limit Escrow Agent's liability for its own gross negligence or willful misconduct):
  - a. The effect of the transaction underlying this escrow or of any element of that transaction, including without limitation, any defect in the real estate or other property that is the subject of that transaction, any failure or delay in the surrender of possession of the property, the rights or obligations of any party in possession of the property, the financial status or insolvency of any other party, and any misrepresentations made by any other party.
  - b. Any legal effect, insufficiency, or undesirability of any instrument deposited with or delivered by Escrow Agent or exchanged by the parties hereunder, whether or not Escrow Agent prepared such instrument.
  - c. The default, error, action or omission of any other party to the escrow.
  - d. Any loss or impairment of funds that have been deposited in escrow while those funds are in the course of collection or while those funds are on deposit in a financial institution if such loss or impairment results from the failure, insolvency or suspension of a financial institution.
  - e. Any defects or conditions of title to any property that is the subject of this escrow, provided however that this limitation of liability does not limit or affect the liability of Fidelity National Title Insurance Company under any title insurance policy which it has issued or may issue and that no title insurance liability is created by this agreement.
  - f. The expiration of any time limit or other consequences of delay, unless a properly executed settlement instruction, accepted by Escrow Agent has instructed the Escrow Agent to comply with said time limit.
  - g. Escrow Agent's compliance with any legal process, subpoena, writs, orders, judgments and decrees of any court whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed.
4. Default, Non-Performance and Disputes: In the event any party to the transaction which is the subject matter of this escrow shall tender any performance after the time when such performance was due, Escrow Agent may nevertheless proceed with its function under this escrow, including without limitation the delivery of documents and the disbursement of funds unless one of the parties to this escrow shall give to the Escrow Agent a written direction to stop the further performance of the Escrow Agent's functions hereunder. Except as otherwise provided herein, the event of written notice of default, non-performance or dispute is given to the Escrow Agent by any party, Escrow Agent will promptly notify all other parties of such notice. Thereafter, Escrow Agent is entitled to decline to disburse funds or to deliver any instrument or otherwise continue to perform its escrow functions, except on receipt of a mutual agreement of the parties in writing or upon an appropriate order of court.
5. Indemnification: The Seller and the Purchaser shall jointly and severally indemnify, defend (with counsel acceptable to the Escrow Agent) and save harmless the Escrow Agent from and against all loss, cost, claim, liability,

damage and expense, including reasonable attorneys' fees and disbursements incurred in connection with the

ESCROW AGREEMENT AS TO EARNEST MONEY DEPOSIT

File No. \_\_\_\_\_

Page 3

**General Conditions of Escrow, continued**

performance of the Escrow Agent's duties hereunder, except with respect to actions or omissions taken or suffered by the Escrow Agent in bad faith, in willful disregard of this Escrow Agreement, or involving gross negligence on the part of the Escrow Agent (the "Indemnified Matters"). As between the Seller and the Purchaser, the cost of such Indemnified Matters shall be shared equally, except to the extent that such Indemnified Matters are attributable to the breach by the Seller or the Purchaser of the Agreement or this Escrow Agreement, in which event the cost shall be borne by whichever of the Seller or the Purchaser is the breaching party.

6. Escrow Fees, Charges, Other Expenses and Additional Required Funds: Escrow Agent shall charge for its service hereunder in accordance with its current regular schedule of fees (which includes annual maintenance fees) unless otherwise provided. Unless otherwise directed such fees shall be charged to the buyer and seller equally. All fees, charges and expenses are due and payable on or before the settlement date hereof, and such amounts may be retained by Escrow Agent out of any funds held in escrow due to the party from whom such amounts are due and owing. Additional amounts, which may become due for any reason shall be promptly paid to Escrow Agent by the party owing such amounts. Escrow Agent shall not be required to advance its own funds for any purpose, provided, that any such advance made at its option shall be promptly reimbursed by the party for whom it is advanced, and such optional advance shall not be an admission of liability on the part of Escrow Agent.

7. These conditions of escrow shall apply to and be for the benefit of agents of the Escrow Agent employed by it for services in connection with this escrow.

8. Attorney Fees: In the event that litigation is initiated relating to this escrow, the parties hereto agree that Escrow Agent shall be held harmless from any attorney's fees, court costs and expenses relating to that litigation to the extent that litigation does not arise as a result of the Escrow Agent's fault. To that end, the parties hereto agree to indemnify Escrow Agent from all such attorneys' fees, court costs and expenses. To the extent that Escrow Agent holds a fund under the terms of this escrow, the parties agree that the Escrow Agent may charge that fund with any such attorneys' fees, court costs, and expenses as they are incurred by Escrow Agent.

**EXHIBIT G**  
**BIDDING PROCEDURES**



**WALLER LANSDEN DORTCH & DAVIS, LLP**

Blake D. Roth

Ryan K. Cochran (admitted *pro hac vice*)

511 Union Street, Suite 2700

Nashville, Tennessee 37219

Telephone: 615.244.6380

Email: blake.roth@wallerlaw.com

ryan.cochran@wallerlaw.com

*Counsel for the Receiver*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**DWAYNE EDWARDS; TODD BARKER;  
SENIOR SOLUTIONS OF SOCIAL  
CIRCLE, LLC; OXTON PLACE OF  
DOUGLAS, LLC, d/b/a OXTON REAL  
ESTATE OF DOUGLAS, LLC; ROME  
ALF, LLC; SAVANNAH ALF, LLC;  
GAINESVILLE ALF, LLC; WATERFORD  
PLACE ALF, LLC; MONTGOMERY ALF,  
LLC; COLUMBUS ALF, LLC; and  
OPELIKA ALF, LLC,**

