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**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

**RECEIVER'S MOTION FOR ORDER:
(I) AUTHORIZING AND APPROVING
BIDDING PROCEDURES FOR THE
SALE OF SUBSTANTIALLY ALL OF
THE ASSETS OF OPELIKA ALF, LLC;
(II) AUTHORIZING THE SALE OF
SUBSTANTIALLY ALL OF THE
ASSETS OF OPELIKA 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 OF THE
ASSETS OF OPELIKA ALF, LLC; AND
(V) GRANTING RELATED RELIEF**

HEARING DATE:

January 3, 2018, at 3:30 p.m. (Eastern)

OBJECTION DEADLINE;

January 2, 2018

Derek Pierce, as the court-appointed receiver (the “**Receiver**”), files this motion seeking entry of orders: (a) authorizing and approving bidding procedures for the sale of substantially all of the assets of Opelika ALF, LLC (“**Opelika ALF**”), d/b/a Manor House of Opelika, the associated real property located at 1001 Fox Run Parkway a/k/a 701 Brookstone Drive, Opelika, Alabama, and to the extent legally transferable, rights to existing licenses and the associated Alabama Certificate of Need (all such assets, collectively, the “**Opelika Facility**”); (ii) authorizing the sale of the Opelika Facility free and clear of all liens, claims, encumbrances, and other interests; (iii) approving the Proposed Stalking Horse (as defined below), break-up fee, and overbid protections; (iv) scheduling a hearing to approve the sale of the Opelika Facility; and (v) granting related relief. In support of this motion, the Receiver relies upon the *Brief in Support of the Receiver’s Motion for Order: (I) Authorizing and Approving Bidding Procedures for the Sale of Substantially All of the Assets of Opelika ALF, LLC; (II) Authorizing the Sale of All of the Assets of Opelika 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 All of the Assets of Opelika ALF, LLC; and (V) Granting Related Relief* (the “**Brief in Support**”) and, respectfully, states as follows:

SUMMARY OF REQUESTED RELIEF

1. Pursuant to paragraph 37 of the *Order Appointing Receiver* (Dkt. No. 7) (the “**Receiver Order**”), the Receiver is, among other things, authorized to sell and transfer, subject to Court approval, all assets of the Receivership Entities¹ in the Receivership Estate.

2. By this motion, the Receiver seeks entry of the “**Bidding Procedures Order**” attached hereto as **Exhibit A** and the proposed “**Sale Order**” attached hereto as **Exhibit B** (the

¹ Capitalized terms not defined herein shall have the meaning given in the Receiver Order.
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form of which it has negotiated with the Proposed Stalking Horse and Indenture Trustee) providing for, among other things:

- a. approval of the Proposed Stalking Horse as the stalking horse purchaser for the Opelika Facility;
- b. approval of the Opelika APA (as defined below);
- c. approval of the bidding procedures for the sale of the Opelika Facility; and
- d. setting a hearing date to consider the final approval of the sale of the Opelika Facility on a date that is approximately thirty (30) days from the date of the entry of the Bidding Procedures Order.

3. The Receiver and its broker, Mike Pardoll (“*Mr. Pardoll*”) of Marcus & Millichap Real Estate Investment Brokerage Company collaborated to compile an offering memorandum describing all nine facilities and substantially all of the assets comprising the Receivership Estate (the “*Offering Memorandum*”).

4. The Receiver and Mr. Pardoll further collaborated in establishing a data room containing financial and other information regarding the nine assisted living facilities that would be of interest to potential buyers.

5. As of the date of filing, Mr. Pardoll has had approximately four hundred sixty-one (461) telephone calls with potential buyers, the Offering Memorandum and a confidentiality agreement have been delivered to one hundred thirty-two (132) prospective buyers, and, as a result, thirty-nine (39) prospective buyers have executed confidentiality agreements and been given access to the data room to enable them to conduct diligence.

6. The Offering Memorandum requested that interested parties submit bids by June 15, 2017.²

7. The Offering Memorandum further requested that any party who submitted a bid on multiple facilities break their bid down by facility.

8. The Receiver received multiple offers from interested parties and evaluated the offers with Mr. Pardoll.

9. The Receiver and Mr. Pardoll then negotiated price and sale terms with certain of the parties who had submitted bids.

10. As a result, the Receiver and Mr. Pardoll have identified Opelika Retirement Investors, LLC (the “*Proposed Stalking Horse*”) as a prospective buyer.

11. The Proposed Stalking Horse made the best offer for the Opelika Facility—\$2,000,000.³

12. The Receiver intends to market-test the Proposed Stalking Horse’s initial bid for the Opelika Facility to determine whether higher or better offers for the Opelika Facility can be obtained.

13. The Receiver will do so by continuing to market the Opelika Facility for sale.

14. To that end, the Receiver is requesting approval of a bidding and auction process to facilitate further marketing and the ultimate sale to the highest and best offer.

² The Receiver and Mr. Pardoll welcome additional bids and bidders. The purpose of the June 15 date was to give prospective buyers notice of the time period after which the Receiver and Mr. Pardoll would select proposed stalking horse bidders. The passage of the June 15 date is not a bar to the submission of new or additional bids.

³ Another potential bidder offered \$2,050,000. The Receiver decided to proceed with the Proposed Stalking Horse’s \$2,000,000 offer because the Receiver and Proposed Stalking Horse had nearly completed negotiating the terms of the Opelika APA at the time the new bid was received. Further, the Receiver is of the opinion that getting the auction process commenced sooner rather than later is more beneficial to the Receivership Estate than the potential for delay that could result from shifting to a new stalking horse at this time.

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15. The Receiver and Proposed Stalking Horse have negotiated the terms of the asset purchase agreement for the Opelika Facility (the “*Opelika APA*”), which sets forth the Proposed Purchased Assets (defined below).

16. The Opelika APA contains certain protections the Proposed Stalking Horse and the Receiver have negotiated to incentivize and compensate the Proposed Stalking Horse for continuing to expend money, time, and effort in connection with purchasing the Opelika Facility (the “*Bid Protections*”), notwithstanding that its offer will be subjected to higher or better offers.

17. In addition, the Receiver and Proposed Stalking Horse have negotiated certain bidding and auction procedures (the “*Bidding Procedures*”) to enable the Receiver to continue to market the Opelika Facility for sale, qualify additional bidders, govern the submission of competing bids, and establish a date and location to conduct an auction for the Opelika Facility.

18. Once a party is determined to be the successful bidder at the auction, the Receiver will then request final approval from this court for the sale (free and clear of all liens, claims and encumbrances, with all such liens, claims and encumbrances attaching to the proceeds of such sale in the same order of validity, priority, and enforceability) to the successful bidder on such terms as may be agreed upon by the Receiver and the successful bidder (the “*Sale Approval*”).

19. The Receiver contends that a period of approximately thirty (30) days between entry of an order approving the Bidding Procedures and the hearing to consider the Sale Approval will provide (a) an appropriate period of time for additional bidders to conduct due diligence, qualify to bid, submit additional bids, and participate in one or more auctions; and (b) for the Receiver to provide notice of the proposed sale process to parties the Receiver has identified with an interest in the Opelika Facility or who have claims against the Receivership Estate.

RELEVANT FACTUAL BACKGROUND

20. U.S. Bank National Association is the indenture trustee (the “*Indenture Trustee*”) for Seven Million Four Hundred Fifty Thousand Dollars (\$7,450,000) The Medical Clinic Board of the City of Opelika, Alabama First Mortgage Healthcare Facility Revenue Bonds (Opelika ALF, LLC Project), Series 2015A, and Seven Hundred Thousand Dollars (\$700,000) The Medical Clinic Board of the City of Opelika, Alabama First Mortgage Healthcare Facility Revenue Bonds (Opelika ALF, LLC Project), Series 2015B (Taxable) (together, the “*Bonds*”).

21. Pursuant to that certain Trust Indenture, dated as of September 1, 2015 (the “*Indenture*”), by and between The Medical Clinic Board of the City of Opelika, Alabama (the “*Issuer*”) and the Indenture Trustee, the Issuer issued the Bonds to (a) finance the acquisition, renovation, and expansion of the Opelika Facility, (b) fund certain of the trust funds with the Indenture Trustee, and (c) pay the costs related to the issuance of the Bonds.

22. To provide for the repayment of the Bonds, the Issuer and Opelika ALF entered into that certain Lease Agreement, dated as of September 1, 2015 (the “*Lease Agreement*”).

23. The obligations due and owing under the Indenture are secured by, among other things, that certain Mortgage and Security Agreement, dated as of September 1, 2015 (the “*Mortgage and Security Agreement*”), granted by the Issuer to the Indenture Trustee.

24. Pursuant to that certain Mortgage Joinder and Indemnity by Lessee (the “*Joinder*”), the obligations due and owing under the Lease Agreement are secured by, among other things, the Mortgage and Security Agreement.

25. Pursuant to the Mortgage and Security Agreement, the Issuer granted to the Indenture Trustee first-priority, senior liens on and security interests in the Opelika Facility, including:

a. all that tract, or parcel of land located in Lee County, Alabama, more particularly described in Exhibit "A" to the Mortgage and Security Agreement (the "*Land*");

b. all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, washers, dryers, water heaters, mirrors, mantels, air conditioning apparatus, refrigerating plants, refrigerators, cooking apparatus and appurtenances, window screens, awnings and storm sashes, which are or shall be attached to said buildings, structures or improvements and all other furnishings, furniture, fixtures, machinery, equipment, appliances, vehicles and personal property of every kind and nature whatsoever, but excluding inventory, now or hereafter owned by the Issuer and located in, on or about, or used or intended to be used with or in connection with the use, operation or enjoyment of the Opelika Facility, including all extensions, additions, improvements, betterments, renewals and replacements of any of the foregoing and all the right, title and interest of the Issuer in any such furnishings, furniture, fixtures, machinery, equipment, appliances, vehicles and personal property subject to or covered by any prior security agreement, conditional sales contract, chattel mortgage or similar lien or claim, together with the benefit of any deposits or payments now or hereafter made by the Issuer or on behalf of the Issuer, all of which are hereby declared and shall be deemed to be fixtures and accessions to the freehold and a part of the Opelika Facility as between the parties to the Mortgage and Security Agreement and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness described in the Mortgage and Security Agreement and to be secured by the Mortgage and Security Agreement;

c. together with all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to the Opelika Facility or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Issuer and the reversion and reversions, remainder and remainders, the rents, issues, profits and revenues of the Opelika Facility from time to time accruing (including without limitation all payments under leases or tenancies, proceeds of insurance, condemnation payments, tenant security deposits and escrow funds), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Issuer of, in and to the same; and

d. all revenues, income, receipts, and money (other than proceeds of borrowing) received with respect to the Opelika Facility in any period by or on behalf of the Issuer, including, but with limiting the generality of the foregoing, (i) revenues derived from operation of the Opelika Facility; (ii) proceeds derived from the Opelika Facility with respect to (a) insurance, except to the extent otherwise required by the Indenture, (b) rights to payment for goods sold or leased or for services rendered which

are not evidenced by a chattel paper, whether or not they have been earned by performance, (c) securities and other investments, and the income earnings and gains thereon, (d) inventory and other tangible and intangible property, and (e) contract rights and other rights and assets now or hereafter owned, held, or possessed by the Issuer; and (iii) rentals received from the leasing of the Opelika Facility or units therein or from tangible personal property; and

e. all existing and future accounts, contract rights, rights under the Lease Agreement and accounts receivable of Opelika ALF, all existing and future instruments, chattel paper and general intangibles of Opelika ALF and all proceeds of the above, but only to the extent that any such item is directly related to or directly arises from the Opelika Facility and/or the operations thereon (“a” through “e” collectively, the “*Collateral*”).

26. Pursuant to the Joinder, Opelika ALF agreed to discharge the duties of the Issuer under the Mortgage and Security Agreement and subjected Opelika ALF’s interest in and to all of the Collateral to the lien and security interests granted to the Indenture Trustee by the Mortgage and Security Agreement.

27. To properly perfect the liens and security interests granted under the Mortgage and Security Agreement, the (a) Mortgage and Security Agreement was properly recorded on October 1, 2015 with the Probate Judge for Lee County, Alabama in book 4165 at pages 592 *et seq.*, (b) a UCC fixture filing was properly recorded in the Lee County Superior Court on July 27, 2015 in book 11588 at pages 77 *et seq.* (the “*Fixture Filing*”), and (c) a UCC-1 financing statement was properly recorded with Alabama Secretary of State on October 1, 2015, as instrument number 15-0523558 (the “*Financing Statement*” and together with the Indenture, Lease Agreement, Mortgage and Security Agreement, Fixture Filing and all other documents relating to the Bonds, the “*Bond Documents*”).

28. Under the Bond Documents, the Issuer’s rights and powers under the Bond Documents are assigned to the Indenture Trustee.

29. The Opelika Facility is subject to certain restrictions, pursuant to that certain Land Use Restriction Agreement, dated as of September 1, 2015 (the “*LURA*”), between the Indenture Trustee and Opelika ALF.

30. A true and correct copy of the LURA is attached to this motion as **Exhibit C** and is incorporated in this paragraph by reference.

31. The Receiver has conducted its own diligence regarding the priority of the Indenture Trustee’s security interests in and liens on the Collateral.

32. The Receiver’s diligence has confirmed that, with the exception of potential or existing tax liens that may have priority over the Indenture Trustee’s security interests and liens, the Indenture Trustee has properly perfected, first priority security interests in and liens on the Collateral. To the extent any taxing authority has security interests or liens senior to the Indenture Trustee’s security interest and liens, such taxing authority’s claims shall be paid at the Closing of the sale contemplated in the Bidding Procedures.

PROCEDURAL BACKGROUND

33. On January 20, 2017, the Securities and Exchange Commission commenced the above-captioned action.

34. On that same day, this court entered the Receiver Order appointing the Receiver.

35. As noted in the Receiver Order, at the time the Receiver was appointed in this case, a number of the Receivership Entities, including Opelika ALF, were involved in separate state court and federal court receiverships (*See* Dkt No. 7, Receiver Order, Exh. A).

36. In particular, Opelika ALF, LLC was subject to a receivership established by the *Consent Order Appointing Receiver* (the “*Opelika Receiver Order*”), in case number 3:16-cv-650-WKW styled as *U.S. Bank, N.A., as trustee v. Opelika ALF, LLC et al.* (the “*Opelika Case*”)

pending in the United States District Court for the Middle District of Alabama (the “*Opelika Court*”).

37. Pursuant to the Receiver Order, upon entry of an order vacating the Opelika Receiver Order, the Receiver was granted exclusive jurisdiction and control over Opelika ALF and all of its assets.

38. On June 2, 2017, the United States District Court for the Middle District of Alabama entered an order vacating the receivership in the Opelika Case.

39. As a result, Opelika ALF and all of its assets have been within the exclusive jurisdiction and control of the Receiver in this court, since June 2, 2017.

40. At that time, pursuant to the Receiver Order, the Receiver was directed and empowered to take all rights and powers with respect to, among other Receivership Entities, Opelika ALF and the administration and operation of the Opelika Facility.

THE RECEIVER’S EFFORTS TO SELL THE ASSETS OF THE RECEIVERSHIP ESTATE

41. Upon the Receiver accepting its appointment pursuant to the Receiver Order, the Receiver investigated the financial condition and performance of each facility operated by the Receivership Entities.

42. Upon the Receiver’s investigation, it immediately became clear that certain of the facilities were operating at a loss.

43. The Receiver determined in its sound business judgment that it was in the best interest of the Receivership Estate and its creditors to sell, subject to court approval, substantially all of the assets of, among other entities, Opelika ALF (the “*Assets*”) as soon as practicable.

44. To that end, the Receiver filed the *Receiver’s Application for Order Approving Employment of Marcus and Millichap as Real Estate Investment Brokerage Company* (Dkt. No.

75), seeking to employ Mr. Pardoll of Marcus and Millichap as the broker to assist the Receiver in marketing the Assets for sale.

45. On March 29, 2017, this court entered the *Order Approving Receiver's Application for order Approving Employment of Marcus & Millichap Investment Brokerage Company* (Dkt. No. 85).

46. Since Mr. Pardoll's retention, Mr. Pardoll has vigorously marketed the Assets.

47. In particular, Mr. Pardoll has had approximately four hundred sixty-one (461) telephone calls with potential buyers, and the Offering Memorandum and a confidentiality agreement have been delivered to one hundred thirty-two (132) prospective buyers.

48. As a result of these marketing efforts, thirty-nine (39) potential purchasers have executed non-disclosure and confidentiality agreements.

49. In addition, as a result of the marketing efforts to date, ten (10) bidders have made forty-one (41) separate stalking horse offers to purchase all or some portion of the Assets.

50. Specifically, with regards to the Opelika Facility, the Receiver and Mr. Pardoll received offers from three (3) bidders.

51. The Receiver, in consultation with his counsel, Mr. Pardoll, and the Indenture Trustee, has determined that it is in the best interests of Opelika ALF, the Opelika Facility, and creditors of each, including the bondholders, to continue marketing the Assets in an effort to locate additional interested parties and to market-test the Proposed Stalking Horse's offer on the Opelika Facility.

52. To that end, as set forth below, the Receiver is requesting that this court enter the proposed order approving a bidding and auction process to facilitate further marketing and the ultimate sale of the Assets for the highest and best offer.

THE PROPOSED STALKING HORSE AND OPELIKA APA

53. As a result of the Receiver’s marketing efforts, the Receiver recently executed the Opelika APA with the Proposed Stalking Horse for the purchase of substantially all of the assets of Opelika ALF, including the Opelika Facility and fee title to the real property on which the Opelika Facility is located (all as more specifically identified in the Opelika APA the “***Proposed Purchased Assets***”).

54. A true and correct copy of the Opelika APA is attached to this motion as **Exhibit D** and is incorporated in this paragraph by reference.

55. The Receiver proposes to sell the Proposed Purchased Assets to the Proposed Stalking Horse (or such other purchaser as determined in accordance with the Bidding Procedures set forth below) free and clear of all liens, claims, encumbrances, and other interests.

