

declaratory judgment and damages against Vero Beach Facility Operations, LLC and LaVie Care Centers, LLC (collectively, the “Defendants”) and states as follows:

Nature of the Action

1. Plaintiff and Defendants are parties to certain agreements including an Operations Transfer Agreement (“Agreement”) effective as of January 31, 2022. Pursuant to the Agreement, Vero Beach Facility Operations, LLC (the “Old Operator”) sold and transferred its interests in the Facility (defined below). One material provision of the Agreement was the Defendants’ agreement to permit Plaintiff to bill Medicare and other providers under the Old Operator’s provider agreements for services rendered by the Plaintiff until such time as the Plaintiff was able to bill under its own provider agreements. Critically, the Defendants also agreed, pursuant to Section 2.1(b) of the Agreement, that the Old Operator would “promptly forward to [Plaintiff] any payments received with respect to services rendered by [Plaintiff] from and after the Closing” (the “Transition Period Payments”).

2. The parties agreed that the Transition Period Payments did not belong to the Defendants, and instead, belonged to the Plaintiff. Indeed, the Defendants expressly promised, pursuant to Section 2.5(f) of the Agreement, to hold the Transition Period Payments in trust for the Plaintiff. However, since the Petition Date (defined below), the Defendants have continued to retain certain Medicaid payments totaling \$269,082.59 that belong to the Plaintiff and have never been property of the bankruptcy estates. Plaintiff is bringing this action to enforce the terms of the Agreement and to compel the Defendants to turnover the converted funds to Plaintiff.

Parties, Jurisdiction, and Venue

3. Vero Beach Operations, LLC is a Delaware limited liability corporation with its principal place of business at 1000 Gates Ave., 5th floor, Brooklyn, NY 11221.

4. Upon information and belief, Vero Beach Facility Operations, LLC is an Ohio limited liability corporation with its principal place of business at 850 Concourse Parkway South, Suite 250, Maitland, FL 32751.

5. Upon information and belief, Vero Beach Facility Operations, LLC's registered agent is Corporation Service Company whose address is 1201 Hays Street, Tallahassee, FL 32301.

6. Upon information and belief, LaVie Care Centers, LLC is a Delaware limited liability corporation with its principal address at 1040 Crown Point Parkway, Suite 600, Atlanta, GA 30338.

7. Upon information and belief, LaVie Care Centers, LLC's registered agent is Corporation Service Company whose address is 1201 Hays Street, Tallahassee, FL 32301.

8. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the retention of jurisdiction provisions stated in this Court's *Order Approving on Final Basis and Confirming Debtors' Modified Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization* [Doc. No. 735 in Case No. 24-55507-PMB].

9. 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.

10. Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

11. The legal predicates for the relief requested herein are sections 105(a) and 541(a) of title 11 of the United States Code (the "Bankruptcy Code"), Federal Rule of Bankruptcy

Procedure 7001, Rule 7007-1 of the Local Rules of Practice, and the *Second Amended and Restated General Order 26-2019, Procedures for Complex Chapter 11 Cases*, dated February 6, 2023 (“Complex Case Procedures”).

Factual Background

I. Operations Transfer Agreement

12. On or about January 31, 2022, Vero Beach Operations, LLC (“Plaintiff” or “New Operator”) entered into the Agreement with Old Operator and LaVie Care Centers, LLC (“Guarantor”) related to a skilled nursing facility (“SNF”) named Consulate Health Care of Vero Beach (“Facility”) located at 1310 37th Street Vero Beach, Florida 32960 (“Property”). A true and correct copy of the Agreement is attached hereto as **Exhibit “A.”**

13. The Facility is a skilled nursing facility that is licensed and certified for one hundred and fifty-nine (159) beds.

14. The Old Operator and New Operator entered the Agreement to facilitate an orderly transition of the Facility’s operations from the Old Operator to the New Operator.

15. RE Vero Beach, LLC (“Seller”) owned the Property on which the Facility is located when the Agreement was signed and executed on or about January 31, 2022.

16. Prior to the Agreement, on or about December 6, 2021, the Seller and Vero Beach Realty, LLC (“Purchaser”) entered into a Purchase and Sale Agreement (“PSA”), whereby the Purchaser agreed to purchase the Property, and all furniture, fixtures, equipment, and other personal property located therein (“Sale”).

17. Pursuant to the Agreement, the Old Operator was obligated to transfer its operations of the Facility, along with all assignable licenses, permits, and other assets, to the New Operator on the closing date (“Closing Date”) set forth in the PSA.

18. Upon information and belief, the Closing Date occurred on May 1, 2022.

19. Upon the Closing Date, the Old Operator transferred the operations of the Facility to the New Operator.

20. For a period after the Closing Date, the New Operator had not received its own National Provider Identifier (“NPI”).

21. Without its own unique NPI number, the New Operator could not bill and receive payments for services rendered to Medicaid and Medicare beneficiaries.

22. Likewise, without its own NPI number, the Old Operator could not transfer its Medicare and Medicaid provider agreements to the New Operator.

23. Accordingly, pursuant to the Agreement, the Old Operator agreed to bill for services provided by the New Operator after the Closing Date using the Old Operator’s Medicare and Medicaid provider agreements, along with any NPI numbers and other billing identifiers necessary to complete such billing.

24. This arrangement is standard within the healthcare industry, especially with SNFs.

25. Specifically, Section 2.1 of the Agreement states, in relevant part:

(b) For any periods following the Closing that New Operator is not yet able to bill under its Medicaid and/or Medicare provider agreements and/or managed care contracts (the “Provider Agreements”), Current Operator shall allow New Operator to bill under Current Operator’s respective Provider Agreements, to the extent permitted by applicable law or contract, and Current Operator shall promptly forward to New Operator any payments received with respect to services rendered by New Operator from and after Closing in accordance with Section 2.5 hereof.

26. Section 2.5 of the Agreement states, in relevant part:

(a) On the Closing Date, New Operator shall, and does hereby, assume responsibility for the billing for, and collection of, payments on Accounts Receivable (as such term is defined below) for services rendered by them at their Facility, on and after the Closing Date (such Accounts Receivable, "New Operator Amounts"). On and after the Closing Date, all New Operator Amounts shall be billed and collected by New Operator using New Operator's own computer software and billing systems. Current Operator shall not be responsible for billing or collecting New Operator's amounts using its own computer software, billing systems, or any other resources. Without limiting the foregoing, to the extent permitted under applicable law and applicable enrollment terms, and at New Operator's election, for a period between the Closing Date and the first anniversary thereof, Current Operator hereby agrees that New Operator may bill for services provided by New Operator under Current Operator's Medicare and Medicaid provider agreements (including use of any NPI numbers of other billing identifiers necessary to complete such billing), as well as any other provider agreements, and that the New Operator Amounts resulting from such billing may be paid to Current Operator. Such New Operator Amounts collected by Current Operator shall be paid to New Operator as provided in this Section 2.5 and as provided in the MidCap Agreement. As a condition of the rights granted by Current Operator in this Section 2.5, New Operator agrees to comply with the terms of the MidCap Agreement and further agree that, if any terms of the MidCap Agreement conflict with the terms of this Section 2.5, then the terms of the MidCap Agreement shall control.

(e) Current Operator and New Operator agree that, except as provided in the MidCap Agreement, any payments received by Current Operator that pertain to the period commencing from and after the Closing Date, whether received from private pay patients or as repayment or reimbursement arising out of cost reports, shall be remitted by Current Operator to New Operator within five (5) days of Current Operator's receipt thereof.

(f) To the extent either party receives any proceeds from the Accounts Receivable of the other party, the parties acknowledge that the party receiving the payment belonging to the other party shall hold the payment in trust. However, both Parties shall have the right to offset with respect to any amounts otherwise owed, or reasonably estimated to be owed, by and between the Parties pursuant to this Agreement. For a period of six (6) months following the Closing Date, Current Operator and New Operator shall provide each other with an accounting by the twentieth (20th) day of each month setting forth all amounts received by them during the preceding month with respect to the Accounts Receivable. To the extent that such accounting shows that either party received Accounts Receivable that are applicable to the other party's period of operation, such amounts shall be paid over to such other party within five (5) days of such determination. Nothing herein shall be deemed to limit in any way either party's rights and remedies to recover accounts receivable due and owing to it under the terms of this Agreement.

27. Section 2.5 of the Agreement relates to Section 2.9 of the Agreement.

28. Section 2.9 of the Agreement states, in relevant part:

(a) Current Operator and New Operator understand that reimbursements from Medicare and/or Medicaid for items or services provided or rendered from or after the Closing Date may continue to be issued to Current Operator for a period of time. Current Operator agree to comply with the terms of Section 2.5 with respect to any reimbursements received by Current Operator from Medicare and/or Medicaid for items or services provided or rendered from or after the Closing Date, subject to the terms of the MidCap Agreement. Notwithstanding anything to the contrary contained herein, with respect to any audit, interim payment, final payment, or other action relating to Current Operator's business for the period prior to the Closing Date by any state regulatory agency, the Centers for Medicaid and Medicare Services, Blue Cross Blue Shield or its applicable state affiliate, Health Care Service Corporation, or any other third party payer (any such action, a "Current Operator Payer Audit"), in no event will New Operator make any assumption or take any action, which results in any claim, adjustment, or offset against amounts otherwise reimbursable to Current Operator for services provided prior to the Closing Date. New Operator agrees to promptly notify Current Operator upon receipt of any notice of a Current Operator's Payor Audit. If, and to the extent that, New Operator is responsible for taking any action, or making any filing, pursuant to a Current Operator Payer Audit, New Operator agrees to keep Current Operator reasonably informed and will coordinate with Current Operator any such actions taken or filings made by New Operator.

(b) In the event any Governmental Entity making payments for services performed at the Facility or vested with audit authority, makes any recoupment on or after the Closing Date for an alleged overpayment, underpayment, or adjustment of any tax assessment or Medicaid or Medicare reimbursement applicable for any period prior to the Closing Date (collectively, a "Recapture Claim"), then each party agrees to notify the other within five (5) business days. Both parties shall be entitled to contest or pursue such Recapture Claim (to the extent permitted by applicable law/regulation); provided, however, that New Operator shall be allowed the opportunity to participate in such contest, and be included in all meetings, and be provided with copies of all audit adjustments and workpapers. Current Operator and New Operator shall cooperate to resolve such audit to their mutual satisfaction. In the event one party fails to pursue any issue or issues raised in any such appeal, the other party may, at its own expense, pursue an appeal of such issue or issues, and the non-appealing party will cooperate fully with appealing party in such appeal, including by providing copies of any documentation required to substantiate costs reported on the cost reports. In the event either party's funds are withheld from, or credited to, the other party as the result of a Recapture Claim, then the receiving or crediting party shall pay such amounts to the other party within five (5) days following demand therefore.

29. The Agreement is governed by Florida law.

30. LaVie Care Centers, LLC guaranteed performance of Sections 2.5, 2.9 and 5 of the Agreement.

31. In fact, the Guarantor acknowledged and agreed that its guaranty is full and unconditional, and no release of the Old Operator's obligations or liabilities, whether by decree under bankruptcy law or otherwise, shall affect the continuing validity and enforceability of the guaranty.

32. Section 5.6 of the Agreement states:

5.6 Guaranty. As an inducement to New Operator to enter into and consummate the transactions contemplated under this Agreement, Guarantor hereby absolutely, unconditionally, and irrevocably guarantees to New Operator the due and punctual payment of any and all amounts payable by Current Operator pursuant to Section 2.5(h), Section 2.9(b) and this Section 5 (the "Guaranteed Obligations"). This is a guarantee of payment and performance, and not merely of collection, and Guarantor acknowledges and agrees that, except as otherwise set forth herein, this guarantee is full and unconditional, and no release or extinguishments of Current Operator's obligations or liabilities (other than in accordance with the terms of this Agreement), whether by decree under bankruptcy law or otherwise, shall affect the continuing validity and enforceability of this guarantee. Guarantor agrees that performance of the Guaranteed Obligations by Guarantor shall be a primary obligation, and shall not be subject to any counterclaim, set off, abatement, deferment, or defense based upon any claim that Guarantor may have against New Operator. Guarantor agrees that performance of the Guaranteed Obligations by Guarantor 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 other than those set forth in this Agreement, whether or not Guarantor shall have any knowledge thereof, including, without limitation, (i) any voluntary or involuntary bankruptcy, assignment for the benefit of creditors, receivership, or similar events or proceedings with respect to Current Operator or Guarantor, as applicable, (ii) any voluntary or involuntary dissolution or roll-up of Current Operator, or (iii) 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 Current Operator or Guarantor, to the fullest extent permitted by law. Guarantor hereby waives, for the benefit of New Operator, any right to require New Operator, as a condition of payment or performance by Guarantor, to proceed against Current Operator or pursue any other remedies whatsoever and (b) to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded by law that limit the liability of or exonerate guarantors or sureties. Guarantor understands that New Operator is relying on this guarantee in entering into this Agreement.

33. With the Agreement, the Old Operator and New Operator entered a Facility Accounts Transition Agreement (“MidCap Agreement”). A true and correct copy of the MidCap Agreement is attached hereto as **Exhibit “B.”**

34. The MidCap Agreement is explicitly referenced and incorporated into Sections 2.5 and 2.9 of the Agreement.

35. The MidCap Agreement clarifies that after the Closing Date, the Old Operator may come into possession of collections on accounts, accounts receivable and/or payment intangibles that are property of the New Operator.

36. The MidCap Agreement further provides that the New Operator and Old Operator will comply with the terms of Section 2.5 of the Agreement with respect to the handling of accounts receivable after the Closing Date.

37. The MidCap Agreement states, in relevant part:

C. Prior Operator and New Operator have advised Agent that, for a period of time following the Transfer Date, Prior Operator may come into possession of collections on accounts, accounts receivable and/or payment intangibles (collectively, “Accounts”) that are the property of New Operator pursuant to the terms and conditions of the Operations Transfer Agreement (such collections, the “New Operator Amounts”).

1. New Operator Amounts are the property of New Operator pursuant to the terms and conditions of the Operations Transfer Agreement. The Operations Transfer Agreement contemplates that certain New Operator Amounts may be received by Prior Operator prior to the time the provider numbers under which such New Operator Amounts are billed and paid are transferred to New Operator and, pursuant to the Operations Transfer Agreement, Prior Operator has agreed to transfer to New Operator an amount equal to the New Operator Amounts received by Prior Operator. Agent agrees and acknowledges that New Operator Amounts (a) do not constitute Agent’s or Lenders’ collateral under the Credit Agreement or under any other agreement, instrument or document entered into by Prior Operator with Agent or other Lenders, (b) are the property of New Operator pursuant to the terms and conditions of the Operations Transfer Agreement subject to the first priority lien of Capital Finance, LLC (including its successors and assigns) (“New Lender”), and (c) are to be held in trust by Prior Operator for the benefit of New Operator. Pursuant to the terms of the Credit Agreement, concurrent with the consummation of the transactions described in the

Operations Transfer Agreement, Agent released its Liens on all asset of Prior Operator that are transferred pursuant to the Operations Transfer Agreement other than, for the avoidance of doubt, the Accounts arising from the operation of the Facilities prior to the Transfer Date. In consideration of the agreements set forth herein, New Operator and Prior Operator agree to comply with the terms of Section 2.5 of the Operations Transfer Agreement with respect to the handling of accounts receivable after the Transfer Date.

II. Medicaid Overpayments

38. Florida Community Care, LLC (“FCC”) is a Florida limited liability company that operates a Medicaid provider service network.

39. FCC provides services to beneficiaries who meet the qualifications for long-term care services and support in the State of Florida.