**Defendants,**

**-and-**

**OXTON SENIOR LIVING, LLC; MANOR  
HOUSE SENIOR LIVING, LLC; SUSAN  
EDWARDS, a/k/a SUSAN ROGERS;  
SHARON NUNAMAKER, a/k/a SHARON  
HADDEN; and SDH DESIGN, LLC,**

**Relief Defendants.**

**Case No. 2:17-cv-393-ES-SCM**

**BIDDING PROCEDURES**

**WATERFORD PLACE ALF, LLC d/b/a  
MANOR HOUSE OF WATERFORD  
PLACE**

**I. Notice of Public Auction**

The Receiver shall publish a Notice of Receiver Sale with the *Montgomery Independent* once a week for at least four (4) weeks prior to the proposed Auction. The Receiver shall also contact and provide a copy of the Notice of Receiver Sale to all of the persons or entities that the Receiver has identified as (a) having an interest in the Proposed Purchased Assets or (b) potentially interested in acquiring the Proposed Purchased Assets. In addition, within two (2) business days following entry of the Bidding Procedures Order, the Receiver will cause the Indenture Trustee to publish the Bidding Procedures Order at EMMA (the Electronic Municipal Market Access).

**a. Access to Diligence Materials**

To participate in the bidding process and to receive access to due diligence (the “*Diligence Materials*”), a party (other than the Proposed Stalking Horse) must submit to the Receiver and executed confidentiality and non-disclosure agreement in form and substance satisfactory to the Receiver and evidence demonstrating the party’s financial and regulatory capability with respect to an Alternative Transaction, as determined by the Receiver. For the avoidance of doubt, no confidentiality and non-disclosure agreement shall preclude the Receiver from providing the Indenture Trustee with information regarding any party to the process.

The Receiver has established an electronic data room to provide all interested parties with access to Diligence Materials. A party (other than the Proposed Stalking Horse) who qualifies for access to Diligence Materials shall be a “*Preliminary Interested Party*.” All due diligence requests must be directed to the Receiver’s counsel, c/o Blake D. Roth, Waller, Lansden, Dortch & Davis, LLP, 511 Union Street, Suite 2700, Nashville, Tennessee 37219, 615.244.6804 (facsimile), blake.roth@wallerlaw.com.

**b. Due Diligence From Bidders**

Each Preliminary Interested Party and Qualified Bidder (as defined below) shall comply with all reasonable requests for additional information and due diligence access by the Receiver or its advisors regarding such Bidder (as defined below) and its contemplated transaction. Failure by a Preliminary Interested Party to comply with such reasonable requests for additional information and due diligence access may be a basis for the Receiver to determine that such Preliminary Interested Party is not a Qualified Bidder. Failure by a Qualified Bidder (other than the Proposed Stalking Horse) to comply with requests for additional information and due diligence access may be a basis for the Receiver to determine that a bid made by such Qualified Bidder is not a Qualified Bid. All Bidders must complete their due diligence by no later than **February 2, 2018 at 5:00 p.m. (prevailing Eastern time).**<sup>2</sup>

---

<sup>2</sup> This due diligence deadline is applicable solely to potential bidders other than the Proposed Stalking Horse. The Proposed Stalking Horse’s due diligence period is governed solely by the Waterford Place APA.

**c. Auction Qualification Process**

To be eligible to participate in the Auction (as defined below), each offer, solicitation, or proposal (each, a “*Bid*”), and each party submitting such a Bid (each, a “*Bidder*”) must be determined by the Receiver to satisfy each of the conditions set forth below. A Bid will not be considered qualified for the Auction if such Bid does not satisfy each of the following conditions:

(a). Good Faith Deposit. Each Bid must be accompanied by a deposit of cash in the amount of \$147,000 (the “*Good Faith Deposit*”)<sup>3</sup> to the account of Waller, Lansden, Dortch & Davis, LLP, attorneys for the Receiver (the “*Escrow Account*”), pursuant to wire instructions to be provided upon request.

(b). Identification of Bidder and Proposed Transaction. The Bid must: (i) fully disclose the Bidder’s identity and the identity of the entity(ies), if any, which shall be directly or indirectly acquiring a portion of the Proposed Purchased Assets under or in connection with the Bid, as well as any such party’s (ies’) relationship(s) with the Receiver, any other Bidder, and any other party to this lawsuit; and (ii) state with specificity the Proposed Purchased Assets to be acquired and the liabilities the Bidder intends to assume.

(c). Same or Better Terms. Each Bid must be on terms that, in the Receiver’s business judgment, after consultation with its financial and legal advisors, are the same or better than the terms of the Proposed Stalking Horse’s Initial Bid (as defined in the Waterford Place APA) taken as a whole.

(d). Executed Agreement. Each Bid must be based on the Waterford Place APA and must include executed transaction documents, signed by an authorized representative of such Bidder, pursuant to which the Bidder proposes to effect an Alternative Transaction (the “*Modified Asset Purchase Agreement*”). A Bid shall also include a copy of the Asset Purchase Agreement marked against the Modified Asset Purchase Agreement to show all changes requested by the Bidder, including those related to purchase price and to remove all provisions that apply only to the Proposed Stalking Horse (e.g., the Bid Protections (as defined below)).