56. The key terms of the Opelika APA are as follows:

Purchase Price

\$2,000,000, subject to certain credits at closing, as set forth in the Opelika APA

Proposed Purchased Assets

Substantially all of Opelika ALF’s real and personal property assets including the operating assets of that certain 32-bed (licensed for 36 beds) specialty care assisted living facility known as Manor House of Opelika, and the approximately 4.785 acre tract of land at 1001 Fox Run Parkway (a/k/a 701 Brookstone Drive), Opelika, Alabama on which it is located, all as more fully set forth in the Opelika APA.

Good Faith Deposit

\$50,000

No Warranties

The Proposed Purchased Assets shall be sold “AS IS/WHERE IS” and free and clear of all liens, claims, encumbrances, and other interests, including without limitation, any taxes or successor liability, subject only to title exceptions and other assumed liens, claims, interests, and encumbrances as set forth more

specifically in the Opelika APA.

Break-up Fee

In the event the Proposed Stalking Horse is not the successful purchaser and is not in breach of the Opelika APA, the Proposed Stalking Horse shall, upon the closing of a sale of the Proposed Purchased Assets in accordance with the Bidding Procedures (as defined below) be entitled to a break-up fee equal to \$80,000, which includes reimbursement of the Proposed Stalking Horse's actual, reasonable expenses (the "***Break-up Fee***") (as set forth in the Opelika APA)

Conditions to Closing; Closing

Closing shall take place within seven (7) days after the later of (a) entry of the Sale Order, (b) entry of the TIP Order, or (c) receipt of Regulatory Approvals (as set forth in the Opelika APA).

57. The Indenture Trustee has agreed to release its liens, claims, encumbrances, and other interests in and on the Proposed Purchased Assets (or any Assets purchased in accordance with the Bidding Procedures), with such liens, claims, encumbrances, and other interests attaching to the proceeds of the sale in the same order of priority.

58. The Issuer has agreed to execute a quitclaim deed and the Receiver will issue a Receiver's Deed in favor of the Stalking Horse Purchaser at Closing.

59. To ensure the best offer is received for the Proposed Purchased Assets (or any Assets purchased in accordance with the Bidding Procedures), the Receiver proposes that the bidding procedures set forth in **Exhibit E** to this motion (the "***Bidding Procedures***") govern the submission of competing bids for the Proposed Purchased Assets or any portion of the Assets and the conduct of an auction.

60. The following are the key terms of the proposed Bidding Procedures as they relate to the Proposed Purchased Assets:

<u>Initial Bid</u>	\$2,000,000, subject to certain credits at Closing, as set forth more specifically in the Opelika APA
<u>Breakup Fee</u>	\$80,000
<u>Minimum Overbid</u>	\$200,000
<u>Good Faith Deposit</u>	\$50,000
<u>Due Diligence Deadline</u> ⁴	February 2, 2018 @ 5:00 p.m. (prevailing Eastern time)
<u>Initial Bid Deadline</u>	February 7, 2018 @ 5:00 p.m. (prevailing Eastern time)
<u>Auction Date</u>	February 15, 2018 @ 10:00 a.m. (prevailing Eastern time)
<u>Deadline to Object to Sale</u>	February 15, 2018 @ 4:00 p.m. (prevailing Eastern time)
<u>Hearing to Confirm Sale</u>	February 16, 2018 @ 10:00 a.m. (prevailing Eastern time)

61. In the Receiver’s reasonable business judgment, the Bidding Procedures will assure that the Receiver receives the best offer for the Proposed Purchased Assets or any portion of the Assets, as the Bidding Procedures will expose the Proposed Purchased Assets to the market and competition amongst all parties sufficiently interested to bid for the purchase of the Proposed Purchased Assets (or any portion of the Assets).

62. In addition, within two (2) business days following entry of the Bidding Procedures Order, the Receiver will serve copies of the Bidding Procedures Order (including the Bidding Procedures) and the Notice of Sale, substantially in the form attached to the Motion as **Exhibit F**, upon: (a) the parties set forth on the certificate of service for the Motion; (b) all parties known to have asserted liens against the Proposed Purchased Assets; (c) all federal and state taxing authorities or offices that have a reasonably known interest in the relief requested in

⁴ 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 Opelika APA.
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this motion; (d) counsel to the Proposed Stalking Horse; (e) prospective buyers who signed a confidentiality agreement and all parties who submitted a bid; and (f) any other party that has entered an appearance in this case or otherwise requested notice in this case.

WHEREFORE, the Receiver respectfully requests that this court enter: (a) an order, substantially in the form attached to the Motion as **Exhibit A**, (i) authorizing and approving the Bidding Procedures, (ii) authorizing and approving the Proposed Stalking Horse and Bid Protections, (iii) authorizing and approving the form and manner of notice of the motion and Sale Hearing, (iv) scheduling the Sale Hearing, and (v) granting other and further related relief; and (b) after conducting the Sale Hearing, an order, substantially in the form attached to the Motion as **Exhibit B**, (i) authorizing, approving, and directing the sale of the Proposed Purchased Assets 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 Opelika APA or substantially similar asset purchase agreements applicable to the Successful Bidder or Backup Bidder, as applicable, (iii) approving the Receiver's marketing and sale process, and (iv) granting other and further related relief.

Dated: December 18, 2017

Respectfully submitted,

/s/ Blake D. Roth
Blake D. Roth
Ryan K. Cochran (admitted *pro hac vice*)
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Counsel for the Receiver

EXHIBIT A
PROPOSED BIDDING PROCEDURES ORDER

WALLER LANSDEN DORTCH & DAVIS, LLP
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Counsel for the Receiver

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

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ESTATE OF DOUGLAS, LLC; ROME
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Relief Defendants.

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

**ORDER: (I) AUTHORIZING AND
APPROVING (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 OF THE
ASSETS OF OPELIKA ALF, LLC; AND
(III) GRANTING RELATED RELIEF**

Upon consideration of the *Receiver's Motion for Order: (I) Authorizing and Approving*

Bidding Procedures for the Sale of Substantially All of the Assets of Opelika ALF, LLC;

(II) Authorizing the Sale of Substantially All of the Assets of Opelika 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 of the Assets of Opelika ALF, LLC; and (V) Granting Related Relief (the “Motion”); and upon consideration of the Brief in Support of the Receiver’s Motion for Order: (I) Authorizing and Approving Bidding Procedures for the Sale of Substantially All of the Assets of Opelika ALF, LLC; (II) Authorizing the Sale of Substantially All of the Assets of Opelika 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 of the Assets of Opelika ALF, LLC; and (V) Granting Related Relief (the “Brief in Support”);¹ and upon consideration of any and all responses and replies relating to the Motion; and upon finding that due and sufficient notice of the Motion has been given and no other or further notice need be given; and after due deliberation and it appearing that the relief sought in the Motion is in the best interest of the Receivership Estate, its creditors, and other parties in interest,

IT IS HEREBY FOUND, DETERMINED, AND CONCLUDED THAT:²

1. This court has jurisdiction over this matter and over the property of Opelika ALF.
2. Proper, timely, adequate, and sufficient notice of the Motion has been provided, such notice was sufficient and appropriate under the particular circumstances, and no other or further notice of the Motion or relief sought in the Motion is necessary or required.

¹ Capitalized terms used in this order and not otherwise defined have the meanings ascribed to them in the Brief in Support.

² The findings and conclusions set forth in this order constitute the court’s findings of fact and conclusions of law. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

3. A reasonable opportunity to object or be heard regarding the requested relief in the Motion and this order has been afforded to all interested parties, including, without limitation, all parties to this action and all persons or entities known to the Receiver that have or may have an interest in any portion of the Proposed Purchased Assets.

4. The Receiver has the power and authority to sell the Proposed Purchased Assets, or any portion of the Assets, at a public sale pursuant to and in accordance with the Bidding Procedures, free and clear of liens, claims, and encumbrances, with such liens, claims, and encumbrances attaching to the proceeds of such sale.

5. Upon the Receiver's appointment and after investigating the financial condition of Opelika ALF, LLC, the Receiver undertook a comprehensive effort to solicit interest from potential purchasers for the Proposed Purchased Assets.

6. The Receiver's and Mr. Pardoll's existing and continued marketing efforts, combined with the publication required by the Bidding Procedures are reasonable and sufficient.

7. The Indenture Trustee, the holder of the senior, first priority liens on and security interests in the Proposed Purchased Assets, has consented to release, at closing, its liens, claims, encumbrances, and other interests in the Proposed Purchased Assets, with such liens, claims, encumbrances, and other interests attaching to the proceeds of the sale of the Proposed Purchased Assets with the same priority.

8. The Indenture Trustee's consent dramatically improves the marketability of the assets and their potential sale price, because parties will not have to factor in the risks and costs of satisfying pre-receivership claims and the release of liens, claims, encumbrances, and other interests into the purchase price.

9. It is, therefore, prudent and in the best interests of the bondholders for the Indenture Trustee to release its liens, claims, encumbrances, and other interests in the Proposed Purchased Assets.

10. The Receiver has demonstrated a sufficient basis and compelling circumstances requiring the entry of this order, the selection of the Proposed Stalking Horse, the Bid Protections provided to the Proposed Stalking Horse, and the proposed sale of the Proposed Purchased Assets in accordance with the Bidding Procedures, and such actions are appropriate exercises of the Receiver's reasonable business judgment and are in the best interest of the Receivership Estate and its creditors and meet the requirements of 28 U.S.C. §§ 2001, 2002, and 2004.

11. The Receiver's authorization to pay the Break-up Fee is an essential inducement and condition relating to the Proposed Stalking Horse's entry into, and continuing obligations under the Opelika APA.

12. The Receiver's promise to pay the Break-up Fee, which has induced the Proposed Stalking Horse to submit its bid that will serve as a minimum or floor bid on which the Receiver can rely, provides a material benefit to the Receivership Estate and its creditors by increasing the likelihood that the best possible purchase price for the Proposed Purchased Assets will be received.

13. The Bidding Procedures are reasonable, non-collusive, created in good faith, substantively and procedurally fair, and will enable the Receiver to obtain the highest value for the Proposed Purchased Assets.

14. The Receiver may sell the real property on which the Opelika Facility is located.

NOW, THEREFORE, BASED UPON THE FOREGOING FINDINGS AND THE RECORD BEFORE THIS COURT, IT IS HEREBY

ORDERED that the Motion is GRANTED as set forth in this order; and it is further

ORDERED that all objections to the Motion concerning the Bidding Procedures and relief granted in this order that have not been withdrawn, waived, resolved, sustained, or settled are expressly denied and overruled in their entirety; and it is further

ORDERED that the Opelika APA as set forth in **Exhibit D** to the Motion is approved; and it is further

ORDERED that the Bidding Procedures, as set forth in **Exhibit E** to the Motion are approved in their entirety and are incorporated in this order by reference as if set forth fully at length in this order; and it is further

ORDERED that the Receiver may proceed to sell the Proposed Purchased Assets (or any portion of the Assets) free and clear of liens, claims, encumbrances, and other interests at public sale at the main entrance of the United States District Court for the District of New Jersey (Newark) located at 50 Walnut Street, Newark, New Jersey 07101, in accordance with and subject to the Bidding Procedures on **February 15, 2018, at 10:00 a.m. (prevailing Eastern time)**; and it is further

ORDERED that the Receiver may proceed to sell the real property on which the Opelika Facility is located; and it is further

ORDERED that the Proposed Stalking Horse's deposit (as provided in the Opelika APA) shall be held in escrow and shall not constitute or be deemed to constitute property of the Receivership Estate or the Receiver, and the Receivership Estate and Receiver shall have no interest of any kind (equitable or otherwise) in the deposit unless and until such deposit is

actually unconditionally paid or payable in accordance with the Opelika APA, and no liens, claims or encumbrances shall attach to the deposit; and it is further

ORDERED that the Sale Hearing shall be held in this court on **February 16, 2018, at 10:00 a.m. (prevailing Eastern time)**; and it is further

ORDERED that any objection on any basis to the proposed sale of the Proposed Purchased Assets must be filed in writing with the court no later than **4:00 p.m. (prevailing Eastern time) on February 15, 2018** (the “*Objection Deadline*”) and served on (a) counsel to the Receiver, 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) counsel to the Proposed Stalking Horse, c/o Richard D. Faulkner, Jr., Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, 633 Chestnut Street, Suite 1900, Chattanooga, Tennessee 37450, 423.752.9529 (facsimile), rfaulkner@bakerdonelson.com, and (c) counsel to the Indenture Trustee, c/o Marc P. Solomon, Burr & Forman LLP, 420 North 20th Street, Suite 3400, Birmingham, AL 35203, 205.458.5100 (facsimile), msolomon@burr.com; and it is further

ORDERED that the Receiver shall: (A) provide notice to (i) all known creditors of Opelika ALF, LLC, including each of the Opelika ALF, LLC’s known secured creditors; (ii) those previously served with notice of the claims procedures established by this court with respect to Opelika ALF, LLC; (iii) all relevant federal, state and local taxing and regulatory authorities or offices that have a reasonably known interest in the relief requested in the Motion; (iv) counsel to the Proposed Stalking Horse; (v) the parties set forth on the certificate of service of the Motion and any other party that has entered an appearance in this case or otherwise requested notice in this case; (vi) all counterparties to any leases and contracts; and (vii) 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; (B) cause the Indenture Trustee to publish the Bidding Procedures Order and Sale Notice at EMMA, and (C) publish a notice of Receiver Sale with the *Opelika - Auburn News* for at least four (4) weeks prior to the proposed Auction, which publication shall be deemed due, timely, good, and sufficient notice of the entry of this order, the Sale Order and all proceedings to be held in accordance with this order; and it is further

ORDERED that the Indenture Trustee shall release any lien on and security interest in the Proposed Purchased Assets at the closing of the sale of the Proposed Purchased Assets, with such liens, claims, encumbrances, and other interests attaching to the proceeds of the sale of the Proposed Purchased Assets with the same priority; and it is further

ORDERED that any person or entity seeking to participate as a Bidder at the Auction shall comply with the Bidding Procedures; and it is further

ORDERED that each Qualified Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding on or sale of the Proposed Purchased Assets; and it is further

ORDERED that this order shall become effective immediately upon its entry; and it is further

ORDERED that this court shall retain jurisdiction over any and all matters or disputes arising from or related to this order or its enforcement.

Dated: _____, 2018

EXHIBIT B
PROPOSED SALE ORDER

WALLER LANSDEN DORTCH & DAVIS, LLP
Blake D. Roth
Ryan K. Cochran (admitted *pro hac vice*)
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Nashville, Tennessee 37219
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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

**ORDER: (I) AUTHORIZING,
APPROVING, AND DIRECTING THE
SALE OF SUBSTANTIALLY ALL OF
THE ASSETS OF OPELIKA 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 OPELIKA APA; (III) APPROVING
THE RECEIVER'S MARKETING AND
SALE PROCESS; AND (IV) GRANTING
RELATED RELIEF**

Upon consideration of the *Receiver's Motion for Order: (I) Authorizing and Approving*

Bidding Procedures for the Sale of Substantially All of the Assets of Opelika ALF, LLC;

(II) Authorizing the Sale of Substantially All of the Assets of Opelika 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 of the Assets of Opelika ALF, LLC; and (V) Granting Related Relief (the “Motion”); and upon consideration of the Brief in Support of the Receiver’s Motion for Order: (I) Authorizing and Approving Bidding Procedures for the Sale of Substantially All of the Assets of Opelika ALF, LLC; (II) Authorizing the Sale of Substantially All of the Assets of Opelika 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 of the Assets of Opelika ALF, LLC; and (V) Granting Related Relief (the “Brief in Support”);¹ and upon consideration of any and all responses and replies relating to the Motion; and upon finding that due and sufficient notice of the motion has been given and no other or further notice need be given; and after due deliberation and it appearing that the relief sought in the Motion is in the best interest of the Receivership Estate, its creditors, and other parties in interest,

IT IS HEREBY FOUND, DETERMINED, AND CONCLUDED THAT:²

A. This court has jurisdiction over this matter and over the property of the Receivership Estate.

B. The approval of the sale of the Proposed Purchased Assets is within the sound legal discretion of this court.

¹ Capitalized terms used in this order and not otherwise defined have the meanings ascribed to them in the Brief in Support.

² The findings and conclusions set forth in this order constitute the court’s findings of fact and conclusions of law. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. It is necessary and appropriate for this court to retain jurisdiction to, among other things, (a) interpret, implement, and enforce the terms and provisions of this order, the Opelika APA, all amendments to the Opelika APA, any waivers and consents under the Opelika APA, and each of the agreements executed in connection with the Opelika APA and (b) to adjudicate, if necessary, any and all disputes concerning or relating in any way to the sale of the Proposed Purchased Assets, and such jurisdiction is retained.

PROPER NOTICE OF THE MOTION AND AUCTION

D. The Receiver properly provided notice, pursuant to and in accordance with the Bidding Procedures Order.

E. The Receiver has adequately disclosed all material terms and conditions regarding the Bidding Procedures, Opelika APA, and sale of the Proposed Purchased Assets.

F. The notice provided by the Receiver was in substantial compliance with all applicable laws and satisfied all due process requirements.

G. The notice provided was reasonably calculated to apprise all interested parties of the sale of the Proposed Purchased Assets free and clear of all liens, claims, encumbrances, and other interests.

H. As a result, notice of the Motion, Bidding Procedures, Sale Hearing, and Auction and a reasonable opportunity to object or be heard with respect to the foregoing has been afforded to all interested persons and entities, and the notice provided is appropriate and sufficient for all purposes, including the sale of the Proposed Purchased Assets free and clear of all liens, claims, encumbrances, and other interests.

THE AUCTION COMPLIED WITH THE BIDDING PROCEDURES ORDER AND APPLICABLE LAW

I. On February 15, 2018, the Receiver conducted the Auction in accordance with the Bidding Procedures Order.

J. The Receiver complied in all material respects with applicable law.

K. The Successful Bidder has confirmed that it did not engage in any collusion in connection with the Auction or the purchase of the Proposed Purchased Assets.