40. The FCC is charged with making qualifying Florida Medicaid program payments to SNFs like the Facility.

41. Following the Closing Date, the FCC continued to facilitate and issue Medicaid payments to the Old Operator for services that the New Operator provided to Medicaid beneficiaries at the Facility.

42. As contemplated by the Agreement, the New Operator could not independently bill the FCC for services provided to Medicaid beneficiaries at the Facility until the New Operator obtained its own NPI number and received the Old Operator’s Provider Agreements.

43. In the interim, the Old Operator agreed to bill the FCC for services provided by the New Operator after the Closing Date using the Old Operator’s billing identifiers.

44. After the Closing Date, the Old Operator and the New Operator met on a weekly basis to reconcile their payment history and accounts receivable.

45. Between August and September of 2023, the Old Operator received five (5) separate Medicaid overpayments (“Overpayments”) totaling \$269,082.59, and listed on the following chart:

Remit Total	Remit Date
\$128,978.78	8/10/2023
\$53,052.77	8/17/2023
\$33,455.05	8/24/2023
\$31,012.70	8/31/2023
\$26,848.67	9/7/2023

46. The Overpayments were for services rendered by the New Operator to Medicaid beneficiaries at the Facility after the Closing Date.

47. The Overpayments belonged to the New Operator pursuant to the terms of the Agreement and the MidCap Agreement.

48. Upon information and belief, the Old Operator acknowledged that the Overpayments belonged to the New Operator.

49. The Old Operator indicated it would only turn over the Overpayments if the FCC got involved and made a formal demand against the Old Operator.

50. On or about August 28, 2024, FCC sent a refund request letter (“Letter”) to the Old Operator seeking the return of the Overpayments (the “Refund Request”) by October 21, 2024 (“Response Date”). A true and correct copy of the Refund Request Letter is attached hereto as **Exhibit “C.”**

51. Upon information and belief, the Old Operator failed to contest or appeal the Refund Request by the Response Date or anytime thereafter.

52. To date, the Old Operator and/or the Guarantor have failed to remit the Overpayments to the FCC or the New Operator.

III. Bankruptcy Cases

53. On June 2, 2024 (“Petition Date”), Defendants filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (“Chapter 11 Cases”) in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (“Court”).

54. The Old Operator and the Guarantor have taken the position during the Chapter 11 Cases that the Overpayments are property of the bankruptcy estate, and the New Operator’s only recourse is the claims process.

55. In an abundance of caution, the New Operator filed three (3) separate proofs of claim in the Chapter 11 Cases related to the Overpayments.

56. First, the New Operator filed a proof of claim (“First POC”) against the Old Operator for \$269,082.59 for an “improper payment made to debtor by Florida Community Care, LLC for refund that should have been directed to creditor.”

57. Second, the New Operator filed a proof of claim (“Second POC”) against the Old Operator for an unknown amount for “indemnity provisions of OTA executed by debtor with creditor.”

58. Third, the New Operator filed a proof of claim (“Third POC”) (the First POC, Second POC, and Third POC are collectively the “Claims”) against the Guarantor for \$269,082.59 for an unknown amount for “indemnity provisions of OTA executed by debtor with creditor.”

Causes of Action

Count I – Declaratory Judgment

59. Plaintiff incorporates paragraphs 1-58 above into this count as if those paragraphs were fully stated herein.

60. An actual controversy presently exists between Plaintiff and Defendants concerning their respective rights and obligations under the Agreement, specifically, whether the Overpayments are property of the bankruptcy estate or property of the Plaintiff.

61. The Old Operator and the Guarantor have taken the position during the Chapter 11 Cases that the Overpayments are property of the bankruptcy estate, and therefore, the New Operator's only recourse is the claims process.

62. The New Operator maintains that the Overpayments have never been property of the bankruptcy estate, and instead, are Plaintiff's property pursuant to the Agreement.

63. This Court's entry of a declaratory judgment would clarify and settle legal rights and relations at issue in this action, and afford relief from the uncertainty, insecurity, and controversy giving rise to this action.

64. Accordingly, Plaintiff respectfully requests this Court enter a declaratory judgment that the Overpayments are property of the Plaintiff pursuant to the Agreement and not part of the Defendants' bankruptcy estate.

Count II – Breach of Contract

65. Plaintiff incorporates paragraphs 1-58 above into this count as if those paragraphs were fully stated herein.

66. The Old Operator, the New Operator, and the Guarantor entered into the Agreement to facilitate the orderly transition of the Facility from the Old Operator to the New Operator.

67. The Agreement and MidCap Agreement clearly dictate how the Old Operator is obligated to handle Medicaid and Medicare payments received by the Old Operator for items or services provided or rendered by the New Operator to Medicaid and Medicare beneficiaries from or after the Closing Date.

68. In such event, the Old Operator is required to hold payments in trust and promptly forward the payments to the New Operator.

69. The Old Operator breached the Agreement by retaining the Overpayments and failing to remit the Overpayments to the Plaintiff.

70. Plaintiff has been damaged in an amount no less than \$269,082.59 because of the Old Operator's breach of the Agreement.

71. Guarantor guaranteed Sections 2.5, 2.9, and 5 of the Agreement making Guarantor liable for the Old Operator's breach of the Agreement.

72. Accordingly, Plaintiff respectfully requests this Court enter a monetary judgment against both Defendants in an amount no less than \$269,082.59.

Count III – Conversion

73. Plaintiff incorporates paragraphs 1-58 above into this count as if those paragraphs were fully stated herein.

74. The New Operator has an ownership interest in the Overpayments pursuant to the Agreement and MidCap Agreement.

75. The Old Operator merely facilitated the Overpayments because New Operator could not yet bill under the Provider Agreements.

76. The Old Operator agreed to receive the Overpayments on behalf of the New Operator, hold the Overpayments in trust, and promptly transfer the Overpayments to New Operator upon receipt.

77. The Old Operator has refused to return the Overpayments to the New Operator or the FCC since receiving the Overpayments in August and September 2023.

78. The Old Operator continues to deprive the New Operator of the Overpayments.

79. Upon information and belief, the Old Operator knew at all relevant times the Overpayments belonged the New Operator.

80. The Old Operator never had an ownership interest in the Overpayments.

81. The Old Operator and the Guarantor have indicated they have no intention of returning the Overpayments to the New Operator.

82. The New Operator has not authorized the Old Operator and/or the Guarantor to keep or use the Overpayments for their own benefit.

83. Plaintiff has been damaged in an amount no less than \$269,082.59 because of the Defendants' willful misconduct with respect to the Overpayments.

84. Accordingly, Plaintiff respectfully requests this Court enter a monetary judgment against both Defendants in an amount no less than \$269,082.59.

Request for Relief

Based on the foregoing allegations and causes of action, Plaintiff requests the following relief from the Court:

- a. on Plaintiff's First Claim for Relief, a declaratory judgment that the Overpayments are property of the Plaintiff under the Agreement and not property of the Defendants' bankruptcy estate;
- b. on Plaintiff's Second Claim for Relief, a money judgment against the Defendants for all losses and damages Plaintiff suffered as a result of Defendants' breaches of the Agreement, not less than \$269,082.59;
- c. on Plaintiff's Third Claim for Relief, a money judgment against the Defendants for all losses and damages Plaintiff suffered as a result of Defendants' conversion of the Overpayments, not less than \$269,082.59; and
- d. an award of all further relief the Court deems just and equitable.

Dated: April 17, 2025

BAKER & HOSTETLER LLP

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EXHIBIT A

Operations Transfer Agreement

OPERATIONS TRANSFER AGREEMENT

This OPERATIONS TRANSFER AGREEMENT (“**Agreement**”) is entered into as of this 31st day of January, 2022 (the “**Effective Date**”), by and among the entity listed as a current operator on **Exhibit A** attached hereto (“**Current Operator**”), the entity listed as a new operator on **Exhibit A** attached hereto (“**New Operator**”), and LaVie Care Centers, LLC, a Delaware limited liability company, as Guarantor, solely for purposes of Sections 2.5, 2.9 and 5 (“**Guarantor**”).

RECITALS

A. The entity listed as the Owner on **Exhibit A** attached hereto (the “**Owner**”) owns certain real property improved with a certain skilled nursing facility listed on **Exhibit A** attached hereto (the “**Facility**”) located at the address set forth on **Exhibit A** attached hereto, and all of the furniture, fixtures and equipment and other items of personal property located therein (other than such personal property that is owned by the Current Operator) (collectively with the Facility, the “**Property**”). The Facility is licensed and certified for that number of SNF beds listed on **Exhibit A** attached hereto (the “**License**”).

B. Owner and the purchaser listed on **Exhibit A** attached hereto (the “**Purchaser**”) are parties, along with the other parties named therein, to that certain Purchase and Sale Agreement, dated December 6, 2021 (the “**PSA**”), pursuant to which Purchaser will purchase the Property from Owner contemporaneously with the closing of the transactions contemplated by this Agreement.

C. Current Operator is the licensed operator of the Facility and leases its Property directly or indirectly from Owner pursuant to a lease or sub-lease agreement.

D. Pursuant to the terms and conditions of this Agreement, Owner desires for Current Operator to transfer to New Operator on the Closing Date the Assignable Licenses and Permits (defined below), and for the parties to take other acts to ensure the continued business operations of the Facility on and after the Closing Date, in order that New Operator may lease the Facility from and after the consummation of the transaction contemplated by the PSA, and be the licensed operator of the Facility on and after the Closing Date.

E. The parties desire to enter into this Agreement to facilitate an orderly transition of the Facility’s operations from Current Operator to New Operator as more specifically provided herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree that:

SECTION 1
CLOSING; CONVEYANCE OF ASSETS; LIABILITIES; CLOSING CONDITIONS;
CLOSING DELIVERABLES

1.1 Closing. The closing of the transactions contemplated under this Agreement (the “**Closing**”) shall occur on the first day of the first calendar month following the satisfaction of all conditions precedent set forth in Section 1.2 below (the “**Closing Date**”). 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 Closing Date. It is currently anticipated that the Closing Date shall be May 1, 2022. Notwithstanding anything to this Agreement to the contrary, nothing in this Section shall obligate either party to close the transactions contemplated by this Agreement if any condition precedent to Closing has not been met in accordance with the terms of this Agreement or waived in writing by the applicable party. Notwithstanding the foregoing, or anything to the contrary contained herein, Current Operator and New Operator agree that at any time prior to the Outside Date, at New Operator’s request, they will enter into a management agreement (in a form to be mutually agreed upon by the parties) (the “**Management Agreement**”). The Management Agreement will provide that if the Closing does not occur by the Outside Date due to a failure to meet the closing condition set forth in Section 1.4(a)((6)) below, or at such earlier date if requested by New Operator, then New Operator shall take over the management of the Facility on behalf of Current Operator until such closing condition has been satisfied. In addition, among other things, the Management Agreement will provide that New Operator will assume responsibility for all of the expenses related to the operation of the Facility and, in consideration of such assumption, Current Operator shall pay to New Operator all of the gross revenues generated in connection with the operation of the Facility following New Operator’s assumption of the expenses.

1.2 Conveyance of Assets. On the Closing Date, Current Operator shall transfer to New Operator the following (the “**Assigned Assets**”):

(a) To the extent Current Operator’s interest is assignable and/or transferable pursuant to applicable law and to the extent New Operator, in its sole discretion, elects to assume the same, all consents, the Assignable Licenses and Permits, permits, approvals, accreditations, certifications, bed operating rights, and Medicare and Medicaid provider numbers and agreements issued by any Governmental Entity, including without limitation, any authorizations to participate in any state or federal reimbursement program such as Medicaid or Medicare;

(b) All right, title and interest of Current Operator in and to any trade names and all variations thereof connected with each Facility;

(c) All telephone and facsimile numbers relating solely to the Facility (including, without limitation, any “e-fax” numbers and all “800” numbers) and all post office box addresses associated with the Facility;

(d) all current resident and employee records in the form located at the Facility on the Closing Date;

(e) all consumable inventories of every kind and nature whatsoever (specifically including, but not limited to, all pharmacy supplies, nursing supplies, medical supplies, housekeeping supplies, laundry supplies, maintenance supplies, office supplies, dietary supplies, other supplies and food) located at and used in connection with the operation of the Facility (the “**Supplies**”), which Supplies shall be in a quantity sufficient to meet the needs of the residents of the Facility for the proper operation thereof and in compliance with all applicable laws, in the ordinary course of business; and

(f) Any and all other items of tangible and intangible personal property owned or leased by the applicable Current Operator and used solely in connection with the operation, leasing and maintenance of the Facility, including all furniture, fixtures and equipment, IT equipment, and other items of personal property located at the Facility (collectively, the “**Personal Property**”), and any goodwill of Current Operator associated with the business operated at the Facility.

Current Operator shall have no obligation to deliver the Assigned Assets to any location other than that at which each item of the Assigned Assets is currently located, and New Operator agrees that the presence of the Assigned Assets at the Facility on the Closing Date shall constitute delivery thereof. Notwithstanding the foregoing, the parties shall cooperate in the transfer of records as contemplated herein.

1.3 Excluded Liabilities. New Operator shall not assume and shall not be liable for, and Current Operator shall satisfy and indemnify and defend New Operator from and against, in accordance with Section 5 herein, any debts, liabilities, claims or obligations of any kind or nature arising from, out of or relating to Current Operator’s operation of the Facility, or any activities, of Current Operator prior to the Closing Date including the performance of Current Operator’s obligations under its respective Assigned Agreements prior to the Closing Date (the “**Retained Liabilities**”).

1.4 Conditions Precedent.

(a) New Operator’s Conditions Precedent. New Operator’s obligation to consummate the transactions contemplated in this Agreement shall be subject to the following conditions precedent being satisfied on or prior to the Closing Date or the waiver thereof by New Operator, which waiver shall be binding upon New Operator only to the extent made in writing:

- (1) Current Operator shall have duly and timely performed and fulfilled all of its duties, obligations, promises, covenants and agreements required to be performed hereunder on or prior to the Closing Date in all material respects;
- (2) Each of the representations and warranties of Current Operator contained in this Agreement shall be true and correct in all material respects as of the Closing Date, except that those representations and warranties that contain materiality qualifications and other qualifications based on the word “material” shall be required to be true and correct in all respects and not merely material respects;
- (3) Current Operator shall deliver to New Operator on or before the Closing Date the Current Operator’s Deliverables;

- (4) Owner and Purchaser shall have entered into, and consummated the transactions contemplated under the PSA;
- (5) Transfer of the Assigned Assets;
- (6) Transfer of those Assignable Licenses and Permits from Current Operator to New Operator which are required for New Operator to operate the Facility as of the Closing Date as a duly licensed skilled nursing facility, and the procurement by New Operator of the new License from the State of Florida, provided that the same shall be deemed to have been satisfied if the parties have satisfied all notice and filing requirements such that any of such transfer(s) or procurement shall be effected after the Closing but effective as of the Closing Date;
- (7) Since the date of this Agreement, there shall have occurred no event, circumstance or other change in Current Operator or the Facility that has had a Material Adverse Effect that has not been corrected or resolved prior to Closing to New Operator's satisfaction as determined in its reasonable discretion;
- (8) No Facility shall be Out of Compliance; and
- (9) On the Closing Date there shall not be any injunction or order entered by a court of competent jurisdiction prohibiting the consummation of the transaction contemplated hereby.