(e). Bids for Portions of the Proposed Purchased Assets. A Bid must offer to purchase all or a portion of substantially all of the Proposed Purchased Assets; provided, however, that if the Bid is for a portion of the Proposed Purchased Assets, the Receiver must be able to combine such Bid with another Bid or combination of other Bids for a portion of the Proposed Purchased Assets such that the combination of such Bids results in a combination of binding offers to purchase all of the Proposed Purchased Assets.

(f). Corporate Authority. A Bid must include written evidence reasonably acceptable to the Receiver demonstrating appropriate corporate authorization to consummate the proposed Alternative Transaction; provided, however, that, if the Bidder is an entity specially formed for the purpose of effectuating the Alternative Transaction,

---

<sup>3</sup> The amount of the Proposed Stalking Horse’s deposit is set out in the Waterford Place APA.

then the Bidder must furnish written evidence reasonably acceptable to the Receiver of the approval of the Alternative Transaction by the equity holder(s) of such Bidder.

(g). Proof of Financial Ability to Perform. A Bid must include written evidence that the Receiver concludes, in consultation with its advisors, demonstrates that the Bidder has the necessary financial ability or has received funding commitments (or has cash) sufficient in the aggregate to timely finance and consummate the Alternative Transaction contemplated, including proof of the Good Faith Deposit in cash and one or more of: (i) evidence of sufficient cash to consummate the Alternative Transaction; (ii) an unconditional lending commitment from a recognized banking institution in the amount of any cash portion of the purchase price of such Bid; (iii) the posting of an unconditional, irrevocable letter of credit from a recognized banking institution issued in favor of the Receiver in the amount of any cash portion of the purchase price of such Bid; or (iv) a guarantee from another person or entity in favor of the Receiver in the amount of any cash portion of the purchase price of such Bid (with such person or entity providing written evidence of its financial wherewithal reasonably acceptable to the Receiver). In addition, the Bid must include the following financial information on the Bidder:

- i. Contact names and numbers of financing sources;
- ii. The Bidder's current financial statements (audited if they exist) or other similar financial information reasonably acceptable to the Receiver; and
- iii. Any such other form of financial disclosure or credit-quality support information or enhancement reasonable acceptable to the Receiver demonstrating that such Bidder has the ability to timely close the Alternative Transaction.

(h). Proof of Regulatory Ability to Perform. A Bid must include evidence that the Receiver concludes, in consultation with its advisors, demonstrates that the Bidder has the ability to obtain all necessary regulatory approvals to timely consummate the Alternative Transaction.

(i). Contingencies. Each Bid (i) may not contain representations and warranties, covenants, or termination rights more onerous than those set forth in the Waterford Place APA (when considering all such provisions as a whole) and (ii) may not be conditioned on financing or due diligence contingencies of any kind or any other conditions precedent to such Bidder's obligation to purchase the Acquired Assets subject to such Bid other than as may be included in the Waterford Place APA.

(j). Participation in More Than One Auction. Any Bidder or Proposed Stalking Horse may submit a Bid and be declared a Qualified Bidder with a Qualified Bid for any number of auctions to be conducted by the Receiver whether the auction be conducted separately or simultaneously.

(k). Bid Deadline. Any competing Bid must be submitted in writing to the Receiver's counsel, c/o Blake D. Roth, Waller Lansden Dortch & Davis, LLP, 511 Union

Street, Suite 2700, Nashville, Tennessee 37219, 615.244.6804 (facsimile), blake.roth@wallerlaw.com, so as to be actually received no later than **February 7, 2018, at 5:00 p.m. (prevailing Eastern time)** (the “***Bid Deadline***”).

A Bid (or combination of Bids) that is actually received from a Bidder before the Bid Deadline and which meets the above requirements for the Proposed Purchased Assets shall collectively constitute a “***Qualified Bid***” for the Proposed Purchased Assets, and such Bidder (or combination of Bidders) shall constitute a “***Qualified Bidder***” for the Proposed Purchased Assets. The Receiver shall not consider any Bids received after the Bid Deadline. Notwithstanding anything in these Bidding Procedures to the contrary, the Waterford Place APA submitted by the Proposed Stalking Horse shall be deemed a Qualified Bid, and the Proposed Stalking Horse shall be deemed a Qualified Bidder.

As soon as reasonably practicable after the Bid Deadline, the Receiver shall notify each Bidder if they have or have not been selected as a Qualified Bidder. In addition, each Qualified Bidder (including the Proposed Stalking Horse) will receive notice from the Receiver of all Qualified Bidders.

**d. AUCTION**

If one or more Qualified Bids for the Proposed Purchased Assets (other than the Waterford Place APA submitted by the Proposed Stalking Horse) are received by the Bid Deadline, the Receiver will conduct an auction (the “***Auction***”) to determine the highest or otherwise best Qualified Bid for the Proposed Purchased Assets. This determination shall take into account any factors the Receiver reasonably deems relevant to the value of the Qualified Bid to the Receivership Estate and may include, among other things: (a) the number, type, and nature of any changes to the Waterford Place APA requested by the Bidder; (b) the extent to which modifications are likely to delay closing of the sale of the Proposed Purchased Assets and the cost to the Receivership Estate of such modifications or delay; (c) the total consideration to be received by the Receivership Estate; (d) the likelihood of the Bidder’s ability to close a transaction and the timing of such closing; and (e) the net benefit to the Receivership Estate, taking into account the Proposed Stalking Horse’s rights under these Bidding Procedures and the Waterford Place APA. Only parties that the Receiver determines in accordance with these Bidding Procedures are Qualified Bidders may participate in the Auction. If the Proposed Stalking Horse is the only Qualified Bidder, the Receiver may, but is not required to, still conduct the Auction with the Proposed Stalking Horse as the only Qualified Bidder; provided, that, if the Receiver determines to not conduct the Auction, the Receiver shall still be authorized to determine that the Proposed Stalking Horse is the Successful Bidder.

