

LAKE UNDERHILL ROAD OPERATIONS LLC;)
9311 SOUTH ORANGE BLOSSOM TRAIL)
OPERATIONS LLC; 9355 SAN JOSE)
BOULEVARD OPERATIONS LLC; BAYA)
NURSING AND REHABILITATION, LLC;)
BRANDON FACILITY OPERATIONS, LLC;)
CONSULATE FACILITY LEASING, LLC;)
EPSILON HEALTH CARE PROPERTIES, LLC;)
FLORIDIAN FACILITY OPERATIONS, LLC;)
JACKSONVILLE FACILITY OPERATIONS, LLC;)
JOSERA, LLC; KISSIMMEE FACILITY)
OPERATIONS, LLC; LIDENSKAB, LLC; LV CHC)
HOLDINGS I, LLC; MELBOURNE FACILITY)
OPERATIONS, LLC; MIAMI FACILITY)
OPERATIONS, LLC; NEW PORT RICHEY)
FACILITY OPERATIONS, LLC; NORTH FORT)
MYERS FACILITY OPERATIONS, LLC; ORANGE)
PARK FACILITY OPERATIONS, LLC; PORT)
CHARLOTTE FACILITY OPERATIONS, LLC;)
TALLAHASSEE FACILITY OPERATIONS, LLC;)
TOSTURI, LLC; AND WEST ALTAMONTE)
FACILITY OPERATIONS, LLC;)

Plaintiffs,)

v.)

HEALTHCARE NEGLIGENCE SETTLEMENT)
RECOVERY CORP.)

Defendant.)

COMPLAINT

LaVie Care Centers, LLC (“LaVie”) and certain of its affiliates and subsidiaries, as debtors and debtors-in-possession (collectively, the “Debtors” or “Plaintiffs”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), hereby file this adversary complaint (the “Complaint”) pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) against Defendant Healthcare Negligence Settlement Recovery Corp. (the “Recovery Corp.”). As the basis for the Complaint, Plaintiffs state as follows:

NATURE OF THE ACTION

1. Through these Chapter 11 Cases, the Debtors seek to maximize the value of their estates through various restructuring efforts that, to the best of the Debtors' ability, provide meaningful recoveries for creditors and stakeholders alike, including, among others, the marketing, auction, and sale of substantially all of their assets under section 363 of the Bankruptcy Code, and subsequent chapter 11 plan of reorganization.

2. The Debtors bring this action to stop Recovery Corp. from continuing to prosecute claims (a) against the Non-Debtor Defendants (defined below) that share an identity of interest with the Debtors due to, among other things, the Debtors' indemnification obligations to the Non-Debtor Defendants and/or (b) that belong to the Debtors' estates, including claims for fraudulent conveyances and corporate veil piercing. Without the requested relief, Recovery Corp.'s continued litigation will erode the value of the Debtors' estates and produce inequitable results, potentially rewarding the winners in the proverbial "race to the courthouse" and disadvantaging all other creditors.

3. As discussed herein, and as set forth in the *Declaration of M. Benjamin Jones in Support of Debtors' Motion for Entry of Order (I) Extending the Automatic Stay and Preliminary Enjoining Claims and Causes of Action Against Non-Debtor Defendants and (II) Expedition* (the "Jones Declaration"), attached hereto as **Exhibit A**, the automatic stay applies to the Non-Debtor Defendants because the Recovery Corp. Action against the Non-Debtor Defendants is "an[] act to obtain possession of property of the state or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). Further, to the extent the automatic stay does not automatically apply to the Recovery Corp. Action, this Court should extend the automatic stay because any judgment against the Non-Debtor Defendants will effectively be a judgment against the Debtors due to the Debtors' broad indemnification obligations. Any other result would curtail

any progress made in these Chapter 11 Cases and allow Recovery Corp. to impermissibly dissipate property of the Debtors' estates to the detriment of all creditors and parties-in-interest.

4. Accordingly, the Recovery Corp. Action cannot proceed without impeding the Debtors' restructuring efforts. Plaintiffs respectfully request that this Court:

- (a) declare that the claims enumerated in the Recovery Corp. Action against the Non-Debtor Defendants are already stayed under Bankruptcy Code section 362 or, in the alternative, that this Court extend the automatic stay to apply to such claims against the Non-Debtor Defendants;
- (b) enjoin the Recovery Corp. Action under Bankruptcy Code section 105, as applicable to the Non-Debtor Defendants; and
- (c) award all such other and further relief, at law or in equity, that this Court deems just and proper.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The legal predicates for the relief requested herein are sections 105(a) and 362(a) of title 11 of the United States Code (the "Bankruptcy Code"), Rules 7001(7), 7007 and 7065 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Rule 7007-1 of the Local Rules of Practice for the United States Bankruptcy Court for the Northern District of Georgia (the "Local Rules"), and the *Second Amended and Restated General Order 26-2019, Procedures for Complex Chapter 11 Cases*, dated February 6, 2023 (the "Complex Case Procedures").

PARTIES

7. Debtor and Plaintiff LaVie Care Centers, LLC is a Delaware limited liability company with its principal address at 1040 Crown Point Parkway, Atlanta, GA 30338.

8. Debtor and Plaintiff 1010 Carpenters Way Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

9. Debtor and Plaintiff 1120 West Donegan Avenue Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

10. Debtor and Plaintiff 11565 Harts Road Operations LLC is a Florida limited liability company and a licensed skilled nursing facility operator.

11. Debtor and Plaintiff 12170 Cortez Boulevard Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

12. Debtor and Plaintiff 1465 Oakfield Drive Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

13. Debtor and Plaintiff 15204 West Colonial Drive Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

14. Debtor and Plaintiff 1550 Jess Parrish Court Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

15. Debtor and Plaintiff 1615 Miami Road Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

16. Debtor and Plaintiff 1851 Elkcam Boulevard Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

17. Debtor and Plaintiff 216 Santa Barbara Boulevard Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

18. Debtor and Plaintiff 2333 North Brentwood Circle Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

19. Debtor and Plaintiff 2826 Cleveland Avenue Operations LLC is a Florida limited liability company and a licensed skilled nursing facility operator.

20. Debtor and Plaintiff 3001 Palm Coast Parkway Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

21. Debtor and Plaintiff 3101 Ginger Drive Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

22. Debtor and Plaintiff 3735 Evans Avenue Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

23. Debtor and Plaintiff 4200 Washington Street Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

24. Debtor and Plaintiff 4641 Old Canoe Creek Road Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

25. Debtor and Plaintiff 518 West Fletcher Avenue Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

26. Debtor and Plaintiff 5405 Babcock Street Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

27. Debtor and Plaintiff 6305 Cortez Road West Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

28. Debtor and Plaintiff 6414 13th Road South Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

29. Debtor and Plaintiff 6700 NW 10th Place Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

30. Debtor and Plaintiff 702 South Kings Avenue Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

31. Debtor and Plaintiff 710 North Sun Drive Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

32. Debtor and Plaintiff 741 South Beneva Road Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

33. Debtor and Plaintiff 777 Ninth Street North Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

34. Debtor and Plaintiff 7950 Lake Underhill Road Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

35. Debtor and Plaintiff 9311 South Orange Blossom Trail Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

36. Debtor and Plaintiff 9355 San Jose Boulevard Operations LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

37. Debtor and Plaintiff Baya Nursing and Rehabilitation, LLC is a Delaware limited liability company and a licensed former skilled nursing facility operator.

38. Debtor and Plaintiff Brandon Facility Operations, LLC is an Ohio limited liability company and a licensed former skilled nursing facility operator.

39. Debtor and Plaintiff Consulate Facility Leasing, LLC is a Florida limited liability company.

40. Debtor and Plaintiff Epsilon Health Care Properties, LLC is a Florida limited liability company.

41. Debtor and Plaintiff Floridian Facility Operations, LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

42. Debtor and Plaintiff Josera, LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

43. Debtor and Plaintiff Kissimmee Facility Operations, LLC is an Ohio limited liability company and a licensed former skilled nursing facility operator.

44. Debtor and Plaintiff Lidenskab, LLC is a Florida limited liability company and a licensed former skilled nursing facility operator.

45. Debtor and Plaintiff LV CHC Holdings I, LLC is a Delaware limited liability company and holding company affiliate of LaVie.

46. Debtor and Plaintiff Melbourne Facility Operations, LLC is an Ohio limited liability company and a licensed former skilled nursing facility operator.

47. Debtor and Plaintiff Miami Facility Operations, LLC is an Ohio limited liability company and a licensed former skilled nursing facility operator.

48. Debtor and Plaintiff New Port Richey Facility Operations, LLC is an Ohio limited liability company and a licensed former skilled nursing facility operator.

49. Debtor and Plaintiff North Fort Myers Facility Operations, LLC is an Ohio limited liability company and a licensed former skilled nursing facility operator.

50. Debtor and Plaintiff Orange Park Facility Operations, LLC is an Ohio limited liability company and a licensed former skilled nursing facility operator.

51. Debtor and Plaintiff Port Charlotte Facility Operations, LLC is an Ohio limited liability company and a licensed former skilled nursing facility operator.

52. Debtor and Plaintiff Tallahassee Facility Operations, LLC is an Ohio limited liability company and a licensed former skilled nursing facility operator.

53. Debtor and Plaintiff Tosturi, LLC is a Florida limited liability company.

54. Debtor and Plaintiff West Altamonte Facility Operations, LLC is an Ohio limited liability company and a licensed former skilled nursing facility operator.

55. Upon information and belief, Recovery Corp. is a newly formed Florida corporation to which approximately 97 tort plaintiffs putatively assigned claims against the Debtors and Non-Debtor Defendants.²

FACTUAL BACKGROUND

I. The Chapter 11 Cases

56. On June 2, 2024 (the “Petition Date”), each Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”) in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the “Court”). The Debtors continue to operate their business and manage their property as debtors and debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

57. On June 13, 2024, the Office of the United States Trustee for Region 21, Atlanta Division (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Committee”), consisting of the following nine members: (a) Healthcare Services Group, Inc., (b) Omnicare, Inc., (c) Twin Med, LLC, (d) ShiftMed, LLC, (e) CBD Services USA, LLC, (f) Amidon Nurse Staffing, (g) Recovery Corp.,³ (h) the Estate of Nancy Walsh, and (i) Theodore

² The Debtors do not waive any defenses or arguments with respect Recovery Corp. Action, including without limitation, whether Recovery Corp. has the proper standing to bring forth the asserted claims, and whether the purported assignment of claims was valid. The Debtors reserve all rights, claims, counterclaims, and defenses with respect to the Recovery Corp. Action.

³ Recovery Corp. is a member of the Committee.

Horrobin. *See* Docket No. 112. To date, no chapter 11 trustee or examiner has been appointed in the Chapter 11 Cases.

58. Certain of the Debtors in the Chapter 11 Cases manage and/or operate approximately 43 skilled nursing facilities and independent living facilities. These Debtors provide short-term rehabilitation, comprehensive post-acute skilled care, long-term care, assisted living, and therapy services in each of their facilities, comprising nearly 4,300 licensed beds across Pennsylvania, Mississippi, North Carolina, Virginia, and Florida. Additional information regarding the Debtors and these Chapter 11 Cases, including the Debtors' business operations, capital structure, financial condition, and the reasons for and objectives of these Chapter 11 Cases, is set forth in the *Declaration of M. Benjamin Jones in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 17].

II. The Recovery Corp. Action

59. On April 22, 2024, Recovery Corp. filed a lawsuit (the "Recovery Corp. Action")⁴ in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida Civil Division, captioned *Healthcare Negligence Settlement Recovery Corp. v. 5405 Babcock Street Operations, LLC*, et al., No. 2024-007342-CA-01.

60. The Recovery Corp. Action was filed against several of the Debtors (collectively, the "Debtor Defendants")⁵ and approximately nine non-debtor entities (the "Non-Debtor

⁴ A true and correct copy of the complaint filed in the Recovery Corp. Action is attached to the Jones Declaration as Exhibit A.

⁵ The Debtor Defendants include LaVie Care Centers, LLC; 1010 Carpenters Way Operations LLC; 1120 West Donegan Avenue Operations LLC; 11565 Harts Road Operations LLC; 12170 Cortez Boulevard Operations LLC; 1465 Oakfield Drive Operations LLC; 15204 West Colonial Drive Operations LLC; 1550 Jess Parrish Court Operations LLC; 1615 Miami Road Operations LLC; 1851 Elkcarn Boulevard Operations LLC; 216 Santa Barbara Boulevard Operations, LLC; 2333 North Brentwood Circle Operations, LLC; 2826 Cleveland Avenue Operations LLC; 3001 Palm Coast Parkway Operations LLC; 3101 Ginger Drive Operations LLC; 3735 Evans Avenue Operations LLC; 4200 Washington Street Operations LLC; 4641 Old Canoe Creek Road Operations LLC; 518 West Fletcher Avenue Operations LLC; 5405 Babcock Street Operations LLC; 6305 Cortez Road West

Defendants”), including (a) 9400 SW 137th Avenue Operations LLC, (b) Aspire Healthcare, LLC, (c) CMC II, LLC, (d) Concourse Partners, LLC, (e) Concurrent Partners, LLP, (f) Daniel E. Dias, Esq., (g) NSPIRE Healthcare Inc., (h) NSPRMC, LLC, and (i) Synergy Healthcare Services, Inc.

61. As an initial matter, Recovery Corp. appears to have mistakenly named certain of the Non-Debtor Defendants, including entities that do not exist. For example, CMC II, LLC no longer exists, as it was dissolved following the post-effective date administration of its estate, and all claims and causes of action against it were released as a result of its prior chapter 11 case.⁶ Concourse Partners, LLC and Concurrent Partners, LLP are not entities in the Debtors’ corporate structure and the Debtors do not know who they are or what services they provide.⁷ Finally, the Debtors are also unaware of any entities that exist with the legal names of “Synergy Healthcare Services, Inc.” or “NSPIRE Healthcare Inc.” and can only surmise that Recovery Corp. attempted to name Pourlessoins, LLC, d/b/a Synergy Healthcare Services (“Synergy”), and NSPRMC, LLC,

Operations LLC; 6414 13th Road South Operations LLC; 6700 NW 10th Place Operations LLC; 702 South Kings Avenue Operations LLC; 710 North Sun Drive Operations LLC; 741 South Beneva Road Operations LLC; 777 Ninth Street North Operations LLC; 7950 Lake Underhill Road Operations, LLC; 9311 South Orange Blossom Trail Operations, LLC; 9355 San Jose Boulevard Operations LLC; Baya Nursing And Rehabilitation, LLC; Brandon Facility Operations, LLC; Consulate Facility Leasing, LLC; Epsilon Health Care Properties, LLC; Floridian Facility Operations, LLC; Jacksonville Facility Operations, LLC; Josera, LLC; Kissimmee Facility Operations, LLC; Lidenskab, LLC; LV CHC Holdings I, LLC; Melbourne Facility Operations, LLC; Miami Facility Operations, LLC; New Port Richey Facility Operations, LLC; North Fort Myers Facility Operations, LLC; Orange Park Facility Operations, LLC; Port Charlotte Facility Operations, LLC; Tallahassee Facility Operations, LLC; Tosturi, LLC; and West Altamonte Facility Operations, LLC.

⁶ See *Findings of Fact, Conclusions of Law, and Order Confirming the First Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation, In re CMC II, LLC*, Case No. 21-10461 (JTD) (Bankr. D. Del. Mar. 1, 2021) [Docket No. 718] (“[A]ll entities who have held, hold, or may hold Claims against or Equity Interests in the Debtors shall be **permanently enjoined** from taking any of the following actions against any property that is to be distributed under the terms of the Combined Plan and Disclosure Statement on account of any such Claims or Equity Interests: (a) commencing or continuing, in any manner or in any place, any action or other proceeding . . .”) (emphasis added); see also Docket No. 718-1 at 4 (“After the Effective Date, after completing all remaining ordinary course business operations, fiduciary obligations, and the administration of this Combined Plan and Disclosure Statement, **the Debtors will be dissolved.**”) (emphasis added).

⁷ Given the Debtors’ unfamiliarity with these entities, Concourse Partners, LLC and Concurrent Partners, LLP are not discussed herein.

d/b/a NSPIRE Healthcare (“NSPIRE”). Accordingly, this action seeks to extend the automatic stay to the following Non-Debtor Defendants: Mr. Dias, 9400 SW 137th Avenue Operations LLC, Synergy, NSPIRE, and Aspire Healthcare, LLC.

62. Recovery Corp. asserts various claims against the Debtor Defendants and the Non-Debtor Defendants, including alleged claims for intentional and constructive fraudulent transfers, successor liability, veil piercing, unfair and deceptive trade practices, civil conspiracy, breach of fiduciary duty, and unjust enrichment.⁸

63. The Recovery Corp. Action is in its nascent stages. No responsive pleadings have been filed, discovery has yet to commence, and substantial work remains before a resolution on the merits—which is, at best, many months away.

III. The Indemnification Obligations

64. Pursuant to various operating, support services, administrative services, and operating transfer agreements, the Debtor Defendants are contractually obligated to indemnify the Non-Debtor Defendants for any damages and reasonable attorneys’ fees incurred in connection with many of the claims asserted in the Recovery Corp. Action, creating an identity of interest and meriting extension of the automatic stay.

A. The LVCC Operating Agreement

65. Pursuant to its limited liability company operating agreement (the “LVCC Operating Agreement”),⁹ Debtor Defendant LaVie must indemnify certain Non-Debtor Defendants

⁸ For the avoidance of doubt, the Debtors dispute the underlying allegations set forth in the Recovery Corp. Action and reserve all rights, counterclaims, and defenses with respect thereto.

⁹ A true and correct copy of the LVCC Operating Agreement is attached to the Jones Declaration as Exhibit B.

for any liability under the Recovery Corp. Action. Section 17(b) of the LVCC Operating Agreement provides:

The Company shall indemnify an Indemnified Representative against any Liability incurred in connection with any Proceeding in which the Indemnified Representative may be involved as a party or otherwise by reason of the fact that such person is or was serving in an Indemnified Capacity, including, without limitation, any Liability resulting from any actual or alleged breach or neglect of duty, error, misstatement or misleading statement, negligence, gross negligence or act giving rise to strict or products liability. . . .

See Jones Decl., Ex. B at §17(b) (emphasis added).

66. The LVCC Operating Agreement defines “Indemnified Representative” as:

[A]ny and all **members, managers, officers, employees and agents of the Company and any other person designated as an Indemnified Representative** by the Member (which may, but need not, include any person serving at the request of the Company, as a **member, manager, officer, employee, agent, fiduciary or trustee of another limited liability company, corporation, partnership, joint venture, trust, employee benefit plan or other entity or enterprise**).

See *id.* at § 17(a)(ii) (emphasis added). Mr. Dias, NSPIRE, and Synergy each constitute an “Indemnified Representative” based on their roles as managers, agents, and persons serving at the request of Debtor Defendant LaVie.

67. The LVCC Operating Agreement defines “Indemnified Capacity” as:

[A]ny and all **past, present and future service by an Indemnified Representative in one or more capacities** as a member, manager, officer, employee or agent of the Company, or, at the request of the Company, as a member, manager, officer, employee, agent, fiduciary or trustee of another limited liability company, corporation, partnership, joint venture, trust, employee benefit plan or other entity or enterprise.

See *id.* at § 17(a)(i) (emphasis added).

68. Finally, the LVCC Operating Agreement defines “Proceeding” as:

[A]ny threatened, pending or completed action, suit, appeal or other proceeding of any nature, whether civil, criminal, administrative or investigative, whether formal or informal, and whether brought by or in the right of the Company, a class of its members, or security holders or otherwise.

See id. at § 17(a)(iv).

69. Accordingly, Debtor Defendant LaVie’s indemnification obligations under the LVCC Operating Agreement are implicated for certain of the Non-Debtor Defendants, including Mr. Dias, Synergy, and NSPIRE.

B. The Support Services Agreements

70. Certain of the Debtor Defendants (each, an “Operator” and collectively, the “Operators”)¹⁰ are party to a support services agreement (each, a “Support Services Agreement” and collectively, the “Support Services Agreements”) through which the Operator engaged Non-Debtor Defendant NSPIRE, (the “Consultant”) to provide advice and recommendations regarding various aspects of facility operations and property maintenance.

71. Pursuant to the Support Services Agreements, the Operators and NSPIRE are contractually obligated to broadly indemnify each other for liabilities incurred in connection with

¹⁰ The Operators include the following Debtor Defendants: 1010 Carpenters Way Operations LLC; 1120 West Donegan Avenue Operations LLC; 11565 Harts Road Operations LLC; 12170 Cortez Boulevard Operations LLC; 1465 Oakfield Drive Operations LLC; 15204 West Colonial Drive Operations LLC; 1550 Jess Parrish Court Operations LLC; 1615 Miami Road Operations LLC; 1851 Elckam Boulevard Operations LLC; 216 Santa Barbara Boulevard Operations, LLC; 2333 North Brentwood Circle Operations, LLC; 2826 Cleveland Avenue Operations LLC; 3001 Palm Coast Parkway Operations LLC; 3101 Ginger Drive Operations LLC; 3735 Evans Avenue Operations LLC; 4200 Washington Street Operations LLC; 4641 Old Canoe Creek Road Operations LLC; 518 West Fletcher Avenue Operations LLC; 5405 Babcock Street Operations LLC; 6305 Cortez Road West Operations LLC; 6414 13th Road South Operations LLC; 6700 NW 10th Place Operations LLC; 702 South Kings Avenue Operations LLC; 710 North Sun Drive Operations LLC; 741 South Beneva Road Operations LLC; 777 Ninth Street North Operations LLC; 7950 Lake Underhill Road Operations, LLC; 9311 South Orange Blossom Trail Operations, LLC; 9355 San Jose Boulevard Operations LLC; Baya Nursing And Rehabilitation, LLC; Brandon Facility Operations, LLC; Floridian Facility Operations, LLC; Jacksonville Facility Operations, LLC; Kissimmee Facility Operations, LLC; Melbourne Facility Operations, LLC; Miami Facility Operations, LLC; New Port Richey Facility Operations, LLC; North Fort Myers Facility Operations, LLC; Orange Park Facility Operations, LLC; Port Charlotte Facility Operations, LLC; Tallahassee Facility Operations, LLC; and West Altamonte Facility Operations, LLC.

any Proceeding¹¹ arising out of the operations of the applicable facility. In an illustrative example, one such Support Services Agreement was entered into between Debtor Defendant 11565 Harts Road Operations LLC, as Operator, and NSPIRE, as Consultant (as amended, supplemented, or otherwise modified from time to time, the “Harts Harbor Support Services Agreement”).¹² Section 8.2 of the Harts Harbor Support Services Agreement provides:

Operator agrees to indemnify and hold harmless Consultant, and its directors, officers, employees, representatives, and agents from, against, for and in respect of any and all penalties, fines, interest and monetary sanctions, losses, obligations, **liabilities**, demands, deficiencies, costs and expenses, including, without limitation, reasonable attorneys’ fees and other costs and expenses incident to any investigation, claim or Proceeding sustained by any of them **arising out of . . . any claim asserted against any of them in connection with the operations of the Business**. . . .

See Jones Decl., Ex. C, at § 8.2 (emphasis added).

72. Accordingly, under the Harts Harbor Support Services Agreement, Debtor Defendant 11565 Harts Harbor Road Operations LLC must indemnify Non-Debtor Defendant NSPIRE for, among other things, any and all liabilities incurred in connection with any Proceeding related to the operation of its business, which includes the Recovery Corp. Action. The same can be said for at least 19 other Debtor Defendants, each of which are party to Support Services Agreements with NSPIRE and accordingly owe the same indemnification obligations to NSPIRE.¹³

¹¹ “Proceeding” is defined in the Support Services Agreements as “any pending or completed action or proceeding, whether civil, criminal, administrative or investigative, any appeal in such an action or proceeding, and any inquiry or investigation that could lead to such an action or proceeding.” See Jones Decl., Ex. C, at § 11.6(P).

¹² A true and correct copy of the sample Harts Harbor Support Services Agreement is attached to the Jones Declaration as Exhibit C. The Harts Harbor Support Services Agreement is representative of all other Support Services Agreements between an Operator and NSPIRE.

¹³ Such Debtor Defendants include: 12170 Cortez Boulevard Operations, LLC; 1465 Oakfield Drive Operations, LLC; 15204 West Colonial Drive Operations, LLC; 216 Santa Barbara Boulevard Operations, LLC; 2826

73. Importantly, though the operations of many of the underlying facilities have since been divested to new operators, effectively terminating the engagement between the Operators and the Consultants, the indemnification provisions in the Support Services Agreements expressly survive such termination. *See id.* at § 7.2 (“All other rights and obligations of the Parties under this Agreement will terminate, except for the rights and obligations of any party under . . . Article VIII hereof . . .”). As such, the Operators referenced above continue to owe indemnification obligations to Non-Debtor Defendant NSPIRE notwithstanding operations divestitures.

C. The Administrative Services Agreements

74. Debtor Defendants Josera, LLC and Lidenskab, LLC are each party to an administrative services agreement with Non-Debtor Defendant Synergy (each, an “Administrative Services Agreement” and together, the “Administrative Services Agreements”).¹⁴ Pursuant to Article VIII of the Administrative Services Agreements, Debtor Defendants Josera, LLC and Lidenskab, LLC and Synergy are contractually obligated to broadly indemnify each other for, among other things, “third-party claims” which are caused in whole or in part by any negligent act or omission of the other party in connection with performance of their duties. Specifically, section 8.1 of the Administrative Services Agreements provides as follows:

[Synergy] and [Debtor Defendants Josera, LLC and Lidenskab, LLC] shall **indemnify and hold each other and their respective**

Cleveland Avenue Operations, LLC; 3101 Ginger Drive Operations, LLC; 3735 Evans Avenue Operations, LLC; 4641 Old Canoe Creek Road Operations, LLC; 5405 Babcock Street Operations, LLC; 6305 Cortez Road West Operations, LLC; 702 South Kings Avenue Operations, LLC; 710 North Sun Drive Operations, LLC; 741 South Beneva Road Operations, LLC; 777 Ninth Street North Operations, LLC; 7950 Lake Underhill Road Operations, LLC; Floridian Facility Operations, LLC; Melbourne Facility Operations, LLC; Orange Park Facility Operations, LLC; and Tallahassee Facility Operations, LLC.

¹⁴ A true and correct copy of the Administrative Services Agreement between Debtor Josera, LLC and Synergy, dated as of December 1, 2021 (as amended, supplemented, or otherwise modified from time to time, the “Josera Administrative Services Agreement”) is attached to the Jones Declaration as Exhibit D-1, and a true and correct copy of the Administrative Services Agreement between Debtor Lidenskab, LLC and Synergy, dated as of May 1, 2023 (as amended, supplemented, or otherwise modified from time to time, the “Lidenskab Administrative Services Agreement”) is attached to the Jones Declaration as Exhibit D-2.

officers, directors, members, employees and affiliates (each, an “Protected Party”) harmless from any and all claims, losses, judgments, actions, proceedings, damages, expenses and liabilities whatsoever incurred by a Protected Party, including reasonable attorneys’ fees, arising out of a material breach of this Agreement or **any third-party claims which are caused in whole or in part by any negligent act or omission of the other party in connection with the performance of its duties under this Agreement.** . . .

See Jones Decl., Exs. D-1, D-2 at § 8.1 (emphasis added). Accordingly, pursuant to the Administrative Services Agreements, Debtor Defendants Josera, LLC and Lidenskab, LLC are each obligated to indemnify Non-Debtor Defendant Synergy for “third-party claims” caused in whole or in part by any negligent act or omission in connection with the performance of its duties, including potentially the “third-party claims” alleged in the Recovery Corp. Action.

75. Importantly, the indemnification provisions in the Administrative Services Agreements expressly survive termination. See *id.* at § 8.1 (“The obligations under this Section 8.1 shall survive termination or expiration of this Agreement.”).

D. The OTAs

76. In connection with their prepetition facility operations divestitures, certain of the Debtor Defendants¹⁵ entered into operations transfer agreements (collectively, the “OTAs”) with new facility operators, many of which are affiliates of Non-Debtor Defendant Aspire Healthcare, LLC (“Aspire”). Pursuant to the OTAs, the former operators (*i.e.*, certain of the Debtor Defendants)

¹⁵ The applicable Debtor Defendants include: 1120 West Donegan Avenue Operations LLC; 12170 Cortez Boulevard Operations LLC; 1465 Oakfield Drive Operations LLC; 15204 West Colonial Drive Operations LLC; 1615 Miami Road Operations LLC; 216 Santa Barbara Boulevard Operations LLC; 2333 North Brentwood Circle Operations LLC; 3001 Palm Coast Parkway Operations LLC; 3101 Ginger Drive Operations LLC; 3735 Evans Avenue Operations LLC; 4641 Old Canoe Creek Road Operations LLC; 518 West Fletcher Avenue Operations LLC; 5405 Babcock Street Operations LLC; 6305 Cortez Road West Operations LLC; 6414 13th Road South Operations LLC; 6700 NW 10th Place Operations LLC; 702 South Kings Avenue Operations LLC; 710 North Sun Drive Operations LLC; 741 South Beneva Road Operations LLC; 9355 San Jose Boulevard Operations LLC; Jacksonville Facility Operations, LLC; North Fort Myers Facility Operations, LLC; Orange Park Facility Operations, LLC; Tallahassee Facility Operations, LLC;

agreed to broadly indemnify the new facility operators and related parties (including affiliates) for any losses incurred at the facility prior to the operations divestiture closing date.

77. For illustrative purposes, one such Operations Transfer Agreement was entered into between Debtor Defendant 216 Santa Barbara Boulevard Operations LLC, as existing operator, Santa Barbara Blvd Opco LLC, as new operator, LaVie, as existing operator guarantor, and Altranais Care Centers LLC, as new operator guarantor (the “SNF OTA”).¹⁶ The SNF OTA provides that:

Existing Operator will hold harmless and indemnify **New Operator and its officers, directors, employees, members, affiliates, designees, successors and assigns** from and against any Loss that . . . (ii) arises from any tort, general liability, or professional liability claim made by any third party . . . with respect to the Facility as a result of operation of the Facility prior to the Operations Closing Date, whether such obligation accrues before or after the Operations Closing Date. . . .

See Jones Decl., Ex. E, Art. IX.A (emphasis added).

78. Based on the foregoing, as affiliate of the new operators and new operator guarantors, Non-Debtor Defendant Aspire is an indemnitee under the OTAs. Non-Debtor Defendant Aspire is entitled to indemnification by the Debtor Defendants party to the OTAs for the claims asserted by the plaintiffs in the Recovery Corp. Action.

IV. Irreparable Harm

79. Absent an injunction of the Recovery Corp. Action, the Debtors and their estates will suffer irreparable harm.

80. The continued prosecution of the claims and causes of action at issue would risk losses to the Debtors’ estates and, subsequently, the Debtors’ creditors as a whole because, if

¹⁶ A true and correct copy of the sample SNF OTA is attached to the Jones Declaration as Exhibit E. The SNF OTA is representative of all other Aspire OTAs.

permitted, such piecemeal prosecution would result in the liquidation of estates causes of action to the detriment of the Debtors' creditors and key stakeholders. *See* Jones Decl. ¶ 14. Given the Debtors' indemnification obligations owed to the Non-Debtor Defendants, the prosecution of claims against the Non-Debtor Defendants may result in claims of indemnification against the Debtors' estates for, among other things, attorneys' fees, expenses, judgments, settlements, and other indemnified costs. As such, without injunctive relief, the Debtors would be forced to defend against such claims or risk irreparable harm in the form of losses to creditors and parties-in-interest, as well as the diversion of funds away from their estates.

81. Additionally, continued prosecution of Recovery Corp.'s claims would distract the Debtors' key employees and divert time and resources away from the Debtors' restructuring, threatening the Debtors' ability to resolve their Chapter 11 Cases swiftly and efficiently. *See* Jones Decl. ¶ 15.

82. Moreover, continued prosecution and resolution of Recovery Corp.'s claims and issues against the Non-Debtor Defendants could improperly bind the Debtor Defendants under various preclusion doctrines such as collateral estoppel and res judicata. *See* Jones Decl. ¶ 16. To avoid this risk, the Debtor Defendants would be forced to participate in the Recovery Corp. Action in order to ensure that their interests are adequately protected, notwithstanding the existence of the automatic stay, which would undermine its very purpose and consume valuable time and resources of the estates and their professionals. *See id.*

83. In sum, continuation of the prosecution of the same against the Non-Debtor Defendants would frustrate the purpose of the automatic stay—to provide Debtors with a “breathing spell” to allow them to focus on the bankruptcy proceedings and would unnecessarily distract the Debtors, as well as their management, employees, and advisors, from the important,

near-term tasks at hand in the Chapter 11 Cases, to the detriment of the Debtors, their estates, and all parties-in-interest.

COUNT ONE
(Extension of Automatic Stay Pursuant to Bankruptcy Code Section 362)

84. The allegations set forth above are incorporated herein by reference.

85. Upon the commencement of a bankruptcy case, Bankruptcy Code section 362(a) operates to stay:

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
- ...
- (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title . . .

11 U.S.C. § 362(a)(1), (2), (3), (6).

86. Recovery Corp.'s claims for fraudulent transfer, successor liability, and alter ego are property of the Debtors' estates, and thus should be automatically stayed.

87. If not automatically stayed, bankruptcy courts in the Eleventh Circuit may extend the automatic stay to non-debtor third parties when there is an identity of interest between the debtor and another defendant.

88. There is an identity of interest between the Debtor Defendants and the Non-Debtor Defendants in the Recovery Corp. Action because, pursuant to the indemnification obligations, a

judgment against the Non-Debtor Defendants would essentially be a judgment against the Debtor Defendants.

89. Therefore, this Court should extend the automatic stay to the Non-Debtor Defendants because (a) the claims asserted by Recovery Corp. are property of the Debtors' estates, and (b) the Debtor Defendants are obligated to defend and indemnify certain of the Non-Debtor Defendants, thus implicating the Debtor Defendants as the "real party defendant" in the Recovery Corp. Action.

COUNT TWO
(Preliminary Injunction Pursuant to Bankruptcy Code Section 105)

90. The allegations set forth above are incorporated herein by reference.

91. Bankruptcy Code section 105(a) permits the bankruptcy court to issue any order "necessary or appropriate" to assure the administration of the debtor's bankruptcy estate, including issuing injunctions to enjoin actions against non-debtors. *See* 11 U.S.C. § 105(a).

92. Here, the issues between the debtors and Non-Debtor Defendants are inextricably interwoven and judicial economy would be served if the issues were fully litigated in a single proceeding. Therefore, an injunction is warranted to prohibit Recovery Corp. from prosecuting claims against the Non-Debtor Defendants while the Debtors are focused on their restructuring efforts in their Chapter 11 Cases.

93. The Debtors have shown (a) a reasonable likelihood of a successful reorganization and success on the merits; (b) a danger of imminent, irreparable harm to the estate or the debtor's ability to reorganize in absence of an injunction; (c) that the balance of equities tips in favor of the debtor as opposed to the creditor who would be restrained; and (d) the public interest in successful bankruptcy reorganization outweighs other competing societal interests

94. An injunction is necessary to prevent irreparable harm to the Debtors and their estates because the continued prosecution of the claims and causes of action at issue would (i) risk losses to the Debtors' estates and, subsequently, the Debtors' creditors as a whole; (ii) distract the Debtors' key employees and divert time and resources away from the Debtors' restructuring, threatening the Debtors' ability to resolve their Chapter 11 Cases swiftly and efficiently; and (iii) force the participation of the Debtor Defendants in order to ensure that their interests are adequately protected.

95. With respect to the third factor, in contrast to the immediate and irreparable harm the Debtors and their estates would face if injunctive relief were denied, the only potential harm faced by Recovery Corp. is mere delay.

96. As to the fourth and final factor, public interest favors an injunction, which would enable the Debtors to maximize the value of their estates and focus on successfully reorganizing in chapter 11—two paramount goals of the Bankruptcy Code.

97. Accordingly, an injunction barring Recovery Corp. from prosecuting the claims and causes of action enumerated in the Recovery Corp. Action against the Non-Debtor Defendants until the earlier of (a) the confirmation of a chapter 11 plan or (b)(i) conversion or (ii) dismissal of the Chapter 11 Cases is appropriate and essential to the orderly and effective administration of the Debtors' estates.

PRAYER FOR RELIEF

WHEREFORE, the Debtors respectfully request that this Court enter an order:

- (a) declaring that the claims enumerated in the Recovery Corp. Action against the Non-Debtor Defendants are stayed under Bankruptcy Code section 362 or, in the alternative, extending the automatic stay to apply to such claims against the Non-Debtor Defendants;
- (b) enjoining the Recovery Corp. Action under Bankruptcy Code section 105, as applicable to the Non-Debtor Defendants; and

- (c) awarding all such other and further relief, at law or in equity, that this Court deems just and proper.

[Remainder of page intentionally left blank]

Dated: Atlanta, Georgia
June 30, 2024

MCDERMOTT WILL & EMERY LLP

/s/ Daniel M. Simon

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*Proposed Counsel for the Debtors and
Debtors-in-Possession*

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing Brief was served by the Court's CM/ECF system on all counsel of record registered in these Chapter 11 Cases through CM/ECF. The Debtors' claims and noticing agent, Kurtzman Carson Consultants LLC, will be filing a supplemental certificate of service on the docket to reflect any additional service of the foregoing Brief, including on the Limited Service List.

Dated: Atlanta, Georgia
June 30, 2024

MCDERMOTT WILL & EMERY LLP

/s/ Daniel M. Simon

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*Proposed Counsel for the Debtors and
Debtors-in-Possession*

EXHIBIT A

Jones Declaration

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:)	Chapter 11
LAVIE CARE CENTERS, LLC, <i>et al.</i> ,)	Case No. 24-55507 (PMB)
Debtors. ¹)	(Jointly Administered)

LAVIE CARE CENTERS, LLC; 1010) Adversary Proc. No. 24-[] ()
CARPENTERS WAY OPERATIONS LLC; 1120)
WEST DONEGAN AVENUE OPERATIONS LLC;)
11565 HARTS ROAD OPERATIONS LLC; 12170)
CORTEZ BOULEVARD OPERATIONS LLC; 1465)
OAKFIELD DRIVE OPERATIONS LLC; 15204)
WEST COLONIAL DRIVE OPERATIONS LLC;)
1550 JESS PARRISH COURT OPERATIONS LLC;)
1615 MIAMI ROAD OPERATIONS LLC; 1851)
ELKCAM BOULEVARD OPERATIONS LLC; 216)
SANTA BARBARA BOULEVARD OPERATIONS)
LLC; 2333 NORTH BRENTWOOD CIRCLE)
OPERATIONS LLC; 2826 CLEVELAND AVENUE)
OPERATIONS LLC; 3001 PALM COAST)
PARKWAY OPERATIONS LLC; 3101 GINGER)
DRIVE OPERATIONS LLC; 3735 EVANS)
AVENUE OPERATIONS LLC; 4200)
WASHINGTON STREET OPERATIONS LLC; 4641)
OLD CANOE CREEK ROAD OPERATIONS LLC;)
518 WEST FLETCHER AVENUE OPERATIONS)
LLC; 5405 BABCOCK STREET OPERATIONS)
LLC; 6305 CORTEZ ROAD WEST OPERATIONS)
LLC; 6414 13TH ROAD SOUTH OPERATIONS)
LLC; 6700 NW 10TH PLACE OPERATIONS LLC;)
702 SOUTH KINGS AVENUE OPERATIONS LLC;)
710 NORTH SUN DRIVE OPERATIONS LLC; 741)
SOUTH BENEVA ROAD OPERATIONS LLC; 777)
NINTH STREET NORTH OPERATIONS LLC; 7950)

¹ The last four digits of LaVie Care Centers, LLC's federal tax identification number are 5592. There are 282 Debtors in these chapter 11 cases, which are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://www.kccllc.net/LaVie>. The location of LaVie Care Centers, LLC's corporate headquarters and the Debtors' service address is 1040 Crown Pointe Parkway, Suite 600, Atlanta, GA 30338.

LAKE UNDERHILL ROAD OPERATIONS LLC;)
9311 SOUTH ORANGE BLOSSOM TRAIL)
OPERATIONS LLC; 9355 SAN JOSE)
BOULEVARD OPERATIONS LLC; BAYA)
NURSING AND REHABILITATION, LLC;)
BRANDON FACILITY OPERATIONS, LLC;)
CONSULATE FACILITY LEASING, LLC;)
EPSILON HEALTH CARE PROPERTIES, LLC;)
FLORIDIAN FACILITY OPERATIONS, LLC;)
JACKSONVILLE FACILITY OPERATIONS, LLC;)
JOSERA, LLC; KISSIMMEE FACILITY)
OPERATIONS, LLC; LIDENSKAB, LLC; LV CHC)
HOLDINGS I, LLC; MELBOURNE FACILITY)
OPERATIONS, LLC; MIAMI FACILITY)
OPERATIONS, LLC; NEW PORT RICHEY)
FACILITY OPERATIONS, LLC; NORTH FORT)
MYERS FACILITY OPERATIONS, LLC; ORANGE)
PARK FACILITY OPERATIONS, LLC; PORT)
CHARLOTTE FACILITY OPERATIONS, LLC;)
TALLAHASSEE FACILITY OPERATIONS, LLC;)
TOSTURI, LLC; AND WEST ALTAMONTE)
FACILITY OPERATIONS, LLC;)

Plaintiffs,)

v.)

HEALTHCARE NEGLIGENCE SETTLEMENT)
RECOVERY CORP.)

Defendant.)

**DECLARATION OF M. BENJAMIN JONES IN SUPPORT OF DEBTORS’ MOTION
FOR ENTRY OF ORDER (I) EXTENDING THE AUTOMATIC STAY
AND/OR PRELIMINARILY ENJOINING CLAIMS AND CAUSES OF
ACTION AGAINST NON-DEBTOR DEFENDANTS AND (II) EXPEDITION**

I, M. Benjamin Jones, hereby declare under penalty of perjury that the following is true to the best of my knowledge, information, and belief:

1. I am the Chief Restructuring Officer (“CRO”) of LaVie Care Centers, LLC (“LaVie”) and its subsidiaries and affiliates that are debtors and debtors-in-possession

(collectively, the “Debtors” or the “Company”) in the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”). I am also a Senior Managing Director at Ankura Consulting Group, LLC (“Ankura”) and the Global Co-Head of Ankura’s Turnaround & Restructuring Advisory group.

2. I submit this declaration (this “Declaration”) in support of the *Debtors’ Motion for Order (I) Declaring the Automatic Stay Applies to Claims and Causes of Action Asserted Against Non-Debtor Defendants in the Recovery Corp. Action or (II) Extending the Automatic Stay and Preliminarily Enjoining Claims and Causes of Action Asserted Against Non-Debtor Defendants* (the “Motion”).²

3. Except as otherwise indicated, all facts set forth in this Declaration are based upon: (a) my personal knowledge of the Debtors’ operations; (b) my review of relevant documents; (c) information provided to me by management, advisors, counsel, agents, employees, or other representatives of the Debtors; (d) or my opinion based upon my experience and knowledge. I am over the age of 18, and I am authorized to submit this Declaration on behalf of the Debtors. If called to testify, I could and would testify competently to the facts set forth in this Declaration.

INTRODUCTION

4. Through these Chapter 11 Cases, the Debtors aim to maximize the value of their estates through, among other things, a fulsome marketing and sale process and a chapter 11 plan that, to the best of the Debtors’ ability, provides meaningful recoveries for creditors and stakeholders alike. The relief sought in the Motion is critical to the Debtors’ ability to achieve that purpose.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

5. It is my understanding that, without the requested relief, Recovery Corp. may be permitted to litigate claims and causes of action against non-Debtors that may have significant negative effects on the Debtors and the Chapter 11 Cases, including because Recovery Corp.’s claims and causes of action seek adverse findings against Debtors, and because the Non-Debtor Defendants have indemnification rights against certain Debtors. In addition, I understand that the claims and causes of action in the Recovery Corp. Action may belong to the Debtors’ estates.

6. The continued prosecution of the Recovery Corp. Action against the Non-Debtor Defendants will cause irreparable harm to the Debtors and their stakeholders by, among other things, eroding the value of their estates through direct and indirect litigation costs and indemnification claims, impairing the Debtors’ restructuring efforts and undermining the very purpose of the Chapter 11 Cases.

7. If granted, the relief requested in the Motion will afford the Debtors to focus on the administration of the Chapter 11 Cases, pursue estate causes of action for the benefit of all creditors (not just the Defendant), and maximize the value of these estates in order to provide a meaningful and equitable recovery to all parties in interests.

I. BACKGROUND

A. The Recovery Corp. Action

8. On April 22, 2024, an entity called “Healthcare Negligence Settlement Recovery Corp.” (“Recovery Corp.”)³ filed a lawsuit (the “Recovery Corp. Action”) in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida Civil Division by Defendant, captioned *Healthcare Negligence Settlement Recovery Corp. v. 5405 Babcock Street Operations*,

³ I understand that approximately 97 tort plaintiffs putatively assigned their claims to the Recovery Corp., who then brought suit on behalf of those entities against certain of the Debtors and the Non-Debtor Defendants (as defined herein).

LLC, et al., No. 2024-007342-CA-01. The Recovery Corp. Action was filed against several of the Debtors (collectively, the “Debtor Defendants”)⁴ and approximately nine non-debtor entities (collectively, the “Non-Debtor Defendants”), including (a) 9400 SW 137th Avenue Operations LLC, (b) Aspire Healthcare, LLC, (c) CMC II, LLC, (d) Concourse Partners, LLC, (e) Concurrent Partners, LLP, (f) Daniel E. Dias, Esq., (g) NSPIRE Healthcare Inc., (h) NSPRMC, LLC, and (i) Synergy Healthcare Services, Inc.

9. I note that certain of the named Non-Debtor Defendants do not appear to exist. For example, CMC II, LLC no longer exists, as it was dissolved following the post-effective date administration of its estate, and all claims and causes of action against it were released as a result of its prior chapter 11 case. Concourse Partners, LLC and Concurrent Partners, LLP are not entities in the Debtors’ corporate structure and I do not know who they are or what services they provide. I am also unaware of any entities that exist with the legal names of “Synergy Healthcare Services, Inc.” or “NSPIRE Healthcare Inc.” and can only surmise that Recovery Corp. attempted to name Pourlessoins, LLC, d/b/a Synergy Healthcare Services (“Synergy”), and NSPRMC, LLC, d/b/a NSPIRE Healthcare (“NSPIRE”).

⁴ The Debtor Defendants include LaVie Care Centers, LLC; 1010 Carpenters Way Operations LLC; 1120 West Donegan Avenue Operations LLC; 11565 Harts Road Operations LLC; 12170 Cortez Boulevard Operations LLC; 1465 Oakfield Drive Operations LLC; 15204 West Colonial Drive Operations LLC; 1550 Jess Parrish Court Operations LLC; 1615 Miami Road Operations LLC; 1851 Elckam Boulevard Operations LLC; 216 Santa Barbara Boulevard Operations, LLC; 2333 North Brentwood Circle Operations, LLC; 2826 Cleveland Avenue Operations LLC; 3001 Palm Coast Parkway Operations LLC; 3101 Ginger Drive Operations LLC; 3735 Evans Avenue Operations LLC; 4200 Washington Street Operations LLC; 4641 Old Canoe Creek Road Operations LLC; 518 West Fletcher Avenue Operations LLC; 5405 Babcock Street Operations LLC; 6305 Cortez Road West Operations LLC; 6414 13th Road South Operations LLC; 6700 NW 10th Place Operations LLC; 702 South Kings Avenue Operations LLC; 710 North Sun Drive Operations LLC; 741 South Beneva Road Operations LLC; 777 Ninth Street North Operations LLC; 7950 Lake Underhill Road Operations, LLC; 9311 South Orange Blossom Trail Operations, LLC; 9355 San Jose Boulevard Operations LLC; Baya Nursing And Rehabilitation, LLC; Brandon Facility Operations, LLC; Consulate Facility Leasing, LLC; Epsilon Health Care Properties, LLC; Floridian Facility Operations, LLC; Jacksonville Facility Operations, LLC; Josera, LLC; Kissimmee Facility Operations, LLC; Lidenskab, LLC; LV CHC Holdings I, LLC; Melbourne Facility Operations, LLC; Miami Facility Operations, LLC; New Port Richey Facility Operations, LLC; North Fort Myers Facility Operations, LLC; Orange Park Facility Operations, LLC; Port Charlotte Facility Operations, LLC; Tallahassee Facility Operations, LLC; Tosturi, LLC; and West Altamonte Facility Operations, LLC.

10. I understand that discovery has yet to commence in the Recovery Corp. Action and no responsive pleadings have been filed.

B. The Indemnification Obligations

11. It is my understanding that the Debtor Defendants may be contractually obligated to indemnify the Non-Debtor Defendants for damages and reasonable attorneys' fees incurred in connection with the Recovery Corp. Action, including pursuant to the LVCC Operating Agreement, the Support Services Agreements, the Administrative Services Agreement, and/or the OTAs, copies of which are attached hereto as Exhibits 2-5.

II. THE RECOVERY CORP. ACTION SHOULD BE STAYED AND/OR ENJOINED.

12. I understand that certain of the claims set forth in the Recovery Corp. Action—including fraudulent transfer claims and corporate veil piercing—are causes of action that belong to the Debtors' estates, meaning that such claims are automatically stayed pursuant to Bankruptcy Code section 362(a)(3). Moreover, I understand that many, if not all, of the claims and causes of action in the Recovery Corp. Action implicate the Debtors' indemnification obligations and/or are inextricably intertwined such that it would be difficult, if not impossible, for the Debtor Defendants to stand on the sidelines which such claims are permitted to proceed against the Non-Debtor Defendants. Thus, I believe that any judgment against the Non-Debtor Defendants will equate to a judgment against the Debtors, and the continued prosecution of such claims against the Non-Debtor Defendants will only further deplete valuable estate assets and unnecessarily distract the Debtors from their Chapter 11 Cases at this critical juncture.

13. I believe significant irreparable harm will befall the Debtors in the absence of an injunction for several reasons.

14. I believe the prosecution of the claims and causes of action in the Recovery Corp. Action would result in losses to the Debtors' estates and, in turn, the Debtors' creditors as a whole because, if permitted, such piecemeal prosecution would erode value of the Debtors' estates to the detriment of the Debtors' creditors and key stakeholders. Similarly, I understand that, given the Debtors' indemnification obligations owed to the Non-Debtor Defendants, the prosecution of claims against the Non-Debtor Defendants may result in claims of indemnification against the Debtors' estates for, among other things, attorneys' fees, expenses, judgments, settlements, and other indemnified costs. As such, without injunctive relief, I believe the Debtors would be forced to defend against such claims or risk irreparable harm in the form of losses to creditors and parties-in-interest, as well as the diversion of funds away from their estates.

15. I also believe that continued prosecution of the Recovery Corp. Action would distract the Debtors' professionals and divert valuable estate resources from the Debtors' restructuring efforts in the Chapter 11 Cases.

16. It is also my understanding, based on discussions with counsel, that the resolution of claims and causes of action against the Non-Debtor Defendants could bind the Debtors under various preclusion doctrines and could lead to inconsistent results among varying tribunals. To avoid this risk, I understand that the Debtors may be compelled to actively participate in the Recovery Corp. Action, in order to protect their interests, thereby consuming valuable and limited estate resources.

17. In sum, I believe that continued prosecution of the Recovery Corp. Action against the Non-Debtor Defendants would undermine the Debtors' "breathing spell" provided by Bankruptcy Code section 362(a) and would unnecessarily distract the Debtors, as well as their

management, employees, and advisors, from the important, near-term tasks at hand in the Chapter 11 Cases, to the detriment of the Debtors, their estates, and all parties-in-interest.

18. I believe that the Debtors are likely to succeed in their proposed reorganization efforts. The Debtors have worked in good faith and in collaboration with their key stakeholders to establish the go-forward path in chapter 11 that is efficient, viable, and beneficial to all parties-in-interest. Furthermore, the Debtors are currently in the process of preparing to commence their marketing and sale process while also analyzing various estate claims and causes of action in order to maximize creditor recoveries. Though still early in the process, I believe that the Debtors' prospects for engaging in a successful marketing and sale process, and subsequently confirming a chapter 11 plan of reorganization, are strong, given the collaboration and support from its key stakeholders, and an injunction will only enhance the prospects of doing so by avoiding unnecessary depletion of estate resources.

19. In contrast to the immediate and irreparable harm the Debtors and their estates would face if injunctive relief were denied, I believe that the only potential harm to be asserted by the Defendant is delay. The Recovery Corp. Action was filed on April 22, 2024, approximately nine weeks ago, and I believe that any delay will be temporary because any injunction or extension of the automatic stay would only last until confirmation of a chapter 11 plan in the Chapter 11 Cases, or conversion or dismissal of the same.


20. Accordingly, if the automatic stay is not extended, I believe that an injunction barring Recovery Corp. from prosecuting the claims and causes of action enumerated in the Recovery Corp. Action against the Non-Debtor Defendants, until the earlier of (a) confirmation of a chapter 11 plan in the Chapter 11 Cases or (b)(i) conversion or (ii) dismissal of the Chapter 11

Cases, is appropriate and essential to the orderly and effective administration of the Debtors' estates.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: Atlanta, Georgia
June 28, 2024

By: 
Name: M. Benjamin Jones
Title: Chief Restructuring Officer

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing Declaration was served by the Court's CM/ECF system on all counsel of record registered in these Chapter 11 Cases through CM/ECF. The Debtors' claims and noticing agent, Kurtzman Carson Consultants LLC, will be filing a supplemental certificate of service on the docket to reflect any additional service of the foregoing Declaration, including on the Limited Service List.

Dated: Atlanta, Georgia
June 30, 2024

MCDERMOTT WILL & EMERY LLP

/s/ Daniel M. Simon

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*Proposed Counsel for the Debtors and
Debtors-in-Possession*

EXHIBIT 1

Recovery Corp. Action

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CIVIL DIVISION**

HEALTHCARE NEGLIGENCE SETTLEMENT RECOVERY
CORP.,

Plaintiff,

v.

Case No.:

5405 BABCOCK STREET OPERATIONS, LLC, EPSILON HEALTH CARE PROPERTIES, LLC, CMC II, LLC, LAVIE CARE CENTERS, LLC, 6700 N.W. 10TH PLACE OPERATIONS, LLC, 4200 WASHINGTON STREET OPERATIONS, LLC, 2826 CLEVELAND AVENUE OPERATIONS, LLC, BAYA NURSING AND REHABILITATION, LLC, 1465 OAKFIELD DRIVE OPERATIONS, LLC, 777 NINTH STREET NORTH OPERATIONS, LLC, 3101 GINGER DRIVE OPERATIONS, LLC, TALLAHASSEE FACILITY OPERATIONS, LLC, JOSERA, LLC; TOSTURI, LLC, MELBOURNE FACILITY OPERATIONS, LLC, NORTH FORT MYERS FACILITY OPERATIONS, LLC, CONSULATE FACILITY LEASING, LLC, 1010 CARPENTERS WAY OPERATIONS, LLC, MIAMI FACILITY OPERATIONS, LLC, 741 SOUTH BENEVA ROAD OPERATIONS, LLC, 3735 EVANS AVENUE OPERATIONS, LLC, 7950 LAKE UNDERHILL ROAD OPERATIONS, LLC, 518 WEST FLETCHER AVENUE OPERATIONS, LLC, LIDENSKAB LLC, JACKSONVILLE FACILITY OPERATIONS, LLC, 3001 PALM COAST PARKWAY OPERATIONS, LLC, KISSIMMEE FACILITY OPERATIONS, LLC, 9311 SOUTH ORANGE BLOSSOM TRAIL OPERATIONS, LLC, 4641 OLD CANOE CREEK ROAD OPERATIONS, LLC, 2333 NORTH BRENTWOOD CIRCLE OPERATIONS, LLC, 710 NORTH SUN DRIVE OPERATIONS, LLC, 1851 ELKCAM BOULEVARD OPERATIONS, LLC, 6414 13TH ROAD SOUTH OPERATIONS, LLC, 1120 WEST DONEGAN AVENUE OPERATIONS, LLC, 12170 CORTEZ BOULEVARD OPERATIONS, LLC, 9400 SW 137TH AVENUE OPERATIONS LLC, NSPRMC, LLC, 1550 JESS PARRISH COURT OPERATIONS, LLC, LV CHC HOLDINGS I, LLC, CONCOURSE PARTNERS, LLC, CONCURRENT PARTNERS, LLLP, PORT CHARLOTTE FACILITY OPERATIONS, LLC, WEST ALTAMONTE FACILITY OPERATIONS, LLC, 216 SANTA BARBARA

BOULEVARD OPERATIONS, LLC, FLORIDIAN FACILITY OPERATIONS, LLC, 1615 MIAMI ROAD OPERATIONS, LLC, 6305 CORTEZ ROAD WEST OPERATIONS, LLC, 15204 WEST COLONIAL DRIVE OPERATIONS, LLC, NEW PORT RICHEY FACILITY OPERATIONS, LLC, 11565 HARTS ROAD OPERATIONS, LLC, BRANDON FACILITY OPERATIONS, LLC, 9355 SAN JOSE BOULEVARD OPERATIONS, LLC, 702 SOUTH KINGS AVENUE OPERATIONS, LLC, ORANGE PARK FACILITY OPERATIONS, LLC, SYNERGY HEALTHCARE SERVICES, INC., NSPIRE HEALTHCARE INC., ASPIRE HEALTHCARE, LLC, and DANIEL E. DIAS, ESQUIRE,

Defendants.