L. All Qualified Bidders confirmed that they did not engage in any collusion in connection with the Auction or the purchase of the Proposed Purchased Assets.

M. The Auction was substantively and procedurally fair to all potential Bidders and Qualified Bidders, including the Proposed Stalking Horse.

N. The Auction was conducted in good faith.

HIGHEST AND BEST OFFER

O. At the Auction, the Successful Bidder submitted the highest or otherwise best offer to purchase the Proposed Purchased Assets.

P. Neither the sale of the Proposed Purchased Assets nor the Opelika APA violate or are otherwise inconsistent with the Bidding Procedures Order, the Bidding Procedures, or applicable law.

Q. The Successful Bid and Opelika APA constitutes the highest and best offer for the Proposed Purchased Assets and will provide a greater recovery for the Receivership Estate's creditors than would be provided by any other practical alternative.

R. The Receiver's determination that the Successful Bid and Opelika APA constitute the highest and best offer for the Proposed Purchased Assets constitutes a valid and sound exercise of the Receiver's reasonable business judgment.

S. The selection of the Successful Bid and Successful Bidder was done with the consent of the Indenture Trustee.

T. The Indenture Trustee acted prudently and in the best interest of the bondholders, in determining to release, at closing, its security interests in and liens on the Proposed Purchased Assets.

U. The Successful Bid and Opelika APA represent a fair and reasonable offer to purchase the Proposed Purchased Assets under the circumstances of this receivership case.

V. No other entity or group of entities has offered to purchase the Purchased Assets for greater economic value to the Receivership Estate than the Successful Bidder.

W. The Receiver's decision to sell the Proposed Purchased Assets to the Successful Bidder pursuant to the Opelika APA and this order is supported by good business reasons and sound justification based upon the Receiver's experience and the circumstances presented in this case.

X. The sale of the Proposed Purchased Assets and the substitution of collateral coupled with the final payment to applicable bondholders at the close of the Receivership constitutes an event of involuntary noncompliance as the term is used in the LURA and Regulations.

GOOD FAITH OF THE SUCCESSFUL BIDDER

Y. The Successful Bidder is not an affiliate, subsidiary, or other insider of any of the parties to this case or the Receiver.

Z. The terms of the sale of the Proposed Purchased Assets, as set forth more specifically in the Opelika APA, are fair and reasonable under the circumstances.

AA. Pursuant to the terms of the Opelika APA and in compliance with the Bidding Procedures, the Successful Bidder is [_____].

BB. The sale of the Proposed Purchased Assets to the Successful Bidder in all respects complies with the Bidding Procedures, Bidding Procedures Order, and applicable law.

CC. The Successful Bidder negotiated the terms and conditions of the sale of the Proposed Purchased Assets in good faith and at arm's length.

DD. The Successful Bidder is entering into the Opelika APA and sale of the Proposed Purchased Assets in good faith and is a good faith purchaser for value.

EE. The Successful Bidder will be acting in good faith in closing the sale of the Proposed Purchased Assets pursuant to the Opelika APA after entry of this order.

FF. The court has found that the Successful Bidder has acted in good faith in all respects in connection with this case, the Bidding Procedures, the Auction, and the sale of the Proposed Purchased Assets.

GG. [In accordance with the Bidding Procedures Order, the Proposed Stalking Horse is entitled to receive the Break-up Fee in the amount of \$[_____] for the material contributions the Proposed Stalking Horse has made by serving as the stalking horse purchaser and agreeing to submit its offer to higher and better offers.]

NO FRAUDULENT TRANSFER

HH. The consideration provided for the Proposed Purchased Assets under the Opelika APA (a) is fair and reasonable, (b) is the highest or otherwise best offer for the Proposed Purchased Assets, and (c) constitutes reasonably equivalent value for the Proposed Purchased Assets.

VALIDITY OF TRANSFER

II. The Receiver's transfer of the Proposed Purchased Assets including fee title to the real property along with the Issuer's quit claim deed in favor of the Successful Bidder pursuant to the Opelika APA and this order will be a legal, valid, and effective transfer of the Proposed Purchased Assets including fee title to the real property and will indefeasibly vest the Successful Bidder with good and valid title in and to the Proposed Purchased Assets free and clear of any Liens (as defined below).

JJ. The Receiver has full power and authority to execute and consummate the Opelika APA and all related documents and is directed to do so, and no consents or approvals (other than those expressly provided for in the Opelika APA) are required to consummate the transactions contemplated by the Opelika APA and this order.

KK. The Receiver (i) has all rights and powers with respect to the Receiver Estate, including the Proposed Purchased Assets, (ii) possesses good, valid, and marketable title to the Proposed Purchased Assets, and (iii) has the ability and authority to convey the Proposed Purchased Assets to the Successful Bidder on the terms and conditions set forth in the Opelika APA and this order.

LL. The Receiver and Successful Bidder proposed, negotiated, and entered into the Opelika APA without collusion, in good faith, and from arm's length bargaining positions.

MM. Neither the Receiver nor the Successful Bidder have engaged in any conduct that would cause or permit the Opelika APA or transactions contemplated by the Opelika APA to be avoided or otherwise set aside.

THE SALE IS IN THE BEST INTEREST OF THE RECEIVERSHIP ESTATE AND ITS CREDITORS

NN. [No interested party objected to the Motion, Bidding Procedures, Opelika APA, Auction, or the sale of the Proposed Purchased Assets to the Successful Bidder.]

OO. The approval and consummation of the sale of the Proposed Purchased Assets pursuant to and in accordance with the Opelika APA and this order is in the best interest of the Receivership Estate and its creditors, including the bondholders.

NOW, THEREFORE, BASED UPON THE FOREGOING FINDINGS AND THE RECORD BEFORE THIS COURT, IT IS HEREBY

ORDERED that the Motion is GRANTED as set forth in this order; and it is further

ORDERED that all objections to the Motion concerning the Auction, Successful Bid, Successful Bidder, marketing process employed by the Receiver, Opelika APA or otherwise relating to the sale of the Proposed Purchased Assets and relief granted in this order that have not been withdrawn, waived, resolved, sustained, or settled are expressly denied and overruled in their entirety; and it is further

ORDERED that the Opelika APA, as set forth in **Exhibit D** to the Motion, is approved in its entirety and is incorporated in this order by reference as if set forth fully at length in this order; and it is further

ORDERED that the Receiver is directed to sell the Proposed Purchased Assets free and clear of all Liens (as defined below) in accordance with the Opelika APA and this order; and it is further

ORDERED that the Proposed Purchased Assets include fee title to the real estate on which the Opelika Facility is located and that the Receiver is directed to sell the fee title to the

real estate on which the Opelika Facility is located free and clear of all Liens in accordance with the Opelika APA and this order; and it is further

ORDERED that the Proposed Purchased Assets include, to the extent legally transferable, all rights to (i) the existing licenses of the Opelika Facility, including the specialty care assisted living facility license, subject to the approval of the Alabama Department of Public Health, and (ii) the Alabama Certificate of Need, subject to the approval of the Alabama State Health Planning & Development Agency; and it is further

ORDERED that the Receiver is authorized to take all actions to consummate the sale of the Proposed Purchased Assets pursuant to and in accordance with the Opelika APA and this Order, including transferring and conveying the Proposed Purchased Assets to the Successful Bidder; and it is further

ORDERED that the Receiver is authorized, directed, and empowered to consummate and implement fully the Opelika APA, together with all additional instruments and documents that may be necessary or desirable to implement and consummate the sale of the Proposed Purchased Assets in accordance with the Opelika APA and this order; and it is further

ORDERED that the Receiver is authorized and directed to take all actions necessary or desirable for the purpose of assigning, transferring, granting, conveying, and conferring the Proposed Purchased Assets to the Successful Bidder; and it is further

ORDERED that, time being of the essence, the Successful Bidder is directed to use its best efforts to close the sale of the Proposed Purchased Assets in accordance with the terms of the Opelika APA and this order; and it is further

ORDERED that, in the Receiver's sole discretion, any agreements, documents, or other instruments executed in connection with the Opelika APA may be modified, amended, or

supplemented by the Receiver and Successful Bidder in accordance with the terms of the Opelika APA without further notice or order of this court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Receivership Estate or its creditors; and it is further

ORDERED that the transfer of the Proposed Purchased Assets to the Successful Bidder shall be free and clear of any and all liens, encumbrances, claims, charges, defenses, offsets, recoupments, and interests on the foregoing and against the foregoing of whatever type or description, including, without limitation, the Lease Agreement, the LURA, and any restrictions on or conditions to transfer or assignment, liens, mortgages, security interests, pledges, hypothecations, control agreements, equities and other claims and interests having arisen, existed, or accrued prior to and through the Closing Date, whether direct or indirect, monetary or non-monetary, arising at law or in equity, contract or tort, absolute or contingent, matured or unmatured, voluntary or involuntary, liquidated or unliquidated, of, by, or against the Proposed Purchased Assets (collectively, the “*Liens*”), with such Liens to attach to the net proceeds of the sale of the Proposed Purchased Assets in accordance with the same validity, priority, and enforceability as existed prior to the sale; and it is further

ORDERED that the LURA is hereby terminated and of no further force or effect; and it is further

ORDERED that the Indenture Trustee is authorized to execute and deliver to the Receiver, the Release and Discharge of Land Use Restriction Agreement exhibited to the Opelika APA; and it is further

ORDERED that no party shall have any rights of redemption with respect to the Proposed Purchased Assets; and it is further

ORDERED that any and all Liens will attach to the net proceeds of the sale of the Proposed Purchased Assets with the same effect, validity, enforceability, and priority of such Liens, if any, as such Liens had against the Proposed Purchased Assets prior to the sale authorized by this order, subject to any rights, claims, defenses, and objections of the Receiver and all interested parties with respect to such Liens; and it is further

ORDERED that the Indenture Trustee has first priority liens on and security interests in the Proposed Purchased Assets and the Indenture Trustee's first priority liens on and security interests in the Proposed Purchased Assets shall attach to the proceeds of the sale of the Proposed Purchased Assets in the same order of validity, priority, and enforceability; and it is further

ORDERED that the transfer of the Proposed Purchased Assets to the Successful Bidder may not be avoided under any applicable law, because the Successful Bidder is providing the Receivership Estate with reasonably equivalent value; and it is further

ORDERED that all entities that are presently, or upon Closing may be, in possession of some or all of the Proposed Purchased Assets are directed to surrender possession of the Proposed Purchased Assets to the Receiver or the Receiver's designee; and it is further

ORDERED that the provisions of this order authorizing the sale of the Proposed Purchased Assets free and clear of any Liens shall be and are self-executing, and the Receiver and Successful Bidder shall not be required, but are permitted in their discretion, to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of the Opelika APA and this order; and it is further

ORDERED that neither the purchase of the Purchased Assets nor the subsequent operation of the Purchased Assets by the Successful Bidder shall cause the Successful Bidder or

its affiliates, successors, or assigns or their respective properties (including the Proposed Purchased Assets) to be deemed a successor in any respect of the Receivership Estate's or the defendants' business operations within the meaning of any laws, rules, or regulations relating to any tax, revenue, pension, benefit, ERISA, environmental, labor, employment, products liability, or other law, rule, or regulation of any federal, state, or local government; and it is further

ORDERED that, upon Closing, this order and the documents executed in connection with and pursuant to this order constitute a full and complete general assignment, conveyance, and transfer of the Proposed Purchased Assets or a deed or a bill of sale transferring good and marketable title in the Proposed Purchased Assets to the Successful Bidder on the Closing Date free and clear of all Liens, and each and every federal, state, and local governmental agency or department is directed to accept this order as such an assignment, deed or bill of sale or any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Opelika APA and this order; and it is further

ORDERED that, if necessary, this order shall be accepted for recordation on or after the Closing Date as conclusive evidence of the free and clear, unencumbered transfer of title to the Proposed Purchased Assets to the Successful Bidder; and it is further

ORDERED that this order is effective as a determination that any and all Liens, if any, will be, and are, without further action by any person or entity, unconditionally released, discharged, and terminated with respect to the Proposed Purchased Assets; and it is further

ORDERED that this court retains exclusive jurisdiction to (a) enforce and implement the Opelika APA and any other agreements, documents, and instruments executed in connection with the Opelika APA, (b) compel delivery of possession of the Proposed Purchased Assets (or any part of the Proposed Purchased Assets) to the Successful Bidder, (c) resolve any disputes,

controversies, or claims arising out of or relating to the Opelika APA, this order, or the sale of the Proposed Purchased Assets, including disputes, controversies or claims asserted by any holder or holders of the Bonds, and (d) interpret, implement, and enforce the provisions of this order; and it is further

ORDERED that the terms and conditions of the Opelika APA and this order will be binding in all respects upon, and will inure to the benefit of, the Receiver, the Receivership Estate, Successful Bidder, and their respective affiliates, successors and assigns, and any affected third parties; and it is further

ORDERED that all persons who hold Liens against the Receivership Estate, the defendants, insiders of the defendants, or the Proposed Purchased Assets are forever estopped and permanently enjoined from asserting or prosecuting any claims or causes of action against the Successful Bidder, its affiliates, successors or assigns, or any of their respective officers, directors, employees, attorneys or advisors, arising out of or in connection with the sale of the Proposed Purchased Assets; and it is further

ORDERED that, to the extent of any inconsistency between the provisions of any agreements, documents, or other instruments executed in connection with the Opelika APA and this order, the provisions contained in the Opelika APA control; and it is further

ORDERED that the reversal or modification of this order on appeal shall not affect the validity of the sale of the Proposed Purchased Assets to the Successful Bidder, because the Successful Bidder acted in good faith in participating in the Bidding Procedures and Auction and in purchasing the Proposed Purchased Assets in accordance with the Opelika APA and this order; and it is further

ORDERED that the Receiver is authorized to pay Mr. Pardoll his commission at the Closing of the sale of the Proposed Purchased Assets; and it is further

ORDERED that the authority granted to the Receiver to close the sale of the Proposed Purchased Assets pursuant to and in accordance with the Opelika APA and this order shall not be stayed if this order is appealed; and it is further

ORDERED that there is no just delay for the implementation of this order and, for all purposes, this order shall be a final order with respect to the sale of the Proposed Purchased Assets and other relief granted in this order; and it is further

ORDERED that time is of the essence and this order shall take effect immediately upon its entry.

Dated: _____, 2018

EXHIBIT C
LURA

2469 685
Recorded in the Above
DEEDS Book & Page
10-01-2015 02:18:33 PM
Bill English - Probate Judge
Lee County, AL
Book/Pg: 2469/685
Term/Cashier: SCAN2 / jbrides
Tran: 15476.225968.300612
Recorded: 10-01-2015 14:18:45
REC Recording Fee
Total Fees: \$ 83.00

83.00

LAND USE RESTRICTION AGREEMENT

By and between

U.S. BANK NATIONAL ASSOCIATION
as Trustee

and

OPELIKA ALF, LLC
the Lessee

Pertaining to

\$7,450,000 The Medical Clinic Board of the City of Opelika, Alabama
First Mortgage Healthcare Facility Revenue Bonds
(Opelika ALF, LLC Project), Series 2015A

Dated as of September 1, 2015

The interest of The Medical Clinic Board of the City of Opelika, Alabama in this Land Use Restriction Agreement and all amounts receivable hereunder (except the rights of The Medical Clinic Board of the City of Opelika, Alabama to receive notices, to give consents, notices and approvals, and to enforce all of its express rights hereunder, without limiting the obligations of the Trustee with respect thereto) has been assigned to U.S. Bank National Association as Trustee under the Trust Indenture, dated as of September 1, 2015, between The Medical Clinic Board of the City of Opelika, Alabama and U.S. Bank National Association, as Trustee.

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LAND USE RESTRICTION AGREEMENT

THIS LAND USE RESTRICTION AGREEMENT (this "Restriction Agreement") is dated as of September 1, 2015, by and between **U.S. BANK NATIONAL ASSOCIATION**, as trustee under the Indenture referred to herein (the "Trustee") and **OPELIKA ALF, LLC**, a Georgia limited liability company (together with its successors and assigns permitted hereunder, the "Lessee").

WITNESSETH:

WHEREAS, pursuant to the Chapter 58 of Title 11 of the Code of Alabama (Code of Alabama 1975, Section 11-58-1 et seq.) as amended, or any successor statute; as amended (collectively, the "Act"); as the same may be amended from time to time, and other applicable provisions of law and resolution adopted by The Medical Clinic Board of the City of Opelika, Alabama (the "Issuer") on September 17, 2015 (the "Resolution") the Issuer authorized the issuance of its Revenue Bonds (Opelika ALF, LLC Project), Series 2015A (the "Bonds"); and

WHEREAS, the Bonds will be issued pursuant to the Act, the Resolution and a Trust Indenture, dated as of September 1, 2015 (the "Indenture"), between the Issuer and the Trustee; and

WHEREAS, the Issuer will apply the proceeds from the sale of the Bonds to: (i) the Lessee's costs of acquiring, renovating and expanding that certain 32-bed (licensed for 36 beds) specialty care assisted living facility, which is located on an approximate 4.785 acre tract of land at 1001 Fox Run Parkway, in Opelika, Alabama, and which is commonly known as "Cambridge Place Assisted Living" with a twenty percent (20%) set aside for low to moderate income earners, (the "Facility") (as more particularly described in the Security Agreement); (ii) the Lessee's acquisition of additional furniture and fixtures for use at the Facility; (iii) the funding of certain funds and accounts established under the Indenture, including a deposit to the Debt Service Reserve Fund for the Series 2015 Bonds; and (iv) the payment of certain costs of issuance of the Bonds, such Project to be financed through the Issuer for the Lessee (collectively, the "Project");

WHEREAS, the Facility will be occupied at least partially by "individuals of low or moderate income" within the meaning of Section 142(d) of the Code;

WHEREAS, pursuant to the Lease Agreement between the Issuer and the Lessee, dated as of September 1, 2015, and assigned to the Trustee pursuant to the Indenture (the "Agreement"), the Lessee has promised to pay lease payments to the Issuer (the "Lease Payment Obligation");

NOW, THEREFORE, for and in consideration of the mutual covenants and representations hereinafter contained, the parties hereto agree as follows:

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**ARTICLE 1
DEFINITIONS**

Section 1.1. Definitions. All words and phrases defined in the Indenture shall have the same meanings for the purposes of this Restriction Agreement. In addition to the words and terms defined elsewhere herein, the following words and phrases shall have the following meanings:

"Bonds" means the \$7,450,000 The Medical Clinic Board of the City of Opelika, Alabama First Mortgage Healthcare Facility Revenue Bonds (Opelika ALF, LLC Project), Series 2015A.