**e. PROCEDURES FOR THE AUCTION**

The Auction shall be conducted on **February 15, 2018 at 10:00 a.m. (prevailing Eastern time)** at the United States District Court for the District of New Jersey (Newark) located at 50 Walnut Street, Newark, New Jersey 07101 (the “***Courthouse***”). If more than one Qualified Bidder appears at the Auction, the Auction may be adjourned to a nearby location at the discretion of the Receiver; provided, that, upon determining the highest or otherwise best

Qualified Bid for the Proposed Purchased Assets, the Auction shall be adjourned and thereafter, concluded at the Courthouse.

Only the Receiver, the Proposed Stalking Horse, any other Qualified Bidder, the Indenture Trustee, any parties to the civil action in which the Receiver is appointed, and their respective representatives and advisors (collectively, the "*Permitted Attendees*") shall be permitted to participate in the Auction, and shall do so only in person. Only the Proposed Stalking Horse and such other Qualified Bidders will be entitled to make any Bids at the Auction.

**I. The Receiver shall conduct the Auction.**

The Receiver and its advisors shall direct and preside over the Auction. Subject to its compliance with these Bidding Procedures, the Receiver may conduct the Auction in the manner the Receiver determines will result in the highest, best, or otherwise superior offer for any or all of the Proposed Purchased Assets. At the start of the Auction, the Receiver shall describe the terms of the highest or otherwise best Qualified Bid or Qualified Bids received prior to the Bid Deadline (each such highest or otherwise best Qualified Bid, the "*Baseline Bid*"). The Receiver shall advise each Qualified Bidder (including the Proposed Stalking Horse) regarding which such Qualified Bid shall be the Baseline Bid as soon as reasonably practicable prior to the commencement of the Auction. Each Qualified Bidder participating in the Auction must confirm that it (a) has not engaged in any collusion with respect to the bidding or sale of any of the Proposed Purchased Assets and (b) has reviewed, understands, and accepts the Bidding Procedures.

The Receiver may sequester participating Qualified Bidders and other Permitted Attendees in separate rooms and meet and negotiate individually with each such Qualified Bidder to obtain the highest and best offer for the Proposed Purchased Assets. In such event, the Receiver may periodically convene a meeting of all participating Qualified Bidders and Permitted Attendees to discuss the status of the Bids, and the Auction shall not be terminated until all participating Qualified Bidders have been advised of the highest and best Bid and given an opportunity to make a higher or better Bid.

**f. Overbids.**

An "*Overbid*" is any Bid made at the Auction subsequent to the Receiver's announcement of the Baseline Bid. To submit an Overbid for purposes of the Auction, a Bidder must comply with the following conditions:

- (a). Minimum Overbid Increments. If the Baseline Bid is the Proposed Stalking Horse's Bid, the initial Overbid shall exceed the Baseline Bid by \$200,000 (the "*Initial Overbid*"). Any successive Bid (or the Initial Overbid if the Baseline Bid is not the Proposed Stalking Horse's Bid) shall be made in increments valued at not less than \$50,000. Additional consideration in excess of the amount set forth in the respective Baseline Bid may include cash or non-cash consideration.
- (b). Bids. All Qualified Bidders attending the Auction (including the Proposed Stalking Horse) shall be permitted to bid at the Auction. For the avoidance of

doubt, the Proposed Stalking Horse shall be permitted to include the full amount of the Bid Protections in each bid by the Proposed Stalking Horse for the purposes of comparison to any Overbid in connection with each round of bidding at the Auction.

- (c). Remaining Terms Unchanged. An Overbid at the Auction must comply with the conditions for a Qualified Bid set forth in these Bidding Procedures; provided, however, the Bid Deadline shall not apply. Any Overbid must remain open and binding on the Bidder until and unless the Receiver accepts a higher or otherwise better Overbid.

To the extent not previously provided, a Bidder submitting an Overbid at any Auction must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit quality support information or enhancement reasonable acceptable to the Receiver) demonstrating such Bidder's ability to close the Alternative Transaction contemplated by such Overbid.

- (d). Announcement of Overbids. The Receiver shall announce at the Auction the material terms of each Overbid and the basis for calculating the total consideration offered in each such Overbid.

**g. Closing the Auction.**

The Auction shall continue until there is only one Qualified Bid for the Proposed Purchased Assets (or combination of Qualified Bids that, in total, encompass all of the Proposed Purchased Assets) that the Receiver determines in its reasonable business judgment, after consultation with its advisors, produces the highest or otherwise best Qualified Bid (such Qualified Bid, the "*Successful Bid*" and such Bidder, the "*Successful Bidder*").

The Successful Bidder shall submit fully executed sale and transaction documents memorializing the terms of the Successful Bid prior to the conclusion of the Auction.

Promptly following the conclusion of the Auction, the Receiver shall announce the Successful Bidder and Successful Bid and shall file with the court notice of the Successful Bidder and Successful Bid. The Receiver shall not consider any Bids or Overbids after the conclusion of the Auction.

**h. Backup Bidder.**

Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the Bidder or Bidders with the next highest or otherwise best Bid or Overbid or combination of Bids or Overbids at the Auction, as determined by the Receiver in the exercise of its reasonable business judgment, after consultation with its advisors, will be designated as the backup bidder (the "*Backup Bidder*"). In the event that a Bidder or Bidders are identified by the Receiver as the Backup Bidder, such Bidder or Bidders shall be required to serve as the Backup Bidder. The Backup Bidder shall be required to keep its last Bid or Overbid (or combination of Bids or Overbids) (the "*Backup Bid*") open and irrevocable until the earlier of 5:00 p.m.