(b) Current Operator's Conditions Precedent. Current Operator's obligation to consummate the transactions contemplated in this Agreement shall be subject to the following conditions precedent being satisfied on or prior to the Closing Date to or the waiver thereof by Current Operator, which waiver shall be binding upon Current Operator only to the extent made in writing:

- (1) New Operator shall have duly and timely performed and fulfilled all of its duties, obligations, promises, covenants and agreements required to be performed hereunder on or prior to the Closing Date in all material respects;
- (2) Each of the representations and warranties of New Operator contained in this Agreement shall be true and correct in all material respects as of the Closing Date, except that those representations and warranties that contain materiality qualifications and other qualifications based on the word "material" shall be required to be true and correct in all respects and not merely material respects;
- (3) New Operator shall have executed and delivered to Current Operator the New Operator Deliverables, as applicable;
- (4) Owner and Purchaser shall have entered into, and consummated the transactions contemplated under the PSA; and

- (5) Current Operator's Lease obligations and those of any affiliate related to Property have been terminated.

1.5 Current Operator Deliverables. At Closing, Current Operator shall deliver the following to New Operator (collectively, the "***Current Operator Deliverables***");

(a) Executed counterparts of a closing statement reflecting any prorations and other payments to be made at Closing in accordance with the terms of this Agreement (the "***OTA Settlement Statement***");

(b) The accounting of patient funds required by Section 2.2 hereof and such patient funds;

(c) An executed counterpart of that certain Agreement entered into among Current Operator, New Operator and MidCap Funding IV Trust, a Delaware statutory trust and Current Operator's lender ("MidCap"), a copy of which is attached hereto as **Exhibit B** (the "MidCap Agreement.");

(d) Counterparts to any conveyance documents;

(e) An executed counterpart of the Bill of Sale, the form of which is attached hereto as **Exhibit C** (the "***Bill of Sale***");

(f) An executed counterpart of the Assignment and Assumption Agreement, the form of which is attached hereto as **Exhibit D** (the "***Assignment and Assumption***"); and

(g) Cooperate with New Operator to provide any and all documents reasonably requested or required by New Operator's lenders.

1.6 New Operator's Deliverables. At Closing, New Operator shall deliver the following to Current Operator (collectively, the "***New Operator Deliverables***");

(a) An executed counterpart of the OTA Settlement Statement;

(b) Payment in immediately available funds of any amounts due to Current Operator from New Operator with respect to the Facility as reflected in the OTA Settlement Statement;

(c) An executed counterpart of the Bill of Sale;

(d) An executed counterpart of the Assignment and Assumption; and

(e) Counterparts to any conveyance documents.

1.7 Payment. Any mutual obligations owing between Current Operator on the one hand and New Operator on the other pursuant to Sections 1.5 and 1.6 hereof shall be offset against each

other and shall be reflected on the OTA Settlement Statement or otherwise paid in accordance with Section 2.8.

1.8 Waiver. In the event that either of the parties hereto (a “***Waiving Party***”) waives a condition precedent to its performance hereunder, or otherwise elects to proceed with the Closing despite the fact that one or more conditions precedent to its performance have not been satisfied, such action by the Waiving Party shall in no way be deemed a waiver of any payment, indemnification or other rights of the Waiving Party with respect to such condition, and the Waiving Party shall be entitled, following the Closing, to pursue any and all available remedies at law or equity with respect thereto.

SECTION 2 TRANSFER OF OPERATIONS; CERTAIN COVENANTS

2.1 Licensure; Cooperation.

(a) The parties hereto agree to cooperate with each other to effect an orderly and expeditious transfer of the continued operations of the Facility. The parties hereto also agree to cooperate with each other to effect an orderly and expeditious transfer of all of the licenses and permits which Current Operator uses as a requirement for the operation of the Facility as a licensed skilled nursing facility and which are assignable by law (the “***Assignable Licenses and Permits***”). New Operator acknowledges that the Assignable Licenses and Permits will not include the License if the same is not assignable by law. New Operator shall apply for any and all consents, approvals, authorizations, notices, filings, transfers and other approvals, including, but not limited to, approval for a new License, and approval of the transfer of the Assignable Licenses and Permits, which in each case are (i) prescribed by any governmental, regulatory or administrative body, agency or authority, whether Federal, state or local, (ii) required by the Assignable Licenses and Permits, and/or (iii) required for the operation of the Facility as a duly licensed skilled nursing facility. As soon as practicable, New Operator shall apply for the approvals from Medicare and Medicaid (including, without limitation, the assignment to New Operator of Current Operator’s respective Medicare provider agreement). New Operator, at its sole cost and expense, shall take all steps necessary to secure in New Operator’s name all such licensure, permits or other authorizations that are required for New Operator to operate the Facility upon the Closing, and New Operator shall use all commercially reasonable efforts to obtain such licensure, permits and other authorizations for the Closing to occur within sixty (60) days of the Effective Date. Current Operator shall reasonably cooperate with New Operator by furnishing all reasonably requested documentation and executing all documents and consents reasonably necessary for New Operator’s satisfaction of its obligations under this Section 2.1. Any reasonable, documented, out of pocket expense incurred by Current Operator in complying with the foregoing shall be promptly reimbursed by New Operator at the Closing or as provided in Section 2.8.

(b) For any periods following the Closing that New Operator is not yet able to bill under its Medicaid and/or Medicare provider agreements and/or managed care contracts (the “***Provider Agreements***”), Current Operator shall allow New Operator to bill under Current Operator’s respective Provider Agreements, to the extent permitted by applicable law or contract, and Current Operator shall promptly forward to New Operator any payments received with respect to services rendered by New Operator from and after Closing in accordance with Section 2.5

hereof. Nothing herein shall require Current Operator to submit claims on behalf of New Operator, perform any billing activity on behalf of New Operator or otherwise make representations to any payor, except as necessary to advise the payor of the operations transfer.

2.2 Patient Funds; Advance Payments.

(a) Within five (5) days following the Closing Date, and subject to adjustment within thirty (30) days following the Closing Date, Current Operator shall provide New Operator with an accounting of all funds belonging to residents at the Facility, which are held by Current Operator in a custodial capacity, and an accounting of all advance payments received by each of them pertaining to residents at the Facility (collectively, the “**Resident Trust Funds/Payments**”). Such accounting shall set forth the names of the residents for whom such Resident Trust Funds/Payments are held and the amounts held on behalf of each resident.

(b) No later than five (5) days before the Closing Date, New Operator shall provide Current Operator with wire transfer instructions for New Operator’s receipt on the Closing Date of the Resident Trust Funds/Payments into trust accounts opened by New Operator prior to the Closing in compliance with all applicable laws.

(c) On the Closing Date, and subject to adjustment within thirty (30) days following the Closing Date, Current Operator shall transfer the Resident Trust Funds/Payments to a bank account designated by New Operator, and New Operator shall acknowledge receipt of, and does hereby expressly assume, all of Current Operator’s financial and custodial obligations arising from and after the Closing with respect thereto, it being the intent and purpose of this provision that, as of the Closing, and effective upon transfer of the Resident Trust Funds/Payments into the account designated by New Operator, Current Operator shall be, and is hereby, relieved of all fiduciary and custodial obligation with respect to such funds and that New Operator shall, and does hereby, assume all such post-Closing obligations and shall be directly accountable to the residents with respect thereto.

(d) On the Closing Date, New Operator shall, and does hereby, assume custody of all Resident Trust Funds/Payments and any other trust accounts for residents transferred by Current Operator to New Operator and agrees to hold and treat such accounts in the fiduciary capacity required by law. New Operator agrees to indemnify and hold Current Operator harmless from all liabilities, claims, and demands that may be asserted against Current Operator in connection with New Operator’s treatment of such accounts on and after the Closing Date.

2.3 Final Cost Reports. Current Operator shall prepare and file, with the appropriate governmental authorities, a final cost report in respect to its operation of the Facility, prior to Closing, within the time frame following the Closing as required by law, rule, or regulation. New Operator shall prepare and file, with the appropriate governmental authorities, its initial cost reports with respect to its operation of the Facility, following Closing for the fiscal year

commencing with the fiscal year in which the Closing occurs, within the time frame following the Closing as required by law, rule, or regulation.

2.4 Employees.

(a) As of the Effective Date, Current Operator currently employs certain employees engaged in the operation of the Facility (together with such additional persons as Current Operator may hire before the Closing in the ordinary course of the Facility's operations (the "**Employees**"). Current Operator shall provide New Operator with a list of all Employees as of the Effective Date including: (i) the vacation, sick, holiday, personal time-off, and any other paid time off of all such Employees, whether vested or unvested, to the extent it was accrued prior to the Effective Date and remains unused ("**PTO**"), (ii) the current base salaries or wage rate of such Employees, (iii) the exempt and nonexempt status of each Employee under the Fair Labor Standards Act and any applicable state law (whether or not paid an hourly or salary rate), (iv) each Employee's date of hire or commencement of most recent employment, (v) each Employee's position, and (vi) the number of hours worked by each Employee in the preceding 12 months, each of which shall be updated as of the most recent payroll day prior to the Closing. New Operator shall not be bound by or assume any employment contracts to which Current Operator may be a party. Current Operator shall terminate the employment and all benefits of the Employees, effective as of 11:59:59 on the day immediately preceding the Closing Date. Current Operator shall be responsible for, and shall pay to the Employees, at or prior to the Closing Date, any amounts due for PTO payable in accordance with, or otherwise as required under (i) Current Operator's then-current policy for terminated employees, which New Operator acknowledges may not require any payout, (ii) any collective bargaining agreements affecting the Facility, as determined by the Current Operator, and (iii) applicable laws of the state, county, or city in which the Facility is located.

(b) New Operator shall offer to hire a sufficient number of the Employees effective as of the Closing Date, and shall use all commercially reasonable efforts to employ the minimum number of employees, so as to avoid creating any obligation on the part of Current Operator under the Worker Adjustment and Retraining Notification Act, or any other comparable state or local law (collectively, the "**WARN Act**"). Such Employees who accept such employment offers from New Operator shall be referred to as the "**Retained Employees**." Any such employment of a Retained Employee by New Operator shall be on terms such that Current Operator shall not have violated the WARN Act, and will not result in a determination that Retained Employees have been constructively discharged. New Operator shall not discriminate in the hiring of Employees on any legally impermissible basis, and shall indemnify, defend, and hold harmless Current Operator with respect to any related liability or claim. No later than five (5) business days before the Closing Date, New Operator shall provide Current Operator with a written list of any Employees whom New Operator does not anticipate will become Retained Employees.

(c) New Operator and Current Operator acknowledge and agree that the provisions of this Section 2.4, are designed, in part, to ensure that Current Operator is not required to give notice to Employees under the WARN Act. Accordingly, New Operator agrees to, and hereby does, assume any liability relating to the WARN Act, in the event of the violation by New Operator of their obligations under Section 2.4 of this Agreement, including a violation which results from allegations that New Operator constructively discharged any Employees as a result of the terms

and conditions of employment offered by New Operator or any of their affiliates. Nothing in this Section 2.4 shall, however, create any third party beneficiary or other rights in favor of any person not a party hereto, including Employees, or constitute an employment agreement or condition of employment for Retained Employees.

(d) Current Operator shall be responsible for providing, if required by law, all applicable 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 the Employee Retirement Income Security Act of 1974, as amended, and the regulations thereunder) as in effect from time to time and the regulations thereunder or pursuant to other applicable state law in connection with the transaction. New Operator shall cooperate as reasonably necessary so that Current Operator may satisfy all such obligations. Current Operator acknowledges and agrees that New Operator is not assuming any of Current Operator’s obligations to its Current Employees, former employees, and/or qualified beneficiaries under COBRA or other applicable state law.

2.5 Accounts Receivable.

(a) On the Closing Date, New Operator shall, and does hereby, assume responsibility for the billing for, and collection of, payments on Accounts Receivable (as such term is defined below) for services rendered by them at their Facility, on and after the Closing Date (such Accounts Receivable, “**New Operator Amounts**”). On and after the Closing Date, all New Operator Amounts shall be billed and collected by New Operator using New Operator’s own computer software and billing systems. Current Operator shall not be responsible for billing or collecting New Operator’s amounts using its own computer software, billing systems, or any other resources. Without limiting the foregoing, to the extent permitted under applicable law and applicable enrollment terms, and at New Operator’s election, for a period between the Closing Date and the first anniversary thereof, Current Operator hereby agrees that New Operator may bill for services provided by New Operator under Current Operator’s Medicare and Medicaid provider agreements (including use of any NPI numbers of other billing identifiers necessary to complete such billing), as well as any other provider agreements, and that the New Operator Amounts resulting from such billing may be paid to Current Operator. Such New Operator Amounts collected by Current Operator shall be paid to New Operator as provided in this Section 2.5 and as provided in the MidCap Agreement. As a condition of the rights granted by Current Operator in this Section 2.5, New Operator agrees to comply with the terms of the MidCap Agreement and further agree that, if any terms of the MidCap Agreement conflict with the terms of this Section 2.5, then the terms of the MidCap Agreement shall control.

(b) Current Operator shall retain all rights in and title to Accounts Receivable for services rendered at its Facility prior to the Closing Date (the “**Current Operator’s Accounts Receivable**”), and shall retain full responsibility for the collection thereof. The Current Operator’s Accounts Receivable shall include all amounts due Current Operator, whether billed or unbilled prior to the Closing Date, for all services and ancillary services or products provided to any current or former residents by Current Operator prior to the Closing Date, and any Accounts Receivable arising from the rate adjustments which relate to periods prior to the Closing Date, even if such adjustments occur after the Closing Date.

(c) All third party payor payments that designate the dates of service or other identifying data on the remittance received by New Operator from and after the Closing Date shall relate to the period prior to the Closing Date or after the Closing Date, as the case may be, in connection with the account of the resident for whom the payment is made in accordance with the dates of service or other identifying data indicated on the remittance, and New Operator shall remit to Current Operator, within five (5) days of its receipt thereof, any payment received by New Operator that apply to Current Operator's Accounts Receivable, together with a copy of the remittance advice; provided, however, in the event payment is made without remittance advice (or where the remittance advice does not specify the dates of service), and the parties are otherwise unable to identify the time period to which such payment relates, such payment will, for the first thirty (30) days after the Closing Date, be applied to the appropriate Current Operator's Accounts Receivable, and thereafter to the appropriate New Operator Amounts.

(d) In addition, New Operator shall remit to Current Operator, within fifteen (15) business days of its receipt thereof, any cash repayment or cash reimbursement received by New Operator arising out of cost reports filed for the period ending prior to the Closing Date. New Operator acknowledges that Medicare Part A coinsurance receivables from dates of service prior to the Closing Date exist, and New Operator agrees that, to the extent the information is provided to the New Operator so that it may accurately reflect the information in the filing, New Operator will (i) report any amounts uncollectible from Medicare Part A beneficiaries that meet all of the criteria specified in 42 CFR 413.89(3), or any successor laws thereto, and any other regulations, laws, materials, or CMS guidance (such amounts, the "**Medicare Bad Debts**") from Current Operator's dates of service on New Operator's initial Medicare cost report, and any subsequent cost reports if needed, and (ii) if New Operator receives payment or credit for the Medicare Bad Debts that are from Current Operator's dates of service, New Operator will pay to Current Operator those amounts within fifteen (15) business days of its receipt thereof. Any amounts not so paid to Current Operator shall bear interest thereon at an annual rate of twelve percent (12%) calculated from the date such payment or credit was received by New Operator through the date when paid in full.

(e) Current Operator and New Operator agree that, except as provided in the MidCap Agreement, any payments received by Current Operator that pertain to the period commencing from and after the Closing Date, whether received from private pay patients or as repayment or reimbursement arising out of cost reports, shall be remitted by Current Operator to New Operator within five (5) days of Current Operator's receipt thereof.