"Code" means the Internal Revenue Code of 1986, as amended. Reference herein to any specific provision of the Code shall be deemed to include any successor provision of the Code to the extent such successor provision is applicable to the Bonds.

"Event of Default" means any event described as an event of default in Section 4.1 hereof and which has continued beyond any applicable notice or grace period.

"Facility" means that certain 32 bed (licensed for 36 beds) specialty care assisted living facility, which is located on an approximate 4.785 acre tract of land at 1001 Fox Run Parkway, in Opelika, Alabama, and which is commonly known as "Cambridge Place Assisted Living.

"HUD" means the United States Department of Housing and Urban Development, or any successor thereto.

"Income Certification" means each of the tenant income certificates which the Lessee is required to obtain prior to the commencement of occupancy by such Low- or Moderate-Income Tenant from, and thereafter to request annually from, each Low- or Moderate-Income Tenant in accordance with the requirements of Section 3.2 of this Restriction Agreement and set forth in Exhibit B hereto.

"Land" means the real property described in Exhibit C attached hereto.

"Low or Moderate Income Tenants" means persons and families within the meaning of the term "individuals of low or moderate income," as used in Treasury Regulation §1.103-8(b)(8)(v) and as modified by Proposed Treasury Regulations 1.103-8(b)(8)(v), i.e., individuals or families having income and as determined under Section 142(d) of the Code, which are equal to or less than the income limit for a "very low income" family of the same size, as determined by the Department of Housing and Urban Development for the Lee, Alabama PMSA under section 8 of the United States Housing Act of 1937.

"Permitted Encumbrances" means those certain Permitted Encumbrances defined in the Agreement.

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"Qualified Bond Counsel" means an attorney or firm of attorneys of nationally recognized standing with respect to the issuance of bonds by states and their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States of America.

"Qualified Project Period" means, with respect to the Facility, that period, beginning on the first day following the date of issuance of the Bonds on which at least ten percent (10%) of the units in the Facility are first occupied, and ending on the latest of (i) the date which is fifteen (15) years after the date on which at least fifty percent (50%) of the units in the Facility are first occupied, (ii) the first day on which no Bonds are outstanding, or (iii) the date on which any assistance provided with respect to the Facility under Section 8 of the United States Housing Act of 1937 terminates.

"Regulations" means the regulations promulgated or proposed by the United States Department of the Treasury pursuant to the Internal Revenue Code of 1986 or the Code, as amended from time to time.

"Security Agreement" means the Mortgage and Security Agreement of the Issuer in favor of the Trustee and joined in by the Lessee, dated as of September 1, 2015, securing the obligations of the Issuer under the Indenture, as such Mortgage is from time to time amended and supplemented.

"State" means the State of Alabama.

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Restriction Agreement; the term "heretofore" means before the date of execution of this Restriction Agreement; and the term "hereafter" means after the date of execution of this Restriction Agreement.

Section 1.2. Interpretation. Words imparting any gender include all genders. Words importing the singular form shall include the plural and vice versa, unless the context shall otherwise indicate. Words importing persons include firms, partnerships, joint ventures, associations, corporations and other legal entities. References to Articles, Sections and other subdivisions of this Restriction Agreement are the Articles, Sections and other subdivisions of this Restriction Agreement. Reference to "this Article," "this Section," "this subsection," or "this paragraph" shall refer to the particular Article, Section, subsection or paragraph in which the reference appears.

ARTICLE 2 BOND PROCEEDS AND ADDITIONAL LESSEE CONTRIBUTIONS

Section 2.1. Prohibition on Transfer Without Issuer Consent. The Lessee shall not sell, lease, encumber (except for Permitted Encumbrances) or otherwise transfer the Facility, the rents or revenues therefrom or any part thereof without the prior written consent of the

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Trustee pursuant to the provisions of this Restriction Agreement; provided that the Facility may be leased to residential and allowable commercial tenants in accordance with the requirements hereof.

ARTICLE 3
SPECIAL COVENANTS OF LESSEE

Section 3.1. Residential Rental Property. The Lessee hereby acknowledges and agrees that the Facility is to be owned, managed and operated as a project for "residential rental property" as such term is referred to in Section 142(d) of the Code. To that end, the Lessee hereby makes the following representations and warranties and, until the expiration of the Qualified Project Period or until the Bonds are no longer outstanding, whichever occurs later, the following covenants:

(a) The Facility will be acquired, constructed and equipped for the purpose of providing multifamily residential rental property. The entire Facility shall be owned by the Issuer and leased to the Lessee for federal income tax purposes. The Facility shall be owned, managed and operated as a multifamily residential rental property comprised of a building or structure or several buildings or structures, together with any functionally related and subordinate facilities and no other facilities, in accordance with Section 142(d) of the Code and Sections 1.103-8(b) and 1.103-8(a)(4) of the Regulations, and in accordance with such requirements as may be imposed thereby on the Facility from time to time.

(b) Once available for occupancy, each unit in the Facility has been and will be held available for rental on a continuous basis at all times during the longer of the Qualified Project Period or until the Bonds are no longer outstanding.

(c) The Facility is and will be comprised of similarly constructed dwelling units, each of which contains and shall contain separate and complete facilities for living, sleeping, eating, cooking and sanitation for a single person or a family, including a living area, a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, refrigerator and sink, but may be served by centrally located equipment such as heating and air conditioning.

(d) Neither the Facility nor any of the residential units in the Facility will at any time be used on a transient basis, and no portion of the Facility has been or shall be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home or trailer park or court. Prior to commencing occupancy in any unit in the Facility each tenant shall execute a written lease which shall be for a term of at least six (6) months.

(e) Subject, in all events, to the occupancy requirements of Section hereof, all of the units will be rented or available for rent on a continuous basis to members of the general public, and the Lessee will not give preference to any particular class or group in renting the

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dwelling units in the Facility, except to the extent necessary to ensure the Low or Moderate Income Tenants will have equal access to and enjoyment of all common facilities of the Facility; provided, however, that an insubstantial number of dwelling units in the Facility may be occupied by maintenance, security or managerial employees of the Lessee or its property manager, which employees are reasonably necessary for operation of the Facility. The Facility is and shall be located entirely within the territorial boundaries of Lee, Alabama. Any functionally related and subordinate facilities (e.g., parking areas, swimming pool, tennis courts, etc.) which are included as part of the Facility will be made available to all tenants on an equal basis. Fees will only be charged with respect to the use thereof if the charging of fees is customary for the use of such facilities at similar residential rental properties in the surrounding area. In any event, any fees charged will not be discriminatory or exclusionary as to the Low or Moderate Income Tenants.

(f) The Facility is and shall be located on a single tract of land or on two (2) or more contiguous tracts of land, and all of the buildings, structures and facilities which are part of the Facility do and shall comprise a single geographically and functionally integrated project for residential rental property, as evidenced by the ownership, management, accounting and operation of the Facility. The Facility does and shall consist of one or more discrete edifices or other man-made construction, each consisting of an independent foundation, outer walls and roof, all of which are and will be owned by the same person for federal tax purposes, located on a common tract of land or two (2) or more tracts of land which are contiguous except for being separated by a road, street, stream or other similar property, and financed by the Loan or otherwise pursuant to a common plan of financing, and which will consist entirely of:

(i) Units which are similar in quality and type of construction and amenities;
and

(ii) Facilities functionally related and subordinate in purpose and size to property described in (i) above, e.g., parking areas, laundries, swimming pools, tennis courts and other recreational facilities (none of which may be unavailable to any person because such person is a Low or Moderate Income Tenant) and other facilities which are reasonably required for the Facility, e.g., heating and cooling equipment, trash disposal equipment or units for residential managers or maintenance personnel.

(g) The Lessee has no present plan, nor does there exist any contractual arrangement, formal or informal, to convert the Facility to any use other than use as residential rental property.

(h) No part of the Facility has been or will at any time be owned or used by a cooperative housing corporation.

(i) The Facility does not and will not include a unit in a building where all units in such building are not also included in the Facility.

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Section 3.2. Low or Moderate Income Tenants. To the end of satisfying the requirements of Section 142(d) of the Code, the Lessee hereby represents and warrants as follows, and agrees and covenants as follows for the period specified in paragraph hereof:

(a) At all times during the Qualified Project Period, at least twenty percent (20%) of the completed dwelling units in the Facility will be occupied or made available for occupancy by Low or Moderate Income Tenants, provided however, that during the initial rent-up period (i.e., the period commencing with the date on which at least ten percent (10%) of the dwelling units are first occupied until the time each of the dwelling units has been occupied at some time) at least twenty percent (20%) of the occupied dwelling units must be occupied by Low or Moderate Income Tenants. For purposes of complying with these requirements, any dwelling unit occupied by an individual or family who is a Low or Moderate Income Tenant at the commencement of occupancy shall continue to be treated as if occupied by a Low or Moderate Income Tenant even though such individual or family subsequently ceases to be a Low or Moderate Income Tenant. Moreover, if a unit is vacated by an individual or family who qualified as a Low or Moderate Income Tenant, such dwelling unit shall be treated as occupied by a Low or Moderate Income Tenant until reoccupied (other than for a temporary period of not more than thirty one (31) days) at which time the character of the unit shall be redetermined. The Lessee will advise the Trustee in writing of the leasing of units to Low or Moderate Income Tenants and any revision thereof. The units so leased shall have substantially the same equipment and amenities as the other units in the Facility. All dwelling units will be occupied by or held available for rental only to members of the general public, without regard to race, creed, religion, national origin or sex.

(b) The Lessee shall obtain from each Low or Moderate Income Tenant, at the time of such tenant's initial occupancy in the Facility and the Lessee shall annually request that each Low and Moderate Income Tenant deliver to it within sixty (60) days of the end of the calendar year, and maintain on file executed original sworn and notarized Income Certifications from each Low or Moderate Income Tenant dated immediately prior to the initial occupancy of such tenant in the Facility (or if obtained dated the end of such calendar year, as the case may be), in the form and containing such information as may be required by Section 142(d) of the Code (initially in the form attached as Exhibit B hereto, as the same may be from time to time amended on the advice of Qualified Bond Counsel), or in such other form and manner as may be required by the Code and the Regulations.

(c) The Lessee shall maintain materially complete and accurate records pertaining to the dwelling units occupied or to be occupied by Low or Moderate Income Tenants, and the incomes of (to the extent obtained pursuant to Section and rentals charged to Low or Moderate Income Tenants residing in the Facility, and permit any duly authorized representative of the Trustee, the Issuer, the Department of the Treasury or the Internal Revenue Service to inspect the books and records of the Lessee pertaining to the incomes and the Income Certifications of Low or Moderate Income Tenants residing in the Facility upon reasonable notice and at reasonable times.

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(d) Within ten (10) days after the end of each calendar month (but as to items and below, such report shall only be required quarterly), the Lessee shall render to the Trustee a compliance certificate executed by the Lessee in the form attached as Exhibit A hereto, stating, among other matters, the dwelling units of the Facility which were occupied by Low or Moderate Income Tenants during such period, together with photocopies of all Income Certifications of Low or Moderate Income Tenants of the Facility not previously furnished to the Trustee, that it has no knowledge that any material default has occurred in the observance of its covenants contained in this Restriction Agreement, and that no event has occurred in connection with the operation of the Facility which has caused or will cause the Facility to cease to materially meet the requirements of this Restriction Agreement. In the event the Lessee is unable to deliver such compliance certificate, the Lessee shall furnish to the Trustee in writing a detailed explanation of the reasons for such non-compliance.

(e) The provisions of this Section relating to Low or Moderate Income Tenants shall terminate upon the expiration of the Qualified Project Period, and the other provisions of this Section shall terminate upon the last to occur of the expiration of the Qualified Project Period or on the first day when no Bonds remain Outstanding under the Indenture.

(f) Monthly rental charges for units occupied or set aside for occupancy by Low or Moderate Income Tenants shall not exceed 1/12 of thirty percent (30%) of the income limit applicable to Low or Moderate Income Tenants or such other amount as allowed or required by law.

(g) The distribution of units occupied or set aside for occupancy by Low or Moderate Income Tenants among different-sized units in the Facility shall reflect the same percentage distribution as the number of different sized units bears to the total number of units, provided that greater percentage of the Low or Moderate Income Tenant units than would otherwise be required may be allocated to larger units.

(h) The Lessee shall file with the Trustee and the Issuer, on the first day of each month, copies of the Income Certifications specified in Section hereof obtained by the Lessee during the previous month and annually within thirty (30) days of the end of each calendar year, a certificate, to the knowledge of the Lessee, representing that the provisions contained in Section hereof have been satisfied for the preceding calendar year.

(i) The Lessee shall prepare and submit to the Trustee and the Issuer, on the first day of each quarter, the monthly rent rolls for the Facility during the previous quarter.

(j) The Lessee agrees that it shall include as a tenant covenant within each Low or Moderate Income Tenant's lease an obligation on the part of the tenant to furnish Income Certifications in compliance with subsection hereof.

(k) The Lessee agrees that all tenant lists, applications, and waiting lists relating to the Facility shall at all times be kept separate and identifiable from any other business of the

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Lessee which is unrelated to the Facility and shall be maintained in a reasonable condition for proper audit and subject to examination during business hours upon reasonable notice by representatives of the Issuer and the Trustee. Failure to keep such lists and applications or to make them available to the Issuer or the Trustee will be a default hereunder.

(l) All dwelling units have been and shall be occupied by or held available for rental only to members of the general public, without regard to race, creed, religion, national origin or sex.

Section 3.3. Covenant of Lessee Regarding Tax-Exempt Status of the Bonds. The Lessee hereby represents, warrants, covenants and agrees as follows:

(a) The Lessee will comply with the provisions of the Code applicable to the Bonds applicable to it and will not take any action or fail to take any action which would cause the interest on the Bonds to lose the exclusion from gross income under Section 103(a) of the Code.

(b) Upon the request of the Issuer or the Trustee, the Lessee will take such action or actions as may be reasonably necessary in a Qualified Bond Counsel's Opinion, to comply fully with all provisions of the Act which relate, and all rules, rulings, policies, procedures, Regulations or other official statements promulgated, proposed or made by the Department of the Treasury under the Code which relate, to maintenance of the exclusion from gross income of interest on the Bonds.

(c) The Lessee hereby covenants to include (by incorporation by reference or verbatim) the requirements and restrictions contained in this Restriction Agreement in any deed and other documents transferring any interest in the Facility to another to the end that such transferee has notice of, and is bound by such restrictions to the extent and for the period required thereby and to obtain the agreement from any transferee to so abide.

Section 3.4. Reserved.

Section 3.5. Lessee To Maintain Its Existence. The Lessee agrees to maintain its existence as a limited liability company duly organized under the laws of the State of Alabama and qualified to transact business under the laws of the State.

Section 3.6. Lessee to Remain Qualified in State and Appoint Agent. If required by laws of the State, the Lessee will remain duly qualified to transact business in the State and will maintain an agent in the State on whom service of process may be made in connection with any actions against the Lessee.

Section 3.7. Covenants To Run With the Land. The covenants, reservations and restrictions set forth herein shall be deemed covenants running with the Land and, except as

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provided in Section 5.9 hereof, shall pass to and be binding upon the Lessee, its heirs, assigns and successors in title to the Land or the Facility; provided, however, that upon the termination of this Restriction Agreement in accordance with the terms hereof said covenants, reservations and restrictions shall expire. Except as provided in Section hereof, each and every contract, deed or other instrument hereafter executed covering or conveying the Land or the Facility or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. If a portion or portions of the Facility are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Facility.

ARTICLE 4 EVENTS OF DEFAULT AND REMEDIES

Section 4.1. Events of Default. The occurrence of any one or more of the following events shall constitute an Event of Default under this Restriction Agreement:

(a) If notice is given to the Lessee by the Trustee or the Issuer that the Lessee has failed to comply with or to perform any of the covenants, conditions or provisions of this Restriction Agreement which apply to the Lessee, and, in any such case, the passage of thirty (30) days from the date of such notice during which time the Lessee shall be entitled to cure any such failure to comply (or such longer period of time if permitted under the Agreement or the Mortgage thereafter grants its permission for such longer period in writing so long as the Lessee commences cure within such thirty (30)-day period and after commencement thereof diligently continues such cure to completion). Notwithstanding the foregoing, in the case of a failure to comply with the requirements of Sections 3.1, 3.2 or 3.3 hereof, such breach shall not constitute an Event of Default if within thirty (30) days after the date of such notice the Trustee receives an opinion of Qualified Bond Counsel stating that such failure or Event of Default does not produce a material risk that interest on the Bonds will become includable in the gross income for federal income tax purposes of the recipient thereof (except respecting Bonds owned by a "substantial user" of the Facility or a "related person"), or such failure or Event of Default can be remedied with the effect of permitting the interest on the Bonds to continue to be excludable from gross income for purposes of federal income taxation and such failure or Event of Default is so remedied within the period of time determined by Qualified Bond Counsel to be necessary to permit interest on the Bonds to continue to be excludable from gross income for purposes of federal income taxation (except respecting Bonds owned by a "substantial user" of the Facility or a "related person," and such failure or Event of Default does not cause a violation of the Act, the Indenture or the Resolution by the Trustee.

Section 4.2. Remedies for Failure to Perform.