(prevailing Eastern time) on the date that is sixty (60) days after the date of the Auction (the “*Outside Backup Date*”) and the closing of the transaction with the Successful Bidder.

**i. SALE HEARING**

The Successful Bid will be subject to court approval. The hearing to approve the sale of the Proposed Purchased Assets in accordance with these Bidding Procedures is scheduled to take place at the Courthouse on **February 16, 2018 at 10:00 a.m. (prevailing Eastern time)** (the “*Sale Hearing*”) (the “*Sale Hearing*”). The Sale Hearing may be adjourned from time to time without further notice to parties in interest other than by announcement of the adjournment in open court on the date scheduled for such Sale Hearing or a notice filed with the court, as applicable; provided, however, that if the Proposed Stalking Horse is the Successful Bidder, the Sale Hearing shall not be adjourned without the express written consent of the Proposed Stalking Horse and Indenture Trustee.

Following the Sale Hearing, if the Successful Bidder fails to consummate its transaction, the Receiver may designate the Backup Bidder to be the new Successful Bidder, in which case the Backup Bidder will be deemed the Successful Bidder and the Receiver will be authorized, but not required, to consummate the transaction or transactions with the Backup Bidder as the new Successful Bidder without further order of the court. In such case, the defaulting Successful Bidder’s Good Faith Deposit shall be forfeited to the Receiver and the Receiver specifically reserves the right to seek all additional available damages from the defaulting Successful Bidder. The Good Faith Deposit of the Backup Bidder shall be held by the Receiver until the earlier of Seventy-Two (72) hours after (i) closing of the transaction or transactions with the Successful Bidder (if not the Backup Bidder) and the Outside Backup Date.

**I. Additional Procedures.**

The Receiver reserves its rights, in the exercise of its obligations, to modify the Bidding Procedures or impose, at or prior to the Auction, different or additional terms and conditions on the sale subject to the Bidding Procedures; provided, however, that such rules are not inconsistent in any material respect with the Bidding Procedures or the Waterford Place APA.

**j. Consent to Jurisdiction as Condition to Bidding.**

The Stalking Horse Purchaser and all other Qualified Bidders at the Auction shall be deemed to have (a) consented to the jurisdiction of the court presiding over this matter to enter an order or orders, which shall be binding in all respects, in any way related to the Receiver, the Receivership Estate, the Bidding Procedures, the Waterford Place APA, the Proposed Purchased Assets, the Auction, or the construction and enforcement of any Qualified Bid or related documents and (b) waived any right to a jury trial in connection with any disputes relating to the foregoing.

**k. BID PROTECTIONS**

Pursuant to the Bidding Procedures Order, the Proposed Stalking Horse is entitled to the Bid Protections in accordance with the terms of the Waterford Place APA and the Bidding Procedures Order. Pursuant to the Bidding Procedures Order, except for the Proposed Stalking



Horse, no other party submitting an offer, Bid, Qualified Bid, or Overbid shall be entitled to any expense reimbursement or breakup, termination, or similar fee, unless the Receiver and the Proposed Stalking Horse (in each of their sole discretion) expressly agree otherwise in writing, and by submitting an offer, Bid, Qualified Bid, or Overbid, a Bidder (other than the Proposed Stalking Horse) shall be deemed to waive any right with respect to same.

**I. RETURN OF GOOD FAITH DEPOSITS**

The Good Faith Deposits of All Qualified Bidders shall be held in the Escrow Account, but shall not become property of the Receivership Estate absent further order of the court, except as expressly set forth in these Bidding Procedures. The Good Faith Deposit of any Qualified Bidder that is neither a Successful Bidder nor a Backup Bidder shall be returned to such Qualified Bidder not later than five (5) business days after the Sale Hearing. The Good Faith Deposit of the Backup Bidder, if any, shall be returned as set forth above. If a Successful Bidder timely closes the transaction(s) contemplated by its Successful Bid, the Successful Bidder's Good Faith Deposit shall be credited towards its purchase price.

**EXHIBIT H**  
**RELEASE AND DISCHARGE OF LAND USE RESTRICTION AGREEMENT**

This Instrument Prepared By:

Ryan K. Cochran

Waller Lansden Dortch & Davis, LLP

511 Union Street, Suite 2700

Nashville, Tennessee 37219

(615) 244-6380

When Recorded Return To:

[Purchaser or Purchaser's Counsel]

[Purchaser or Purchaser's Counsel Street Address]

[Purchaser or Purchaser's Counsel City, State]

Attention: [Purchaser or Purchaser's Counsel]

### **RELEASE AND DISCHARGE OF LAND USE RESTRICTION AGREEMENT**

This RELEASE AND DISCHARGE OF LAND USE RESTRICTION AGREEMENT (the "Release") is made effective as of \_\_\_\_\_, 2017 (the "Effective Date") by and among BOKF, N.A. d/b/a Bank of Oklahoma (the "Trustee"), and Derek A. Pierce, acting solely in his capacity as court-appointed receiver (the "Receiver").