COMPLAINT

Healthcare Negligence Settlement Recovery Corp. (the “Recovery Corp.”), by and through its undersigned counsel, hereby sues 5405 Babcock Street Operations, LLC, Epsilon Health Care Properties, LLC, CMC II, LLC, Lavie Care Centers, LLC, 6700 N.W. 10th Place Operations, LLC, 4200 Washington Street Operations, LLC, 2826 Cleveland Avenue Operations, LLC, Baya Nursing and Rehabilitation, LLC, 1465 Oakfield Drive Operations, LLC, 777 Ninth Street North Operations, LLC, 3101 Ginger Drive Operations, LLC, Tallahassee Facility Operations, LLC, Joseira, LLC, Tosturi, LLC, Melbourne Facility Operations, LLC, North Fort Myers Facility Operations, LLC, Consulate Facility Leasing, LLC, 1010 Carpenters Way Operations, LLC, Miami Facility Operations, LLC, 741 South Beneva Road Operations, LLC, 3735 Evans Avenue Operations, LLC, 7950 Lake Underhill Road Operations, LLC, 518 West Fletcher Avenue Operations, LLC, Lidenskab LLC, Jacksonville Facility Operations, LLC, 3001 Palm Coast Parkway Operations, LLC, Kissimmee Facility Operations, LLC, 9311 South Orange Blossom Trail Operations, LLC, 4641 Old Canoe Creek Road Operations, LLC, 2333 North Brentwood Circle Operations, LLC, 710 North Sun Drive Operations, LLC, 1851 Elkcam Boulevard

Operations, LLC, 6414 13th Road South Operations, LLC, 1120 West Donegan Avenue Operations, LLC, 12170 Cortez Boulevard Operations, LLC, 9400 SW 137th Avenue Operations LLC, NSPRMC, LLC, 1550 Jess Parrish Court Operations, LLC, LV CHC Holdings I, LLC, Concourse Partners, LLC, Concurrent Partners, LLLP, Port Charlotte Facility Operations, LLC, West Altamonte Facility Operations, LLC, 216 Santa Barbara Boulevard Operations, LLC, Floridian Facility Operations, LLC, 1615 Miami Road Operations, LLC, 6305 Cortez Road West Operations, LLC, 15204 West Colonial Drive Operations, LLC, New Port Richey Facility Operations, LLC, 11565 Harts Road Operations, LLC, Brandon Facility Operations, LLC, 9355 San Jose Boulevard Operations, LLC, 702 South Kings Avenue Operations, LLC, Orange Park Facility Operations, LLC, (collectively, the “Consulate Entities”), Synergy Healthcare Services, Inc., NSPIRE Healthcare Inc., and Aspire Healthcare, LLC (collectively, the “Transferees”), and Daniel E. Dias, Esquire (the “Control Individual”), all of which are collectively referred to herein as the “Defendants,” and alleges:

A. PRELIMINARY ALLEGATIONS

1. The Recovery Corp. is a Florida corporation, doing business in Hillsborough County, Florida.
2. Each of the Consulate Entities is a business entity, doing business in Miami-Dade County, Florida, or elsewhere in the State of Florida.
3. Each of the Transferees is a business entity, doing business in Miami-Dade County, Florida, or elsewhere in the State of Florida.
4. The Control Individual is an individual, sui juris, doing business in Miami-Dade County, Florida that has subjected himself to the jurisdiction of this Court.
5. Pursuant to Florida Statutes §26.012(2)(a), and other applicable law, jurisdiction

for each count alleged in this complaint (this “Complaint”) lies with this Court because this Complaint seeks damages in excess of \$50,000, exclusive of attorneys’ fees, court costs, and related expenses arising from acts that occurred or had impact in Miami-Dade County, Florida.

6. Pursuant to Florida Statutes §47.011, and other applicable law, venue is proper in Miami-Dade County, Florida.

7. All requirements and conditions precedent to the bringing of this action have been satisfied, performed by the Recovery Corp. or its predecessors-in-interest, or waived by the applicable Defendants.

8. The Recovery Corp. has retained the undersigned law firm as counsel of record herein and has agreed to compensate and reimburse it for services rendered and costs incurred in connection with enforcement of the rights and remedies more fully set forth below.

B. THE CONTRACTUAL BASIS FOR THE CLAIMS

9. The Consulate Entities have owned and operated a series of skilled nursing facilities (the “SNFs”) throughout the State of Florida and beyond. The Consulate Entities have been the frequent targets of claims for nursing home abuse and related causes of action.

10. With respect to each of the SNFs, and all residents including the Claimants, the Consulate Entities owed a duty to exercise reasonable care in the operation pursuant to Florida Statutes §400.023. Moreover, each of the Consulate Entities was subject to the provisions of 42 Code of Federal Regulations, Part 483, Chapter 400, Florida Statutes, and Chapter 59 A-4, Florida Administrative Code.

11. On March 28, 2024, the Recovery Corp. was formed by a set of claimants (collectively, the “Claimants”), all of whom had a set of undisputed claims (the “Claims”) against one or more of the Consulate Entities.

12. In all instances, the Claimants originally asserted Claims based upon failure to maintain the required level of care for residents is imposed pursuant to Florida Statutes §400.022. Each of the Claims arose on the date that injuries were experienced by the residents in question.

13. The Claims were all reduced to Settlement Documents evidenced by release documents that were substantially identical to one another (collectively, the “Settlement Documents”). An exemplar of a Settlement Document is attached hereto as Exhibit “A,” and the Settlement Documents are so voluminous that it would be inappropriate to include the same as exhibits to this Complaint, as provided under Florida Rule of Civil Procedure 1.130.

14. In connection with the formation of the Recovery Corp., the Claimants executed an assignment (collectively, the “Assignments”) that assigned the Claims to the Recovery Corp. in exchange for equity ownership interests commensurate with their respective Claims. An exemplar of an Assignment is attached hereto as Exhibit “B,” and the Assignments are so voluminous that it would be inappropriate to include the same as exhibits to this Complaint, as provided under Florida Rule of Civil Procedure 1.130.

15. A schedule of ninety-seven (97) Claimants, and their Claims amounting to \$8,678,877 (collectively, the “Aggregate Outstanding Balance”), is attached hereto as Exhibit “C.” The Aggregate Outstanding Balance is calculated as the sum of settlement payments promised but not made under the Settlement Documents, exclusive of interest, attorneys’ fees, costs, punitive damages, or other claim components that may be due based upon the underlying nucleus of operative facts.

16. All the Settlement Documents provided for the payment by applicable Consulate Entities of settlement payments over time to the Claimants on account of their respective Claims. Many but not all of the Claims have been the subject of nursing home negligence actions

(collectively, the “Negligence Actions”), with Courts presiding over the Negligence Actions each reserving jurisdiction to enforce the underlying settlements.

17. At least three (3) Courts presiding over Negligence Actions brought by Claimants have entered judgments in favor of the applicable Claimants and against the applicable Consulate Entity (collectively, the “Final Judgments”), for failure to make payments as agreed. Copies of the Final Judgments are attached as Composite Exhibit “D.”

18. The Final Judgments remain due and owing to the Recovery Corp., as successor to all Claimants. The judgment amounts set forth therein are subject to adjustment upward to include statutory interest, attorneys’ fees, and costs. Pursuant to Florida Statutes §57.111 and other applicable law, attorneys’ fees and costs incurred in connection with the collection of a judgment are properly awarded as an additional form of relief.

19. Because the Final Judgments are final, the Recovery Corp. as assignee is now entitled as a matter of law to assert his rights and remedies against the Consulate Entities. Because the Consulate Entities have operated as a single unit, and because numerous payment obligations previously due to the Claimants are in a state of uncured default, it is undisputable that the Consulate Entities are insolvent in that they are not paying their debts as they come due and owing in the ordinary course. It is also clear that the Consulate Entities are unable or unwilling to pay the Aggregate Outstanding Balance, and all sums due and owing under the Settlement Documents are therefore properly accelerated.

20. As of the date that the Claims arose that were asserted against the Consulate Entities in the events leading up to the execution of the various Settlement Documents, the Claimants each became a “creditor” of the Consulate Entities, for purposes of obtaining relief under Florida’s codification of the Uniform Fraudulent Transfer Act, codified at Florida Statutes §726.101 et seq.

(“FUFTA”) and other applicable law. The Recovery Corp. now stands in the Claimants shoes as successor.

C. DEFENDANTS’ PLANNED DEFAULTS UNDER SETTLEMENT DOCUMENTS

21. The defaults of the Consulate Entities under the Settlement Documents were not accidental or unexpected, they were engineered.

22. As noted above, the Claimants are part of a larger universe of nursing home negligence victims who were nursing home residents, or survivors of residents, who suffered serious neglect, injuries, and/or death at SNFs operated by the constituent Consulate Entities.

23. The Claims and other similar claims by victims, were analyzed by the Control Individual, who is both an executive for some of the Defendants and a defense attorney who worked as counsel of record opposite a set of fifteen (15) law firms throughout the State of Florida (collectively, the “Plaintiffs Firms”), for purposes of negotiating the settlements in question.

24. Although the Consulate Entities attributed payment defaults under under the Settlement Documents to cash flow problems, neither the Claimants nor the Plaintiffs Firms were aware that the Consulate Entities were experiencing cash flow difficulties was because they were transferring SNFs and other valuable assets (collectively, the “Assets”) as part of corporate restructurings. For purposes of this Complaint, the actions of transferring Assets from the Consulate Entities to the Transferees are collectively referred to herein as the “Transfers.” The Transfers had the effect of enabling the Consulate Entities to avoid liabilities they knew of at the time that the Transfers were occurring.

25. When payments fell into arrears under the Settlement Documents, it became obvious to the Plaintiffs Firms and the Claimants that the Consulate Entities had adopted a business plan intended to maximize profits by (a) skimping on the expenses normally associated with the

quality level of care required under Florida law for licensed skilled nursing home facilities, (b) failing to carry appropriate insurance coverage on any of the SNFs, and (c) utilizing a shifting shell game of business entities to place core business assets beyond the reach of anticipated tort claimants, the victims of negligent care. The gravamen of this Complaint focuses upon the third element of this business plan.

26. The Claimants clearly fall within the universe of creditors that the Consulate Entities were intending to avoid paying by migrating Assets from the Consulate Entities to the Transferees. Other such victims include those who never brought a lawsuit, brought a lawsuit but did not reach a conclusion, or who have a settlement that has been breached but are not parties to this action. However, because the Claimants fall within a unique set of creditors with acknowledged claims based upon statutory violations of care referenced above, with liquidated sums owed, their Claims were all very similar.

27. As defense counsel and corporate executive for the Consulate Entities, the Control Individual is upon information and belief most responsible for the calculated decision to negotiate settlements with the Plaintiffs Firms while simultaneously effectuating the Transfers in order to avoid the liabilities memorialized thereunder. He (a) represented the Consulate Entities as counsel in dealings with Plaintiffs Firms and other similarly situated law firms representing other nursing home negligence victims, (b) migrated to management of the Consulate Entities for purposes of planning a specific strategy of transferring assets such as SNFs to the Transferees, and (c) formulated and implemented the transfers pursuant to which Assets were transferred to the Transferees leading to payment defaults under the Settlement Documents.

28. The existence of the Transfers, and the strategy of the Consulate Entities in placing the Assets beyond the reach of creditors such as the Claimants, can hardly be considered a secret.

The Tampa Bay Times recently reported that “In the wake of a bankruptcy filing and a slew of bad press over the last few years, the privately held chain — the sixth-largest nursing home company in the nation — has quietly divided its Florida facilities into three separate companies. All three appear to still be affiliated with Consulate.” A copy of the referenced article is provided as Exhibit “E.” And yet the corporate machinations are very difficult to trace, and deliberately so.

29. In connection with any change of ownership of the Consulate Entities responsible to the various Claimants under the corresponding Settlement Documents, the Claimants and the Plaintiffs Firms were entitled to notice. Florida Nursing Home Residents Rights statutes were recently amended to require nursing homeowner/operators and licensees to provide proper written notice of any proposed change or ownership or change of operator before any such transactions could be approved. See Florida Statutes §400.024, Florida Agency for Health Care Administration (“ACHA”).

30. Notwithstanding the mandatory notice provisions set forth above, none of the Consulate Entities provided any notice to any of the Claimants or any of the Plaintiffs Firms that changes of ownership were contemplated, even though the purpose of the change of ownership was quite obviously to make it impossible for the Claimants to recover on their Settlement Documents.

31. Separately, each of the Claimants were virtually powerless to face the corporate behemoth that had perpetrated this cruel trick on victims and families of nursing home abuse that has tacitly been acknowledged in Settlement Documents amounting to \$10,763,500 in original settlement liability. However, as a group, the Claimants have formed the Recovery Corp. were to pursue (a) all the Consulate Entities for the Aggregate Outstanding Balance, (b) all Claims against the Transferees who appear to be operating the SNFs and holding the Assets beyond the reach of

the Claimants, and (c) the Control Individual for all claims arising from his role in orchestrating the Consulate Entities' defaults under the Settlement Documents that he personally negotiated with the Claimants and the Plaintiffs Firms while signing on with the Transferees.

COUNT I: INTENTIONALLY FRAUDULENT TRANSFERS

32. This is an action by the Recovery Corp., as successor-in-interest to the Claimants, against the Consulate Entities and the Transferees (collectively, the "UFTA Defendants"), for damages pursuant to Florida Statutes §§726.105(1)(a) and (b), 726.108, and 726.109(2) and (3) and other applicable law.

33. The Recovery Corp. realleges and incorporates by reference paragraphs 1 through 30 of this Complaint as fully set forth herein.

34. With respect to the Transfers:

- a. the Transfers were made with the actual intent to hinder, delay, and defraud creditors of the Consulate Entities, and specifically the Claimants;
- b. the Transfers were made for less than reasonably equivalent value of the assets transferred, primarily the going concern value of the Consulate Entities;
- c. the Transfers were concealed, as evidenced by the failure to give required statutory notice to the Claimants and the Plaintiffs Firms;
- d. the Transferees are insiders of the Consulate Entities;
- e. the Consulate Entities were insolvent, undercapitalized, or became insolvent shortly after the Transfers were made; and
- f. the Transfers occurred in connection with changes in the status of significant debt of the Consulate Entities, including a veritable "litigation pandemic" against the Consulate Entities for their incorrigible nursing home negligence

violations of Florida Statutes §400.022, 400.023, and Chapter 59 A-4 of the Florida Administrative Code.

35. Other “badges of fraud” are also present in this fact scenario including:
- a. The Control Individual has retained control of the Assets through the Transferees;
 - b. before the Transfers were made, the Consulate Entities had been sued by the Claimants, among others, and serious liability was evident; and
 - c. the Transfers occurred shortly before or shortly after a substantial debt to the Recovery Corp. was identified in connection with the Settlement Documents placing payment requirements on the applicable Consulate Entities.

36. Based upon the foregoing, the Transfers constitute fraudulent transfers to the Transferees and unjustly inured to the benefit of the Transferees in that the Transfers were made, as a matter of law, with actual intent to hinder, delay, and defraud the Recovery Corp. and others having claims or interests in the Transfers.

WHEREFORE, the Recovery Corp. requests relief in her favor and against the UFTA Defendants that shall provide for:

- a. entry of a judgment for damages against the UFTA Defendants for the full value of the Assets, including the going concern value of the operating businesses that has been transferred without a day of operations having been interrupted, subject to appropriate adjustment as the equities may require as set forth pursuant to Florida Statutes §§726.109(2) and (3), which equities should specifically include the recognition of any appreciation or other income generated from the Assets since the time of the Transfers;

- b. the recovery of all of the Recovery Corp.'s attorneys' fees, court costs, and related expenses incurred as a result of the Transfers, to the extent recoverable under applicable law; and
- c. such other or additional relief as is necessary and appropriate.

COUNT II: CONSTRUCTIVELY FRAUDULENT TRANSFERS

37. This is an action by the Recovery Corp. for damages against the UFTA Defendants pursuant to Florida Statutes §§726.105(1)(b), 726.108(1)(a) and (2), and 726.109(2) and (3) and other applicable law.

38. The Recovery Corp. realleges and incorporates by reference paragraphs 1 through 30 of this Complaint as fully set forth herein.

39. With respect to the Transfers:

- a. the relevant Consulate Entities made the Transfers to the Transferees and the Transferees were the recipients of the Transfers;
- b. the value of the consideration received by the Consulate Entities in exchange for the Transfers was not reasonably equivalent to the value of the Assets; and
- a. the Transfers constituted a transfer of all the meaningful assets of the Consulate Entities at the time of the Transfers.

40. At the time of the Transfers, because the Consulate Entities transferred to the Transferees all Assets and the ability to continue operating the SNFs:

- a. the Consulate Entities were engaged or were about to engage in a business and in a transaction for which their remaining assets were unreasonably small in relation to the Transfers; and/or
- b. the Consulate Entities intended to incur, believed, or reasonably should have

believed that they would incur debts beyond their ability to repay them as they came due.

41. Based upon the foregoing, the Transfers constitute constructively fraudulent transfer and unjustly inured to the benefit of the Transferees in that the Transfers were made, as a matter of law, for less than reasonably equivalent value and are constructively fraudulent as to the Recovery Corp., as successor-in-interest to the Claimants.

WHEREFORE, the Recovery Corp. requests relief in his favor and against the Defendants that shall provide for:

- a. entry of a judgment for damages against the UFTA Defendants for the full value of the Transfers, subject to appropriate adjustment as the equities may require as set forth pursuant to Florida Statutes §726.109(2) and (3), which equities should specifically include the recognition of any appreciation or other income generated from the Transfers since the time of the Transfers;
- b. the recovery of all the Recovery Corp.'s attorneys' fees, court costs, and related expenses incurred as a result of the Transfers, to the extent recoverable under applicable law; and
- c. such other and additional relief as is necessary and appropriate.

**COUNT III: DECLARATORY RELIEF REGARDING
CONTINUATION OF BUSINESS LIABILITY AGAINST TRANSFEREES**

42. This is an action by the Recovery Corp. against the Transferees for declaratory relief, based upon a controversy pertaining to the Transferees' liability under a continuation of business theory based upon their continuation of the respective business of the respective Consulate Entities (the "Transferees Liability Controversy").

43. The Recovery Corp. realleges and incorporates by reference paragraphs 1 through

30 of this Complaint as fully set forth herein.

44. The Recovery Corp. asserts, as successor-in-interest to the Claimants, that the threshold liability of the Transferees is established in the preceding paragraphs as a threshold for adjudicating the merits of the Transferees Liability Controversy.

45. Under Florida law, the pattern of business activity as between the Consulate Entities and the corresponding Transferees leaves no doubt that in substance and in form, by intent and in effect, the Transferees represent nothing more than a continuation of the business SNFs, without any change to any business dynamic or attribute whatsoever. Without any defining moment separating the extinguishment of the Consulate Entities and the emergence of the corresponding Transferees, (a) the same name of the business remains unchanged, (b) the same website, phone number, domain names, and other intellectual property associated with the business remain the same, (c) all executory contracts and going concern assets remained intact, and (d) profit margins, financial governance, and fraudulent intent continued uninterrupted.

46. The relief requested herein relates to the Transferees Liability Controversy, that must be adjudicated pursuant to Florida Statutes §86.011 et seq. By way of background, it is noted that successor liability is imposed when there is a continuity of the successor entity evidenced by such things as the same management, personnel, assets, location, and ownership.

47. The rationale for successor liability is rooted in the notion that no business entity should be permitted to commit a tort or breach a contract and avoid liability through corporate transformation in form only. Here, as much as the Transferees may claim otherwise, all of the elements of a mere continuation are present.

48. There is a bona fide, actual, present practical need for a declaration of the rights and duties of the Recovery Corp. and the Transferees (collectively, the “Parties”) with respect to

the Transferees Liability Controversy.

49. The facts surrounding the Transferees Liability Controversy are readily ascertainable and can be readily established. The Parties require timely adjudication of the Transferees Liability Controversy as the status of current business, financial, and legal affairs continue to create an unacceptable situation for all involved.

50. The Recovery Corp. seeks declaratory relief regarding the Transferees Liability Controversy.

51. The rights of the Parties, and other interested parties, are dependent upon the adjudication of the Transferees Liability Controversy.

52. The Parties are all before this Court, and thus this is the correct forum in which to determine the rights of the Parties.

53. A range of equitable considerations, including a weighing of the relative burdens on the Parties to this proceeding, and the equitable nature and authority of this Court, dictate that declaratory relief regarding the Transferees Liability Controversy is appropriate currently.

54. The Transferees Liability Controversy presented in this Court is ripe. The Parties are unsure as to their relative rights and remedies as to the Transferees Liability Controversy. The Parties require this Court's declaratory relief to proceed.

55. Against the foregoing alleged facts, the Transferees refuse to take responsibility for the pattern of conduct perpetrated at the expense of the Recovery Corp., as successor-in-interest to the Claimants. Accordingly, all the Transferees should be deemed liable for the Aggregate Outstanding Balance, as if each executed the underlying Settlement Documents from the outset.

WHEREFORE, the Recovery Corp. requests declaratory judgment regarding all aspects of the Transferees Liability Controversy, in its favor and against the Transferees, finding the

Transferees to be liable for all the same liabilities of the Consulate Entities as set forth above, and finding that the Aggregate Outstanding Balance is owed by the Transferees, on a continuation of business theory, and all other appropriate relief.

**COUNT IV: DECLARATORY RELIEF REGARDING
DE FACTO MERGER LIABILITY AGAINST TRANSFEREES**

56. This is an action by the Recovery Corp. against the Transferees for declaratory relief, based upon a controversy pertaining to the Transferees liability under a de facto merger theory based upon their continuation and absorption of the respective business of the respective Consulate Entities (the “Transferees Merger Controversy”).

57. The Recovery Corp. realleges and incorporates by reference paragraphs 1 through 30 of this Complaint as fully set forth herein.

58. The Recovery Corp., as successor-in-interest to the Claimants, asserts that the threshold liability of the Transferees is established in the preceding paragraphs as a threshold for adjudicating the merits of the Transferees Merger Controversy.

59. Under Florida law, the pattern of business activity as between the respective Consulate Entities and the corresponding Transferees leaves no doubt that in substance and in form, by intent and in effect, the Transferees represent nothing more than a dissolution and merger of the Business into that of the Transferees, without any change to any business dynamic or attribute whatsoever.

60. Without any defining moment separating the extinguishment of the each of the Consulate Entities and the emergence of the corresponding Transferees, (a) the same name of the business remains unchanged, (b) the same website, phone number, domain names, and other intellectual property associated with the business remain the same, (c) the Control Individual fully controls and maintains all Assets, (d) the business essentially ceases to operate as it previously did

under the control of each of the Consulate Entities, and (e) profit margins, financial governance, and fraudulent intent have continued uninterrupted.

61. The relief requested herein relates to the Transferees Merger Controversy, that must be adjudicated pursuant to Florida Statutes §86.011 et seq. By way of background, it is noted that de facto merger liability is imposed when one corporation is absorbed by another, i.e., there is a continuity of the selling corporation evidenced by such things as the same management, personnel, assets, location, and stockholders.

62. There is a bona fide, actual, present practical need for a declaration of the rights and duties of the Parties with respect to the Transferees Merger Controversy.

63. The facts surrounding the Transferees Merger Controversy are readily ascertainable and can be readily established.

64. The Parties require timely adjudication of the Transferees Merger Controversy as the status of current business, financial, and legal affairs continue to create an unacceptable situation for all involved.

65. The Recovery Corp. seeks declaratory relief regarding the Transferees Merger Controversy.

66. The rights of the Parties, and other interested parties, are dependent upon the adjudication of the Transferees Merger Controversy.

67. The Parties are all before this Court, and thus this is the correct forum in which to determine the rights of the Parties.

68. A range of equitable considerations, including a weighing of the relative burdens on the Parties to this proceeding, and the equitable nature and authority of this Court, dictate that declaratory relief regarding the Transferees Merger Controversy is appropriate currently.

69. The Transferees Merger Controversy presented in this Count is ripe. The Parties are unsure as to their relative rights and remedies as to the Transferees Merger Controversy. The Parties require this Court's declaratory relief to proceed.

70. Against the foregoing alleged facts, the Transferees refuse to take responsibility for the pattern of conduct perpetrated at the expense of the Recovery Corp.

WHEREFORE, the Recovery Corp. requests declaratory judgment regarding all aspects of the Transferees Merger Controversy, in its favor and against the Transferees, finding the Transferees to be liable for all the same liabilities of each of the Consulate Entities as set forth above, and finding that the Aggregate Outstanding Balance is owed by the Transferees, on a de facto merger theory, and all other appropriate relief.

**COUNT V: DECLARATORY RELIEF REGARDING
CORPORATE VEIL PIERCING AGAINST TRANSFEREES**

71. This is an action for declaratory relief by the Recovery Corp. against the Transferees, based upon a controversy as to whether the Control Individual's improper use and manipulation of the Consulate Entities has occurred in a context that justifies piercing the corporate veil so as to hold the Transferees accountable for the liabilities of the respective Consulate Entities (the "Veil Piercing Controversy").

72. The Recovery Corp. realleges and incorporates by reference paragraphs 1 through 30 of this Complaint as fully set forth herein.

73. The Recovery Corp. asserts that the threshold liability of the Consulate Entities is established in the preceding paragraphs as a threshold for adjudicating the merits of the Veil Piercing Controversy.

74. The Recovery Corp. has described how the Control Individual deliberately structured the Transfers as part of the standard operating procedure to prevent any scenario in

which the ongoing business activities of the Transferees' enterprise would be held financially accountable for tort liability reduced to the Settlement Documents.

75. The Control Individual, first through the Consulate Entities and then through the Transferees, (a) maintain a set of nursing home businesses, including the SNFs, that are deliberately operated in a manner that would cause one to expect tort claims like those of the Claimants, (b) carry insufficient insurance coverage on the SNFs, (c) employ a shifting shell game strategy to place the Assets beyond the reach of creditors, and (d) maintain a structure that purports to shield the Control Individual from personal liability because their own management practices and corporate structure, and that of the Consulate Entities.

76. Relevant licensure and corresponding notice requirements to the Claimants and other prejudiced creditors were disregarded to effectuate the Transfers so as to place the Assets out of the reach of the Claimants and other creditors. Then, the Transferees took their places in continuing any obligations that the Control Individual deemed necessary to maintain profitability while evading the practical consequences of tort liability.

77. As part of the Consulate Entities standard operating procedure throughout the business matrix, the Control Individual deliberately orchestrated a scenario in which (a) residents of each of the SNFs receive substandard care, (b) the Control Individual acted to place Assets in the name of the Transferees, (c) the Transferees became the new owners of the SNFs and Assets, beyond the reach of the Claimants, and (d) the negligent operation of the SNFs will continue without economic ramifications proportionate to the negligence committed. None of this is acceptable, as a matter of law.

78. The relief requested herein relates to the Veil Piercing Controversy, that must be adjudicated pursuant to Florida Statutes §86.011 et seq. By way of background, it is noted that

justification for piercing the corporate veil requires proof that (a) there was a lack of separateness between a business entity and its true owner, (b) improper conduct occurred in the use and manipulation of the business entity directed by its true owner, and (c) the improper conduct conducted through the business entity was the proximate cause of the alleged loss. These circumstances are present as relating to the Transferees, and justify the relief requested by the Recovery Corp.

79. There is a bona fide, actual, present practical need for a declaration of the rights and duties of the Parties with respect to the Veil Piercing Controversy.

80. The facts surrounding the Veil Piercing Controversy are readily ascertainable and can be readily established. The Parties require timely adjudication of the Veil Piercing Controversy as the status of current business, financial, and legal affairs continue to create an unacceptable situation for all involved.

81. The Recovery Corp. seeks declaratory relief regarding the Veil Piercing Controversy, piercing the veils of all of the Consulate Entities, such that the corporate separateness of the Consulate Entities should be ignored, and the Transferees held liable for the same liabilities of the Consulate Entities. Accordingly, the Recovery Corp. seeks to pierce the veils of the Transferees both vertically and horizontally as appropriate within the Control Individual's business matrix.

82. The rights of the Parties, and other interested parties, are dependent upon the adjudication of the Veil Piercing Controversy.

83. The Parties are all before this Court, and thus this is the correct forum in which to determine the rights of the Parties.

84. A range of equitable considerations, including a weighing of the relative burdens

on the Parties to this proceeding, and the equitable nature and authority of this Court, dictate that declaratory relief regarding the Veil Piercing Controversy is appropriate currently.

85. The Veil Piercing Controversy presented in this Count is ripe. The Parties are unsure as to their relative rights and remedies as to the Veil Piercing Controversy. The Parties require this Court's declaratory relief to proceed.

86. Against the foregoing alleged facts, the Transferees will not accept financial responsibility for the corporate artifice that the Control Individual has created.

WHEREFORE, the Recovery Corp. requests declaratory judgment regarding all aspects of the Veil Piercing Controversy, in its favor and against the Transferees, finding that the Aggregate Outstanding Balance is owed by the Transferees, on a veil piercing theory, and all other appropriate relief.

COUNT VI: UNFAIR AND DECEPTIVE TRADE PRACTICES

87. This is an action for damages by the Recovery Corp. against all of the Defendants, pursuant to the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), as amended, codified at Florida Statutes §501.201, et. seq.

88. The Recovery Corp. realleges and incorporates by reference paragraphs 1 through 88 of this Complaint as fully set forth herein.

89. The Recovery Corp. is a successor to the Claimants, who are "consumers" as defined by Florida Statutes §501.203.

90. The Defendants are actively engaged in trade and commerce in the State of Florida, and specifically in the Middle District of Florida.

91. The Defendants have engaged in unfair, deceptive, and unconscionable acts or trade practices in their trade and commerce.

92. Such acts and practices offend public policy and are immoral, unethical, oppressive, and unscrupulous. The facts accurately described above reflect that the Defendants' conduct is unconscionable.

93. The conduct of the Defendants has been materially injurious to the Claimants.

94. The conduct of the Defendants was the actual and proximate cause of the damages sustained by the Claimants.

95. The Defendants' unfair and deceptive acts have caused the Claimants to sustain damages.

WHEREFORE, the Recovery Corp. demand judgment in its favor and against the Defendants for damages for its unfair and deceptive trade practices, plus attorneys' fees and costs pursuant to Florida Statutes §501.211(2), and all additional relief that is just and proper.

COUNT VII: DAMAGES FOR CIVIL CONSPIRACY

96. This is an action by the Recovery Corp. against the Control Individual and the Transferees for damages as a result of the civil conspiracy to interfere with the Settlement Documents.

97. The Recovery Corp. reincorporates by reference the allegations contained in paragraphs 30 above as though fully set forth herein.

98. The Claimants and the Consulate Entities were parties to a set of Settlement Documents, and the Consulate Entities were due to perform by paying the Aggregate Outstanding Balance.

99. The Control Individual and the Transferees collectively committed fraudulent and otherwise avoidable transfers as described above, for their own lucre, at the expense of the Claimants, the predecessors-in-interest to the Recovery Corp.

100. As a result of the foregoing overt acts, among others perpetrated in collusion by the Control Individual and the Transferees, the Recovery Corp. has sustained damages because the Aggregate Outstanding Balance remains outstanding and the Assets and SNFs are owned and controlled by the Transferees.

WHEREFORE, the Recovery Corp. requests judgment in its favor and against the Control Individual and the Transferees, jointly and severally, for the Aggregate Outstanding Balance, together with such other and further relief deemed just, equitable, and proper.

**COUNT VIII: BREACH OF FIDUCIARY
DUTY AGAINST THE CONTROL INDIVIDUAL**

101. This is an action by the Recovery Corp. against the Control Individual for damages relating to his breach of fiduciary duty post-closing with respect to the operations of the Consulate Entities following negotiation and execution of the Settlement Documents.

102. The Recovery Corp. realleges paragraphs 1 through 30 of this Complaint as though fully set forth herein.

103. As noted above, it cannot be reasonably disputed that the Control Individual, in his own right and on behalf of Consulate Entities, deliberately caused the Claimants to repose trust in him, in achieving each of the Settlement Documents.

104. The Control Individual knowingly accepted the Claimants' trust, only to betray it while mismanaging the Consulate Entities. Specifically, by orchestrating the Transfers, the Control Individual ensured that the Consulate Entities would be unable to meet their commitments and pay the Aggregate Outstanding Balance.

105. In addition to the foregoing, upon information and belief, the Control Individual held corporate positions in one or more of the Consulate Entities at times during which the Consulate Entities were insolvent. Under applicable law, officers and directors of a solvent

business entity have a statutory fiduciary duty to equity; however, officers and directors of an insolvent business entity have a duty to creditors: Engineering fraudulent transfers is inconsistent with the fiduciary duty owed to creditors of an insolvent enterprise.

106. The Recovery Corp.'s interest in the Consulate Entities has been substantially diminished as a result of the aforementioned actionable misconduct, including reduction commensurate with the value of the Assets as transferred.

107. The Recovery Corp. has been harmed as a result of all the foregoing aforementioned actionable misconduct.

WHEREFORE, the Recovery Corp. requests judgment for damages against the Control Individual, together with costs, and granting such other and further relief deemed just, equitable, and proper.

COUNT IX: UNJUST ENRICHMENT

108. This is an action for damages by the Recovery Corp. against the Control Individual and the Transferees for unjust enrichment.

109. The Recovery Corp. realleges and incorporates by reference paragraphs 1 through 30 of this Complaint as fully set forth herein.

110. The Consulate Entities transferred the Assets to the Transferees and the Transferees are now controlled by the Control Individual, who negotiated the Settlement Documents and then orchestrated the Transfers to make it impossible for the Consulate Entities to pay the Aggregate Outstanding Balance.

111. The Control Individual and the Transferees were aware of and appreciated the fact that the Assets were transferred clandestinely, for insufficient value, in an insolvency scenario, and with other circumstances indicative of bad faith and fraudulent intent.

112. The totality of the circumstances makes it inequitable for the Transferees to retain the Assets without paying the value thereof.

113. The Control Individual and the Transferees fully knew that the value received was inequitable under the totality of the circumstances.

WHEREFORE, the Recovery Corp. demands judgment against the Control Individual and the Transferees, for the aggregate value of the Aggregate Outstanding Balance, together with interest, costs and such other relief as this Court deems appropriate.

D. JURY TRIAL DEMANDED

114. The Recovery Corp. demands a trial by jury on all issues so triable.

Dated this 22nd day of April 2024.

/s/ John A. Anthony

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Attorneys for the Recovery Corp.

Exhibit “A”

GENERAL RELEASE

BE IT KNOWN that I, [REDACTED], as **Personal Representative of the Estate of [REDACTED]**, Releasor, for and in consideration of the sum of [REDACTED] or other valuable considerations, *to be made payable by December 31, 2024*, do, for myself, and my respective heirs, representatives, executors, administrators and assigns, hereby fully release and forever discharge [REDACTED], hereinafter "Releasees", from any and all manner of actions, claims for relief and damages, suits, debts, obligations, judgments, and demands whatsoever, in law or in equity, whether known or unknown, direct or indirect, not existing, which Releasor ever had, now has, or which any personal representative, successor, heir or assign of said Releasor, hereafter can, shall or may have against said Releasee, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of these presents, including, without limitation, all claims or actions arising out or related in any way to the PRESUIT matter of: [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] including any and all claims for attorneys fees and costs.

It is understood and agreed that this release shall also apply to the Releasees past, present and future employees, managers, operators, parents, affiliates, subsidiaries, shareholders, officers and directors, predecessors and successors in interest and assigns, and all other persons, firms, corporations, or companies with whom any of the former have been, are now or may hereafter be affiliated, any language in this release to the contrary notwithstanding.

The Releasor hereby agrees to indemnify and hold harmless the Releasee from any and all claims and/or liens and/or subrogated interests herein for which these funds are intended to cover.

Releasor warrants and expressly agrees to satisfy any and all existing encumbrances or liens, including but not limited to governmental or third party payor sources such as Medicare, Medicaid or Social Security liens which are in existence, and agree to satisfy any encumbrances or liens which may hereinafter be filed, levied, asserted, or placed upon any proceeds identified with this Release.

Releasor acknowledges and understands that information concerning Releasor, the settlement, and other circumstances are subject to the mandatory reporting requirements of Section 111 of the Medicare, Medicaid & SCHIP Extension Act of 2007 (MMSEA). Releasor agrees that this General Release is final and binding, no matter what act, position, assertion, recovery effort, or enforcement action may be made against Releasor or the settlement.

In consideration of the payment of [REDACTED] which sum is included in the total amount of the settlement as stated above in this document and is not in addition to it, Releasor and Releasee agree that the terms of this agreement are absolutely

GENERAL RELEASE

Page 2 of 3

confidential and shall not be disclosed to anyone else, including any publisher, representative of the media, journal and/or periodical in the absence of a court order, except as may be necessary to effectuate its terms. This agreement is intended to be binding on the Plaintiff/Releasor and his/her agents and representatives. Any disclosure in violation of this section shall be deemed a material breach of this agreement.

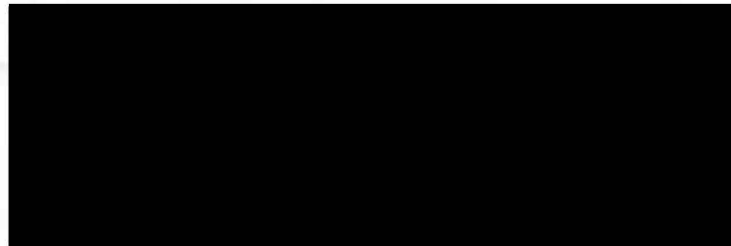
It is further understood and agreed that this release does not, and is not intended to, release or discharge any claim or potential claim against any other person or entity not identified herein, including, but not limited to, any claim or any potential claim against any other nursing home, any surgeon or doctor, or their professional association, nurses, or independent contractors, any therapy company or pharmaceutical company, consultants, or any hospital except those specifically provided herein.

It is further understood and agreed that this settlement is the compromise of disputed claims and that the payment made is not to be construed as an admission of liability on the part of any Releasees, all of whom expressly deny any liability for this action.

It is further understood and agreed that no promise or agreement not herein expressed has been made to Releasor and that this Release contains the entire agreement between the parties to it and that the terms of this Release are contractual and not a mere recital.

It is further, the Releasor waives and agrees to hold harmless, Releasee from any and all claims that may exist on behalf of all natural and/or adopted children of [REDACTED].

Releasor has had the benefit of counsel and of his/her own attorney; that Releasor fully understands the terms of this Release; and that Releasor is making full and final settlement of all claims of every nature and character against persons hereby released.



[NOTARY PAGE TO FOLLOW]

GENERAL RELEASE

[REDACTED]

Page 3 of 3

STATE OF [REDACTED]

COUNTY OF [REDACTED]

The foregoing instrument was acknowledged before me this [REDACTED] day of [REDACTED], 2022 by [REDACTED], who is personally known to me or has produced [REDACTED] as identification and who did not (did) take an oath.

(S E A L)

[REDACTED]

[REDACTED]
Notary Public, State of [REDACTED]
(Signature of Notary taking Acknowledgment)

[REDACTED]
Name of Notary Typed,
Printed or Stamped

My Commission Expires: [REDACTED]

[REDACTED]
Commission Number

THIS INSTRUMENT PREPARED BY:

ANTONIO CIFUENTES, ESQ.
Florida Bar No.: 043605
DIAS & ASSOCIATES, P.A.
5102 W. Laurel Street, Suite 700
Tampa, Florida 33607
Telephone: (813) 769-6280
Facsimile: (813) 769-6281
Attorneys for DEFENDANTS

Exhibit “B”

ASSIGNMENT OF CLAIM AND CORPORATE PROXY

This Assignment of Claim and Corporate Proxy (this “Assignment”) pertains to all claims (collectively, the “Assigned Claims”) that the undersigned claimant (the “Assignor”) possesses or may possess against Consulate Healthcare, its affiliates, subsidiaries, transferees, alter egos, related entities, and management individuals (collectively, the “Consulate Targets”). In connection with the Assignor’s assignment of the Assigned Claims to Healthcare Negligence Settlement Recovery Corp. (the “Recovery Corp.”), reference is made to the following:

1. The Assignor is among numerous claimants (collectively, the “Claimants”) who are parties to a series of settlement agreements (collectively, the “Settlement Agreements”) with one or more of the Consulate Targets, based upon nursing home negligence, medical malpractice, wrongful death, or other tort claims that were settled. In all instances, the Claimants have been represented by a series of law firms specializing in the prosecution of civil claims pertaining to nursing home negligence, medical malpractice, wrongful death, or other tort claims (collectively, the “Plaintiffs Firms”).

2. Consistently with the foregoing, the Assignor retained one of the Plaintiffs Firms for representation, culminating in execution of one of the Settlement Agreements (the “Assigned Settlement Agreement”), a copy of which is attached as Exhibit “A.” The Assignor’s counsel of record is indicated on the Assigned Settlement Agreement, and counsel (the “Assignor Plaintiffs Counsel”) continues to represent the Assignor.

3. Through no fault of the Assignor, there is good cause to believe that payments due or coming due under the Assigned Settlement Agreement will not be paid. Moreover, it has become apparent to all the Plaintiffs Firms that future payments under all the Settlement Agreements is highly unlikely. The reason for existing defaults and anticipatory repudiation under the Settlement Agreements is the transfer of assets away from the business entities obligated for payment under the Settlement Agreements.

4. The Assignor seeks to assign the Assigned Settlement Agreement, and all rights arising thereunder, including rights to recover against transferees, management, and any other parties responsible for causing defaults under the Assigned Settlement Agreement, to the Recovery Corp. In consideration for this Assignment, the Assignor is receiving an equity interest in the Recovery Corp. (the “Equity Interest”). The amount of the Assignor’s Equity Interest is commensurate with the amount due under the Assigned Settlement Agreement in relation to the aggregate face value of unpaid settlement obligations arising under all the Settlement Agreements.

5. As a shareholder of the Recovery Corp., effective as of the date of its formation, the Assignor hereby consents to the appointment of the board of directors of Recovery Corp. (the “Board”), consisting of lead trial counsel for each of the Plaintiffs Firms, including the Assignor Plaintiffs Counsel as indicated above. The Board shall have authority for representing the interests of all Claimants, to the extent that such Claimants become shareholders of Recovery Corp. in connection with execution of assignment documents matching this Assignment in

substance and form. The Assignor irrevocably assigns its voting rights to Assignor Plaintiffs Counsel, as a broad proxy regarding governance of Recovery Corp.

6. The Assignor recognizes that Recovery Corp. is retaining Anthony & Partners, LLC (“A&P”) as counsel of record to commence collection-related activities against the Consulate Targets, with the goal of recovering the full aggregate balance of sums due under the Settlement Agreements. A&P contemplates filing an initial lawsuit against the Consulate Targets (the “Consolidated Recovery Action”), as soon as conveniently possible. To initiate the engagement of A&P, the Plaintiffs Firms have commenced the engagement as a group, with the understanding that A&P’s client will be the Recovery Corp. when all assignment documents of all participating Claimants have been received. Just as the Assignor’s equity position in Recovery Corp. is commensurate with the amount due under its Assigned Settlement Agreement in relation to all others, so too are the Assignor’s rights to recover from any recovery achieved through litigation or alternative dispute resolution.

7. For purposes of this Assignment, the term “Assigned Claims” shall include not only contract rights arising under the Assigned Settlement Agreement, but also claims against third parties facilitating or causing the insolvency of the Consulate Targets, including claims for intentionally fraudulent transfers, constructively fraudulent transfers, alter ego/veil piercing liability, mere continuation liability, de facto merger, aiding and abetting fraud, breach of fiduciary duty, unjust enrichment, and other theories of recovery. Some or all of these Assigned Claims are commonly held by other Claimants, and will be pursued in the context of the Consolidated Recovery Action.

8. The Assignor recognizes that any litigation expense incurred by Assignor Plaintiffs Counsel in connection with the pursuit of collection efforts such as the Consolidated Recovery Action will produce a pro rata reduction of any distribution realized against the Consulate Targets. However, other than litigation expense, Recovery Corp. will act as a “pass-through entity” for the benefit of all participating Claimants. Notwithstanding the fact that there will be no additional deductions from the Assignor’s ultimate distribution, the Assignor hereby reaffirms the terms and conditions of the Assignor’s engagement agreement with Assignor Plaintiffs Counsel. Assignor Plaintiffs Counsel will be compensated and reimbursed for litigation expense at the same time that disbursements are made to all Claimants.

9. Although this Assignment is absolute and irrevocable, certain caveats are recognized. First, there have been no representations as to the likelihood of success on the merits as to claims that will be asserted against the Consulate Targets, in the context of the Consolidated Recovery Action or otherwise. Second, without attenuating the first caveat, the Assignor recognizes that the Board and its selection of counsel A&P will have fiduciary duties to the Assignor and other Claimants regarding the governance of Recovery Corp. Third, to the extent that a Court of competent jurisdiction determines that any claims asserted hereunder are not assignable under the law, then the Assignor shall exercise best efforts to cure any defect necessary to achieve the benefit of the bargain. Failing that, the Assigned Claims shall revert back to the Assignor as provided by law, though the proceeds may be separately addressed or

assigned elsewhere.

10. By executing this Assignment where indicated below, the Assignor represents and affirms that the Assignor has authority to execute this Assignment, and is the sole owner of all rights arising pursuant to the Assigned Settlement Agreement. There are no other terms and conditions of this Assignment, written or oral. This Assignment is irrevocable, in the absence of express written consent by all Claimants, all Plaintiffs Firms, and Recovery Corp., because all such parties are identifiable third-party beneficiaries with respect to the same. Any dispute regarding the negotiation, execution, performance, or breach of this Assignment shall be adjudicated, under Florida law, in the Thirteenth Judicial Circuit, in and for Hillsborough County, Florida. **All rights to jury trial regarding any such litigation are expressly waived, whatever they may be, as a material condition of this Assignment and the events and circumstances contemplated above.**

NOW, THEREFORE, for value received, the sufficiency of which is hereby acknowledged and conceded, the Assignor hereby assigns, transfers, and sets over unto Recovery Corp. all the Assigned Claims, and all other consideration referenced above, with the express proviso that this Assignment is conditioned upon Recovery Corp. confirming the percentage equity position of the Assignor within five (5) business days after receipt of all assignment documents from the Claimants.

ASSIGNOR:

Date: April __, 2024

Signature: _____

Printed Name: _____

Address: _____

E-mail Address: _____

Telephone: _____

Title (if applicable): _____

Company (if applicable): _____

Exhibit “C”

CLAIMANT REGISTER

	Claimant/Plaintiff Name	Claimant PR/PoA/ Releasor	Defendant Entity	Settlement Date	Settlement Amount	Outstanding Amount
1	Stacey Abel , as Personal Representative of the Estate of Bebee Abel	Abel, PR	5405 Babcock Street Operations, LLC; Epsilon Health Care Properties, LLC; CMC II, LLC; Lavie Care Centers, LLC	09/21/22	\$ 125,000	\$ 32,875
2	Sharon Acevedo	Acevedo, Releasor	1120 West Donegan Avenue Operations, LLC	07/09/22	\$140,000	\$ 81,667
3	Jacqueline D. Aker , as Personal Representative of the Estate of Kevin R. Aker	Aker, PR	6700 N.W. 10th Place Operations, LLC	03/02/23	\$ 75,000	\$ 75,000
4	Marie Cherisier , as Personal Representative of the Estate of Philomene A. Antoine	Cherisier, PR	4200 Washington Street Operations, LLC	02/14/23	\$ 75,000	\$ 75,000
5	Nancy Roarck , as Personal Representative of the Estate of Mary Ashley	Roarck, PR	777 Ninth Street North Operations, LLC	06/23/22	\$ 150,000	\$ 150,000
6	Harry Barrett	Barrett, Releasor	11565 Harts Road Operations, LLC	07/06/22	\$ 140,000	\$ 81,667
7	Norma Barry , as Power of Attorney for John Barry	Barry, PoA	2826 Cleveland Avenue Operations, LLC	07/09/21	\$ 50,000	\$ 50,000
8	Jechiel Bershadski , as Power of Attorney for Nelia Bershadski	Bershadski, PoA	777 Ninth Street North Operations, LLC	11/21/23	\$ 85,000	\$ 85,000
9	Connie Blair as Personal Representative of the Estate of Bobby Blair	Blair, PR	3001 Palm Coast Parkway Operations, LLC	05/31/22	\$ 140,000	\$ 81,667
10	Corrado Burdieri , as Personal Representative of the Estate of Theresa Mary Burdieri	Burdieri, PR	North Fort Myers Facility Operations, LLC; Consulate Facility Leasing, LLC	09/07/21	\$ 250,000	\$ 250,000
11	Gerard Celestin , as Personal Representative of the Estate of Sylvia Celestin	Celestin, PR	Miami Facility Operations, LLC	11/08/22	\$ 175,000	\$ 175,000
12	Michelle Stawicki , as Personal Representative of the Estate of Nancy A. Cherba	Stawicki, PR	710 North Sun Drive Operations, LLC; Lavie Care Centers, LLC	09/12/23	\$ 85,000	\$ 85,000

	Claimant/Plaintiff Name	Claimant PR/PoA/ Releasor	Defendant Entity	Settlement Date	Settlement Amount	Outstanding Amount
13	Jennifer Varela , a Personal Representative of the Estate of Rosenda Clavijo	Varela	Kissimmee Facility Operations, LLC	04/18/24	\$ 150,000	\$ 150,000
14	Gwendolyn Cage , as Personal Representative of the Estate of Doneatha Cobb	Cage, PR	1010 Carpenters Way Operations, LLC	05/18/22	\$ 140,000	\$ 81,667
15	Joseph Cunningham , as Power of Attorney for Jeffrey J. Cunningham	Cunningham, PoA	741 South Beneva Road Operations, LLC	09/21/23	\$ 75,000	\$ 75,000
16	Jill R. Davis , as Personal Representative of the Estate of Larry R. Davis	Davis, PR	777 Ninth Street North Operations, LLC	06/29/23	\$ 65,000	\$ 65,000
17	Jill R. Davis , as Personal Representative of the Estate of Larry R. Davis	Davis, PR	North Fort Myers Facility Operations, LLC	04/13/23	\$ 85,000	\$ 85,000
18	Jose R. Diaz , as Personal Representative of the Estate of Jose Rafael Diaz	Diaz, PR	518 West Fletcher Avenue Operations, LLC; Epsilon Health Care Properties, LLC; Lidenskab LLC	07/26/23	\$ 100,000	\$ 100,000
19	Quenita L. Donald , as Personal Representative or the Estate of Charles Donald	Donald, PR	Jacksonville Facility Operations, LLC	04/05/24	\$ 75,000	\$ 75,000
20	Tracy Lynn Druelle , as Power of Attorney for Catherine Druelle	Druelle, PoA	6305 Cortez Road West Operations, LLC	07/13/22	\$ 140,000	\$ 81,667
21	Linda Solash-Reed , as Personal Representative of the Estate of Billy Joe Early	Solash-Reed, PR	710 North Sun Drive Operations, LLC; Epsilon Health Care Properties, LLC	11/24/20	\$ 125,000	\$ 125,000
22	Lesia A. Rucker , as Personal Representative of the Estate of Mildred G. Fluellen	Rucker, PR	3735 Evans Avenue Operations, LLC	03/09/23	\$ 50,000	\$ 50,000
23	Pamela Foster , as Personal Representative of the Estate of Mary Foster	Foster, PR	3001 Palm Coast Parkway Operations, LLC	03/01/23	\$ 75,000	\$ 75,000
24	Nola Gager , as Personal Representative of the Estate of Ehud Gager	Gager, PR	Kissimmee Facility Operations, LLC	07/13/22	\$ 140,000	\$ 81,667
25	Donald Garrett	Garrett [Releasor]	6700 N.W. 10th Place Operations, LLC	09/29/23	\$ 75,000	\$ 75,000

	Claimant/Plaintiff Name	Claimant PR/PoA/ Releasor	Defendant Entity	Settlement Date	Settlement Amount	Outstanding Amount
26	Albert J. Gates , III, as Personal Representative of the Estate of Shirley Gates	Gates, PR	9311 South Orange Blossom Trail Operations, LLC	02/03/23	\$ 75,000	\$ 75,000
27	Benny Gibson	Gibson [Releasor]	4641 Old Canoe Creek Road Operations, LLC	08/12/23	\$ 75,000	\$ 75,000
28	Thomas Graham , as Personal Representative of the Estate of Madeline Graham	Graham	Jacksonville Facility Operations, LLC	09/27/22	\$ 150,000	\$ 150,000
29	Mindy Stoltz , as Power of Attorney for John M. Griffin	Stoltz, PoA	3920 Rosewood Way Operations, LLC	04/03/23	\$ 75,000	\$ 75,000
30	Janelle J. Guelich , as Personal Representative of the Estate of Judy Guelich	Guelich, PR	2333 North Brentwood Circle Operations, LLC; Josera, LLC; Tosturi, LLC; Epsilon Health Care Properties, LLC	07/24/23	\$ 100,000	\$ 100,000
31	Tyler Hall Eagleson , as Personal Representative of the Estate of James Edward Hall	Eagleson, PR	Jacksonville Facility Operations, LLC	09/22/23	\$ 75,000	\$ 75,000
32	Constance A.M. Brandt , as Power of Attorney for Mary J. Hause	Brandt, PoA	Melbourne Facility Operations, LLC	07/11/22	\$ 140,000	\$ 81,667
33	Cheryl Waggoner , as Personal Representative of the Estate of Joan Kay Higgins	Waggoner, PR	777 Ninth Street North Operations, LLC	04/08/24	\$ 75,000	\$ 75,000
34	Geraldine Hill , as Personal Representative of the Estate of Roosevelt Hill	Hill, PR	518 West Fletcher Avenue Operations, LLC	04/11/22	\$ 140,000	\$ 81,667
35	Teresa Margraf , as Personal Representative of the Estate of Mary Holt	Margraf, PR	6305 Cortez Road West Operations, LLC	10/13/20	\$ 225,000	\$ 225,000
36	Don Howard , Jr., as Personal Representative of the Estate of Don Howard [Case Style: Luthenia Hayes, PR . . .]	Howard, Jr., PR	710 North Sun Drive Operations, LLC	08/24/21	\$ 175,000	\$ 25,000
37	Johnnie Mae Jones Smith , as Personal Representative of the Estate of Juanita Jones	Smith, PR	Port Charlotte Facility Operations, LLC	07/27/23	\$ 75,000	\$ 75,000