(f) To the extent either party receives any proceeds from the Accounts Receivable of the other party, the parties acknowledge that the party receiving the payment belonging to the other party shall hold the payment in trust. However, both Parties shall have the right to offset with respect to any amounts otherwise owed, or reasonably estimated to be owed, by and between the Parties pursuant to this Agreement. For a period of six (6) months following the Closing Date, Current Operator and New Operator shall provide each other with an accounting by the twentieth (20th) day of each month setting forth all amounts received by them during the preceding month with respect to the Accounts Receivable. To the extent that such accounting shows that either party received Accounts Receivable that are applicable to the other party's period of operation, such amounts shall be paid over to such other party within five (5) days of such determination. Nothing

herein shall be deemed to limit in any way either party's rights and remedies to recover accounts receivable due and owing to it under the terms of this Agreement.

(g) Notwithstanding anything in this Agreement to the contrary, any and all grant payments, stimulus payments, retroactive rate adjustments, and any and all other payments and support paid with respect to the Facility in relation to COVID-19 relief efforts ("**COVID Payments**") based on, in return for, or calculated using data or dates of service prior to the Closing Date, shall be the property of the Current Operator and retained by and/or paid to the Current Operator. Any COVID Payments based on, in return for, or calculated using data or dates of service on or after the Closing Date shall be the property of the New Operator and retained by and/or paid to the New Operator. Such COVID Payments shall be transferred by the receiving party in the same manner as other Accounts Receivable pursuant to this Section 2.5 and in compliance with applicable law. To the extent that Current Operator receives any COVID Payments after the Closing Date that are not legally permitted to be transferred to New Operator for any reason, then Current Operator shall otherwise cooperate with New Operator to ensure that such COVID Payments are used solely for the benefit of the Facility and its residents and staff in compliance with applicable law. To the extent that New Operator receives any COVID Payments after the Closing Date that are not legally permitted to be transferred to Current Operator for any reason, then New Operator shall cooperate with Current Operator to ensure that such COVID Payments are used solely to offset applicable COVID-19 costs and expenses incurred by Current Operator prior to the Closing Date in compliance with applicable law.

(h) As of the Effective Date, Current Operator is in receipt of an amount equal to Two Hundred Twenty-Five Thousand Thirty-Six and 00/100 Dollars (\$225,036.00) pursuant to the Medicare Accelerated & Advance Payment Program ("**MAAPP Funds**"), which funds were received by Current Operator in accordance with the process described by the United States Department of Health and Human Services' Centers for Medicare & Medicaid Services ("**CMS**"). Current Operator has applied or will apply the MAAPP Funds in accordance with all applicable CMS requirements under federal laws, regulations, and published CMS policies or guidance. The parties hereto hereby acknowledge and agree that should any of the COVID Payments including MAAPP Funds be recouped against New Operator's Medicare provider agreement, or should New Operator otherwise be required to repay such COVID Payments including MAAPP Funds (collectively, the "**Recouped MAAPP Funds**"), then Current Operator shall, within thirty (30) days of receipt of notice that such recoupment was for Recouped MAAPP Funds, remit such Recouped MAAPP Funds to New Operator. Should Current Operator not remit such funds, New Operator may seek such funds from the Guarantor. Current Operator shall pay to New Operator interest on the Recouped MAAPP Funds equal to the rate of twelve percent (12%) per annum, compounded monthly, from the date of such recoupment until such Recouped MAAPP Funds have been paid in full.

2.6 Payment of Operating Costs, Prorations and Deposits. Current Operator shall be responsible for, and shall pay on a timely basis, claims or charges which are owed to third parties arising from their use, operation, or control of the Facility, including payroll, taxes (including all real estate and personal property taxes and assessments), insurance premiums, utilities, amounts due under executory obligations, and similar obligations for all periods prior to the Closing Date. New Operator, to the extent it utilizes the services provided by third parties, shall be responsible for, and shall pay on a timely basis, any claims or charges which are due to such third parties

arising from the use, operation, or control of the Facility from and after the Closing Date. Revenues and expenses pertaining to utility charges for the billing period in which the Closing Date occurs, prepaid expenses, real estate taxes and assessments for the year during which the Closing Date occurs, and like items of revenue or expense attributable to the Facility shall be prorated between Current Operator and New Operator as of the Closing Date. All such prorations shall be made on the basis of actual days elapsed in the relevant accounting or revenue period, and shall be based on the most recent information available to Current Operator. Utility charges that are not metered and read on the Closing Date shall be estimated based on prior charges, and shall be re-prorated upon receipt of statements therefor. Real estate taxes and assessments shall be estimated based on the most recently available tax bill, and shall be re-prorated upon receipt of the actual tax bill for the year of Closing. In general, such prorations shall be made so as to reimburse Current Operator for actual prepaid expense items, and to charge Current Operator for prepaid revenue items, to the extent that the same are attributable to periods on or after the Closing Date.

2.7 Treatment of Prorations. The accounts of Current Operator and New Operator created pursuant to the prorations provided for in the preceding Section 2.6 shall be netted against each other; as follows:

(a) If the result is a net positive balance for New Operator, Current Operator shall pay to New Operator the amount of such balance in immediately available funds in accordance with the terms of Section 1.5 of this Agreement; and

(b) If the result is a net positive balance for Current Operator, New Operator shall pay to Current Operator the amount of such balance in immediately available funds in accordance with the terms of Section 1.5 of this Agreement.

The aforementioned accounts shall be reflected on the OTA Settlement Statement or shall be otherwise paid in accordance with Section 2.8.

2.8 Future Settlement. All amounts owing from one party hereto to the other party hereto, including, without limitation, prorations according to Section 2.6 hereof (but excluding amounts in respect of Section 2.2, Section 2.5, and Section 5 hereof that are determined or otherwise require adjustment after the date of the OTA Settlement Statement) shall be settled three (3) months after the Closing Date. If, thereafter, a party hereto determines that any further payment or adjustment is to be made, such party shall submit a statement to the owing party setting forth any and all such items, and the calculation of the amounts due hereunder. Such statement shall be submitted with appropriate backup materials. If amounts are owing from New Operator to Current Operator, New Operator shall have thirty (30) days from the date of receipt of such statement to tender payment to on behalf of Current Operator, or to question or dispute in writing any item thereon. If amounts are determined to be owing from Current Operator to New Operator, Current Operator shall have thirty (30) days from the date of receipt of such statement to tender payment to New Operator, or to question or dispute in writing any item thereon.

2.9 Medicare/Medicaid Reimbursements; Audits.

(a) Current Operator and New Operator understand that reimbursements from Medicare and/or Medicaid for items or services provided or rendered from or after the Closing

Date may continue to be issued to Current Operator for a period of time. Current Operator agree to comply with the terms of Section 2.5 with respect to any reimbursements received by Current Operator from Medicare and/or Medicaid for items or services provided or rendered from or after the Closing Date, subject to the terms of the MidCap Agreement. Notwithstanding anything to the contrary contained herein, with respect to any audit, interim payment, final payment, or other action relating to Current Operator's business for the period prior to the Closing Date by any state regulatory agency, the Centers for Medicaid and Medicare Services, Blue Cross Blue Shield or its applicable state affiliate, Health Care Service Corporation, or any other third party payer (any such action, a "***Current Operator Payer Audit***"), in no event will New Operator make any assumption or take any action, which results in any claim, adjustment, or offset against amounts otherwise reimbursable to Current Operator for services provided prior to the Closing Date. New Operator agrees to promptly notify Current Operator upon receipt of any notice of a Current Operator's Payer Audit. If, and to the extent that, New Operator is responsible for taking any action, or making any filing, pursuant to a Current Operator Payer Audit, New Operator agrees to keep Current Operator reasonably informed and will coordinate with Current Operator any such actions taken or filings made by New Operator.

(b) In the event any Governmental Entity making payments for services performed at the Facility or vested with audit authority, makes any recoupment on or after the Closing Date for an alleged overpayment, underpayment, or adjustment of any tax assessment or Medicaid or Medicare reimbursement applicable for any period prior to the Closing Date (collectively, a Recapture Claim"), then each party agrees to notify the other within five (5) business days. Both parties shall be entitled to contest or pursue such Recapture Claim (to the extent permitted by applicable law/regulation); provided, however, that New Operator shall be allowed the opportunity to participate in such contest, and be included in all meetings, and be provided with copies of all audit adjustments and workpapers. Current Operator and New Operator shall cooperate to resolve such audit to their mutual satisfaction. In the event one party fails to pursue any issue or issues raised in any such appeal, the other party may, at its own expense, pursue an appeal of such issue or issues, and the non-appealing party will cooperate fully with appealing party in such appeal, including by providing copies of any documentation required to substantiate costs reported on the cost reports. In the event either party's funds are withheld from, or credited to, the other party as the result of a Recapture Claim, then the receiving or crediting party shall pay such amounts to the other party within five (5) days following demand therefore.

2.10 Transfer of Resident Records; Access to Records. Subject to all applicable laws, on the Closing Date, Current Operator shall transfer to New Operator, by leaving at the Facility, the records of all residents in the Facility (the "***Transferred Records***"); provided, however, that (a) Current Operator shall be entitled to keep such copies of all Transferred Records, as it may deem necessary, and (b) New Operator shall not have any claim or right of indemnity against Current Operator arising from the condition or quality of the Transferred Records, including claims based on their completeness or accuracy. From and after the Closing Date, New Operator shall be solely responsible for caring for the residents of the Facility in accordance with their contractual rights, and in accordance with law. Subsequent to the Closing Date, New Operator shall allow Current Operator and their respective affiliates, agents, and representatives, at Current Operator's sole cost and expense, to have unfettered access to (upon reasonable prior notice), and to make copies of, the Transferred Records, and any other records that are in New Operator's possession on the Closing Date relating to the operations of the business at the Facility prior to the Closing Date

(“**Operational Records**”), to the extent reasonably required by Current Operator. New Operator will preserve the existence and maintain the confidentiality of the resident records and the other the Transferred Records and the Operational Records, to the extent required by law and in accordance with any applicable any Government and/or private third party provider agreements, but in no event less than seven (7) years.

2.11 Deposits. All deposits, if any, held by a utility, or other party to an executory contract, shall remain the property of Current Operator, and New Operator shall be required to post its own replacement security deposits, including, but not limited to, any security deposits required under any Assigned Agreements (as herein defined) assumed by New Operator.

2.12 Compliance with Laws. The parties shall comply in all material respects with all applicable laws, and with all applicable rules and regulations of all governmental authorities, in conjunction with the execution, delivery, and performance of this Agreement and the transactions contemplated hereby.

2.13 Accounts Payable. New Operator agrees to assume only those accounts payable for supplies and other goods or equipment received at the Facility on and subsequent to the Closing Date, and for services rendered and performed on and subsequent to the Closing Date. Unless otherwise specifically assumed in writing by New Operator, New Operator shall not be responsible or liable for any accounts payable, including, without limitation, trade payables, utility bills, vendor payables, or other expenses which accrued prior to the Closing Date, except to the extent New Operator continues to receive or utilize such services, supplies, goods, or equipment following the Closing Date. Notwithstanding the foregoing, New Operator agrees to ensure all services, supplies, goods, or equipment received at the Facility on and subsequent to the Closing Date are under its own accounts, and New Operator shall maintain responsibility for paying for the same.

2.14 Taxes. New Operator shall not assume, and shall not be liable for, and Current Operator shall indemnify New Operator for, any debts, liabilities, or obligations of the Current Operator for any Taxes applicable to, or assessed against, the Current Operator, the Property, or the assets or business of the Current Operator for (a) any taxable year or period ending on or prior to the Closing Date, and (b) in the case of any Straddle Period, the portion of the Straddle Period prior to the Closing Date. New Operator shall be liable for, and New Operator shall indemnify Current Operator for, any debts, liabilities, or obligations of New Operator for any taxes applicable to, or assessed against, the New Operator, or the assets or business of the New Operator for (aa) any taxable year or period beginning after the Closing Date, and (bb) in the case of any Straddle Period, the portion of the Straddle Period beginning after the Closing Date. “**Straddle Period**” means any taxable year or period that includes, but does not end on, the Closing Date. For purposes of this Agreement, whenever it is necessary to determine the liability for Taxes in respect of the Current Operator or New Operator for a Straddle Period, the determination of such Taxes for the portion of the Straddle Period ending on and including, and the portion of the Straddle Period beginning after, the Closing Date shall be determined as follows: (1) in the case of property and similar ad valorem taxes and any other taxes not described in clause (2) below, by multiplying the amount of such taxes for the entire Straddle Period by a fraction, the numerator of which is the number of days during the Straddle Period that fall on or prior to the Closing Date and the denominator of which is the number of days in the entire Straddle Period, and (2) in the case of income taxes, sales

and similar taxes, employment taxes, and other taxes that are readily apportionable based on an actual or deemed closing of the books, by assuming that the Straddle Period consisted of two taxable years or periods, one which ended at the close of the Closing Date and the other which began at the beginning of the day immediately following the Closing Date, and items of income, gain, deduction, loss, or credit of the Current Operator or the New Operator for the Straddle Period shall be allocated between such two taxable years or periods on a “closing of the books basis” by assuming that the books of the Current Operator or New Operator, as applicable, were closed at the close of the Closing Date; provided, however, that exemptions, allowances, or deductions that are calculated on an annual basis, such as the deduction for depreciation, shall be apportioned between such two taxable years or periods on a daily basis.

2.15 Regulatory Inspections; Surveys. Current Operator shall be responsible for, and shall bear all costs and expenses incurred in connection with, any requirements of regulatory inspections or surveys (a) completed prior to the Closing Date, or (b) commenced, but not completed prior to, the Closing Date, except in such case Current Operator shall only be responsible to the extent penalties are assessed for dates prior to the Closing Date. New Operator shall be responsible for and shall bear all costs and expenses incurred in connection with any requirements of regulatory inspections or surveys conducted on or after the Closing Date. Current Operator shall be responsible and obligated for all costs and expenses of correction if upon a change of ownership any life safety code waivers currently in effect are withdrawn or cancelled.

2.16 Delivery of Inventory. On the Closing Date, Current Operator shall deliver to New Operator, by leaving at the Facility, the Supplies located at the Facility, as of the Closing Date; and it shall be Current Operator’s responsibility to ensure that it has delivered, prior to Closing, such amounts sufficient to comply with applicable law and/or regulation as of the Closing Date.

2.17 Assignment of Contracts.

(a) Promptly following the Effective Date, Current Operator shall make available for review by New Operator copies or a model of the care or residency agreements pertaining to residents of the Facility (the “**Care Agreements**”) and Current Operator will provide copies of agreements and contracts relating to the operations of the Facility (the “**Facility Operating Agreements**”).

(b) Thirty (30) days prior to the Closing Date, New Operator shall identify in writing all of those Facility Operating Agreements which are assignable by Current Operator to New Operator and which New Operator elects to assume (any agreements so assigned are referred to collectively herein as the “**Selected Facility Agreements**,” and all of the Facility Operating Agreements which are not Selected Facility Agreements are “**Rejected Agreements**”). The election of the Selected Facility Agreements shall be in writing (“**Notice of Selected Facility Agreements**”) delivered to Current Operator provided not later than thirty (60) business days prior to the Closing Date. In the event New Operator fails to deliver the Notice of Selected Facility Agreements within such period, it shall be deemed to be New Operator’s election NOT to assume any of the Facility Operating Agreements.

(c) Current Operator may, at its election and at any time after deliver of the Notice of Selected Facility Agreements, provide notices of intent to terminate any Facility Operating Agreements which New Operator has not already identified on such Notice.