### **RECITALS**

A. The Medical Clinic Board of Montgomery - 1976 East (the "*Issuer*") issued \$9,050,000 in aggregate principal amount of The Medical Clinic Board of the City of Montgomery -1976 East First Mortgage Revenue Bonds (Waterford Place ALF, LLC Project), Series 2015A (the "2015A Bonds") and \$700,000 in aggregate principal amount of The Medical Clinic Board of the City of Montgomery - 1976 East First Mortgage Revenue Bonds (Waterford Place ALF, LLC Project), Taxable Series 2015B (the "2015B Bonds," with the 2015A Bonds, the "Bonds"), pursuant to the terms of a Trust Indenture, dated as of May 1, 2015, between the Issuer and the Trustee for the purpose of, among other things, financing the acquisition and rehabilitation of a 32-unit assisted living facility (the "Facility"), which is located at 3920 Antoinette Drive, Montgomery, Alabama (the "Land" and together with the Facility, the "Project").

B. The Trustee and Waterford Place ALF, LLC, as Borrower (the "*Borrower*"), entered into a Land Use Restriction Agreement (the "LURA") for the Project, dated as of May 1, 2015, and recorded on \_\_\_\_\_, 2015, in the Probate Court of Montgomery County, Alabama as RLPY 04696 Pages 0340-0362.

C. On January 20, 2017, the Securities and Exchange Commission (the "*SEC*") filed a complaint in the United States District Court of New Jersey (the "*Court*"), commencing a case styled as Securities and Exchange Commission v. Dwayne Edwards, et al., case number 2:17-cv-393-ES-SCM (the "Receivership Proceeding"), in order to, among other things, seek the appointment of Derek A. Pierce as receiver for the Project.

D. On January 20, 2017 (the "Appointment Date"), the Court entered the Order Appointing Receiver (the "Receiver Order"), appointing Derek A. Pierce, as the Receiver.

E. On \_\_\_\_\_, 2017, the Receiver filed the Receiver's Motion for Order: (I) Authorizing and Approving Bidding Procedures for the Sale of Substantially All of the Assets of Waterford Place ALF, LLC; (II) Authorizing the Sale of Substantially All of the Assets of Waterford Place ALF, LLC Free and Clear of All Liens, Claims, Encumbrances, and Other Interests; (III) Approving Stalking Horse Purchaser, Break-up Fee, and Overbid Protections; (IV) Scheduling a Hearing to Approve the Sale of Substantially All Assets of Waterford Place ALF, LLC; and (V) Granting Related Relief (the "Bidding Procedures Motion"). On \_\_\_\_\_, 2017, the Court entered the Order: (I) Authorizing and Approving for Waterford Place ALF, LLC (A) Stalking Horse Purchaser, Bidding Procedures, and Bid Protections and (B) the Form and Manner of Notice of the Bidding Procedures and Sale Hearing; (II) Scheduling a Hearing to Consider the Sale of Substantially All Assets of Waterford Place ALF, LLC; and (III) Granting Related Relief (the "Bidding Procedures Order").

F. On \_\_\_\_\_, 2017, the Receiver auctioned the Project to the highest and best bidder. \_\_\_\_\_ was declared the successful bidder at the auction, and on \_\_\_\_\_, 2017, the Court entered the Order: (I) Authorizing, Approving, and Directing the Sale of Substantially All Assets of Waterford Place ALF, LLC to the Successful Bidder and Backup Bidder in Accordance With the Bidding Procedures Free and Clear of All Liens, Claims, Encumbrances, and Other Interests; (II) Authorizing and Approving the Waterford Place APA; (III) Approving the Receiver's Marketing and Sale Process; and (IV) Granting Related Relief (the "Sale Order").

G. On \_\_\_\_\_, the Receiver and \_\_\_\_\_ closed the sale of the Project (as set forth in the Asset Purchase Agreement).

H. As provided in Section 5.9 of the LURA, the requirements of the LURA automatically terminate in the event of involuntary noncompliance caused by foreclosure, transfer of title by deed in lieu of foreclosure, or similar event, but only if, within a reasonable period thereafter, either the Bonds are retired or amounts received as a consequence of such event are used to provide a project which meets the requirements of the Code and Regulations (as defined in the Regulatory Agreement).

I. The Receiver's sale of the Project (as set forth in the Asset Purchase Agreement) is an event of involuntary noncompliance as provided in Section 5.9 of the LURA.

H. Based on the foregoing, the Receiver has requested that the Trustee execute and record a release and discharge of the LURA.

#### **AGREEMENT**

NOW THEREFORE, in consideration of the above recitals and the mutual benefits contained herein, the receipt and sufficiency of which consideration are hereby acknowledged, the parties hereto agree as follows:

1. The LURA and the covenants set forth in the LURA are terminated as a matter of record.
2. The LURA is released and discharged.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Release to be effective as of the date first written above.

**TRUSTEE:**

BOKF, N.A. d/b/a Bank of Oklahoma, as indenture trustee

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss:

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_ of UMB Bank, NA, as indenture trustee, on behalf of BOKF, N.A. d/b/a Bank of Oklahoma, as indenture trustee.

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

My Commission Expires: \_\_\_\_\_

## RECEIVER:

DEREK A. PIERCE, ACTING SOLELY IN HIS CAPACITY AS COURT-APPOINTED  
RECEIVER

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

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, \_\_\_\_\_ of Healthcare Management Partners, LLC, on behalf of Healthcare Management Partners, LLC.

Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT I**  
**PERMITTED EXCEPTIONS**

[To be inserted in accordance with Section 5.01(b)(ii)]



**SCHEDULE 1.01**  
**PURCHASED ASSETS**

The Purchased Assets shall consist of:

(a). Real Property. The (i) real property described in Exhibit A to this Agreement (the “**Land**”), (ii) all of Borrower’s right, title and interest in all improvements and fixtures located on the Land, including, without limitation, all buildings and structures owned by Borrower presently located on the Land, all apparatus, equipment and appliances used in connection with the occupancy of the Land, such as heating, air conditioning, and lighting systems and other facilities used to provide any utility services, refrigeration, ventilation, garbage disposal, or other services on the Land (the “**Improvements**”), and (iii) all easements, interests, rights and privileges benefiting or appurtenant to the Land, including, but not limited to, all right, title and interest of Borrower in and to any land lying in the bed of any highway, street, road or avenue, existing or proposed, in front of or abutting or adjoining the Land and all right, title and interest of Borrower in and to any unpaid award for the taking by eminent domain of any part of the Land or the Improvements or for damage thereto by reason of a change of grade of any highway, street, road or avenue (the “**Appurtenances**” and together with the Land and Improvements, the “**Real Property**”);

(b). Personal Property. To the extent assignable, all of Borrower’s rights and interests in the following personal property now or hereafter in existence as of the Closing Date and owned by Borrower and used solely in the ownership, use, operation, occupancy, maintenance or development of the Real Property including but not limited to furniture, fixtures and equipment, usual and customary inventory for the continued operation of the Facility, resident and prospect lists, resident records and business records, originals or copies of all books, records and computer data including any and all computer operating systems in which such information may be stored, all licenses and permits to the extent transferable in accordance with applicable laws, resident trust accounts, resident security deposits and any other assets of any nature whatsoever that are related to or used in connection with the business of the Facility or the regulatory requirements of the Facilities (collectively, the “**Personal Property**”): (i) all reports, test results, environmental assessments, and surveys; (ii) all transferrable warranties and guaranties from manufacturers, contractors, subcontractors, suppliers and installers with respect to the Purchased Assets (“**Warranties**”); (iii) all trade names, trademarks, service marks, building and property names and building signs used in connection with the Real Property including facility specific domain names and uniform resource locators (URL’s), collateral materials, marketing and sales databases, so called “hot boards” and sales leads (the “**Tradenames**”); (iv) architectural drawings, plans and specifications and as-built drawings for the Purchased Assets; (v) any development rights; and (vi) all equipment and other tangible personal property now or hereafter located on or in the Real Property; and

(c). Contracts. To the extent assignable, all of Borrower’s rights and interest in any and all currently existing equipment leases, service, utility, supply, maintenance, and concession contracts, federal, state or private reimbursement agreements, and other continuing contractual obligations (but excluding insurance contracts, claims and policies) affecting the use, operation, maintenance, development and repair of the Purchased Assets which shall extend beyond the

Closing Date and which the Purchaser elects to assume in accordance with this Agreement (the "*Contracts*");

Provided, however, that for the avoidance of doubt, the foregoing shall not include the Excluded Assets, as defined in Schedule 1.02 of this Agreement.

**SCHEDULE 1.02**  
**EXCLUDED ASSETS**

1. Any and all claims and causes of action of the Receivership Entities and Receivership Estate, including, but not limited to, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, and the collection of debts. Any and all claims and causes of action relating to or arising out of the Bonds, Bond Documents, and issuance of the Bonds.

2. The Leased Personal Property described in Schedule 7.01(o).

3. Any and all cash, cash equivalents, bank accounts, deposit accounts, credits, prepaid expenses, deposits, deferred charges, advance payments, security deposits, prepaid items, funds, securities, investment accounts, accounts receivable, notes, notes receivable, mortgages, security interests, income, revenues derived from the Facility, insurance claims, insurance proceeds, other than amounts to be transferred to Purchaser in accordance with Section 15.09 of this Agreement.

**SCHEDULE 1.05**  
**ASSUMED LIABILITIES**

**SCHEDULE 1.09**  
**ANCILLARY PERMITS AND APPROVALS**

City of Montgomery Business license (No. 201712995)

CLIA Certificate of Waiver (No. 01D1001385)

Fire safety inspection permit

Food service permit

Local Business Occupational License Tax Permit

Certificate of Occupancy

Boiler Permit(s)

**SCHEDULE 7.01 (e)**

Sub-Management Agreement for Manor House of Waterford Place dated May 1, 2016, by and between Affinity Living Group, LLC and Manor House of Waterford Place, LLC, Article XVIII includes a right of first refusal of Manager, if there is a Third Party Offer (as defined therein), to purchase the Facility.

**Addendum I**

**License Surrender and Transfer Cooperation Agreement**

**Attached.**

## LICENSE SURRENDER AND TRANSFER COOPERATION AGREEMENT

**THIS LICENSE SURRENDER AND TRANSFER COOPERATION AGREEMENT** ("Agreement") is dated as of December 19, 2017, by and between Affinity Living Group, LLC ("License Holder") and Derek Pierce (the "Seller"), acting solely in his capacity as court-appointed receiver under that certain *Order Appointing Receiver* dated January 23, 2017 entered in a civil proceeding currently pending before the United States District Court for the District of New Jersey (the "Court") entitled *Securities and Exchange Commission v. Dwayne Edwards, et al.*, Case No. 17-00393 (the "Receivership Proceeding"). The foregoing parties, collectively, the "Parties" and each a "Party".