	Claimant/Plaintiff Name	Claimant PR/PoA/ Releasor	Defendant Entity	Settlement Date	Settlement Amount	Outstanding Amount
38	Danielle Anglade , as Personal Representative of the Estate of Maria Joseph	Anglade, PR	4200 Washington Street Operations, LLC; CMC II, LLC		\$ 100,000	\$ 100,000
39	Laura Knicley , as Personal Representative of the Estate of Peggy Knicley	Knicley, PR	195 Mattie M. Kelly Boulevard Operations, LLC; Epsilon Health Care Properties, LLC	10/18/22	\$ 140,000	\$ 14,000
40	Angela Pinkney , as Personal Representative of the Estate of Mae Liza Knight	Pinkney, PR	1615 Miami Road Operations, LLC	04/11/23	\$ 75,000	\$ 75,000
41	Yvonne Kolbe , as Personal Representative of the Estate of Richard Kolbe	Kolbe, PR	1851 Elcam Boulevard Operations, LLC; Epsilon Health Care Properties, LLC; Lavie Care Centers, LLC	10/07/22	\$ 100,000	\$ 37,500
42	Kendra Mae Mize , as Personal Representative of the Estate of Ingrid K. Lane	Mize	1550 Jess Parrish Court Operations, LLC; Epsilon Health Care Properties, LLC; LV CHC Holdings I, LLC; Concourse Partners, LLC; Lavie Care Centers, LLC; Concurrent Partners, LLLP	04/18/24	\$ 100,000	\$ 100,000
43	Gloria Mackey	Mackey [Releasor]	1120 West Donegan Avenue Operations, LLC	04/11/22	\$ 140,000	\$ 81,667
44	Diane Malcomb , as Personal Representative of the Estate of Buddy R. Malcomb	Malcomb, PR	3735 Evans Avenue Operations, LLC	03/07/22	\$ 100,000	\$ 100,000
45	Billy Manuel , as Personal Representative of the Estate of Anthony Manuel	Manuel, PR	4200 Washington Street Operations, LLC	10/12/23	\$ 75,000	\$ 75,000
46	Lydia Martinez , as Personal Representative of the Estate of Luz M. Martinez	Martinez, PR	New Port Richey Facility Operations, LLC	06/06/23	\$ 75,000	\$ 75,000
47	Charles Mazza , as Personal Representative of the Estate of Alfonso Mazza	Mazza, PR	12170 Cortez Boulevard Operations, LLC; Epsilon Health Care Properties, LLC; Tosturi, LLC	09/01/23	\$ 100,000	\$ 100,000
48	Alberta Walls , as Personal Representative of the Estate of Gwendolyn McCray	Walls, PR	6700 N.W. 10th Place Operations, LLC	04/07/24	\$ 75,000	\$ 75,000

	Claimant/Plaintiff Name	Claimant PR/PoA/ Releasor	Defendant Entity	Settlement Date	Settlement Amount	Outstanding Amount
49	Darlene Yvette Cuves , as Personal Representative of the Estate of David McGhee	Cuves, PR	3735 Evans Avenue Operations, LLC	06/23/23	\$ 65,000	\$ 65,000
50	Vickie McHenry	McHenry, Releasor	11565 Harts Road Operations, LLC	04/16/24	\$ 35,000	\$ 35,000
51	Donald McKenzie , as Personal Representative of the Estate of Stanley McKenzie	McKenzie, PR	9311 South Orange Blossom Trail Operations, LLC	05/10/22	\$ 140,000	\$ 81,667
52	Melissa Smith , as Personal Representative of the Estate of Nettie P. McKinnon-Murphy	Smith, PR	1120 West Donegan Avenue Operations, LLC	05/23/22	\$ 140,000	\$ 81,667
53	Shannon Castro , as Power of Attorney for Vernon Lee Meyer	Castro, PoA	Baya Nursing and Rehabilitation, LLC	07/14/23	\$ 75,000	\$ 75,000
54	Eileen Miller	Miller [Releasor]	9400 SW 137th Avenue Operations LLC; NSPRMC, LLC	08/30/23	\$ 62,500	\$ 62,500
55	Carmen Millsap , as Personal Representative of the Estate of James Millsap	Millsap, PR	3001 Palm Coast Parkway Operations, LLC; CMC II, LLC	12/01/20	\$ 200,000	\$ 200,000
56	Anna Hollins , as Personal Representative of the Estate of Doris Mitchell	Hollins, PR	Brandon Facility Operations, LLC	06/23/22	\$ 140,000	\$ 81,667
57	Julienne Joseph , as Power of Attorney for Juliette Mompoint	Joseph, PoA	4200 Washington Street Operations, LLC	09/26/23	\$ 75,000	\$ 75,000
58	Donald Moran , as Power of Attorney for Doris Moran	Moran, PoA	3735 Evans Avenue Operations, LLC	05/19/22	\$ 140,000	\$ 81,667
59	Darlene L. Murison , as Personal Representative of the Estate of David G. Murison	Murison, PR	Port Charlotte Facility Operations, LLC	01/11/21	\$ 75,000	\$ 75,000
60	Howard Williams , as Personal Representative of the Estate of Nessa	Williams, PR	9311 South Orange Blossom Trail Operations, LLC	08/01/22	\$ 150,000	\$ 60,000
61	Joshua R. Nielsen , as Personal Representative of the Estate of Martin Nielsen	Nielsen, PR	West Altamonte Facility Operations, LLC	04/06/24	\$ 75,000	\$ 75,000
62	Margaret Jones-Frison , as Personal Representative of the Estate of Dorothy Johnson Norris	Jones-Frison, PR	710 North Sun Drive Operations, LLC; Lidenskab, LLC	06/20/23	\$ 125,000	\$ 125,000

	Claimant/Plaintiff Name	Claimant PR/PoA/ Releasor	Defendant Entity	Settlement Date	Settlement Amount	Outstanding Amount
63	David O'Berry , as Personal Representative of the Estate of Barbara O'Berry	O'Berry, PR	7950 Lake Underhill Road Operations, LLC	04/18/24	\$ 175,000	\$ 175,000
64	Avram S. Oegar , as Personal Representative of the Estate of Avram Oegar	Oegar, PR	4200 Washington Street Operations, LLC	02/23/23	\$ 75,000	\$ 75,000
65	Orlando Ortiz , as Personal Representative of the Estate of Crispin D. Ortiz	Ortiz, PR	216 Santa Barbara Boulevard Operations, LLC	10/10/23	\$ 65,000	\$ 65,000
66	Jerri Owens , as Power of Attorney for Lular Owens	Owens, PoA	Kissimmee Facility Operations, LLC; Laive Care Centers, LLC	09/19/22	\$ 100,000	\$ 37,500
67	Gonzalo Padron , as Personal Representative of the Estate of Marina Padron	Padron, PR	Floridian Facility Operations, LLC	04/19/23	\$ 75,000	\$ 75,000
68	John Paul , as Personal Representative of the Estate of Karen Paul-Bennett	Paul, PR	Baya Nursing and Rehabilitation, LLC	05/18/22	\$ 140,000	\$ 81,667
69	Karel S. Bennett , as Personal Representative of the Estate of Suzanne Perez	Bennett, PR	1465 Oakfield Drive Operations, LLC	01/11/24	\$ 75,000	\$ 75,000
70	Elizenda Pina Torres , as Personal Representative of the Estate of Mirelle Pina	Torres, PR	4200 Washington Street Operations, LLC	08/04/23	\$ 75,000	\$ 75,000
71	Tiffany Bivins , as Personal Representative of the Estate of Tereather Powell	Bivins, PR	3101 Ginger Drive Operations, LLC; Tallahassee Facility Operations, LLC; Joseira, LLC; Tosturi, LLC; Epsilon Health Care Properties, LLC	03/26/24	\$ 75,000	\$ 75,000
72	Brett Rigas , as Personal Representative of the Estate of Gail Rigas	Rigas, PR	7950 Lake Underhill Road Operations, LLC	10/19/22	\$ 160,000	\$ 16,000
73	Laura Reyes , as Power of Attorney for Delia Rodriguez	Reyes, PoA	6414 13th Road South Operations, LLC	11/06/23	\$ 75,000	\$ 75,000
74	Maria Herrera , as Personal Representative of the Estate of Aldemaro Rojas	Herrera, PR	Miami Facility Operations, LLC	07/28/23	\$ 75,000	\$ 75,000
75	Annabelle Rios , as Power of Attorney for Gloria Rojas	Rios, PoA	7950 Lake Underhill Road Operations, LLC	10/21/22	\$ 125,000	\$ 12,500
76	Daniel Rousseau , as Personal Representative of the Estate of Gertrude Rousseau	Rousseau, PR	West Altamonte Facility Operations, LLC	10/06/20	\$ 145,000	\$ 145,000

	Claimant/Plaintiff Name	Claimant PR/PoA/ Releasor	Defendant Entity	Settlement Date	Settlement Amount	Outstanding Amount
77	Dennis Sampson , as Personal Representative of the Estate of Marguerite Sampson	Sampson, PR	710 North Sun Drive Operations, LLC; Florida Health Care Properties, LLC; Genoa Healthcare Group, LLC	04/10/21	\$ 210,000	\$ 210,000
78	Sharon Scott , as Personal Representative of the Estate of Moses Scott , III	Scott, PR	9355 San Jose Boulevard Operations, LLC	05/13/22	\$ 140,000	\$ 81,667
79	Rita Baar , as Power of Attorney for Delano Skow	Baar, PoA	2826 Cleveland Avenue Operations, LLC	04/03/23	\$ 90,000	\$ 90,000
80	Qiana Watson , as Personal Representative of the Estate of Anna Marie Brown Smith	Watson, PR	Miami Facility Operations, LLC	04/07/23	\$ 75,000	\$ 75,000
81	Alilla Stover , as Personal Representative of the Estate of Machrell Stover	Stover, PR	9311 South Orange Blossom Trail Operations, LLC	03/06/23	\$ 75,000	\$ 75,000
82	Lashell Taylor , as Personal Representative of the Estate of Catherine Taylor	Taylor, PR	West Altamonte Facility Operations, LLC	08/11/23	\$ 125,000	\$ 125,000
83	Emma Foster , as Plenary Guardian of the Ward Levi Foster	Foster, Plenary Guardian	15204 West Colonial Drive Operations, LLC	10/27/22	\$ 140,000	\$ 81,667
84	Marie C. Louine , as Personal Representative of the Estate of Rosita Thenor	Louine, PR	6414 13th Road South Operations, LLC	09/26/23	\$ 75,000	\$ 75,000
85	Erin Poarch , Individually and as Personal Representative of the Estate of William A. Thompson	Poarch, PR	1851 Elkcarn Boulevard Operations, LLC	05/20/21	\$ 125,000	\$ 125,000
86	Michael D. Thompson , as Personal Representative of the Estate of Christine Thompson	Thompson, PR	North Fort Myers Facility Operations, LLC	08/03/23	\$ 206,000	\$ 206,000
87	Linda Tillman , as Personal Representative of the Estate of Bertha Tillman	Tillman, PR	4200 Washington Street Operations, LLC	02/17/23	\$ 100,000	\$ 100,000
88	Jennie Zayas , as Personal Representative of the Estate of Edwin A. Zayas Torres	Zayas, PR	7950 Lake Underhill Road Operations, LLC	01/09/23	\$ 75,000	\$ 75,000
89	Rodney Christopher Vargas , as Personal Representative of the Estate of Gerardo Vargas	Vargas, PR	4200 Washington Street Operations, LLC	09/21/23	\$ 75,000	\$ 75,000
90	Juanita Davila , as Power of Attorney for Rafael Vega	Davila, PoA	7950 Lake Underhill Road Operations, LLC	04/14/22	\$ 140,000	\$ 81,667
91	James Walker , as Personal Representative of the Estate of Louise Walker	Walker, PR	Miami Facility Operations, LLC	06/21/22	\$ 140,000	\$ 81,667

	Claimant/Plaintiff Name	Claimant PR/PoA/ Releasor	Defendant Entity	Settlement Date	Settlement Amount	Outstanding Amount
92	Dennis W. Walker , Jr., as Personal Representative of the Estate of Lula Mae Walker	Walker, Jr., PR	1615 Miami Road Operations, LLC	05/18/22	\$ 140,000	\$ 81,667
93	Rebecca Barrow , as Personal Representative of the Estate of Carolyn Wayt	Barrow, PR	Baya Nursing and Rehabilitation, LLC	12/16/21	\$ 250,000	\$ 250,000
94	Susan Whitcomb	Whitcomb	702 South Kings Avenue Operations, LLC	07/08/22	\$ 140,000	\$ 81,667
95	Stephania Redding , as Personal Representative of the Estate of Jessie White	Redding, PR	Orange Park Facility Operations, LLC	06/22/22	\$ 140,000	\$ 81,667
96	Anna Wendolyn Wilkie , as Personal Representative of the Estate of Barbara Wilkie	Wilkie, PR	6700 N.W. 10th Place Operations, LLC	07/06/23	\$ 75,000	\$ 75,000
97	Teresa R. Woodard , as Power of Attorney for Chester L. Woodard , Jr.	Woodard, PoA	2826 Cleveland Avenue Operations, LLC	07/10/20	<u>\$ 50,000</u>	<u>\$ 30,000</u>
			TOTALS:		\$ 10,763,500	\$ 8,678,877

Composite Exhibit “D”

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY
FLORIDA CIVIL DIVISION**

MARY HOLT, Deceased, by and through
TERESA MARGRAF, as Personal
Representative of the Estate,

CASE NO.: 41-2017-CA004423AX
DIVISION: B

Plaintiff,

v.

6305 CORTEZ ROAD WEST PERATIONS
LLC d/b/a BRADENTON HEALTH CARE
and CMC II, LLC,

Defendants.

FINAL JUDGMENT

THIS CAUSE came on to be heard before the Court on “Motion to Enforce Settlement” (the “Motion”), filed by Mary Holt, Deceased, by and through Teresa Margraf, as Personal Representative of the Estate (the “Plaintiff”), on March 26, 2024, whose address is 1112 Channelside Drive, Suite 5, Tampa Florida 33602. The Motion seeks relief against defendants, 6305 Cortez Road West Operations LLC, 1040 Crown Pointe Pkwy Ste 600 Atlanta, Ga 30338-4741 in the amount of \$168,750.00 (the “Judgment Amount”), based upon the undisputed failure to make certain payments under a settlement agreement (the “Settlement Agreement”), that this Court has jurisdiction to enforce.

For reasons stated orally on the record in open Court, that shall constitute the findings of fact, conclusions of law, and holding of this Court, this Court has determined that the Motion has merit, to the extent set forth in this Judgment. Accordingly, it is:

ORDERED, ADJUDGED, and DECREED as follows:

1. Judgment is entered in favor of the Plaintiff and against the Defendant 6305 Cortez Road West Operations LLC in the Judgment Amount, for which let execution issue.
2. Interest on the Judgment Amount shall accrue at the rate set forth in Florida Statute §55.03, from the date of entry hereof, said rate currently being 9.34% per annum. This Court reserves jurisdiction to adjudicate any motion for recovery of costs filed in connection herewith.
3. The Defendant is hereby directed to complete, execute before a notary, and transmit to the Plaintiff, within forty-five (45) days from the date of entry hereof, a "Fact Information Sheet" that is complete, accurate, and truthful, in a manner consistent with Florida Rule of Civil Procedure Form 1.977.
4. This Court reserves jurisdiction to enforce this Judgment, including replevin, garnishment, charging orders, orders on proceedings supplementary, writs of execution, discovery in aid of execution, and all other means of execution and levy permitted by law and in equity. Pursuant to Florida Statutes §57.115, the Plaintiff may be entitled to recovery of attorneys' fees and costs in connection with the collection of this Judgment.

DONE AND ORDERED in Chambers in Manatee County, Florida.



eSigned by D. RYAN FELIX, Circuit Judge 04/05/2024 13:41:41 PpuANJe2

**HONORABLE D. RYAN FELIX
CIRCUIT COURT JUDGE**

**Conformed copies to:
Scott Distasio, Esquire
Antonio Cifuentes, Esquire**

Return to:

William A. Dean, Esquire
Ford, Dean & Rotundo, P.A.
3323 N.E. 163rd Street, Suite 605
North Miami Beach, FL 33160

IN THE CIRCUIT COURT OF THE
6TH JUDICIAL CIRCUIT, IN AND FOR
PASCO COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.: 2019-CA-003349 CA

LYDIA MARTINEZ, as Personal
Representative of the Estate of
LUZ M. MARTINEZ, Deceased,

Plaintiff,

vs.

NEW PORT RICHEY FACILITY
OPERATIONS, LLC. d/b/a CONSULATE
HEALTH CARE OF NEW PORT RICHEY,

Defendant.

FINAL JUDGMENT

THIS CAUSE, having come on for hearing before the Court on Plaintiff's Motion to Enforce Settlement on January 4, 2024, after the Parties executed a binding Settlement Release, and the Defendant nursing home has not paid the settlement funds as required by the Settlement Release. Therefore the court finding that the Defendant, NEW PORT RICHEY FACILITY OPERATIONS, LLC. d/b/a CONSULATE HEALTH CARE OF NEW PORT RICHEY, is indebted to the Plaintiff, LYDIA MARTINEZ, as Personal Representative of the Estate of LUZ M. MARTINEZ, Deceased, for damages in the amount of \$75,000.00, and the Court being otherwise duly advised in the premises, it is thereupon,

CONSIDERED, ORDERED and ADJUDGED:

1. Plaintiff, LYDIA MARTINEZ, as Personal Representative of the Estate of LUZ M. MARTINEZ, Deceased, 7034 Fairfax Drive, Port Richey, FL 34668, do have and recover of and from Defendant, NEW PORT RICHEY FACILITY OPERATIONS, LLC. d/b/a CONSULATE HEALTH CARE OF NEW PORT RICHEY, an Florida corporation, Florida Document No. M06000003835, FEI NO. 20-5112212, whose principal address is 850 Concourse Parkway S, Suite 250, Maitland, FL 32751, and mailing address is 1040 Crown Pointe Parkway, Suite 600, Atlanta, GA 30338, the sum of Seventy-Five Thousand Dollars, (\$75,000.00) as principal damages, making a total due Plaintiff from Defendant of \$75,000.00, that shall bear interest at the statutorily mandated rate per year until satisfied, and for all of which let execution issue.

2. It is further ordered and adjudged that the judgment Defendant/Debtor, NEW PORT RICHEY FACILITY OPERATIONS, LLC. d/b/a CONSULATE HEALTH CARE OF NEW PORT RICHEY shall complete, under oath, Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on the Plaintiff's attorney, William A. Dean, Esq. at his address listed below within 45 days from the date of this Final Judgment, unless the Final Judgment is satisfied or post-judgment discovery is stayed. The Judgment Defendant/Debtor shall also timely file a Notice with the Clerk of the Court, with a copy being sent to the Judgment Creditor Plaintiff's Attorney, certifying compliance with having timely completed and mailed the Fact Information Sheet.

Jurisdiction of this case is retained to enter any further Orders including orders on Motions to Compel, Motions For Contempt, Motions to Tax Prevailing Party Costs or any other Motion seeking appropriate relief, in the event it is necessary to compel and order the judgment Defendant/Debtor, NEW PORT RICHEY FACILITY OPERATIONS, LLC. d/b/a

CONSULATE HEALTH CARE OF NEW PORT RICHEY, a Florida corporation to complete form 1.977, including the submission of all required attachments, and have it mailed and served on the judgment creditor's/Plaintiff's attorney.

NOTICE AND WARNING is hereby given to the Judgement Defendant/Debtor that the failure to comply with the foregoing shall be grounds for the Court to hold the Judgment Defendant/Debtor in contempt of Court. The original of said Fact Information Sheet is hereby being mailed to the Defendant, NEW PORT RICHEY FACILITY OPERATIONS, LLC. d/b/a CONSULATE HEALTH CARE OF NEW PORT RICHEY, an Florida corporation at the address listed below, in conjunction with the mailing of the copy of this Final Judgment.

3. The Court hereby specifically reserves and retains jurisdiction of this case to enter all appropriate Orders and/or Judgments to determine and award attorney's fees and the taxing of costs in favor of the Plaintiff, as allowed by law, based upon proper timely motion and notice of hearing thereon.

NPR, Pasco
DONE AND ORDERED at ~~Miami~~ Pasco County, Florida, on _____, 2024.

Electronically Conformed 4/11/2024
Kimberly Sharpe Byrd

CIRCUIT COURT JUDGE

Copies furnished to:

William A. Dean, Esquire
Ford, Dean & Rotundo, P.A.
Attorneys for Plaintiff
3323 N.E. 163rd Street, Suite 605
North Miami Beach, FL 33160

Antonio Cifuentes, Esquire
Dias & Associates, P.A.
Attorneys for Defendant
5110 Sunforest Drive, Suite 160
Tampa, FL 33634

IN THE CIRCUIT COURT OF THE
6TH JUDICIAL CIRCUIT, IN AND FOR
PASCO COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.: 2019-CA-003349 CA

LYDIA MARTINEZ, as Personal
Representative of the Estate of
LUZ M. MARTINEZ, Deceased,

Plaintiff,

vs.

NEW PORT RICHEY FACILITY
OPERATIONS, LLC. d/b/a CONSULATE
HEALTH CARE OF NEW PORT RICHEY,

Defendant.

_____ /

FACT INFORMATION SHEET

Name of Entity: NEW PORT RICHEY FACILITY OPERATIONS, LLC. d/b/a CONSULATE
HEALTH CARE OF NEW PORT RICHEY

Name and title of person filling out this form:

Telephone number:

Mailing address (if different):

Gross/taxable income reported for federal income tax purposes last three years:

\$ _____ /\$ _____ \$ _____ /\$ _____ \$ _____ /\$ _____

Taxpayer identification number:

Is this entity an S corporation for federal income tax purposes? _____ Yes _____ No

Average number of employees per month _____

Name of each shareholder, member, or partner owing 5% or more of the entity's common stock,
preferred stock, or other equity interest:

Names of officers, directors, members, or partners:

Checking account at: _____ Account # _____

Savings account at: _____ Account # _____

Does the entity own any vehicles? _____ Yes _____ No

For each vehicle please state:

Year/Make/Model: _____ Color: _____

Vehicle ID No.: _____ Tag No. _____ Mileage: _____

Names on Title: _____ Present Value: _____

Loan Owed to:

Balance on Loan: \$

Monthly Payment: \$

Does the entity own any real property? _____ Yes _____ No

If yes, please state the address(es):

Please check if the entity owns the following:

_____ Boat

_____ Camper

_____ Stocks/bonds

_____ Other real property

_____ Other personal property

Please attach copies of the following:

Copies of state and federal income tax returns for the past 3 years.

1. All bank, savings and loan, and other account books and statements for accounts in institutions in which the entity had any legal or equitable interest for the past 3 years.

2. All cancelled checks for the 12 months immediately preceding the service date of this Fact Information Sheet for accounts in which the entity held any legal or equitable interest.
3. All deeds, leases, mortgages, or other written instruments evidencing any interest in ownership of real property at any time within the 12 months immediately preceding the date this lawsuit was filed.
4. Bills of sale or other written evidence of the gift, sale, purchase, or other transfer of any personal or real property to or from the entity to or from the entity within the 12 months immediately preceding the date this lawsuit was filed.
5. Motor vehicle or vessel documents, including titles and registrations relating to any motor vehicles or vessels owned by the entity alone or with others.
6. Financial statements as to the entity's assets, liabilities, and owner's equity prepared within the 12 months immediately preceding the service date of this Fact Information Sheet.
7. Minutes of all meetings of the entity's members, partners, shareholders, or board of directors held within 2 years of the service date of this Fact Information Sheet.
8. Resolutions of the entity's members, partners, shareholders, or board of directors passed within 2 years of the service date of this Fact Information Sheet.

UNDER PENALTY OF PERJURY, I SWEAR OR AFFIRM THAT THE FOREGOING ANSWERS ARE TRUE AND COMPLETE.

Judgment Debtor's Designated
Representative/Title

STATE OF FLORIDA

COUNT OF _____

The foregoing instrument was acknowledged before me on _____, by _____, who is personally known to me or has produced _____ as identification and who _____ did/did not _____ take an oath.

WITNESS my hand and official seal, this _____ day of _____, _____.

Notary Public

State of Florida

My Commission Expires:

THE JUDGMENT DEBTOR SHALL FILE WITH THE CLERK OF THE COURT A NOTICE OF COMPLIANCE AFTER THE ORIGINAL FACT INFORMATION SHEET, TOGETHER WITH ALL ATTACHMENTS, HAS BEEN DELIVERED TO THE JUDGMENT CREDITOR'S ATTORNEY, OR TO THE JUDGMENT CREDITOR IF THE JUDGMENT CREDITOR IS NOT REPRESENTED BY AN ATTORNEY.

**IN THE CIRCUIT COURT OF THE 9TH JUDICIAL
CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA**

CASE NO.: 2020-CA-011946-O

**HOWARD WILLIAMS, as Personal Representative of
the Estate of NESSA WILLIAMS, deceased,**

Plaintiff,

v.

**9311 SOUTH ORANGE BLOSSOM TRAIL OPERATIONS
LLC d/b/a PARKS HEALTHCARE AND
REHABILITATION CENTER; and CMC II, LLC,**

Defendants.

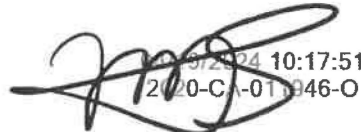
FINAL JUDGMENT

Pursuant to the Order Granting Plaintiff's Motion to Enforce Settlement entered on March 29, 2024, in this action, it is:

ADJUDGED that Plaintiff HOWARD WILLIAMS, recover from Defendant 9311 SOUTH ORANGE BLOSSOM TRAIL OPERATIONS LLC d/b/a PARKS HEALTHCARE AND REHABILITATION CENTER, the sum of \$60,000, that shall bear interest at 9.09% per annum for the remainder of 2024, and thereafter at a legal rate fixed by the Comptroller for the State of Florida pursuant to Chapter 55, Florida Statutes, for which let execution issue.

This Court reserves ruling on sanctions.

DONE and Ordered in Orange County, Florida on the date shown on the electronic signature.



04/19/2024 10:17:51
2020-CA-011946-O

eSigned by Margaret H. Schreiber 04/19/2024 10:17:51 tpT4osNr

Margaret H. Schreiber

Circuit Judge

If there are parties not receiving service through the Florida Courts e-filing Portal, counsel will serve a copy of the order via U.S. Mail to the non-e-filing parties and file a certificate of service in the court file no later than three days from the date of this order.

Electronic Service List

Antonio A Cifuentes <efile@mdlegal.net>, <nrodriguez@mdlegal.net>, <tcifuentes@mdlegal.net>

Michael Kohl <mkohl@kohlpa.com>

Civil Circuit Case Managers <CivilCM@ocnjcc.org>

Jason A Paul <mmoran@paulandperkins.com>, <jpaul@paulandperkins.com>

Jonathan D Shistle <orlandopipgeico@geico.com>, <JShistle@geico.com>

Jonathan David Shistle <tcifuentes@mdlegal.net>, <efile@mdlegal.net>, <ypinion@mdlegal.net>

Maureen Sellers <msellers@mdlegal.net>

Michael J. Kohl <mkohl@kohlpa.com>

Ninth Judicial Circuit <judicial9@ocnjcc.org>

Exhibit “E”

Consulate nursing homes are changing names. Are they changing ownership?

Florida's largest chain still seems to be tied to the homes that now carry new branding.



Exterior photo of Radiant Health Care of Brandon, formerly Consulate Health pictured on Wednesday, Jan. 19, 2022 in Brandon. [LUIS SANTANA | Times]

By

- **Hannah Critchfield** *Times staff*

Published Jan. 19, 2022|Updated Jan. 22, 2022

The largest nursing home chain in Florida is rebranding.

On its website, Consulate Health Care Services no longer lists any long-term care facilities in the state.

In the wake of a bankruptcy filing and a slew of bad press over the last few years, the privately held chain — the sixth-largest nursing home company in the nation — has quietly divided its Florida facilities into three separate companies. All three appear to still be affiliated with Consulate.

Neither Consulate or the new companies responded to multiple requests for comment. On calls made to Consulate's corporate headquarters to reach a spokesperson,

employees directed the *Tampa Bay Times* to a person who denied working for the company.

“Consulate broke into four different companies,” said a receptionist at Consulate Health Care’s office in Georgia. “Anything that’s outside of the state of Florida is still considered Consulate. Anything inside the state of Florida has been divvied up among Radiant, Independence and NSPIRE. But we are still the corporate office for any of those companies.”

Many of Consulate’s Florida nursing homes have begun to change their individual names as well, erasing any affiliation with the chain.

Such reorganization leaves consumers in the dark, critics say.

“If you Google Consulate, you’ve got 20 years of bad press,” said Bill Dean, a former Miami-Dade prosecutor who now specializes in suing nursing homes. “But no one is ever going to know that the new ‘Happy Nursing Home LLC’ is actually the same exact people as Consulate. It’s the same employees, the same leadership — but it’s now under a new, rebranded fancy name.”

With new company names and opaque relationships, he said, consumers searching for a nursing home in Florida may have a hard time knowing a facility’s prior history or current ownership.

A household name

Consulate was well known in Florida even before the pandemic struck. By 2018, the for-profit company controlled one out of every nine nursing homes in Florida, the *Naples Daily News* [reported](#), including 13 in Tampa Bay.

Its facilities have been no stranger to controversy.

In January 2018, the state Agency for Health Care Administration threatened to [revoke](#) 53 of Consulate’s 77 Florida nursing homes’ licenses over poor patient care and safety violations. The agency instead reached a [settlement](#) that put eight of Consulate’s homes on a [two-year improvement plan](#), including three in the Tampa Bay area.

The giant chain was one of five nursing home companies that were investigated by Congress over their handling of coronavirus in 2020.

The same year, the U.S. Court of Appeals upheld a \$256 million civil fraud judgment against Consulate, ruling that nursing homes currently owned by the company had defrauded taxpayers by inflating bills for residents’ treatments.

Entities operating under Consulate filed for bankruptcy in March 2021. The chain, which at the time owned 140 facilities across the country, said that it did not have the funds to pay the judgment.

“Many large skilled nursing organizations, including Consulate, have encountered increased financial stress as a direct result (of the pandemic),” wrote Paul Rundell, the company’s bankruptcy restructuring officer, in a September 2021 [court filing](#). “And the State of Florida, where many of Consulate’s skilled nursing facilities are located, is among the hardest hit.”

The Justice Department and the whistleblower filing the claim eventually [agreed to settle](#) for far less, leaving Consulate responsible for only \$4.5 million in light of the company declaring bankruptcy.

This bankruptcy filing, and the fanfare accompanying a high-profile federal lawsuit, may have contributed to the divvying up of Consulate Health Care’s nursing homes in Florida. But licensing documents and corporate filings suggest the new owners of these facilities are related to the company.

New companies

Using Florida’s Agency for Health Care Administration data, the *Tampa Bay Times* analyzed all of the state’s long-term care facilities with licenses linked to Consulate Health Care’s official website in 2021.

The *Times* found that out of 77 senior homes with active licenses, 76 were owned by limited liability companies that still listed a Consulate office in Georgia as their mailing address. This was true even for facilities that had recently changed names to remove “Consulate Health Care” from their titles.

Mailing addresses are considered an industry shorthand for determining a facility’s corporate ownership, according to Dean.

“When it has that address in Georgia, I know it’s a Consulate facility,” he said.

Seven of these facilities no longer appear to be listed on any company website; the rest have been divvied up.

Consulate Health Care facilities in Florida now are listed as being operated by one of three companies:

- **Raydiant Health Care Services**
 - [Raydiant Health Care Services’ website says](#) the company has led the way in rehabilitative care in Florida since “opening their doors to the Sunshine State in 2021.”

- The application to create the name “Raydiant Health Care” was submitted to the Florida Department of State’s Division of Corporations in September 2021 by Charlene G. Johnson, attorney and director of licensing and certification at Consulate Health Care. Johnson used her official Consulate company email address.
- Many Consulate nursing homes have been renamed using the Raydiant moniker. Consulate Health Care of Brandon, one of its Tampa Bay facilities, is now Raydiant Health Care of Brandon. The nursing home experienced an early, deadly coronavirus outbreak at the same time that Congress was [investigating](#) Consulate Health Care for its handling of the pandemic. Twenty-two of its residents had [died](#) of COVID-19 by the time the state [stopped publishing](#) nursing home data in June 2021.
- **Independence Living Centers**
 - Independence Living Centers’ website appears to [have launched](#) in early January.
 - The name “Independence Living Centers” was registered with the Division of Corporations in September 2021, the same month as Raydiant Health Care. John Silliter, a former Consulate employee, is the chief executive officer of Independence Living Centers, according to his voicemail. Silliter signed the registration form. The limited liability company that owns the name, Josera LLC, was created in July, with Johnson of Consulate again signing off as the authorized representative.
 - Its facilities were all previously advertised as Consulate-operated homes. Several have been renamed.
 - Locations include Tallahassee Living Center, formerly named Consulate Health Care of Tallahassee, which has a one-star rating on the federal database Care Compare. The facility is one of four Florida Consulate homes that are currently listed as candidates for the Centers for Medicare & Medicaid Services program for “special focus facilities,” a designation reserved only for nursing homes that face possible forced closure due to a history of serious quality of care problems.
 - Independence Living Centers is actively hiring for positions in Florida facilities, including 92 jobs in Tampa Bay. Its application portal redirects candidates to a page that says, “Consulate Health Care Job Listings.”
- **NSPIRE Healthcare**
 - NSPIRE Healthcare has operated five facilities in south Florida for several years. These appear not to be directly owned by Consulate. Its current website was created in early 2021. In April, it [advertised](#) its five nursing homes. But today, the company [lists](#) 27 facilities, 22 of which were previously marketed as Consulate-owned homes.
 - The *Times* called several area NSPIRE facilities in an attempt to reach a media contact for the company. A front desk staffer at NSPIRE Health Care Sarasota — formerly Consulate Health Care of Sarasota — said that these Consulate facilities had not been sold to a new company, but that Consulate had instead “rebranded.” Any of the Florida locations are under different names, she said — either Independence, Raydiant or NSPIRE.

- Like Independent Living Centers, the webpage that displays all open jobs at NSPIRE facilities is labeled, “Consulate Health Care Job Listings.”

‘Synergy Health Care Services’

A new business related to Consulate has recently emerged.

Calls to the number for the company office in Atlanta or for the in-state office in Maitland now redirect to an automated message that begins with, “Thank you for calling Synergy HCS.”

Synergy Health Care Services advertises itself as a consulting company to senior care operators, working “behind-the-scenes to deliver solutions that allow providers to focus on what they do best, patient and resident care.” The company’s LinkedIn page was created in 2021.

All of its current listed employees — 20 in total — began their positions in December 2021 after a long run working at Consulate.

Chris Bryson, former [chief executive officer](#) at Consulate Health Care, has the [same role](#) at Synergy.

Synergy is actively hiring. All the open positions are [based](#) at the longtime Consulate operations address in Maitland.

At first, though, it wasn’t clear if there was a website for Synergy.

“There’s been a recent reorganization within the company, and I just don’t believe the website has been switched over yet so that it’s up and running and operational,” said Sarah Catherine Whalen, corporate counsel at Synergy HCS and [former](#) attorney at Consulate Health Care, on a phone call in which the *Times* requested a communications person for Synergy.

She directed the *Times* to Jennifer Trapp, vice president of brand management for Synergy HCS and the former spokesperson for Consulate.

Trapp said that Synergy is a separate company that contracts with Consulate to provide “back-office” support.

“The buildings in Florida were acquired by other operating management companies,” she said. “The company that I work for, we contract with several different providers, including Consulate, who operates outside of the state of Florida.”

Trapp declined to name the company’s other clients, citing privacy reasons.

She said the *Times* would have to contact Consulate's press person for questions about its Florida facilities or company structure.

On a call back to the Consulate office in Atlanta to request contact information for a Consulate-specific spokesperson, the receptionist said the *Times* should contact Trapp. "We just split into four different companies and it's just kind of a little confusing," said the front desk receptionist. "So I thought Jen Trapp would still take care of that."

She said as far as she knew, she was still answering the phone for Consulate.

EXHIBIT 2

LVCC Operating Agreement

**SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF
LAVIE CARE CENTERS, LLC**

This Limited Liability Company Operating Agreement (this “Agreement”) of **LaVie Care Centers, LLC**, a Delaware limited liability company (the “Company”), is dated as of the 14th day of December, 2015, by the member set forth on **Schedule A** (together with any other Person who hereafter becomes an additional or substitute Member, together with their successors and permitted assigns, the “Members”).

WITNESSETH:

WHEREAS, the Company was formed upon the filing of the Certificate of Formation (the “Articles”) with the Delaware Secretary of State (the “Secretary”);

WHEREAS, the Member entered into that certain Limited Liability Company Agreement, dated as of September 27, 2011;

WHEREAS, the Member subsequently entered into that certain Amended and Restated Limited Liability Company Agreement, dated as of July 31, 2015, which amended and restated the prior agreement;

WHEREAS, the Member wishes to amend and restate the previous agreement to set forth the terms and conditions pursuant to which the affairs of the Company and the conduct of its business shall be governed; and

WHEREAS, capitalized terms used but not defined in this Agreement shall have the meaning set forth on **Schedule B**, which schedule is hereby incorporated into and made part of this Agreement by this reference.

NOW, THEREFORE, in accordance with the Delaware Limited Liability Company Law, as amended from time to time (the “Act”), the Members hereby agree as follows:

1. Name. The name of the limited liability company is:

LaVie Care Centers, LLC

2. Term. The Company shall have perpetual existence, unless the Company is dissolved and its business and affairs wound up in accordance with the provisions of this Agreement or the Act.

3. Purpose. The nature of the business and purpose of the Company shall be to engage in any lawful act permitted by the Act and approved by the Board (the “Company’s Business”).

4. Principal Business Office. The principal business office of the Company shall be located at such place as designated by the Board.

5. Commercial Registered Office Provider and Registered Office. The Company shall have a registered agent in the state and may change such registered agent from time to time in its discretion.

6. Certificates.

(a) Execution of Certificates. The Member shall execute, deliver and file any other certificates and other filings (and any amendments and/or restatements thereof) necessary or desirable for the Company to qualify to do business in any jurisdiction in which the Company may wish to conduct business.

(b) Certificate of Cancellation. The Company shall continue in existence as a separate legal entity until dissolved and a Certificate of Cancellation is filed with the Secretary in accordance with Section 18 below.

7. Member.

(a) Members Generally. The Member is the sole member of the Company and, unless and until any additional member(s) are admitted in accordance with the provisions of this Agreement and the Act, the Member owns all of the limited liability company interests of the Company. The name and business address of the Member is set forth in **Schedule A**.

(b) Limited Liability. All debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company and no Member shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member.

8. Management.

(a) Management of the Company Generally. (i) The Company's Business shall be managed by or under the direction of a Board of Managers (the "Board"), and (ii) the Board shall have full and complete authority, power and discretion to direct, manage and control the business, affairs and properties of the Company, to make and/or delegate as the Board may elect all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's Business. To the extent of the powers, statutory or otherwise, held by the Board under the Act or set forth in this Agreement, the actions of the Board taken in accordance with such powers shall bind the Company. In the event of any inconsistency between any terms and conditions contained in this Agreement and any non-mandatory provisions of the Act, the terms and conditions contained in this Agreement shall govern, and in the event of any inconsistency between any items and conditions contained in this Agreement and any mandatory provisions of the Act, the terms and conditions of the Act shall govern. The Board shall consist of no fewer than one (1) manager (a "Manager"). For all such times that the Company has one and only one Manager, all action taken by such Manager on behalf of the Company shall be deemed approved by the Board and shall be binding on the Company without the need for further evidence of approval of such action by such Manager.

The Managers shall be appointed by the Member. A Manager shall serve on the Board until such Manager's disability, death, resignation, removal or replacement. A Manager may resign from the Board at any time and for any reason by written notice to the Company and the Board. A Manager may be removed by the Member at any time, for any reason or no reason whatsoever.

(b) Authority to Bind the Company. Unless authorized to do so by this Agreement or by the Board, no attorney-in-fact, employee, officer or agent of the Company other than the Board shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose.

(c) Manner of Acting. Whenever any Company action is to be taken by a vote of the Board, it shall be authorized upon receiving a majority vote of the Board. Any action of the Company which may be taken at a meeting of the Board may be taken without a meeting by written consent upon the execution of such consent by the number of Managers that would be necessary to authorize or take such action at a meeting at which all the Managers on the Board were present and voted.

(d) Authority and Certain Powers of the Board. Without limiting the generality of Section 8(a) above, the Board shall have power and authority, on behalf of the Company:

(i) Acts. To do and perform all acts as may be necessary or appropriate to the conduct of the Company's Business;

(ii) Property. To purchase, hold, sell, exchange, transfer and otherwise acquire and dispose of and exercise all rights, powers, privileges and other incidents of ownership or possession with respect to real and personal property, whether tangible or intangible, held by the Company;

(iii) Insurance. To purchase liability and other insurance to protect the Company's property and the Company's Business;

(iv) Loans. To borrow money and to execute and deliver documents and instruments authorizing the confession of judgment against the Company;

(v) Officers. To appoint from time to time such officers, committees, employees or other agents as the Company's Business may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in this Agreement, or as the Board may from time to time determine. The Board may delegate to any committee the power to elect subordinate officers and to retain or appoint employees or other agents, or committees thereof, and to prescribe the authority and duties of such subordinate officers, committees, employees or other agents. The salaries or other compensation of any other officers, employees and other agents shall be fixed from time to time by the Board or the committee to which the power to elect such officers or to retain or appoint such employees or other agents has been delegated pursuant to this Section 8.

(vi) Documents. To execute, and to authorize Persons to execute, on behalf of the Company all instruments and documents, including, without limitation, checks,

drafts, notes and other negotiable instruments, mortgages or deeds of trust, security agreements, financing statements, guaranties, documents providing for the acquisition, mortgage or disposition of the Company's property, assignments, deeds, bills of sale, leases, partnership agreements, operating agreements of other limited liability companies, including without limitation, of any Affiliate, and any other instruments or documents necessary or advisable, in the opinion of the Board, to the Company's Business;

(vii) Experts. To employ or otherwise engage, employees, accountants, legal counsel, managing agents, or other experts or consultants to perform services for the Company and to compensate them from Company funds; and

(viii) Other Agreements. To authorize the entering into of any and all other agreements on behalf of the Company, with any other Person for any purpose, in such forms as the Board may approve.

(e) Reliance by Third Parties. Persons dealing with the Company shall be entitled to rely on a certificate of any officer of the Company as conclusive evidence of the incumbency of any officer of the Company and its authority to take action on behalf of the Company and shall be entitled to rely on a copy of any resolution or other action taken by the Board, certified by any officer of the Company, as conclusive evidence of such action and of the authority of the officer referred to in such resolution or other action to bind the Company to the extent set forth therein.

(f) Limited Liability.

(i) Management. Each Manager shall perform his managerial duties in good faith, in a manner reasonably believed to be in the best interests of the Company, and with such care and business judgment as an ordinarily prudent person in a like position would use under similar circumstances. Each Manager shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any of its officers, employees or committees of the Company, or by any other person, as to matters such Manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the Company or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be made.

(ii) No Personal Liability. Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and no Manager shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Manager.

(iii) Duty of Manager. No Manager, acting in the capacity of a manager of the Company, shall be liable to the Company for money damages for breach of fiduciary duty except to the extent such Manager could be held liable under the Delaware

General Corporation Law if the Company were a Delaware corporation and the Managers were directors.

(g) Bank Accounts. The Board may from time to time open bank accounts in the name of the Company, and any officer of the Company designated by the Board, as may be determined from time to time by the Board, shall be the sole signatory or signatories thereon, unless the Board determines otherwise.

(h) Compensation. The Company shall reimburse each Manager for such Manager's reasonable expenses incurred in connection with its services to the Company.

9. Additional Contributions. The Member is not required to make any additional capital contributions to the Company.

10. Allocation of Profits and Losses. The Company's profits and losses shall be allocated to the Member.

11. Membership Interests Un-certificated. Limited liability membership interests in the Company shall be un-certificated.

12. Tax Treatment. It is intended that so long as the Company has a single equity owner for U.S. federal income tax purposes, the Company shall be disregarded as an entity separate from that sole owner, and if the Company has more than one equity owner for U.S. federal income tax purposes, the Company shall be classified as a partnership for U.S. federal income tax purposes. Neither the Company nor any member shall make any election to classify the Company in a manner other than as a disregarded entity or partnership, as just described, without the consent of all the Members, and shall not take any position on any tax return that is inconsistent with the treatment of the Company as a disregarded entity or partnership, as just described.

13. Distributions. Distributions shall be made to the Member at the times and in the aggregate amounts as determined by the Member. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be required to make a distribution to the Member on account of its interest in the Company if such distribution would violate the Act or any other applicable law.

14. Transfer of Membership Interest. The Member may transfer, sell, convey and assign, in whole or in part, its limited liability company interest in the Company as it may determine in its sole discretion. Any permitted transferee shall be admitted to the Company as a member of the Company effective upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. Any such transferee may receive an interest in the Company without making a contribution or being obligated to make a contribution to the Company. If a member transfers all of its limited liability company interest in the Company pursuant to this Section 14, such member shall cease to be a member of the Company effective immediately following consummation of such transfer and the transferee's execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement. Notwithstanding anything in this Agreement to the contrary, any successor to the Member by

merger or consolidation shall, without further act, be the Member hereunder, and such appointment shall not constitute an assignment for purposes of this Agreement and the Company shall continue without dissolution.

15. Resignation of the Member. Any member of the Company may resign from the Company at any time by giving thirty (30) days' written notice to the Company. If the Member resigns pursuant to this Section 15, an additional member of the Company designated by the Member shall be admitted to the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. Such admission shall be deemed effective immediately prior to the resignation and, immediately following such admission, the resigning Member shall cease to be a member of the Company. If any member resigns pursuant to this Section 15, it shall not have the right to receive any payment or other distribution at the time of such resignation (including, without limitation, the fair value of its limited liability company interest), other than any distribution to which such member is otherwise entitled, as of the date of resignation, to receive under Section 13.

16. Admission of Additional Member(s). One or more persons may be admitted as additional members of the Company from time to time with the consent of the Member. Each such person shall be admitted as an additional member of the Company at the time such person (i) executes this Agreement or a counterpart of this Agreement (or an amendment and restatement of this Agreement which is also executed by all other members) and (ii) is named as a member of the Company on **Schedule A** hereto or thereto. If the Company is or becomes taxable as a partnership, the Member agrees to cooperate in good faith to amend and restate this Agreement in consideration of the applicable partnership tax rules.

17. Indemnification.

(a) Definitions. For the purposes of this Section 17, the following terms shall have the following meanings:

(i) "Indemnified Capacity" means any and all past, present and future service by an Indemnified Representative in one or more capacities as a member, manager, officer, employee or agent of the Company, or, at the request of the Company, as a member, manager, officer, employee, agent, fiduciary or trustee of another limited liability company, corporation, partnership, joint venture, trust, employee benefit plan or other entity or enterprise.

(ii) "Indemnified Representative" means any and all members, managers, officers, employees and agents of the Company and any other person designated as an Indemnified Representative by the Member (which may, but need not, include any person serving at the request of the Company, as a member, manager, officer, employee, agent, fiduciary or trustee of another limited liability company, corporation, partnership, joint venture, trust, employee benefit plan or other entity or enterprise).

(iii) "Liability" means any damage, judgment, amount paid in settlement, fine, penalty, punitive damages, excise tax assessed with respect to an employee

benefit plan, or cost or expense of any nature (including, without limitation, reasonable attorneys' fees and disbursements).

(iv) "Proceeding" means any threatened, pending or completed action, suit, appeal or other proceeding of any nature, whether civil, criminal, administrative or investigative, whether formal or informal, and whether brought by or in the right of the Company, a class of its members, or security holders or otherwise.

(b) Indemnification by the Company.

(i) Expenses. Unless limited by the Articles, an Indemnified Representative who has been successful, on the merits or otherwise, in the defense of any Proceeding, or in the defense of any claim, issue or matter in the Proceeding, shall be indemnified against reasonable expenses incurred by the Indemnified Representative in connection with the Proceeding, claim, issue or matter in which the Indemnified Representative was successful.

(ii) In General. The Company shall indemnify an Indemnified Representative against any Liability incurred in connection with any Proceeding in which the Indemnified Representative may be involved as a party or otherwise by reason of the fact that such person is or was serving in an Indemnified Capacity, including, without limitation, any Liability resulting from any actual or alleged breach or neglect of duty, error, misstatement or misleading statement, negligence, gross negligence or act giving rise to strict or products liability, except:

- (A) where such indemnification is expressly prohibited by applicable law;
- (B) where it has been finally determined:
 - (1) that the act or omission of the Indemnified Representative was material to the matter giving rise to the Proceeding; and
 - (i) was committed in bad faith; or
 - (ii) was the result of active and deliberate dishonesty; or
 - (2) that the Indemnified Representative actually received an improper personal benefit in money, property or services; or
 - (3) in the case of any criminal Proceeding, that the Indemnified Representative had reasonable cause to believe that the act or omission was unlawful; or

(C) to the extent such indemnification has been finally determined in a final adjudication to be otherwise unlawful.

(iii) Partial Indemnification. If an Indemnified Representative is entitled to indemnification in respect of a portion, but not all, of any Liability to which such Indemnified Representative may be subject, the Company shall indemnify such Indemnified Representative to the maximum extent for such portion of that Liability.

(iv) Settlement. Except as provided in clause (v) below, the termination of a Proceeding by judgment, order or settlement shall not create a presumption that the Indemnified Representative is not entitled to indemnification.

(v) Termination of a Proceeding. The termination of a Proceeding by conviction, or a plea of nolo contendere or its equivalent, or an entry of an order of probation prior to judgment, creates a rebuttable presumption that the Indemnified Representative is not entitled to indemnification.

(vi) Successful Defense Indemnified. To the extent that an Indemnified Representative of the Company has been successful on the merits or otherwise in defense of any Proceeding or in defense of any claim, issue or matter therein, such Indemnified Representative shall be indemnified against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such Indemnified Representative in connection therewith.

(c) Proceedings Initiated by Indemnified Representatives. Notwithstanding any other provision of this Section 17, the Company shall not indemnify under this Section 17 an Indemnified Representative for any Liability incurred in a Proceeding initiated (which shall not be deemed to include counterclaims or affirmative defenses) or participated in as an intervenor or *amicus curiae* by such Indemnified Representative seeking indemnification except for a proceeding brought to enforce indemnification under this Section 17 or unless such initiation of or participation in the Proceeding is authorized, either before or after its commencement, by the Board. This paragraph does not apply to reimbursement of expenses incurred in successfully prosecuting or defending the rights of an Indemnified Representative granted by or pursuant to this Section 17.

(d) Advancing Expenses. The Company may pay the expenses (including reasonable attorneys' fees and disbursements) incurred in good faith by an Indemnified Representative in advance of the final disposition of a Proceeding described in Section 17(b) or the initiation of or participation in such Proceeding which is authorized pursuant to Section 17(c) upon receipt by the Company of (i) a written affirmation by the Indemnified Representative of the Indemnified Representative's good faith belief that the standard of conduct necessary for indemnification by the Company has been met; and (ii) of an undertaking by or on behalf of the Indemnified Representative to repay the amount if it is ultimately determined that such Indemnified Representative is not entitled to be indemnified by the Company pursuant to this Section 17. The financial ability of an Indemnified Representative to repay an advance shall not be a prerequisite to the making of such advance.

(e) Securing of Indemnification Obligations. To further effect, satisfy or secure the indemnification obligations provided in this Section 17 or otherwise, the Company may maintain insurance, obtain a letter of credit, act as self-insurer, create a reserve, trust, escrow, cash collateral or other fund or account, enter into indemnification agreements, pledge or grant a security interest in any assets or properties of the Company, or use any other mechanism or arrangement whatsoever in such amounts, at such costs, and upon such other terms and conditions as the Board shall deem appropriate. Absent fraud, the determination of the Board with respect to such amounts, costs, terms and conditions shall be conclusive against the present and future members of the Company and all security holders and officers of the Company and shall not be subject to voidability.

(f) Payment of Indemnification. An Indemnified Representative shall be entitled to indemnification within 30 days after a written request for indemnification has been delivered to the secretary of the Company. The indemnification pursuant to this Section 17 shall be made only from the assets of the Company and no Manager or Member shall be personally liable therefor.

(g) Contribution. If the indemnification provided for in this Section 17 or otherwise is unavailable for any reason in respect of any Liability or portion thereof, the Company shall contribute to the Liabilities to which the Indemnified Representative may be subject in such proportion as is appropriate to reflect the intent of this Section 17 or otherwise.

(h) Contract Rights; Amendment or Repeal. All rights under this Section 17 shall be deemed a contract between the Company and each Indemnified Representative pursuant to which the Company and each Indemnified Representative intend to be legally bound. Any repeal, amendment or modification hereof shall be prospective only and shall not affect any rights or obligations then existing.

(i) Scope of this Section. The rights granted by this Section 17 shall not be deemed exclusive of any other rights to which those seeking indemnification, contribution or advancement of expenses may be entitled under any statute, agreement or otherwise, both as to action in an Indemnified Capacity and as to action in any other capacity. The indemnification, contribution and advancement of expenses provided by or granted pursuant to this Section 17 shall continue as to a person who has ceased to be an Indemnified Representative in respect of matters arising prior to such time, and shall inure to the benefit of the heirs, executors, administrators and personal representatives of each such person.

(j) Reliance on Provisions. Each person who shall act as an Indemnified Representative shall be deemed to be doing so in reliance upon the rights of indemnification, contribution and advancement of expenses provided by this Section 17.

(k) Exculpation. Notwithstanding any other provisions of this Agreement, whether express or implied, or any obligation or duty at law or in equity, none of the Indemnified Representatives shall be liable to the Company or any other Person for any act or omission (in relation to the Company, its property or the conduct of its business or affairs, this Agreement, any related document or any transaction or investment contemplated hereby or thereby) taken or omitted by an Indemnified Representative in the reasonable belief that such act or omission is in

or is not contrary to the best interests of the Company and is within the scope of authority granted to such Indemnified Representative by this Agreement, provided such act or omission does not constitute fraud, willful misconduct, bad faith or gross negligence.

18. Dissolution.

(a) In General. The Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company's Business is continued in a manner permitted by this Agreement or the Act, (ii) the determination of the Board to dissolve the Company or (iii) the entry of a decree of judicial dissolution under the Act.

(b) Bankruptcy or Insolvency of Member. Notwithstanding any other provision of this Agreement or the Act, the bankruptcy or insolvency of any member of the Company shall not cause such member to cease to be a member of the Company and upon the occurrence of such an event, the Company's Business shall continue without dissolution.

(c) Company Waiver. Notwithstanding any other provision of this Agreement or the Act, each member of the Company waives any right it might have to agree in writing to dissolve the Company upon the bankruptcy or insolvency of such member or any other member of the Company or the occurrence of any other event that causes such member or any other member of the Company to cease to be a member of the Company.

(d) Winding Up of the Company. In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in the Act.

(e) Termination of the Company's Existence. The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company shall have been distributed to the Member in the manner provided for in this Agreement and (ii) the Articles shall have been dissolved and canceled by the filing of a Certificate of Cancellation in the manner required by the Act.

19. Title to Property. All property owned by the Company shall be owned by the Company as an entity and no Member shall have any ownership interest in such property in its individual name, and the Member's interest in the Company shall be personal property for all purposes. The Company shall hold title to all of its property in the name of the Company and not in the name of the Member.

20. Rights of Agent.

(a) Notwithstanding anything to the contrary set forth in this Agreement, the membership interests issued hereunder or covered hereby may be pledged to MidCap Funding IV Trust, a Delaware statutory trust (together with any successor thereto, the "Agent"), for the benefit of the Agent and Lenders (as defined in the Pledge Agreement referred to below)

pursuant to that certain Pledge Agreement (as may be amended, restated, supplemented or otherwise modified from time to time, the “Pledge Agreement”) among Agent, the Company, the Member and any other parties named therein. The pledge of such membership interests shall not cause the Member to cease to be a Member or, except as otherwise provided in such Pledge Agreement or other Financing Documents (as defined in the Pledge Agreement), to have the power to exercise any rights or powers of the Member and neither Agent nor any Lender shall have any liability as a result of such pledge.

(b) The right of Agent to enforce its rights and remedies under Pledge Agreement and other Financing Documents hereby is acknowledged and any such action taken in accordance therewith shall be valid and effective for all purposes under this Agreement (regardless of any restrictions herein contained) and any assignment, sale or other disposition of the membership interests by Agent pursuant to the Pledge Agreement or other Financing Documents in connection with the exercise of Agent’s rights and powers shall be valid and effective for all purposes, including, without limitation, under Sections 18-702 and 18-704 of the Delaware Limited Liability Company Act and this Agreement, to transfer all right, title and interest of the applicable Member hereunder to Agent or any other Person (each a “Transferee”), including, without limitation, the rights to participate in the management of the business and the business affairs of the Company, to share profits and losses, to receive distributions and to receive allocation of income, gain, loss, deduction, credit or similar item, and such Transferee shall be a Member of the Company, with all rights and powers of a Member. Such assignment shall not constitute an event of dissolution or cause the termination of the Company under this Agreement. Further, neither Agent nor any such Transferee shall be liable for the obligations of the Member assignor to make contributions. Any limitations contained in this Agreement inconsistent with the provisions of the Pledge Agreement or this Article shall be deemed waived, void and of no further force and effect until all of the Obligations (as defined in the Pledge Agreement) have been fully and indefeasibly paid. The Member approves the foregoing and agrees that no further approval shall be required for the exercise of any rights or remedies under the Pledge Agreement or other Financing Documents.