(d) On the Closing Date, Current Operator shall and hereby does assign to New Operator, and New Operator shall and hereby does assume, all of the Care Agreements.

(e) On the Closing Date, Current Operator shall and hereby does assign to New Operator, and New Operator shall and hereby does assume the Selected Facility Agreements (together with the Care Agreements, the “**Assigned Agreements**”).

(f) Current Operator shall provide commercially reasonable cooperation to New Operator in connection with New Operator’s arrangement of the assignment and assumption of all Selected Facility Agreements (and New Operator shall be primarily responsible for making such arrangements). Current Operator shall retain responsibility for the termination or transfer of Rejected Agreements, however, New Operator shall reimburse Current Operator for any termination penalties due in connection with the termination of any Rejected Agreements if New Operator has failed to deliver a Notice of Selected Facility Agreements within the time frame required in Section 2.17(b).

(g) Current Operator shall be responsible for any and all amounts accrued under the Facility Operating Agreements including any costs related to the termination of the same, subject to other terms of this Section 2.17. New Operator acknowledges and understands that Current Operator intends to provide notices of termination of the Facility Operating Agreements effective as of the Outside Date and that any failure of the Closing to occur on the Outside Date for any reason other than Current Operator’s material breach of this Agreement may adversely affect the continued business operations of the Facility and/or cause Current Operator to incur additional costs and expenses. Accordingly, New Operator hereby acknowledges and agrees that, upon any failure of the Closing to occur on or before the Date for any reason other than Current Operator’s material breach of this Agreement, New Operator shall immediately reimburse Current Operator, upon request delivered with reasonable documentation of the amounts owing, any amounts owed by Current Operator under any of the Facility Operating Agreements as (i) penalties for early termination of any of the Rejected Agreements, or (ii) additional costs incurred in connection with re-initiating services for any period following the Outside Date (such amounts collectively, the “**Additional Transfer Costs**”).

(h) Payments under the Assigned Agreements shall be prorated through the Closing Date in accordance with the terms of Section 2.6 above.

(i) Except as otherwise specifically set forth in this Agreement, any Assigned Agreements or other business records being acquired by New Operator pursuant to this Agreement shall be delivered by leaving all such records at the Facility on the Closing Date.

2.18 Remittances, Mail and Other Communications. All remittances, mail, and other communications received by Current Operator, or its affiliates, at any time after the Closing Date, relating to the operations of the Facility following the Closing Date, shall be promptly turned over to New Operator. All remittances, mail, and other communications received by New Operator, or

its affiliates, relating to the operations of the Facility prior to the Closing Date, shall be promptly turned over to Current Operator.

2.19 Interim Operations. During the period from the Effective Date to the Closing Date (the “*Pre-Closing Period*”), except as otherwise (a) permitted or provided in this Agreement, (b) consented to by New Operator (such consent not to be unreasonably withheld), or (c) reasonably requested in writing by New Operator, Current Operator shall operate the Facility in the ordinary course and in a manner substantially consistent with past practices, including, without limitation, with respect to any marketing efforts, and during said period shall:

- (a) refrain from transferring, selling, leasing, or conveying (or listing for transfer, sale, lease, or conveyance) any of the Assigned Assets or Assignable Licenses and Permits;
- (b) keep in effect Current Operator’s existing policies of public liability, professional liability, and hazard and extended coverage insurance, insuring the Facility and employees to the extent required by law, or required under the Current Operator’s lease with the Owner;
- (c) perform all material obligations under the Assigned Agreements;
- (d) continue to market the Facility and use commercially reasonable efforts to maintain census consistent with past practice;
- (e) maintain their normal inventory of Supplies, which shall be in quantities consistent with legal requirements and past practice for operation of the Facility;
- (f) without limiting the foregoing, to the extent depleted or replaced in the ordinary course, restock and replenish any portion of the Supplies used during the Pre-Closing Period with inventory of comparable quality and consistent with past practice;
- (g) not increase the wages, salaries, or benefits of the Employees, except in the ordinary course of business and consistent with past practice; and
- (h) comply with all labor agreements affecting the Facility in all material respects.

During the Pre-Closing Period, Current Operator shall promptly notify New Operator in writing of any fact, circumstance, event, or action, the existence, occurrence, or taking of which: (1) has had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, or (2) has resulted in, or could reasonably be expected to result in, the failure of any of the requirements set forth in this Section 2.19 to be satisfied. During the Pre-Closing Period, Current Operator (i) shall not, without the prior written consent of New Operator, enter into any transaction or contractual obligation that would materially adversely impact Current Operator’s ability to perform its respective obligations under this Agreement; (ii) shall, prior to the end of each calendar month, provide New Operator with a Resident Census Report detailing the performance of the applicable Facility for the previous calendar month; and (iii) shall not transfer any Employees and shall not transfer any residents to any business or facility owned or controlled by an affiliate of Current Operator, unless required to comply with legal requirements.

2.20 Cooperation. New Operator shall cooperate, in good faith, with Current Operator, with respect to any suit, claim, governmental investigation, or other legal or administrative proceeding involving Current Operator and the Facility that is outstanding from and after the Closing Date, including, without limitation, promptly providing Current Operator with such information and documentation regarding the Facility and the operation thereof that is in the possession or control of New Operator, and as is required in connection with the foregoing.

2.21 Confidentiality.

(a) New Operator agrees that, between the Effective Date and the Closing Date (or thereafter for one (1) year if the Closing does not occur), without the prior written consent of Current Operator, New Operator shall not disclose to any third party any information to be provided or previously provided by, or on behalf of, Current Operator, related to the operations of the Facility or otherwise provided in connection with the transactions contemplated herein (the “**Current Operator’s Confidential Information**”), except as provided herein or as required by law. New Operator agrees that the Current Operator’s Confidential Information shall be used solely for the purposes of New Operator’s investigation of the Facility, the operation of the Facility, facilitating an orderly transition with respect to operations of the Facility, and/or providing continuing patient care for residents of the Facility, and the same will not in any way be used in a manner that is directly or indirectly detrimental to Current Operator. In addition, New Operator agrees to disclose Current Operator’s Confidential Information only to New Operator’s agents, consultants, and representatives who have a legitimate need to know such information and who shall: (i) be advised by New Operator of the confidentiality provisions of this Agreement; and (ii) agree in writing to be bound by the confidentiality provisions hereof. New Operator shall be responsible for any breach of this Agreement by any of New Operator’s agents, consultants and representatives (including employees who, subsequent to the first date of disclosure of Current Operator’s Confidential Information hereunder, become former employees, if disclosed during term of employment). New Operator agrees, at its sole expense, to take all reasonable measures, including, but not limited to, court proceedings, to restrain New Operator’s agents, consultants and representatives (and former employees) from unauthorized disclosure or use of Current Operator’s Confidential Information.

(b) New Operator hereby acknowledges that if any breach of this section occurs, Current Operator would be irreparably and immediately harmed and could not be made whole by monetary damages. Accordingly, in addition to any other remedy to which they may be entitled in law or in equity, Current Operator shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and/or to compel specific performance of this section, and New Operator shall not oppose the granting of such relief on the basis that monetary damages are adequate. Following a breach by New Operator, New Operator also agrees to reimburse Current Operator for all reasonable costs and expenses, including reasonable attorney’s fees, incurred by it in enforcing New Operator’s or New Operator’s representatives’ obligations under this section.

(c) Current Operator’s Confidential Information does not include all, or any portion of, information which (i) becomes generally available to the public, other than as a result of a disclosure by New Operator or New Operator’s representatives, or (ii) was or becomes rightfully available to New Operator on a non-confidential basis from a source other than Current Operator or Current Operator’s representatives; provided that such source is not prohibited from disclosing

such information to New Operator by a contractual, legal, or fiduciary obligation to Current Operator or Current Operator's representatives.

(d) Notwithstanding any other provision of this Agreement, the terms of this section related to Current Operator's Confidential Information shall survive any termination or expiration of this Agreement.

2.22 Non-Solicitation.

(a) During the Pre-Closing Period and for a period of twelve (12) months commencing on the Closing Date, Current Operator and Guarantor shall not, and shall not permit any of their respective affiliates who had direct contact with any of the Retained Employees prior to Closing to: (i) solicit any Retained Employee(s) or encourage any such Retained Employee(s) (or Employees during the Pre-Closing Period) to leave such employment; or (ii) solicit any resident of the Facility. In the event that a Retained Employee separates from employment with New Operator during the first nine (9) months following the Closing Date, Current Operator shall be permitted to solicit such Retained Employee after a period of ninety (90) days following the Retained Employee's separation date. Nothing in this Agreement shall restrict Current Operator or Guarantor from conducting general mass solicitations of employment and generalized employee searches through headhunter/search firms (in either case not targeted, directly or indirectly, at the Retained Employees) and hiring any individual who responds to any such general mass solicitation or generalized employee search.

(b) Current Operator and Guarantor acknowledge that a breach or threatened breach of Section 2.22(a) would give rise to irreparable harm to New Operator, for which monetary damages would not be an adequate remedy, and hereby agree that in the event of a breach or a threatened breach by Current Operator or Guarantor 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 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). Current Operator and Guarantor acknowledge that the restrictions contained in Section 2.22(a) 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.

SECTION 3 REPRESENTATIONS AND WARRANTIES OF NEW OPERATOR

New Operator hereby makes the representations and warranties indicated below to Current Operator on the Effective Date and, subject to Section 1.4(b)(2), on the Closing Date:

3.1 Authority, Validity and Binding Effect. New Operator has all necessary corporate/partnership/limited liability company (as the case may be) power and authority to operate and lease the Facility and to carry on its business, as it is now being conducted. New Operator has all necessary corporate/partnership/limited liability company (as the case may be) power and authority, to enter into this Agreement, and to execute all documents and instruments referred to herein or contemplated hereby, and all necessary action has been taken to authorize the

individuals executing this Agreement on each of its behalf to do so. This Agreement has been duly validly executed and delivered by New Operator and is enforceable against New Operator in accordance with its terms.

3.2 No Defaults. The execution and delivery of this Agreement, and any documents contemplated hereby by New Operator, and the performance of its obligations hereunder and thereunder, does not and will not:

(a) conflict with, or result in any material breach of, the provisions of, or constitute a default under, the articles of formation and operating agreement of New Operator (or, if New Operator is not a limited liability company, the charter or other organizational documents and governing stockholder agreements);

(b) violate any material license, authorization, or permit, or other material agreement or instrument to which any New Operator is a party, unless (i) such violation will be cured prior to the Closing Date, or (ii) such license, authorization, permit, agreement, or instrument will be terminated prior to the Closing Date, as a result of the transactions contemplated by this Agreement; or

(c) constitute a violation of any applicable material resolution, rule, regulation, law, statute, or ordinance of any administrative agency or governmental authority, or of any judgment, decree, writ, injunction, or order of any court to which New Operator is subject, or by which its assets are bound, or any credit agreement or other financing arrangement to which New Operator, or any of their respective affiliates, is a party.

3.3 No Litigation. There are no actions, suits, claims, governmental investigations, or other legal or administrative proceedings, or any orders, decrees, or judgments in progress, pending or in effect, or to the knowledge of New Operator, threatened, against New Operator, that challenge or seek to prevent, enjoin, or otherwise delay the transactions contemplated by this Agreement.

3.4 Accuracy of Representations and Warranties. Each representation and warranty of New Operator hereunder is true, complete, and correct in all respects as of the Effective Date and the Closing Date.

SECTION 4 REPRESENTATIONS AND WARRANTIES OF CURRENT OPERATOR

Current Operator hereby makes the representations and warranties indicated below to New Operator on the Effective Date and, subject to Section 1.4(a)(2), on the Closing Date:

4.1 Authority, Validity and Binding Effect. Current Operator is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Ohio. Current Operator is duly qualified to do business in Florida and is not required to be licensed or qualified in any other jurisdiction. Current Operator has all necessary limited liability company power and authority to carry on its business, as it is now being conducted. Current Operator has all necessary limited liability company power and authority to enter into this Agreement, and to execute all documents and instruments referred to herein or contemplated hereby, and all necessary action has been taken to authorize the individuals executing this Agreement to do so. This Agreement has

been duly and validly executed and delivered by Current Operator, and is enforceable against Current Operator in accordance with its terms. Current Operator has no subsidiaries.

4.2 No Defaults. The execution and delivery of this Agreement, and any documents contemplated hereby, by Current Operator, and the performance of their obligations hereunder, does not and will not:

(a) conflict with, or result in any material breach of, the provisions of, or constitute a default under, the articles of formation or operating agreements of Current Operator;

(b) violate any material license, authorization, or permit or other material agreement or instrument to which Current Operator is a party, unless (i) such violation will be cured prior to the Closing Date, or (ii) such license, authorization, permit, agreement, or instrument will be terminated prior to the Closing Date, as a result of the transactions contemplated by this Agreement; or

(c) constitute a violation of any applicable material resolution, rule, regulation, law, statute, or ordinance of any administrative agency or governmental authority, or any judgment, decree, writ, injunction, or order of any court to which Current Operator is subject or by which its assets are bound, or any credit agreement or other financing arrangement to which Current Operator is a party.

4.3 No Litigation. There are no actions, suits, claims, governmental investigations, or other legal or administrative proceedings, or any orders, decrees, or judgments in progress, pending, or in effect, or to the knowledge of Current Operator, threatened, against Current Operator, that challenge or seek to prevent, enjoin, or otherwise delay the transactions contemplated by this Agreement.

4.4 Labor Matters. Except as set forth on Schedule 4.4, neither Current Operator nor any ERISA Affiliate is, or has ever been, a party to any collective bargaining agreement, employment agreement or other labor contract, and there are no pending or, to Current Operator's knowledge, threatened labor disputes at the Facility including, but not limited to, any strike, slowdown, picketing, work stoppage, organizational activities, employee grievances or unfair labor practice charges affecting each Facility. No Employee is, to Current Operator's knowledge, a party to or bound by any contract, or subject to any judgment that may interfere with the use of such Employee's best efforts to promote the interests of the Facility, may conflict with the operation of the Facility, this Agreement or related agreements, or that has had or could reasonably be expected to have a material adverse effect on the Assets and the operations of the Facility. Current Operator has complied in all material respects with all applicable state and federal laws governing wage, hour, payroll and all other employment and labor matters.

4.5 Environmental. Except for medical waste generated and disposed of in the ordinary course of business and in compliance with applicable laws, Current Operator has not generated, stored or disposed of any Hazardous Materials on the Properties, and there is not currently any Hazardous Materials on the Properties. Current 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 Property. Any and all environmental permits, licenses or approvals required by any applicable law pertaining to the Facility are listed on **Schedule 4.5**.

4.6 **ERISA and Benefit Plans.**

(a) Except as set forth on **Schedule 4.6(a)**, neither Current Operator nor any ERISA 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”) as they relate to the Employees.

(b) Neither Current 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 Current Operator nor any ERISA Affiliate has incurred any withdrawal liability, nor do any of them have any liability for any potential withdrawal liability. Neither Current 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 Current Operator or any ERISA Affiliate, regardless of whether such Employee Plan relates to the Employees.

(c) 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).

(d) Current 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 Current Operator has complied with all its obligations thereunder, including all reporting obligations, such that Current Operator is not and will not be subject to any assessable payments under Code Section 4980H or other penalties under the Code or other applicable laws.

4.7 Health Care Representations.

(a) Current Operator has not received any notice from any Governmental Entity, accrediting body, or other applicable authority of (i) any violation, non-renewal, suspension or revocation of any such licenses or accreditations that has not been dismissed or cured, or (ii) any failure by Current Operator to obtain any material licenses or accreditations required by any applicable law for the ownership, maintenance, use, occupancy or operation of the Facility as currently owned or operated.