### RECITALS:

**A. Whereas**, Seller is or will become a party to an Asset Purchase Agreement (the "Purchase Agreement") whereby it agrees or will agree to sell, transfer and convey to a third-party purchaser substantially all of the assets used in connection with the operation of the assisted living facility known as Manor House at Waterford Place, which is located at 3920 Antoinette Drive, Montgomery, Alabama 36111 (the "Facility"), including without limitation the licenses, permits, and Certificate of Need ("CON") rights associated with such Facility, each to the extent transferrable or assignable, and contingent upon such purchaser being the successful bidder at a public auction (the "Approved Purchaser"), and the Court approving the sale to the Approved Purchaser by entry of a sale order (the "Sale Order");

**B. Whereas**, License Holder is currently managing the Facility and the current holder of the specialty care assisted living facility license for the Facility (the "License"), the License having been granted to the License Holder by the Alabama State Board of Health in 2016 after the License Holder assumed management of the Facility and prior to the commencement of the Receivership Proceeding;

**C. Whereas**, the License Holder or one of its affiliates may bid at the auction of the Facility, and may itself be determined to be the Approved Purchaser at the auction; and

**D. Whereas**, the Parties desire to enter into this Agreement to provide for the surrender of the License by License Holder and, to the extent that License Holder also holds any CON rights to the Facility, the CON for the specialty care assisted living facility beds to the Approved Purchaser upon the issuance of the Sale Order, and to acknowledge and agree to License Holder's cooperation with the Approved Purchaser to transfer License Holder's Facility licensure rights to Approved Purchaser by cooperating in the process by which such Approved Purchaser must obtain a new specialty care assisted living facility license from the Alabama Department of Public Health (the "New License").

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

**1. Surrender and Cooperation in Transfer.** If the License Holder or one its affiliates is not the Approved Purchaser, and the Court enters a Sale Order approving a purchaser other than the License Holder, then the License Holder irrevocably and unconditionally agrees to (i) surrender the License upon the issuance of the Sale Order, and to cooperate with the Approved Purchaser in the transfer of such licensure rights through the Alabama Department of Public Health process to obtain the New License for Approved Purchaser to operate the Facility as a specialty care assisted living facility and (ii) turn over to Seller any and all Facility information and records. To the extent that License Holder holds any CON rights to the Facility, License Holder irrevocably and unconditionally agrees to cooperate and assist the Approved Purchaser in obtaining approval from the Alabama State Health Planning & Development Agency ("SHPDA") to transfer



the CON rights to the Facility to the Approved Purchaser.

2. **Waiver of Right of First Refusal.** License Holder hereby irrevocably waives any right of first refusal granted to License Holder in that certain Sub-Management Agreement by and between License Holder and Manor House at Waterford Place, LLC, so long as the sale of the Facility is conducted pursuant bidding procedures approved by the Court.

3. **Representations and Warranties.** As an inducement to Purchaser to enter into the Purchase Agreement and to consummate the transactions contemplated thereby, License Holder represents and warrants as follows:

(a) **Organization; Qualification.** License Holder is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of North Carolina, is authorized to do business in the State of Alabama, and has full corporate power and authority to carry on its business as currently conducted and to hold the License for the Facility.

(b) **Authority and Validity.** License Holder has full power, authority and legal capacity to execute, deliver and perform his or its obligations under this Agreement. This Agreement has been duly executed and delivered by License Holder and does not require any further authorization or consent, and is the legal, valid and binding obligations of License Holder, enforceable against License Holder in accordance with its terms.

4. **Further Assurances.** If the License Holder or one its affiliates is not the Approved Purchaser, and the Court enters a Sale Order approving a purchaser other than the License Holder, License Holder agrees to take such additional actions and to execute, acknowledge and deliver any and all other acts, deeds, assignments, powers of attorney, instruments or other documents as may reasonably be required to effect the intent and purposes of this Agreement and the actions contemplated hereby.

5. **Amendment and Modification; Waiver.** This Agreement may be amended, modified and supplemented only by a written instrument authorized and executed by License Holder and Seller. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and executed by the party so waiving. The waiver by either party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other or subsequent breach.

6. **Governing Law; Waiver of Jury Trial.** This Agreement shall be governed by and construed in accordance with the Laws of the State of Alabama, without giving effect to any choice or conflict of Laws provision or rule that would cause the application of the Laws of any other jurisdiction. EACH OF THE PARTIES KNOWINGLY AND VOLUNTARILY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, ARISING OUT OF, OR RELATING TO THIS AGREEMENT OR THE ACTIONS CONTEMPLATED HEREBY.

7. **Severability.** In the event any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason and in any respect, such invalidity, illegality or unenforceability shall in no event affect, prejudice or disturb the validity of the remainder of this Agreement, which shall be and remain in full force and effect, enforceable in accordance with its terms.

8. **Divisions and Headings.** The division of this Agreement into sections and subsections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Agreement. The parties have participated jointly in the negotiation and drafting of this Agreement, and in the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties hereto and no presumption or burden of

proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

9. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or Portable Document Format (PDF) shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or PDF shall be deemed to be their original signatures for any purposes whatsoever.

**[Remainder of page intentionally left blank. Signature page follows.]**

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by such party or its authorized officer, all as of the date and year first above written.

**License Holder:**

Affinity Living Group, LLC

By: 

Name: Charles E. Trefzger, Jr.

Title: Manager

**Seller:**

\_\_\_\_\_  
Derek Pierce, acting solely in his capacity as court-  
appointed receiver

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by such party or its authorized officer, all as of the date and year first above written.

**License Holder:**

Affinity Living Group, LLC

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

Name: Charles E. Trefzger, Jr.

Title: Manager

**Seller:**

A handwritten signature in black ink, appearing to read 'Derek Pierce', is written over a horizontal line.

Derek Pierce, acting solely in his capacity as court-appointed receiver