21. Inurement. This Agreement shall be binding on, and inure to the benefit of, all parties hereto, their successors and assigns to the extent, but only to the extent, that assignment is made in accordance with, and permitted by, the provisions of this Agreement.

22. Severability of Provisions. Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

23. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

24. Amendments. This Agreement may be amended from time to time by a written agreement executed by the Member.

25. Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of Delaware (without regard to its conflicts of laws principles), all rights and remedies being governed by said laws.

26. Construction. Whenever the context requires, references in this Agreement to the singular number shall include the plural, and words denoting gender shall include the masculine, feminine and neuter. The recitals above and the schedules attached hereto are true, correct and complete in all respects and are hereby made a part of this Agreement and are deemed incorporated herein in full.

27. Headings. The headings in this Agreement are for convenience only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions.

28. Waiver. The failure of any party to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Agreement shall not prevent a subsequent act that would have originally constituted a violation from having the effect of an original violation.

29. Cumulative Remedies. The rights and remedies provided under this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right of such party to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

30. Notices. Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed by registered or certified mail, return receipt requested, postage prepaid, or delivered to a recognized overnight courier service with guaranteed next day delivery or sent by telecopy, electronic mail or other similar form of rapid transmission (with confirmation received), and shall be deemed to have been duly given upon receipt (a) in the case of the Company, to:

c/o LaVie Care Centers, LLC
800 Concourse Parkway S.
Maitland, FL, 32751
Attention: Daniel Dias
Chief Corporate Counsel
Consulate Health Care
Phone: 407.571.1550

With a copy to:

c/o LaVie Care Centers, LLC
3500 Lenox Rd, Suite 510
Atlanta, GA 30326
Attn: Asset Management – LaVie Portfolio
Facsimile: 770.754.3085

With a copy to:

c/o LaVie Care Centers, LLC
3500 Lenox Rd, Suite 510
Atlanta, GA 30326
Attn: Compliance
Facsimile: 770.754.3085

(b) in the case of any member of the Company, to such member at its address as listed on **Schedule A** and (c) in the case of either of the foregoing, at such other address as may be designated by written notice to the other party.


31. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. Any signature delivered by electronic or facsimile transmission shall be deemed to be an original signature page to this Agreement.

[Signature Page Follows]

{Signature Page to Second Amended and Restated Limited Liability Company Operating Agreement of LaVie Care Centers, LLC}

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Agreement as of the date first written above.

LV OPERATIONS II, LLC

By: 
Name: Scott Brown
Title: Manager

Schedule A

Sole Member

Name	Mailing Address	Percentage Interest
LV Operations II, LLC	3500 Lenox Road, Suite 510 Atlanta, GA 30326	100%

Schedule B

Definitions

“Affiliate” shall mean as to any Person any other Person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with such first Person.

“Control” (including, with correlative meanings, the terms “controlled by” and “under common control with”) means the ownership or control of securities possessing at least 50% of the voting power of all outstanding voting securities of a Person or the power to otherwise direct or cause the direction of the management, policies and/or decision making of such a Person, whether through the ownership of voting stock or similar rights or otherwise.

“Person” shall mean any individual, limited liability company, corporation, partnership, joint venture, trust, employee benefit plan or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person as the context may require.

EXHIBIT 3

Support Services Agreement

SUPPORT SERVICES AGREEMENT

FOR

11565 HARTS ROAD OPERATIONS LLC

THIS SUPPORT SERVICES AGREEMENT (this “**Agreement**”) is made and effective as of May 1st, 2023 (the “**Effective Date**”), by and between **NSPRMC, LLC d/b/a Coquina Care Partners**, a Florida limited liability company (“**Consultant**”), and **11565 Harts Road Operations LLC**, a Florida limited liability company (the “**Operator**”). Capitalized terms not defined at their first use shall have the meanings ascribed to them in Section 11.6.

RECITALS:

A. Operator provides healthcare services to residents, as well as supervisory, accounting and financial services (collectively, the “**Business**”), at the facility located at 11565 Harts Road, Jacksonville, FL 32218-3777 (the “**Property**”).

B. Operator desires to engage Consultant to provide advice and recommendations regarding operation of the Business and maintenance of the Property on the terms and conditions set forth herein; however

C. Consultant shall not have any authority or responsibility for the direct care and treatment of Operator’s residents, and Operator shall retain ultimate authority to make operational decisions with respect to the conduct of the Business and maintenance of the Property,

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual representations, covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Consultant and Operator agree as follows:

ARTICLE I ENGAGEMENT OF CONSULTANT

1.1 **Engagement.** Operator hereby engages Consultant to provide advice and recommendations regarding operation of the Business and maintenance of the Property pursuant to the terms and conditions set forth herein. Notwithstanding anything to the contrary herein, Operator shall retain ultimate control and direction over the Business and the Property, and Consultant shall have no authority to take any independent action with respect to Operator unless requested by Operator.

1.2 **Independent Contractor.** The parties hereto expressly acknowledge and agree that Consultant is at all times acting and performing under this Agreement as an independent contractor, and that no act, commission or omission by either Operator or Consultant will be construed to make or constitute the other its partner, principal, agent, joint venturer or associate.

1.3 **Ownership.** Operator will own and hold all licenses, permits and contracts obtained with respect to the Business, and shall be the “provider” within the meaning of all third-party contracts for the Business. Without limiting the generality of the foregoing, Operator shall to the extent allowed by law, own, hold or be a party to: (A) the Medicare provider number, (B) the Medicare provider agreement(s), (C) the Medicare certification, (D) the Medicaid provider number, (E) the Medicaid provider agreement(s), and (F) the Medicaid certification.

ARTICLE II TERM

This Agreement will commence on the Effective Date and shall continue in force for a one year period, unless an earlier termination is made effective pursuant to Section 7.1 hereof. Following the initial one-year term, this Agreement shall automatically renew for additional successive one-year renewal terms.

ARTICLE III RIGHTS AND DUTIES OF CONSULTANT

At Operator's request, Consultant will advise and provide support to the Operator as follows:

3.1 General.

(A) Necessary Resources and Time Devoted to Program. Consultant shall devote such resources and working time and attention to the Operator as reasonably necessary or desirable in order for Consultant to discharge its obligations under this Agreement.

(B) Operation of Business.

(i) Consultant will use reasonable commercial efforts to support the operation of the Business in accordance with the Applicable Requirements (as defined in Section 3.7), subject to Operator's limitations imposed hereunder or as otherwise directed by Operator. Consultant will provide the Operator with customary services and techniques typically employed by third-party consultants when advising similar facilities. Consultant shall, amongst other things, provide guidance regarding the provision of any care and specialty medical services required to be provided by the Operator; and provide guidance regarding staffing, accounting, billing, collection, rate setting, and general on-site administrative services performed by the Operator.

(ii) Consultant will not do, or permit anyone acting under its authority to do, any act or thing which would reasonably be expected to: (x) result in a cancellation of the insurance on the Operator or the Property, (y) cause or permit any waste of the Property (ordinary wear and tear excepted) or any part thereof, or (z) cause the Operator to lose licensure or the right to participate in Medicare, Medicaid, or any other government, public or private third-party payment or reimbursement program.

(C) Engagement of Third Parties. Subject to the requirements of Section 11.3(B)(ii), Consultant may delegate or subcontract any of its responsibilities hereunder to one or more third parties, including without limitation engaging third-party consultants and subcontractors.

3.2 Employees.

(A) At Operator's request, Consultant will advise Operator regarding the recruitment, hiring, promotion, discharge, and replacement process for all Employees. However, Consultant will not make any decisions regarding the recruitment, hiring, promotion, discharge, or replacement of any Employees. All such determinations shall be Operator's sole responsibility, and shall remain under Operator's sole control and direction.

(B) All employees who provide services exclusively to the Operator shall be employees of Operator, and the compensation and benefits of all such employees who provide services exclusively to the Operator (collectively the "Employees") shall be an Operator Expense (as defined in Section 11.6).

(C) To the extent consented to by Operator, Employees may provide services to other facilities operated by Affiliates of Operator to whom Consultant provides support services. The compensation and benefits of such employees shall be allocated among the Operator and the facilities operated by such Affiliates on a pro rata basis (based on the hours spent working for the Operator and the other facilities) as an Operator Expense.

(D) Consultant shall provide advice and support to Operator with respect to Operator's payment of its federal, state and local employment and other taxes with respect to all Employees. All such taxes shall be Operator Expenses.

(E) Consultant shall advise and support Operator with respect to compliance with Operator's workers' compensation insurance program. All expenses related thereto (including, without limitation, the cost of workers compensation insurance premiums) shall be Operator Expenses.

3.3 Information Technology Services. Consultant will provide support for Operator's information technology services, and upon Operator's request, will arrange for necessary services to be provided to Operator. Consultant will assist as requested with the design, programming and implementation of all such services, as well as any necessary training of employees. All technology hardware located on the Property (including computers, monitors, computer accessories, printers, copy machines, modems, wiring, etc.) used by the Operator will remain the sole and exclusive property of Operator, unless otherwise agreed to by Operator. All direct, out-of-pocket fees, expenses and charges incurred in connection with this Section 3.3 shall be Operator Expenses. To the extent that Consultant provides software to be used by the Operator, Consultant shall retain ownership of such software.

3.4 Labor and Employment Matters. Consultant will provide guidance to Operator in handling all significant employee relations matters, union and non-union, and to the extent requested by Operator, will assist with negotiating with any labor union lawfully entitled to represent the Employees, provided that any resolution or agreement resulting therefrom must first receive Operator Approval, and the Operator shall be the only Person authorized to execute the same. All direct out-of-pocket fees and expenses of outside professionals in conducting such negotiations shall be Operator Expenses.

3.5 Concessionaries, etc. As requested by Operator, Consultant shall support Operator's contracting process, and shall advise and assist Operator in negotiating and consummating contracts or arrangements with concessionaires, licensees, tenants, and other intended users of the Property. All direct, out-of-pocket fees, expenses and charges incurred in connection therewith shall be Operator Expenses. Any revenue derived from concessions, licenses or tenants will inure to the Operator.

3.6 Ancillary Services, Utilities, etc. As requested by Operator, Consultant will assist Operator in negotiating and entering into such contracts in the name of and for the account of Operator as may be deemed necessary or advisable for the furnishing of all ancillary services, utilities, concessions, supplies and other services as may be needed from time to time for the maintenance of the Property and the operation of the Business.

3.7 Repairs.

(A) At Operator's request, Consultant will support the contracting process for any proper repairs, replacements, additions and improvements in and to the Property and the furnishings and equipment thereof as necessary in order to keep and maintain the same in good repair, working order and condition, and outfitted and equipped for the proper operation thereof in accordance with:

- (i) general industry standards;

(ii) all applicable statutes, ordinances, laws, rules, regulations, or orders of any Governmental Authority over the Operator or the Property;

(iii) the terms and conditions of any lease, mortgage or other financing arrangement identified in writing to Consultant;

(iv) all applicable requirements of insurers and insurance policies related to the Operator or the Property; and

(v) Medicare, Medicaid and any other governmental, public or private payment or reimbursement program (subsections (i) through (vi) above collectively, the “**Applicable Requirements**”).

(B) Notwithstanding the foregoing, except to the extent set forth in Section 5.5 and except as otherwise specifically agreed in writing by Consultant, no landlord or Property Mortgagee shall have any rights whatsoever under this Agreement.

(C) Operator shall not enter into any new agreements that would materially expand Consultant’s obligations hereunder without Consultant’s consent.

(D) All direct, out-of-pocket fees, expenses and charges incurred in connection with this section shall be Operator Expenses.

(E) Notwithstanding the foregoing, Consultant shall have no obligation or liability hereunder if sufficient Operator Funds are not available for Consultant to perform its duties hereunder.

3.8 Licenses, Permits and Certifications.

(A) Consultant will provide guidance and assistance as requested by Operator in timely obtaining and maintaining all necessary bed allocations, licenses, permits, certifications and approvals required in connection with the operation of the Business and maintenance of the Property to comply with all Applicable Requirements.

(B) If Consultant is required by law to obtain any license or permit in its name, Consultant will, with Operator Approval, obtain and maintain such license or permit in its name. Operator will timely cooperate with Consultant in applying for, obtaining, and maintaining any such required licenses and permits.

(C) Consultant will not take any action or fail to take any action which would reasonably be expected to result in or cause any Governmental Authority having jurisdiction over the Operator to institute any Proceeding for the suspension, rescission or revocation of any necessary Operator license, permit or approval; or that would adversely affect the Operator’s right to accept and obtain payments under Medicare, Medicaid and any other government, public or private third-party payment or reimbursement programs.

(D) As requested by Operator, Consultant will assist with the preparation and submission of applicable plans of correction to the Licensing Authority and any other applicable state survey/certification agencies.

(E) All direct, out-of-pocket fees, expenses and charges incurred in connection with this Section 3.8 shall be Operator Expenses.

3.9 Governmental Notices. Consultant will promptly provide to Operator as and when received by Consultant copies of all notices, reports and correspondence from any Governmental Authority that assert material deficiencies or charges against the Operator or that otherwise relate to any suspension, revocation, or other action materially adverse to any right to receive payment from Medicare, Medicaid, or any other government, public or private third-party payment or reimbursement program or materially adverse to any approval, authorization, certificate, determination, license or permit required or necessary to operate.

3.10 Support of Clinical, Quality, and Operating Standards.

(A) At Operator's request, Consultant will develop and support Operator's implementation of standards, procedures and policies for admitting, discharging and treating residents, for quality assurance, for charging residents for services, and for collecting the charges from residents or third parties.

(B) Any standards, procedures and policies developed by Consultant for Operator will generally be substantially the same as standards, procedures and policies prevailing in the industry. Consultant shall timely provide to Operator all necessary updates and amendments to such standards, procedures and policies. Notwithstanding anything to the contrary herein, all such standards, procedures and policies developed by Consultant shall be and remain the sole and exclusive property of Consultant. Nothing herein shall preclude Consultant from implementing or using the standards, procedures and policies for itself or any other client. Operator shall have the right to use any such Consultant standards, procedures and policies only for its own internal use on a royalty-free basis and only during the term of this Agreement.

(C) All direct, out-of-pocket fees, expenses and charges incurred in connection with this Section 3.10 are Operator Expenses.

3.11 Insurance.

(A) At Operator's request, Consultant will assist Operator with soliciting, applying for, obtaining, and maintaining on Operator's behalf such policies of insurance as Operator deems appropriate. All fees, expenses and charges incurred in connection with this Section 3.11 shall be Operator Expenses.

(B) All liability insurance policies will be carried in the name of Operator and Consultant and any losses payable under such policies will be payable to Operator and Consultant, as their respective interests may appear. If instructed by Operator, the landlord of the Property, landlord's lender, and any Property Mortgagee designated by Operator shall be named as mortgagee and additional insured on the property insurance and the comprehensive general liability insurance policies.

(C) Consultant and any officer, partner, director, shareholder, or employee of Operator and/or Consultant, to the extent permissible, will be named as additional insureds under any policy of (i) property insurance or fire and extended coverage insurance, (ii) comprehensive general liability insurance, (iii) professional liability insurance, (iv) auto liability insurance, (v) workers' compensation insurance, (vi) umbrella liability insurance, and (vii) crime insurance coverage.

3.12 Taxes and Encumbrances.

(A) Consultant will provide advice and support to Operator with respect to Operator's payment of all taxes, assessments and charges of every kind imposed upon any entity owning the Property by any Governmental Authority, including interest and penalties thereon (collectively, "**Taxes**"), when due from Operator Funds, prior to incurring interest, penalties or fees thereon, and subject to the terms of any lease, mortgage or other financing arrangement.

(B) Consultant will not create or suffer to be created any lien, encumbrance or charge against the Property, except with Operator Approval, or as otherwise permitted herein.

(C) All direct, out-of-pocket fees, expenses and charges incurred in connection with this Section 3.12 shall be Operator Expenses.

3.13 Legal Actions: Contests.

(A) As requested by Operator, Consultant will recommend counsel, and with Operator Approval, will retain counsel on behalf of Operator to prosecute or defend any and all legal actions or Proceedings necessary or desirable for the Operator.

(B) Any counsel to be retained by Consultant, on behalf of Operator, for any reason will be subject to Operator Approval.

(C) All direct, out-of-pocket fees, expenses and charges incurred in connection with this Section 3.13 shall be Operator Expenses.

3.14 Billing and Collection.

(A) Consultant will advise and support the Operator as requested with respect to issuance of invoices for services furnished by the Operator; collection of accounts receivable and monies owed to the Operator; maintenance of accounting, billing, resident and collection records; and preparation and submission of insurance, Medicare, Medicaid and any and all other necessary or desirable applications, reports and filings related to revenue production.

(B) Consultant will provide support as requested by Operator for the processing of all third-party billing and appeals for services provided by the Operator, including without limitation, exhaustion of all applicable administrative proceedings or procedures, adjustment and denials by any Governmental Authority or their fiscal intermediaries and other third-party payors.

(C) Upon Consultant's request, Operator shall timely execute any necessary or desirable Medicare, Medicaid, and insurance applications, reports and filings.

3.15 Collection and Disbursement of Funds.

(A) Consultant and Operator will deposit into an account in the name of Operator all monies received by Operator in connection with the operation of the Business, or that are received by Consultant for and on behalf of Operator (the "**Operator Funds**").

(B) If directed by Operator, Consultant shall establish and utilize a cash management system in accordance with procedures, systems and controls as determined by Operator.

(C) In the event the Applicable Requirements require the deposit of monies from Medicare and/or Medicaid in an account solely owned and controlled by Operator, and with respect to which Consultant has no withdrawal or disbursement rights, then Operator shall establish a separate account for the deposit of such funds with a standing instruction to sweep, on a daily basis, the funds deposited in such account to one or more of the accounts of Operator established pursuant to this Section 3.15.

(D) Consultant shall have authority to access such accounts and will disburse and make payments from said accounts, as directed by Operator and on behalf of Operator, in the order of priority permitted under the Property's ground lease and loan financing obligations, including any intercreditor agreement entered into in connection therewith. Consultant hereby covenants that to the extent Consultant receives any funds attributable to Operator, or collects any funds on Operator's behalf, Consultant will deliver such funds to Operator promptly following Consultant's receipt of such funds.

(E) The covenants set forth in the foregoing Section 3.15 will survive the termination of this Agreement.

3.16 Payment of Expenses.

(A) As directed by Operator, Consultant shall pay all Operator Expenses from Operator Funds.

(B) Operator will pay directly (or reimburse Consultant promptly if Consultant advances funds for any Operator Expenses not paid from Operator Funds).

(C) Notwithstanding anything to the contrary herein, Consultant shall have no obligation to advance any funds hereunder if Operator Funds are unavailable.

(D) Except for Operator Expenses, all fees, expenses and charges incurred by Consultant in connection with its duties and obligations under this Agreement are for Consultant's account ("**Consultant Expenses**").

(E) Consultant will promptly reimburse the Operator for any Consultant Expenses paid by the Operator.

(F) Notwithstanding anything to the contrary provided herein, the Consultant's direct, out-of-pocket expenses shall not include an allocation of costs and salaries of the Consultant's home office personnel.

3.17 Accounts Payable. As requested by Operator, Consultant will process and pay on behalf of Operator such accounts payable for Operator Expenses as Operator determines necessary or desirable in order to efficiently administer the affairs of the Operator. Consultant will pay the Operator's accounts payable and other obligations in accordance with their respective payment terms from Operator Funds. Consultant does not assume any of Operator's obligations or liabilities by virtue of this authorization and is not obligated to advance any of its own funds on behalf of Operator.

3.18 Separateness. Consultant will:

(A) maintain records and books of account separate from those of Operator;

(B) conduct its own business in its own name and not in the name of Operator;

- (C) maintain financial statements separate from Operator; and
- (D) hold itself out as an entity separate from Operator.

3.19 Budgets. Consultant will advise and support Operator as requested with preparation of necessary budgets and backup information supporting such budgets.

3.20 Books and Records.

(A) Consultant, as requested by Operator and on behalf of Operator, will assist with the keeping of full and accurate books of account, resident medical records and such other records reflecting the results of operation in the manner and for the periods as required by all Applicable Requirements. In connection therewith, Consultant will, to the extent requested by Operator, provide or contract for data processing required to maintain the financial and accounting records of the Operator, and provide advice and assistance with the following:

- (i) maintenance of resident billing records for all accounts receivable for the Operator, and collection of same;
- (ii) maintenance of all records for accounts payable and the payment of same from Operator Funds;
- (iii) maintenance of all payroll functions, the payment of all withholding taxes from Operator Funds, and the issuance of W-2 forms to all Employees;
- (iv) preparation of all third-party insurance forms for the Operator;
- (v) preparation of all reports and returns for all sales, use, and occupancy taxes for the Property and Operator, to the extent applicable;
- (vi) maintenance of a complete general ledger recording and summarizing the transactions of the Operator; and
- (vii) maintenance and preparation of all records necessary for Medicare and Medicaid cost reports.
- (viii) The cost of any requested data entry, data processing, and maintenance of the books and records of the Operator hereunder shall be an Operator Expense. Data processing supplies used by the Operator and WAN charges for the Operator shall also be Operator Expenses.
- (ix) Financial Statements and Operational Reports. At the request of Operator and at the frequency requested by Operator, Consultant will assist Operator with preparing and delivering such financial statements, operational reports, statistics and other Operator information that Operator is required to provide to its landlords, lenders, and operational management teams, which may include, without limitation:
 - (x) census and resident mix information, staffing reports, incident reports, and quality indicator reports;

(xi) unaudited financial statements of the Operator as certified by Consultant consisting of a balance sheet and statement of profit and loss prepared in accordance with GAAP for such calendar month and the year-to-date, and a comparison and reconciliation to the budget, and having attached thereto a computation of the Consulting Fee (as determined under Section 5.1 hereof) for such preceding month and year-to-date; provided, however, notwithstanding the foregoing, upon the mutual consent of Operator and Consultant (and, if required, upon the consent of Operator's lender and the landlord of the Property) and for the purpose of providing non-distortive operating results to Operator, Consultant may furnish or arrange for the preparation of such statements not in accordance with GAAP;

(xii) accounts receivable report in sufficient detail to show amounts due from each class of customer-mix by account age classifications;

(xiii) any financial statements required by a landlord or lender. If required by a landlord or lender, such annual financial statements will be audited and certified by an independent public accounting firm of Operator's choice (at Operator's expense) and Consultant agrees to fully cooperate with Operator, any such accounting firm and their designees or representatives in connection with any audit and certification of financial statements. In addition, Consultant shall reasonably cooperate with Operator with respect to preparation of consolidated and consolidating financial statements for the Operator and for its Affiliates to whom Consultant provides similar support services, which shall include a balance sheet, a statement of profit and loss, and a statement of cash receipts and disbursements for the Operator and all such other facilities operated by Operator's Affiliates for the fiscal year then ended.

(xiv) A copy of any Medicare and Medicaid cost reports prepared by Consultant at the Operator's request.

(B) Consultant further agrees to (i) provide Operator with information regarding all alterations and general maintenance activities that Consultant has engaged in or intends to engage in with respect to the Property at Operator's request and (ii) provide consultation at Operator's request with respect to matters relating to ongoing alterations to, and general maintenance of, the Property.

(C) Consultant or its designee has the right to enter upon any part of the Property, without notice to Operator, for the purposes of examining or inspecting the Property or examining or making copies of books and records of the Operator, provided that such inspection shall not violate applicable patient privacy laws or unreasonably interfere with the operation of the Business.

(D) Consultant may delegate its rights under this Section 3.20 to an Affiliate or one or more third parties (including engaging third-party consultants and professionals such as clinical experts, billing and collection experts and risk managers) to review, audit and inspect all aspects of operation of the Business, including, without limitation, review of compliance with the Applicable Requirements and performance of pre-survey audits or mock surveys.

ARTICLE IV RIGHTS AND DUTIES OF OPERATOR

4.1 Cooperation with Consultant. Operator will fully and timely cooperate with Consultant in supporting the operation of the Business and performing Consultant's services hereunder. Operator will fully and timely provide Consultant with the necessary equipment, approvals, funds and resources to enable Consultant to fully and timely perform the services described herein.

4.2 Engagement of Consultants. Operator may engage or hire any consultant, professional or expert to perform Operator's obligations and rights under the Agreement or to perform other services related

to the Business or the Property. All fees, expenses and charges incurred in connection with this Section 4.2 shall be Operator Expenses. Any such consultant, professional or expert shall be subject to the confidentiality and cooperation and other obligations of Operator hereunder; provided, however, Operator shall have no liability for any violation or failure to comply with such obligations by any such consultant, professional or expert.

ARTICLE V COMPENSATION

5.1 Consulting Fee. In consideration for the services rendered by Consultant under this Agreement, Consultant will be paid a monthly fee equal to five percent (5%) of Adjusted Gross Revenues (as defined in Section 5.2 below) realized by Operator each month during the Term (such sum is the "Consulting Fee"). Upon providing advance notice to Operator, Consultant shall have the option, in its sole discretion, to increase the Consulting Fee to a maximum of 5.5% of Adjusted Gross Revenues realized by Operator each month during the Term.

5.2 Adjusted Gross Revenues. For purposes of determining the Consulting Fee, "Adjusted Gross Revenues" for any monthly period will be determined on the basis of all revenues derived by the Business during such period as determined in accordance with GAAP, consistently applied, excluding the following:

- (A) federal, state and municipal excise, sales, and use taxes collected directly from residents as a part of the sales prices of any goods or services;
- (B) proceeds of any life or casualty insurance policies, condemnation or eminent domain;
- (C) gains or losses arising from the sale or other disposition of capital assets;
- (D) any reversal or accrual of any contingency or tax reserve;
- (E) interest earned on sinking funds, bond funds, etc., originally and specifically formed as a requirement of any bond issue utilized to finance any part of the Business;
- (F) revenue from other interest earned, sub-lease rent;
- (G) third-party contractual adjustments accrued during the Term of this Agreement;
- (H) disallowance for reimbursement claims accrued during the Term of this Agreement;
- (I) tax refunds;
- (J) resident trust accounts;
- (K) miscellaneous revenues arising from dividends, discounts, or refunds related to items previously expensed (unless recorded as expense deductions), and bequests, gifts or similar donations; and
- (L) Implicit price concessions derived by historical cash collection estimates.

The proceeds of business interruption insurance or proceeds as a result of Medicare and Medicaid audits shall be included in Adjusted Gross Revenues, however, funds required to be repaid as a result of Medicare and Medicaid audits shall be deducted from Adjusted Gross Revenues.

5.3 Consulting Fee Reconciliation. Consultant shall prepare, for Operator's review and approval, an annual report ("**Consulting Fee Report**") demonstrating the calculation of the amount of the Consulting Fee paid to Consultant (the "**Estimated Consulting Fee**") and the actual amount payable to Consultant under this Agreement as of such date, as calculated after the Adjusted Gross Revenue has been finally determined (the "**Actual Consulting Fee**"). . In the event the annual total Estimated Consulting Fees paid by Operator exceed the annual Actual Consulting Fees due, Consultant shall refund to Operator the amount of such excess. If the total Estimated Consulting Fees paid by Operator are less than the total annual Actual Consulting Fees due, Operator shall pay to Consultant the amount of the deficiency.

5.4 Subordination of Consulting Fee. Any provision in this Agreement to the contrary notwithstanding, Consultant hereby agrees that the payment of the Consulting Fee shall be limited and subordinated upon a default of, and in accordance with the terms of, (first) loan agreements entered into with Operator's institutional lender(s), their successors or assigns, and (second) the Property's lease requirements. In the event the payment of any Consulting Fees are subordinated hereunder, such fees shall be deferred and accrued without interest and shall be paid in full in a subsequent period as soon as the forbearance conditions are no longer applicable.

ARTICLE VI CONFIDENTIALITY

6.1 Confidentiality.

(A) Consultant agrees to hold as confidential any proprietary information it obtains from Operator, and any information regarding the operation and maintenance of the Property and the Business, including, without limitation, identities or lists of residents, residents' family members, doctors, nurses or other providers of services, suppliers, subcontractors, as well as all costs and expenses of operation and maintenance. Consultant shall not disclose to others (except as required by law or regulation for maintenance of licenses and certifications or pursuant to engagements of professional consultants or subcontractors), or use for itself, any proprietary information obtained by Consultant during the performance of services hereunder, except as otherwise provided by this Agreement.

(B) Operator agrees to hold as confidential any proprietary information it obtains from Consultant, and any information regarding policies, procedures, business methods or other confidential information of Consultant. Operator shall not disclose to others (except as required by law or regulation for maintenance of licenses and certifications), or use for itself, any proprietary information obtained by Operator from Consultant.

(C) Upon expiration or termination of this Agreement, Consultant will return to Operator all original documents and all copies thereof, except for one copy which Consultant may maintain for record purposes only, which relate in any way to the performance of services hereunder, and the operation and maintenance of the Property and the Business, including, without limitation, personnel records, resident records, purchase orders, material receiving reports, checks, vouchers, and all bills of account, however maintained.

(D) Upon expiration or termination of this Agreement, Operator will return to Consultant all original documents and all copies thereof, except for one copy which Operator may maintain for record purposes only, and cease using the intellectual property contained therein, which relate in any

way to the policies, procedures, business methods or other confidential information of Consultant which have been provided, directly or indirectly, hereunder or in connection herewith.

(E) The restriction on non-use and non-disclosure will continue to apply for a period of two years after expiration or termination of this Agreement or for such longer period as required by applicable law.

ARTICLE VII TERMINATION RIGHTS

7.1 Termination. This Agreement will automatically terminate effective upon the termination of Operator's rights to operate the Business at the Property, including pursuant to the termination or expiration of the Operator's sublease or ground lease of the Property, as applicable.

(A) Termination by Consultant. Consultant may terminate this Agreement under the following circumstances:

(i) Operator fails to pay to Consultant, when due, the Consulting Fee or any other fees or payments referred to in this Agreement (which failure to pay is through no fault of Consultant) and such default continues for a period of ten days after written notice thereof by Consultant;

(ii) Operator fails to maintain or renew those governmental licenses or approvals necessary for the Operator to provide services or items as contemplated in this Agreement, or necessary to continuously qualify the Operator for Medicare, Medicaid and any other government, public or private third-party payment or reimbursement programs for which it is eligible;

(iii) Operator ceases operation for any period;

(iv) Operator fails to keep, observe or perform any other covenant, agreement, term or provision of this Agreement required to be kept, observed or performed by Operator and such default continues for a period of thirty days after written notice thereof by Consultant, or if cure is not possible within thirty days, such default continues beyond the date that cure is reasonably practicable as determined by Consultant.

(B) Termination for Convenience. Operator and Consultant shall each have the right to terminate this Agreement without cause at any time by providing the other party thirty days' prior written notice, and such termination will not require the payment of any \ termination fee to the non-terminating party in any form whatsoever.

7.2 Surviving Rights upon Termination. If either party exercises its option to terminate this Agreement, each party will account for and pay to the other all sums due and owing pursuant to the terms of this Agreement promptly after the effective date of termination. All other rights and obligations of the parties under this Agreement will terminate, except for the rights and obligations of any party under Section 3.16, Section 7.2, and Article VIII hereof and the rights and obligations of any party that by the terms of this Agreement expressly survive termination.

ARTICLE VIII INDEMNIFICATION

8.1 Indemnification of Operator by Consultant. Consultant agrees to indemnify and hold harmless Operator, its Affiliates, and their directors, officers, employees, representatives, and agents from,

against, for and in respect of any and all penalties, fines, interest and monetary sanctions, losses, obligations, liabilities, demands, deficiencies, costs and expenses, including, without limitation, reasonable attorneys' fees and other costs and expenses incident to any investigation, claim or Proceeding sustained by any of them arising out of third party claims that are caused by the gross negligence, willful misconduct or fraud of Consultant in connection with a material breach of the Agreement ; provided, however, that Consultant's obligation to indemnify Operator shall not extend to any civil monetary penalties imposed by CMS, any Medicare cost disallowances, or any Medicare, Medicare or other governmental fines or penalties.

8.2 Indemnification of Consultant by Operator. Operator agrees to indemnify and hold harmless Consultant, and its directors, officers, employees, representatives, and agents from, against, for and in respect of any and all penalties, fines, interest and monetary sanctions, losses, obligations, liabilities, demands, deficiencies, costs and expenses, including, without limitation, reasonable attorneys' fees and other costs and expenses incident to any investigation, claim or Proceeding sustained by any of them arising out of (i) a material breach of the Agreement or (ii) any claim asserted against any of them in connection with the operations of the Business including, without limitation, any claims related to professional liability or resident care; provided however, that Operator's obligation to indemnify Consultant shall not extend to any gross negligence, willful misconduct or fraud of Consultant. .

ARTICLE IX HIPAA OBLIGATIONS

9. Acknowledgment of HIPAA Obligations. The parties agree to execute the Business Associate Agreement (attached hereto as Exhibit A) simultaneously with the execution of this Agreement. The parties agree to comply with the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as well as the HIPAA Security and Privacy regulations pursuant to Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), including Sections 164.308, 164.310, 164.312 and 164.316 of Title 45 of the Code of Federal Regulations, if and to the extent applicable.

ARTICLE X SUBORDINATION

(A) This Agreement is subject and subordinate to any Property Mortgage, ground lease, or loan agreement with Operator's lender, to all advances made or hereafter to be made thereunder and to all renewals, modifications, consolidations, replacements and extensions thereof and substitutions therefore. This clause is self-operative and no further instrument of subordination is required by any Property Mortgage, ground lessor or lender.

(B) Consultant agrees that it will not withhold or delay its consent unreasonably to any amendment of this Agreement reasonably required by a Property Mortgagee or ground lessor, and Consultant shall be deemed to have withheld or delayed its consent unreasonably if the requested amendment does not (i) alter the economic terms of this Agreement, (ii) diminish the rights of Consultant under this Agreement or (iii) increase the obligations of Consultant under this Agreement.

(C) In the event the payment of any Consulting Fees are subordinated hereunder, such fees shall be deferred and accrued without interest and shall be paid in full in a subsequent period as soon as the forbearance conditions are no longer applicable.

ARTICLE XI MISCELLANEOUS PROVISIONS

11.1 No Partnership or Joint Venture. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between Operator, its successors, or assigns, on the one part and Consultant, its successors, or assigns, on the other part.

11.2 Limitation of Liability. No advisor, trustee, director, officer, employee, accountant, attorney, beneficiary, shareholder, partner, member, participant or agent of or in Operator or Consultant or any of their Affiliates providing services hereunder shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any existing or future amendment or amendments to any of the foregoing. Operator and Consultant and their respective successors and assigns and, without limitation, all other Persons, shall look solely to Operator's or Consultant's, as applicable, assets for any payment or performance, and Operator and Consultant hereby waive any and all such personal liability except as set forth herein. The limitations of liability provided in this Section 11.2 are in addition to, and not in limitation of, any limitation on liability applicable to Operator or Consultant, as applicable, provided by law or by any other contract, agreement or instrument.

11.3 Government Regulations.

(A) In accordance with their obligations under this Agreement, Operator will operate and maintain the Property and the Business in compliance with the Applicable Requirements. In accordance with and subject to its obligations under this Agreement, Consultant will support the Operator in compliance with the Applicable Requirements. If for any reason any term or condition of this Agreement is found to be invalid or contrary to government laws, rules, regulations or orders, Operator and Consultant agree to immediately negotiate an amendment to this Agreement to modify such term or condition to comply with such government law, rule, regulation, order or program. Notwithstanding anything to the contrary contained herein, if any such amendment to the Agreement required by the Applicable Requirements results in a material and adverse modification of the economics of the arrangement to the detriment of a party, then such adversely affected party may elect to terminate this Agreement on thirty days' prior written notice to the other party.

(B) In the event, and only in the event, that 42 U.S.C. Section 1395x(v)(1)(I) is applicable to this Agreement, Operator and Consultant agree as follows:

(i) until the expiration of four years after the furnishing of such services pursuant to this Agreement, Consultant shall make available, upon written request to the Secretary of the federal Department of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement, and books, documents and records of Consultant that are necessary to certify the nature and extent of the costs incurred pursuant to this Agreement.

(ii) if Consultant carries out any of the duties of this Agreement through a subcontract, with a value or cost of \$10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary of the federal Department of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of the costs incurred pursuant to such subcontract.

11.4 Assignment. Neither party may assign this Agreement without the written consent of the other party hereto, which consent may be withheld or conditioned in such other party's sole and absolute discretion.

11.5 Governing Law; Dispute Resolution. This Agreement is made under, and will be construed and enforced in accordance with, the laws of the State of Florida, without giving effect to principles of conflicts of law. The parties mutually consent and submit to the jurisdiction of the federal and/or state courts of Orange County, Florida, and any action concerning this Agreement or related matters shall only be brought by the parties in federal or state court with appropriate subject matter jurisdiction in Orange County, Florida. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO DEMAND A TRIAL BY JURY FOR ANY ACTION OR PROCEEDING ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE RELATIONSHIP OF THE PARTIES. THIS WAIVER EXTENDS TO ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY ARISING FROM ANY SOURCE, INCLUDING BUT NOT LIMITED TO THE CONSTITUTION OF THE UNITED STATES, THE CONSTITUTION OF ANY STATE, COMMON LAW OR ANY APPLICABLE STATUTE OR REGULATION. EACH PARTY HEREBY ACKNOWLEDGES THAT IT IS KNOWINGLY AND VOLUNTARILY WAIVING THE RIGHT TO DEMAND TRIAL BY JURY.

11.6 Certain Definitions. When used in this Agreement, the following terms have the respective meanings specified therefore below. Other capitalized terms used in this Agreement shall have the respective meanings ascribed to such terms as such terms are introduced in this Agreement.

(A) "Affiliate" shall mean, when used with reference to a specified Person, any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, the specified Person.

(B) "Business Day" means any day other than a Saturday, Sunday or holiday on which national banking associations in the state in which the Property is located are authorized or required to be closed.

(C) "Control", "Controls" and "Controlled" shall mean either the possession, directly or indirectly, of the power to direct or cause the direction of the operations and policies of a Person, whether through ownership of voting securities, by contract, or otherwise.

(D) "Operator Expenses" means those fees, expenses and charges incurred by Operator or Consultant for Operator's account.

(E) "Property Mortgage" means any mortgage, deed of trust or other security agreement, as the same may be modified, amended, restated or refinanced, that is now or hereafter a lien upon (i) the interest of the owner of the real property on which the Property is located or the Property, or (ii) Operator's interest in any or all of the real property on which the Property is located or the Property, as amended from time to time.

(F) "Property Mortgagee" means the secured party to a Property Mortgage, its successors and assigns, any servicer acting on behalf of a Property Mortgagee with respect to a Property Mortgage and, if any Property Mortgage is deposited with a trust, then the trustee acting on behalf of the certificate holders of such trust.

(G) "Force Majeure" means war, insurrection, declarations of national emergencies, strikes or other work stoppages, acts of God or other cases or circumstances beyond the control of Operator

or Consultant; provided, however, that inclement weather and financial inability to perform shall not be included within the definition of Force Majeure.

(H) “GAAP” means generally accepted accounting principles, as in effect in the United States of America on the date hereof, as same may be modified from time to time by Operator or by Consultant through written notice to Operator, provided that no such change by Consultant shall result in the provision of materially misleading information to Operator.

(I) “Governmental Authority” means any United States federal, state, local, possession or foreign governmental, regulatory or administrative authority, agency or commission, or any political subdivision thereof, or any court, tribunal or arbitral body (whether governmental or not).

(J) “Licensing Authority” means the department or division of the state in which the Property is located that issues and supervises licenses for the Operator, makes Medicaid bed allocations and enters into Medicaid contracts.

(K) “Medicaid” means any state program pursuant to which healthcare providers are paid or reimbursed for care given or goods afforded to indigent individuals and administered pursuant to a plan approved by the Centers for Medicare and Medicaid Services under Title XIX of the Social Security Act, as amended.

(L) “Medicare” means any medical program established under Title XVIII of the Social Security Act, as amended, and administered by the Centers for Medicare and Medicaid Services.

(M) “Operator Approval” means the approval of Operator in its sole and absolute discretion unless otherwise specifically provided in this Agreement with respect to a particular matter.

(N) “Person” means any individual, sole proprietorship, joint venture, corporation, business unit, partnership, governmental body, regulatory agency or other entity of any nature.

(O) “Primary Intended Use” means licensed skilled nursing facility or similar senior living facility, and any ancillary use.

(P) “Proceeding” means any pending or completed action or proceeding, whether civil, criminal, administrative or investigative, any appeal in such an action or proceeding, and any inquiry or investigation that could lead to such an action or proceeding.

11.7 Headings, etc. The article, section and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope of intent of any provision of this Agreement.

11.8 Enforceability. Should any provision of this Agreement be unenforceable as between the parties, such unenforceability will not affect the enforceability of the other provisions of this Agreement.

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

11.10 Entire Agreement, Amendment and Waiver. This Agreement (including any exhibits attached hereto) constitutes the final and entire agreement between the parties relating to its subject matter and supersedes any and all prior or contemporaneous letters, memoranda, representations, discussions, negotiations, understandings and agreements, whether written or oral, with respect to such subject matter,

all of the same being merged herein. This Agreement may be amended, modified or supplemented only by a writing that refers explicitly to this Agreement and that is signed by authorized representatives on behalf of both parties. No waiver will be implied from conduct or failure to timely enforce any rights. No waiver will be effective unless in a writing signed on behalf of the party against which the waiver is asserted.

11.11 Notices. All notices, reports, requests, approvals and other communications by either party to the other required or permitted under this Agreement must be in writing and will be deemed to have been duly given upon confirmed receipt or refusal of receipt if sent by certified mail, return receipt requested, postage prepaid, or overnight delivery with proper address as indicated below. Until otherwise provided by the respective parties via written notice given in accordance with the requirements of this paragraph, all notices, reports, requests, approvals and other communications to each of them shall be addressed as follows:

To Operator: 11565 Harts Road Operations LLC
11565 Harts Road
Jacksonville, FL 32218-3777
Attention: Executive Director

To Consultant: NSPRMC, LLC d/b/a Coquina Care Partners
3920 Rosewood Way
Orlando, FL 32808-1033
Attention: Legal Department

11.12 Force Majeure. Whenever a period of time is herein prescribed for action to be taken by either party hereto, such party shall not be responsible for, and there shall be excluded from the computation for any such period of time, any delays due to Force Majeure.

11.13 Attorneys' Fees. In the event that any action is instituted in connection with any controversy arising out of this Agreement, then the prevailing party will be entitled to recover, in addition to costs and expenses, such sum as the court may judge reasonable as attorneys' fees in such action and in any appeal of its results.

11.14 Expiration of Time Periods. In the event that any date specified herein is, or that any period specified herein expires on, a Saturday, a Sunday, or a holiday, then the date or the expiration date of such period, as the case may be, will be extended to the next succeeding Business Day.


11.15 Third Party Beneficiaries. With the sole exception of the subordination rights granted under Section 5.4, the provisions of this Agreement are not intended to be for the benefit of or enforceable by any third party and shall not give rise to any rights on the part of any third party, including, except to the extent of any rights granted under Section 5.4, any landlord, sublandlord or Property Mortgagee.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

OPERATOR:

11565 Harts Road Operations LLC

By: 

Name: Marcia Mitchell
Title: Executive Director

CONSULTANT:

NSPRMC, LLC d/b/a Coquina Care Partners

By:  _____

Name: Craig Robinson
Title: Manager

EXHIBIT A

BUSINESS ASSOCIATE AGREEMENT

PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION

This Business Associate Agreement ("Agreement") is made effective May 1st, 2023 ("Effective Date"), by and between **11565 Harts Road Operations LLC**, the Covered Entity (referred to herein as "CE" or "Operator"), located at 11565 Harts Road, Jacksonville, FL 32218-3777 and **NSPRMC, LLC d/b/a Coquina Care Partners**, the Business Associate (referred to herein as "BA" or "Consultant"), located at 3920 Rosewood Way, Orlando, FL 32808-1033.

In consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

I. DEFINITIONS

For purposes of this Agreement, the terms used herein, whether or not capitalized, unless otherwise specifically defined, shall have the same meanings as used in the Health Insurance Portability and Accountability Act of 1996, and any amendments or implementing regulations ("HIPAA", inclusive of the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and 164), and the Health Information Technology for Economic and Clinical Health Act ("HITECH", Title XIII of the American Recovery and Reinvestment Act of 2009), and any amendments or implementing regulations. A reference in this Agreement to any provision of a law or regulation means the provision as then in effect, amended, or implemented via regulation. In the event of a conflict between the definitions in this Agreement and the definitions contained in HIPAA and HITECH, the definitions contained in HIPAA and HITECH shall be applied.

Availability means that data or information is accessible and useable upon demand by an authorized person.

BA "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean the Business Associate referenced above.

CE "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean the Covered Entity referenced above.

Confidentiality means that data or information is not made available or disclosed to unauthorized persons or processes.

Data Aggregation means, with respect to PHI created, received, maintained, or transmitted by an BA in its capacity as a business associate of a CE, the combining of such PHI by the BA with the PHI received by the BA in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

Disclose or Disclosure means the release, transfer, provision of access to, or divulging in any other manner of PHI to parties outside the BA's organization.

HIPAA means the Health Insurance Portability and Accountability Act of 1996.

HITECH means the Health Information Technology for Economic and Clinical Health Act.

Individual means the person who is the subject of PHI and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

Integrity means that data or information has not been altered or destroyed in an unauthorized manner.

Privacy Rule means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR 160 and 164, Subparts A and E, as amended by HITECH.

Protected Health Information (“PHI”) has the same meaning as this term has in 45 CFR 160.103 (as amended by the HITECH Act), limited to the information created, received, maintained, or transmitted by BA from or on behalf of CE. It includes PHI that is transmitted by or maintained in any electronic media known as Electronic Protected Health Information.

Required By Law means a mandate contained in the law that compels a covered entity to make a use or disclosure of PHI and that it is enforceable in a court of law.

Secretary means the Secretary of the Department of Health and Human Services (“HHS”) or any other officer or employee of HHS to whom the authority involved has been delegated.

Security Incident means the attempted or successful unauthorized access, Use, Disclosure, modification, or destruction of PHI or interference with information system operations that contains PHI.

Security Rule means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR 160 and 164, Subparts A and C.

Use means the sharing, employment, application, utilization, examination, or analysis of PHI within the BA’s organization.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

1. Nondisclosure. BA shall not Use or Disclose CE's PHI otherwise than as permitted or required by this Agreement or as Required By Law.
2. Minimum Necessary. BA shall Use or further Disclose PHI only in the minimum amount and to the minimum number of individuals necessary to achieve the purpose of the services being rendered to or on behalf of CE.
3. Safeguards. BA shall develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of PHI that BA creates, receives, maintains, or transmits on CE’s behalf as required by the Privacy and Security Rules. In doing so, BA shall comply with Subpart C of 45 CFR 164 with respect to electronic protected health information, to prevent Use or Disclosure of PHI other than as provided for by this Agreement.
4. Reporting of Unauthorized Disclosures. BA shall report to CE within three (3) calendar days any Use or Disclosure of PHI not provided for by this Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any Security Incident of which it becomes aware. This provision applies regardless of whether such unauthorized Use or Disclosure was by BA, its agents or subcontractors, or any third party.
5. Mitigation. BA shall mitigate, to the extent practicable, any harmful effect that is known to BA of a Use or Disclosure of PHI by BA in violation of the requirements of this Agreement.
6. BA's Agents and Subcontractors. In accordance with 45 CFR 164.502(e)(1)(ii), 164.308(b)(2) and 164.314(a), if applicable, BA shall ensure that any subcontractors or agents that create, receive, maintain, or transmit PHI on behalf of BA, agree to the same restrictions, conditions, and requirements that apply to BA through this Agreement with respect to such PHI. BA may Disclose PHI to those of its agents and subcontractors who have been previously approved by CE, have executed an agreement containing a provision substantially conforming to the Confidentiality and other related terms of this Agreement, and who reasonably need to know such information in order to perform obligations under this Agreement and, in such case, shall only disclose the minimum amount of such PHI

as is necessary. BA shall make such agreements with its agents and subcontractors available upon request of CE. The acts or omissions of BA's agent and/or subcontractors shall be deemed the acts and omissions of BA.

7. Access to PHI. In order for CE to satisfy its obligations under 45 CFR 164.524 and as otherwise required by law, BA shall provide CE access to PHI upon request, in the time and manner designated by CE. In the event any Individual delivers directly to BA a request for access to PHI, BA shall promptly forward such request to CE. This provision applies only to PHI received or created by BA pursuant to this Agreement, if BA possesses such PHI.

8. Documentation of Disclosures. BA shall document such Disclosure of PHI and information related to such Disclosure as would be required for CE to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

9. Accounting of Disclosures. BA shall document disclosures of PHI and information related to such disclosures as would be required for CE to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. BA shall provide to CE, in a time and manner designated by CE, information documented in accordance with this section, to permit CE to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

10. Amendment of PHI. BA shall make available any PHI in its possession at the request of CE for any amendments to such PHI pursuant to 45 CFR 164.526, and in the time and manner designated by CE. This provision applies only to PHI received or created by CE and BA pursuant to this Agreement, if BA possesses such PHI. In the event any Individual delivers directly to BA a request for amendment to PHI, BA shall promptly forward such request to CE for further direction.

11. Internal Practices. BA shall make its internal practices, books and records relating to the Use and Disclosure of PHI received from CE, or created, received, maintained, or transmitted by BA on behalf of CE, available to the CE, or to the Secretary, for purposes of the Secretary determining CE's compliance with HIPAA.

12. HITECH. BA acknowledges that, pursuant to HITECH, it is responsible for compliance with the HIPAA Privacy and Security Rules in the same manner as a Covered Entity. BA acknowledges and agrees to abide by these requirements.

13. Privacy of Individually Identifiable Health Information. To the extent the BA is to carry out one or more of CE's obligation(s) under Subpart E of 45 CFR Part 164, BA shall comply with the requirements of Subpart E that apply to CE in the performance of such obligation(s).

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

1. Permitted Uses and Disclosures. Except as otherwise limited in this Agreement, BA may Use or Disclose PHI to perform functions, activities, or services for, or on behalf of CE, provided such Use or Disclosure would not violate the Privacy Rule if done by the CE. BA may also Use or Disclose PHI as Required By Law. BA may not Use or Disclose PHI in a manner that would violate the Privacy Rule if done by CE, except for the specific uses and disclosures set forth below in Section III (2), (3), (4), (5), and (6). Any Use or Disclosure of PHI by BA shall be consistent with the Minimum Necessary requirement set forth in Section II (2) of this Agreement.

2. Use for Management and Administration. Except as otherwise limited in this Agreement, BA may Use PHI for the proper management and administration of the BA or to carry out the legal responsibilities of the BA.

3. Disclosure for Management and Administration. Except as otherwise limited in this Agreement, BA may Disclose PHI for the proper management and administration of the BA or to carry out the legal responsibilities of the BA, provided that:

- a. Disclosures are Required By Law; or
 - b. BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and
 - c. The person notifies the BA of any instances of which it is aware in which the Confidentiality of the information has been breached.
4. Data Aggregation. Except as otherwise limited in this Agreement, BA may Use PHI to provide Data Aggregation services to CE relating to the health care operations of the CE as permitted by 45 CFR 164.504(e)(2)(i)(B).
 5. Other Permitted Uses. Except as otherwise limited in this Agreement, BA may Use or Disclose PHI for the limited purposes provided for in any other current and future contracts between the BA and CE, so long as that use does not violate HIPAA. Should any limited purposes of the Use or Disclosure of PHI, in any current or future contract between the BA and CE, be more restrictive than the permitted Uses and Disclosures contained in this Agreement, then the more restrictive language contained in such contract shall apply.
 6. Report Violations of Law. Except as otherwise limited in this Agreement, BA may Use PHI to report actual or suspected conduct that is unlawful or otherwise violates professional or clinical standards, or that endangers patients, workers or the public, to appropriate Federal and State authorities consistent with 45 CFR 164.502(j)(1).

IV. OBLIGATIONS OF COVERED ENTITY

1. Notice of Privacy Practices. Upon request, CE shall provide BA with the notice of privacy practices that CE produces in accordance with 45 CFR 164.520, as well as any changes to such notice.
2. Changes in Permission. CE shall notify BA of any changes in, or revocation of, permission by an Individual to Use or Disclose his or her PHI, to the extent that such changes may affect BA's Use or Disclosure of PHI.
3. Notification of Restrictions. CE shall notify BA of any restriction to the Use or Disclosure of PHI that CE has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect BA's Use or Disclosure of PHI.

V. PERMISSIBLE REQUESTS BY COVERED ENTITY

1. Requests by Covered Entity. CE shall not request BA to Use or Disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR 164 if done by CE, unless BA is to Use or Disclose PHI for data aggregation, management and administration, or legal responsibilities of the BA.
2. Audits, Inspection and Enforcement. From time to time upon reasonable notice, CE may inspect the facilities, systems, books, and records of BA to monitor compliance with this Agreement. BA shall promptly remedy any violation of any provision of this Agreement to the satisfaction of CE in CE's sole discretion, and shall certify the same to CE in writing. The fact that CE inspects, or fails to inspect, or has the right to inspect, BA's facilities, systems and procedures does not relieve BA of its responsibility to comply with this Agreement, nor does CE's (i) failure to detect or (ii) detection.

VI. TERM AND TERMINATION

1. Term. The Term of this Agreement shall be effective as of the Effective Date and shall remain in effect as long as BA or any of BA's agents and/or subcontractors retains CE's PHI or on the date CE terminates for cause as authorized in Section VI(2).
2. Termination for Cause. Upon CE's knowledge that BA or any of BA's agents and/or subcontractors has violated a material term of HIPAA or this Agreement, CE may either:
 - a. Give written notice of such breach or violation and provide a reasonable time period for BA to cure the breach or end the violation, and if BA does not cure the breach or end the violation within the time specified by CE, terminate this Agreement; or,
 - b. Immediately terminate this Agreement and the underlying contract if BA has breached a material term of this Agreement or failed to meet its HIPAA obligations; or,
 - c. Report the violation to the Secretary if neither cure of the breach or violation nor termination of this Agreement are feasible.
3. Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, BA shall return to CE or, if agreed to by CE, securely destroy all PHI received from CE, or created, maintained, received, or transmitted by BA on behalf of CE, that the BA and/or its agents and subcontractors, still maintains in any form, has recorded on any medium, or stored in any storage system. BA and/or its agents and subcontractors shall retain no copies of the PHI.

VII. INDEMNIFICATION

BA shall indemnify and hold CE harmless from and against all claims, damages, liabilities, judgments, fines, assessments, penalties, awards, or other expenses of any kind or nature whatsoever, including without limitation, attorney's fees, costs, and expenses relating to or arising out of any breach or alleged breach of this Agreement or Disclosure of PHI in violation of applicable law or regulation.

VIII. MISCELLANEOUS

1. Amendment. Both BA and CE agree to take such action as is necessary to amend this Agreement from time to time for CE to comply with the requirements of HIPAA and any other applicable law.
2. Survival. The respective rights and obligations of BA under Section VI(3) and VII of this Agreement shall survive the termination of this Agreement.
3. Interpretation. A reference in this Agreement to the HIPAA or HITECH Rules shall mean the section in effect as of the Effective Date as it may be amended from time to time. This Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and applicable state laws. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that permits CE to comply with HIPAA and applicable state laws.
4. Assistance in Litigation or Administrative Proceedings. BA shall make itself, and any subcontractors, employees or agents assisting BA in the performance of its obligations under this Agreement, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or employees, based upon claimed violation of the Security Rule and/or the Privacy Rule, except where BA or its subcontractor, employee or agent is a named adverse party.

5. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE or BA, any rights, remedies, obligations, or liabilities whatsoever.

6. Notices. Any notice or other communication required to be provided by or to either party herein shall be in writing and may be delivered by (i) a nationally recognized courier/overnight delivery service, or (ii) by certified mail with return receipt requested. If notices are delivered by courier/overnight delivery, it will be deemed delivered as of the next business day. If notices are delivered by certified mail, it will be deemed delivered three (3) days from the date of mailing. Notices may be sent to the addresses set forth in the beginning of this Agreement.


7. Independent Contractor Status. In the performance of its duties and obligations pursuant to this Agreement, BA shall at all times be acting and performing as an independent contractor of CE.