(a) Upon the occurrence of an Event of Default specified in Section above, the Trustee may exercise one or more of the following remedies subject in all respects to the provisions relating thereto in the Indenture:

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- (i) through its duly authorized agents, have access to and inspect, examine and make copies of, the books, records and accounts of the Lessee;
 - (ii) upon any required court approval, assume possession and management of the Facility;
 - (iii) petition a court of competent jurisdiction for the appointment of a receiver to take possession of and manage and operate the Facility in conformity with the provisions of this Restriction Agreement;
 - (iv) take whatever action at law or in equity may appear necessary or desirable to enforce observance or performance of any covenant, condition or agreement of the Lessee under this Restriction Agreement and to collect the amounts then due and thereafter to become due consistent with the obligations of the Lessee under this Restriction Agreement; or
 - (v) exercise any remedy available to the Trustee or the Issuer hereunder.
- (b) Upon the receipt of notice of noncompliance pursuant to Section hereof, the Trustee may but need not take one or more of the following actions as it so reasonably determines to be necessary or appropriate to protect the interests of the Bondholders hereunder:
- (i) notify the Lessee that with the passage of time the noncompliance may result in an Event of Default; and
 - (ii) direct the Lessee to take such steps as necessary to correct the noncompliance in a timely fashion.

Section 4.3. Discontinuance of Proceedings. In case any proceeding taken by the Issuer or the Trustee on account of any failure to perform under this Restriction Agreement shall have been discontinued or determined adversely to the Issuer or the Trustee, then and in every case the Issuer, the Trustee and the Lessee shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Issuer and the Trustee shall continue as though no such proceeding had been taken, except with respect to any final and binding determination rendered in such proceeding.

Section 4.4. Remedies Cumulative. No remedy conferred upon or reserved to the Issuer or the Trustee by this Restriction Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Restriction Agreement or the Indenture or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any failure to perform under this Article shall impair any such right or power or shall be construed to be a waiver thereof. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than as otherwise specified in this Restriction Agreement.

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**ARTICLE 5
MISCELLANEOUS**

Section 5.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered to the addressee by registered mail, postage prepaid, addressed as follows:

If to the Issuer: *The Medical Clinic Board of the City of Opelika, Alabama*
c/o John Scott Pierce, Esq.
Capell & Howard, P.C.
150 South Perry Street
Montgomery, Alabama 36104
Attn: Chairman

If to the Lessee: *Opelika ALF, LLC*
c/o Dewayne A. Edwards
2151 Eatonton Road, Building G
Madison, Georgia 35209

If to the Trustee: *U.S. Bank National Association*
c/o Global Corporate Trust Services
101 North First Avenue, Suite 1600
Phoenix, Arizona 85003

A duplicate copy of each notice, certificate or other communication given hereunder by the Trustee or the Lessee shall also be given to the Issuer. The parties listed above may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 5.2. Concerning Successors and Assigns. All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the financing herein contemplated and shall continue in full force and effect so long as the obligations hereunder are outstanding. Whenever in this Restriction Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Lessee and the Trustee which are contained in this Restriction Agreement shall bind and inure to the benefit of their respective successors and assigns.

Section 5.3. Governing Law. This Restriction Agreement and the exhibits attached hereto shall be construed in accordance with and governed by the laws of the State and, where applicable, the laws of the United States of America.

Section 5.4. Amendments; Waivers. This Restriction Agreement may be amended only by an instrument in writing executed and acknowledged on behalf of the Trustee and the

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Lessee in such manner as the instrument may be recorded. No waiver by the Trustee in any particular instance of any event of default or required performance by the Lessee and no course of conduct of the parties or failure by the Trustee to enforce or insist upon performance of any of the obligations of the Lessee under this Restriction Agreement at any time shall preclude enforcement of any of the other terms of this Restriction Agreement or the Loan thereafter.

Any provision of this Restriction Agreement requiring the consent or approval of the Trustee for the taking of any action or the omission of any action requires such consent by the Trustee in writing signed by a fully authorized officer of the Trustee. Any such consent or approval, unless it expressly states otherwise, is limited to the particular action or omission referred to therein and does not apply to subsequent similar actions or omissions.

Notwithstanding the foregoing, this Restriction Agreement shall be amended to reflect changes in Section 142(d) of the Code, the Regulations and any revenue rulings promulgated thereunder, or in the interpretation thereof.

Section 5.5. Further Assurances and Corrective Instruments. The Trustee and the Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of performance required by a party to this Restriction Agreement.

Section 5.6. Captions. The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Restriction Agreement.

Section 5.7. Severability. In the event any provision of this Restriction Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

Section 5.8. Counterparts. This Restriction Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 5.9. Effective Date and Term. This Restriction Agreement shall become effective upon its execution and delivery by the parties hereto, shall be effective and remain in full force from the date hereof, and, subject to the provisions hereof, shall expire on the latest of the expiration of the Qualified Project Period or the first date on which none of the Bonds remain outstanding or satisfaction in full of the Loan. Notwithstanding the preceding sentence, the Lessee's obligations set forth herein shall expire on the later of (i) the first date on which none of the Bonds remains Outstanding, or (ii) satisfaction in full of the Loan. Notwithstanding the foregoing, this Restriction Agreement shall automatically terminate in the event of foreclosure or transfer by deed in lieu of foreclosure, and further provided that this Restriction Agreement shall terminate in the event of any involuntary noncompliance with the

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provisions of this Restriction Agreement caused by fire, seizure, requisition, change in a federal law or an action of a federal agency that prevents the Trustee from enforcing the provisions hereof, or condemnation or a similar event, but only if (i) within a reasonable period thereafter, the Bonds are retired or (ii) the proceeds received as a result of such event are used to finance a development that complies with the provisions hereof and any other applicable requirements of the Code and the Regulations. In the case of foreclosure or transfer of title by deed in lieu of foreclosure or similar event, such termination will cease to be in effect if, at any time during the remainder of the Qualified Project Period, the Lessee, any subsequent obligor under the or a "related person" (as defined in Section 147(a)(2) of the Code) obtains an ownership interest in the Facility for federal tax purposes. Notwithstanding any other provision in this Restriction Agreement, all restrictions on the operation and occupancy of the Facility contained in this Restriction Agreement which are not necessary, in the opinion of Qualified Bond Counsel, to maintain the exclusion from gross income of interest on the Bonds for purposes of federal income taxation, shall terminate when either the Bonds or the Loan has been paid in full.

Section 5.10. No Liability of Officers. No recourse under or upon any obligation, covenant, or agreement or in any of the Bonds, or under any judgment obtained against the Trustee, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, director or officer, as such, past, present, or future, of the Trustee, either directly or through the Trustee, or otherwise, for the payment for or to the Trustee or any receiver thereof, or for or to the holder of any Bonds, of any sum that may be due and unpaid by the Trustee upon any of the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director or officer, as such, to respond by reason of any act or omission on his part or otherwise, for the payment for or to the Trustee or any receiver thereof, or for or to the holder of any Bonds, of any sum that may remain due and unpaid upon the Bonds or any of them, is hereby expressly waived and released as a condition of and consideration for the execution of this Restriction Agreement and the issuance of the Bonds.

Section 5.11. Recording and Filing. The Lessee shall cause this Restriction Agreement and all amendments and supplements hereto to be recorded and filed in the conveyance and real property records of the county in which the Facility is located and in such other places as the Issuer and the Trustee may reasonably request. The Lessee shall pay all fees and charges incurred in connection with any such recording.

Section 5.12. Modification of Tax Covenants. To the extent any amendments, modifications or changes to the Regulations, the Code shall, in a Qualified Bond Counsel's Opinion addressed to the Trustee and filed with the Lessee, impose requirements upon the ownership, occupancy or operation of the Facility which require observance and/or compliance to maintain the exclusion from gross income for purposes of Federal income taxation different from those imposed by the Regulations, the Code and stated herein, this Restriction Agreement shall be amended and modified in accordance with such requirements. The parties hereto

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agree to execute, deliver and record, if applicable, any and all documents or instruments reasonably necessary in the opinion of and in the form approved by Qualified Bond Counsel to effectuate the intent of this Section.

Section 5.13. Burden and Benefit. The Issuer and the Lessee hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the Land in that the Lessee's legal interest in the Land and the Facility is rendered less valuable thereby. The Issuer and the Lessee hereby further declare their understanding and intent that the benefit of such covenants touch and concern the Land by enhancing and increasing the enjoyment and use of the Land and the Facility by Low or Moderate Income Tenants to the extent set forth herein, the intended beneficiaries of applicable covenants, reservations and restrictions as set forth herein, and by furnishing the public purposes for which the Bonds were issued. The provisions hereof are imposed upon and made applicable to the Land and shall run with the Land and shall be enforceable against the Lessee or any other person or entity that has or had an ownership interest in the Facility at the time of such violation or attempted violation.

Section 5.14. Uniformity; Common Plan. The covenants, reservations and restrictions hereof shall apply uniformly, in accordance with their terms, to the entire Facility.

Section 5.15. Notice of Noncompliance. As soon as is reasonably possible, the Lessee shall notify the Trustee and the Issuer of the existence of any situation or the occurrence of any event of which the Lessee has knowledge, the existence or occurrence of which would violate materially any of the provisions of this Restriction Agreement or cause the interest on the Bonds to lose the exclusion from gross income for purposes of federal income taxation.

Section 5.16. Reliance; Compliance. The Trustee and the Lessee hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons interested in the legality and validity of the Bonds and in the exclusion from gross income for federal income tax purposes of the interest on the Bonds. In performing its duties and obligations hereunder, the Trustee may rely upon statements and certificates of the Lessee and the Low and Moderate Income Tenants and upon audits of the books and records of the Lessee pertaining to the Facility. In addition, the Issuer and the Trustee may consult with Qualified Bond Counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Trustee hereunder in good faith and in conformity with such opinion.

Promptly following its receipt thereof, the Trustee will review each Income Certificate and compliance certificate delivered pursuant to this Restriction Agreement in order to determine that each such document is complete and to determine that the percentage set forth in paragraph 2 of the compliance certificate is at least twenty percent (20%).

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If the Lessee fails to submit to the Trustee any certification required pursuant to this Restriction Agreement within forty five (45) days of the time set forth herein, the Trustee shall immediately give written notice of that fact to the Issuer and the Lessee. .

Section 5.17. Survival of Covenants. The parties hereto agree that, notwithstanding anything to the contrary contained herein, the property subject to the Mortgage is subject to the covenants set forth in this Restriction Agreement and said property shall remain subject to such covenants now and after the acquisition of the property through foreclosure proceedings or by any other means, by Issuer as the mortgagee on the Mortgage or any other party, to the extent necessary to preserve the tax-exempt status of the Bonds.

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IN WITNESS WHEREOF, the Lessee hereto has executed this Restriction Agreement and caused the corporate seal of the general partner to be affixed hereto and to be attested, all as of the date first set forth above.

OPELIKA ALF, LLC

(CORPORATE SEAL)

By: [Signature]
Manager

STATE OF GEORGIA)
)
COUNTY OF FULTON)

I, the undersigned, a Notary Public in and for said State and County, do hereby certify that Dewayne A. Edwards, whose name as Manager of Opelika ALF, LLC, a Georgia limited liability company, is signed to the foregoing conveyance, and who is known to me and known to be such official, acknowledged before me this day that he, in his respective capacity as such official, being informed of the contents of the conveyance, and with full authority and of his own free will and accord, voluntarily executed the foregoing Land Use Restriction Agreement for and as the free and unrestrained act of said limited liability company, for the purposes therein named and expressed.

20 IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office this day of September, 2015.

Cathy Rumsey
NOTARY PUBLIC
Cobb County, GEORGIA
(SEAL) My Comm. Expires
08/15/2019

[Signature]
NOTARY PUBLIC

My Commission Expires:

8/15/19

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EXHIBIT A

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

The undersigned (the "Lessee"), the owner of [NAME OF FACILITY] multi-family housing development, has read and is thoroughly familiar with the provisions of the Land Use Restriction Agreement dated as of September 1, 2015 (the "Restriction Agreement") by and between the Lessee and the Trustee and certifies to the best of its knowledge:

1. As of the date of this certificate, the following number of residential units in the Facility (i) are occupied to Low or Moderate Income Tenants (as such term is defined in the Agreement) or (ii) were previously occupied by Low or Moderate Income Tenants and have been vacant and not re-occupied except for a temporary period of no more than thirty one (31) days, as indicated:

- (a) Number of units occupied by Low or Moderate Income Tenants: _____
- (b) Number of units previously occupied by Low or Moderate Income Tenants (vacated and not re-occupied except for a temporary period of no more than thirty-one (31) days) _____
- (c) Total number of residential units in the Facility _____

2. The total number of units occupied or previously occupied by Low or Moderate Income Tenants as shown above is _____% of the total number of units.

3. As of the date of this certificate (and on a quarterly basis pursuant to Section 3.2(d) of the Restriction Agreement), no material default has occurred in the observance of the covenants contained in the Restriction Agreement, and no event has occurred in connection with the operation of the Facility which has caused or will cause the Facility to cease to materially meet the requirements of the Restriction Agreement.

OPELIKA ALF, LLC

(CORPORATE SEAL)

By: _____
Manager

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EXHIBIT B

TENANT INCOME CERTIFICATE

[NAME OF FACILITY]

Name of Tenant (i.e., person whose name appears on the lease):

Address of Apartment: _____

Apartment Number: _____

Some or all of the cost of the apartment development in which you are to lease an apartment was financed by bonds issued for the benefit of the owner. Interest paid on those bonds is intended to be excluded from gross income for purposes of federal income taxation. In order to qualify for that exclusion there are certain requirements which must be met with respect to the apartment building and its tenants. To satisfy one of those requirements, it is necessary for you to provide the information requested in this Income Certificate at the time you sign your lease.

I. ANTICIPATED INCOME

For each person who is expected to occupy the unit at any time during the next twelve months, please provide the following information:

Name	Salary/Wages*	Other Income**	Total Income
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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The Employers of the persons listed above are as follows:

Occupant	Employer	Employer Address	Telephone Number
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Provide copies of latest Form 1040s.

*State the gross amount of compensation, before any payroll deductions, including any wages and salaries, bonuses, overtime pay, tips, commissions, or fees anticipated to be received during the next twelve months.

**Other income generally includes income anticipated to be received from any source whatsoever during the next twelve months, including but not limited to:

(a) the greater of (i) interest, dividends, rental income or other income derived from capital investments or (ii) the value of such investments multiplied by the current passbook savings rate as determined by HUD;

(b) net income from a profession or operation of a business;

(c) regular or periodic payments received instead of earnings, such as unemployment compensation, worker's compensation and severance (but does not include lump-sum payments that are received only once);

(d) periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts;

(e) periodic and determinable allowances, such as alimony and child support payments and regular contributions or gifts from persons not listed above;

(f) welfare or public assistance, but if the public assistance payment includes an amount specifically designated for shelter and utilities which is subject to adjustment by the public assistance agency in accordance with the actual cost of shelter and utilities, the amount of public assistance income to be included shall consist of;

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(1) the amount of the assistance that is not specifically designated for shelter and utilities, plus

(2) the maximum amount which the public assistance agency could in fact allow the occupant for shelter and utilities;

(g) for members of the armed forces, all regular pay, special pay and allowances (except special pay for hazardous duty); and

(h) any earned income tax credit to the extent that it exceeds the taxes paid for that year.

Do not include in the amount of other income shown above the following items:

(a) temporary, special or irregular payments you may receive (including gifts);

(b) income earned by children under 18 years of age;

(c) payments received for the care of foster children;

(d) amounts which are specifically for, or in reimbursement of, the cost of medical expenses;

(e) lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains and settlements for personal or property losses;

(f) income of a live-in aide who resides in the apartment to assist an elderly or disabled person;

(g) amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment; provided that any amounts of such scholarships, or payments to veterans not used for the above purposes which are available for subsistence are to be included in income;

(h) Amounts received under training programs funded by HUD;

(i) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS); or

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(j) Amounts received by a participant in other publicly assisted programs which are specifically for out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made to allow participation in a specific program.

II. STUDENTS

(a) Will all of the persons listed above be (or have they been) full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?

Yes _____ No _____

(b) Is any such full-time student married and eligible to file a joint federal income tax return?

Yes _____ No _____

(c) Is any such full-time student attending night school on a full-time basis?

Yes _____ No _____

I, the undersigned, certify that I have read and answered fully, frankly and personally each of the foregoing questions and requests for information for all persons who are to occupy the unit in the above Facility. I acknowledge that all of the above information is relevant to the status under federal income tax law of the interest on bonds issued to finance the Facility containing the unit which I intend to occupy. I consent to the disclosure of this information to the issuer of such bonds, the owners of such bonds and any agent acting on their behalf.

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I certify under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____, 20____, at _____, Georgia.

Tenant

STATE OF _____)

_____ COUNTY)

I, _____, a Notary Public in and for the said County in the State aforesaid, do hereby certify that _____, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he/she signed and delivered the said instrument, as his/her free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____,

_____.

Notary Public
My Commission Expires: _____

(SEAL)

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EXHIBIT C

DESCRIPTION OF LAND

Parcels A and B of Final Plat of Cambridge Place Plat 1, according to plat thereof recorded in Plat Book 21, Page 103 of the records of the Judge of Probate of Lee County, Alabama.

Together with and subject to the terms and conditions of that certain easement dated April 5, 2000 by and between the Opelika Industrial Development Authority and Cambridge, L.L.C. recorded in Deed Book 2193, at Page 450.

EXHIBIT D
OPELIKA APA

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the “*Agreement*”), dated as of 15th day of December, 2017, (the “*Effective Date*”) is executed by Derek Pierce, acting solely in his capacity as court-appointed receiver under the Receiver Order (as defined below) (the “*Seller*”), and Opelika Retirement Investors, LLC a Georgia limited liability company (the “*Purchaser*”).