(b) The Facility is and shall be, as of 11:59 p.m. on the day prior to the Closing Date, licensed by the applicable Governmental Entity as a skilled nursing facility, with the same number and type of units and beds as are operating at the Facility on the Effective Date. Such licenses are and shall on the Closing Date be unrestricted, unconditional, in good standing and in full force and effect and subject to no waivers or limitations. Current Operator has operated the Facility in compliance with all laws necessary to operate the Facility as licensed by the applicable Governmental Entity.

(c) Except as disclosed on Schedule 4.7(c), there are no outstanding inspections, surveys, or plans of correction, and no deficiencies exist in respect of any such inspections, surveys or plans of correction, nor has Current Operator been cited for substandard quality of care. 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 Current Operator's knowledge, 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) 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 Authority or been placed on any "watch list" or other list for consideration for a SFF program within the three (3) year period immediately preceding the Effective Date, (ii) been subject to enhanced penalties by the OIG or otherwise, (iii) has 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 Effective Date.

(e) Except as set forth on Schedule 4.7(e), neither Current Operator nor any current director, officer, or managing employee of Current Operator, 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 neither the Facility nor the Assets are in any way subject to or liable with respect to any such corporate integrity agreement, corporate compliance agreement, or other settlement agreement). Neither Current Operator nor any current director, officer, contractor, vendor, or employee of Current 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.

(f) The Facility is certified for participation in the Medicare and Medicaid programs and Current Operator has a provider agreement with such government reimbursement program (collectively, the “**Provider Agreement**”). The Provider Agreement is in full force and effect, and Current Operator does not have any knowledge of any fact or circumstance that would cause any such Provider Agreement not to remain in force or be renewed on and after Closing. The Provider Numbers are active 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 each Current Operator’s knowledge, threatened, involving any of the government reimbursement program or any other third-party payor programs, with respect to the Facility, and Current Operator has no reason to believe that any such proceedings, audits, investigations, or surveys are pending, threatened, or imminent.

(g) The cost reports for the Facility for the last six (6) years prior to the Effective Date have been prepared and filed in material compliance with all applicable laws and any applicable Provider Agreement.

(h) Except as set forth on **Schedule 4.7(h)**, neither Current Operator nor the Facility (i) 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.

(i) Current Operator has not received written notice, and Current Operator does not have any knowledge, (i) that any actions will or may be taken with respect to any of the foregoing representations and warranties that could result in a violation of, or action described under, any of the foregoing representations and warranties in this **Section 4.8**, (ii) that Current Operator or the Facility is under investigation or review with respect to any of the subjects described in the foregoing representations and warranties in this **Section 4.8**, or (iii) of the existence of any circumstances or occurrences that could be reasonably believed to lead to a violation of, or action described under, any of the foregoing representations and warranties in this **Section 4.8**.

4.8 **Contracts**. True, correct, and complete copies of all of the Care Agreements and Facility Operating Agreements have been, or will be, made available to New Operator to the extent such Care Agreements and Facility Operating Agreements are in Current Operator’s possession or control. Except as set forth in **Schedule 4.8(a)**, (i) each of the Care Agreements and Facility Operating Agreements is valid, binding and enforceable in accordance with its terms except as limited by bankruptcy, insolvency, fraudulent conveyance, moratorium, liquidation, reorganization or other similar laws affecting the enforcement of creditors’ rights in general, (ii) neither Current Operator nor, to Current Operator’s knowledge, the other party to each of the Assigned Agreements is in material breach or default, and, no event has occurred which with notice or lapse of time would constitute such a material breach or default, or permit termination, modification or acceleration under any Assigned Agreements to which the Current Operator is a party, (iii) neither a Current Operator nor, to each Current Operator’s knowledge, the other party

to each of the Assigned Agreements have repudiated any material provision of such Assigned Agreements.

(a) Current Operator has the power and authority to assign each of the Assigned Agreements to which Current Operator is a party to New Operator, subject to any consent requirements under such Assigned Agreements.

4.9 Broker. Except as set forth on **Schedule 4.9**, Current Operator has not engaged, nor is Current Operator liable to pay any fees, costs or commissions to, any broker, finder, agent or financial advisor in connection with the transactions contemplated hereby.

4.10 Compliance with Applicable Laws. To Current Operator's knowledge, the Facility is being used and operated by Current Operator in compliance in all material respects with applicable and material statutes, laws, regulations, rules, licensing requirements, ordinances, orders or permits of any kind whatsoever affecting the Facility or any part thereof, and any rules or regulations promulgated thereunder, but not including any Environmental Laws.

4.11 Intangible Property. Except for commercial software licensed for use, Current Operator owns the entire right, title and interest in and to all intangible property used in the operation of the Facility (the "***Intangible Property***"). There have not been and are no pending or, to Current Operator's knowledge, threatened proceedings or litigation or other adverse claims affecting or with respect to the Intangible Property. There is no reasonable basis upon which a claim may be asserted against Current Operator for infringement of any domestic or foreign letters patent, patents, patent applications, patent licenses and know-how licenses, trade names, trademark registrations and applications, common law trademarks, service marks, service mark registrations or applications, [internet domain name registrations or applications], copyrights, copyright registrations or applications, trade secrets or other confidential proprietary information.

4.12 PPP Loans. Current Operator represents and warrants that it has not received any Paycheck Protection Program ("PPP") loans or similar governmental aid or deferred any payroll taxes in connection therewith.

4.13 Knowledge. Where any representation or warranty contained in this Agreement is expressly qualified by reference to "Current Operator's knowledge," "the knowledge of Current Operator" or similar qualifications, such knowledge shall be to the actual knowledge of the Facility's administrator.

4.14 Accuracy of Representations and Warranties. Each representation and warranty of Current Operator hereunder is true, complete, and correct in all respects as of the Effective Date.

Except as expressly set forth in this Agreement, Current Operator makes no representation, warranty, or covenant with respect to the Facility, the operations of Current Operator's business, the assets to be conveyed hereunder, or any matter, thing or event related to the foregoing. Without limiting the generality of the foregoing and except as otherwise specifically set forth in this Agreement, Current Operator will convey and New Operator will accept the Assigned Assets conveyed hereunder in their "AS-IS" "WHERE-IS" condition as of the Effective Date, subject to normal wear and tear. Current Operator shall have no obligation to replace any Assigned Asset to be conveyed hereunder, to repair any damage to or defect in the Facility or the Assigned Asset to

be conveyed hereunder, or otherwise to remedy any matter affecting the condition of the Facility, Assigned Asset and New Operator acknowledges that it has had sufficient opportunity to perform its own inspection.

SECTION 5 INDEMNIFICATION

5.1 Survival of Representations and Warranties. Without limiting the parties' obligations under Section 2.5 with respect to Accounts Receivable and payment and collection and remittances thereof or any of the other covenants set forth herein, all warranties, and representations, and the indemnification rights associated therewith, in this Agreement, shall survive the execution of this Agreement for a period of eighteen (18) months (the "***Survival Period***"); provided that claims for breaches of the representations and warranties set forth in Section 4.1, Section 4.2 and Section 4.7 and claims made by New Operator under Section 5.3(a) and Section 5.3(c) shall survive for six (6) years. The parties hereto in executing and in carrying out the provisions of this Agreement are relying solely on the representations, warranties, and agreements contained in this Agreement, and not upon any representation, warranty, agreement, promise, or information, written or oral, made by any person other than as specifically set forth herein or therein.

5.2 Agreement to Defend. In the event of any action, suit, proceeding, or investigation of the nature specified in Sections 5.3, 5.4, or 5.5 hereof is commenced, all of the parties hereto agree to cooperate and use their commercially reasonable best efforts to defend against and respond thereto.

5.3 Indemnification by Current Operator. Subject to the limitations set forth in this Section 5, Current Operator shall indemnify, exculpate, and hold New Operator, and its partners, members, directors, managers, officers, employees, and agents (collectively, the "***Acquiring Indemnified Parties***"), harmless from and against, and will promptly defend Acquiring Indemnified Parties from, and will reimburse Acquiring Indemnified Parties, to the extent of, any and all losses, damages, costs, expenses, liabilities, obligations, and claims of any kind (including, without limitation, costs of investigation, reasonable attorneys' fees, and other reasonable legal costs and expenses actually incurred), which any of the Acquiring Indemnified Parties may at any time suffer or incur, or become subject to, as a result of:

(a) any claim brought by a third party against an Acquiring Indemnified Party in connection with a Retained Liability;

(b) any misrepresentation or inaccuracy in, or any breach of, any of the representations and warranties made by Current Operator in this Agreement; and

(c) any failure by Current Operator to carry out, perform, satisfy, and discharge any of its covenants, agreements, liabilities, or obligations under this Agreement.

Notwithstanding anything to the contrary herein, Current Operator's indemnity obligations, and any and all other liabilities to New Operator or any of the other Acquiring Indemnified Parties, including in tort or in contract, shall be limited to actual damages suffered by New Operator or any of the other Acquiring Indemnified Parties in excess of any insurance proceeds available and actually received as a result of such liabilities, and Current Operator shall not be responsible for any lost profits or any speculative, incidental, indirect, consequential, special, or punitive damages.

5.4 Indemnification by New Operator. Subject to the limitation set forth in this Section 5, New Operator shall indemnify, exculpate, and hold Current Operator, and its respective partners, directors, officers, employees, and agents (collectively, “**Current Operator’s Indemnified Parties**”), harmless from and against, and will promptly defend Current Operator’s Indemnified Parties from, and will reimburse Current Operator’s Indemnified Parties, to the extent of, any and all losses, damages, costs, expenses, liabilities, obligations, and claims of any kind (including, without limitation, costs of investigation, reasonable attorneys’ fees, and other reasonable legal costs and expenses actually incurred), which any of the Current Operator’s Indemnified Parties may at any time suffer or incur, or become subject to, as a result of:

(a) any claim brought by a third party against a Current Operator Indemnified Party in connection with an Assumed Liability (as used herein, the term “Assumed Liability” shall refer only to any liability, obligation or claim arising in connection with (A) the performance of New Operator’s obligations under the Assigned Agreements on and following the Closing Date and/or New Operator’s operation of the Facility on and following the Closing Date);

(b) any material misrepresentation or inaccuracy in, or any breach of, any of the representations or warranties made by New Operator in, or pursuant to, this Agreement; and

(c) any failure by New Operator to carry out, perform, satisfy, and discharge any of their covenants, agreements, undertakings, liabilities, or obligations under this Agreement.

Notwithstanding anything to the contrary herein, New Operator’s indemnity obligations, and any and all other liabilities to Current Operator or any of the other Current Operator’s Indemnified Parties, including in tort or in contract, shall be limited to actual damages suffered by Current Operator or any of the other Current Operator’s Indemnified Parties in excess of any insurance proceeds available and actually received as a result of such liabilities, and New Operator shall not be responsible for any lost profits or any speculative, incidental, indirect, consequential, special, or punitive damages.

5.5 Indemnification Procedures: All claims for indemnification by any Acquiring Indemnified Parties or Current Operator’s Indemnified Parties (each, an “**Indemnified Party**”) under this Section 5 shall be asserted and resolved as follows:

(a) If an Indemnified Party intends to seek indemnification under this Section 5, it shall promptly notify the party from which it is seeking indemnification hereunder (the “**Indemnifying Party**”), in writing, of such claim, which such notice shall include a description of the facts underlying such claim, the provisions hereunder forming the basis for such claim, and a reasonable estimate of the amount of such claim. The failure to provide such notice will not affect any rights hereunder, except to the extent the Indemnifying Party is materially prejudiced thereby.

(b) If such claim involves a claim by a third party against the Indemnified Party, the Indemnifying Party may, within ten days after receipt of such notice and upon notice to the Indemnified Party, assume, with counsel reasonably satisfactory to the Indemnified Party, at the sole cost and expense of the Indemnifying Party, the settlement or defense thereof; provided, that the Indemnified Party may participate in such settlement or defense through counsel chosen by it at its sole expense. If the Indemnified Party determines, in good faith, that representation by the

Indemnifying Party's counsel of both the Indemnifying Party and the Indemnified Party may present such counsel with a conflict of interest, then the Indemnifying Party shall pay the reasonable fees and expenses of the Indemnified Party's counsel. Notwithstanding the foregoing, (i) the Indemnified Party may take over the control of the defense or settlement of a third-party claim at any time if it irrevocably waives its right to indemnity under this Section 5 with respect to such claim, and (ii) the Indemnifying Party may not, without the consent of the Indemnified Party, settle or compromise any action or consent to the entry of any judgment, such consent not to be unreasonably withheld. The Indemnified Party shall not pay or settle any such claim without the Indemnifying Party's consent, such consent not to be unreasonably withheld.

(c) If, and to the extent, any liabilities for which indemnification is sought is related to events or circumstances occurring both prior to and after the Closing Date, or are from both a cause that is indemnified and one that is not so indemnified, (i) the obligations of Current Operator hereunder shall extend only to liabilities attributable to events or circumstances occurring prior to the Closing Date, and to the indemnified event, circumstance, or cause, and (ii) the obligations of New Operator hereunder shall extend only to liabilities attributable to events or circumstances on and subsequent to the Closing Date, and to the indemnified event, circumstance, or cause.

(d) Claims must be brought within the Survival Period. Any claim to be asserted must be asserted in writing, and with reasonable specificity as to the facts forming a basis for such claim.

5.6 Guaranty. As an inducement to New Operator to enter into and consummate the transactions contemplated under this Agreement, Guarantor hereby absolutely, unconditionally, and irrevocably guarantees to New Operator the due and punctual payment of any and all amounts payable by Current Operator pursuant to Section 2.5(h), Section 2.9(b) and this Section 5 (the "**Guaranteed Obligations**"). This is a guarantee of payment and performance, and not merely of collection, and Guarantor acknowledges and agrees that, except as otherwise set forth herein, this guarantee is full and unconditional, and no release or extinguishments of Current Operator's obligations or liabilities (other than in accordance with the terms of this Agreement), whether by decree under bankruptcy law or otherwise, shall affect the continuing validity and enforceability of this guarantee. Guarantor agrees that performance of the Guaranteed Obligations by Guarantor shall be a primary obligation, and shall not be subject to any counterclaim, set off, abatement, deferment, or defense based upon any claim that Guarantor may have against New Operator. Guarantor agrees that performance of the Guaranteed Obligations by Guarantor 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 other than those set forth in this Agreement, whether or not Guarantor shall have any knowledge thereof, including, without limitation, (i) any voluntary or involuntary bankruptcy, assignment for the benefit of creditors, receivership, or similar events or proceedings with respect to Current Operator or Guarantor, as applicable, (ii) any voluntary or involuntary dissolution or roll-up of Current Operator, or (iii) 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 Current Operator or Guarantor, to the fullest extent permitted by law. Guarantor hereby waives, for the benefit of New Operator, any right to require New Operator, as a condition of payment or performance by Guarantor, to proceed against Current Operator or pursue any other remedies whatsoever and (b) to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded

by law that limit the liability of or exonerate guarantors or sureties. Guarantor understands that New Operator is relying on this guarantee in entering into this Agreement.

5.7 Exclusive Remedy. The rights of indemnification contained in this Agreement shall be the sole and exclusive remedy of the parties with regard to any and all liabilities, obligations, losses, damages, claims, activities and expenses (including, without limitation, attorneys' fees and court costs) that result or arise from or any breach or inaccuracy of any representation or warranty made by any party contain in, or related to, this Agreement.