[Remainder of Page Intentionally Left Blank – Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

OPERATOR:

11565 Harts Road Operations LLC

By: 

Name: Marcia Mitchell
Title: Executive Director

CONSULTANT:

NSPRMC, LLC d/b/a Coquina Care Partners

By:  _____

Name: Craig Robinson
Title: Manager

EXHIBIT 4-A

Josera Administrative Services Agreement

ADMINISTRATIVE SERVICES AGREEMENT

THIS ADMINISTRATIVE SERVICES AGREEMENT (the “Agreement”) is made and entered into as of December 1, 2021 (the “Effective Date”), by and between JOSERA, LLC a Florida limited liability company (“Company”), and POURLESSOINS, LLC a Georgia limited liability company (“SSCo”).

WITNESSETH:

WHEREAS, Company is engaged in the business of providing management services to certain skilled nursing facilities (the “Facilities”);

WHEREAS, Company desires to engage SSSCo to provide certain administrative services to Company; and

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

ARTICLE I

TERM

The initial term of this Agreement shall commence on the Effective Date and shall continue for a period of one (1) year thereafter (the “Initial Term”). If this Agreement is not earlier terminated pursuant hereto, upon the expiration of the Initial Term, this Agreement shall automatically renew for successive one year terms (each, a “Renewal Term”) unless either party delivers to the other, at least sixty (60) days prior to the expiration of the Initial Term or any Renewal Term, written notice of such party’s intent not to renew this Agreement. The entire term of this Agreement, including the Initial Term and any and all Renewal Terms, is hereinafter referred to as the “Term.”

ARTICLE II

RETENTION OF SSCO

- 2.1 Control Retained by Company.** All management company responsibilities for the Facilities will remain with Company. SSSCo shall perform the duties herein required to be performed by it as the agent of Company and in accordance with the policies and directives from time to time adopted by Company.
- 2.2 Data Ownership.** All data, records and reports relating to the Company’s business (collectively, the “Records”), whether in existence at the Effective Date or compiled thereafter by SSSCo in the course of performing its administrative services to Company hereunder, shall be treated by SSSCo as the exclusive property of the Company. Neither the Company’s grant of access to Records to SSSCo, nor the furnishing of Records by SSSCo to Company, shall grant any express or implied license to SSSCo related to such Records other than that which is necessary for SSSCo to perform and provide the

administrative services to the Company. Upon request by the Company, and without regard to the default or other status of the parties under this Agreement, SS Co shall promptly deliver to Company the requested Records in electronic format and in such hard copy as exists on the date of the request by Company.

- 2.3 Relationship of Parties.** The parties hereto acknowledge that SS Co is at all times acting and performing hereunder as an independent contractor, and that nothing contained in this Agreement shall constitute or be construed to be or to create a partnership, joint venture or lease between Company and SS Co nor is it intended that any third parties have any benefits from this Agreement nor any rights not expressly stated herein.

ARTICLE III

DUTIES AND OBLIGATIONS

During the Term and subject to the terms and conditions hereof, SS Co shall provide the following services to Company:

3.1 Accounting.

- (a) SS Co shall assist Company in coordinating and preparing schedules and other information reasonably requested by Company's outside independent certified public accountants in connection with the preparation of fiscal year-end financial statements for Company and/or Facilities.
- (b) SS Co shall deliver or cause to be delivered to Company, at Company's expense, the following financial statements and other information related to it or the Facilities:
 - (i) within thirty (30) days following the end of each calendar month, an unaudited profit and loss statement and balance sheet (both prepared on an accrual basis in accordance with United States generally accepted accounting principles, as in effect from time to time ("GAAP")) reflecting the results of Company's operations and financial position of the Company for such calendar month and the year-to-date;
 - (ii) within one hundred and twenty (120) days after the close of each fiscal year, if required by Company, an audited balance sheet and related statement of profit and loss certified by an independent certified public accounting firm and prepared in accordance with GAAP, reflecting the financial position and the results of Company's operations during the preceding twelve (12) months then ended. All items related to the annual audit, such as actuarial analysis and accountants' fees, shall be at Company's sole expense; and
 - (iii) other financial services, analyses, reports and information reasonably requested by Company.

3.2 Tax Services. SS Co shall, on behalf of Company and Facilities, and at Company's sole expense, prepare and process all taxes, assessments and charges of every kind imposed upon Company or Facilities by any governmental authority, including but not limited to monthly sales and use taxes, annual property taxes, and annual income taxes ("Taxes"). SS Co shall cause all Taxes, including interest and penalties thereon, to be paid by Company Funds when due, except that SS Co shall not cause such payment to be made if: (i) such Taxes are being contested in good faith by Company at its sole expense and without cost to SS Co; (ii) enforcement thereof is stayed; and (iii) Company shall have given SS Co written notice of such contest and stay and authorized the non-payment thereof. Interest or penalty payments shall be reimbursed by SS Co to Company if imposed upon Company by reason of negligence on the part of SS Co in making the payment. SS Co shall also prepare an annual filing and, if necessary, remittance due for any unclaimed property pursuant to state law.

3.3 Cash Management.

- (a) SS Co shall provide cash management services to Company, including the initiation of approved wire transfers, stop payments and returned items and the creation of reports relating to operating capital and cash analysis.
- (b) SS Co shall establish a deposit account or accounts, in the name of Company, in a banking institution that is a member of the Federal Deposit Insurance Corporation. Company authorizes SS Co, as agent for Company, to manage all funds for and on behalf of Company, and to disburse and pay the same from said accounts on behalf and in the name of Company, subject to any direction from Company.
- (c) All funds received from the Company's operations shall be deposited in a bank account or accounts established in Company's name. Company shall designate the signatory or signatories required on all checks or other documents of withdrawal for the accounts.

3.4 Operational Finance. SS Co shall assist Company with targeted analytics on an as-needed basis, including but not limited to preparation of strategic business models, census and marketing, labor and staffing, expense management, and general projections and financial forecasting. SS Co will also coordinate quarterly payroll based journal submissions and respond to any related audit requests.

3.5 Benefits. SS Co shall manage for Company, at Company's sole expense, all aspects of Company's employee benefits program that may be offered to employees of Company from time to time.

3.6 Books and Records. SS Co shall keep accurate records as required by applicable law or as reasonably requested by the Company in connection with its business operations. SS Co shall maintain a complete audit trail for all financial and non-financial transactions arising from or in connection with this Agreement in such a manner as required by the records management policies of the Company and GAAP. SS Co will maintain such audit

trail for such periods of time as may be specified in the records management policies of the Company or, if no such period is specified, for such period as the parties may agree. SS Co shall provide to Company, its consultants, its auditors (including internal audit staff and external auditors), regulators and other representatives as Company may from time to time designate in writing, access at all reasonable times to SS Co's systems, data, records, policies and procedures and other information relating to provision of administrative services hereunder for the purpose of providing consulting services to, or performing audits, inspections or surveys of, either SS Co or Company.

3.7 Clinical Services.

- (a) SS Co will consult on the development of, and provide guidance on the Company's standards, procedures and policies for admitting, discharging and treating residents, for charging residents for services, and for collecting payments from residents or third parties.
- (b) SS Co will provide Company with standards, procedures and policies that will assist Company with implementing its own standards, procedures, and policies concerning social services, advanced directives, activities, dining, pharmacy, infection control and restorative nursing that will be substantially the same as standards, procedures and policies generally prevailing in the industry.
- (c) SS Co shall timely provide to Company all updates and amendments to such standards, procedures and policies. Company shall have the right to use any such SS Co standards, procedures and policies only for its own internal use on a royalty-free basis and only during the Term hereof.
- (d) SS Co will assist Company with survey preparedness and provide tools such as a pre-survey score tool, survey best practices, regulatory coaching program, and risk management.
- (e) SS Co will consult and assist Company with clinical education on CMS regulations, industry trend responses, pharmacy regulations and trends, disease management, nursing competency (e.g., CHF, COPD, palliative care, stroke, etc.), nursing ethics, return to hospital, QAPI/RCA, and other topics as requested by Company.
- (f) SS Co will provide consultation to Company on any of the subjects referenced in this **Section 3.7** on an as-needed basis.

3.8 Information Technology Services.

- (a) SS Co will provide overall direction and supervision of information technology services for Company and the Facilities and will arrange to provide to Company and the Facilities information technology services as required for Company's operation of the Company.

- (b) SS Co will advise the Company on solutions to meet the telecommunication needs of the Company and Facilities, including telephone systems, email, WIFI, cable programming and internet connections and will manage the relationships with the chosen vendors (e.g., telecom carriers and service providers for voice and data transmission).
- (c) SS Co will advise Company on the selection and provisioning/setup of hardware (e.g., computers, thin clients, laptops, tablets, monitors, computer accessories, printers, telecopy machines, etc.) to meet their information technology needs and will support the relationship with the chosen hardware vendors. Hardware purchased by Company will remain the sole and exclusive property of Company, unless otherwise agreed to by Company.
- (d) SS Co will provide full support and maintenance of the Facilities' electronic medical records application.
- (e) SS Co will provide information technology security solutions such as data protection and malicious website/software protection, and will provision user accounts and manage rights to IT resources and applications.
- (f) SS Co will organize, store, backup and manage data of Company and the Facilities, including the provision of redundancy systems to avoid (or minimize the impact of) outages and downtimes for IT services.
- (g) SS Co will manage and optimize the provisioning, deployment, maintenance, utilization and disposal of software applications.
- (h) SS Co will provide 24-7 support services directly accessible to Company employees to assist with and support all of the services provided in this **Section 3.8.**
- (i) SS Co will provide, as part of the Administrative Service Fee, certain hardware (e.g., data center servers, modems, routers, switches and other network equipment for accessing those data center servers) and related software to be used by Company and Facilities, Company shall not retain ownership interests in such hardware and software.

3.9 Labor and Employment Matters.

- (a) SS Co will assist Company and the Facilities in the handling and settlement of all significant employee relations matters, union and non-union, and will negotiate, on Company's behalf, with any labor union lawfully entitled to represent the employees, provided that any settlement, collective bargaining agreement or labor contract resulting therefrom must first receive Company approval, and the Company shall be the only person authorized to execute the same.
- (b) SS Co will consult Company with the development and implementation of a strategy to recruit talent, including: (i) training and support on recruitment

functions such as job posting, development of job descriptions and applicant tracing, (ii) serving as a liaison to third-party recruitment vendors approved by Company (e.g., iCims, Career Builder, etc.), and (iii) assisting Company with its participation in school partnerships, job fairs and trade shows.

- (c) SS Co will consult with Company on any HR regulatory and compliance audits.
- (d) SS Co will consult with Company on employee relations, retention, engagement, policy development, investigation guidance, performance management and leadership training.

3.10 Concessionaires, etc. SS Co shall assist in the contracting process, including the negotiation and consummation, in the name of and for the account of Company and the Facilities, contracts or arrangements with concessionaires, licensees, tenants, and other intended users of the Company. Any revenue derived from concessions, licenses or tenants will inure to the Company.

3.11 Ancillary Support Services.

- (a) SS Co shall assist in identifying, contracting with and managing an independent pharmacy service and shall serve as the liaison to that service provider. SS Co shall also monitor services provided for contractual compliance and will provide support to Company to address applicable regulations, diversion and other medication-related concerns, and will provide assistance with formulary and therapeutic interchange.
- (b) SS Co shall assist in the contracting process for Company and the Facilities, including the negotiation and consummation, in the name of and for the account of Company or Facilities, of all ancillary services, utilities, concessions, supplies and other services as may be needed from time to time for the maintenance and operation of the Company, including, without limitation, food, transportation, resident care equipment, and mobile diagnostic services. All out-of-pocket fees, expenses and charges incurred in connection with the provision of ancillary supplies and services to the residents of the Company and all utility fees, charges and expenses shall be Company Expenses.

3.12 Physical Plant Management & Safety Services.

- (a) SS Co will use reasonable commercial efforts to assist in the contracting process to cause to be made or installed in the name of and for the account of Company or Facilities any proper repairs, replacements, additions and improvements in and to the Company or Facilities and the furnishings and equipment thereof as necessary in order to keep and maintain the same in good repair, working order and condition, and outfitted and equipped for the proper operation thereof in accordance with:
 - (i) the Capital Budget;

- (ii) general industry standards;
 - (iii) all applicable statutes, ordinances, laws, rules, regulations, or orders of any governmental authority over the Company or Facilities, where the failure to comply will have a material adverse effect on the Company or Facilities;
 - (iv) the terms and conditions of any lease, mortgage or other financing arrangement identified in writing to SS Co;
 - (v) all applicable requirements of insurers and insurance policies related to the Company or Facilities; and
 - (vi) Medicare, Medicaid and any other governmental, public or private payment or reimbursement program.
- (b) SS Co will consult with Company and assist with the development and implementation of life safety strategies, policies and best practices, including development and implementation of an emergency management program.
 - (c) SS Co will also assist with capital improvement projects and any necessary construction management associated with any of the foregoing services.
 - (d) Notwithstanding the foregoing, except to the extent set forth in and otherwise specifically agreed to in writing by SS Co, no landlord or Company mortgagee shall have any rights whatsoever under this Agreement.

3.13 Licenses, Permits and Certifications.

- (a) SS Co will assist Company in timely obtaining and maintaining, on behalf of Company and the Facilities, all necessary bed allocations, licenses, permits, certifications and approvals required in connection with the management and operation of the Company and Facilities to comply with all applicable requirements.
- (b) Company will cooperate with SS Co in applying for, obtaining, and maintaining such licenses and permits as referenced herein. SS Co will make available, upon request by Company, a copy of each Medicaid or Medicare report and all supplemental materials filed with a governmental authority for the Company.
- (c) Company will promptly make available to SS Co, upon request, all complaint, licensure and certification surveys taken by federal and state health and life safety code agencies (including, without limitation, HCFA 2567 Forms and related correspondence and plans of correction) upon receipt or issuance. SS Co will make available to Company the final drafts of all cost reports or similar filings with any governmental authority prior to the due date for such report or filing with the applicable governmental authority. The Company shall have the right to review and make modifications to all such drafts, reports and filings; and SS Co shall

make such modifications or ensure that such modifications are made by any third-party preparing such reports or filings.

- (d) SS Co will assist, if requested, in the preparation and submission of applicable plans of correction to the licensing authority and any other applicable state survey/certification agencies and coordinate such plans of correction with Company when requested to do so.

3.14 Insurance.

- (a) SS Co will apply for, obtain, maintain and manage on Company's behalf at all times during the Term of this Agreement such policies of insurance as Company deems appropriate and designates in writing to SS Co. SS Co will submit to Company all quotes for coverage, retention of coverage and premiums for coverage prior to issuance of a binder for coverage on new or renewal policies, upon request. SS Co will provide to Company all policies and certificates evidencing such insurance. In addition, SS Co will provide Company the current name, address and telephone numbers of all the insurance brokers for all the insurance policies.
- (b) All insurance provided for under this **Section 3.14** must be affected by policies issued by insurance companies that are compliant with leases and loan agreements. If SS Co cannot obtain the insurance coverage as contemplated by **Section 3.14(a)** at usual and reasonable market rates, SS Co will immediately notify Company so that Company may consider alternative acceptable coverage.
- (c) All liability insurance policies will be carried in the name of Company and any losses payable under such policies will be payable to Company. If instructed by Company, the landlord of the Company and any Company mortgagee designated by Company and SS Co, shall be named as mortgagee and additional insured on the property insurance and the comprehensive general liability insurance policies.
- (d) Company and any officer, partner, director, shareholder or employee of Company and/or SS Co, to the extent permissible, will be named as additional insureds under any policy of: (i) property insurance or fire and extended coverage insurance, (ii) comprehensive general liability insurance, (iii) professional liability insurance, (iv) auto liability insurance, (v) workers' compensation insurance, (vi) umbrella liability insurance, and (vii) crime insurance coverage maintained with respect to the Company.
- (e) Unless otherwise permitted by Company, any employee of Company or of SS Co responsible for handling of any funds of Company will be bonded by a fidelity bond or otherwise covered by insurance in an amount to be determined annually by Company, the cost of which shall be a Company Expense.

3.15 Legal Actions: Contests.

- (a) SS Co will, with Company approval, institute, in its own name or in the name of Company, supervise the institution, prosecution or defense of any and all legal actions or proceedings necessary or desirable for the Company, including without limitation:
 - (i) to defend any claims asserted by any third-party against the Company, SS Co, or Company, or the officers, directors, employees and affiliates of SS Co or Company, or to defend any claims asserted by any third-party for which Company may be liable for indemnification;
 - (ii) to collect charges, rent, or other sums due the Company or Facilities;
 - (iii) to lawfully oust or dispossess residents, tenants or other persons in possession, or lawfully cancel, modify, or terminate any resident agreement, lease, license, or concession agreement for the breach thereof or default thereunder by the tenant, licensee, or concessionaire thereunder; or
 - (iv) to contest the validity or application of any agreement, law, ordinance, rule, ruling, regulation, order or requirement of any governmental authority having jurisdiction over the Company or the operation of the Facilities, or to appeal any action taken by any governmental authority against the Company or Facilities, including, without limitation, enforcement actions initiated against the Company, SS Co, or Facilities for alleged violations of applicable laws; provided that such contest or appeal will not result in the suspension of the Company or Facilities; and provided further, that Company shall have no obligation to secure and protect SS Co from any loss, cost, damage or expense that is ultimately determined to have arisen out of SS Co willful misconduct, bad faith, fraud, violation of law or gross negligence in the performance of its obligations under this Agreement.
- (b) SS Co will, with Company approval, supervise and direct the legal actions necessary to protect, settle and/or litigate to final judgment in any appropriate court any such dispute, proceeding, violation, order or contest affecting the Company or the Facilities.
- (c) SS Co will supervise and direct the processing of all third-party payment claims and appeals for the services provided by the Company or the Facilities, including without limitation, exhaustion of all applicable administrative proceedings or procedures, adjustment and denials by any governmental authority or their fiscal intermediaries and other third-party payors.
- (d) Any counsel to be engaged by SS Co, on behalf of Company, for any reason in fulfillment of its duties under this Agreement will be subject to timely Company approval.

- (e) SS Co will diligently conduct all legal actions, proceedings and contests it is required to conduct in good faith and Company will reasonably cooperate with SS Co under this section.

3.16 Patient and Payor Billing and Collection.

- (a) SS Co will consult and assist with the development and implementation of Company's procedures for the issuance of bills or invoices for services and advise on the Company's procedures for collection of accounts receivable, maintenance of accounting, billing, resident and collection records and all other necessary or desirable applications, reports and claims related to revenue production.
- (b) SS Co shall provide central billing services for claims transmission for Medicare, Medicaid and Insurance/HMO payors, including electronic remittance capture and posting to the accounts receivable system and the collection of related balances.
- (c) SS Co shall provide assistance from a qualified chart audit review team for payor audits for medical necessity and, with approval of Company, appeals of claims that are denied through Medicare or Insurance and HMO payors.
- (d) SS Co shall process and post all bad debt write-off requests consistent with Company policy, including ensuring that Medicare and Medicaid dual eligible (MXA) write off criteria are satisfied for cost report reimbursement.
- (e) SS Co shall liaison with outside collection agencies, legal resources, payors and other entities as may be necessary to assist in Company's billing and collection efforts.
- (f) SS Co shall provide access to its internally developed software tools and reports for use by Company, including Medicare Reimbursable Bad Debt Write off Portals, Asset Searches, Month-End closing checklists, and tools for processing accounts receivable refunds, tracking medical necessity audits and denials, and tracking of electronic remits.
- (g) SS Co shall not be responsible for the routine billing and collecting of private pay, hospice, Veterans Administration, workers compensation, or hospital payors, or for the generation and mailing of monthly statements. Month-end closing in the accounts receivable system and the posting of checks or cash received at the facility will also remain the responsibility of Company.
- (h) Upon SS Co request, Company shall timely execute all such applications, reports and claims. Company expressly constitutes and appoints SS Co, to the extent permitted by the applicable requirements, as Company's agent to direct and supervise the processing and collection, on Company's behalf and in its name, of all private party insurance, Medicare, Medicaid and other receivables.

3.17 Collection and Disbursement of Funds.

- (a) SS Co will supervise the deposit by Company personnel into an account in the name of Company or Facilities with one or more institutions, each of which must be a member of the Federal Deposit Insurance Corporation and receive Company approval, all monies arising from and received in connection with the operation of the Company or Facilities or otherwise received by SS Co for and on behalf of Company (the “**Company Funds**”).
- (b) Company may establish and utilize (or require SS Co to establish and utilize) a cash management system in accordance with procedures, systems and controls as determined by Company for the Company’s use.
- (c) In the event the applicable requirements require the deposit of monies from Medicare and/or Medicaid in an account solely owned and controlled by Company or Facilities, and with respect to which SS Co has no withdrawal or disbursement rights, then Company shall establish a separate account for the deposit of such funds with a standing instruction to sweep, on a daily basis, the funds deposited in such account to one or more of the accounts of Company or Facilities.
- (d) SS Co shall have authority to access such accounts and will disburse and pay from said accounts, on behalf of Company or Facilities and as a Company Expense, in the order of priority permitted under the Company’s or Facilities’ ground lease and loan financing obligations, including any intercreditor agreement entered into in connection therewith. SS Co hereby covenants that to the extent SS Co receives any funds from any third-party payor after the termination of this Agreement which is attributable to the Term of this Agreement or collected by SS Co on behalf of Company or Facilities for the periods prior to the date of this Agreement, SS Co will deliver such funds to Company promptly following receipt of such funds.
- (e) The covenants set forth in the foregoing **Section 3.17** will survive the termination of this Agreement.

3.18 Payment of Expenses.

- (a) SS Co shall provide accounts payable services including, without limitation, the following: (i) process payments as directed by Company; (ii) maintain vendor and payable files; (iii) establish payment terms; (iv) maintain and process IRS Form 1099s; (v) review vouchers for appropriate authorizations, invoice information and coding; (vi) expedite payment of “priority” vendors, such as employee expenses, Taxes and utilities; and (vii) petty cash management.
- (b) SS Co shall provide payroll services for Company, including the processing of payroll for employees of the Company and Facilities.
- (c) Unless otherwise stated in this Agreement, all direct, out-of-pocket fees, expenses and charges incurred in connection with Article III shall be Company Expenses

(“**Company Expenses**”). SSSCo is authorized to pay all Company Expenses from Company Funds.

- (d) Company will pay directly (or reimburse SSSCo promptly if SSSCo advances funds for) any Company Expenses not paid from Company Funds.
- (e) If Company Funds are not available to pay Company Expenses, SSSCo will notify Company by submitting a fund request form (such form to be subject to Company approval and will contain such information as Company may reasonably require) to Company and Company will supply the requested funds within ten (10) days after written request by SSSCo.
- (f) Notwithstanding anything to the contrary herein, SSSCo shall have no obligation to advance any funds hereunder if Company Funds are unavailable unless such unavailability is due to SSSCo’s failure to perform its obligations under this Agreement.
- (g) Except for Company Expenses, all fees, expenses and charges incurred by SSSCo in connection with its duties and obligations under this Agreement (including, without limitation, fees, expenses and charges incurred due to delegation of any duty or obligation herein to subcontractors, third-party consultants and professionals and not specifically described as a Company Expense) are for SSSCo’s account (“**SSCo Expenses**”).
- (h) SSSCo will promptly reimburse the Company for any SSSCo Expenses paid by the Company.
- (i) SSSCo shall not be in default under this Agreement if SSSCo’s failure to comply with the terms of this Agreement is due to the lack of adequate Company Funds.
- (j) Notwithstanding anything to the contrary provided herein, SSSCo’s direct, out-of-pocket expenses shall not include an allocation of costs and salaries of SSSCo’s or its affiliate’s home office personnel unless such allocation is specifically set forth in the budgets which have received Company approval.

3.19 Reimbursement Services. SSSCo shall consult and advise on reimbursement matters affecting the Company or the Facilities including:

- (a) The preparation of state and federally required cost reports and, once approved by Company, the filing of the same.
- (b) Review applicable reimbursement rates and Medicare bad debt reporting and resulting advice on achieving the accurate reimbursement.
- (c) Budget preparation support, including projection of anticipated Medicare or Medicaid reimbursement rates and provider taxes.

- (d) Review of consolidated billing invoices and transportation costs to ensure accurate billing and advice on cost containment where appropriate.

3.20 Payor Strategy Services. SS Co shall utilize its existing relationships with third-party payors and cultivate new ones to assist Company with the development of reimbursement strategies, contracting opportunities, and the resolution of claims, including:

- (a) The development, implementation, and maintenance of reimbursement strategies, including value based purchasing such as accountable care organizations, the advanced bundled payment for care improvement program and the comprehensive joint replacement initiative.
- (b) Responding to requests for proposals from hospitals for value payment initiatives and the related assistance to Company with redesigned workflows necessary for participation.
- (c) Training and guidance to Company in responding to managed care and value based initiative workflows as well as assistance with grievance and complaint processes with payors.
- (d) Payor contracting services, including solicitation of new contracts, amendments thereto, creation of contract summaries and roll out of health plan program updates. Assistance will also be provided for escalating claims issues of Company or Facilities to payors.
- (e) Assistance with the credentialing and re-credentialing of Company or Facilities with payors.
- (f) Coordinate directly with health plans to facilitate communication in all facets of reporting that is required for participation, including attendance at ACO and bundled payment collaborative meetings necessary to achieve and maintain preferred status in those programs.

3.21 Rehabilitation Support Services. SS Co shall monitor and consult on rehabilitation services delivered to Company or Facilities, including:

- (a) Identification and engagement of Company approved third-party rehabilitation provider.
- (b) Serving as a liaison to the rehabilitation provider and assisting with the monitoring of its rehabilitation standards through site visits, audits, and the establishment and review of metrics to ensure that the Company's clinical and operational goals are being met.
- (c) Managing therapy revenue and expense through collaboration with the third-party provider and Company.

3.22 MDS Services.

- (a) SS Co shall assist Company with developing and implementing auditing procedures to improve and maintain care plan accuracy, achieve compliance and resolve survey issues that may arise.
- (b) SS Co shall assist Company with the identification of trends and areas of opportunity in Medicare and managed care utilization including, establishment of processes, training and support to ensure accurate billing related to MDS RUG and level based plans and assistance with certification and recertification
- (c) SS Co shall assist Company in evaluating and improving quality metric/five-star scores for each of its facilities and related training.
- (d) SS Co shall consult and advise Company and Facilities on Minimum Data Set (“MDS”) and case management training and education, including accurate coding, ICD 10 codes, regulatory updates, root cause analysis on survey tags, current trends, and additional training as may be requested by Company.

3.23 Communication & Marketing Services.

- (a) SS Co will assist Company with the development and implementation of a communication and marketing strategy that will include digital media (website, social media, blog), Reputational Management (online listening and response), Special Events Planning and Marketing, PR & Media Relations, Issues/Crisis Management, and advertising.
- (b) SS Co will also assist Company in the design, production or acquisition of branded promotional (e.g., hats, pens, shirts) items and marketing materials (e.g., stationary, posters, vehicle wraps, exterior signs).

3.24 Corporate Compliance Services.

- a. SS Co will provide overall direction and supervision of Company’s corporate compliance department and arrange to be provided to Company corporate compliance services as required for Company’s operation.
- b. SS Co will develop and implement a corporate compliance plan that satisfies the conditions of participation.
- c. SS Co will provide a corporate compliance officer and a corporate compliance committee to administer the Company’s corporate compliance plan, provide guidance on compliance related issues, and to ensure that all potential compliance matters are appropriately investigated, resolved, and reported as necessary.
- d. SS Co will develop and implement standards, policies, and procedures to enable Company to comply with the conditions of participation related to corporate compliance programs, the HIPAA and HITECH Acts, and the Fraud, Waste, and Abuse Statutes.

- e. SS Co will create and administer necessary compliance education and training on Fraud, Waste and Abuse, HIPAA and HITECH, the Elder Justice Act and abuse, neglect and misappropriation reporting obligations, and the Company's corporate compliance programs, including the code of ethics and policies and procedures.
- f. SS Co will provide monitoring, auditing, and internal reporting systems.
- g. SS Co will provide standards and procedures for administering disciplinary and remedial measures when incidences of non-compliance are identified.
- h. SS Co will provide employee screening of the OIG Exclusion List and GSA Debarment List through a third-party vendor.
- i. SS Co will utilize a third-party vendor to administer the Company's anonymous compliance hotline. SS Co will review all reports and ensure that they are appropriately investigated and resolved.

3.25 Additional Services. SS Co agrees that any specialized or additional services requested by Company (application development and other non-routine projects) may be performed for a separate fee as agreed upon by Company and SS Co. If SS Co provides any such service, such fee shall not be in excess of such amount as would be charged by a third-party, negotiating at arm's length, for the performance of such service. Additionally, services provided by outside consultants for services not covered under this Agreement will be the sole responsibility of Company and not SS Co.

3.26 HIPAA Addendum. If SS Co, in connection with its provision of administrative services to Company under this Agreement, constitutes a Business Associate, (as defined in HIPAA and/or its implementing privacy regulations at 45 C.F.R. Parts 160-164 (the "HIPAA Privacy Rule")) and uses Protected Health Information (as defined in HIPAA and/or the HIPAA Privacy Rule) that has been generated or entrusted to Company, then the terms of Exhibit A shall apply with respect to SS Co's provision of administrative services under this Agreement. Company shall provide notice to SS Co of changes in HIPAA and/or the HIPAA Privacy Rule relevant to the performance of the administrative services with respect to SS Co's compliance with HIPAA and the HIPAA Privacy Rule in accordance with Exhibit A.

ARTICLE IV

COMPENSATION

Commencing upon the Effective Date and continuing until the end of the Term, Company shall pay to SS Co a service fee equal to \$ \$720,833.00 per month (the "Administrative Service Fee"). Payment shall be made to SS Co via either of the following methods, at the Company's option:

- (a) Upon the Effective Date, Company shall pay to SS Co a deposit equal to one month of the Administrative Service Fee, and thereafter shall pay the Administrative Service Fee to SS Co monthly in arrears; or

- (b) Company shall pay a prorated weekly portion of the Administrative Service Fee to SSCO each week, in arrears.

Notwithstanding the foregoing, and at any time, SSCO shall have the right to increase the Administrative Service Fee by providing Company with thirty (30) days written notice.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF COMPANY

- 5.1 **Organization and Standing of Company.** Company is a limited liability company duly organized, validly existing and in good standing under the laws of the state of its formation. Copies of the certificate of formation and limited liability company agreement of Company, and all amendments thereof to date, have been, if requested, delivered to SSCO and are complete and correct.
- 5.2 **Absence of Conflicting Agreements.** Neither the execution or delivery of this Agreement nor the performance by Company of the transactions contemplated hereby, conflicts with, or constitutes a breach of or a default or requires the consent of any third-party under: (i) the certificate of formation or limited liability company agreement of Company, (ii) to the best of Company's knowledge, any applicable law, rule, judgment, order, writ, injunction, or decree of any court, currently in effect, (iii) to the best of Company's knowledge, any applicable rule or regulation of any administrative agency or other governmental authority currently in effect, or (iv) any agreement, indenture, contract or instrument to which Company is now a party or by which the assets of Company are bound.
- 5.3 **Consents.** No authorization, consent, approval, license, exemption by, filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, is or will be necessary in connection with the execution, delivery and performance of this Agreement by Company.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF SSCO

- 6.1 **Organization and Standing of SSCO.** SSCO is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Georgia. Copies of the certificate of formation and limited liability company agreement of SSCO, and all amendments thereof to date, have been, if requested, delivered to Company and are complete and correct.
- 6.2 **Absence of Conflicting Agreements.** Neither the execution or delivery of this Agreement nor the performance by SSCO of the transactions contemplated hereby, conflicts with, or constitutes a breach of or a default or requires the consent of any third-party under: (i) the certificate of formation or limited liability company agreement of SSCO, (ii) to the best of SSCO's knowledge, any applicable law, rule, judgment, order, writ, injunction, or decree of any court, currently in effect, (iii) to the best of SSCO's

knowledge, any applicable rule or regulation of any administrative agency or other governmental authority currently in effect, or (iv) any agreement, indenture, contract or instrument to which SS Co is now a party or by which the assets of SS Co are bound.

- 6.3** **Consents.** No authorization, consent, approval, license, exemption by, filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, is or will be necessary in connection with the execution, delivery and performance of this Agreement by SS Co.

ARTICLE VII

TERMINATION RIGHTS

- 7.1** **Termination by Company.** If, at any time or from time to time during the Term, SS Co shall fail to keep, observe, or perform any material covenant, agreement, term or provision of this Agreement to be kept, observed, or performed by SS Co, and such default shall continue for a period of sixty (60) days after written notice thereof by Company to SS Co, then this Agreement may be terminated by Company upon ten (10) days' written notice to SS Co.
- 7.2** **Termination by SS Co.** If, at any time or from time to time during the Term, either of the following events shall occur and not be remedied within the applicable period of time herein specified, then this Agreement may be terminated by SS Co upon ten (10) days' written notice to Company:
- (a) Company shall fail to keep, observe, or perform any material covenants, agreement, term or provision of this Agreement to be kept, observed, or performed by Company and such default shall continue for a period of sixty (60) days after written notice thereof by SS Co to Company;
 - (b) Company fails to pay any Administrative Service Fee due to SS Co, regardless of whether payments are due weekly or monthly.
- 7.3** **Termination by Either Party.** This Agreement may be terminated, except as to liabilities or claims of either party that explicitly survive the Term of the Agreement, at any time for any reason by providing the other party sixty (60) days written notice.
- 7.4** **Surviving Rights Upon Termination.** If either party exercises its option to terminate pursuant to this Article VII, each party shall forthwith account for and pay to the other all sums due and owing pursuant to the terms of this Agreement. Without limiting the generality of the foregoing, upon any termination of this Agreement, Company shall be obligated fully and immediately to pay to SS Co all accrued and unpaid Administrative Service Fees and Company Expenses described herein. All other rights and obligations of the parties under this Agreement shall terminate (except as otherwise set forth herein).

ARTICLE VIII

INDEMNIFICATION

- 8.1 Indemnification.** SCo and Company shall indemnify and hold each other and their respective officers, directors, members, employees and affiliates (each, an “Protected Party”) harmless from any and all claims, losses, judgments, actions, proceedings, damages, expenses and liabilities whatsoever incurred by a Protected Party, including reasonable attorneys’ fees, arising out of a material breach of this Agreement or any third-party claims which are caused in whole or in part by any negligent act or omission of the other party in connection with the performance of its duties under this Agreement. However, SCo’s obligation to indemnify the Company Protected Parties shall not extend to any Medicare or Medicaid cost disallowances. The obligations under this **Section 8.1** shall survive termination or expiration of this Agreement.
- 8.2 Control of Defense of Indemnifiable Claims.** A party seeking indemnification under this Article VIII shall give the other party prompt written notice of the claim for which it seeks indemnification. Failure of the party seeking indemnification to give such prompt notice shall not relieve the other party of its indemnification obligation; provided, however, that such indemnification obligation shall be reduced by any damages suffered by such other party resulting from a failure to give prompt notice hereunder. The party receiving the aforementioned notice: (i) shall provide the defense of such claim, including, without limitation, retention and payment of attorneys, and (ii) shall not agree to a settlement of any claim which provides for any relief other than the payment of monetary damages.

ARTICLE IX

CONFIDENTIALITY; NON-SOLICITATION

- 9.1 Non-Disclosure of Confidential Information.** Company acknowledges that SSSCo's business involves the development and use of Confidential Information (defined below) and that SSSCo will make available such Confidential Information to Company in connection with SSSCo's duties under this Agreement. Except as Company and SSSCo may disclose in fulfillment of their duties and responsibilities under this Agreement, as may be required to be disclosed by Company and SSSCo by law, or as the parties may elect to disclose in response to surveys or data gathering efforts of trade associations in which Company is a member, the parties and their respective members, officers, directors, employees or agents shall not, at any time during or after the Term, divulge, furnish or make accessible Confidential Information to any person or entity for any purpose whatsoever. "Confidential Information" means, with respect to any party, any confidential or proprietary information, including, without limitation, manuals, forms, policies and procedures, computer programs, system documentation and related software, patient records and patient information, and any other information of any kind with respect to the finances, business plans or business operations of such party; provided, however, that "Confidential Information" shall not include any information which (i) becomes generally available to the public other than as a result of disclosure by the receiving party or its agents or representatives, or (ii) becomes available to the receiving party on a non-confidential basis from a source other than the disclosing party or its agents or representatives, provided that such a source lawfully obtained such information and is not bound by, or subject to, confidentiality obligations to the disclosing party.
- 9.2 Non-Use of Materials.** Effective upon the termination of this Agreement for any reason whatsoever, the parties and their respective members, officers, directors, employees or agents shall not use any Confidential Information for any purpose whatsoever.
- 9.3 Proprietary Material.** Company acknowledges and agrees that, except as otherwise provided herein, the systems, methods, programs, software, brochures, manuals, forms, data, procedures, and related information used by SSSCo in the performance of SSSCo's obligations under this Agreement are proprietary in nature, shall be and remain (along with any corresponding copyrights or similar rights) the sole property of SSSCo and shall not at any time be directly or indirectly used, distributed, disclosed, copied or otherwise employed by Company during the Term. Upon termination of this Agreement, Company shall return to SSSCo all such proprietary materials and information and all documents (including all copies thereof) containing such information in Company's possession or within its control, and shall use its best efforts to ensure that its employees have not retained any such materials, information or documents or copies thereof and, upon request by SSSCo, confirm compliance with the foregoing in writing.

SSCo acknowledges and agrees that the systems, methods, programs, software, brochures, manuals, forms, data, procedures, and related information used by or acquired on behalf of Company, which are not the proprietary material of SSSCo, are proprietary in nature, and shall be and remain (along with any corresponding copyrights or similar

rights) the sole property of Company and shall not at any time be directly or indirectly used, distributed, disclosed, copied or otherwise employed by SS Co. Upon termination of this Agreement, SS Co shall return to Company all such proprietary materials and information and all documents (including all copies thereof) containing such information in SS Co's possession or within its control, and use its best efforts to ensure that its employees have not retained any such materials, information or documents or copies thereof and, upon request by Company, confirm compliance with the foregoing in writing.

ARTICLE X

SUCCESSORS AND ASSIGNS

SS Co, without the consent of Company, shall have the right to assign this Agreement to a wholly or majority owned subsidiary or to an affiliate of SS Co under common ownership with SS Co and SS Co's parent. In the event that all or substantially all the assets of SS Co or all its limited liability company interests shall during the Term be acquired by another corporation or other limited liability company or other entity (hereinafter referred to as the "Acquiring Entity") as a result of a merger, consolidation, reorganization, or other transaction, and the Acquiring Entity assumes all of the obligations of SS Co then accrued hereunder, if any, then SS Co shall be relieved of all such obligations. Except as otherwise permitted herein, SS Co shall have no right to assign this Agreement.

ARTICLE XI

MISCELLANEOUS PROVISIONS

11.1 Notices. All notices or other communications hereunder shall be in writing and shall be deemed given (a) one (1) business day after being sent to the recipient by reputable overnight courier service (charges prepaid), or (b) three (3) days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, to the parties at the following addresses:

To Company:

Josera, LLC
195 Mattie M. Kelly Boulevard
Destin, FL 32541

To SS Co:

Pourlessoins, LLC
1040 Crown Pointe Parkway, Suite 600
Atlanta, GA 30338

or to such other address, and to the attention of such other person or officer as either party may designate in writing by notice.

- 11.2 No Partnership or Joint Venture.** Nothing contained in the Agreement shall constitute or be construed to be or create a partnership or joint venture between Company, its successors, or assigns on the one part and SS Co, its successors, or assigns on the other part. Notwithstanding the foregoing, the parties hereby agree that they shall each have a duty to act in good faith and to deal fairly with the other party hereto.
- 11.3 Modifications and Changes.** This Agreement cannot be changed or modified except by another agreement in writing signed by the party sought to be charged therewith or by its duly authorized agent.
- 11.4 Headings.** The article and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope of intent of any provision of this Agreement.
- 11.5 Governing Law.** This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida.
- 11.6 Enforceability.** Should any provision of this Agreement be unenforceable as between the parties, such unenforceability shall not affect the enforceability of the other provisions of this Agreement.
- 11.7 Counterparts.** This Agreement may be executed and delivered (including by facsimile transmission) in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

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

COMPANY:
Josera, LLC

By: _____

Name: John Silliter

Title: Chief Executive Officer

SSCO:
Pourlessoins, LLC

By: _____

Name: _____

Title: Authorized Signatory

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

Company:
Josera, LLC

By: _____
Name: John Silliter
Title: Chief Executive Officer

SSCo:
Pourlessoins, LLC

By:  _____
Name: Gregory Hayes
Title: Authorized Signatory

EXHIBIT A

BUSINESS ASSOCIATE AGREEMENT

PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION

This Business Associate Agreement ("Agreement") is made effective December 1, 2021 ("Effective Date"), by and between Josera, LLC, on behalf of itself and on behalf of all facilities it manages, collectively the Covered Entity ("CE"), located at 195 Mattie M. Kelly Boulevard, Destin, FL 32541-2811, and Pourlessoins, LLC, the Business Associate ("BA"), located at 1040 Crown Pointe Parkway, Suite 600, Atlanta, Georgia 30338.

In consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

I. DEFINITIONS

For purposes of this Agreement, the terms used herein, whether or not capitalized, unless otherwise specifically defined, shall have the same meanings as used in the Health Insurance Portability and Accountability Act of 1996, and any amendments or implementing regulations ("HIPAA", inclusive of the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and 164), and the Health Information Technology for Economic and Clinical Health Act ("HITECH", Title XIII of the American Recovery and Reinvestment Act of 2009), and any amendments or implementing regulations. A reference in this Agreement to any provision of a law or regulation means the provision as then in effect, amended, or implemented via regulation. In the event of a conflict between the definitions in this Agreement and the definitions contained in HIPAA and HITECH, the definitions contained in HIPAA and HITECH shall be applied.

Availability means that data or information is accessible and useable upon demand by an authorized person.

BA "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean the Business Associate referenced above.

CE "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean the Covered Entity referenced above.

Confidentiality means that data or information is not made available or disclosed to unauthorized persons or processes.

Data Aggregation means, with respect to PHI created, received, maintained, or transmitted by an BA in its capacity as a business associate of a CE, the combining of such PHI by the BA with the PHI received by the BA in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

Disclose or Disclosure means the release, transfer, provision of access to, or divulging in any other manner of PHI to parties outside the BA's organization.

HIPAA means the Health Insurance Portability and Accountability Act of 1996.

HITECH means the Health Information Technology for Economic and Clinical Health Act.

Individual means the person who is the subject of PHI and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

Integrity means that data or information has not been altered or destroyed in an unauthorized manner.

Privacy Rule means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR 160 and 164, Subparts A and E, as amended by HITECH.

Protected Health Information (“PHI”) has the same meaning as this term has in 45 CFR 160.103 (as amended by the HITECH Act), limited to the information created, received, maintained, or transmitted by BA from or on behalf of CE. It includes PHI that is transmitted by or maintained in any electronic media known as Electronic Protected Health Information.

Required By Law means a mandate contained in the law that compels a covered entity to make a use or disclosure of PHI and that it is enforceable in a court of law.

Secretary means the Secretary of the Department of Health and Human Services (“HHS”) or any other officer or employee of HHS to whom the authority involved has been delegated.

Security Incident means the attempted or successful unauthorized access, Use, Disclosure, modification, or destruction of PHI or interference with information system operations that contains PHI.

Security Rule means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR 160 and 164, Subparts A and C.

Use means the sharing, employment, application, utilization, examination, or analysis of PHI within the BA’s organization.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

1. Nondisclosure. BA shall not Use or Disclose CE's PHI otherwise than as permitted or required by this Agreement or as Required By Law.

2. Minimum Necessary. BA shall Use or further Disclose PHI only in the minimum amount and to the minimum number of individuals necessary to achieve the purpose of the services being rendered to or on behalf of CE.

3. Safeguards. BA shall develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of PHI that BA creates, receives, maintains, or transmits on CE’s behalf as required by the Privacy and Security Rules. In doing so, BA shall comply with Subpart C of 45 CFR 164 with respect to electronic protected health information, to prevent Use or Disclosure of PHI other than as provided for by this Agreement.

4. Reporting of Unauthorized Disclosures. BA shall report to CE within three (3) calendar days any Use or Disclosure of PHI not provided for by this Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any Security Incident of which it becomes aware. This provision applies regardless of whether such unauthorized Use or Disclosure was by BA, its agents or subcontractors, or any third party.

5. Mitigation. BA shall mitigate, to the extent practicable, any harmful effect that is known to BA of a Use or Disclosure of PHI by BA in violation of the requirements of this Agreement.

6. BA's Agents and Subcontractors. In accordance with 45 CFR 164.502(e)(1)(ii), 164.308(b)(2) and 164.314(a), if applicable, BA shall ensure that any subcontractors or agents that create, receive, maintain, or transmit PHI on behalf of BA, agree to the same restrictions, conditions, and requirements that apply to BA through this Agreement with respect to such PHI. BA may Disclose PHI to those of its agents and subcontractors who have been previously approved by CE, have executed an agreement containing a provision substantially conforming to the Confidentiality and other related terms of this Agreement, and who reasonably need to know such information in order to perform obligations under this Agreement and, in such case, shall only disclose the minimum amount of such PHI as is necessary. BA shall make such agreements with its agents and subcontractors available upon request of CE. The acts or omissions of BA's agent and/or subcontractors shall be deemed the acts and omissions of BA.

7. Access to PHI. In order for CE to satisfy its obligations under 45 CFR 164.524 and as otherwise required by law, BA shall provide CE access to PHI upon request, in the time and manner designated by CE. In the event any Individual delivers directly to BA a request for access to PHI, BA shall promptly forward such request to CE. This provision applies only to PHI received or created by BA pursuant to this Agreement, if BA possesses such PHI.

8. Documentation of Disclosures. BA shall document such Disclosure of PHI and information related to such Disclosure as would be required for CE to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

9. Accounting of Disclosures. BA shall document disclosures of PHI and information related to such disclosures as would be required for CE to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. BA shall provide to CE, in a time and manner designated by CE, information documented in accordance with this section, to permit CE to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

10. Amendment of PHI. BA shall make available any PHI in its possession at the request of CE for any amendments to such PHI pursuant to 45 CFR 164.526, and in the time and manner designated by CE. This provision applies only to PHI received or created by CE and BA pursuant to this Agreement, if BA possesses such PHI. In the event any Individual delivers directly to BA a request for amendment to PHI, BA shall promptly forward such request to CE for further direction.

11. Internal Practices. BA shall make its internal practices, books and records relating to the Use and Disclosure of PHI received from CE, or created, received, maintained, or transmitted by BA on behalf of CE, available to the CE, or to the Secretary, for purposes of the Secretary determining CE's compliance with HIPAA.

12. HITECH. BA acknowledges that, pursuant to HITECH, it is responsible for compliance with the HIPAA Privacy and Security Rules in the same manner as a Covered Entity. BA acknowledges and agrees to abide by these requirements.

13. Privacy of Individually Identifiable Health Information. To the extent the BA is to carry out one or more of CE's obligation(s) under Subpart E of 45 CFR Part 164, BA shall comply with the requirements of Subpart E that apply to CE in the performance of such obligation(s).

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

1. Permitted Uses and Disclosures. Except as otherwise limited in this Agreement, BA may Use or Disclose PHI to perform functions, activities, or services for, or on behalf of CE, provided such Use or Disclosure would not violate the Privacy Rule if done by the CE. BA may also Use or Disclose PHI as

Required By Law. BA may not Use or Disclose PHI in a manner that would violate the Privacy Rule if done by CE, except for the specific uses and disclosures set forth below in Section III (2), (3), (4), (5), and (6). Any Use or Disclosure of PHI by BA shall be consistent with the Minimum Necessary requirement set forth in Section II (2) of this Agreement.

2. Use for Management and Administration. Except as otherwise limited in this Agreement, BA may Use PHI for the proper management and administration of the BA or to carry out the legal responsibilities of the BA.

3. Disclosure for Management and Administration. Except as otherwise limited in this Agreement, BA may Disclose PHI for the proper management and administration of the BA or to carry out the legal responsibilities of the BA, provided that:

a. Disclosures are Required By Law; or

b. BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and

c. The person notifies the BA of any instances of which it is aware in which the Confidentiality of the information has been breached.

4. Data Aggregation. Except as otherwise limited in this Agreement, BA may Use PHI to provide Data Aggregation services to CE relating to the health care operations of the CE as permitted by 45 CFR 164.504(e)(2)(i)(B).

5. Other Permitted Uses. Except as otherwise limited in this Agreement, BA may Use or Disclose PHI for the limited purposes provided for in any other current and future contracts between the BA and CE, so long as that use does not violate HIPAA. Should any limited purposes of the Use or Disclosure of PHI, in any current or future contract between the BA and CE, be more restrictive than the permitted Uses and Disclosures contained in this Agreement, then the more restrictive language contained in such contract shall apply.

6. Report Violations of Law. Except as otherwise limited in this Agreement, BA may Use PHI to report actual or suspected conduct that is unlawful or otherwise violates professional or clinical standards, or that endangers patients, workers or the public, to appropriate Federal and State authorities consistent with 45 CFR 164.502(j)(1).

IV. OBLIGATIONS OF COVERED ENTITY

1. Notice of Privacy Practices. Upon request, CE shall provide BA with the notice of privacy practices that CE produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

2. Changes in Permission. CE shall notify BA of any changes in, or revocation of, permission by an Individual to Use or Disclose his or her PHI, to the extent that such changes may affect BA's Use or Disclosure of PHI.

3. Notification of Restrictions. CE shall notify BA of any restriction to the Use or Disclosure of PHI that CE has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect BA's Use or Disclosure of PHI.

V. PERMISSIBLE REQUESTS BY COVERED ENTITY

1. Requests by Covered Entity. CE shall not request BA to Use or Disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR 164 if done by CE, unless BA is to Use or Disclose PHI for data aggregation, management and administration, or legal responsibilities of the BA.
2. Audits, Inspection and Enforcement. From time to time upon reasonable notice, CE may inspect the facilities, systems, books, and records of BA to monitor compliance with this Agreement. BA shall promptly remedy any violation of any provision of this Agreement to the satisfaction of CE in CE's sole discretion, and shall certify the same to CE in writing. The fact that CE inspects, or fails to inspect, or has the right to inspect, BA's facilities, systems and procedures does not relieve BA of its responsibility to comply with this Agreement, nor does CE's (i) failure to detect or (ii) detection.

VI. TERM AND TERMINATION

1. Term. The Term of this Agreement shall be effective as of the Effective Date and shall remain in effect as long as BA or any of BA's agents and/or subcontractors retains CE's PHI or on the date CE terminates for cause as authorized in Section VI(2).
2. Termination for Cause. Upon CE's knowledge that BA or any of BA's agents and/or subcontractors has violated a material term of HIPAA or this Agreement, CE may either:
 - a. Give written notice of such breach or violation and provide a reasonable time period for BA to cure the breach or end the violation, and if BA does not cure the breach or end the violation within the time specified by CE, terminate this Agreement; or,
 - b. Immediately terminate this Agreement and the underlying contract if BA has breached a material term of this Agreement or failed to meet its HIPAA obligations; or,
 - c. Report the violation to the Secretary if neither cure of the breach or violation nor termination of this Agreement are feasible.
3. Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, BA shall return to CE or, if agreed to by CE, securely destroy all PHI received from CE, or created, maintained, received, or transmitted by BA on behalf of CE, that the BA and/or its agents and subcontractors, still maintains in any form, has recorded on any medium, or stored in any storage system. BA and/or its agents and subcontractors shall retain no copies of the PHI.

VII. INDEMNIFICATION

BA shall indemnify and hold CE harmless from and against all claims, damages, liabilities, judgments, fines, assessments, penalties, awards, or other expenses of any kind or nature whatsoever, including without limitation, attorney's fees, costs, and expenses relating to or arising out of any breach or alleged breach of this Agreement or Disclosure of PHI in violation of applicable law or regulation.

VIII. MISCELLANEOUS

1. Amendment. Both BA and CE agree to take such action as is necessary to amend this Agreement from time to time for CE to comply with the requirements of HIPAA and any other applicable law.
2. Survival. The respective rights and obligations of BA under Section VI(3) and VII of this Agreement shall survive the termination of this Agreement.

3. Interpretation. A reference in this Agreement to the HIPAA or HITECH Rules shall mean the section in effect as of the Effective Date as it may be amended from time to time. This Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and applicable state laws. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that permits CE to comply with HIPAA and applicable state laws.

4. Assistance in Litigation or Administrative Proceedings. BA shall make itself, and any subcontractors, employees or agents assisting BA in the performance of its obligations under this Agreement, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or employees, based upon claimed violation of the Security Rule and/or the Privacy Rule, except where BA or its subcontractor, employee or agent is a named adverse party.

5. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE or BA, any rights, remedies, obligations, or liabilities whatsoever.

6. Notices. Any notice or other communication required to be provided by or to either party herein shall be in writing and may be delivered by (i) a nationally recognized courier/overnight delivery service, or (ii) by certified mail with return receipt requested. If notices are delivered by courier/overnight delivery, it will be deemed delivered as of the next business day. If notices are delivered by certified mail, it will be deemed delivered three (3) days from the date of mailing. Notices may be sent to the address set forth in the beginning of this Agreement, c/o Legal Department.

7. Independent Contractor Status. In the performance of its duties and obligations pursuant to this Agreement, BA shall at all times be acting and performing as an independent contractor of CE.

[Remainder of Page Intentionally Left Blank – Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

COVERED ENTITY:
Josera, LLC

BUSINESS ASSOCIATE
Pourlessoins, LLC

By:  _____

By: _____

Print Name: John Silliter

Print Name: _____

Title: Chief Executive Officer

Title: Authorized Signatory

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

COVERED ENTITY:
Josera, LLC

BUSINESS ASSOCIATE
Pourlessoins, LLC

By: _____

By:  _____

Print Name: John Silliter

Print Name: Gregory Hayes

Title: Chief Executive Officer

Title: Authorized Signatory

EXHIBIT 4-B

Lidenskab Administrative Services Agreement

AMENDED AND RESTATED ADMINISTRATIVE SERVICES AGREEMENT

THIS AMENDED AND RESTATED ADMINISTRATIVE SERVICES AGREEMENT (the “Agreement”) is made and entered into as of May 1, 2023 (the “Effective Date”), by and between LIDENSKAB, LLC d/b/a Raydiant Health Care, a Florida limited liability company (“Company”), and POURLESSOINS, LLC d/b/a SYNERGY HEALTHCARE SERVICES a Georgia limited liability company (“SSCo”).

WITNESSETH:

WHEREAS, Company is engaged in the business of providing management services to certain skilled nursing facilities (the “Facilities”);

WHEREAS, SSSCo and Company entered into that certain Administrative Services Agreement dated December 1, 2021 (as has been further amended and modified, the “Original Agreement”) pursuant to which SSSCo provides certain administrative services to Company; and

WHEREAS, SSSCo and Company desire to amend and restate the Original Agreement, in its entirety, in accordance with the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

ARTICLE I

TERM

The initial term of this Agreement shall commence on the Effective Date and shall continue for a period of one (1) year thereafter (the “Initial Term”). If this Agreement is not earlier terminated pursuant hereto, upon the expiration of the Initial Term, this Agreement shall automatically renew for successive one year terms (each, a “Renewal Term”) unless either party delivers to the other, at least sixty (60) days prior to the expiration of the Initial Term or any Renewal Term, written notice of such party’s intent not to renew this Agreement. The entire term of this Agreement, including the Initial Term and any and all Renewal Terms, is hereinafter referred to as the “Term.”

ARTICLE II

RETENTION OF SSSCO

2.1 Control Retained by Company. All management company responsibilities for the Facilities will remain with Company. SSSCo shall perform the duties herein required to be performed by it as the agent of Company and in accordance with the policies and directives from time to time adopted by Company.

2.2 Data Ownership. All data, records and reports relating to the Company’s business (collectively, the “Records”), whether in existence at the Effective Date or compiled thereafter by SSCo in the course of performing its administrative services to Company hereunder, shall be treated by SSCo as the exclusive property of the Company. Neither the Company’s grant of access to Records to SSCo, nor the furnishing of Records by SSCo to Company, shall grant any express or implied license to SSCo related to such Records other than that which is necessary for SSCo to perform and provide the administrative services to the Company. Upon request by the Company, and without regard to the default or other status of the parties under this Agreement, SSCo shall promptly deliver to Company the requested Records in electronic format and in such hard copy as exists on the date of the request by Company.

2.3 Relationship of Parties. The parties hereto acknowledge that SSCo is at all times acting and performing hereunder as an independent contractor, and that nothing contained in this Agreement shall constitute or be construed to be or to create a partnership, joint venture or lease between Company and SSCo nor is it intended that any third parties have any benefits from this Agreement nor any rights not expressly stated herein.