RECITALS

WHEREAS, Opelika ALF, LLC (the “*Borrower*”) is the owner and operator of a 32-unit (licensed for 36 beds) specialty care assisted living facility known as “*Manor House of Opelika*” (hereafter referred to as the “*Facility*”), which is located on an approximately 4.785 acre tract of land at 1001 Fox Run Parkway, Opelika, Alabama 36801 aka 701 Brookstone Drive, Opelika, Alabama 36801 (the “*Land*”, and together with the Facility, “*Project*”);

WHEREAS, pursuant to that certain Trust Indenture, dated as of September 1, 2015 (the “*Indenture*”), between The Medical Clinic Board of the City of Opelika, Alabama (the “*Issuer*”) and U.S. Bank National Association (the “*Indenture Trustee*”), the Issuer issued \$7,450,000 of The Medical Clinic Board of the City of Opelika, Alabama First Mortgage Healthcare Facility Revenue Bonds (Opelika ALF, LLC Project) Series 2015A Bonds (the “*Series 2015A Bonds*”) and \$700,000 of The Medical Clinic Board of the City of Opelika, Alabama First Mortgage Healthcare Facility Revenue Bonds (Opelika ALF, LLC Project) Series 2015B (Taxable) Bonds (the “*Series 2015B Bonds*,” and together with the Series 2015A Bonds the “*Bonds*”) in order to provide financing for the Project;

WHEREAS, Issuer has entered into a Lease Agreement dated as of September 1, 2015 (the “*Lease Agreement*”) with the Borrower under the terms of which the Issuer has agreed to finance the cost of the Project through the issuance of the Bonds and, in consideration thereof, the Borrower has agreed to pay to the Issuer moneys sufficient to pay the principal of, the redemption premium (if any) and the interest on, the Bonds as the same become due and payable and to pay certain administrative expenses in connection with the Bonds;

WHEREAS, the Borrower has entered into a Mortgage and Security Agreement, dated as of September 1, 2015 (the “*Mortgage*” and together with the Indenture, Lease Agreement, and all other related documents, the “*Bond Documents*”) in favor of the Indenture Trustee, pursuant to the terms of which the Issuer has assigned to the Indenture Trustee in the granting clause of the Indenture a security title to and security interest in that portion of the Project consisting of real property, all improvements thereon, and certain personal property as security for the payments required to be made under the Lease Agreement;

WHEREAS, as security for the payment of the Bonds, the Issuer has assigned to and pledged to the Indenture Trustee all right, title and interest of the Issuer in (a) the Lease Agreement (except certain rights reserved by the Issuer under the terms of the Indenture), together with the Lease Agreement, (b) the “*Pledged Revenues*” (as defined in the Indenture), and (c) all amounts on deposit from time to time in the “*Project Fund*” (as defined in the Indenture);

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 Pierce as receiver over the “**Receivership Entities**”¹;

WHEREAS, the license to operate the Facility and the Certificate of Need (“**CON**”) are held by Affinity Living Group, LLC, the current manager of the Facility (the “**Manager**”), due to the Alabama Department of Public Health previously requiring that the license be transferred from one of the Receivership Entities to the Manager to facilitate continued Facility operations (“**License Holder**”) and pursuant to an associated 2016 change of ownership approval from the State Health Planning and Development Agency (“**SHPDA**”);

WHEREAS, the Issuer has agreed to convey title to the Land to Purchaser by quitclaim deed at Closing (as defined below);

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, and 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, the TIP Order (as defined below) 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

¹ The Receivership Entities include: Opelika ALF, LLC; Oxtan Court of Opelika, LLC; and Manor House of Opelika, LLC.

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:

ARTICLE I. CONVEYANCE AND ACQUISITION

Section 1.01. Agreement to Convey and Acquire. Subject to 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, pledges, options, charges, security interests, deeds of trust, mortgages, conditional sales agreements, encumbrances, 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 the Receivership Entities, including (a) the real property described in Exhibit A to the Agreement, (b) only to the extent legally transferable, Seller’s, Manager’s and the Receivership Entities’ rights to existing licenses and the CON (including the specialty care assisted living facility license and CON for the specialty care assisted living facility beds held by License Holder, which Seller shall cause to be transferred, to the extent legally transferrable, by License Holder to Purchaser in accordance with the License and CON Surrender and Transfer Cooperation Agreement by and between Manager and Seller attached hereto as Addendum I (the “*Transfer Agreement*”) and subject to approval of the Alabama Department of Public Health of Purchaser as the New License holder and SHPDA of Purchaser as the CON holder (“*CON Approval*”), bed rights, permits, and certificates for the Facility, (c) the Facility’s equipment, furniture, motor vehicles, and other tangible and intangible personal property, all buildings, and fixtures associated with the Facility for its operation as a duly licensed 36-bed specialty care assisted living facility in Opelika, Alabama, (d) all Leases (as defined in Schedule 1.01), and (e) all Contracts (as defined in Schedule 1.01), including, without limitation, all such assets 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, (c) a quitclaim deed, substantially in the form attached to this Agreement as Exhibit D (the “*Quitclaim Deed*”), conveying all of Issuer’s rights, titles, and interests in and to the land, improvements, and fixtures included in the Purchased Assets, (d) an assignment of intangible property, substantially in the form similar to that attached hereto as Exhibit E (the “*Assignment of Intangibles*”), and (e) an assignment of leases and contracts, substantially in the form attached to this Agreement as

Exhibit F (the “*Assignment of Contracts and Leases*”), assigning to Purchaser all of the assumed leases and contracts identified therein, including all Leases in effect on the Closing Date and the interest of Seller and the Receivership Entities under all design contracts, construction contracts, subcontracts, utility contracts, water and sewer service contracts of any nature, maintenance contracts, management contracts, food service contracts, senior housing or assisted living management contracts, certificates of occupancy, permits, soils reports, and other contracts or documents of any nature relating to the Project (the “*Service Contracts*”) which are assignable by Seller and which Purchaser approves and elects to assume.

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 **Two Million Dollars** (\$2,000,000) (the “*Initial Bid*”).

Section 1.04. Payment of Purchase Price at Closing. If Purchaser is the Successful Bidder (as defined in **Section 2.03** of this Agreement) 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 proration as set forth in ARTICLE XI of this Agreement, to Seller in immediately available funds, as set forth more fully in **Section 3.02(h)** 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 and the Receivership Entities which are known at Closing other than the Assumed Liabilities. Neither Purchaser nor Seller has any responsibility for liabilities or obligations which are not disclosed to Seller and Purchaser on or before Closing Date.

Section 1.06. Liabilities Not Assumed by Purchaser. Purchaser shall not be the successor to the Seller, the Receivership Entities, or Manager, 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 taxes imposed on or with respect to the Purchased Assets for any period prior to the Closing Date. As of the Closing Date, Seller shall terminate all management agreements relating to the Facility prior to the Closing Date, including the Sub-Management Agreement with Manager, and Purchaser shall not assume any liability or responsibility therefor.

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 **Fifty**

Thousand Dollars (\$50,000) (“**Purchaser’s Deposit**”) by wire transfer of immediately available funds. Purchaser’s Deposit shall be held in a separate escrow account under the custody and control of Commonwealth Land Title Insurance Company (the “**Title Company**” or “**Escrowee**”) pursuant to the Escrow Agreement attached hereto as **Exhibit G**. The provisions of this Section 1.07 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(h) 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 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 Sections 5.01(b)(ii), 13.01(i), or 14.01(i), 15.14(a)(i), Section 15.14(a)(ii), Section 15.14(a)(iii), by Purchaser due to Seller’s default, or pursuant to Section 15.14(b), or 15.14(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 or (v) if the license to operate the Facility and the CON (including the specialty care assisted living facility license and CON for the specialty care assisted living facility beds) are not successfully transferred by Manager and/or License Holder to Purchaser at Closing.

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 Section 4.01 of this Agreement 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 an 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 Seller shall cause License Holder, pursuant to the attached Transfer Agreement, to cooperate with Purchaser in connection with the filing for the New License and CON Approval. 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 for in the Bidding Procedures Order, and (b) pursuant to the Sale Order.

Section 2.02. Bidding Procedures. Within three (3) 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 H 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 two (2) Business Days 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 as soon after the Effective Date as possible.

(e). The Auction shall occur no later than forty-five (45) days after the entry of the Bidding Procedures Order.

(f). The Sale Order shall be entered by the Court in a form and substance agreed to by Purchaser within one (1) to three (3) Business Days of the Auction.

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/or 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 **Eighty Thousand Dollars** (\$80,000) (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 the 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 no later than seven (7) days after the later of (a) 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**”), (b) entry of the TIP Order, or (c) the date Purchaser has obtained all Regulatory Approvals, unless such other date that is mutually acceptable to Seller and Purchaser is agreed upon (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 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 and the Receivership Entities’ rights, titles, and interests in, to, and under all personal property included in the Purchased Assets, free and clear of all Liens.

(b). Receiver’s Deed and Issuer’s Deed. Seller will deliver the Receiver’s Deed, fully executed by Seller and Purchaser, conveying to Purchaser all of Seller’s and Borrower’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. Seller shall cause Issuer to deliver the Quitclaim Deed, fully executed by Issuer, conveying to Purchaser all of Issuer’s rights, title, and interests in, to, and under the land, improvements, and fixtures included in the Purchased Assets.

(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 the Receivership Entities’ interest in the contracts and leases identified therein (the “**Assigned Contracts**”), together with the interest of Seller and Borrower in security deposits collected and held by Seller to secure the performance of the duties and obligations of tenants under the Assigned Contracts.

(d). Employee List, Census Report, and Litigation Schedule Seller will deliver an updated employee list, updated census report and updated litigation schedule.

(e). Records and Advance Payments. Seller will deliver originals of all Medical Records, Transferred Records and records of Advance Payments in the possession of Seller.

(f). Termination of Management Agreements. Seller will deliver proof of termination of any management agreement affecting the Facility.

(g). Other Documents. Seller will use commercially reasonable efforts to deliver such other documents as Purchaser may reasonably request to accomplish the transactions contemplated by this Agreement or to evidence Seller's compliance with the covenants and agreements of Seller contained in this Agreement, including without limitation, a FIRPTA affidavit and any documents necessary to transfer the current telephone service and number(s) and website to Purchaser or Purchaser's designee.

(h). 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.

(i). 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(i) shall not be binding on Seller or any third party for any other purpose, including, without limitation, proceedings in the Receivership Proceeding.

(j). 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 10.01 of this Agreement.

(k). 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 by Seller as may be required to put the Purchased Assets in actual possession and operating control of Purchaser.

(l). 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 (i) the Indenture Trustee to release any 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 and (ii) the Title Company to release any other mortgages, liens, pledges, security interests, charges, claims, restrictions, and other encumbrances 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.

(m). 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 I**, 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 as of the Closing Date.

(n). TIP Proceeding. Seller and Purchaser contemplate that subsequent to the execution of this Agreement, the Indenture Trustee will commence a Trust Instruction Proceeding, pursuant to Minn. Stat. 501C.0201, *et seq.*, (a "**TIP Proceeding**"), in Ramsey County, Minnesota District Court (the "**TIP Court**") seeking entry of an order in a form and substance acceptable to the Indenture Trustee (the "**TIP Order**") authorizing the Indenture Trustee to, *inter alia*, consent to the sale of the Purchased Assets pursuant to this Agreement and release of its liens. The authority for, and obligation of, Seller to close the transaction contemplated in this Agreement is subject to the Indenture Trustee successfully obtaining entry by the TIP Court of the TIP Order, and Closing shall not occur without notice from the Indenture Trustee that the Indenture Trustee has obtained the required TIP Order, or has expressly waived that condition in writing. Seller shall cause the Indenture Trustee to deliver or cause to be delivered to Purchaser upon Indenture Trustee's filing thereof, all documents filed on behalf of the Indenture Trustee in the TIP Proceeding that relate to the transactions contemplated by this Agreement.

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, control or ability to voluntarily obtain:

(a). Certificates of occupancy and other necessary governmental licenses or approvals.

(b). "As-built" 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). 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.

(d). 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.

(e). All contracts affecting the Project.

(f). Accounting books and records including financial statements of operations prepared by a certified public accountant for the Project for the years 2015 and 2016, as well as year-to-date operating statements for the Project.

(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 Effective 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 commitments, title policies, underlying title documents, including Seller's vesting deed, surveys, environmental reports, 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.

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 the 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.

ARTICLE V. TITLE AND SURVEY

Section 5.01. Title and Survey.

(a). Conditions of Title. On the Closing Date, 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. As of the Effective Date, Purchaser has obtained a commitment #S17-2299 for an owners' policy of title insurance issued by Title Company (the "**Commitment**") 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 Response**") 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 therein 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, with and subject only to: (a) general taxes not yet due or payable, (b) any matters listed on **Exhibit J** attached to this Agreement, provided however, if Purchaser receives an updated Commitment which removes items on Exhibit J, then Exhibit J will be amended to conform to the Commitment, 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 Central time) on the date that is fourteen (14) days after entry of the Bidding Procedures Order.

(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 and the current calendar year; (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's or any of the Receivership Entities' 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.

(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 Facility. If, as a result of Purchaser's exercise of its rights under this ARTICLE VI, any damage occurs to the Project by Purchaser or its agents, consultant or professionals, 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, or 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 and in the 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 Receiver 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, which Seller shall cause License Holder to transfer, 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 or 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, which Seller shall cause License Holder to transfer, 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/or the powers granted to Seller under the Receiver 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, entry of the TIP 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, entry of the TIP 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, entry of the TIP 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 Seller's 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, entry of the TIP Order, 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 or the Project 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 or the Project, (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, except to the extent set forth on **Schedule 7.01(e)** hereto. Subject to Seller obtaining the Sale Order from the Court and entry of the TIP Order, 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, except with regard to Seller's obligation to cooperate as set forth herein.

(f). Sale Assets Complete and Lien Free. Pursuant to the Receiver Order, Seller has good and valid title to the Purchased Assets or in the case of 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, TIP Order, and Regulatory Approvals, Seller will transfer the Purchased Assets at Closing free and clear of all Liens.

(g). Litigation. Aside from the Receivership Proceeding, to Seller's Knowledge, Seller is not a party to or subject to the provisions of any 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 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 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, the Project does not contain any hazardous substance, except for hazardous substances typically used in, and in quantities necessary for, the day-to-day operation of the Project, including, but not limited to, cleaning fluids, insecticides and medicines, and which are not in violation of any environmental laws.

(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.

(o). Leased Personal Property. Attached hereto as **Schedule 7.01(o)** is a list of all personal property leased by Seller, Manager or the Receivership Entities at the Facility (the "**Leased Personal Property**").

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 Georgia.

(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 limited liability company 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 limited liability company 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. Except in the event of termination pursuant to the terms of this Agreement, 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, and subject to the Sale Order, 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 and the Sale Order, 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. No later than the end of the Inspection Period, Purchaser will have 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 in any respect impair the Project or change the number of licensed units and/or beds or hinder or delay Purchaser's seeking to obtain any Regulatory Approvals necessary for Purchaser to obtain the licenses, permits and CON(s) needed to operate the intended business or obtain approvals from any necessary governmental agency.

(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 or is required to make in connection with the transactions contemplated under this Agreement and reasonably cooperate with Purchaser in obtaining approval from any regulatory authority in connection with the transactions contemplated under this Agreement.

(c). 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.

(d). Regular Course of Business. Seller shall use commercially reasonable efforts to (a) operate the Facility in a manner substantially consistent with federal and state health care standards and laws and past practices; (b) maintain the Purchased Assets to meet required regulatory standards of any federal or state governmental authorities and agencies with regulatory jurisdiction over Facility; (c) timely pay, or shall cause to be paid, all rents, payroll, payments under Service Contracts and other payments due on or before the Closing, and use its commercially reasonable efforts to otherwise maintain (except for expiration due to lapse of time), all resident contracts, Leases and the Service Contracts in effect without change except as expressly provided herein; (d) comply in all material respects with the provisions of all laws applicable to the operation of Facility, including, without limitation, compliance with requirements of all government programs; (e) not make any material changes or modifications in any resident contract, Lease, Contract, or the Purchased Assets or incur any further obligations or surrender any rights thereunder other than as routinely occur in the ordinary course of business; (f) not enter into, without the prior consent of Purchaser, any agreements or leases other than in the ordinary course of business; (g) keep in full force and effect present insurance policies through the Closing Date or other comparable insurance coverage; and (h) use its commercially reasonable efforts to maintain in good standing all health care licenses and other licenses and permits necessary to operate the Facility.

(e). 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 at the levels normally maintained in the ordinary course of business (the "*Inventory*").

(f). 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.

(g). Reports. Seller shall prepare and file, at Seller's expense, any Alabama Annual Report for SCALFs (the "**Report**") with respect to the operation of the Facility due for any period prior to the Closing Date not later than the date each such Report is due. Seller shall cooperate, at Seller's expense, with Purchaser in the completion of the Report relating to periods from and after the Closing Date, including the provision of information required to complete the Report. Seller shall thereafter timely provide (or cause their accountants to provide) any additional existing information which may be reasonably required by governmental authorities with respect to such final Report or any of Borrower's or Seller's Reports.

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, including the requirements listed on Schedule B, Section 1 of the most recently revised Commitment.

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, or the transactions provided for in this Agreement, if successfully prosecuted, would not have an adverse effect on Purchaser or make any representation or warranty of Seller hereunder untrue or misleading.

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. (a) The Court shall have entered a final non-appealable 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, and (b) The Indenture Trustee shall have obtained the TIP Order.

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. State Survey Compliance. The Facility shall be in substantial compliance with all applicable governmental, legal and regulatory requirements. In the event of the Facility's having received one or more deficiencies related to an inspection, the Facility's plan of correction to achieve substantial compliance must have been accepted by the governmental authority issuing such deficiency.

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 11:59:59 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.

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 as of the Closing Date based upon 103% 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/Advance Payments. 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. Any Advance Payments by or on behalf of any resident of the Facility prior to Closing shall be prorated on a daily basis, and the portion allocable to the period including and following the Closing Date shall be credited to Purchaser on the closing statement.

Section 11.04. Operating Expenses. All utility services charges for electricity, heat and air conditioning service, and 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. Seller shall cooperate to ensure that the continuance of all such utility service shall continue on and after the Closing Date, which shall be a condition to Purchaser's obligations under this Agreement.

Section 11.05. Intentionally Deleted.

Section 11.06. Accounts Receivable/Payable.

(a). Accounts Receivable. Seller shall retain all accounts receivable accruing prior to the Closing. Any necessary adjustments shall occur in accordance with the terms and conditions set forth in Section 15.12 herein.