SECTION 6 MISCELLANEOUS

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

6.2 Notices. All notices, requests, demands, and other communications required or permitted hereunder shall be in writing, and shall be sent by overnight commercial delivery service (provided a receipt is available with respect to such delivery), or mailed by first-class certified or registered mail, return receipt requested, postage prepaid. Notices sent via overnight commercial delivery service shall be effective on the day after mailing. Notices sent via first-class certified or registered mail shall be effective on the third day after mailing. A copy of any notice to a party must also be sent to that party's e-mail address listed below, but e-mail alone shall not constitute notice.

If to Current Operator or Guarantor:

Vero Beach Facility Operations, LLC
c/o Synergy Healthcare Services
800 Concourse Parkway S., Suite 200
Maitland, FL 32751
Attn: Legal Department

and

If to New Operator:

Vero Beach Operations, LLC
1000 Gates Avenue
Brooklyn, New York 11206
Attn: Sam Gutman
Email: SamG@citadelcarecenters.com

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

Ulmer & Berne LLP
1660 W. 2nd Street, Suite 1100
Cleveland, Ohio 44113
Attn: Daniel A. Gottesman, Esq.
Email: dgottesman@ulmer.com

or to such other person or address as any party hereto shall furnish to the other parties hereto in writing pursuant to this Section 6.2.

6.3 Payment of Expenses. In the event of any dispute or controversy arising out of this Agreement, including in connection with the interpretation of any term or condition of this Agreement, the prevailing party shall recover from the non-prevailing party all reasonable costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party.

6.4 Entire Agreement; Amendment; Waiver. This Agreement, together with the other agreements referred to herein, constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions, and preliminary agreements. This Agreement may not be modified or amended, except in writing signed by the parties hereto. No waiver of any term, provision, or condition of this Agreement, in any one or more instances, shall be deemed to be, or be construed as a further or continuing waiver of, any such term, provision, or condition, or as a waiver of any other term, provision, or condition, of this Agreement. No failure to act shall be construed as a waiver of any term, provision, condition, or rights granted hereunder.

6.5 Joint Venture; Third Party Beneficiaries. Nothing contained herein shall be construed as forming a joint venture or partnership between the parties hereto with respect to the subject matter hereof. Except as otherwise provided in Section 5, the parties hereto do not intend that any third party shall have any rights under this Agreement.

6.6 Representation by Counsel. The parties hereto acknowledge that they have been represented by independent legal counsel of their choosing throughout all of the negotiations which preceded the execution of this Agreement, and that each party has executed this Agreement with the consent and on the advice of such independent legal counsel. This Agreement is a negotiated document. As a result, any rule of construction providing for any ambiguity in the terms of this Agreement to be construed against the draftsperson of this Agreement shall be inapplicable to the interpretation of this Agreement.

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

6.8 Counterparts. This Agreement may be executed and delivered (including by facsimile transmittal, which for purposes of this Agreement shall be deemed to be an original signature) in

one or more counterparts and all such counterparts taken together shall constitute a single original Agreement.

6.9 Governing Law. This Agreement shall be governed by the laws of the state where the Facility is located, as to, including, but not limited to, matters of validity, construction, effect and performance but exclusive of such jurisdiction's conflicts of laws provisions.

6.10 Waiver of Jury Trial. EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION BROUGHT ON OR WITH RESPECT TO THIS AGREEMENT, INCLUDING TO ENFORCE OR DEFEND ANY RIGHTS HEREUNDER, AND AGREES THAT ANY SUCH ACTION SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

6.11 Termination.

(a) In the event that prior to the Closing the PSA is terminated pursuant to the terms and conditions set forth in the PSA, then this Agreement shall automatically terminate contemporaneously therewith.

(b) In the event of a material breach of this Agreement by either party that is not cured within ten (10) days of delivery of written notice of such breach, this Agreement may be terminated by the non-breaching party, upon which termination each of the parties hereto shall automatically be relieved of its respective obligations hereunder, except for obligations arising prior to such termination.

(c) In the event that the Closing has not occurred by May 1, 2022 (the "***Outside Date***"), then New Operator and Current Operator shall enter into the Management Agreement.

(d) The obligations of the parties which by their nature are intended to survive this agreement, including without limitation the parties' indemnity and confidentiality obligations, shall so survive.

6.12 Definitions. For purposes of this Agreement, the following terms shall have the following meanings (all terms used in this Agreement which are not defined in this paragraph shall have the meanings set forth elsewhere in this Agreement):

"Accounts Receivable" means any and all receivables, including, but not limited to, all receivables arising out of, resulting from, or in connection with, services and/or goods and materials provided to residents and patients, including all accounts receivable and rights to reimbursement from private pay patients, the Medicaid and Medicare programs, the Veteran's Administration, Blue Cross/Blue Shield, and other insurance carriers and third party payors, including whether billed or unbilled, or accrued or unaccrued; all third party cost report settlements; and all rights to payment, however evidenced or incurred, including, but not limited to, all rights to payment and/or reimbursement from and claims against (i) insurers of persons to whom the Facility provides services or goods, and (ii) any governmental authority; and all cash and non-cash proceeds and products of the foregoing, including, but not limited to, all proceeds of the sale or collection of the foregoing, cash and deposit accounts, whether now existing or hereafter arising, including any

unearned premiums, refunds, or returns on premiums, or any indemnity, warranty, or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing accounts.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Environmental Laws**” shall mean any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials, as now or at any time hereafter in effect.

“**ERISA Affiliate**” means each trade or business (whether or not incorporated) which together with Current Operator is or ever was treated as a single employer under Section 414(b), (c), (m), (o) or (t) of the Code.

“**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**” shall mean any toxic or hazardous waste, pollutants or substances listed, defined, designated, or classified as such, or otherwise determined to be such, under or pursuant to any Environmental Law including, without limitation, asbestos, PCB’s, petroleum products and by products, substances defined or listed as: “Hazardous Substances” or “Toxic Substances” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA.”) as amended, 42 U.S.C. § 9601, et seq., “Hazardous Materials” in the Hazardous Materials Transportation Act, 49 U.S.C. § 1802, et seq., “Hazardous Waste” in The Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., any chemical substance or mixture regulated under the Toxic Substance Control Act of 1976, as amended, 15 U.S.C. § 2061, et seq., any “Toxic Pollutant” under the Clean Water Act, 33 U.S.C. §125 1, et seq., as amended, any “Hazardous Air Pollutant” under the Clean Air Act, 42 U.S.C. § 7401, et seq., and any hazardous or toxic substance or pollutant regulated under any other applicable federal, state or local Environmental Laws.

“**Material Adverse Effect**” means any event, fact, change, development or occurrence, individually or in the aggregate, that has had or would reasonably be expected to have a material and adverse effect on (a) the operations, condition (financial or otherwise) or results of operations of Current Operator, the Assigned Assets or the Facility taken as a whole, (b) the value of the Assigned Assets, or (c) the ability of Current Operator to consummate the transactions contemplated hereby on a timely basis.

“**Out of Compliance**” means (A) a finding by a governmental authority of one or more deficiencies at the Facility at a “Level G” or higher that has not been corrected and cleared by the applicable governmental authority; (B) a denial of the Facility’s right to admit patients or to receive Medicare or Medicaid payments or reimbursement for existing patients or for new admissions at the Facility; (C) the Facility has its license suspended or loses its license or certificate to operate; (D) the Facility has any provider agreement suspended, revoked or terminated; (E) the Facility is declared

a Special Focus Facility by CMS or is placed on the SFF watch list; and (F) the Facility has its number of licensed beds materially reduced after the Effective Date.

“Resident Census Report” shall mean a true, correct and complete schedule (provided in accordance with HIPAA) that accurately and completely sets forth the occupancy status of each Facility, the average daily rate and other charges payable with respect thereto, the class of payment or reimbursement (i.e., private, third-party payor, Medicare, and Veterans Administration) of all residents, and the average monthly census of each Facility.

[Rest of page intentionally left blank; signature page follows.]

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

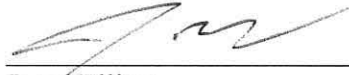
CURRENT OPERATOR:

VERO BEACH FACILITY OPERATIONS, LLC

By:

Name: Jared Elliott

Its: Authorized Representative

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

NEW OPERATOR:

VERO BEACH OPERATIONS LLC

By:



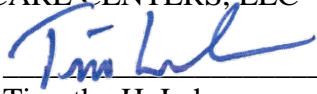
Name: Sam Gutman

Its: Authorized Representative

GUARANTOR:

LAVIE CARE CENTERS, LLC

By:

Name:  _____ Timothy H. Lehner

Its: Manager

Exhibit A
to
Operations Transfer Agreement

Current Operator	New Operator	Owner	Purchaser	Facility Name	Facility Address	# of Beds
Vero Beach Facility Operations, LLC	Vero Beach Operations, LLC	RE Vero Beach, LLC	Vero Beach Realty, LLC	Consulate Health Care of Vero Beach	1310 37 th Street Vero Beach, Florida 32960	159

Exhibit B
to
Operations Transfer Agreement

Mid-Cap Agreement

See Attached

FACILITY ACCOUNTS TRANSITION AGREEMENT

This **FACILITY ACCOUNTS TRANSITION AGREEMENT** (this “**Agreement**”), dated as of _____, 2022, is by and among **MidCap Funding IV Trust**, as agent for itself and the other Lenders (as defined below) (in such capacity, together with its successors and assigns, “**Agent**”), **Vero Beach Facility Operations, LLC** (“**Prior Operator**”), **Vero Beach Operations, LLC** (“**New Operator**”)

A. Pursuant to that certain Operations Transfer Agreement, dated as of _____, 2022 (as amended, restated, supplemented or otherwise modified in accordance with this Agreement, the “**Operations Transfer Agreement**”, together with any and all other agreements, documents, instruments and certificates executed in connection therewith, the “**Transfer Documents**”), between Prior Operator and New Operator, New Operator has assumed the operation of the skilled nursing facility having an address listed opposite its name on Schedule 1 (the “**Facility**”) effective as of 12:01 a.m. on _____, 2022 (the “**Transfer Date**”).

B. Pursuant to that certain Amended and Restated Credit and Security Agreement, dated as of November 19, 2013 (as amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), by and among Prior Operator, 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. Prior Operator and New Operator have advised Agent that, for a period of time following the Transfer Date, Prior Operator may come into possession of collections on accounts, accounts receivable and/or payment intangibles (collectively, “**Accounts**”) that are the property of New Operator pursuant to the terms and conditions of the Operations Transfer Agreement (such collections, the “**New Operator Amounts**”).

D. Agent, Prior Operator and New Operator 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 Operator.

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 Operator pursuant to the terms and conditions of the Operations Transfer Agreement. The Operations Transfer Agreement contemplates that certain New Operator Amounts may be received by Prior Operator prior to the time the provider numbers under which such New Operator Amounts are billed and paid are transferred to New Operator and, pursuant to the Operations Transfer Agreement, Prior Operator has agreed to transfer to New Operator an amount equal to the New Operator Amounts received by Prior Operator. Agent agrees and acknowledges that New Operator Amounts (a) do not constitute Agent’s or Lenders’ collateral under the Credit Agreement or under any other agreement, instrument or document entered into by Prior Operator with Agent or other Lenders, (b) are the property of New Operator pursuant to the terms and conditions of the Operations Transfer Agreement subject to the first priority lien of Capital Finance, LLC (including its successors and assigns) (“**New Lender**”), and (c) are to be held in trust by Prior Operator for the benefit of New Operator. Pursuant to the terms of the Credit Agreement, concurrent with the consummation of the transactions described in the Operations Transfer Agreement, Agent released its Liens on all asset of Prior Operator that are transferred pursuant to the Operations Transfer Agreement other than, for the avoidance of doubt, the

Accounts arising from the operation of the Facilities prior to the Transfer Date. In consideration of the agreements set forth herein, New Operator and Prior Operator agree to comply with the terms of Section 2.5 of the Operations Transfer Agreement with respect to the handling of accounts receivable after the Transfer Date.

2. New Operator hereby acknowledges that (i) pursuant to the Credit Agreement all proceeds of Accounts arising from the operation of the Facility received by Prior Operator (including New Operator Amounts) will be swept to a deposit account owned by Agent (the “**Payment Account**”), and (ii) that the Payment Account is one of Agent’s general collection accounts that receives payments made by both the Borrowers and other unaffiliated borrowers in connection with Agent’s various credit arrangements. Agent, upon receipt of such monies (including New Operator Amounts), shall be permitted to commingle such monies with Agent’s and Lenders’ other assets and use and apply such monies for Agent’s and Lenders’ own business purposes without regard to New Operator’s or any other person’s interests in the New Operator Amounts and Agent shall have no obligation to hold such monies in trust for New Operator or any other person.

3. Prior Operator agrees and acknowledges that the sweep of New Operator Amounts to the Payment Account shall not modify the covenants of Prior Operator pursuant to Section 2.5 of the Operations Transfer Agreement with respect to the timely payment of New Operator Amounts to New Operator. If Prior Operator delivers to Agent a request to borrow an amount equal to the New Operator Amounts due to New Operator and otherwise satisfy all requirements for borrowing set forth in the Credit Agreement, Agent agrees to disburse to Prior Operator, within the time frames set forth in the Credit Agreement, the proceeds of a revolving loan in an amount equal to such New Operator Amounts.

4. Prior Operator and New Operator 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). New Operator agrees that Agent shall have no liability to New Operator for making any New Operator Amounts Payment in accordance with the terms of this Agreement. Prior Operator hereby agrees to indemnify, defend and hold Agent and Lenders harmless to the extent required by Section 12.14 of the Credit Agreement.

5. 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, except as expressly set forth herein with respect to New Lender. Agent shall be permitted to assign its rights and obligations under this Agreement. Notwithstanding the foregoing, this Agreement shall not be assignable by Prior Operator or New Operator without the prior written consent of the other parties hereto.

6. 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).

7. 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 and consented to in writing by New Lender. The Operations Transfer Agreement 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.

8. 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.

9. 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.

10. This Agreement may be signed by Prior Operator, Agent and New Operator 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.

11. 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.

12. New Lender shall be a third party beneficiary of the agreements made hereunder with respect to the obligations to the New Operator who are party to the Transfer Documents, and shall have the right to enforce such agreements (including this Agreement) directly to the extent it deems such enforcement necessary or advisable to protect its rights or the rights of New Operator hereunder.

13. No parties hereto shall have any setoff rights against the New Operator Amounts. For the avoidance of doubt, any payments by Agent to Prior Operator for New Operator Amounts shall not be offset by amounts owed by Prior Operator to Agent and/or Lenders.

14. Agent authorizes New Operator (or its designees) to file the UCC-3 partial release financing statement in the form attached hereto as Exhibit A to evidence the release of its Liens on all assets of Prior Operator that are transferred pursuant to the Operations Transfer Agreement other than the Prior Operator Amounts.