ARTICLE III

DUTIES AND OBLIGATIONS

During the Term and subject to the terms and conditions hereof, SSCo shall provide the following services to Company:

3.1 Accounting.

(a) SSCo shall assist Company in coordinating and preparing schedules and other information reasonably requested by Company’s outside independent certified public accountants in connection with the preparation of fiscal year-end financial statements for Company and/or Facilities.

(b) SSCo shall deliver or cause to be delivered to Company, at Company’s expense, the following financial statements and other information related to it or the Facilities:

(i) within thirty (30) days following the end of each calendar month, an unaudited profit and loss statement and balance sheet (both prepared on an accrual basis in accordance with United States generally accepted accounting principles, as in effect from time to time (“GAAP”)) reflecting the results of Company’s operations and financial position of the Company for such calendar month and the year-to-date;

(ii) within one hundred and twenty (120) days after the close of each fiscal year, if required by Company, an audited balance sheet and related statement of profit and loss certified by an independent certified public accounting firm and prepared in accordance with GAAP, reflecting the financial position and the results of Company’s operations during the preceding twelve (12) months then ended. All items related to the annual audit, such as actuarial analysis and accountants’ fees, shall be at Company’s sole expense; and

(iii) other financial services, analyses, reports and information reasonably requested by Company.

3.2 Tax Services. SSCo shall, on behalf of Company and Facilities, and at Company's sole expense, prepare and process all taxes, assessments and charges of every kind imposed upon Company or Facilities by any governmental authority, including but not limited to monthly sales and use taxes, annual property taxes, and annual income taxes ("Taxes"). SSCo shall cause all Taxes, including interest and penalties thereon, to be paid by Company Funds when due, except that SSCo shall not cause such payment to be made if: (i) such Taxes are being contested in good faith by Company at its sole expense and without cost to SSCo; (ii) enforcement thereof is stayed; and (iii) Company shall have given SSCo written notice of such contest and stay and authorized the non-payment thereof. Interest or penalty payments shall be reimbursed by SSCo to Company if imposed upon Company by reason of negligence on the part of SSCo in making the payment. SSCo shall also prepare an annual filing and, if necessary, remittance due for any unclaimed property pursuant to state law.

3.3 Cash Management.

- (a) SSCo shall provide cash management services to Company, including the initiation of approved wire transfers, stop payments and returned items and the creation of reports relating to operating capital and cash analysis.
- (b) SSCo shall establish a deposit account or accounts, in the name of Company, in a banking institution that is a member of the Federal Deposit Insurance Corporation. Company authorizes SSCo, as agent for Company, to manage all funds for and on behalf of Company, and to disburse and pay the same from said accounts on behalf and in the name of Company, subject to any direction from Company.
- (c) All funds received from the Company's operations shall be deposited in a bank account or accounts established in Company's name. Company shall designate the signatory or signatories required on all checks or other documents of withdrawal for the accounts.

3.4 Operational Finance. SSCo shall assist Company with targeted analytics on an as-needed basis, including but not limited to preparation of strategic business models, census and marketing, labor and staffing, expense management, and general projections and financial forecasting. SSCo will also coordinate quarterly payroll based journal submissions and respond to any related audit requests.

3.5 Benefits. SSCo shall manage for Company, at Company's sole expense, all aspects of Company's employee benefits program that may be offered to employees of Company from time to time.

3.6 Books and Records. SSCo shall keep accurate records as required by applicable law or as reasonably requested by the Company in connection with its business operations. SSCo shall maintain a complete audit trail for all financial and non-financial transactions arising from or in connection with this Agreement in such a manner as required by the records management policies of the Company and GAAP. SSCo will maintain such audit trail for such periods of time as may

be specified in the records management policies of the Company or, if no such period is specified, for such period as the parties may agree. SS Co shall provide to Company, its consultants, its auditors (including internal audit staff and external auditors), regulators and other representatives as Company may from time to time designate in writing, access at all reasonable times to SS Co's systems, data, records, policies and procedures and other information relating to provision of administrative services hereunder for the purpose of providing consulting services to, or performing audits, inspections or surveys of, either SS Co or Company.

3.7 Clinical Services.

(a) SS Co will consult on the development of, and provide guidance on the Company's standards, procedures and policies for admitting, discharging and treating residents, for charging residents for services, and for collecting payments from residents or third parties.

(b) SS Co will provide Company with standards, procedures and policies that will assist Company with implementing its own standards, procedures, and policies concerning social services, advanced directives, activities, dining, pharmacy, infection control and restorative nursing that will be substantially the same as standards, procedures and policies generally prevailing in the industry.

(c) SS Co shall timely provide to Company all updates and amendments to such standards, procedures and policies. Company shall have the right to use any such SS Co standards, procedures and policies only for its own internal use on a royalty-free basis and only during the Term hereof.

(d) SS Co will assist Company with survey preparedness and provide tools such as a pre-survey score tool, survey best practices, regulatory coaching program, and risk management.

(e) SS Co will consult and assist Company with clinical education on CMS regulations, industry trend responses, pharmacy regulations and trends, disease management, nursing competency (e.g., CHF, COPD, palliative care, stroke, etc.), nursing ethics, return to hospital, QAPI/RCA, and other topics as requested by Company.

(f) SS Co will provide consultation to Company on any of the subjects referenced in this **Section 3.7** on an as-needed basis.

3.8 Information Technology Services.

(a) SS Co will provide overall direction and supervision of information technology services for Company and the Facilities and will arrange to provide to Company and the Facilities information technology services as required for Company's operation of the Company.

(b) SS Co will advise the Company on solutions to meet the telecommunication needs of the Company and Facilities, including telephone systems, email, WIFI, cable programming and internet connections and will manage the relationships with the chosen vendors (e.g., telecom carriers and service providers for voice and data transmission).

(c) SS Co will advise Company on the selection and provisioning/setup of hardware (e.g., computers, thin clients, laptops, tablets, monitors, computer accessories, printers, telecopy

machines, etc.) to meet their information technology needs and will support the relationship with the chosen hardware vendors. Hardware purchased by Company will remain the sole and exclusive property of Company, unless otherwise agreed to by Company.

(d) SS Co will provide full support and maintenance of the Facilities' electronic medical records application.

(e) SS Co will provide information technology security solutions such as data protection and malicious website/software protection, and will provision user accounts and manage rights to IT resources and applications.

(f) SS Co will organize, store, backup and manage data of Company and the Facilities, including the provision of redundancy systems to avoid (or minimize the impact of) outages and downtimes for IT services.

(g) SS Co will manage and optimize the provisioning, deployment, maintenance, utilization and disposal of software applications.

(h) SS Co will provide 24-7 support services directly accessible to Company employees to assist with and support all of the services provided in this **Section 3.8.**

(i) SS Co will provide, as part of the Administrative Service Fee, certain hardware (e.g., data center servers, modems, routers, switches and other network equipment for accessing those data center servers) and related software to be used by Company and Facilities, Company shall not retain ownership interests in such hardware and software.

3.9 Labor and Employment Matters.

(a) SS Co will assist Company and the Facilities in the handling and settlement of all significant employee relations matters, union and non-union, and will negotiate, on Company's behalf, with any labor union lawfully entitled to represent the employees, provided that any settlement, collective bargaining agreement or labor contract resulting therefrom must first receive Company approval, and the Company shall be the only person authorized to execute the same.

(b) SS Co will consult Company with the development and implementation of a strategy to recruit talent, including: (i) training and support on recruitment functions such as job posting, development of job descriptions and applicant tracing, (ii) serving as a liaison to third-party recruitment vendors approved by Company (e.g., iCims, Career Builder, etc.), and (iii) assisting Company with its participation in school partnerships, job fairs and trade shows.

(c) SS Co will consult with Company on any HR regulatory and compliance audits.

(d) SS Co will consult with Company on employee relations, retention, engagement, policy development, investigation guidance, performance management and leadership training.

3.10 Concessionaires, etc. SS Co shall assist in the contracting process, including the negotiation and consummation, in the name of and for the account of Company and the Facilities,

contracts or arrangements with concessionaires, licensees, tenants, and other intended users of the Company. Any revenue derived from concessions, licenses or tenants will inure to the Company.

3.11 Ancillary Support Services.

(a) SS Co shall assist in identifying, contracting with and managing an independent pharmacy service and shall serve as the liaison to that service provider. SS Co shall also monitor services provided for contractual compliance and will provide support to Company to address applicable regulations, diversion and other medication-related concerns, and will provide assistance with formulary and therapeutic interchange.

(b) SS Co shall assist in the contracting process for Company and the Facilities, including the negotiation and consummation, in the name of and for the account of Company or Facilities, of all ancillary services, utilities, concessions, supplies and other services as may be needed from time to time for the maintenance and operation of the Company, including, without limitation, food, transportation, resident care equipment, and mobile diagnostic services. All out-of-pocket fees, expenses and charges incurred in connection with the provision of ancillary supplies and services to the residents of the Company and all utility fees, charges and expenses shall be Company Expenses.

3.12 Physical Plant Management & Safety Services.

(a) SS Co will use reasonable commercial efforts to assist in the contracting process to cause to be made or installed in the name of and for the account of Company or Facilities any proper repairs, replacements, additions and improvements in and to the Company or Facilities and the furnishings and equipment thereof as necessary in order to keep and maintain the same in good repair, working order and condition, and outfitted and equipped for the proper operation thereof in accordance with:

(i) the Capital Budget;

(ii) general industry standards;

(iii) all applicable statutes, ordinances, laws, rules, regulations, or orders of any governmental authority over the Company or Facilities, where the failure to comply will have a material adverse effect on the Company or Facilities;

(iv) the terms and conditions of any lease, mortgage or other financing arrangement identified in writing to SS Co;

(v) all applicable requirements of insurers and insurance policies related to the Company or Facilities; and

(vi) Medicare, Medicaid and any other governmental, public or private payment or reimbursement program.

(b) SS Co will consult with Company and assist with the development and implementation of life safety strategies, policies and best practices, including development and implementation of an emergency management program.

(c) SS Co will also assist with capital improvement projects and any necessary construction management associated with any of the foregoing services.

(d) Notwithstanding the foregoing, except to the extent set forth in and otherwise specifically agreed to in writing by SS Co, no landlord or Company mortgagee shall have any rights whatsoever under this Agreement.

3.13 Licenses, Permits and Certifications.

(a) SS Co will assist Company in timely obtaining and maintaining, on behalf of Company and the Facilities, all necessary bed allocations, licenses, permits, certifications and approvals required in connection with the management and operation of the Company and Facilities to comply with all applicable requirements.

(b) Company will cooperate with SS Co in applying for, obtaining, and maintaining such licenses and permits as referenced herein. SS Co will make available, upon request by Company, a copy of each Medicaid or Medicare report and all supplemental materials filed with a governmental authority for the Company.

(c) Company will promptly make available to SS Co, upon request, all complaint, licensure and certification surveys taken by federal and state health and life safety code agencies (including, without limitation, HCFA 2567 Forms and related correspondence and plans of correction) upon receipt or issuance. SS Co will make available to Company the final drafts of all cost reports or similar filings with any governmental authority prior to the due date for such report or filing with the applicable governmental authority. The Company shall have the right to review and make modifications to all such drafts, reports and filings; and SS Co shall make such modifications or ensure that such modifications are made by any third-party preparing such reports or filings.

(d) SS Co will assist, if requested, in the preparation and submission of applicable plans of correction to the licensing authority and any other applicable state survey/certification agencies and coordinate such plans of correction with Company when requested to do so.

3.14 Insurance.

(a) SS Co will apply for, obtain, maintain and manage on Company's behalf at all times during the Term of this Agreement such policies of insurance as Company deems appropriate and designates in writing to SS Co. SS Co will submit to Company all quotes for coverage, retention of coverage and premiums for coverage prior to issuance of a binder for coverage on new or renewal policies, upon request. SS Co will provide to Company all policies and certificates evidencing such insurance. In addition, SS Co will provide Company the current name, address and telephone numbers of all the insurance brokers for all the insurance policies.

(b) All insurance provided for under this **Section 3.14** must be affected by policies issued by insurance companies that are compliant with leases and loan agreements. If SS Co cannot obtain

the insurance coverage as contemplated by **Section 3.14(a)** at usual and reasonable market rates, SS Co will immediately notify Company so that Company may consider alternative acceptable coverage.

(c) All liability insurance policies will be carried in the name of Company and any losses payable under such policies will be payable to Company. If instructed by Company, the landlord of the Company and any Company mortgagee designated by Company and SS Co, shall be named as mortgagee and additional insured on the property insurance and the comprehensive general liability insurance policies.

(d) Company and any officer, partner, director, shareholder or employee of Company and/or SS Co, to the extent permissible, will be named as additional insureds under any policy of: (i) property insurance or fire and extended coverage insurance, (ii) comprehensive general liability insurance, (iii) professional liability insurance, (iv) auto liability insurance, (v) workers' compensation insurance, (vi) umbrella liability insurance, and (vii) crime insurance coverage maintained with respect to the Company.

(e) Unless otherwise permitted by Company, any employee of Company or of SS Co responsible for handling of any funds of Company will be bonded by a fidelity bond or otherwise covered by insurance in an amount to be determined annually by Company, the cost of which shall be a Company Expense.

3.15 Legal Actions: Contests.

(a) SS Co will, with Company approval, institute, in its own name or in the name of Company, supervise the institution, prosecution or defense of any and all legal actions or proceedings necessary or desirable for the Company, including without limitation:

(i) to defend any claims asserted by any third-party against the Company, SS Co, or Company, or the officers, directors, employees and affiliates of SS Co or Company, or to defend any claims asserted by any third-party for which Company may be liable for indemnification;

(ii) to collect charges, rent, or other sums due the Company or Facilities;

(iii) to lawfully oust or dispossess residents, tenants or other persons in possession, or lawfully cancel, modify, or terminate any resident agreement, lease, license, or concession agreement for the breach thereof or default thereunder by the tenant, licensee, or concessionaire thereunder; or

(iv) to contest the validity or application of any agreement, law, ordinance, rule, ruling, regulation, order or requirement of any governmental authority having jurisdiction over the Company or the operation of the Facilities, or to appeal any action taken by any governmental authority against the Company or Facilities, including, without limitation, enforcement actions initiated against the Company, SS Co, or Facilities for alleged violations of applicable laws; provided that such contest or appeal will not result in the suspension of the Company or Facilities; and provided further, that Company shall have no obligation to secure and protect SS Co from any loss, cost, damage or expense that is ultimately determined to have arisen out of SS Co willful misconduct, bad faith, fraud, violation of law or gross negligence in the performance of its obligations under this Agreement.

- (b) SS Co will, with Company approval, supervise and direct the legal actions necessary to protect, settle and/or litigate to final judgment in any appropriate court any such dispute, proceeding, violation, order or contest affecting the Company or the Facilities.
- (c) SS Co will supervise and direct the processing of all third-party payment claims and appeals for the services provided by the Company or the Facilities, including without limitation, exhaustion of all applicable administrative proceedings or procedures, adjustment and denials by any governmental authority or their fiscal intermediaries and other third-party payors.
- (d) Any counsel to be engaged by SS Co, on behalf of Company, for any reason in fulfillment of its duties under this Agreement will be subject to timely Company approval.
- (e) SS Co will diligently conduct all legal actions, proceedings and contests it is required to conduct in good faith and Company will reasonably cooperate with SS Co under this section.

3.16 Patient and Payor Billing and Collection.

- (a) SS Co will consult and assist with the development and implementation of Company's procedures for the issuance of bills or invoices for services and advise on the Company's procedures for collection of accounts receivable, maintenance of accounting, billing, resident and collection records and all other necessary or desirable applications, reports and claims related to revenue production.
- (b) SS Co shall provide central billing services for claims transmission for Medicare, Medicaid and Insurance/HMO payors, including electronic remittance capture and posting to the accounts receivable system and the collection of related balances.
- (c) SS Co shall provide assistance from a qualified chart audit review team for payor audits for medical necessity and, with approval of Company, appeals of claims that are denied through Medicare or Insurance and HMO payors.
- (d) SS Co shall process and post all bad debt write-off requests consistent with Company policy, including ensuring that Medicare and Medicaid dual eligible (MXA) write off criteria are satisfied for cost report reimbursement.
- (e) SS Co shall liaison with outside collection agencies, legal resources, payors and other entities as may be necessary to assist in Company's billing and collection efforts.
- (f) SS Co shall provide access to its internally developed software tools and reports for use by Company, including Medicare Reimbursable Bad Debt Write off Portals, Asset Searches, Month-End closing checklists, and tools for processing accounts receivable refunds, tracking medical necessity audits and denials, and tracking of electronic remits.
- (g) SS Co shall not be responsible for the routine billing and collecting of private pay, hospice, Veterans Administration, workers compensation, or hospital payors, or for the generation and mailing of monthly statements. Month-end closing in the accounts receivable system and the posting of checks or cash received at the facility will also remain the responsibility of Company.

(h) Upon SSCo request, Company shall timely execute all such applications, reports and claims. Company expressly constitutes and appoints SSCo, to the extent permitted by the applicable requirements, as Company's agent to direct and supervise the processing and collection, on Company's behalf and in its name, of all private party insurance, Medicare, Medicaid and other receivables.

3.17 Collection and Disbursement of Funds.

(a) SSCo will supervise the deposit by Company personnel into an account in the name of Company or Facilities with one or more institutions, each of which must be a member of the Federal Deposit Insurance Corporation and receive Company approval, all monies arising from and received in connection with the operation of the Company or Facilities or otherwise received by SSCo for and on behalf of Company (the "**Company Funds**").

(b) Company may establish and utilize (or require SSCo to establish and utilize) a cash management system in accordance with procedures, systems and controls as determined by Company for the Company's use.

(c) In the event the applicable requirements require the deposit of monies from Medicare and/or Medicaid in an account solely owned and controlled by Company or Facilities, and with respect to which SSCo has no withdrawal or disbursement rights, then Company shall establish a separate account for the deposit of such funds with a standing instruction to sweep, on a daily basis, the funds deposited in such account to one or more of the accounts of Company or Facilities.

(d) SSCo shall have authority to access such accounts and will disburse and pay from said accounts, on behalf of Company or Facilities and as a Company Expense, in the order of priority permitted under the Company's or Facilities' ground lease and loan financing obligations, including any intercreditor agreement entered into in connection therewith. SSCo hereby covenants that to the extent SSCo receives any funds from any third-party payor after the termination of this Agreement which is attributable to the Term of this Agreement or collected by SSCo on behalf of Company or Facilities for the periods prior to the date of this Agreement, SSCo will deliver such funds to Company promptly following receipt of such funds.

(e) The covenants set forth in the foregoing **Section 3.17** will survive the termination of this Agreement.

3.18 Payment of Expenses.

(a) SSCo shall provide accounts payable services including, without limitation, the following: (i) process payments as directed by Company; (ii) maintain vendor and payable files; (iii) establish payment terms; (iv) maintain and process IRS Form 1099s; (v) review vouchers for appropriate authorizations, invoice information and coding; (vi) expedite payment of "priority" vendors, such as employee expenses, Taxes and utilities; and (vii) petty cash management.

(b) SSCo shall provide payroll services for Company, including the processing of payroll for employees of the Company and Facilities.

- (c) Unless otherwise stated in this Agreement, all direct, out-of-pocket fees, expenses and charges incurred in connection with Article III shall be Company Expenses (“**Company Expenses**”). SSCO is authorized to pay all Company Expenses from Company Funds.
- (d) Company will pay directly (or reimburse SSCO promptly if SSCO advances funds for) any Company Expenses not paid from Company Funds.
- (e) If Company Funds are not available to pay Company Expenses, SSCO will notify Company by submitting a fund request form (such form to be subject to Company approval and will contain such information as Company may reasonably require) to Company and Company will supply the requested funds within ten (10) days after written request by SSCO.
- (f) Notwithstanding anything to the contrary herein, SSCO shall have no obligation to advance any funds hereunder if Company Funds are unavailable unless such unavailability is due to SSCO’s failure to perform its obligations under this Agreement.
- (g) Except for Company Expenses, all fees, expenses and charges incurred by SSCO in connection with its duties and obligations under this Agreement (including, without limitation, fees, expenses and charges incurred due to delegation of any duty or obligation herein to subcontractors, third-party consultants and professionals and not specifically described as a Company Expense) are for SSCO’s account (“**SSCO Expenses**”).
- (h) SSCO will promptly reimburse the Company for any SSCO Expenses paid by the Company.
- (i) SSCO shall not be in default under this Agreement if SSCO’s failure to comply with the terms of this Agreement is due to the lack of adequate Company Funds.
- (j) Notwithstanding anything to the contrary provided herein, SSCO’s direct, out-of-pocket expenses shall not include an allocation of costs and salaries of SSCO’s or its affiliate’s home office personnel unless such allocation is specifically set forth in the budgets which have received Company approval.

3.19 Reimbursement Services. SSCO shall consult and advise on reimbursement matters affecting the Company or the Facilities including:

- (a) The preparation of state and federally required cost reports and, once approved by Company, the filing of the same.
- (b) Review applicable reimbursement rates and Medicare bad debt reporting and resulting advice on achieving the accurate reimbursement.
- (c) Budget preparation support, including projection of anticipated Medicare or Medicaid reimbursement rates and provider taxes.
- (d) Review of consolidated billing invoices and transportation costs to ensure accurate billing and advice on cost containment where appropriate.

3.20 Payor Strategy Services. SS Co shall utilize its existing relationships with third-party payors and cultivate new ones to assist Company with the development of reimbursement strategies, contracting opportunities, and the resolution of claims, including:

- (a) The development, implementation, and maintenance of reimbursement strategies, including value based purchasing such as accountable care organizations, the advanced bundled payment for care improvement program and the comprehensive joint replacement initiative.
- (b) Responding to requests for proposals from hospitals for value payment initiatives and the related assistance to Company with redesigned workflows necessary for participation.
- (c) Training and guidance to Company in responding to managed care and value based initiative workflows as well as assistance with grievance and complaint processes with payors.
- (d) Payor contracting services, including solicitation of new contracts, amendments thereto, creation of contract summaries and roll out of health plan program updates. Assistance will also be provided for escalating claims issues of Company or Facilities to payors.
- (e) Assistance with the credentialing and re-credentialing of Company or Facilities with payors.
- (f) Coordinate directly with health plans to facilitate communication in all facets of reporting that is required for participation, including attendance at ACO and bundled payment collaborative meetings necessary to achieve and maintain preferred status in those programs.

3.21 Rehabilitation Support Services. SS Co shall monitor and consult on rehabilitation services delivered to Company or Facilities, including:

- (a) Identification and engagement of Company approved third-party rehabilitation provider.
- (b) Serving as a liaison to the rehabilitation provider and assisting with the monitoring of its rehabilitation standards through site visits, audits, and the establishment and review of metrics to ensure that the Company's clinical and operational goals are being met.
- (c) Managing therapy revenue and expense through collaboration with the third-party provider and Company.

3.22 MDS Services.

- (a) SS Co shall assist Company with developing and implementing auditing procedures to improve and maintain care plan accuracy, achieve compliance and resolve survey issues that may arise.
- (b) SS Co shall assist Company with the identification of trends and areas of opportunity in Medicare and managed care utilization including, establishment of processes, training and support to ensure accurate billing related to MDS RUG and level based plans and assistance with certification and recertification

(c) SS Co shall assist Company in evaluating and improving quality metric/five-star scores for each of its facilities and related training.

(d) SS Co shall consult and advise Company and Facilities on Minimum Data Set (“MDS”) and case management training and education, including accurate coding, ICD 10 codes, regulatory updates, root cause analysis on survey tags, current trends, and additional training as may be requested by Company.

3.23 Communication & Marketing Services.

(a) SS Co will assist Company with the development and implementation of a communication and marketing strategy that will include digital media (website, social media, blog), Reputational Management (online listening and response), Special Events Planning and Marketing, PR & Media Relations, Issues/Crisis Management, and advertising.

(b) SS Co will also assist Company in the design, production or acquisition of branded promotional (e.g., hats, pens, shirts) items and marketing materials (e.g., stationary, posters, vehicle wraps, exterior signs).

3.24 Corporate Compliance Services.

- a. SS Co will provide overall direction and supervision of Company’s corporate compliance department and arrange to be provided to Company corporate compliance services as required for Company’s operation.
- b. SS Co will develop and implement a corporate compliance plan that satisfies the conditions of participation.
- c. SS Co will provide a corporate compliance officer and a corporate compliance committee to administer the Company’s corporate compliance plan, provide guidance on compliance related issues, and to ensure that all potential compliance matters are appropriately investigated, resolved, and reported as necessary.
- d. SS Co will develop and implement standards, policies, and procedures to enable Company to comply with the conditions of participation related to corporate compliance programs, the HIPAA and HITECH Acts, and the Fraud, Waste, and Abuse Statutes.
- e. SS Co will create and administer necessary compliance education and training on Fraud, Waste and Abuse, HIPAA and HITECH, the Elder Justice Act and abuse, neglect and misappropriation reporting obligations, and the Company’s corporate compliance programs, including the code of ethics and policies and procedures.
- f. SS Co will provide monitoring, auditing, and internal reporting systems.
- g. SS Co will provide standards and procedures for administering disciplinary and remedial measures when incidences of non-compliance are identified.

- h. SS Co will provide employee screening of the OIG Exclusion List and GSA Debarment List through a third-party vendor.
- i. SS Co will utilize a third-party vendor to administer the Company's anonymous compliance hotline. SS Co will review all reports and ensure that they are appropriately investigated and resolved.

3.25 Additional Services. SS Co agrees that any specialized or additional services requested by Company (application development and other non-routine projects) may be performed for a separate fee as agreed upon by Company and SS Co. If SS Co provides any such service, such fee shall not be in excess of such amount as would be charged by a third-party, negotiating at arm's length, for the performance of such service. Additionally, services provided by outside consultants for services not covered under this Agreement will be the sole responsibility of Company and not SS Co.

3.26 HIPAA Addendum. If SS Co, in connection with its provision of administrative services to Company under this Agreement, constitutes a Business Associate, (as defined in HIPAA and/or its implementing privacy regulations at 45 C.F.R. Parts 160-164 (the "HIPAA Privacy Rule")) and uses Protected Health Information (as defined in HIPAA and/or the HIPAA Privacy Rule) that has been generated or entrusted to Company, then the terms of Exhibit A shall apply with respect to SS Co's provision of administrative services under this Agreement. Company shall provide notice to SS Co of changes in HIPAA and/or the HIPAA Privacy Rule relevant to the performance of the administrative services with respect to SS Co's compliance with HIPAA and the HIPAA Privacy Rule in accordance with Exhibit A.

ARTICLE IV

COMPENSATION

Commencing upon the Effective Date and continuing until the end of the Term, Company shall pay to SS Co a service fee equal to \$822,167.00 per month (the "Administrative Service Fee"). Payment shall be made to SS Co via either of the following methods, at the Company's option:

- (a) Upon the Effective Date, Company shall pay to SS Co a deposit equal to one month of the Administrative Service Fee, and thereafter shall pay the Administrative Service Fee to SS Co monthly in arrears; or
- (b) Company shall pay a prorated weekly portion of the Administrative Service Fee to SS Co each week, in arrears.

Notwithstanding the foregoing, and at any time, SS Co shall have the right to increase the Administrative Service Fee by providing Company with thirty (30) days written notice.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF COMPANY

5.1 Organization and Standing of Company. Company is a limited liability company duly organized, validly existing and in good standing under the laws of the state of its formation. Copies of the certificate of formation and limited liability company agreement of Company, and all amendments thereof to date, have been, if requested, delivered to SS Co and are complete and correct.

5.2 Absence of Conflicting Agreements. Neither the execution or delivery of this Agreement nor the performance by Company of the transactions contemplated hereby, conflicts with, or constitutes a breach of or a default or requires the consent of any third-party under: (i) the certificate of formation or limited liability company agreement of Company, (ii) to the best of Company's knowledge, any applicable law, rule, judgment, order, writ, injunction, or decree of any court, currently in effect, (iii) to the best of Company's knowledge, any applicable rule or regulation of any administrative agency or other governmental authority currently in effect, or (iv) any agreement, indenture, contract or instrument to which Company is now a party or by which the assets of Company are bound.

5.3 Consents. No authorization, consent, approval, license, exemption by, filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, is or will be necessary in connection with the execution, delivery and performance of this Agreement by Company.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF SS CO

6.1 Organization and Standing of SS Co. SS Co is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Georgia. Copies of the certificate of formation and limited liability company agreement of SS Co, and all amendments thereof to date, have been, if requested, delivered to Company and are complete and correct.

6.2 Absence of Conflicting Agreements. Neither the execution or delivery of this Agreement nor the performance by SS Co of the transactions contemplated hereby, conflicts with, or constitutes a breach of or a default or requires the consent of any third-party under: (i) the certificate of formation or limited liability company agreement of SS Co, (ii) to the best of SS Co's knowledge, any applicable law, rule, judgment, order, writ, injunction, or decree of any court, currently in effect, (iii) to the best of SS Co's knowledge, any applicable rule or regulation of any administrative agency or other governmental authority currently in effect, or (iv) any agreement, indenture, contract or instrument to which SS Co is now a party or by which the assets of SS Co are bound.

6.3 Consents. No authorization, consent, approval, license, exemption by, filing or registration with any court or governmental department, commission, board, bureau, agency or

instrumentality, domestic or foreign, is or will be necessary in connection with the execution, delivery and performance of this Agreement by SSSCo.

ARTICLE VII

TERMINATION RIGHTS

7.1 Termination by Company. If, at any time or from time to time during the Term, SSSCo shall fail to keep, observe, or perform any material covenant, agreement, term or provision of this Agreement to be kept, observed, or performed by SSSCo, and such default shall continue for a period of sixty (60) days after written notice thereof by Company to SSSCo, then this Agreement may be terminated by Company upon ten (10) days' written notice to SSSCo.

7.2 Termination by SSSCo. If, at any time or from time to time during the Term, either of the following events shall occur and not be remedied within the applicable period of time herein specified, then this Agreement may be terminated by SSSCo upon ten (10) days' written notice to Company:

(a) Company shall fail to keep, observe, or perform any material covenants, agreement, term or provision of this Agreement to be kept, observed, or performed by Company and such default shall continue for a period of sixty (60) days after written notice thereof by SSSCo to Company;

(b) Company fails to pay any Administrative Service Fee due to SSSCo, regardless of whether payments are due weekly or monthly.

7.3 Termination by Either Party. This Agreement may be terminated, except as to liabilities or claims of either party that explicitly survive the Term of the Agreement, at any time for any reason by providing the other party sixty (60) days written notice.

7.4 Surviving Rights Upon Termination. If either party exercises its option to terminate pursuant to this Article VII, each party shall forthwith account for and pay to the other all sums due and owing pursuant to the terms of this Agreement. Without limiting the generality of the foregoing, upon any termination of this Agreement, Company shall be obligated fully and immediately to pay to SSSCo all accrued and unpaid Administrative Service Fees and Company Expenses described herein. All other rights and obligations of the parties under this Agreement shall terminate (except as otherwise set forth herein).

ARTICLE VIII

INDEMNIFICATION

8.1 Indemnification. SSSCo and Company shall indemnify and hold each other and their respective officers, directors, members, employees and affiliates (each, an "Protected Party") harmless from any and all claims, losses, judgments, actions, proceedings, damages, expenses and liabilities whatsoever incurred by a Protected Party, including reasonable attorneys' fees, arising out of a material breach of this Agreement or any third-party claims which are caused in whole or in part by any negligent act or omission of the other party in connection with the performance of its duties under this Agreement. However, SSSCo's obligation to indemnify the Company Protected

Parties shall not extend to any Medicare or Medicaid cost disallowances. The obligations under this **Section 8.1** shall survive termination or expiration of this Agreement.

8.2 Control of Defense of Indemnifiable Claims. A party seeking indemnification under this Article VIII shall give the other party prompt written notice of the claim for which it seeks indemnification. Failure of the party seeking indemnification to give such prompt notice shall not relieve the other party of its indemnification obligation; provided, however, that such indemnification obligation shall be reduced by any damages suffered by such other party resulting from a failure to give prompt notice hereunder. The party receiving the aforementioned notice: (i) shall provide the defense of such claim, including, without limitation, retention and payment of attorneys, and (ii) shall not agree to a settlement of any claim which provides for any relief other than the payment of monetary damages.

ARTICLE IX

CONFIDENTIALITY; NON-SOLICITATION

9.1 Non-Disclosure of Confidential Information. Company acknowledges that SSCO's business involves the development and use of Confidential Information (defined below) and that SSCO will make available such Confidential Information to Company in connection with SSCO's duties under this Agreement. Except as Company and SSCO may disclose in fulfillment of their duties and responsibilities under this Agreement, as may be required to be disclosed by Company and SSCO by law, or as the parties may elect to disclose in response to surveys or data gathering efforts of trade associations in which Company is a member, the parties and their respective members, officers, directors, employees or agents shall not, at any time during or after the Term, divulge, furnish or make accessible Confidential Information to any person or entity for any purpose whatsoever. "Confidential Information" means, with respect to any party, any confidential or proprietary information, including, without limitation, manuals, forms, policies and procedures, computer programs, system documentation and related software, patient records and patient information, and any other information of any kind with respect to the finances, business plans or business operations of such party; provided, however, that "Confidential Information" shall not include any information which (i) becomes generally available to the public other than as a result of disclosure by the receiving party or its agents or representatives, or (ii) becomes available to the receiving party on a non-confidential basis from a source other than the disclosing party or its agents or representatives, provided that such a source lawfully obtained such information and is not bound by, or subject to, confidentiality obligations to the disclosing party.

9.2 Non-Use of Materials. Effective upon the termination of this Agreement for any reason whatsoever, the parties and their respective members, officers, directors, employees or agents shall not use any Confidential Information for any purpose whatsoever.

9.3 Proprietary Material. Company acknowledges and agrees that, except as otherwise provided herein, the systems, methods, programs, software, brochures, manuals, forms, data, procedures, and related information used by SSCO in the performance of SSCO's obligations under this Agreement are proprietary in nature, shall be and remain (along with any corresponding copyrights or similar rights) the sole property of SSCO and shall not at any time be directly or indirectly used, distributed, disclosed, copied or otherwise employed by Company during the

Term. Upon termination of this Agreement, Company shall return to SS Co all such proprietary materials and information and all documents (including all copies thereof) containing such information in Company's possession or within its control, and shall use its best efforts to ensure that its employees have not retained any such materials, information or documents or copies thereof and, upon request by SS Co, confirm compliance with the foregoing in writing.

SS Co acknowledges and agrees that the systems, methods, programs, software, brochures, manuals, forms, data, procedures, and related information used by or acquired on behalf of Company, which are not the proprietary material of SS Co, are proprietary in nature, and shall be and remain (along with any corresponding copyrights or similar rights) the sole property of Company and shall not at any time be directly or indirectly used, distributed, disclosed, copied or otherwise employed by SS Co. Upon termination of this Agreement, SS Co shall return to Company all such proprietary materials and information and all documents (including all copies thereof) containing such information in SS Co's possession or within its control, and use its best efforts to ensure that its employees have not retained any such materials, information or documents or copies thereof and, upon request by Company, confirm compliance with the foregoing in writing.

ARTICLE X

SUCCESSORS AND ASSIGNS

SS Co, without the consent of Company, shall have the right to assign this Agreement to a wholly or majority owned subsidiary or to an affiliate of SS Co under common ownership with SS Co and SS Co's parent. In the event that all or substantially all the assets of SS Co or all its limited liability company interests shall during the Term be acquired by another corporation or other limited liability company or other entity (hereinafter referred to as the "Acquiring Entity") as a result of a merger, consolidation, reorganization, or other transaction, and the Acquiring Entity assumes all of the obligations of SS Co then accrued hereunder, if any, then SS Co shall be relieved of all such obligations. Except as otherwise permitted herein, SS Co shall have no right to assign this Agreement.

ARTICLE XI

MISCELLANEOUS PROVISIONS

11.1 Notices. All notices or other communications hereunder shall be in writing and shall be deemed given (a) one (1) business day after being sent to the recipient by reputable overnight courier service (charges prepaid), or (b) three (3) days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, to the parties at the following addresses:

To Company:
Lidenskab, LLC
1120 West Donegan Avenue
Kissimmee, FL 34741
Attention: Jared Elliott

To SSCO:
Pourlessoins, LLC
1040 Crown Pointe Parkway, Suite 600
Atlanta, GA 30338

or to such other address, and to the attention of such other person or officer as either party may designate in writing by notice.

11.2 No Partnership or Joint Venture. Nothing contained in the Agreement shall constitute or be construed to be or create a partnership or joint venture between Company, its successors, or assigns on the one part and SSCO, its successors, or assigns on the other part. Notwithstanding the foregoing, the parties hereby agree that they shall each have a duty to act in good faith and to deal fairly with the other party hereto.

11.3 Modifications and Changes. This Agreement cannot be changed or modified except by another agreement in writing signed by the party sought to be charged therewith or by its duly authorized agent.

11.4 Headings. The article and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope of intent of any provision of this Agreement.

11.5 Governing Law. This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida.

11.6 Enforceability. Should any provision of this Agreement be unenforceable as between the parties, such unenforceability shall not affect the enforceability of the other provisions of this Agreement.

11.7 Counterparts. This Agreement may be executed and delivered (including by facsimile transmission) in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

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

Company:

Lidenskab, LLC d/b/a Raydiant Health Care

By: 

Name: Jared Elliott

Title: Manager

[Signature Page to Amended and Restated Administrative Services Agreement]

SSCo:
Pourlessoins, LLC d/b/a Synergy
Healthcare Services

By: 
Name: Gregory Hayes
Title: Authorized Signatory

[Signature Page to Amended and Restated Administrative Services Agreement]

EXHIBIT A

**AMENDED AND RESTATED BUSINESS ASSOCIATE AGREEMENT
PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION**

This Amended and Restated Business Associate Agreement ("Agreement") is made effective May 1, 2023 ("Effective Date"), by and between **NSPRMC, LLC d/b/a Coquina Care Partners**, the Covered Entity ("CE"), located at 3920 Rosewood Way, Orlando, FL 32808, and **Pourlessoins, LLC d/b/a Synergy Healthcare Services**, the Business Associate ("BA"), located at 1040 Crown Point Parkway, Suite 600, Atlanta, GA 30338.

Recitals

WHEREAS, CE and BA are parties to that certain Administrative Services Agreement dated December 1, 2021, which was further amended and restated on May 1, 2023 (the "ASA");

WHEREAS, in connection with the ASA, CE and BA entered into that certain Business Associate Agreement dated December 1, 2021 (the "BAA"); and

WHEREAS, CE and BA desire to amend and restate the BAA in its entirety, in accordance with the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

I. DEFINITIONS

For purposes of this Agreement, the terms used herein, whether or not capitalized, unless otherwise specifically defined, shall have the same meanings as used in the Health Insurance Portability and Accountability Act of 1996, and any amendments or implementing regulations ("HIPAA", inclusive of the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and 164), and the Health Information Technology for Economic and Clinical Health Act ("HITECH", Title XIII of the American Recovery and Reinvestment Act of 2009), and any amendments or implementing regulations. A reference in this Agreement to any provision of a law or regulation means the provision as then in effect, amended, or implemented via regulation. In the event of a conflict between the definitions in this Agreement and the definitions contained in HIPAA and HITECH, the definitions contained in HIPAA and HITECH shall be applied.

Availability means that data or information is accessible and useable upon demand by an authorized person.

BA "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean the Business Associate referenced above.

CE "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean the Covered Entity referenced above.

Confidentiality means that data or information is not made available or disclosed to unauthorized persons or processes.

Data Aggregation means, with respect to PHI created, received, maintained, or transmitted by an BA in its capacity as a business associate of a CE, the combining of such PHI by the BA with the PHI received by the BA in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

Disclose or Disclosure means the release, transfer, provision of access to, or divulging in any other manner of PHI to parties outside the BA's organization.

HIPAA means the Health Insurance Portability and Accountability Act of 1996.

HITECH means the Health Information Technology for Economic and Clinical Health Act.

Individual means the person who is the subject of PHI and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

Integrity means that data or information has not been altered or destroyed in an unauthorized manner.

Privacy Rule means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR 160 and 164, Subparts A and E, as amended by HITECH.

Protected Health Information (“PHI”) has the same meaning as this term has in 45 CFR 160.103 (as amended by the HITECH Act), limited to the information created, received, maintained, or transmitted by BA from or on behalf of CE. It includes PHI that is transmitted by or maintained in any electronic media known as Electronic Protected Health Information.

Required By Law means a mandate contained in the law that compels a covered entity to make a use or disclosure of PHI and that it is enforceable in a court of law.

Secretary means the Secretary of the Department of Health and Human Services (“HHS”) or any other officer or employee of HHS to whom the authority involved has been delegated.

Security Incident means the attempted or successful unauthorized access, Use, Disclosure, modification, or destruction of PHI or interference with information system operations that contains PHI.

Security Rule means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR 160 and 164, Subparts A and C.

Use means the sharing, employment, application, utilization, examination, or analysis of PHI within the BA’s organization.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

1. Nondisclosure. BA shall not Use or Disclose CE's PHI otherwise than as permitted or required by this Agreement or as Required By Law.

2. Minimum Necessary. BA shall Use or further Disclose PHI only in the minimum amount and to the minimum number of individuals necessary to achieve the purpose of the services being rendered to or on behalf of CE.

3. Safeguards. BA shall develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of PHI that BA creates, receives, maintains, or transmits on CE’s behalf as required by the Privacy and Security Rules. In doing so, BA shall comply with Subpart C of 45 CFR 164 with respect to electronic protected health information, to prevent Use or Disclosure of PHI other than as provided for by this Agreement.

4. Reporting of Unauthorized Disclosures. BA shall report to CE within three (3) calendar days any Use or Disclosure of PHI not provided for by this Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any Security Incident of which it becomes aware. This provision applies regardless of whether such unauthorized Use or Disclosure was by BA, its agents or subcontractors, or any third party.

5. Mitigation. BA shall mitigate, to the extent practicable, any harmful effect that is known to BA of a Use or Disclosure of PHI by BA in violation of the requirements of this Agreement.

6. BA's Agents and Subcontractors. In accordance with 45 CFR 164.502(e)(1)(ii), 164.308(b)(2) and 164.314(a), if applicable, BA shall ensure that any subcontractors or agents that create, receive, maintain, or transmit PHI on behalf of BA, agree to the same restrictions, conditions, and requirements that apply to BA through this Agreement with respect to such PHI. BA may Disclose PHI to those of its agents and subcontractors who have been previously approved by CE, have executed an agreement containing a provision substantially conforming to the Confidentiality and other related terms of this Agreement, and who reasonably need to know such information in order to perform obligations under this Agreement and, in such case, shall only disclose the minimum amount of such PHI as is necessary. BA shall make such agreements with its agents and subcontractors available upon request of CE. The acts or omissions of BA's agent and/or subcontractors shall be deemed the acts and omissions of BA.

7. Access to PHI. In order for CE to satisfy its obligations under 45 CFR 164.524 and as otherwise required by law, BA shall provide CE access to PHI upon request, in the time and manner designated by CE. In the event any Individual delivers directly to BA a request for access to PHI, BA shall promptly forward such request to CE. This provision applies only to PHI received or created by BA pursuant to this Agreement, if BA possesses such PHI.

8. Documentation of Disclosures. BA shall document such Disclosure of PHI and information related to such Disclosure as would be required for CE to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

9. Accounting of Disclosures. BA shall document disclosures of PHI and information related to such disclosures as would be required for CE to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. BA shall provide to CE, in a time and manner designated by CE, information documented in accordance with this section, to permit CE to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

10. Amendment of PHI. BA shall make available any PHI in its possession at the request of CE for any amendments to such PHI pursuant to 45 CFR 164.526, and in the time and manner designated by CE. This provision applies only to PHI received or created by CE and BA pursuant to this Agreement, if BA possesses such PHI. In the event any Individual delivers directly to BA a request for amendment to PHI, BA shall promptly forward such request to CE for further direction.

11. Internal Practices. BA shall make its internal practices, books and records relating to the Use and Disclosure of PHI received from CE, or created, received, maintained, or transmitted by BA on behalf of CE, available to the CE, or to the Secretary, for purposes of the Secretary determining CE's compliance with HIPAA.

12. HITECH. BA acknowledges that, pursuant to HITECH, it is responsible for compliance with the HIPAA Privacy and Security Rules in the same manner as a Covered Entity. BA acknowledges and agrees to abide by these requirements.

13. Privacy of Individually Identifiable Health Information. To the extent the BA is to carry out one or more of CE's obligation(s) under Subpart E of 45 CFR Part 164, BA shall comply with the requirements of Subpart E that apply to CE in the performance of such obligation(s).

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

1. Permitted Uses and Disclosures. Except as otherwise limited in this Agreement, BA may Use or Disclose PHI to perform functions, activities, or services for, or on behalf of CE, provided such Use or Disclosure would not violate the Privacy Rule if done by the CE. BA may also Use or Disclose PHI as

Required By Law. BA may not Use or Disclose PHI in a manner that would violate the Privacy Rule if done by CE, except for the specific uses and disclosures set forth below in Section III (2), (3), (4), (5), and (6). Any Use or Disclosure of PHI by BA shall be consistent with the Minimum Necessary requirement set forth in Section II (2) of this Agreement.

2. Use for Management and Administration. Except as otherwise limited in this Agreement, BA may Use PHI for the proper management and administration of the BA or to carry out the legal responsibilities of the BA.

3. Disclosure for Management and Administration. Except as otherwise limited in this Agreement, BA may Disclose PHI for the proper management and administration of the BA or to carry out the legal responsibilities of the BA, provided that:

a. Disclosures are Required By Law; or

b. BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and

c. The person notifies the BA of any instances of which it is aware in which the Confidentiality of the information has been breached.

4. Data Aggregation. Except as otherwise limited in this Agreement, BA may Use PHI to provide Data Aggregation services to CE relating to the health care operations of the CE as permitted by 45 CFR 164.504(e)(2)(i)(B).

5. Other Permitted Uses. Except as otherwise limited in this Agreement, BA may Use or Disclose PHI for the limited purposes provided for in any other current and future contracts between the BA and CE, so long as that use does not violate HIPAA. Should any limited purposes of the Use or Disclosure of PHI, in any current or future contract between the BA and CE, be more restrictive than the permitted Uses and Disclosures contained in this Agreement, then the more restrictive language contained in such contract shall apply.

6. Report Violations of Law. Except as otherwise limited in this Agreement, BA may Use PHI to report actual or suspected conduct that is unlawful or otherwise violates professional or clinical standards, or that endangers patients, workers or the public, to appropriate Federal and State authorities consistent with 45 CFR 164.502(j)(1).

IV. OBLIGATIONS OF COVERED ENTITY

1. Notice of Privacy Practices. Upon request, CE shall provide BA with the notice of privacy practices that CE produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

2. Changes in Permission. CE shall notify BA of any changes in, or revocation of, permission by an Individual to Use or Disclose his or her PHI, to the extent that such changes may affect BA's Use or Disclosure of PHI.

3. Notification of Restrictions. CE shall notify BA of any restriction to the Use or Disclosure of PHI that CE has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect BA's Use or Disclosure of PHI.

V. PERMISSIBLE REQUESTS BY COVERED ENTITY

1. Requests by Covered Entity. CE shall not request BA to Use or Disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR 164 if done by CE, unless BA is to Use or Disclose PHI for data aggregation, management and administration, or legal responsibilities of the BA.
2. Audits, Inspection and Enforcement. From time to time upon reasonable notice, CE may inspect the facilities, systems, books, and records of BA to monitor compliance with this Agreement. BA shall promptly remedy any violation of any provision of this Agreement to the satisfaction of CE in CE's sole discretion, and shall certify the same to CE in writing. The fact that CE inspects, or fails to inspect, or has the right to inspect, BA's facilities, systems and procedures does not relieve BA of its responsibility to comply with this Agreement, nor does CE's (i) failure to detect or (ii) detection.

VI. TERM AND TERMINATION

1. Term. The Term of this Agreement shall be effective as of the Effective Date and shall remain in effect as long as BA or any of BA's agents and/or subcontractors retains CE's PHI or on the date CE terminates for cause as authorized in Section VI(2).
2. Termination for Cause. Upon CE's knowledge that BA or any of BA's agents and/or subcontractors has violated a material term of HIPAA or this Agreement, CE may either:
 - a. Give written notice of such breach or violation and provide a reasonable time period for BA to cure the breach or end the violation, and if BA does not cure the breach or end the violation within the time specified by CE, terminate this Agreement; or,
 - b. Immediately terminate this Agreement and the underlying contract if BA has breached a material term of this Agreement or failed to meet its HIPAA obligations; or,
 - c. Report the violation to the Secretary if neither cure of the breach or violation nor termination of this Agreement are feasible.
3. Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, BA shall return to CE or, if agreed to by CE, securely destroy all PHI received from CE, or created, maintained, received, or transmitted by BA on behalf of CE, that the BA and/or its agents and subcontractors, still maintains in any form, has recorded on any medium, or stored in any storage system. BA and/or its agents and subcontractors shall retain no copies of the PHI.

VII. INDEMNIFICATION

BA shall indemnify and hold CE harmless from and against all claims, damages, liabilities, judgments, fines, assessments, penalties, awards, or other expenses of any kind or nature whatsoever, including without limitation, attorney's fees, costs, and expenses relating to or arising out of any breach or alleged breach of this Agreement or Disclosure of PHI in violation of applicable law or regulation.

VIII. MISCELLANEOUS

1. Amendment. Both BA and CE agree to take such action as is necessary to amend this Agreement from time to time for CE to comply with the requirements of HIPAA and any other applicable law.
2. Survival. The respective rights and obligations of BA under Section VI(3) and VII of this Agreement shall survive the termination of this Agreement.

3. Interpretation. A reference in this Agreement to the HIPAA or HITECH Rules shall mean the section in effect as of the Effective Date as it may be amended from time to time. This Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and applicable state laws. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that permits CE to comply with HIPAA and applicable state laws.

4. Assistance in Litigation or Administrative Proceedings. BA shall make itself, and any subcontractors, employees or agents assisting BA in the performance of its obligations under this Agreement, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or employees, based upon claimed violation of the Security Rule and/or the Privacy Rule, except where BA or its subcontractor, employee or agent is a named adverse party.

5. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE or BA, any rights, remedies, obligations, or liabilities whatsoever.

6. Notices. Any notice or other communication required to be provided by or to either party herein shall be in writing and may be delivered by (i) a nationally recognized courier/overnight delivery service, or (ii) by certified mail with return receipt requested. If notices are delivered by courier/overnight delivery, it will be deemed delivered as of the next business day. If notices are delivered by certified mail, it will be deemed delivered three (3) days from the date of mailing. Notices may be sent to the respective addresses set forth in the beginning of this Agreement, c/o Legal Department.

7. Independent Contractor Status. In the performance of its duties and obligations pursuant to this Agreement, BA shall at all times be acting and performing as an independent contractor of CE.

[Remainder of Page Intentionally Left Blank – Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

COVERED ENTITY

By: _____

Print Name: Craig Robinson

Title: Manager

[Signature Page to Amended and Restated Business Associate Agreement]

BUSINESS ASSOCIATE

By: _____

Print Name: Gregory Hayes

Title: Authorized Signatory

[Signature Page to Amended and Restated Business Associate Agreement]

EXHIBIT 5

SNF OTA

SNF OPERATIONS TRANSFER AGREEMENT

This SNF Operations Transfer Agreement (the “*Agreement*”) is made and entered into as of October 31, 2023 (the “*Agreement Date*”) by and among 216 Santa Barbara Boulevard Operations LLC (“*Existing Operator*”), and Santa Barbara Blvd Opco LLC (“*New Operator*”), LaVie Care Centers, LLC, solely for the purposes of Article IX.H.1 hereof (“*Existing Operator Guarantor*”), Altranais Care Centers LLC, solely for the purposes of Article IX.H.2 hereof (“*New Operator Guarantor*”). Existing Operator and New Operator are sometimes each referred to herein as a “*Party*” and collectively as the “*Parties*.”

RECITALS

WHEREAS, Existing Operator is the licensed operator of that certain skilled nursing facility known as Coral Trace Health Care (the “*Facility*”) located at 216 Santa Barbara Boulevard, Cape Coral, FL 33991-2031. The Facility is licensed and certified for 120 SNF beds; and

WHEREAS, Existing Operator and New Operator desire to document the terms and conditions under which the transfer of operational responsibility for the Facility to New Operator will occur.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants of the Parties set forth herein, IT IS HEREBY AGREED AS FOLLOWS:

AGREEMENT

ARTICLE I DEFINITIONS

For purposes of this Agreement, the following terms have the meanings set forth in this Article I.

“*Account Transition Agreement*” will mean that certain agreement between New Operator and the secured lenders of Existing Operator substantially in the form of “Exhibit D” attached hereto.

“*Assignment and Assumption and Bill of Sale*” will mean the assignment and assumption agreement and bill of sale, substantially in the form of Exhibit “A” attached hereto, relating to certain of the Purchased Assets.

“*Assumed Liabilities*” will mean (i) all obligations and liabilities under the Assumed Operating Contracts that accrue and relate to the period from and after the Operations Closing Date (but excluding any liability or obligation arising in connection with the period before the Operations Closing Date or out of or in connection with any breach thereof by Existing Operator occurring before or after the Operations Closing Date); (ii) any liabilities or obligations arising on and after the Operations Closing Date in connection with any action or inaction of New Operator on and after the Operations Closing Date related to the Resident Trust Funds that have been delivered to New Operator; (iii) all expenses arising from New Operator’s operation of the Facility after the Operations Closing Date, including taxes, telephone and utility charges, and any other expense relating to New Operator’s operation of the Facility on and after the Operations Closing Date; (iv) all expenses relating to the Hired Employees accrued or arising on or after the Operations Closing Date, including the obligations related to the Hired Employees set forth in this Agreement; and (v) the performance and operating obligations arising under the Permits assigned to New Operator relating to New Operator’s operation of the Facility following the Operations Closing Date.

“*Assumed Operating Contracts*” will mean Contracts chosen by New Operator and set forth on Schedule VII.F (which shall be attached hereto not less than 30 days prior to the Operations Closing Date)

relating exclusively to the Facility (as the same may be updated by Existing Operator to reflect changes between the date hereof and the Operations Closing Date and excluding contracts that include parties other than the Facility), including the Medicare and Medicaid provider agreements, and any other payor agreements, entered into by the Facility to the extent such contracts can be assigned, transferred or conveyed or are deemed assigned, transferred or conveyed under applicable Law and approved by the appropriate governmental agencies and Other Payors.

“Billing Identification Information” will mean billing names, Medicare provider numbers, Medicaid provider numbers, third-party payor provider numbers, federal employer identification number, and other necessary identifying information previously used by Existing Operator for purposes of submitting claims to Medicare, Medicaid and third-party payors for services provided at the Facility by New Operator after the closing of the Transaction.

“Business Day” will mean any day other than a Saturday, Sunday or all days observed by the federal or New Jersey government as legal holidays and all days on which commercial banks in New Jersey are required by law to be closed, and the following Jewish holidays: Purim, Passover, Shavuos, from Shiva Asar B’tammuz through Tish B’Av, Rosh Hashanah, Yom Kippur, Sukkos, Shemini Atzeres and Simchas Torah.

“Code” will mean the Internal Revenue Code of 1986, as amended.

“Contracts” will mean all contracts, agreements, leases, commitments and arrangements (whether written or oral), including all service contracts, maintenance contracts and consulting agreements, and all of Existing Operator’s duties, obligations, covenants, promises, rights and privileges therein or thereunder to which Existing Operator or its predecessors or agents are a party and which relate to the Facility and the operations thereof.