(b). Accounts Payable. Any expenses of operating and owning the Facility relating to the period prior to the Closing Date, including all trade accounts payable, shall be paid by Seller upon the earlier to occur of (i) sixty (60) days following Closing or (ii) thirty (30) days of notification by Purchaser of such expense. Purchaser shall pay all accounts payable accruing after Closing which shall arise from the operating of the Facility after Closing. Seller and Purchaser shall give joint written notice to all vendors that deliveries made before Closing shall be paid by Seller and deliveries after the Closing shall be paid by Purchaser. Seller shall provide to Purchaser at the Closing accurate lists of all accounts payable of the Seller and Facility as of the Closing Date, which shall be paid by Seller.

Section 11.07. Payroll. Seller shall pay the Employee Accrual Payment with regard to Seller's Employment Expenses, as set forth in Section 15.11(c) herein.

Section 11.08. 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 Lee County, Alabama.

Section 11.09. Survival. The provisions of Section 11.02, 11.04 and 11.06(b) 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 closing escrow, the cost of the Survey, the state/local grantee tax, and the mortgage tax. Seller shall bear the cost of the Title Policy, the cost of any recording fees with respect to the Receiver's Deed and the Quitclaim 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 Commonwealth Land 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’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 Purchaser shall receive a credit against the Purchase 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 residents) in possession of Seller with regard to the Facility or located at the Project (the “*Medical Records*”) along with a categorized itemization of such 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 resident (or other third party) in accordance with all applicable laws, rules, and regulations. 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 residents 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.

Section 15.07. Licensing Matters. 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, 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.

Section 15.08. Intentionally Deleted.

Section 15.09. Transfer of Records; Access to Records. As of the Closing Date, in addition to the transfer to Purchaser of the Medical Records pursuant to Section 15.02 above, Seller shall transfer to Purchaser any other records relating to 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 Transferred Records 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.

(iii) Subsequent to the Closing Date, upon reasonable notice, Seller shall allow Purchaser and its agents and representatives to have reasonable access to, and to make copies of, Seller's and Borrower's books, records and supporting material, relating to the Facility for the period prior to the Closing Date to the extent reasonably necessary: (i) to assist Purchaser to investigate and defend malpractice or other legal claims of any nature, (ii) to assist Purchaser in filing or defending tax returns, cost reports or other governmental inquiries which relate to periods from and after the Closing Date, and (iii) for all other matters which reasonably require Purchaser to access any of such records and other documents relating to the Facility. This paragraph shall survive the termination or expiration of this Agreement.

(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 Transferred 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. Resident Funds; Advance Payments.

(a). Seller shall be solely responsible for all funds belonging to residents at the Facility ("***Resident Funds***"), which are held by Seller in a custodial capacity. Seller shall return all such Resident Funds to the residents at the Facility as of the Closing Date. Purchaser does not assume any custodial responsibility or liability for such Resident Funds. 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 Resident Funds prior to the Closing Date.

(b). 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 advance payments received by it pertaining to residents at the Facility (the "***Advance Payments***"). Such accounting shall set forth the

names of the residents for whom such Advance Payments are held and the amounts held on behalf of each resident.

(c). Seller shall credit Purchaser at Closing for the amount of all Advance Payments received by Seller as of the Closing Date, it being the intent and purpose of this provision that, as of the Closing Date, Seller is relieved of all financial obligation with respect to such Advance Payments and that Purchaser hereby assumes all post-Closing obligations with respect to the Advance Payments and is directly accountable to the residents with respect to the Advance Payments on or after the Closing Date.

Section 15.11. Employees.

(a). As of 11:59:59 on the day before the Closing Date, Seller shall terminate the employment of all employees providing services at the Facility, including, without limitation, persons temporarily absent from active employment by reason of disability, illness, injury, workers' compensation, approved leave of absence or layoff (the "***Current Employees***"). Seller will total all payroll hours through midnight of the day prior to the Closing Date (the "***Effective Time***"). At Closing, all accrued payroll expenses, including wages, overtime, and related F.I.C.A. and other taxes, for the period prior to the Effective Time shall be placed in escrow with Escrowee to ensure that all such expenses are paid on the next regularly scheduled pay date. Seller shall cause payroll checks to be prepared and distributed to Current Employees on the next regularly scheduled pay date. 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. During the time period commencing on the date this Agreement is executed by the Seller and Purchaser and expiring on the Closing Date, neither Manager, the Receivership Entities nor Seller shall offer, announce or implement any general or specific wage or salary increase or award any bonus for any employees at the Facility without the prior written consent of Purchaser.

(b). Purchaser shall determine, in its sole discretion, which of the Current Employees shall be offered employment with Purchaser or an affiliate of Purchaser, pursuant to employment terms acceptable to Purchaser (hereinafter, the "***Retained Employees***"), with such Retained Employees' employment to commence at the midnight that begins with the Closing Date; 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 Retained Employees, if applicable, that have accrued prior to the Closing Date ("***Seller's Employment Expenses***"). In exchange therefore, Purchaser agrees to pay when and as due, all of Seller's Employment Expenses pertaining solely to the Retained Employees. 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. Except as otherwise specified in this Section 15.11(c), Seller shall be solely responsible for the liability associated with any and all salary, bonus pay or paid time off, or any other amounts owed to Current Employees pursuant to Seller's and the Receivership Entities' established plans, practices, labor union contracts, and arrangements which were accrued but unpaid as of the Closing Date and any and all liability or claims associated therewith. Borrower and/or Seller shall timely pay to all applicable governmental and regulatory authorities all employment-related taxes due with respect to Current Employees for periods ending at or prior to the Termination Date. No more than two (2) Business Days prior to Closing, Seller shall provide Purchaser with a certified schedule of Seller's Employment Expenses.

Section 15.12. Accounts Receivable.

(a). Purchaser shall assume responsibility for the billing for and collection of payments on account of services rendered or goods sold by it at the Facility on and after the Closing Date. Seller shall retain all rights in and title to accounts receivable for services rendered or goods sold at the Facility prior to the Closing Date (the "***Seller's Accounts Receivable***") and shall retain full responsibility for the billing and collection thereof. The Seller's Accounts Receivable shall include all amounts due Seller, whether billed or unbilled, prior to the Closing Date, for all services and ancillary services or products provided to any current or former residents by Seller prior to the Closing Date and any accounts receivable arising from the rate adjustments which relate to periods prior to the Closing Date even if such adjustments occur after the Closing Date. Purchaser shall have no liability for uncollectible receivables and shall not be obligated to bear any expense as a result of such activity on behalf of Seller.

(b). All third party payor payments that designate the dates of service or other identifying data on the remittance received by Purchaser from and after the Closing Date shall relate to the period prior to the Closing Date or after the Closing Date, as the case may be, in connection with the account of the resident for whom the payment is made in accordance with the dates of service or other identifying data indicated on the remittance, and Purchaser shall remit to Seller within fifteen (15) business days of its receipt thereof any payment received by Purchaser that applies to Seller's Accounts Receivable, together with a copy of the remittance advice; provided, however, in the event payment is made without remittance advice (or where the remittance advice does not specify the dates of service) and within sixty (60) days of the Closing Date, such payment will be first applied to the appropriate Seller's Accounts Receivable if properly and fully identified to Purchaser before Closing, as updated within thirty (30) days following the Closing Date

for residents' ancillary charges for the month immediately preceding the Closing Date, with any excess to Purchaser. In the event payment is made without remittance advice (or where the remittance advice does not specify the dates of service) and subsequent to the sixtieth (60th) day following the Closing Date, such payment will be applied to the Purchaser's accounts receivable, unless Seller properly and fully identified such payment to Purchaser before Closing, to Purchaser's satisfaction, as updated within thirty (30) days following the Closing Date for residents' ancillary charges for the month immediately preceding the Closing Date. Notwithstanding anything contained herein to the contrary, advance payments received from private pay residents billed by Purchaser shall be retained by Purchaser. If the Closing Date is other than the first of the month, Advance Payments for such month shall be prorated between Seller and Purchaser. In the event Seller or Purchaser has any questions concerning the accounting or crediting of any Payments hereunder, Seller or Purchaser shall make specific inquiry to the other, and the requested party shall respond within five (5) business days.

(c). On the Closing Date, Seller will prepare and supply to Purchaser a detailed aged listing of all resident accounts receivable that are due Seller for services rendered before the Effective Time.

(d). Seller agrees that any payment received by Purchaser from private pay residents that pertain to the period commencing after the Closing Date shall be remitted by Seller to Purchaser within fifteen (15) days of Seller's receipt thereof to be applied and/or disbursed by Purchaser in accordance with the terms of this Agreement.

(e). To the extent either party receives any proceeds from the accounts receivable of the other party, the parties acknowledge that the party receiving the payment belonging to the other party shall hold the payment in trust. Neither party shall have any right to offset with respect to such accounts receivable, and the party erroneously receiving the payment shall have no right, title or interest whatsoever in the payment and shall remit the same to the other within fifteen (15) days of receipt, together with applicable remittance advices. For a period of sixty (60) days after the Effective Time, Purchaser and Seller shall, upon reasonable notice and during normal business hours, have the right to inspect (or to have representatives inspect) all cash receipts and other books and records (including bank statements) related to or concerning the Facility of the other respective party, and to make copies thereof, in order to confirm the other party's compliance with the obligations imposed on it under this Section 15.12(e). Nothing herein shall be deemed to limit in any way either party's rights and remedies to recover accounts receivable due and owing to it under the terms of this Agreement.

(f). Seller and Purchaser shall fully cooperate and work with each other in good faith to resolve any other accounting issues that may arise.

Section 15.13. Accounts Payable. All accounts payable invoices received by the Facility after Closing pertaining to goods or services received by the Facility through the day before the Effective Time shall be submitted to Seller on a weekly basis, and Seller shall be responsible for timely payment of all such accounts payable. Purchaser shall be responsible for payment of all accounts payable relating to goods and services received by the Facility on

and after the Effective Time. The parties agree to allocate the amount of any account payable which includes services both before and after the Effective Time. The basis of the allocation shall be that Seller shall be responsible for the portion allocated to all time periods through the day before the Effective Time and Purchaser shall be responsible for the portion allocated to the time period commencing on the Effective Time.

Section 15.14. 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 Seller or Purchaser 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 15.18 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 either the Bidding Procedures Order, TIP Order, or Sale Approval Order is not entered by the Court within ninety (90) days after the Effective Date.

Section 15.15. 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 15.16. 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 15.17. 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. 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. It is understood that Purchaser's principals typically create new single-asset entities controlled by Purchaser's principals (the "*Affiliated Entity*") to take title to and operate their projects. Purchaser may assign this Agreement in whole or in part and/or designate a nominee to take title to all or any part of the Facility or the operations thereof at Closing (whether by lease or management agreement or otherwise) to an Affiliated Entity without the consent of Seller. In the event of an assignment by Purchaser, the assignor shall be released from any and all of its obligations hereunder, provided that each assignee of such rights agrees to be fully bound by the terms and conditions of this Agreement as if said assignee were the original signatory hereto. Any assignment of this Agreement shall be binding upon and inure to the benefit of the successor or assignee of Purchaser. In the event Purchaser finds it necessary or is required to provide to a third party a collateral assignment of the Purchaser's interest in this Agreement and/or any related documents, Seller shall cooperate with the Purchaser and any third party requesting such assignment including but not limited to Seller signing a consent and acknowledgment of such assignment.

Section 15.18. 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 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 or electronic mail, the date on which the facsimile or electronic mail 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: Opelika Retirement Investors, LLC
2235 Candies Lane, NW
Cleveland, TN 37312
Attn: Barry Ray
Email: bray@legacysl.net

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

Richard D. Faulkner, Jr., Esq.
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
633 Chestnut Street
Suite 1900
Chattanooga, TN 37450
Email: rfaulkner@bakerdonelson.com

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

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
Email: ryan.cochran@wallerlaw.com

Section 15.19. 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 15.20. 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 located in Lee County, Alabama, 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 15.21. 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 15.22. 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 15.23. 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 15.24. 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 15.25. 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 15.26. 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 15.27. 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 15.28. 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 15.29. No Personal Liability of Seller; Limitations on Seller's Representations and Warranties. The Purchaser expressly acknowledges and agrees that:

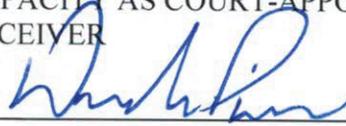
(a). Seller enters into this Agreement solely in its capacity as court appointed receiver under the Receiver Order and pursuant to and in accordance with the Bidding Procedures Order and Sale Order (each when and if approved by the Court) and shall have no corporate, company, or personal liability for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

SELLER:

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

By: _____



PURCHASER:

OPELIKA RETIREMENT INVESTORS, LLC,
a Georgia limited liability company

By: Barry A. Ray

Name: Barry A. Ray

Title: Manager

EXHIBIT A
PROPERTY DESCRIPTION

Parcels A and B of Final Plat of Cambridge Place Plat 1, according to plat thereof recorded in Plat Book 21, Page 103 of the records of the Judge Probate of Lee County, Alabama.

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

ASSIGNEE: OPELIKA RETIREMENT INVESTORS, LLC, a Georgia limited liability company

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 Manor House of Opelika and located at 1001 Fox Run Parkway, Opelika, Alabama 36801, aka 701 Brookstone Drive, Opelika, Alabama 36801 (collectively, the "**Subject Property**"), to have and to hold forever, excluding the assets listed on Exhibit A attached hereto. This conveyance shall be effective as of 12:00:01 AM (prevailing Central 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 Receiver Order and Sale 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 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.

[signature pages to follow]

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

By: _____

OPELIKA RETIREMENT INVESTORS, LLC,
a Georgia limited liability company

By: _____

Name: Barry A. Ray

Title: Manager

EXHIBIT A
(BILL OF SALE)

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 relating to periods prior to the Closing Date, other than amounts to be transferred to Purchaser in accordance with Section 15.10 of this Agreement.

4. Seller's Accounts Receivable.

EXHIBIT C
RECEIVER'S DEED

STATE OF [REDACTED])
)
 _____ COUNTY)

This instrument was prepared by:

Send Tax Notice to:

RECEIVER’S DEED

THIS RECEIVER’S DEED is executed as of the ____ day of _____, 2017, by **DEREK PIERCE**, acting solely in his capacity as court-appointed receiver for the Subject Property referenced herein (“**Grantor**”), and [REDACTED] (“**Grantee**”), whose address and principal place of business is [REDACTED].

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.

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, his 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.

[signature pages to follow]

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

GRANTOR:

DEREK 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 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

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

Parcels A and B of Final Plat of Cambridge Place Plat 1, according to plat thereof recorded in Plat Book 21, Page 103 of the records of the Judge Probate of Lee County, Alabama.

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

IN WITNESS WHEREOF, Grantor has hereunto set their hand and seal effective the ___ day of _____, _____.

THE MEDICAL CLINIC BOARD OF THE CITY OF OPELIKA, ALABAMA

By: _____

Name: _____

Its: _____

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 The Medical Clinic Board of the City of Opelika, Alabama, is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing, as he/she as such _____, and with full authority executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the ___ day of _____, _____.

Notary Public

AFFIX SEAL

My Commission expires: _____

EXHIBIT A TO QUIT CLAIM DEED
(Description of Subject Property)

Parcels A and B of Final Plat of Cambridge Place Plat 1, according to plat thereof recorded in Plat Book 21, Page 103 of the records of the Judge Probate of Lee County, Alabama

EXHIBIT E
ASSIGNMENT OF INTANGIBLES

FOR VALUE RECEIVED, Derek 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 Advance Payments, books and records, contact information and the intangible property associated with the Project. 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 November ____, 2017, by and between Assignor and Opelika Retirement Investors, LLC, a Georgia limited liability company, 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 Pierce, acting solely in his capacity as
Court-Appointed Receiver

By: _____

Its: _____

EXHIBIT F
ASSIGNMENT OF LEASES AND CONTRACTS

Derek. 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 _____ (“Assignee”), all of Assignor’s and any of the Receivership Entities’ 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 contracts (collectively, “Contracts”), all pertaining to the real property and improvements thereon commonly known as Manor House of Opelika.

Assignor represents and warrants to Assignee that:

- (a) Assignor 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 Receivership Entities’ 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 November __, 2017 by and between Assignor and Opelika Retirement Investors, LLC, a Georgia limited liability company.

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

By: _____

Name: Derek Pierce

ASSIGNEE:

[NAME],a(n)

By: _____

Name: _____

Title: _____

EXHIBIT A
[TO ASSIGNMENT OF LEASES AND CONTRACTS]

1. Resident Agreements.

EXHIBIT G
ESCROW AGREEMENT



Commercial Services Office
265 Franklin Street, 8th Floor
Boston, Massachusetts 02110

ESCROW AGREEMENT

Dated: _____

WHEREAS _____ (“Seller”)

And _____ (“Buyer”)

have entered into an agreement for the purchase and sale of property located at _____, and have asked that Commonwealth Land Title Insurance Company (“Escrow Agent”) hold the funds to be deposited in escrow, the parties hereto agree as follows:

Escrow Agent shall hold the sum of _____ which has been given to it this day to be held pursuant to the following escrow terms. The funds shall be deposited in an interest bearing account with the Bank of America, Boston, Massachusetts, for the benefit of the _____ whose taxpayer ID number is _____.

Escrow Agent shall retain the funds in escrow until receiving at the address listed below written instructions signed by both Buyer and Seller, or their counsel, instructing Escrow Agent to disburse the funds in accordance with said written instructions. Buyer and Seller hereby agree that Escrow Agent may rely on facsimile transmissions of the instructions.

Buyer and Seller do hereby jointly and severally agree that the Escrow Agent shall incur no liability whatsoever in connection with its good faith performance under this Escrow Agreement, and do hereby jointly and severally release and waive any claims we may have against Escrow Agent, which may result from its performance in good faith of its function under this agreement, including but not limited to, a delay in the electronic wire transfer of funds. Escrow Agent shall be liable only for loss or damage caused directly by its acts of gross negligence or willful misconduct while performing as Escrow Agent under this Escrow Agreement.