[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 Manager

By: Apollo Capital Management GP, LLC
Its: General Partner

By: _____
Maurice Amsellem
Authorized Signatory

Address for Notices:

MidCap Funding IV Trust
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Ave., Suite 300
Bethesda, Maryland 20814
Attn: General Counsel (Consulate NonHUD)
Facsimile: 301-941-1450

PRIOR OPERATORS:

VERO BEACH FACILITY OPERATIONS, LLC, an Ohio
limited liability company

By: _____
Gregory Hayes
Authorized Signatory

Address for Notices:

800 Concourse Parkway, Suite 200
Maitland, FL 32751
Attn: Legal Department
Facsimile: (407) 571-1599

NEW OPERATORS:

VERO BEACH OPERATIONS LLC

By: _____

Name: _____

Title: _____

Address for Notices:

Attention: _____

SCHEDULE 1

Facility Name; Prior Operator; New Operator

<u>FACILITY ADDRESS</u>	<u>PRIOR OPERATOR</u>	<u>NEW OPERATOR</u>
1310 37 th Street, Vero Beach, Florida	Vero Beach Facility Operations, LLC	Vero Beach Operations LLC

EXHIBIT A

FINANCING STATEMENT

Exhibit C
to
Operations Transfer Agreement

[Facility Name]

Form of Bill of Sale

This BILL OF SALE (this “Instrument”) dated as of _____, is made and delivered pursuant to, and subject to the terms of, that certain Operations Transfer Agreement dated as of _____, 2021 (as amended and restated from time to time, the “OTA”), by and among _____ (“Current Operator”), _____ (“New Operator”) and certain other parties named therein relating to the transfer of certain assets set forth in the OTA and the business and operations of the applicable Facility. Capitalized terms used but not defined herein shall have the meaning provided in the OTA.

WITNESSETH:

WHEREAS, New Operator has the right to acquire the Assigned Assets related to the Facility from Current Operator under the OTA, which includes substantially all of the assets used in the operation of the applicable Facility; and

WHEREAS, New Operator and Current Operator desire to evidence and effectuate the transfer and conveyance of the applicable Assigned Assets to New Operator.

NOW THEREFORE, subject to the terms and conditions of the OTA and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, New Operator and Current Operator hereby agree as follows:

1. Current Operator does hereby convey, transfer, assign and deliver to New Operator all of Current Operator’s right, title and interest in and to the Assets free of all liens, encumbrances and security interests, and New Operator hereby accepts from Current Operator all of the Assigned Assets.

2. Subject to the terms of the OTA, New Operator hereby assumes all liabilities and obligations related to the Assets with respect to periods from and after the date hereof.

3. This Instrument shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Current Operator for itself, its successors and assigns, hereby covenants and agrees that, at any time and from time to time upon the written request of New Operator, Current Operator will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney, and assurances as may be reasonably required by New Operator in order to assign, transfer, set over, convey, assure, and confirm unto and vest in New Operator, its successors and assigns, title to the assets sold, conveyed, and transferred by this Instrument.

4. This Instrument may not be amended, modified or changed nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

5. This Instrument will be construed, performed and enforced in accordance with the laws of the State of Florida without regard to conflict of laws rules.

6. This Instrument may be executed in any number of counterparts, whether original or by facsimile or portable document format (.pdf), each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

[Execution Page to Follow]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Instrument as of the date set forth above.

CURRENT OPERATOR

By: _____
Name: _____
Title: _____

NEW OPERATOR

By: _____
Name: _____
Title: _____

Exhibit D
to
Operations Transfer Agreement

[Facility Name]

Form Assignment and Assumption Agreement

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Instrument”) dated as of _____, is made and delivered pursuant to, and subject to the terms of, that certain Operations Transfer Agreement dated as of _____, 2021 (as amended and restated from time to time, the “OTA”), by and among _____ (“Current Operator”), _____ (“New Operator”) and certain other parties named therein relating to the transfer of certain assets set forth in the OTA and the business and operations of the Facility. Capitalized terms used but not defined herein shall have the meaning provided in the OTA.

WITNESSETH:

WHEREAS, in accordance with the OTA, Current Operator has agreed to assign to New Operator, and New Operator has agreed to accept and assume from Current Operator, the Assignable Licenses and Permits, the Care Agreements, the Assigned Agreements (including Current Operator’s rights and interest under the Medicare provider agreement), and trademarks, service marks or internet domain names, and similar indicia of source of origin, all registrations and applications for registration thereof used in operation of the Facility (the “Assigned Property”), as more fully provided in the OTA; and

WHEREAS, New Operator and Current Operator desire to evidence and effectuate the assignment of the same to New Operator.

NOW THEREFORE, subject to the terms and conditions of the OTA and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, New Operator and Current Operator hereby agree as follows:

1. Current Operator does hereby convey, transfer, assign and deliver to New Operator all of Current Operator’s right, title and interest in and to the Assigned Property, and the New Operator hereby accepts from Current Operator the same.
2. Subject to the terms of the OTA, New Operator hereby assumes the duties and obligations of Current Operator with respect to the Assigned Property, which duties and obligations arise and accrue from and after the date hereof. For the avoidance of doubt, New Operator assumes no duties or obligations of Current Operator with respect to any Assigned Property that arose or accrued prior to the date hereof, and such duties and obligations remain the sole and exclusive responsibility of Current Operator. Each of the parties hereto shall execute and deliver, at the reasonable request of the other party hereto, such additional documents, instruments, conveyances and assurances and take such further actions as such other party may reasonably request to carry out the provisions hereof and give effect to the transactions contemplated by this Instrument.

3. This Instrument may not be amended, modified or changed nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

4. This Instrument will be construed, performed and enforced in accordance with the laws of the State of Florida, without regard to conflict of laws rules.

5. This Instrument may be executed in any number of counterparts, whether original or by facsimile or portable document format (.pdf), each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

[Execution Page to Follow]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Instrument as of the date set forth above.

CURRENT OPERATOR

By: _____
Name: _____
Title: _____

NEW OPERATOR

By: _____
Name: _____
Title: _____

Schedule 4.4

None.

Schedule 4.5

None.

Schedule 4.6(a)

None.

Schedule 4.7(c)

There are Final Orders for Current Operator's survey of 05/02/2019, 05/13/2019, 01/10/2020, 10/23/2020, and 03/05/2021 each of which contains a Settlement Agreement.

Schedule 4.7(e)

None.

Schedule 4.7(h)

None.

Schedule 4.8(a)

None.

Schedule 4.9

None.

EXHIBIT B

MidCap Agreement

FACILITY ACCOUNTS TRANSITION AGREEMENT

This **FACILITY ACCOUNTS TRANSITION AGREEMENT** (this “**Agreement**”), dated as of _____, 2022, is by and among **MidCap Funding IV Trust**, as agent for itself and the other Lenders (as defined below) (in such capacity, together with its successors and assigns, “**Agent**”), **Vero Beach Facility Operations, LLC** (“**Prior Operator**”), **Vero Beach Operations, LLC** (“**New Operator**”)

A. Pursuant to that certain Operations Transfer Agreement, dated as of _____, 2022 (as amended, restated, supplemented or otherwise modified in accordance with this Agreement, the “**Operations Transfer Agreement**”, together with any and all other agreements, documents, instruments and certificates executed in connection therewith, the “**Transfer Documents**”), between Prior Operator and New Operator, New Operator has assumed the operation of the skilled nursing facility having an address listed opposite its name on Schedule 1 (the “**Facility**”) effective as of 12:01 a.m. on _____, 2022 (the “**Transfer Date**”).

B. Pursuant to that certain Amended and Restated Credit and Security Agreement, dated as of November 19, 2013 (as amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), by and among Prior Operator, 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. Prior Operator and New Operator have advised Agent that, for a period of time following the Transfer Date, Prior Operator may come into possession of collections on accounts, accounts receivable and/or payment intangibles (collectively, “**Accounts**”) that are the property of New Operator pursuant to the terms and conditions of the Operations Transfer Agreement (such collections, the “**New Operator Amounts**”).

D. Agent, Prior Operator and New Operator 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 Operator.

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 Operator pursuant to the terms and conditions of the Operations Transfer Agreement. The Operations Transfer Agreement contemplates that certain New Operator Amounts may be received by Prior Operator prior to the time the provider numbers under which such New Operator Amounts are billed and paid are transferred to New Operator and, pursuant to the Operations Transfer Agreement, Prior Operator has agreed to transfer to New Operator an amount equal to the New Operator Amounts received by Prior Operator. Agent agrees and acknowledges that New Operator Amounts (a) do not constitute Agent’s or Lenders’ collateral under the Credit Agreement or under any other agreement, instrument or document entered into by Prior Operator with Agent or other Lenders, (b) are the property of New Operator pursuant to the terms and conditions of the Operations Transfer Agreement subject to the first priority lien of Capital Finance, LLC (including its successors and assigns) (“**New Lender**”), and (c) are to be held in trust by Prior Operator for the benefit of New Operator. Pursuant to the terms of the Credit Agreement, concurrent with the consummation of the transactions described in the Operations Transfer Agreement, Agent released its Liens on all asset of Prior Operator that are transferred pursuant to the Operations Transfer Agreement other than, for the avoidance of doubt, the

Accounts arising from the operation of the Facilities prior to the Transfer Date. In consideration of the agreements set forth herein, New Operator and Prior Operator agree to comply with the terms of Section 2.5 of the Operations Transfer Agreement with respect to the handling of accounts receivable after the Transfer Date.

2. New Operator hereby acknowledges that (i) pursuant to the Credit Agreement all proceeds of Accounts arising from the operation of the Facility received by Prior Operator (including New Operator Amounts) will be swept to a deposit account owned by Agent (the “**Payment Account**”), and (ii) that the Payment Account is one of Agent’s general collection accounts that receives payments made by both the Borrowers and other unaffiliated borrowers in connection with Agent’s various credit arrangements. Agent, upon receipt of such monies (including New Operator Amounts), shall be permitted to commingle such monies with Agent’s and Lenders’ other assets and use and apply such monies for Agent’s and Lenders’ own business purposes without regard to New Operator’s or any other person’s interests in the New Operator Amounts and Agent shall have no obligation to hold such monies in trust for New Operator or any other person.

3. Prior Operator agrees and acknowledges that the sweep of New Operator Amounts to the Payment Account shall not modify the covenants of Prior Operator pursuant to Section 2.5 of the Operations Transfer Agreement with respect to the timely payment of New Operator Amounts to New Operator. If Prior Operator delivers to Agent a request to borrow an amount equal to the New Operator Amounts due to New Operator and otherwise satisfy all requirements for borrowing set forth in the Credit Agreement, Agent agrees to disburse to Prior Operator, within the time frames set forth in the Credit Agreement, the proceeds of a revolving loan in an amount equal to such New Operator Amounts.

4. Prior Operator and New Operator 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). New Operator agrees that Agent shall have no liability to New Operator for making any New Operator Amounts Payment in accordance with the terms of this Agreement. Prior Operator hereby agrees to indemnify, defend and hold Agent and Lenders harmless to the extent required by Section 12.14 of the Credit Agreement.

5. 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, except as expressly set forth herein with respect to New Lender. Agent shall be permitted to assign its rights and obligations under this Agreement. Notwithstanding the foregoing, this Agreement shall not be assignable by Prior Operator or New Operator without the prior written consent of the other parties hereto.

6. 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).

7. 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 and consented to in writing by New Lender. The Operations Transfer Agreement 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.

8. 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.

9. 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.

10. This Agreement may be signed by Prior Operator, Agent and New Operator 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.

11. 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.

12. New Lender shall be a third party beneficiary of the agreements made hereunder with respect to the obligations to the New Operator who are party to the Transfer Documents, and shall have the right to enforce such agreements (including this Agreement) directly to the extent it deems such enforcement necessary or advisable to protect its rights or the rights of New Operator hereunder.

13. No parties hereto shall have any setoff rights against the New Operator Amounts. For the avoidance of doubt, any payments by Agent to Prior Operator for New Operator Amounts shall not be offset by amounts owed by Prior Operator to Agent and/or Lenders.

14. Agent authorizes New Operator (or its designees) to file the UCC-3 partial release financing statement in the form attached hereto as Exhibit A to evidence the release of its Liens on all assets of Prior Operator that are transferred pursuant to the Operations Transfer Agreement other than the Prior Operator Amounts.

[Signature Pages Follow]

(Signature Page to Facility Accounts Transition Agreement – Vero Beach)

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 Manager

By: Apollo Capital Management GP, LLC
Its: General Partner

By: _____
Maurice Amsellem
Authorized Signatory

Address for Notices:

MidCap Funding IV Trust
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Ave., Suite 300
Bethesda, Maryland 20814
Attn: General Counsel (Consulate NonHUD)
Facsimile: 301-941-1450

(Signature Page to Facility Accounts Transition Agreement – Vero Beach)

PRIOR OPERATORS:

VERO BEACH FACILITY OPERATIONS, LLC, an Ohio
limited liability company

By: _____
Gregory Hayes
Authorized Signatory

Address for Notices:

800 Concourse Parkway, Suite 200
Maitland, FL 32751
Attn: Legal Department
Facsimile: (407) 571-1599

NEW OPERATORS:

VERO BEACH OPERATIONS LLC

By: _____

Name: _____

Title: _____

Address for Notices:

Attention: _____

SCHEDULE 1

Facility Name; Prior Operator; New Operator

<u>FACILITY ADDRESS</u>	<u>PRIOR OPERATOR</u>	<u>NEW OPERATOR</u>
1310 37 th Street, Vero Beach, Florida	Vero Beach Facility Operations, LLC	Vero Beach Operations LLC

EXHIBIT A

FINANCING STATEMENT

EXHIBIT C

Refund Request Letter



FLORIDA
COMMUNITY CARE

08/28/2024

Vero Beach Care Center
ATTN: Regina McGrath
1310 37th Street
Vero Beach, Florida, 32960

RE: Refund Request
Provider ID No: 6147902
Overpayment Amount: \$269,082.59

Dear Vero Beach Care Center:

This letter is to notify you that Florida Community Care, LLC ("FCC") has made an overpayment to you in the total amount of \$269,082.59.

The following explains how this happened, what you must do to resolve this matter, and the penalties for failing to act in a timely manner.

How this Happened

This overpayment occurred due to Medicaid payments that were issued for services rendered after a change of ownership had taken place.

How to Resolve this Overpayment

Payment in Full: In order to correct this overpayment, please refund the total amount by October 21st 2024 (the "Due Date").

Submit Payment to:

Florida Community Care
ATTN: Dylan Poliakoff
4601 NW 77th Ave
Miami, FL, 33166

Please include payment details with your payment.

Interest:

If the debt is not fully resolved by the Due Date, interest will begin to accrue on any remaining balance at a rate of twelve (12) percent per year.¹ The interest is payable with the payment of the claim.

¹ The Florida Department of Financial Services, Office of Insurance Regulation, sets the statutory interest rate on an overdue payment for a claim for an overpayment on an annual basis. [See § 641.3155, Fla. Stat.](#)

Repayment Plans: Please contact us immediately if you are unable to refund the entire amount at this time so that we may determine if a repayment plan can be worked out.

Recoupments: If the debt is not fully resolved by the Due Date, FCC will begin withholding payment to the extent possible. The withholding of FCC payments will apply to current and future claims until the full overpayment amount and any applicable interest has been recouped.

Additional Recovery Procedures

Alternatively, if no repayment plan is in place and FCC is unable to recoup by offset, any outstanding balances may result in the initiation of additional recovery procedures by FCC, including referral of delinquent debts to a debt collection agency for recovery.

Appeal/Dispute

To deny or contest this claim for overpayment, you must notify FCC in writing within thirty-five (35) days from receipt of this Refund Request Letter in accordance with s. 641.3155, F.S. The notice must identify the contested portion of the claim and the specific reason for contesting or denying the claim and, if contested, must include a request for additional information. Within 35 days after receipt of the request for additional information, FCC will mail or electronically transfer the information to you. You must pay or deny the claim for overpayment within 45 days after receipt of the information.

Send Dispute to:

Florida Community Care
ATTN: Dylan Poliakoff
4601 NW 77th Ave
Miami, FL, 33166

Thank you for your cooperation and prompt attention to this overpayment. If you have any questions concerning this matter or would like to discuss the overpayment identification, please call 833-322-7526.

Sincerely,

FLORIDA COMMUNITY CARE, LLC