“Excluded Assets” will mean (i) other than the Resident Trust Funds, any of Existing Operator’s cash, cash-equivalents, or deposits in banks or other financial institutions existing as of the Operations Closing Date and all of Existing Operator’s bank accounts; (ii) any of Existing Operator’s accounts receivable (including, without limitation, Existing Operator’s Medicare/Medicaid payments or refunds, resulting from retroactive rate increases or otherwise) for services or goods performed or provided before the Operations Closing Date; (iii) any license agreements, copyrights, trademarks, trade names, service marks or other rights of Existing Operator in any intellectual property or its past or present management companies or service providers); (iv) deposits, letters of credit, and similar items of security, if any, provided to any third party, unless New Operator provided a credit for such items as part of the prorations hereunder; (v) all insurance policies owned by Existing Operator and all rights to collect insurance proceeds under such policies; (vi) any contracts other than the Assumed Operating Contracts; (vii) Existing Operator’s franchise to be a limited liability company, its certificate of formation, operating agreement, minute books, tax returns, books of account or other records having to do with the organization and capitalization of Existing Operator; (viii) all tax refunds for periods ending before the Effective Time and all tax refunds for all periods after the Effective Time to the extent not arising from New Operator’s operation of the Facility on and after the Operations Closing Date; (ix) to the extent inseparable from systems of Existing Operator affiliates unrelated to Facility being transferred, software, and (x) the following to the extent inseparable from systems of Existing Operator affiliates unrelated to Facility being transferred: telecommunications equipment and circuits including, but not limited to, phone systems, desk phones, voicemail systems, MPLS circuits, broadband circuits, PRI circuits, and phone/fax circuits, and (xi) any assets which Existing Operator cannot lawfully transfer or assign to New Operator under the requirements of applicable Law.

“Excluded Liabilities” will mean other than the Assumed Liabilities, any debts, liabilities, or obligations of any nature whatsoever of the Existing Operator, whether accrued, absolute, contingent or otherwise, whether known or unknown, whether due or to become due, whether or not related to the Facility, including, without limitation, Recapture Claims, as well as any other debts, liabilities or obligations relating to the Facility with respect to periods prior to the Operations Closing Date.

“**Existing Operator’s Closing Certificate**” will mean a certificate in the form attached as “Exhibit B” hereto.

“**Governmental Entity**” shall mean any (a) federal, state, county or municipal government, or city, town, borough, village, district or other jurisdiction; (b) governmental or quasi-governmental entity of any nature (including Medicare administrative contractors and any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers); and (c) anybody exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power.

“**Hazardous Materials**” means, in each case, other than medical supplies and medical waste held or generated in the ordinary course of business: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or man-made, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls [and per- and poly-fluoroalkyl substances (PFAS) and other emerging contaminants].

“**Hired Employees**” will mean the employees of the Facility who receive and elect to accept offers of employment with New Operator effective as of the Operations Closing Date.

“**Intangible Property**” will mean, except as otherwise provided in the following two sentences, all of Existing Operator’s right, title and interest in any and all intangible property now or on the Operations Closing Date owned by Existing Operator, including all rights under warranties and goodwill. Intangible Property will not include any rights under any patent, trademark, service mark, trade name, manuals, logos or copyrights owned by Existing Operator, whether registered or unregistered, and any applications and registrations therefore and licenses thereof, all of which will be retained by Existing Operator. Further, Intangible Property will not include any software and related documentation owned or leased by or licensed to Existing Operator, including any and all object codes and source codes, all of which will be retained by Existing Operator unless such leases or licenses are Assumed Operating Contracts.

“**Laws**” will mean all federal, state and local laws, moratoria, initiatives, referenda, ordinances, rules, regulations, standards, orders and other governmental requirements, including, without limitation, those relating to the environment, health and safety, or handicapped persons, where the failure to abide by the same would have a material adverse effect on New Operator, Existing Operator, or the operation of the Facility.

“**Loss**” will mean any obligation, liability, lien, encumbrance, loss, damage, cost, expense or claim, including, without limitation, any claim for damage to the Purchased Assets or injury to or death of any person or persons.

“**New Operator’s Closing Certificate**” will mean a certificate in the form attached as “Exhibit B” hereto.

“**Operations Closing**” will mean the transfer of ownership of the Facility’s operation from Existing Operator to New Operator following the date upon which the Agency issues approval for the issuance of a new Permit to New Operator for the Facility.

“**Operations Closing Date**” will mean the date on which the conditions precedent to the Operations

Closing occur hereunder.

“**Parties**” will mean, collectively, Existing Operator and New Operator.

“**Permits**” will mean all of Existing Operator’s right and interest in all permits, licenses, approvals, entitlements and other governmental and quasi-governmental authorizations including, without limitation, certificates of occupancy required in connection with the operation of the Facility, to the extent such permits, licenses, approvals, entitlements, and authorizations are transferable under applicable Laws and approved by the appropriate governmental agencies.

“**Personal Property**” will mean all furnishings, equipment, tools, machinery, appliances, vehicles, computers, IT equipment, network equipment, and all other tangible personal property, other than fixtures, now or on the Operations Closing Date located at and used in connection with the operation of the Facility and owned by Existing Operator as of the Operations Closing Date, provided, however, that Personal Property will not include the Excluded Assets.

“**Purchased Assets**” will mean the assets described in Article II.A.

“**Recapture Claim**” will mean, in connection with the Facility, (a) any determination by Medicare or Medicaid, any fiscal intermediary, or any federal or state governmental authority or any private third party payor that any amounts paid for any services provided at the Facility prior to the Operations Closing Date for the Facility resulted in (i) an overpayment, or (ii) any other recoupment or determination that funds previously paid by any third-party payor must be repaid, and (b) any fines, penalties, assessments, and other charges associated with any such determinations.

“**Resident Trust Funds**” will mean resident trust funds, patient deposits, or any residents’ property held by Existing Operator on the Operations Closing Date for residents at the Facility.

ARTICLE II **PURCHASE AND SALE**

A. **Purchased Assets**. On the terms and subject to the conditions set forth in this Agreement, on the Operations Closing Date, New Operator will purchase from Existing Operator, and Existing Operator will sell, convey, assign, transfer, or deliver to New Operator the following assets (collectively the “**Purchased Assets**”):

1. **Inventory**. Existing Operator will convey all of its right, title and interest in and to the inventory of supplies in stock at the Facility as of the Operations Closing Date. Existing Operator will have no obligation to deliver the inventory to any location other than the Facility, it being understood and agreed that the presence of the inventory at the Facility on the Operations Closing Date will constitute delivery thereof.

2. **Assumed Operating Contracts**. Existing Operator will assign, and New Operator will assume and agree to be bound by, all of the terms and conditions of the Assumed Operating Contracts. Notwithstanding the foregoing, to the extent that Existing Operator’s rights under any Assumed Operating Contract to be assigned to New Operator hereunder may not be assigned without the consent of another person or entity that has not been obtained, this Agreement will not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful. The Parties will use reasonable efforts to obtain each such required consent as promptly as possible. If any such consent is not

obtained, New Operator will nevertheless pay and perform Existing Operator's obligations under each such Assumed Operating Contract subject to Existing Operator providing to or otherwise obtaining for New Operator the corresponding benefits thereunder, and the Parties will cooperate with one another in any reasonable arrangement proposed by either party to result in such effect, in each case to the extent permitted under applicable Law. Nothing herein will be construed as imposing any liability on New Operator with respect to any obligations under the Assumed Operating Contracts that relate to the period before the Operations Closing Date, it being specifically understood and agreed that New Operator's liability will be limited to its acts and omissions thereunder on and after the Operations Closing Date.

3. Personnel Records. Existing Operator will transfer relevant employee records of Hired Employees, provided, however, that Existing Operator may retain copies of all electronic records and data and provide to New Operator originals thereof.

4. Patient Records. Existing Operator will cooperate with New Operator's transfer of all medical records relating to current patients of the Facility, at Existing Operator's sole expense, as of the Operations Closing Date, provided however, that Existing Operator may retain copies of any patient records stored electronically or as computer data and provide to New Operator the records in its original media.

5. Telephone Number. Existing Operator will assign the telephone and facsimile numbers of the Facility.

6. Permits. To the extent transferable under applicable Laws and approved by the appropriate Governmental Entities, Existing Operator will assign or transfer all Permits necessary for the operation of the Facility.

7. Resident Trust Funds. Existing Operator will transfer or assign all rights and access to Resident Trust Funds in accordance with Article VI.A.

8. Intangible Property. Existing Operator will convey all rights and interest in the Intangible Property associated with the Facility.

B. Excluded Assets. Notwithstanding the foregoing, the Excluded Assets are expressly excluded from the purchase and sale contemplated hereby, and as such, are not Purchased Assets.

C. Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, and as consideration for the Purchased Assets, on the Operations Closing Date, New Operator will assume the Assumed Liabilities. Notwithstanding anything in this Agreement to the contrary, New Operator is not assuming or will not assume or become liable for any Excluded Liabilities. Existing Operator hereby acknowledges that each is retaining, and is and will be liable for, the Excluded Liabilities, and Existing Operator will pay, discharge and perform all such Excluded Liabilities promptly when due. Without limiting the generality of the foregoing, Existing Operator will remain liable for (i) Recapture Claims, and (ii) all liabilities arising in connection with any third party payor provider numbers that constitute Purchased Assets to the extent that such liabilities relate to acts, failures to act, conditions, or circumstances before the Operations Closing Date.

ARTICLE III

INTERIM OPERATIONS AND OTHER COVENANTS

A. Change of Ownership Filings. New Operator shall use commercially reasonable efforts to file or cause to be filed all applications (the "*CHOW*") with the State of Florida, Agency for Health

Care Administration (or other applicable government department or agency) having jurisdiction over the licensing of the Facility as a skilled nursing facility, and/or other applicable designation in the state where the Facility are located (the “**Agency**”) by October 31st, 2023, and will make all other notices or applications of change of ownership or other similar applications and notices (including but not limited to notices or applications related to certificates of need) required by any Governmental Entity having jurisdiction over the Facility to obtain all permits, approvals, authorizations and consents of all such Governmental Entities required to consummate the transactions contemplated by this Agreement within all applicable legally required timeframes; provided, that in the case of the CHOW application, the foregoing shall be conditioned on Existing Operator having provided all Facility information reasonably necessary to apply for the CHOW. Without limiting the foregoing, New Operator shall diligently pursue the CHOW (including but not limited to using commercially reasonable efforts to promptly responding to licensing authority requests for information, to the extent such information is reasonably available; if such information is not reasonably available for New Operator, then New Operator shall use commercially reasonable, best efforts to obtain such information and respond to the licensing agency’s request using commercially reasonable efforts). Except as expressly permitted by this Agreement, New Operator further acknowledges that they will operate the Facility under new names from and after the Operations Closing Date, it being the understanding of the Parties that the Facility’s existing names are an Excluded Asset being retained by Existing Operator, and that any regulatory filing will accurately reflect the Facility’s new name. Existing Operator agrees to cooperate with New Operator in filing any applications or forms necessary to facilitate a change of ownership in favor of New Operator, including, but not limited to, CMS’ 855A form. To the extent applicable, New Operator will also provide to Existing Operator a copy of all pre-closing notices from the Agency authorizing the closing of the transaction with respect to the CHOW, provided that New Operator will be entitled to redact any personal information of officers, directors, or managing employees.

B. **Facility Access.** After the Agreement Date and prior to the Operations Closing Date, Existing Operator will permit New Operator and its authorized representatives to have access to the Facility, employees, and the books and records of the Facility, at reasonable times and in a manner so as not to interfere with the normal business operations of Existing Operator, subject to applicable regulations and guidelines, including, without limitation, regulations and guidelines promulgated by any governmental agency, including, without limitation, those implemented as a result of COVID-19 and the related pandemic, whether in currently in effect or put into effect after the Agreement Date. Existing Operator agrees to cooperate with New Operator, and New Operator agrees to cooperate with Existing Operator, to effect an orderly transfer of the operations of the Facility. Each of the Parties hereto shall execute and deliver, at the reasonable request of the other Parties hereto, such additional documents, instruments, conveyances and assurances and take such further actions as such other Parties may reasonably request to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

C. **Interim Operations of the Facility prior to the Operations Closing Date.** From the Agreement Date until the Operations Closing Date, Existing Operator shall: (i) operate the Facility in the ordinary course of business in the current manner and in material compliance with all applicable Laws, subject to applicable regulations and guidelines, including, without limitation, regulations and guidelines promulgated by any government agency, including, without limitation, those implemented as a result of COVID-19 and the related pandemic, whether in currently in effect or put into effect after the Agreement Date; (ii) maintain the Facility and continue to make ordinary repairs, replacements and maintenance with respect to the Facility (including, without limitation, all machinery, sprinkler systems, air conditioners, equipment, partitions and fixtures); (iii) utilize its commercially-reasonable efforts to maintain the Facility’s licensure status and Medicare and Medicaid provider agreements; (iv) preserve the goodwill with all of the suppliers, residents and others having business relations with Existing Operator or the Facility; (v) maintain in force or renew on substantially similar terms the existing hazard general liability and professional liability insurance policies as are now in effect for the Facility; (vi) pay all taxes or other obligations and liabilities, which are due and payable with respect to the Facility and Purchased Assets arising from operating the

Facility prior to the Operations Closing Date; (vii) maintain its normal inventory of Supplies, which shall be in quantities consistent with legal requirements and past practices for operation of the Facility; (viii) prior to the end of each calendar month, provide New Operator with a resident census report for the previous calendar month; (ix) not transfer any residents to any business or facility owned or controlled by an affiliate of Existing Operator, unless required to comply with legal requirements; and (x) use commercially reasonable efforts to market the Facility in a manner consistent with past practice. Existing Operator shall provide New Operator notice of any failure to materially comply with this Section III.C within five (5) Business Days after such event of non-compliance.

ARTICLE IV **RESTRICTIVE COVENANTS**

A. From the Operations Closing Date until such date that is one (1) year following the Operations Closing Date, neither Existing Operator nor any affiliate thereof shall: (i) directly solicit, or entice any Current Employees, encourage any such Current Employees to leave or otherwise interfere with New Operator's relationship with Hired Employees, (ii) directly solicit, or entice any resident of the Facility to leave the Facility, and (iii) within a twenty five (25) mile radius surrounding the Facility, directly or indirectly open, own, operate, lease, or manage a skilled-nursing or similar facility that, in the reasonable discretion of New Operator, competes with the Facility, other than any facility that is owned, operated, leased or managed by an affiliate of Existing Operator as of the Agreement Date.

B. Existing Operator acknowledges that a breach or threatened breach of this Article IV would give rise to irreparable harm to New Operator, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by Existing Operator of any such obligations, New Operator shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to seek equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond). Existing Operator acknowledges that the restrictions contained in Article IV are reasonable and necessary to protect the legitimate interests of New Operator and constitute a material inducement to New Operator to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in Article IV should ever be adjudicated to exceed the time, geographic, product or service, or other limitations permitted by applicable law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service, or other limitations permitted by applicable Law. The covenants contained in Article IV and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

ARTICLE V **OPERATIONS CLOSING**

A. **Operations Closing.** The Operations Closing will take place by wire transfer of funds and electronic delivery of closing documents in a manner mutually agreeable to the Parties on the Operations Closing Date, which date shall be November 2, 2023. The effectiveness of the Closing and New Operator's obligations for operations at the Facility shall be deemed to have occurred at 12:00 a.m. (beginning of the day) on the Operations Closing Date.

B. **Intentionally Omitted.**

C. **Operations Closing Deliveries.** Subject to the terms and conditions set forth herein, at the Operations Closing or as earlier required as set forth below:

1. Assignment and Assumption and Bill of Sale for Purchased Assets. Existing Operator and New Operator will execute and deliver to each other the executed Assignment and Assumption and Bill of Sale for Purchased Assets.

2. Existing Operator's Closing Certificate. Existing Operator will deliver the executed Existing Operator's Closing Certificate.

3. New Operator's Closing Certificate. New Operator will deliver the executed New Operator's Closing Certificate.

D. **Reserved.**

E. **Conditions Precedent to Operations Closing.**

1. Mutual. Each Party's obligation to consummate the transactions contemplated in this Agreement shall be subject to the following conditions precedent on and as of the Operations Closing Date to the reasonable satisfaction of such Party or the waiver thereof by such Party, which waiver shall be binding upon such Party only to the extent made in writing and dated as of the Operations Closing Date:

(a) No Proceeding. No regulatory authority will have enacted, issued, promulgated, enforced, entered, proposed or introduced any Laws that has, or would have, the effect of making the transactions contemplated by this agreement illegal or otherwise restraining or prohibiting the consummation of such transactions.

(b) Representations and Warranties. The representations and warranties of Existing Operator in Article VII and of New Operator in Article VIII hereof were true and correct as of the Agreement Date and will be true and correct in all material respects, disregarding all qualifications and exceptions contained therein relating to materiality or Material Adverse Effect, as of the Operations Closing Date as if made on and as of the Operations Closing Date.

(c) No Default. The covenants and agreements contained in this agreement to be complied with by both parties at or before the Operations Closing will have been materially complied with.

2. New Operator's Conditions Precedent to Operations Closing Date. New Operator's obligation to proceed with the Operations Closing shall be subject to the following conditions precedent on and as of the Operations Closing Date to the reasonable satisfaction of New Operator, or the waiver thereof by New Operator, which waiver shall be binding upon New Operator only to the extent it proceeds with knowledge of the condition precedent not being met as of the Operations Closing Date: There shall not be imposed against Existing Operator or the Facility, nor shall they have received notice of: i) a survey with a citation of a "G" or more severe finding, ii) a denial of payment for new admissions, iii) a bar on admissions, iv) placement on the CMS Special Focus Facility List (or the candidate list thereof), v) imposition of a Corporate Integrity Agreement, in each case to the extent such imposition or notice relates solely to operation of the Facility prior to the Operations Closing Date. Further, for the avoidance of doubt, this closing condition only applies to the extent such matters are not remedied or paid prior to Closing.

3. Existing Operator's Conditions Precedent to Operations Closing Date. Existing Operator's obligation to proceed with the Operations Closing Date shall be subject to the following conditions precedent on and as of the Operations Commencement Date to the reasonable satisfaction of Existing Operator, or the waiver thereof by Existing Operator, which waiver shall be binding upon Existing Operator to the extent they proceed with knowledge of the condition precedent not being met as of the Operations Closing Date: i) consent to this Agreement by all lenders of Existing Operator, ii) New Operator shall have filed its initial change of ownership application with applicable state regulatory agency, iv) Existing Operator's lease obligations, and those of any related affiliate, regarding the Facility have been terminated and v) New Operator shall have delivered a fully executed counterpart of the Account Transition Agreement which shall be the substantially same terms as Exhibit "E".

F. Closing Costs. Existing Operator will not be responsible for any bed or provider taxes accruing following the Operations Closing Date. All such taxes shall be paid by New Operator. Existing Operator shall be responsible for all bed or provider taxes relating to periods prior to the Operations Closing Date. Each Party is solely responsible for its respective legal, accounting, due diligence, financing, and other professional fees and expenses and the cost of all certificates, instruments, documents and papers required to be delivered, and the cost of all performances required of them to fulfill their obligations hereunder.

G. Bulk Sales Compliance. If applicable in the state where the Facility are located, within ten (10) Business Days following the Agreement Date, New Operator shall deliver to the applicable Governmental Entities (with simultaneous copies to Existing Operator) any notice of bulk sale required by and in accordance with the laws of the states where the Facility are located. If any such governmental authority notifies New Operator prior to Operations Closing that taxes are due from Existing Operator, Existing Operator shall deposit in escrow with an escrow agent mutually agreed upon by the Parties the specified amount, pursuant to an escrow agreement reasonably satisfactory to New Operator, Existing Operator and Escrow Agent executed and delivered at the Operations Closing. Such withheld amount shall be (i) released to Existing Operator upon notification from the applicable Governmental Entity that there are no remaining unpaid taxes or (ii) such amount shall be paid at to the applicable Governmental Entity in satisfaction of such unpaid taxes in the event such amounts are required to be paid.

ARTICLE VI OPERATIONS TRANSFER

A. Transfer of Resident Trust Funds. Within two (2) business days after the Operations Closing Date, Existing Operator will provide to New Operator a true, correct, and complete accounting (properly reconciled) of the Resident Trust Funds. Existing Operator will deliver the Resident Trust Funds to New Operator by check within five (5) business days of the Operations Closing Date.

1. New Operator agrees that it will accept such Resident Trust Funds in trust for the residents of the Facility and will hold and disburse such Resident Trust Funds in accordance with applicable statutory and regulatory requirements.

2. Existing Operator will indemnify, defend, and hold New Operator harmless from all liabilities, claims and demands, including reasonable attorney's fees, in the event the amount of the Resident Trust Funds, if any, transferred to New Operator did not represent the full amount of the Resident Trust Funds shown to have been delivered to Existing Operator as custodian or with respect to any Resident Trust Funds delivered, or claimed to have been delivered, to Existing Operator, but which were not delivered by Existing Operator to New Operator, or for claims that arise from actions or omissions of Existing Operator with

respect to the Resident Trust Funds before the Operations Closing Date.

3. New Operator will indemnify, defend and hold Existing Operator harmless from all liabilities, claims and demands, including reasonable attorneys' fees, in the event a claim is made against Existing Operator due to acts or omissions of New Operator or its agents or affiliates with respect to the Resident Trust Funds where such funds were transferred to New Operator pursuant to the terms of Article VI.A hereof.

4. New Operator, as applicable, shall have provided Existing Operator with evidence that New Operator shall have posted an indemnity bond or a standby letter of credit for the Transferred Resident Trust Funds wherever such security is required by applicable Law.

B. **Cost Reports.** Existing Operator will: (i) file accurate and timely final cost reports relating to the portion of the current fiscal year of the Facility from the commencement of the fiscal year through the Operations Closing Date (i.e., "short period cost reports") with all applicable regulatory authorities and third party payors in accordance with the terms of all third party payor programs (collectively, the "**Final Cost Reports**"); (ii) provide copies of such Final Cost Reports to New Operator at the time of the filing; and (iii) promptly pay such amounts due and payable, if any, pursuant to the setting of final rates based upon the Final Cost Reports (including any final settlement or audit thereof).

C. **Reimbursement Matters.**

1. As of the Operations Closing Date, New Operator shall assume any and all of Existing Operator's rights, obligations, and interests in and to Existing Operator's Medicare provider numbers and Medicare provider reimbursement agreement. Existing Operator and New Operator acknowledge and agree that New Operator is not expected to have received its "tie in" notices CMS with respect to Existing Operator's Medicare provider agreement or new Medicare provider agreement as of the Operation Closing Date. New Operator shall be, to the extent allowed by law, permitted to bill under Existing Operator's Medicare provider agreement and provider number until the issuance of the Medicare "tie in" notices. Existing Operator agrees to cooperate with New Operator in the assignment of Existing Operator's Medicare provider agreements to New Operator, including completing those portions of CMS Form 855A that confirm the change of ownership of the Facility and providing to New Operator or any Governmental Entity any information requested to affect the transfer of Existing Operator's Medicare provider number.

2. New Operator shall secure new Medicaid provider numbers and Medicaid provider reimbursement agreements in its own name, either by assumption of the foregoing from Existing Operator or application for new numbers and agreements as applicable (provided that in the event both assumption or new application are available, New Operator shall elect which to pursue). From and after the Operations Closing Date until any Medicaid provider agreements are obtained by New Operator, to the extent permitted under applicable Law, New Operator may bill for services provided on and after the Operations Closing Date under Existing Operator's Medicaid provider agreements using Existing Operator's Medicaid provider information in accordance with applicable Law. Existing Operator agrees to cooperate with New Operator in the issuance of new Medicaid provider agreements to New Operator, including providing to New Operator or any Governmental Entity any information requested to affect the issuance to New Operator of new Medicaid provider numbers and Medicaid provider agreements.

3. With respect to any managed care and commercial third-party payor provider agreements (all of the foregoing, "**Other Payors**"), New Operator will obtain its own provider agreements (or take assumption of Existing Operator's provider agreements to the extent permitted by the applicable payor), but New Operator shall be permitted to bill under Existing Operator's Billing Identification Information for up to twelve (12) months or until New Operator has been fully credentialed and approved

under its own provider agreements, in each case to the extent permitted by the payor and applicable Law; provided, however, that Existing Operator will cooperate with New Operator promptly after the Agreement Date and assist New Operator in seeking assignment of Existing Operator's provider agreements or obtaining a new provider agreement. Existing Operator shall not provide any notice or communication to any Other Payors with respect to the transaction set forth herein or otherwise take any action with respect to any cancellation or modification of any payor agreements other than to the extent Existing Operator is clearly required to do so by its contractual obligations to the Other Payors or by applicable Law (a "**Required Notice**"); provided that with respect to any Required Notice, Existing Operator shall first obtain written approval of New Operator for the contents of any communication to Other Payors, which approval shall not be unreasonably withheld, conditioned or delayed, and shall allow New Operator: (i) a reasonable opportunity to communicate first with the Other Payors prior to the outside Required Notice date or Operations Closing Date, whichever occurs first, and following reasonable prior notice to Existing Operator, or (ii) New Operator shall be able to join a conversation between Existing Operator and the Other Payors. Existing Operator shall be able to request a joint conversation among Existing Operator, New Operator and the Other Payors as it reasonably deems appropriate after any first communication to the Other Payor by New Operator described above.

4. New Operator expressly does not assume, and the assumption by New Operator of Existing Operator's Medicare provider number and agreements shall not be construed to impose upon New Operator, any obligations under Existing Operator's Medicare, Medicaid, managed care, or other third-party payor provider agreements arising from or related to any event occurring prior to the Operations Closing Date, including, without limitation, any Recapture Claim, refund or overpayment due to any third-party payor that is assessed as a result of services rendered by Existing Operator prior to the Operations Closing Date.

5. Nothing set forth herein shall be deemed to limit in any way (i) Existing Operator's right, title, and interest in its cash and accounts receivable for services rendered prior to the Operations Closing Date, which cash and accounts receivable are property of Existing Operator and shall be reimbursed or retained, as applicable, in accordance herewith, and (ii) Existing Operator's ability to complete any remaining billing for services rendered prior to the Operations Closing Date under Existing Operator's Medicare and Medicaid provider numbers.

6. Existing Operator and New Operator understand that reimbursements from Medicare or Medicaid for items/services provided/rendered after the Operations Closing Date may continue to be issued to Existing Operator for a period of time. Existing Operator shall promptly forward to New Operator any payments received with respect to services rendered by New Operator from and after Operations Closing Date in accordance with Section 9 hereof.

D. **Intentionally Omitted.**

E. **Employees.**

1. New Operator shall determine, in their sole discretion, which of the employees shall be offered employment with New Operator, pursuant to employment terms reasonably acceptable to New Operator, provided that New Operator shall offer employment to a sufficient number of the Employees as of the Operations Closing Date so as to avoid any obligation of Existing Operator to provide advance notice under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq and any similar applicable State law (collectively, the "**WARN Act**"). New Operator shall not be bound by or assume any employment contracts to which Existing Operator may be a party. Other than consistent with past practice or required by law or the terms of any contract existing as of the date hereof, Existing Operator shall not make any material changes in the compensation or benefits of the employees at the Facility prior

to the Operations Closing Date.

2. New Operator and Existing Operator acknowledge and agree that because New Operator is hiring the Hired Employees pursuant to the terms and conditions set forth in subsection 1 immediately above, Existing Operator is not required to give notice to the employees of the Facility of the “closure” thereof under the WARN Act or under any comparable Law of the state where the Facility is located. Notwithstanding the foregoing, conditioned upon New Operator’s compliance with subsection 1 above, Existing Operator agrees to indemnify, defend and hold harmless New Operator from any liability that they may incur under the WARN Act or under comparable state Law in the event of a violation by Existing Operator or New Operator of their obligations thereunder with respect to the termination of employment of any employees by Existing Operator in connection with the consummation of the transactions contemplated hereby. New Operator agrees to indemnify, defend and hold harmless Existing Operator from any liability that they may incur under the WARN Act or under comparable state Law in the event of a violation by Existing Operator or New Operator of their obligations thereunder with respect to any termination of employment of any employees by New Operator. Nothing in Article VI will, however, create any rights in favor of any person not a party hereto, including the employees of a Facility, or constitute an employment agreement or condition of employment for any employee of Existing Operator or any affiliate of Existing Operator who is a Hired Employee.

3. Existing Operator shall be responsible for providing COBRA Notices and COBRA continuation healthcare coverage for all “M & A Qualified Beneficiaries” (as that term is defined in Section 4980B of the Code and Title 6 of ERISA and the regulations thereafter (“**COBRA**”)) in connection with the transaction as of the Operations Closing Date.

4. Within fourteen (14) days after its termination of Facility Employees, Existing Operator shall pay directly to the Facility Employees any accrued paid time off (“ETO”) due to said employee pursuant to either (i) applicable law or (ii) Existing Operator’s then-current policy. . New Operator shall grant benefits and pay to the Hired Employees as and when due, consistent and in accordance with New Operator’s personnel policies, it being agreed that the employees of the Facility will be granted credit for service with Existing Operator under all benefit policies maintained by New Operator for the benefit of the Hired Employees for the purposes of participation and benefits accrual to the extent allowed by New Operator’s benefit policies.

5. Existing Operator acknowledges and agrees that New Operator will have a reasonable opportunity to meet with “**Key Personnel**” including, but not limited to, the administrator, director of nursing, and all department heads within the Facility following the Agreement Date.

F. **Accounts Receivable.** Existing Operator will retain its right, title, and interest in and to all unpaid accounts receivable with respect to the Facility that relate to any period before the Operations Closing Date, including, but not limited to, any accounts receivable arising from rate adjustments, grant payments, stimulus payments, or retroactive payments or adjustments to reimbursement and any and all other payments and support paid with respect to the Facility based on, in return for, or calculated using data for dates of services prior to the Operations Closing Date even if such adjustments occur on or after the Operations Closing Date. Existing Operator will remain liable for any Recapture Claims and any other overpayments made to Existing Operator before the Operations Closing Date for which payment is due to Medicare, Medicaid or any other third party payor on or after the Operations Closing Date.

1. Payments received by New Operator or Existing Operator on or after the Operations Closing Date from any payor will be handled as follows:

(a) If such payments either specifically indicate on the accompanying remittance advice, or if the Parties agree, that they relate to the period before the Operations Closing Date, they will be forwarded to Existing Operator by New Operator, along with the applicable remittance advice;

(b) If such payments indicate on the accompanying remittance advice, or if the Parties agree, that they relate to the period on or after the Operations Closing Date, they will be forwarded to or retained by New Operator, along with the applicable remittance advice; or

(c) If such payments indicated on the accompanying remittance advice, or if the Parties agree, that they relate to periods both before and after the Operations Closing Date, the portion thereof that relates to the period on and after the Operations Closing Date will be forwarded to or retained by New Operator and the balance will be remitted to or retained by Existing Operator.

(d) For Social Security payments, they will be allocated to the month such payments are received.

(e) Notwithstanding the foregoing, for payments received by Existing Operator from private-pay patients relating to any period on or after the Operations Closing Date, Existing Operator will promptly remit such payments to New Operator.

2. Any payments received during the first thirty (30) days commencing on the Operations Closing Date from or on behalf of private pay residents with outstanding balances as of the Operations Closing Date that fail to designate the period to which they relate, will first be applied by New Operator to reduce the resident's pre- Operations Closing Date balances, with any excess applied to reduce any balances due for services rendered by New Operator on or after the Operations Closing Date. Thereafter all non-designated payments will first be applied to any post- Operations Closing Date balances, with the excess, if any, applied to the extent of any balances due for services rendered by Existing Operator before the Operations Closing Date.

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

4. All amounts owing to Existing Operator or New Operator shall be remitted on the first (1st) and fifteenth (15th) day (or the next applicable Business Day) of each applicable month, together with applicable remittance advices, provided such transfer date is at least five (5) Business Days following receipt of such payment by Existing Operator or New Operator, as applicable.

5. In the event the Parties mutually determine that any third party payors or private pay residents are entitled to a refund of payments, the portion thereof that relates to the period from and after the Operations Closing Date shall be paid by New Operator and the portion thereof that relates to the period prior to the Operations Closing Date shall be paid by Existing Operator to such third party payor or private pay resident.

6. In the event the Parties mutually determine that any payment hereunder was misapplied by the Parties, the Party that erroneously received said payment will remit the same to the appropriate other Party within ten (10) days after said determination is made.

7. For a period of twelve (12) months after the Operations Closing Date, Existing Operator and New Operator shall provide each other with an accounting setting forth all amounts received during the preceding month with respect to payments from the residents of the Facility which are due and owing to the other party in accordance with the terms of this Agreement.

8. For a period of twelve (12) months after the Operations Closing Date, each Party will have the right to inspect all cash receipts of the other appropriate Party in order to confirm compliance with the obligations imposed on it under this Article VI.F.

9. Each Party will have the right to offset any such payments for any amounts that are due and owing to it from the other appropriate Party.

G. **Prorations.** Revenues and expenses pertaining to Assumed Operating Contracts, the Quality and Accountability Supplemental Payment Program for Freestanding Skilled Nursing Facilities (if applicable), utility charges for the billing period in which the Operations Closing Date occurs, prepaid expenses, taxes and other related items of revenue or expense attributable to the operation of the Facility will be prorated between Existing Operator and New Operator as of the Operations Closing Date, provided that expenses related to employees will be paid pursuant to Article VI.E. In general, such prorations will be made so as to reimburse Existing Operator for prepaid expense items, and to charge Existing Operator for prepaid revenue items, to the extent that the same are attributable to periods on or after the Operations Closing Date.

1. All such prorations will be made on the basis of actual days elapsed in the relevant accounting or revenue period and will be based on the most recent information available to Existing Operator. Utility charges that are not metered and read on the Operations Closing Date will be estimated based on prior charges, and will be re-prorated upon receipt of statements therefor.

2. All amounts owing from any Party hereto to any other Party hereto that require adjustment will be settled on the Operations Closing Date and shall be readjusted within ninety (90) days after the Operations Closing Date or, in the event the information necessary for such adjustment is not available within said ninety (90) day period, then as soon thereafter as practicable.

H. **Access to Records: Cooperation.** On and after the Operations Closing Date, both Parties will grant reasonable and prompt access to the Facility, patient, or employee records as any party may request. In addition, the Parties agree as follows:

1. New Operator will allow Existing Operator and its agents and representatives, upon reasonable prior notice and during normal business hours, reasonable access to (a) the books and records and supporting materials relating the period before the Operations Closing Date and to make copies or scans of the same; and (b) the Hired Employees, to the extent such access is reasonably necessary to enable Existing Operator to investigate and defend malpractice, employee or other claims, to file or defend cost reports and tax returns. Existing Operator will be entitled to any original records delivered to New Operator for purposes of litigation involving a patient or employee to whom such record relates, if an officer of or counsel for Existing Operator certified that such original must be produced in order to comply with applicable Law or the order of a court of competent jurisdiction in connection with such litigation.

2. New Operator agrees to maintain such books, records and other material comprising records of the Facility's operations after the Operations Closing Date that have been received by New Operator from Existing Operator or otherwise, including, but not limited to, patient records and records of Resident Trust Funds, to the extent required by Law and for a period not less than six (6) years, and will allow Existing Operator a reasonable opportunity to copy such documents, at Existing Operator's expense, at such time after such record retention period as may be required by Law as New Operator will decide to dispose of such documents.

3. New Operator agrees to fully cooperate with Existing Operator, their agents, attorneys, employees, and other designated representatives in the defense of any claims, lawsuits, investigations, or reimbursement matters now existing or arising from or in connection with events occurring before the Operations Closing Date. "Fully cooperate" as used in this provision means that, to the extent permitted by applicable Law, New Operator will provide to Existing Operator within seven (7) days after request from Existing Operator: (i) access to all medical, business and other records of the Facility for inspection and copying at Existing Operator's cost; (ii) access to Hired Employees and their personnel files; (iii) access to the Facility and the equipment thereon; (iv) the last known names and addresses of former employees along with access to their personnel files; (v) access to any other documents and information necessary for the defense of any claim; and (vi) cooperation in re-opening or filing cost reports, including opening a filed cost report for the purpose of adjusting the filed cost reports in order accurately report Existing Operator's "bad debt". Existing Operator will pay any reasonable costs or damages incurred by New Operator in compliance with this Article.

I. **Self-Reporting.** In the event Existing Operator becomes aware of any occurrence at a Facility that Existing Operator would be required under applicable Laws to report to any Governmental Entity, Existing Operator shall use commercially reasonable efforts to provide the appropriate New Operator with written notice of such occurrence within one (1) Business Day thereof but not later than the Operations Closing Date.

J. **Signage; Use of Name.** Within thirty (30) days following Operations Closing, New Operator will (i) remove all signage that in any way reference Existing Operator or the names of the Facility prior to Operations Closing and (ii) claim the Facility's Google pages so that they are associated with New Operator. In the event that the Operations Closing Date has not occurred within eighteen (18) months after the Agreement Date, Existing Operator shall have the right, but not the obligation, to require the affected New Operator to change the d/b/a of the Facility within sixty (60) days after receiving written notice from Existing Operator, subject to any required regulatory approvals, and following such sixty (60) day prior notice to remove at New Operator's expense all signage that in any way references Existing Operator or the name of the Facility as in effect on the Agreement Date.

K. **Existing Operator Insurance.** Existing Operator shall maintain through the Operations Closing Date, insurance coverages substantially similar to those in effect on the Agreement Date.

L. **Survival.** The provisions of this Article VI will survive the Operations Closing.

ARTICLE VII **EXISTING OPERATOR REPRESENTATIONS AND WARRANTIES**

As an inducement to New Operator to enter into this Agreement, Existing Operator makes the following representations and warranties, which are true and correct as of the date hereof to the knowledge of the Existing Operator and which shall be true and correct in all material respects as of the Operations Closing Date to the knowledge of Existing Operator. Any applicable updates to the schedules hereunder shall be promptly provided to New Operator; provided that no such updates to schedules attached hereto as of the Agreement Date shall be deemed to cure a breach of representation or otherwise impact the rights of New Operator hereunder. Knowledge, as used with respect to Existing Operator, shall mean the actual knowledge of the Existing Operator's (i) limited liability company manager, (ii) management company, (iii) Synergy Healthcare Services and (iv) the licensed administrator currently responsible for operating the Facility after reasonable inquiry.

A. **No Notices of Non-Compliance.** Other than matters set out on Schedule VII.M, Existing Operator has not received written notice that, and Existing Operator has no knowledge that any

Governmental Entity or any employee or official thereof considers that the operation of a Facility currently fails to substantially comply with any Law. Existing Operator has not received any written claim, requirement or demand of any licensing or certifying agency supervising or having authority over a Facility to rework or redesign the Facility so as to conform to or comply with any existing law, code or standard which has not been fully satisfied prior to the date hereof or which will not be satisfied prior to the Operations Closing Date.

B. Due Authorization, Execution, Organization, Etc.

1. This Agreement and all agreements, instruments and documents herein provided to be executed or to be caused to be executed by Existing Operator are, or when executed by Existing Operator on the Operations Closing Date will be, duly authorized, executed and delivered by Existing Operator and are binding in accordance with its terms upon Existing Operator, subject to the effect of bankruptcy, insolvency, reorganization, moratorium or other similar Laws of general application and of legal or equitable principles generally and covenants of fair dealing.

2. Existing Operator is duly organized, validly existing and in good standing under the Laws of Florida and is duly qualified to do business in the state where the Facility is located. Existing Operator has the power and authority to enter into this Agreement and all agreements, instruments and documents herein provided and to consummate the transactions contemplated thereby.

3. Neither this Agreement nor any agreement, document or instrument executed or to be executed by Existing Operator in connection with this Agreement, nor anything provided in or contemplated by this Agreement or any such other agreement, document or instrument, does now or will hereafter breach, invalidate, cancel, make inoperative, violate or interfere with, or result in the acceleration or maturity of, (i) any agreement, document, instrument, right or interest, affecting or relating to Existing Operator or any Purchased Assets, (ii) any of the terms, conditions or provisions of any mortgage, indenture, note, license, agreement or other instrument or obligation related to Existing Operator or to its abilities to consummate the transactions contemplated hereby or thereby, (iii) any Law applicable to Existing Operator, or (iv) result in the creation of any claim upon the business of Existing Operator or any Purchased Assets.

C. Financial Statements. Existing Operator's unaudited profit and loss statements with respect to the operations of the Facility for the calendar years 2021 and 2022 (the "*Annual Financial Statements*") and for the year-to-date period through the month of July 2023 (the "*Interim Financial Statements*") and collectively with the Annual Financial Statements, the "*Financial Statements*") were compiled from Existing Operator's books and records, consistent with Existing Operator's past practice, and are accurate in all material respects. All of the Financial Statements have been prepared in accordance with generally accepted accounting principles ("*GAAP*") consistently applied per Existing Operator's consolidated accounting practices and were prepared from the books and records of Existing Operator. Existing Operator is still evaluating the accounting treatment for its ERC credits posted in 2020 and 2021 with its external auditors. The Financial Statements fairly present, in all material respects, the financial position of Existing Operator as of the dates thereof and the results of its operations for the periods ended on the dates thereof. The Financial Statements have been provided to Existing Operator.

D. Litigation: Proceedings. Other than general liability claims incurred by Existing Operator in the ordinary course of business that are covered by insurance and being defended by the insurer and those matters set out on Schedule VII.D attached hereto, there are no material (i) litigation pending or, to Existing Operator's knowledge, threatened against Existing Operator or the Facility (whether or not Existing Operator is a party or prospective party thereto); (ii) arbitrations proceeding or pending relating to Existing Operator; (iii) outstanding orders, writs, judgments, injunctions or decrees served upon Existing Operator by any court.

E. No Proceedings. There are no claims, actions, or proceedings pending against Existing Operator that are reasonably likely to prevent or materially delay the consummation of the transactions contemplated herein. Existing Operator has not been convicted of or pleaded guilty or no contest to any criminal offense related to the operation of the Facility.

F. Contracts. Schedule VII.F sets forth a true and accurate list of all Assumed Operating Contracts. True, correct, and complete copies of all such Assumed Operating Contracts have been, or will be, made available to New Operator to the extent such Contracts are in Existing Operator's possession or control and are assignable, with or without third-party consent, as part of the transactions contemplated by this Agreement. Existing Operator has complied with and performed all of their obligations required to be performed under all Assumed Operating Contracts (whether as an original party or as an assignee or successor) as of the date hereof and is not in default under any Assumed Operating Contract. Complete and correct copies of all Assumed Operating Contracts, together with all modifications and amendments thereto, shall be made available to New Operator within 14 days after the Agreement Date.

G. Purchased Assets. Existing Operator owns or has lease or license rights to the Purchased Assets and Personal Property with good title, free and clear of all liens. The Purchased Assets are in operating condition and repair, ordinary wear and tear excepted, and are adequate for the uses to which they are being put, and none of such Purchased Assets is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost.

H. Leases, Etc. Except as disclosed on Schedule VII.H, no person or entity has any leasehold interest, license, or other right to occupy any part of the Facility by virtue of any oral or written agreement with Existing Operator, other than residents of the Facility under residency agreements.

I. Taxes. Existing Operator has filed all tax returns required to be filed with all applicable governmental authorities and have, to the best of Existing Operator's knowledge, paid or established adequate reserves for all taxes, including but not limited to real estate taxes, personal property taxes, and bed or provider taxes, and any assessments which have been received by it or otherwise. Existing Operator is not delinquent in the payment of any tax, and there is no tax asserted against Existing Operator for which Existing Operator has been notified as being due before the Operations Closing Date. All Taxes that Existing Operator is or was required by any applicable legal requirements to withhold, deduct or collect have been duly withheld, deducted and collected. No examination of any Tax Return of Existing Operator is currently in progress. There are no outstanding agreements or waivers extending the statutory period of limitations applicable to any such Tax Return. There are no encumbrances for Taxes upon the Purchased Assets other than statutory liens for Taxes not yet due or payable.

J. Brokers. No brokers or finders have been engaged by Existing Operator in connection with this Agreement or transaction.

K. ERISA and Benefit Plans. Except as set forth on Schedule VII.K, neither Existing Operator nor any affiliate is or ever has been a party to, participates in, has participated in or has any liability or contingent liability with respect to any of the following: (i) any "employee welfare benefit plan" or "employee pension benefit plan" as those terms are respectively defined in Sections 3(1) and 3(2) of ERISA; (ii) any retirement or deferred compensation plan, incentive compensation plan, stock plan, unemployment compensation plan, vacation pay, severance pay, bonus or benefit arrangement, insurance or hospitalization program or any other fringe benefit arrangements for any current or former employee, director, consultant or agent, whether pursuant to contract, arrangement, custom or informal understanding, written or unwritten, which does not constitute an "employee benefit plan" (as defined in Section 3(3) of ERISA); or (iii) any fringe benefit plans, as that term is defined in Section 6039D(d) of the Code (collectively, the

“**Employee Plans**”), and under no circumstances will New Operator have any liability with respect to any Employee Plan. Except as otherwise set forth on Schedule VII.K, neither Existing Operator, nor any ERISA Affiliate, is or has been a participant in, or is or has been obligated to maintain or to make contributions to, a multiemployer plan (within the meaning of ERISA Section 3(37) and ERISA Section 4001(a)(3) or an Employee Plan which is subject to Title IV of ERISA. Neither Existing Operator nor any ERISA Affiliate has incurred any withdrawal liability, nor do any of them have any liability for any potential withdrawal liability. Neither Existing Operator nor any ERISA Affiliate has sponsored, contributed to or been obligated under Title I or IV of ERISA to contribute to a “defined benefit plan” (as defined in ERISA Section 3(35)) or a plan that was ever subject to Sections 412 or 430 of the Code, or Part 3 of Title I of ERISA, and under no circumstances will New Operator have any liability with respect to any Employee Plan maintained by Existing Operator or any ERISA Affiliate, regardless of whether such Employee Plan relates to the Hired Employees. Except as set forth on Schedule VII. P, none of the Employee Plans promises or provides medical, life or other welfare benefits to any current or future retired employees, managers, members, directors or consultants (or any spouse or dependents thereof), except as required by the Consolidated Omnibus Budget Reconciliation Act (COBRA). Existing Operator has complied in all material respects with the notice and continuation coverage requirements of Section 4980B of the Code and the regulations thereunder with respect to each Employee Plan that is a group health plan within the meaning of Section 5000(b)(1) of the Code. Each Employee Plan that is a group health plan is in material compliance with the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act, to the extent applicable and Existing Operator has complied with all its obligations thereunder, including all reporting obligations, such that Existing Operator is not and will not be subject to any assessable payments under Code Section 498H or other penalties under the Code or other applicable law.

L. Labor and Employment Matters. Except as set forth on Schedule VII.L, Existing Operator is not a party to any collective bargaining agreement or other labor contract applicable to any employees of the Facility, and there are no pending or, to Existing Operator’s knowledge, threatened labor disputes at the Facility including, but not limited to, any strike, slowdown, picketing, work stoppage, organizational activities or employee grievance process affecting the Facility, including without limitation attempts to organize. Existing Operator has complied in all material respects with all applicable Laws governing wage, hour, payroll and all other employment and labor matters. To Existing Operator’s knowledge, no activity of any employee at the Facility as or while an employee of the Facility has caused a violation of any employment contract, confidentiality agreement, patent disclosure agreement or other contract to which such employee was a party.

M. Liens. All contractors, subcontractors and other persons engaged by Existing Operator to furnish work, labor, materials or supplies for the development and construction of the Facility and/or Purchased Assets or Personal Property have been paid, or prior to the Operations Closing shall be paid, whether the work is in progress or completed, for all work performed, material, supplies and the like up to and including the Operations Closing Date, and there are no claims against Existing Operator, the Facility, or any of the Purchased Assets or Personal Property in connection therewith which may give rise to a mechanic’s lien against the Facility, the Purchased Assets or any portion thereof.

N. COVID Funds. Existing Operator has applied for and utilized, as applicable, all COVID Payments in accordance with applicable Laws.

O. Environmental. Except for medical waste generated and disposed of in the ordinary course of business and in compliance with applicable Laws, Existing Operator has not generated, stored or disposed of any Hazardous Materials on the real property on which the Facility is located (the “**Property**”), and, to Existing Operator’s knowledge, there are not currently any Hazardous Materials on the Properties. Existing Operator has not violated any Environmental Laws, in any material manner, in connection with the use, lease, maintenance or operation of the Facility and the Properties. Any and all environmental permits,

licenses or approvals required by any applicable Law pertaining to the Facility are attached hereto as Schedule VII.O.

P. Health Care Representations.

a. Except as set forth in Schedule VII.P or as otherwise disclosed, Existing Operator owns and/or possesses, and holds free from restrictions or conflicts with the rights of others, all material Permits required by a Governmental Entity for the operation of the Facility as a skilled nursing facility. All Permits applicable to the operation of the Facility are set forth on Schedule VII.P. No proceeding is pending or, to Existing Operator's knowledge after reasonable inquiry, threatened, seeking the revocation or limitation of any such Permit. Except as set forth on Schedule VII.P, Existing Operator has not received any notice from any Governmental Entity, accrediting body, or other applicable authority of, and is not aware of any material circumstance or condition that is or would result in, (a) any violation, non-renewal, suspension or revocation of any such Permit that has not been dismissed or cured, or (b) any failure by Existing Operator to obtain any Permit required by any applicable Law for the ownership, maintenance, use, occupancy or operation of the Facility as currently owned or operated.

b. Facility is licensed by the applicable Governmental Entity as a skilled nursing facility with the number and type of units and beds set forth on Schedule VII.P attached to this Agreement. Such Permit is unrestricted, unconditional, in good standing and in full force and effect and subject to no waivers or limitations. During the eighteen (18) months period preceding the Agreement Date, except as disclosed on Schedule VII.P, Existing Operator has operated the Facility in material and substantial compliance with all applicable Laws.

c. Except as disclosed on Schedule VII.P, there are no outstanding inspections, surveys, or plans of correction. There are no implemented bans, remedies, sanctions, prohibitions on payment, or limitations in effect with respect to the Facility, and no action has been taken or recommended, nor, to Existing Operator's knowledge after reasonable inquiry, is there any basis for any action, by any Governmental Entity, either to revoke, withdraw or suspend its license to operate the Facility or to terminate or decertify any participation of the Facility in the Medicare or Medicaid programs.

d. Existing Operator has furnished New Operator with all surveys, inspection reports, waivers of deficiencies, plans of correction, and any similar investigation or examination reports relating to any inspections, investigations or examinations by any Governmental Entity having jurisdiction over the Facility during the eighteen (18) month period preceding the Agreement Date (collectively, the "**Facility Surveys**"), and the Facility Surveys do not contain any citations, deficiencies or violations of any applicable Laws, including, without limitation, a Facility Survey with a citation of a "G" or more severe finding, that, except as disclosed on Schedule VII.P, have not been determined by the applicable Governmental Entity to have been brought back into substantial compliance.

e. Except as disclosed on Schedule VII.P, the Facility has not: (i) been designated as a facility subject to the Special Focus Facility, Low-Rated Facility, or any successor or similar program (collectively, "**SFF**") as defined by CMS or any other applicable Governmental Entity or, to Existing Operator's knowledge after reasonable inquiry, been placed on any "watch list" or other list for consideration for a SFF program within the three (3) year period immediately preceding the Agreement Date, (ii) been subject to enhanced penalties by the OIG or otherwise, (iii) been cited for any material deficiency that has not been cured that would result in a denial of payment for new admissions, civil monetary penalties, termination, final revocation or cancellation of any license, or termination or other restriction of a provider agreement within the three (3) year period immediately preceding the Agreement Date.

f. Neither Existing Operator nor any current member, officer, director, or employee of Existing Operator, including, without limitation, a Facility administrator, has been (i) sanctioned pursuant to the Anti-Kickback Statute (42 U.S.C. §§1320a-7a or 1320a-8), the False Claims Act (31 U.S.C. §3729 et seq.), the Stark Law (42 U.S.C. §1395nn), or the regulations promulgated pursuant to such statutes, or any related or similar federal, state or local statutes or regulations governing referrals, fraud, waste, and abuse in the healthcare industry (“**Health Care Fraud and Abuse Laws**”); or (ii) convicted of a criminal offense under the Health Care Fraud and Abuse Laws. There are no pending or threatened Healthcare Fraud and Abuse Law investigations, proceedings, or actions (including any civil investigative demand, subpoena, or self-disclosure) involving Existing Operator, any current member, officer, director, employee, or administrator of Existing Operator, or the Facility. Other than as set forth on Schedule VII.P, Existing Operator has not received, within the last three (3) years, any notice (i) of the commencement of any proceeding under the Health Care Fraud and Abuse Laws or (ii) that the Facility, Existing Operator, and/or any officer, director or employee of Existing Operator including, without limitation, the Facility administrator, is under investigation or involved in proceedings regarding the Health Care Fraud and Abuse Laws, including as a result of a self-disclosure. Existing Operator, and all agreements, arrangements, and operations of the Facility, have been in material and substantial compliance with all of the Health Care Fraud and Abuse Laws for the three (3) year period immediately preceding the Agreement Date.

g. Except as set forth on Schedule VII.P, neither Existing Operator nor any current director, officer, or managing employee of Existing Operator, including, without limitation, the Facility administrator, is or has been party to a corporate integrity agreement, corporate compliance agreement, or other settlement agreement with the OIG, CMS, the United States Department of Justice, any state Department of Health (or similar Governmental Entity), any state Department of Medicaid (or similar Governmental Entity), or any state Attorney General, as a result of an alleged violation of any applicable law (and the Facility is not in any way subject to or liable with respect to any such corporate integrity agreement, corporate compliance agreement, or other settlement agreement). Neither Existing Operator nor any current director, officer or employee of Existing Operator, including, without limitation, a Facility administrator, nor, to Existing Operator’s knowledge after reasonable inquiry, any contractor or vendor of Existing Operator, is listed on the OIG List of Excluded Individuals and entities, any state Medicaid exclusion list, or has been suspended, excluded, or otherwise limited from participating in the Medicare program or any other government reimbursement program nor do any grounds exist for any such placement, exclusion, or suspension.

h. The Facility is certified for participation in the Medicare and Medicaid programs and Existing Operator has a provider agreement with each such government reimbursement program (collectively, the “**Provider Agreements**”). The Facility is in material compliance with the conditions of participation and conditions for coverage of the government reimbursement programs and with the terms, conditions, and provisions of the Provider Agreements. The Provider Agreements are each in full force and effect, and Existing Operator does not have any knowledge, after reasonable inquiry, of any fact or circumstance that would cause any such Provider Agreement not to remain in force or be renewed on and after Operations Closing. Attached hereto on Schedule VII.P is a true, correct, and complete list of all Medicaid and Medicare provider numbers (the “**Provider Numbers**”) in the name of Existing Operator or the Facility. The Provider Numbers are active, in good standing and available for full use with CMS, the applicable Governmental Entity of the state where the Facility is located, and any other applicable Governmental Entity. There is no proceeding, audit, investigation or survey pending or, to Existing Operator’s knowledge after reasonable inquiry, threatened, involving any of the government reimbursement program or any other third-party payor programs, with respect to the Facility, and Existing Operator has no reason to believe that any such proceedings, audits, investigations, or surveys are pending, threatened, or imminent.

i. The cost reports for the Facility for the last six (6) years prior to the Agreement

Date have been prepared and filed in material compliance with all applicable Laws and Provider Agreements.

j. All billing practices of Existing Operator with respect to all third-party payors have been in material compliance with all applicable laws and the policies of such third-party payors for the six (6) year period immediately preceding the Agreement Date. Neither Existing Operator nor the Facility has been subject to any audit by any third-party payor relating to false or fraudulent billing procedures or practices within the prior six (6) years, or (ii) has received notice of an alleged or actual breach of any commercial or other third-party payor agreement, or any notice of termination, suspension, or other limitation of any commercial or other third-party payor agreement within the prior six (6) years.

k. Schedule VII.P sets forth: (i) the number and type of Facility beds duly licensed by the applicable Governmental Entity; (ii) the number of beds actually located, and currently operational, at the Facility (iii) the number of Facility beds duly licensed or otherwise certified as required to bill Medicaid; and (iv) the number of Facility beds duly licensed or otherwise certified as required to bill Medicare.

l. Existing Operator has furnished to New Operator a resident census report for the twelve (12) month period prior to the Agreement Date, which is accurate and complete in all material respects.

m. Existing Operator and the policies, procedures, and systems of the Facility are in compliance in all material respects with HIPAA and the rules and regulations promulgated thereunder and such other applicable federal, state or local statutes or regulations governing medical records and the privacy of patient information, and any business associate agreements entered into by Existing Operator or the Facility in connection therewith. All protected health information (as defined under HIPAA) maintained by Existing Operator or the Facility is maintained in all material respects in accordance with HIPAA's administrative, physical, and technical safeguard requirements. Except as disclosed on Schedule VII.P, Existing Operator has not received any complaint or notice of investigation (in writing or otherwise) from the Department of Health and Human Services Office for Civil Rights, or from any other person, entity or Governmental Entity regarding Existing Operator, the Facility, or, to their knowledge after reasonable inquiry, any of their respective business associates' uses or disclosures of, or security practices or security incidents regarding, protected health information or HIPAA compliance. With regard to protected health information of the Facility's residents, there have not been any non-permitted uses or disclosures, security incidents, or breaches involving Existing Operator, the Facility, or their respective business associates in the six (6) year period immediately preceding the Agreement Date. Existing Operator and the Facility are, and for the past six (6) years have been, in compliance with all applicable legal requirements related to reporting to individuals, Governmental Entities, the media, or credit reporting agencies, as applicable, any reportable breaches involving protected health information under HIPAA.

n. Except as permitted by (or otherwise not in violation of) applicable Law or regulation, neither the Existing Operator nor any of its members, directors, officers, affiliates or employees is a party to any contract, lease agreement or other arrangement related to the Existing Operator with any physician, physical or occupation therapist, health care facility, hospital, home health agency or other person or entity who is in a position to make or influence referrals to or otherwise generate business for the Existing Operator or Facility to provide services, lease space, lease equipment or engage in any other venture or activity.