The Escrow Agent shall be entitled to rely upon the authenticity of any signature and the genuineness and validity of any writing received by Escrow Agent relating to this Escrow Agreement. Escrow Agent may rely upon any oral identification of a party notifying Escrow Agent orally as to matters relating to this Agreement if such oral notification is permitted hereunder. Escrow Agent is not responsible for the nature, content, validity or enforceability of any of the escrow documents except for those documents prepared by Escrow Agent.

In the event of any disagreement between the parties hereto resulting in conflicting instructions to, or adverse claims or demands upon the Escrow Agent with respect to the release of the escrow funds or the escrow documents, the Escrow Agent may refuse to comply with any such instruction, claim or demand so long as such disagreement shall continue and in so refusing the Escrow Agent shall not release the escrow funds or the escrow documents. The Escrow Agent shall not be, or become liable in any way for its failure or refusal to comply with any such conflicting instructions or adverse claims or demands and it shall be entitled to continue to refrain from acting until such conflicting instructions or adverse claims or demands (a) shall have been adjusted by agreement and it shall have been notified in writing thereof by the parties hereto or (b) shall have finally been determined in a court of competent jurisdiction. Buyer and Seller further agree to indemnify Escrow Agent against any and all loss, costs or damages, including attorney’s fees, incurred by Escrow Agent in its performance of its duties, because of any such disputes or disagreements.

The Escrow Agent may at its sole discretion resign by giving (30) days written notice thereof to the parties hereto. The parties shall furnish to the Escrow Agent written instructions for the release of the escrow funds and escrow documents. If the Escrow Agent shall not have received such written instructions within the thirty (30) days, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent and upon such appointment deliver the escrow funds and escrow documents to such successor.

Costs and fees incurred by or owing to the Escrow Agent may, at the option of the Escrow Agent, be deducted from any funds held pursuant hereto.

The parties hereto do hereby certify that they are aware that the Federal Deposit Insurance Corporation (“FDIC”) coverages apply only to a cumulative maximum amount of \$250,000 for each individual depositor for all of the depositor’s accounts at the same or related institution. The parties hereto further understand that certain banking instruments such as, but not limited to, repurchase agreements and letters of credit are not covered at all by FDIC insurance.

Further the parties hereto understand that Escrow Agent assumes no responsibility for, nor will the parties hereto hold Escrow Agent liable for, a loss occurring which arises from the fact that the amount of the above account may cause the aggregate amount of any individual depositor’s accounts to exceed \$250,000 and that the excess amount is not insured by the Federal Deposit Insurance Corporation or that FDIC insurance is not available on certain types of bank instruments.

ESCROW AGENT: COMMONWEALTH LAND TITLE INSURANCE COMPANY

By: _____

Phone: (617) 619-4800
Fax: (617) 619-4848

SELLER:

DEREK PIERCE, acting solely in his capacity as court-appointed receiver

By: _____

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

Telephone: 615-584-0719 Fax: 615-523-1835

BUYER:

OPELIKA RETIREMENT INVESTORS, LLC, a Georgia limited liability company

By: _____
Barry A. Ray, Manager

Address: 2235 Candies Lane, NW
Cleveland, TN 37312

Telephone: 423-478-8071 Fax: 423-478-8072

EXHIBIT H
BIDDING PROCEDURES

EXHIBIT I
LAND USE RESTRICTION AGREEMENT RELEASE

LAND USE RESTRICTION AGREEMENT RELEASE

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:

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.
633 Chestnut Street
Suite 1900
Chattanooga, TN 37450
Attention: Richard D. Faulkner, Jr., Esq.

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 U.S. Bank National Association, as indenture trustee (the “**Trustee**”), and Derek Pierce, acting solely in his capacity as court-appointed receiver (the “**Receiver**”).

RECITALS

A. The Medical Clinic Board of the City of Opelika, Alabama (the “**Authority**”) issued its First Mortgage Healthcare Facility Revenue Bonds (Opelika ALF, LLC Project), Series 2015A, in the aggregate principal amount of \$7,450,000 (the “**Series 2015A Bonds**”), and First Mortgage Healthcare Facility Revenue Bonds (Opelika ALF, LLC Project), Series 2015B, in the aggregate principal amount of \$700,000 (the “**Series 2015B Bonds**,” and together with the Series 2015A Bonds, the “**Bonds**”), pursuant to the terms of a Trust Indenture, dated as of September 1, 2015, between the Authority and the Trustee for the purpose of, among other things, financing the acquisition, renovation, and expansion of that certain 32-unit (licensed for 36 beds) specialty care assisted living facility (the “**Facility**”), which is located on a 4.785-acre tract of land at 1001 Fox Run Parkway, Opelika, Alabama aka 701 Brookstone Drive, Opelika, Alabama (the “**Land**” and together with the Facility, the “**Project**”).

B. The Trustee and Opelika ALF, LLC, as Borrower (the “**Borrower**”), entered into a Land Use Restriction Agreement (the “**LURA**”) for the Project, dated as of September 1, 2015, and recorded on October 1, 2015, with Bill English, Probate Judge for Lee County, Alabama, in Deed Book 2469 at pages 685 *et seq.*

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 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 Pierce of Healthcare Management Partners, LLC, as the Receiver.

E. On [REDACTED], 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 Opelika ALF, LLC; (II) Authorizing the Sale of Substantially All of the Assets of Opelika 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 Opelika ALF, LLC; and (V) Granting Related Relief* (the “**Bidding Procedures Motion**”). On [REDACTED], 2017, the Court entered the *Order: (I) Authorizing and Approving (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 Opelika ALF, LLC; and (III) Granting Related Relief* (the “**Bidding Procedures Order**”).

F. On [REDACTED], 2017, the Receiver auctioned the Project to the highest and best bidder. [REDACTED] was declared the successful bidder at the auction, and on [REDACTED], 2017, the Court entered the *Order: (I) Authorizing, Approving, and Directing the Sale of Substantially All Assets of Opelika 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 Opelika APA; (III) Approving the Receiver’s Marketing and Sale Process; and (IV) Granting Related Relief* (the “**Sale Order**”).

G. On [REDACTED], the Receiver and [REDACTED] 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.]

EXHIBIT J
PERMITTED EXCEPTIONS

1. Rights or claims of tenants in possession under current existing assisted living occupancy agreements.
2. [[Easements or claims of easements, any lien, or right to a lien, for services, labor, or material hereto or hereafter furnished, imposed by law and not shown by the public records. *]]
3. [[Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the premises would disclose and which are not shown by the public records. *]]
4. Taxes and assessments for the year 2018 and subsequent years and not yet due and payable.
5. Easements, restrictions, protective covenants, conditions and provisions as contained in the Map of the Foxrun Industrial Park, appearing of record in Plat Book 12, Page 102, Probate Office of Lee County, Alabama, but deleting any restrictions based on race, color, creed or national origin.
6. Easements, restrictions, protective covenants, conditions and provisions as contained in the Map of a Re-Subdivision of Foxrun Industrial Park, appearing of record in Plat Book 13, Page 61, in the Probate Office of Lee County, Alabama, but deleting any restrictions based on race, color, creed or national origin.
7. Easements, restrictions, protective covenants, conditions and provisions as contained in the Final Plat of Cambridge Place Plat 1, appearing of record in Plat Book 21, Page 94, in the Probate Office of Lee County, Alabama, but deleting any restrictions based on race, color, creed or national origin.
8. Easements, restrictions, protective covenants, conditions and provisions as contained in the Final Plat of Cambridge Place Plat 1, appearing of record in Plat Book 21, Page 103, in the Probate Office of Lee County, Alabama, but deleting any restrictions based on race, color, creed or national origin.
9. Restrictions appearing of record in Deed Book 1204, Page 492, in the aforesaid Probate Office, but deleting any restrictions based on race, color, creed or national origin.
10. Amendment to Restrictive Covenants appearing of record in Book 1363, Page 141, in the aforesaid Probate Office, but deleting any restrictions based on race, color, creed or national origin.
11. Second Amendment to Restrictive Covenants appearing of record in Book 1743, Page 159, in the aforesaid Probate Office, but deleting any restrictions based on race, color, creed or national origin.
12. Declaration of Vacation as recorded in Book 1897, Page 66, in the aforesaid Probate

Office.

13. Nonexclusive Installation and Service Agreement by and between Marcus Cable of Alabama, L.L.C. I/k/a Charter Communication and The Jennings Group, Inc., as recorded in Misc Book 1290, Page 225, in the aforesaid Probate Office.
14. Third Amendment to Restrictive Covenants appearing of record in Deed Book 2325, Page 970, in the aforesaid Probate Office, but deleting any restrictions based on race, color, creed or national origin.
15. Fourth Amendment to Restrictive Covenants appearing of record in Misc Book 1290, Page 229, in the aforesaid Probate Office, but deleting any restrictions based on race, color, creed or national origin.
16. Easement Agreement by and between the Opelika Industrial Development Authority and Cambridge, L.L.C., as recorded in Deed Book 2193, Page 450, in the aforesaid Probate Office.

*To be removed when Purchaser provides adequate ALTA survey to Title Company.

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 Seller’s and 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 operation or 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 the Receivership Entities’ and/or, Seller’s rights and interests in the following personal property now or hereafter in existence as of the Closing Date and owned by any of the Receivership Entities, or Seller and used in the ownership, use, operation, occupancy, maintenance or development of the Real Property (collectively, the “***Personal Property***”): (i) all licenses (Seller shall cause License Holder to transfer the specialty care assisted living facility license held by License Holder, to the extent legally transferrable by License Holder, to Purchaser in accordance with the License and CON Surrender and Transfer Cooperation Agreement by and between Affinity Living Group, LLC and Seller attached hereto as **Addendum I** (the “***Transfer Agreement***”) and subject to approval of the Alabama Department of Public Health of Purchaser as the New License holder), permits, CON(s) (Seller shall cause License Holder to transfer the CON(s) in accordance with the Transfer Agreement and subject to the approval of SHPDA), certificates, approvals, authorizations and other governmental entitlements (the “***Permits***”); (ii) all reports, test results, environmental assessments, and surveys; (iii) all warranties and guaranties from manufacturers, contractors, subcontractors, suppliers and installers with respect to the Purchased Assets including claims for warranties with respect to the Purchased Assets (“***Warranties***”); (iv) all trade names, trademarks, service marks, building and property names, building signs, know-how, copyrights, and other proprietary materials or intellectual property rights used or held for use exclusively in connection with the operation of the Facility and the Real Property (the “***Tradenames***”); (v) all tenant lists and files with respect to current tenants; (vi) all Advance Payments (as such term is defined in Section 15.10 of the Agreement), to be transferred in accordance with Section 15.10; (vii) architectural drawings, plans and specifications and as-built drawings for the Purchased Assets; (viii) advertising and promotional material including brochures and marketing manuals, developed for or used by the Facility, as well as all mailing lists, if any; (ix) telephone exchange, cell phone and facsimile numbers and directory listings of the Facility, and all websites and domain

names; (x) all documents, charts, personnel records (for Current Employees), property manuals and lists of the books, files and other business records attributable to the business or operations of the Facility, as well as either actual or copies of all books, files and other business records attributable to the business or operations of the Facility; (xi) uniforms used at the Facility, and any other rights, assets or properties owned or leased by Borrower or Seller and used exclusively in connection with the Facility (xii) all dietary menus and forms used in connection with the operation of the Facility; (xiii) all Inventory (as such term is defined in Section 8.01(e) of the Agreement); (xiv) any development rights; (xv) computers and associated hardware, software, to the extent assignable, and equipment, including, but not limited to, any proprietary software and data, used or held exclusively in connection with the operation of the Facility; and (xvi) all other equipment, machinery, tools, office equipment, vehicles and other tangible personal property now or hereafter located on or in the Real Property or used solely in connection with the operation of the Real Property; and

(c). Leases. All of the Receivership Entities' and Seller's interest in all leases, licenses and other occupancy agreements together with all associated amendments, modifications, extensions or supplements to such leases, licenses, or other occupancy agreements, and any other lease, license or occupancy agreement entered into in accordance with the terms of this Agreement prior to the Closing Date and which Purchaser elects to assume (collectively, the "**Leases**") with all persons or entities occupying the Real Property or any part of the Real Property pursuant to the Leases ("**Tenants**"), together with the following (collectively, the "**Supplemental Lease Rights**"): (i) all security deposits, prepaid rent, guaranties, letters of credit and other similar charges and credit enhancements providing additional security for the Leases; and (ii) the accrued and unpaid rent or any other non-current sums due and owing from Tenants on or prior to the Closing Date (excluding accrued and unpaid rent or any other non-current sums due and owing from third-parties on account of the Tenant which is Accounts Receivable); and

(d). Contracts. To the extent assignable, all of the Receivership Entities' and Seller's rights and interest in all equipment leases, service, construction, water and sewer, utility, supply, maintenance, and concession contracts, subcontracts, and other continuing contractual obligations, including certificates of occupancy, permits, soils reports, and other contract or documents (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 relating to periods prior to the Closing Date, other than amounts to be transferred to Purchaser in accordance with Section 15.10 of this Agreement.
4. Seller's Accounts Receivable.

SCHEDULE 1.05
ASSUMED LIABILITIES

NONE.

SCHEDULE 1.09
ANCILLARY PERMITS AND APPROVALS

City of Opelika Business license (45995-2016)

CLIA Certificate of Waiver (No. 01D1000720)

Fire safety inspection permit

Local Business Occupational License Tax Permit

City of Opelika Certificate of Occupancy

Boiler Permit(s)

SCHEDULE 7.01(e)

Sub-Management Agreement for Manor House of Opelika dated May 1, 2016, by and between Affinity Living Group, LLC and Manor House of Opelika, 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. Affinity Living Group, LLC ("Affinity"), pursuant to the terms of that certain License and CON Surrender and Transfer Cooperation Agreement by and between Affinity and Seller, has waived the right of first refusal so long as the property is sold through a public auction as provided in 28 U.S.C. 2001.

SCHEDULE 7.01(o)
LEASED PERSONAL PROPERTY

<u>Name of Lessor</u>	<u>Item Description</u>	<u>Location of Equipment.</u>
<u>Leased Equipment</u>		
Ecolab, Inc.	Phase II Dishwasher	1001 Fox Run Parkway, Opelika, Alabama

Addendum I

License and CON 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 15, 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 of Opelika located at 1001 Fox Run Parkway, Opelika, Alabama 36801 a/k/a 701 Brookstone Drive, Opelika, Alabama 36801 (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 of Opelika, LLC, dated May 1, 2016, so long as the sale of the Facility is conducted pursuant to the 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.]

EXHIBIT E
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

**OPELIKA ALF, LLC d/b/a MANOR
HOUSE OF OPELIKA**

I. Notice of Public Auction

- a. The Receiver shall publish a Notice of Receiver Sale with the *Opelika - Auburn News* 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).

II. Access to Diligence Materials

- a. 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.
- b. 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.

III. Due Diligence From Bidders

- a. 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)**.¹

IV. 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 of \$50,000 (the “*Good Faith Deposit*”) 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 commercially reasonable 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 Opelika APA) taken as a whole.

(d). Executed Agreement. Each Bid must be based on the Opelika 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.

¹ 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 Opelika APA.
4831-8055-5854.13

(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, 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 finance and consummate the Alternative Transaction contemplated, including proof of the Good Faith Deposit in cash and one 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). Such financial information shall include the following:

- 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 acceptable to the Receiver in his commercially reasonable business judgment demonstrating that such Bidder has the ability to 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 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 Opelika 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 Opelika APA.

(j). Participation in More Than One Auction. A party or Proposed Stalking Horse may submit a Qualified Bid in one or more auction to be conducted by the Receiver.

(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 Opelika 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 prior to (but no later than two (2) days before) the Auction, 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 simultaneous notice from the Receiver of all Qualified Bidders.

AUCTION

If one or more Qualified Bids for the Proposed Purchased Assets (other than the Opelika 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 Opelika 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 Opelika 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.

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), in writing, 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.

II. 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 acceptable to the Receiver in his commercially reasonable business judgment, as set forth in Section IV of these Bidding Procedures) 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.

III. 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.

IV. 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 4:00 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.

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 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. 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.

V. 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 Opelika APA.

VI. 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 Asset Purchase Agreement, 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.

BID PROTECTIONS

Pursuant to the Bidding Procedures Order, the Stalking Horse Purchaser is entitled to the Bid Protections in accordance with the terms of the Opelika 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.

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 F
PROPOSED NOTICE OF SALE

NOTICE OF PUBLIC AUCTION OF REAL AND PERSONAL PROPERTY

Derek Pierce, solely in his capacity as the court-appointed receiver for certain assets of Opelika ALF, LLC (the “*Receiver*”) in case number 2:17-cv-393-ES-SCM in the United States District Court for the District of New Jersey (the “*Court*”), posts this notice of his intention to sell certain assets of Opelika ALF, LLC (the “*Assets*”), including, without limitation, the real and personal property located at 1001 Fox Run Parkway (a/k/a 701 Brookstone Drive), Opelika, Alabama. The Assets will be sold at public sale (the “*Auction*”) to be held on February 15, 2018 at 10:00 a.m. (prevailing Eastern time), in accordance with certain bidding procedures approved by the Court. The bidding procedures approved by the Court controls the terms, conditions, and procedures for the Auction, and all interested parties must comply with the bidding procedures in order to participate in the Auction. All sales will be for cash or cash equivalents. All sales will be free and clear of all liens, claims, encumbrances, and other interests pursuant to further orders of the Court. All sales will be “AS IS” and “WHERE IS” with no representations or warranties of any type. In accordance with the terms of the bidding procedures, the Receiver reserves the right to postpone or adjourn the Auction, to accept any bid or to reject any and all bids that it deems not to comply with the terms of the bidding procedures or to be in the best interest of Opelika ALF, LLC, or to withdraw any of the Assets offered for sale at any time prior to the announcement of the completion of the Auction. For additional information on the Auction or the Assets, including further descriptions of the real and personal property to be sold, and to obtain a copy of the bidding procedures, please submit a written request 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.

Dated: _____, 2018

Derek Pierce, as receiver

Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
Nashville, Tennessee 37219
615-244-6380

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