Q. Absence of Change. Since the date of the Interim Financial Statement, except as contemplated by this Agreement or as set forth on Schedule VII.Q, (a) the operation of the Facility has been conducted in all material respects in the ordinary course consistent with past practice, (b) nothing has occurred which would constitute a material adverse effect, (c) all material obligations under the Assumed Operating

Contracts have been performed, (d) the Facility have been marketed and census has been maintained consistent with past practice, (e) no transaction or contractual obligation that would materially adversely impact Existing Operator's abilities to perform their obligations under this Agreement has been entered into, (f) there has been no change in the condition (financial or otherwise), results of operations, business, prospects, assets or Liabilities of the Existing Operator or with respect to the manner in which the Existing Operator conducts its business or operations which has or is reasonably likely to have individually or in the aggregate, a material adverse effect, and (g) no employees or residents of the Facility have been transferred to any business or facility owned or controlled by an affiliate of Existing Operator other than to another Facility, unless required to comply with applicable legal requirements or patient choice.

R. Facility.

1. Condition of the Facility. There exists no defective condition, structural or otherwise, with respect to the Facility that would reasonably be considered to interfere with Existing Operator's ability to operate the Facility as a skilled nursing facility. Existing Operator has not received any written notice from any insurance company which has issued a policy with respect to a Facility or from any board of fire underwriters (or other body exercising similar functions) and any Governmental Entity or any other third party claiming any defects or deficiencies in the Facility or suggesting or requesting the performance of any repairs, alterations or other work to the Facility.

2. Sprinklers; Life Safety Code. There is a sprinkler system at the Facility that is in full operational compliance with all applicable requirements. The Facility is in compliance with all Life Safety Code and similar requirements related to the structural characteristics of the Facility.

S. No Implied Representations or Warranties; Disclaimers. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT, EXISTING OPERATOR ENTERS INTO THIS AGREEMENT WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY AND EXISTING OPERATOR IS CONVEYING THE PURCHASED ASSETS AS IS, WHERE IS, AND WITH ALL FAULTS, AND WITHOUT REPRESENTATION OR WARRANTY (ALL OF WHICH EXISTING OPERATOR HEREBY DISCLAIM) AS TO FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, DESIGN, QUALITY, LAYOUT, PHYSICAL CONDITION, OPERATION, COMPLIANCE WITH SPECIFICATIONS, ABSENCE OF LATENT DEFECTS, OR COMPLIANCE WITH LAWS AND REGULATIONS (INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO HEALTH, SAFETY AND THE ENVIRONMENT) OR ANY OTHER MATTER AFFECTING OR RELATING TO THE CONDITION OF THE PURCHASED ASSETS. NEW OPERATOR HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SPECIFICALLY SET FORTH HEREIN, NEW OPERATOR IS RELYING SOLELY UPON THE INSPECTION, EXAMINATION, AND EVALUATION OF THE PURCHASED ASSETS BY NEW OPERATOR, AND NEW OPERATOR WILL HAVE NO RIGHT TO BE INDEMNIFIED BY OR OTHERWISE BRING ANY ACTION AGAINST EXISTING OPERATOR WITH RESPECT TO ANY MATTER AFFECTING OR RELATING TO THE CONDITION OF THE PURCHASED ASSETS, OR ANY PORTION THEREOF. THE PROVISIONS OF THIS ARTICLE VII WILL SURVIVE THE CLOSING. FURTHER. NEW OPERATOR SHALL HAVE NO CLAIM FOR BREACH OF ANY REPRESENTATION OR WARRANTY UNDER THIS AGREEMENT TO THE EXTENT IT HAD ACTUAL KNOWLEDGE OF THE FACTS UNDERLYING THE ALLEGED BREACH. NEW OPERATOR ACKNOWLEDGES IT HAS HAD FREE ACCESS TO THE FACILITY PRIOR TO THE AGREEMENT DATE AND HAS INTERVIEWED THE FACILITY'S LICENSED ADMINISTRATOR FREE FROM INTERFERENCE BY EXISTING OPERATOR.

Article VIII

NEW OPERATOR REPRESENTATIONS AND WARRANTIES

A. Due Authorization, Execution, Organization, Etc.

1. This Agreement and all agreements, instruments and documents herein provided to be executed or to be caused to be executed by New Operator is, or when executed by New Operator on the Operations Closing Date will be, duly authorized, executed and delivered by New Operator and are binding in accordance with their terms upon New Operator, subject to the effect of bankruptcy, insolvency, reorganization, moratorium or other similar Laws of general application and of legal or equitable principles generally and covenants of fair dealing.

2. New Operator is duly organized, validly existing and in good standing under the Laws of the State of Florida and is duly qualified to do business in the state where the Facility is located. New Operator has the power and authority to enter into this Agreement and all agreements, instruments and documents herein provided and to consummate the transactions contemplated thereby.

3. Neither this Agreement nor any agreement, document or instrument executed or to be executed by New Operator in connection with this Agreement, nor anything provided in or contemplated by this Agreement or any such other agreement, document or instrument, does now or will hereafter breach, invalidate, cancel, make inoperative or interfere with, or result in the acceleration or maturity of, any agreement, document, instrument, right or interest, affecting or relating to New Operator or the Purchased Assets.

B. **No Proceedings.** There are no claims, actions, proceedings pending, or to the knowledge of New Operator, threatened against New Operator that are reasonably likely to prevent or materially delay the consummation of the transactions contemplated herein.

C. **No Criminal Offense.** New Operator has not been convicted of or pleaded guilty or no contest to any criminal offense.

D. **False Claims.** No director or officer of New Operator or any employee of New Operator, acting alone or together, has directly or indirectly within the last three (3) years: (a) given or taken any remuneration, rebates, payments, commissions, or promotional allowances to any customer, supplier, physician, or governmental employee with whom New Operator has done business; or (b) knowingly and willfully made any false statement of material fact in any application for any benefit or payment.

ARTICLE IX **INDEMNIFICATION AND SURVIVAL**

A. **Indemnification by Existing Operator.** Existing Operator will hold harmless and indemnify New Operator and its officers, directors, employees, members, affiliates, designees, successors and assigns from and against any Loss that (i) results from any breach by Existing Operator of any of its representations, warranties, covenants or agreements in this Agreement or in any certificate delivered in connection with this Agreement, (ii) arises from any tort, general liability, or professional liability claim made by any third party other than any Governmental Entity with respect to the Facility as a result of operation of the Facility prior to the Operations Closing Date, whether such obligation accrues before or after the Operations Closing Date, (iii) arises from any and all claims, including, without limitation, any civil monetary penalties or other fines, suit, action, or other proceeding brought by any Governmental Entities or other third party payors against New Operator, the Purchased Assets or the Facility, as a result of operation of the Facility prior to Operations Closing Date, including, without limitation, Recapture Claims and other overpayments made with respect to Medicare, Medicaid and any other third-party payor program, (iv) arises from any other Loss relating to, arising out of or resulting from any liability not expressly assumed by New Operator hereunder, including the Excluded Liabilities or any activities of the Facility,

Existing Operator, and its affiliates prior to the Operations Closing Date, or (v) arises out of any act, event, or omission relating to the operation of the Facility or the Purchased Assets and occurring or arising before the Operations Closing Date or is an Excluded Liability or an Excluded Asset, in each case subject to Article IX.D, or (vi) results from any Other Payors terminating payor agreements with respect to the Facility or otherwise ceasing to make payments with respect thereto, with respect to the transactions set forth herein solely as a result of Existing Operator's breach of its obligations in Article VI.C.3. hereof (provided that Losses for such purpose shall constitute any reimbursement that would have been received from such Other Payors, provided that any amounts indemnified and subsequently recovered by New Operator shall be returned to Existing Operator).

B. Indemnification by New Operator. New Operator will hold harmless and indemnify Existing Operator from and against any Loss that (i) results from any material breach of any representations, warranties, covenants or agreements of New Operator contained in this Agreement or in any document executed in connection with this Agreement; or (ii) arises out of any act, event or omission relating to the operation of the Facility or the Purchased Assets and occurring or arising on or after the Operations Closing Date or is an Assumed Liability, in each case subject to Article IX.D.

C. Billing Indemnification by New Operator. New Operator assumes the risk of all damage, loss, cost and expense associated in any way with the use of the Existing Operator's Billing Identification Information or actions contemplated by this Agreement. New Operator agrees to indemnify, defend and hold harmless the Existing Operator and its Affiliates from and against any and all claims, recoupments, demands, losses, compensation, liabilities, damages, fines, penalties, civil monetary penalties, judgments, interest, costs, (including court costs and costs of appeal) and expenses (including reasonable attorney's fees) that may accrue to or be sustained by Existing Operator and its Affiliates resulting from or relating to the (i) use of Existing Operator's Billing Identification Information by New Operator pursuant to this Agreement, (ii) billing transfer of Existing Operator's Medicare or Medicaid Provider Agreements to New Operator and (iii) New Operator's billing or communications with Other Payors. This indemnification also expressly includes, without limitation, any claim for defense and other costs, actual damages, compensatory damages, statutory damages, common law damages, penalties or any other type of damages and is not subject to the limitation on indemnification, including those set forth in Article IX.D.

D. Limitation on Indemnification.

1. Any claim for indemnity pursuant to Article IX of this Agreement must be made in writing by the party to be indemnified (the "**Indemnitee**") to the applicable other party (the "**Indemnitor**").

2. Notwithstanding anything in this Article IX to the contrary, no Indemnitor will be required to indemnify any Indemnitee pursuant to Article IX.A. or Article IX.B. of this Agreement with respect to any individual claim of liability or damage unless the aggregate amount of all such claims for the Facility exceeds Twenty-Five Thousand Dollars (\$25,000) ("**Indemnity Threshold**"), and then shall be entitled to indemnification for all amounts, including the Indemnity Threshold. However, the indemnification obligations of New Operator under this Agreement, as Indemnitor, and the indemnification obligations of Existing Operator under this Agreement, as Indemnitor, respectively, will not exceed an amount equal to \$500,000 (the "**Cap**"). For purposes of this Article IX, in computing the individual or aggregate amount of claims, the amount of each claim will be deemed to be an amount net of any insurance proceeds and any indemnity, contribution or other similar payments actually paid by a third party to the Indemnitee with respect thereto. Notwithstanding anything to the contrary contained herein, neither the Indemnity Threshold nor the Cap shall apply to an Indemnitor's obligations with respect to claims based upon fraud or intentional misconduct by such Indemnitor, or any Excluded Liabilities, including, without limitation, Recapture Claims.

3. Notwithstanding anything to the contrary set forth herein, claims for indemnification pursuant to Article IX.A. or Article IX.B. must be made before the two-year anniversary of the Operations Closing Date; provided that such time limit shall not apply to an Indemnitor's obligations with respect to claims based upon fraud or intentional misconduct by such Indemnitor, or any Excluded Liabilities, including, without limitation, Recapture Claims.

E. **Defense of Claims.** In the event any indemnity obligation of Existing Operator or New Operator arises hereunder because of a claim of a Loss by a third party, the applicable Indemnitee will promptly provide written notice to the applicable Indemnitor. Such notice shall be given in sufficient time to allow the applicable Indemnitor to defend such claim, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Indemnitor under this Section except solely to the extent that such failure to so notify such Indemnitor results in the forfeiture by the Indemnitor of rights and defenses otherwise available to the Indemnitor. At the option of the Indemnitee, the Indemnitor may defend such third party claims at its sole cost and expense, or Indemnitee may defend such third party claims on its own and Indemnitor will reimburse Indemnitee all costs and expenses related to such defense. The Indemnitee will cooperate with the Indemnitor in all reasonable respects in the defense of such third party claims.

F. **Sole Remedy.** Except as expressly set forth herein, the indemnities provided for in this Article IX and in Article VI will be the sole and exclusive remedy of each Party.

G. **Payments.** Once the amount of a Loss is agreed to by the Indemnitor or finally adjudicated to be payable pursuant to this Article IX, the Indemnitor shall satisfy its obligations within fifteen (15) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds.

H. **Security of Indemnification Obligations.**

1. As an inducement to the New Operator to enter into and consummate the transactions contemplated under this Agreement, Existing Operator Guarantor shall execute a Guaranty Agreement in such form as attached hereto as Exhibit E (the "***Existing Operator Guaranty Agreement***").

2. Pursuant to the Existing Operator Guaranty Agreement, Existing Operator Guarantor shall, jointly, severally, absolutely, unconditionally, and irrevocably guarantee to New Operator all indemnification obligations of Existing Operator under this Agreement (the "***Existing Operator Guaranteed Obligations***").

3. As an inducement to the Existing Operator to enter into and consummate the transactions contemplated under this Agreement, New Operator Guarantor shall execute a joint Guaranty Agreement in such form as attached hereto as Exhibit E (the "***New Operator Guaranty Agreement***"). Pursuant to the New Operator Guaranty Agreement, New Operator Guarantor shall, jointly, severally, absolutely, unconditionally, and irrevocably guarantee to the Existing Operator all indemnification obligations of New Operator under this Agreement (the "***New Operator Guaranteed Obligations***").

H. **Survival.** The provisions of this Article IX will survive the Operations Closing.

Article X

TERMINATION, EFFECT OF TERMINATION, AND DISPUTES

A. **Termination.**

1. This Agreement may be terminated prior to the Operations Closing Date with

respect to the Facility as follows:

- (a) By any Party if (a) mutually agreed by Existing Operator and New Operator; and (b) any Governmental Entity or court with jurisdiction over such matters will have issued a restraining order or otherwise prohibiting the sale of the Purchased Assets hereunder, provided that such was not caused by one of the Parties seeking to terminate this Agreement.
- (b) By New Operator in the event of a material breach by Existing Operator of any representation, warranty, or covenant contained herein that has not been cured within 30 days of receipt of written notice thereof.
- (c) By Existing Operator in the event of a material breach by New Operator of any representation, warranty, or covenant contained herein that has not been cured within 30 days of receipt of written notice thereof.

B. **Effect of Termination: Right to Proceed: Waiver.** In the event of termination of this Agreement with respect to the Facility for any reason, this Agreement will terminate without further liability on the part of any party.

C. **Disputes.** Any controversy, claim or dispute arising out of or relating to the Agreement, as amended, or the subject matter therein or the interpretation, performance or breach of the Agreement, as amended, shall be settled by final and binding arbitration before one arbitrator in Orlando, Florida. The arbitration will be initiated and conducted in accordance with the rules of the American Arbitration Association, except as modified herein, in effect at the time the request for arbitration is made. Any decision or award of the arbitrator shall be final, binding and conclusive on the Parties. The Parties may enforce a final arbitration award in any court of competent jurisdiction. The Parties agree to equally split the cost of any arbitration administrative fee and the compensation of the arbitrator.

Article XI **GENERAL PROVISIONS**

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

B. **Notices.** All notices to be given by any Party to this Agreement to the other Parties hereto will be in writing, and will be (a) given in person, (b) deposited in the United States mail, certified or registered, post-age prepaid, return receipt requested, (c) sent by national overnight courier service or (d) sent by facsimile or e-mail (followed by delivery by one of the other means identified in (a)-(c)), each addressed as follows:

To Existing Operator: 850 S. Concourse Pkwy., Suite 250
Maitland, FL 32751
Attn: Legal
Email: legalnotices@synergyhcs.com

To New Operator: 338 Whitesville Road
Jackson, NJ 08527
Attn: Nathan Freund
Email: freund.nathan@gmail.com

With a copy to: Gitelis LLP
Attn: Dov Grinblatt
525 Chestnut Street, Suite 207
Cedarhurst, NY 11516
Email: dov@gitelisllp.com

Any such notice personally delivered will be deemed delivered when actually received, any such notice deposited in the United States mail, registered or certified, return receipt requested, with all postage prepaid, will be deemed to have been given on the earlier of the date received or the date when delivery is first refused, and any notice deposited with an overnight courier service for deliver will be deemed delivered on the Business Day following such deposit. Any party to whom notices are to be sent pursuant to this Agreement may from time to time change its address for further communications thereunder by giving notice in the manner prescribed herein to all other Parties hereto.

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

D. **Assignment.** Neither this Agreement nor the rights, duties or obligations arising hereunder will be assignable or delegable by any Party hereto without the express prior written consent of the other Parties hereto, which will not be unreasonably withheld, except that if the Agency has not approved New Operator's CHOW by the first (1st) anniversary of the Agreement Date, the entity owning the Property as of the Agreement Date (or its successor) ("***PropCo***") may cause New Operator to assign all of New Operator's rights, duties, and obligations under this Agreement to a substitute operating entity at its option and without the consent or approval of Existing Operator or New Operator, provided that PropCo and its designated substitute operating entity shall indemnify Existing Operator from any costs or loss from such assignment as if this provision were incorporated fully into Article IX.C hereof.

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

F. **Press Releases and Public Announcements.** Neither Party shall issue or cause the publication of any press release or other public announcement or announcement to employees or residents with respect to this Agreement or the transactions contemplated hereby, without the prior written consent of the other Parties hereto. If any Party determines in good faith that the Law requires a public announcement of any kind concerning this Agreement or the transactions contemplated by it, such Party shall consult with the other Parties at least ten (10) Business Days prior to the announcement and such other Parties shall have the right to approve the content of all such announcements.

G. **Captions.** The section headings contained herein are for convenience only and will not be

considered or referred to in resolving questions of interpretation.

H. **Counterparts.** This Agreement may be executed in one or more counterparts and all such counterparts taken together will constitute a single original Agreement. Signatures exchanged electronically will be deemed original signatures.

I. **Confidentiality.**

1. Existing Operator acknowledges that certain of the information that has been and will be made available pursuant to this Agreement may be proprietary and include confidential information. Existing Operator shall hold all such information about New Operator in confidence and shall not disclose it to any person or entity (other than to their respective representatives, so long as those representatives agree to keep any such information in confidence) without the approval of New Operator supplying such information; provided, however, that the foregoing restriction shall not apply to any information that is, through no fault of Existing Operator, publicly known or which is lawfully obtained from a third party, disclosure to any Governmental Entity in connection with the CHOW, or to any disclosure required by any legal requirement or in connection with the enforcement of Existing Operator's or New Operator's rights under this Agreement.

2. New Operator acknowledges that certain of the information that has been and will be made available pursuant to this Agreement may be proprietary and include confidential information. New Operator shall hold all such information about Existing Operator in confidence and shall not disclose it to any person or entity (other than to their respective representatives, so long as those representatives agree to keep any such information in confidence) without the approval of Existing Operator supplying such information; provided, however, that the foregoing restriction shall not apply to any information that is, through no fault of New Operator, publicly known or which is lawfully obtained from a third party, or to any disclosure required by any legal requirement, disclosure to any Governmental Entity in connection with the CHOW, or in connection with the enforcement of New Operator's or Existing Operator's rights under this Agreement.

3. Each Party recognizes that irreparable injury will result from a breach of this Section XII, and that money damages will be inadequate to fully remedy such injury. Accordingly, in the event of a breach or threatened breach of such provisions, a non-breaching party shall be entitled to seek (in addition to any other remedies which may be available to such Party) one or more preliminary or permanent orders (i) restraining and enjoining any act which would constitute a breach or (ii) compelling the performance of any obligation which, if not performed, would constitute a breach.

J. **Specific Performance.** Each Party hereby acknowledges that the rights of each Party to consummate the transactions contemplated hereby are special, unique and of extraordinary character and that, in the event that any Party violates or fails or refuses to perform any covenant or agreement made by such Party herein, money damages may be inadequate and the non-breaching Parties may have no adequate remedy at law. Accordingly, each Party agrees that each other Party shall have the right, in addition to any other rights and remedies existing in its favor, to seek to enforce its rights and the other Party's obligations by an action or actions for equitable relief, including injunction and specific performance; provided, however, that, except in the case of fraud, no Party shall be entitled to seek money damages other than pursuant to Article IX or as otherwise expressly set forth elsewhere in this Agreement. If any such action is brought by a Party to enforce this Agreement, each other Party, as applicable, hereby waives the requirement for the posting of any bond or similar security

K. **Governing Law.** THIS AGREEMENT SHALL BE GOVERNED AND CONTROLLED

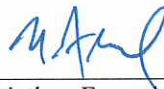
BY THE INTERNAL LAWS OF THE STATE OF FLORIDA AS TO INTERPRETATION, ENFORCEMENT, VALIDITY, CONSTRUCTION, EFFECT, AND IN ALL OTHER RESPECTS BUT EXCLUSIVE OF ITS CONFLICTS OF LAWS PROVISIONS.

[Signatures Continue of the Following Page]

IN WITNESS WHEREOF, the Parties hereby execute this Agreement as of the Agreement Date.

NEW OPERATOR:


Santa Barbara Blvd Opco LLC

By: 
Name: Nathan Freund
Title: Manager

[Signature Page to SNF Operations Transfer Agreement]

EXISTING OPERATOR:

216 Santa Barbara Boulevard Operations LLC

By: 
Name: Craig Robinson
Title: Manager

[Signature Page to SNF Operations Transfer Agreement]

**Schedules to
Operations Transfer Agreement**

**Schedules current as of November 1, 2023.*

Schedule VII.A

Answer: To the extent that F.S. 553.899 or similar laws apply, the Facility has not undergone a milestone structural inspection as required under Florida law. Existing Operator has not taken an analysis whether any existing law, code, or standard requiring structural inspections may apply to buildings younger than 30 years of age.

Additionally, please see Schedules VII.P.

Answer:

Litigation				
Case Caption	Jurisdiction	Case Number	Type of Claim	Plaintiff's Attorney
AHCA v. 216 Santa Barbara Boulevard Operations, LLC d/b/a/ Coral Trace Health Care	Agency Clerk	2023005808	Administrative Complaint seeking \$10,000 administrative fine, \$6,000 survey fee, and conditional license from February 8, 2023 through March 10, 2023.	Gisela Iglesias (AHCA)
Sylvia Cruz as PR of the Estate of Carlos Cruz v. 216 Santa Barbara Boulevard Operations, LLC and CMC II, LLC	Circuit Court for Lee County, FL	20-CA-2566	Professional Liability	Parvey & Cavenago, PA Carlos Cavenago III, Esq
Margaret Lopez v. 216 Santa Barbara Boulevard Operations, LLC; Epsilon Healthcare Properties, LLC; NSPRMC, LLC; NSPR Care Centers, LLC; LV CHC Holdings I, LLC; LaVie Care Centers, LLC	IN RE: ARBITRATION		Professional Liability	Kohn Law Kimberely Kohn, Esq.
Estate of Thalia King by Dana Beatty King Jr, PR v. 216 Santa Barbara Boulevard Operations, LLC; Epsilon Health Care Properties, LLC; LaVie Care Centers, LLC; and Shelley Grimes	Circuit Court for Lee County, FL	22-CA-000549	Professional Liability	Mendes, Reins & Wilander
Bethania Malagon by and through Agustin Malagon v. 216 Santa Barbara Boulevard Operations, LLC; LaVie Care Centers, LLC; Shelley Grimes	Circuit Court for Lee County, FL	22-CA-003578	Professional Liability	Mendes, Reins & Wilander
Caremasters Homehealth, LLC v. 216 Santa Barbara Boulevard Operations, LLC	Circuit Court for Sarasota County, FL	2022-CA-004795	Breach of Contract/Other Litigation	Walters, Levine & DeGrave Joel Walters, Esq.
Marthe Charles Cesar v Coral Trace	Circuit Court for Lee County, FL	23-CA-011247	Professional Liability	Your Insurance Attorney Brian Guppenberger, Esq.
Constant Cesar by and through Amy Cesar, POA v 216 Santa Barbara Boulevard Operations, LLC; NSPRMC, LLC	Circuit Court for Lee County, FL	23-CA-011264	Professional Liability	Your Insurance Attorney Brian Guppenberger, Esq.

Answer: None.

Schedule VII.H

Answer: None

Answer: None

Schedule VII.L

Answer:

Union	CBA Expiration	Grievance
1199SEIU	6/3/2024	None

Schedule VII.O

Answer: None. Additionally, see Schedule VII.P(a).

Schedule VII.P(a)

Answer: See Schedule VII.P(c). Additionally, please refer to the list below.

State	Facility	LIC	LIC #	Issuing Authority	Effective Date	Expiration Date
FL	Coral Trace	Nursing Home	Agency for Health Care Administration	11040961	05/02/2022	05/01/2024
FL	Coral Trace	Biomedical Waste	Department of Health	36-64-1409350	10/01/2023	09/30/2024
FL	Coral Trace	Business	City of Cape Coral	02282	10/01/2023	09/30/2024
FL	Coral Trace	Business	Tax Collector	8800466	10/01/2023	09/30/2024
FL	Coral Trace	Certificate of Waiver	Centers for Medicare & Medicaid Services	10D1048801	12/13/2021	12/12/2023
FL	Coral Trace	Pharmacy	Medical Quality Assurance	PH 26404	03/01/2023	02/28/2025

Schedule VII.P(b)

Answer:

Facility	Licensed # of beds	Type of Facility	Certified to participate in Medicaid?	#of beds certified for Medicaid	Certified to participate in Medicare?	# of beds certified for Medicare	All beds fully licensed by FL AHCA?
Coral Trace	120	Skilled Nursing Facility	Yes	113	Yes	120	Yes

Answer: The Facility currently has an open annual survey of 09/14/2023. It received three tags with the highest level of citation being an "E". The AOC for this survey is TBD.

Legal Regulatory is in the process of finalizing a settlement for an Administrative Complaint dated September 11, 2023 in which the facility is to pay a \$10,000 administrative fine, \$6,000 survey fee, and conditional license from February 8, 2023 through March 10, 2023. The Existing Operator will pay the aforementioned fines and fees when due once established by Final Order.

The Facility is subject to a compliance plan as referenced in the Final Order dated 12/07/2022.

Additionally, please see Schedule VII.A.

Schedule VII.P(d)

Answer: Survey data for the past 18 month period has been provided to New Operator. Any citations of "G" or higher, if given, have been brought back to compliance. Additionally, please refer to referenced publicly available surveys.

Schedule VII.P(e)

Answer: In the past 3 years, the Facility has received a CMS impositions and/or State administrative fines but they have all been cured (settled). Additionally, please refer to referenced publicly available surveys.

Answer: None.

Answer: See Schedule VII.P(c).

Schedule VII.P(h)

Answer:

Facility	Medicaid Provider Number	Medicare Provider Number
Coral Trace	10-5588	004384800

Schedule VII.P(k)

Answer:

Facility	Licensed # of beds	Type of Facility	Certified to participate in Medicaid?	#of beds certified for Medicaid	Certified to participate in Medicare?	# of beds certified for Medicare	All beds fully licensed by FL AHCA?
Coral Trace	120	Skilled Nursing Facility	Yes	113	Yes	120	Yes

Schedule VII.P(m)

Answer: One of our vendors suffered a security incident in early December where cybercriminals targeted portions of their network. Our vendor promptly began working with third-party experts to help them investigate and respond to the incident. During that investigation, the vendor became aware that the unauthorized third party may have accessed records with personal information. The vendor is still investigating the scope of that access and the investigation is being closely monitored.

Answer: None.

Answer: See Schedule VII.A.

EXHIBIT "A"

ASSIGNMENT AND ASSUMPTION AND BILL OF SALE

This Assignment and Assumption and Bill of Sale is entered into as of [_____] in connection with that certain Operations Transfer Agreement, by and between [_____] [_____] LLC, a [_____] limited liability company] ("**Existing Operator**"), and [_____] ("**New Operator**") dated [_____] 2023 ("**Agreement**"), pursuant to which Existing Operator has agreed to assign, convey, and transfer to New Operator certain Purchased Assets and Personal Property located at the skilled nursing facility known as [_____] and located at [_____] (the "Facility") that are not Excluded Assets. Capitalized terms not otherwise defined will have the meaning set forth in the Agreement.

NOW, THEREFORE, for good and valuable consideration, Existing Operator does hereby ASSIGN, TRANSFER, SET OVER, CONVEY AND DELIVER to New Operator as of the date first written above, the Personal Property and the following Purchased Assets (the "**Purchased Assets**"):

1. Assumed Operating Contracts. All obligations and liabilities of Existing Operator under the Assumed Operating Contracts, as defined in the Agreement, to the extent such obligations and liabilities relate to any period of time commencing on or after the Management Effective Time. Notwithstanding the foregoing, to the extent that Existing Operator's rights under any Assumed Operating Contract to be assigned to New Operator hereunder may not be assigned without the consent of another person or entity that has not been obtained, this Agreement will not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful. New Operator at its expense will use its reasonable efforts to obtain each such required consent as promptly as possible. If any such consent is not obtained, New Operator will nevertheless pay and perform Existing Operator's obligations under each such Assumed Operating Contract subject to Existing Operator providing to or otherwise obtaining for New Operator the corresponding benefits thereunder, and the parties will cooperate with one another in any reasonable arrangement proposed by either party to result in such effect, in each case to the extent permitted under applicable Law.
2. Purchased Assets and Personal Property. All Purchased Assets and Personal Property located at the Facility that are not Excluded Assets.
3. Patient Records. All records relating to current patients of the Facility as of the Operations Closing Date, provided however, that Existing Operator may retain any patient records stored electronically or as computer data in its original media and provide to New Operator copies thereof, and provided further that Existing Operator may retain the original media or copies of such patient records conveyed to New Operator.
4. Telephone Number. The telephone and facsimile numbers of the Facility.
5. Intangible Property. All rights and interest in the Intangible Property associated exclusively with the Facility.
6. Permits. To the extent transferable under applicable Laws and approved by the appropriate Governmental Entities, all Permits necessary for the operation of the Facility.

In transferring the Purchased Assets, it is the intent of the parties to effect the transfer of operations from Existing Operator to New Operator. Existing Operator makes no representations or warranties

whatsoever, express, implied, or arising by operation of law, with respect to the Purchased Assets, the Personal Property or the condition of the Purchased Assets or the Personal Property except as set forth in the Agreement.

[Signatures appear on the next page.]

EXECUTED on [--], 2023.

EXISTING OPERATOR:

[_____]

By: _____

Name: _____

Title: _____

NEW OPERATOR:

[_____]

By: _____

Name: _____

Title: _____

EXHIBIT "B"
NEW OPERATOR'S CLOSING CERTIFICATE

THIS CLOSING CERTIFICATE is made as of the ___ day of _____, 2023, by [_____] ("*New Operator*") to [_____] LLC, a [_____] limited liability company] ("*Existing Operator*").

RECITALS

A. Existing Operator and New Operator are parties to that certain Operations Transfer Agreement (the "*Agreement*"), dated as of [_____] 2023, pursuant to which and subject to the terms and conditions therein set forth, Existing Operator agrees to sell the Purchased Assets and transfer the operations of the Facility to New Operator as defined therein. Capitalized terms not otherwise defined will have the meaning set forth in the Agreement.

B. Article V.C. of the Agreement requires the delivery of this Closing Certificate.

NOW THEREFORE, New Operator does hereby represent and warrant to Existing Operator that each and all of the representations and warranties of New Operator contained in the Agreement are true and correct in all material respects, disregarding all qualifications and exceptions contained therein relating to materiality or Material Adverse Effect, as of the date hereof as if made on and as of the date hereof.

New Operator's liability under this Closing Certificate is subject to the limitations on liability set forth in Section IX.D. of the Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the day and year first written.

NEW OPERATOR:

[_____]

By: _____

Name: _____

Title: _____

EXHIBIT "C"

EXISTING OPERATOR'S CLOSING CERTIFICATE

THIS CLOSING CERTIFICATE is made as of the _____ day of _____, 2023, by [_____] LLC, a [_____] limited liability company ("*Existing Operator*"), to [_____] ("*New Operator*").

RECITALS

A. Existing Operator and New Operator are parties to that certain Operations Transfer Agreement (the "*Agreement*"), dated as of [_____] 2023, pursuant to which and subject to the terms and conditions therein set forth, Existing Operator agrees to sell the Purchased Assets and transfer the operations of the Facility to New Operator as defined therein. Capitalized terms not otherwise defined will have the meaning set forth in the Agreement.

B. Article V.C. of the Agreement requires the delivery of this Closing Certificate.

NOW THEREFORE, Existing Operator does hereby represent and warrant to New Operator that each and all of the representations and warranties of Existing Operator contained in the Agreement are true and correct in all material respects, disregarding all qualifications and exceptions contained therein relating to materiality or Material Adverse Effect, as of the date hereof as if made on and as of the date hereof.

Existing Operator's liability under this Closing Certificate is subject to the limitations on liability set forth in Section IX.D. of the Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the day and year first written.

EXISTING OPERATOR:

[_____]

By: _____

Name: _____

Title: _____

FACILITY ACCOUNTS TRANSITION AGREEMENT

This **FACILITY ACCOUNTS TRANSITION AGREEMENT** (this “**Agreement**”), dated as of October 31, 2023, to be effective as of 12:01 am on November 1, 2023, is by and among **MidCap Funding IV Trust**, a Delaware statutory trust, as administrative agent for itself and the other lenders under the Credit Agreement (as defined below) (in such capacity, together with its successors and assigns, the “**Agent**”), the entities listed as “Prior Operators” on Schedule 1 attached hereto (each, a “**Prior Operator**” and, collectively, “**Prior Operators**”), and the entities listed as “New Operators” on Schedule 1 attached hereto (each, a “**New Operator**” and, collectively, “**New Operators**”).

A. Pursuant to those certain SNF Operations Transfer Agreement, each entered into as of October 31, 2023 (individually and collectively, and as amended, restated, supplemented or otherwise modified in accordance with this Agreement, the “**OTA**”, together with any and all other agreements, documents, instruments and certificates executed in connection therewith, the “**Transfer Documents**”), between Prior Operators and New Operators, each New Operator has assumed the operation of the skilled nursing facility having an address listed opposite its name on Schedule 1 (collectively, the “**Facilities**”) effective as of 12:01 a.m. on November 1, 2023 (the “**Transfer Date**”).

B. Pursuant to that certain Credit and Security Agreement, dated as of July 29, 2016 (as amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), by and among Prior Operators, the other borrowers party thereto (together with Prior Operator, the “**Borrowers**”), Agent and the financial institutions or other entities from time to time parties thereto as lenders (the “**Lenders**”), Agent and the Lenders have agreed, subject to the terms and conditions set forth therein (and in the other agreements, documents, instruments, and certificates executed in connection therewith) to make certain loans and financial accommodations to Borrowers.

C. For a period of time following the Commencement Date, Prior Operators may come into possession of collections on accounts, accounts receivable and/or payment intangibles (collectively, “**Accounts**”) that are the property of the New Operators pursuant to the terms and conditions of the OTA (such collections, the “**New Operator Amounts**”), and New Operators may come into possession of Accounts that are the property of Prior Operators pursuant to the terms and conditions of the OTA (such collections, the “**Prior Operator Amounts**”).

D. Agent, Prior Operators and New Operators wish to enter into this Agreement to, among other things, set forth the process for paying an amount equal to the New Operator Amounts over to New Operators.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, it is hereby agreed as follows:

1. New Operator Amounts are the property of New Operators pursuant to the terms and conditions of the OTA. The OTA contemplates that certain New Operator Amounts may be received by a Prior Operator after the Commencement Date and, pursuant to the OTA, Prior Operators have agreed to timely transfer to New Operators an amount equal to the New Operator Amounts received by Prior Operators. Agent agrees and acknowledges that New Operator Amounts are not included in any collateral securing any obligations or amounts owned by Borrowers to Agent or Lenders. Furthermore, each Agent hereby releases its liens upon and security interest in all of Prior Operator’s Purchased Assets (as defined

in the OTA) but excluding the Excluded Assets (as defined in the OTA). In consideration of the agreements set forth herein, each New Operator agrees, for the benefit of Controlling Lien Agent and the Lenders, to comply with Article VI, Section F of the OTA with respect to the handling of accounts receivable after the Commencement Date.

2. New Operator hereby acknowledges that, as part of the arrangements under the Credit Agreement, all proceeds of Accounts received by Prior Operator (including New Operator Amounts) are swept to an account of Agent (the “**Payment Account**”) which is an account into which the Borrowers and other unrelated borrowers of the Lenders make their loan payments. Agent, upon receipt of such monies (including New Operator Amounts), shall be permitted to commingle such monies with Agent’s other assets, and use and apply such monies for Agent’s and Lenders’ own business purposes; provided, however, that Agent shall (a) give appropriate credit on its and their books under the Credit Agreement for all such monies received in the Payment Account that, by the terms of the Credit Agreement, are to be applied to Borrowers’ obligations thereunder (Prior Operator hereby acknowledging that no credit shall be given under the Credit Agreement in respect of New Operator Amounts), and (b) promptly turnover, deliver and or transfer to Prior Operator in accordance with Section 3, all such New Operator Amounts. Without limiting the obligations of Agent set forth in the immediately foregoing proviso, New Operator and Prior Operator acknowledge that Agent may direct that such monies on deposit in the Payment Account be swept to lenders to whom the Lenders’ interests in the Credit Agreement have been pledged for application to indebtedness of Agent. For the avoidance of doubt, no New Operator Amounts may be used to satisfy any indebtedness of Borrowers.

3. Each Prior Operator agrees and acknowledges that the sweep of New Operator Amounts to the Payment Account shall not modify the covenants of Prior Operators pursuant to Article VI, Section F of the OTA with respect to the timely payment of New Operator Amounts to New Operators. If the Borrowers deliver to ABL Agent a request to borrow an amount equal to the New Operator Amounts due to New Operators and otherwise satisfy all requirements for borrowing set forth in the ABL Credit Agreement, ABL Agent agrees to disburse to Prior Operators, within the time frames set forth in the ABL Credit Agreement, the proceeds of a revolving loan in an amount equal to such New Operator Amounts; provided that, in the event Prior Operators advise ABL Agent that New Operator Amounts have been received in the Payment Account (together with supporting information reasonably requested by ABL Agent) at a time that Prior Operators cannot satisfy all requirements for borrowing set forth in the ABL Credit Agreement, ABL Agent nonetheless shall turn over to Prior Operators an amount equal to such New Operator Amounts within five (5) Business Days after receiving such notification. Each Prior Operator agrees and acknowledges that no credit shall be given under the ABL Credit Agreement in respect of proceeds of such New Operator Amounts and any prior application of the same to the Obligations (as defined in the ABL Credit Agreement) shall be reversed.

4. Prior Operators and New Operators acknowledge and agree that the electronic funds transfer instructions issued to Medicare or Medicaid (the “**Current EFT Instructions**”) by Prior Operators shall not be changed unless the Operations Closing Date has occurred. Thereafter, in consideration of the agreements set forth herein, New Operators agree to not change any Current EFT Instructions, nor issue any new remittance instructions to Medicare, Medicaid or any other third party payor making payment on behalf of a resident until the earlier of (a) the date on which Agent notifies Prior Operators that 90% of all Accounts arising in respect of services performed at the Facility prior to the Commencement Date (the “**Prior Accounts**”) have been collected and (b) 210 days after the Commencement Date (the “**Expiration Date**”). After the Expiration Date, unless Agent has notified

such New Operators that all Prior Accounts attributable to the Facility have been collected, any new remittance instructions sent to any third party payor or resident shall clearly instruct such third party payor or resident to identify the dates of service on any payment remittance. Concurrently with sending out such new remittance instructions, New Operators shall advise Agent and Prior Operators in writing of the new payment instructions.

5. Prior Operators and New Operators agree that neither Agent nor any Lender shall have responsibility to determine the accuracy of any New Operator Amounts calculation or any allocation of amounts received in the Payment Account (i.e., which amounts are New Operator Amounts and which amounts are not), nor shall ABL Agent have any obligations to make the transfer described in Section 3 above unless and until Prior Operators submit a borrowing request therefor and otherwise satisfies all requirements for borrowing set forth in the ABL Credit Agreement. Prior Operators hereby agree to indemnify, defend and hold Agent and Lenders harmless to the extent required by the terms of each of the Credit Agreement.

6. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of each of the parties hereto, but does not otherwise create, and shall not be construed as creating, any rights enforceable by any person not a party to this Agreement. Agent shall be permitted to assign its respective rights and obligations under this Agreement. Notwithstanding the foregoing, this Agreement shall not be assignable by any Prior Operator or any New Operator without the prior written consent of the other parties hereto.

7. As between New Operators and Prior Operators, nothing contained herein is intended to expand, limit or modify any of the provisions, requirements or obligations of New Operators or Prior Operators to each other as set forth in the Transfer Documents.

8. All notices, requests and other communications to any party hereunder shall be in writing (including prepaid overnight courier, facsimile transmission, or electronic mail transmission) and shall be given to such party at its address, facsimile number or e-mail address set forth on its signature page hereto or at such other address, facsimile number or e-mail address as such party may hereafter specify for the purpose by notice to the other parties. Each such notice, request or other communication shall be effective (i) if given by facsimile, when such notice is transmitted to the facsimile number specified herein and the sender receives a confirmation of transmission from the sending facsimile machine, (ii) if given by mail, prepaid overnight courier or any other means, when received or when receipt is refused at the applicable address specified herein, and (iii) if given by electronic mail transmission, upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment).

9. This Agreement may not be amended or otherwise modified unless such amendment or other modification is in writing and is signed by the parties hereto. The OTA shall not be amended or otherwise modified in any manner that could reasonably be expected to be adverse to Agent's or Lenders' interests without Agent's prior written consent.

10. This Agreement shall be governed as to validity, interpretations, enforcement and effect by the laws of the State of Maryland without giving effect to conflicts of law principles thereunder.

11. This Agreement shall be and remain absolute and unconditional under any and all circumstances, and no act or omission on the part of any party to this Agreement shall affect or impair the agreement of the other party hereunder.

12. This Agreement may be signed by Prior Operators, Agent, and New Operators in several counterparts. Delivery of a photocopy, facsimile or .pdf copy of an executed counterpart of this letter shall be effective as delivery of a manually executed original counterpart of this letter.

13. If the terms and provisions of this Agreement conflict with the terms and provisions of any Transfer Document, the terms and provisions of this Agreement shall govern and control, except as between Prior Operators and New Operators, in which case, the OTA shall govern and control..

14. Neither the New Operators nor the Prior Operators shall have any setoff rights against the New Operator Amounts or any Accounts that are the property of the Prior Operators.

[Signature Pages follow]

IN WITNESS WHEREOF, the parties have executed this Facility Accounts Transition Agreement as of the date first written above.

AGENT

MIDCAP FUNDING IV TRUST, a Delaware statutory trust

By: Apollo Capital Management, L.P.
Its: Investment New Operator

By: Apollo Capital Management GP, LLC
Its: General Partner

By: _____
Name: Maurice Amsellem
Title: Authorized Signatory

Address for Notices:

MidCap Funding IV Trust
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Ave., Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

PRIOR OPERATORS

**1026 ALBEE FARM ROAD OPERATIONS LLC
216 SANTA BARBARA BOULEVARD OPERATIONS
LLC
1111 DRURY LANE OPERATIONS LLC
3735 EVANS AVENUE OPERATIONS LLC
3001 PALM COAST PARKWAY OPERATIONS LLC
2916 HABANA WAY OPERATIONS LLC
2333 NORTH BRENTWOOD CIRCLE OPERATIONS
LLC
777 NINTH STREET NORTH OPERATIONS LLC
3101 GINGER DRIVE OPERATIONS LLC
5065 WALLIS ROAD OPERATIONS LLC
2401 NE 2ND STREET OPERATIONS LLC
10040 HILLVIEW ROAD OPERATIONS LLC**

By: _____
Gregory Hayes
Authorized Signatory

Address for Notices:

c/o LaVie Care Centers
850 Concourse Parkway South
Suite 350
Maitland, Florida 32751
Attn: Daniel Dias
E-mail: Daniel.E.Dias@synergyhcs.com

and

c/o LaVie Care Centers
1040 Crown Pointe Parkway
Suite 600
Atlanta, Georgia 30338
Attn: Gregory Hayes
E-mail: Gregory.Hayes@synergyhcs.com

NEW OPERATORS

**ALBEE FARM ROAD OPCO LLC
SANTA BARBARA BLVD OPCO LLC
DRURY LANE OPCO LLC
EVANS AVENUE OPCO LLC
PALM COAST PKWY OPCO LLC
HABANA WAY OPCO LLC
NORTH BRENTWOOD CIRCLE OPCO LLC
NINTH STREET OPCO LLC
GINGER DRIVE OPCO LLC
WALLIS ROAD OPCO LLC
NE 2ND STREET OPCO LLC
HILLVIEW DRIVE OPCO LLC**

By: _____
Nathan Freund
Manager

Address for Notices:

343 Whitesville Road
Jackson, NJ 08532
Attn: Nathan Freund

SCHEDULE 1

Facility Name; Prior Operators; New Operators

<u>FACILITY ADDRESS</u>	<u>PRIOR OPERATOR</u>	<u>NEW OPERATOR</u>
1026 Albee Farm Road, Venice FL	1026 Albee Farm Road Operations LLC	Albee Farm Road Opco LLC
216 Santa Barbara Boulevard, Cape Coral FL	216 Santa Barbara Boulevard Operations LLC	Santa Barbara Blvd Opco LLC
1111 Drury Lane, Englewood, FL	1111 Drury Lane Operations LLC	Drury Lane Opco LLC
3735 Evans Avenue, Fort Myers, FL	3735 Evans Avenue Operations LLC	Evans Avenue Opco LLC
3001 Palm Coast Parkway SE, Palm Coast, FL	3001 Palm Coast Parkway Operations LLC	Palm Coast Pkwy Opco LLC
2916 Habana Way, Tampa, FL	2916 Habana Way Operations LLC	Habana Way Opco LLC
2333 N Brentwood Circle, Lecanto, FL	2333 North Brentwood Circle Operations LLC	North Brentwood Circle Opco LLC
777 9 th Street N, Naples, FL	777 Ninth Street North Operations LLC	Ninth Street Opco LLC
3101 Ginger Drive, Tallahassee, FL	3101 Ginger Drive Operations LLC	Ginger Drive Opco LLC
5065 Wallis Road, West Palm Beach, FL	5065 Wallis Road Operations LLC	Wallis Road Opco LLC
2401 NE 2 nd Street, Pompano Beach, FL	2401 NE 2nd Street Operations LLC	NE 2nd Street Opco LLC
10040 Hillview Drive, Pensacola, FL	10040 Hillview Road Operations LLC	Hillview Drive Opco LLC

EXHIBIT "E"

[EXISTING/NEW] OPERATOR GUARANTY AGREEMENT

THIS [EXISTING/NEW] OPERATOR GUARANTY AGREEMENT ("*Guaranty*") is made as of _____, 2023, by _____ (the "[Existing/New] Operator Guarantor"), a _____ limited liability company to and for the benefit of the entity identified in the SNF Operations Transfer Agreement, a limited liability company in its identified state of organization ("[Existing/New] Operator").

RECITALS:

A. The entity identified in the SNF Operations Transfer Agreement (the "OTA"), a limited liability company in its identified state of organization ("_____ Operator") has entered into the OTA with _____ Operator, dated as of ____, 2023, pursuant to which Existing Operator has agreed to transfer operational responsibilities of that certain skilled nursing facility as set forth in the OTA ("Facility") to New Operator, and New Operator has agreed to manage and operate the Facility on behalf of the Existing Operator.

B. Guarantor is affiliated with _____ Operator and will directly benefit from the consummation of the transactions contemplated under the OTA, and Guarantor has agreed to execute and deliver this Guaranty.

AGREEMENT

NOW, THEREFORE, FOR VALUE RECEIVED, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Guarantor agrees as follows:

1. Guaranty. As an inducement for _____ Operator to enter into and consummate the transactions contemplated in the OTA, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to _____ Operator the payment of any amounts due by _____ Operator under and in accordance with the provisions of the OTA now existing or hereafter arising (the "Guaranteed Obligations"). Guarantor hereby absolutely, irrevocably and unconditionally covenants and agrees that it is liable for the Guaranteed Obligations as primary obligor, and that Guarantor shall fully perform each and every term and provision hereof. Any amounts due by Guarantor hereunder shall be due within ten (10) business days after demand with interest accruing on the unpaid amounts at a rate per annum equal to five percent (5%) (the "Default Rate"), which interest shall be due to _____ Operator monthly. Guarantor agrees that it is directly liable to _____ Operator for the Guaranteed Obligations and that the Guaranteed Obligations of Guarantor hereunder are independent of any obligations of _____ Operator to _____ Operator. This Guaranty shall apply until all of the Guaranteed Obligations have been satisfied.

2. Continuing Obligations. Guarantor agrees that performance of the Guaranteed

Obligations by Guarantor shall not be subject to any counterclaim, set-off, abatement, deferment or defense based upon any claim that Guarantor may have against ___ Operator and shall remain in full force and effect without regard to, and shall not be released, discharged or affected in any way by, any circumstance or condition (whether or not Guarantor shall have any knowledge thereof), including, without limitation, (i) any voluntary or involuntary bankruptcy, assignment for the benefit of creditors, insolvency, dissolution, receivership, or similar events or proceedings with respect to ___ Operator or Guarantor, as applicable, or (ii) any other occurrence, circumstance, happening or event, whether similar or dissimilar to the foregoing and whether foreseen or unforeseen, which otherwise might constitute a legal or equitable defense or discharge of the liabilities of Guarantor or which otherwise might limit recourse against _____ Operator or Guarantor, to the fullest extent permitted by law.

3. Waivers. Except as otherwise provided herein, Guarantor expressly and unconditionally waives all notices which may be required by statute, rule of law or otherwise, now or hereafter in effect, to preserve intact any rights against Guarantor.

4. Representations and Warranties. Guarantor agrees that the following shall constitute representations and warranties of Guarantor to ___ Operator, which shall survive the execution and delivery hereof, and that _____ Operator intends to enter into the OTA in reliance thereon:

a. Neither this Guaranty nor any document, financial statement, credit information, written certificate or written statement heretofore furnished or required herein to be furnished to _____ Operator by Guarantor contains any untrue statement of material fact or knowingly omits to state a fact material to this Guaranty.

b. Guarantor is currently informed of the financial condition and performance capabilities of _____ Operator and of all other circumstances which a diligent inquiry would reveal and which would bear upon the risk of nonpayment of the Guaranteed Obligations. Guarantor has provided its 2022 financial statement to _____ Operator and will continue to keep informed of the financial condition of _____ Operator and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Guaranteed Obligations.

5. "Event of Default" shall mean the occurrence of any one of the following events: (i) Guarantor fails or neglects to perform, keep or observe any term, provision, condition, warranty, representation or covenant contained in this Guaranty; (ii) Guarantor shall make an assignment for the benefit of creditors, or an application is made by Guarantor for the appointment of a receiver, trustee, custodian or conservator for Guarantor or any of Guarantor's assets; (iii) an application is made against Guarantor for the appointment of a receiver, trustee, custodian or conservator for Guarantor or any of Guarantor's assets and the related proceeding is pending for sixty (60) days without dismissal; (iv) a petition under the United States Bankruptcy Code or any similar federal, state or local law, statute or regulation shall be filed by Guarantor; or (A) a petition under the United States Bankruptcy Code or any similar federal, state or local law, statute or regulation shall be filed against

Guarantor and the related legal proceeding is pending for sixty (60) days without dismissal; (v) Guarantor is enjoined, restrained or in any way prevented by court order from conducting any part of Guarantor's business, the result of which is a material adverse affect on Guarantor's ability to perform hereunder; (vi) a lawsuit or other proceeding is filed by or against Guarantor to liquidate any of Guarantor's assets and the lawsuit or other proceeding is pending for sixty (60) days without dismissal; or (vii) a material breach, default or event of default occurs under any agreement, document or instrument executed and delivered by _____ Operator or Guarantor to _____ Operator, and such breach, default or event of default is not cured within the applicable grace or cure period, if any.

6. Remedies Upon an Event of Default. Upon the occurrence of and for as long as an Event of Default remains uncured, the Guaranteed Obligations shall be immediately due and payable by Guarantor, and concurrently with the enforcement of _____ Operator's rights under the OTA, _____ Operator may, in its sole discretion, exercise any of its rights or remedies provided in this Guaranty, at law, in equity or otherwise. All of _____ Operator's rights and remedies are cumulative and non-exclusive, and the exercise by _____ Operator of any right or remedy shall not preclude _____ Operator from subsequently exercising any other right or remedy, in any other respect or at any other time.

7. Enforcement Costs. In the event that _____ Operator prevails on the merits of its claim, Guarantor shall additionally pay to _____ Operator upon demand all reasonable out of pocket fees, costs and expenses incurred by _____ Operator in connection with placing this Guaranty in the hands of one attorney for collection or any other legal proceeding with respect to Guarantor, including, without limitation, any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights or involving a claim under this Guaranty.

8. Successors and Assigns. This Guaranty shall inure to the benefit of _____ Operator and its successors and assigns. This Guaranty shall be binding on Guarantor and its successors and assigns.

9. No Waiver of Rights. No delay or failure on the part of _____ Operator to exercise any right, power or privilege under this Guaranty generally shall operate as a waiver thereof, and no single or partial exercise of any right, power or privilege shall preclude any other or further exercise thereof or the exercise of any other power or right, or be deemed to establish a custom or course of dealing or performance between the parties hereto. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law. No notice to or demand on Guarantor in any case shall entitle Guarantor to any other or further notice or demand in the same, similar or other circumstance.

1. Joinder. Any action to enforce this Guaranty may be brought against Guarantor without any reimbursement or joinder of __ Operator or any other party in such action.

2. Nature of Guaranty. This Guaranty is an irrevocable, absolute, continuing guaranty of payment and performance. This Guaranty shall continue to be effective with respect to any Guaranteed Obligations arising or created after any attempted revocation by Guarantor.

3. Interpretation. Wherever possible, each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

4. Assignment. No party to this Guaranty may assign his or its obligations or benefits under this Guaranty absent the prior written consent of all parties to this Guaranty.

5. Governing Law. This Guaranty shall be governed by the laws of the State of Florida and enforced in the courts of that State or in the Federal District Court of Florida.

6. Notices. All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered (i) upon the delivery (or refusal to accept delivery) by personal delivery, messenger or overnight express delivery service (or, if such date is not on a business day, on the business day next following such date), (ii) on the third (3rd) business day next following the date of its mailing by certified mail, postage prepaid, at a post office maintained by the United States Postal Service, or (iii) by electronic mail transmission (followed by delivery by one of the other means identified in (i)-(ii)), addressed as follows:

If to _____ Operator:

Attention:

Email:

With a copy to:

Attention:

Email:

If to Guarantor:

Attention:
Email

or such other address that any party designates to the other by written notice given in the manner stated above. Any notice sent by electronic mail shall be deemed delivered upon transmission, so long as said transmission is evidenced by proof of said transmittal, and sent before 5:00 p.m. local time at the place of the recipient and if sent after 5:00 p.m. shall be deemed delivered on the next business day. Notices from counsel to _____ Operator shall for all purposes hereunder constitute notice from Operator. Notices from counsel to Guarantor shall for purposes hereunder constitute notice from Operator.

1. CONSENT TO JURISDICTION. TO INDUCE _____ OPERATOR ACCEPT THIS GUARANTY, GUARANTOR IRREVOCABLY AGREES THAT, SUBJECT TO THE _____ OPERATOR'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS GUARANTY WILL BE LITIGATED IN COURTS HAVING SITUS IN FLORIDA. GUARANTOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN SUCH COURT, WAIVES PERSONAL SERVICE OF PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO GUARANTOR AT THE ADDRESS STATED HEREIN, AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

2. WAIVER OF JURY TRIAL. GUARANTOR AND _____ OPERATOR (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS GUARANTY OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith AND AGREE THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH OF GUARANTOR AND _____ OPERATOR AGREES THAT THE OTHER WILL NOT ASSERT ANY CLAIM ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL INCIDENTAL OR PUNITIVE DAMAGES.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty Agreement as of the date first set forth above.

[GUARANTOR LEGAL NAME]

By: _____

Name:

Its: Authorized Signatory

Schedule VILE

Assumed Operating Contracts

[To be prepared by New Operator.]