

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

**In re**

**SC HEALTHCARE HOLDING, LLC *et al.*,**

**Debtors.<sup>1</sup>**

Chapter 11

Case No. 24-10443 (TMH)

Jointly Administered

**Petersen Farmer City, LLC, Petersen  
Champaign, LLC, Petersen Health Care –  
Farmer City, LLC and Petersen Health  
Care – Illini, LLC,**

**Plaintiffs,**

**vs.**

**HNC/HK, Inc. (f/k/a Heritage Nursing  
Center, Inc.) and Jackson Heights Nursing  
Center, Inc.,**

**Defendants.**

Adv. Pro. No. 24-\_\_\_\_\_ (TMH)

**COMPLAINT**

The above-captioned plaintiffs, Petersen Farmer City, LLC, Petersen Champaign, LLC, Petersen Health Care – Farmer City, LLC and Petersen Health Care – Illini, LLC (collectively, “Petersen” or the “Plaintiffs”), by and through their undersigned counsel, file this complaint (this “Complaint”) for breach of contract against defendants HNC/HK, Inc. (f/k/a Heritage Nursing

<sup>1</sup> The last four digits of SC Healthcare Holding, LLC’s tax identification number are 2584. The mailing address for SC Healthcare Holding, LLC is c/o Petersen Health Care Management, LLC 830 West Trailcreek Dr., Peoria, IL 61614. Due to the large number of debtors in these Chapter 11 Cases, whose cases are being jointly administered, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information is available on a website of the Debtors’ claims and noticing agent at [www.kccllc.net/Petersen](http://www.kccllc.net/Petersen).



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Center, Inc.) and Jackson Heights Nursing Center, Inc. (together, “Heritage” or the “Defendants”).  
In support of this Complaint, Petersen alleges as follows:

**NATURE OF THE ACTION**

1. Heritage signed a Contract (defined below) in 2007 agreeing to sell to Petersen a rehab and nursing facility property in Champaign, Illinois called Illini Heritage Rehab & Health (the “Illini Property”).

2. Petersen thereafter acted as the owner of the Illini Property, with the full knowledge and consent of Heritage. Petersen occupied the Illini Property, took possession of it, operated its business on it, and paid all of the expenses, taxes, and debts for it.

3. Some of Petersen’s expenses were supposed to be covered by Heritage under the Contract, to the point that those expenses exceeded the purchase price. Thus, at this point, Heritage owes substantial monies (over \$200,000) to Petersen under the Contract, and there is nothing due under the purchase price.

4. In addition, Heritage never transferred title to the Illini Property to Petersen, creating an inordinate situation where—for now—approaching two decades—Petersen is the owner of the Illini Property for all intents and purposes, just without the formal title and other closing items. Petersen only recently learned that Heritage intended to attempt to improperly hold the title to the Illini Property, while not paying any of the Illini Property’s expenses or debts.

5. Now that the Illini Property is subject to a Court-approved bankruptcy sale in the above-captioned chapter 11 cases,<sup>2</sup> Heritage has decided to act opportunistically and is refusing to tender title to the Illini Property to Petersen to formally close the loop on the transaction unless Petersen pays Heritage an extortionate ransom that has no basis under the Contract or applicable law.

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<sup>2</sup> See Bankr. D.I. 653.

6. Heritage is in breach of the Contract. This Complaint therefore seeks an injunction that Heritage transfer the title of the Illini Property and any other required closing items to Petersen so that Petersen can close on the sale of the Illini Property for the benefit of its stakeholders, pay Petersen all recoverable expenses under the Contract, and pay all of Petersen's fees and costs in connection with this Complaint.

### **THE PARTIES**

7. The Plaintiffs operate, among other things, rehabilitation and skilled nursing home facilities and are the lawful owners of the Illini Property. Each of the Plaintiffs are Illinois limited liability companies and all but Petersen Champaign, LLC are Debtors in the above-captioned chapter 11 cases.

8. Upon information and belief, the Defendants are Illinois corporations.

### **JURISDICTION AND VENUE**

9. The Court has jurisdiction over this Complaint pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012.

10. This is a core proceeding pursuant to 28 U.S.C. § 157(2)(A), (E), and/or (O).

11. Venue is proper pursuant to 28 U.S.C. § 1409(a) because this adversary proceeding arises in or relates to cases commenced under title 11 of chapter 11 of the United States Code.

12. Pursuant to Rules 7008-1 and 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the Plaintiffs consent to the entry of a final order or judgment by the Court if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

**FACTUAL BACKGROUND**

13. In 2007, Petersen and Heritage executed an Asset Purchase Agreement for the Illini Property. (the “Contract”). See Ex. A.

14. Under the Contract, Petersen was to pay a purchase price. At the same time, Heritage was contractually obligated to “indemnify and save Buyer [Petersen] harmless of and from ... any expense arising, existing or relating to the period, prior to Closing for which Seller would be liable or which relate to the operation of the Facilities ....”. See Ex. A., § 5.01.

15. As Heritage is aware, thereafter the Parties acted consistently with the Contract for nearly two decades:

- All of the necessary allocations under the Contract occurred.
- Petersen paid all of the indemnifiable expenses for the Illini Property, and has a log of the amounts that are due and owing to it from Heritage under Section 5.01 of the Contract. Petersen has sent that log to Heritage, and Heritage has refused to pay it.
- The costs above exceeded the purchase price and, thus, nothing is owed under the purchase price term. Indeed, until recently, Heritage never made a demand for the purchase price.
- As the owner, Petersen also paid all of the taxes and debts for the Illini Property.
- At no point did Heritage advise or take the position (with Petersen, any regulators, or anyone else) that the closing had not occurred or would not occur.
- Nor did Heritage ever attempt to exercise their termination rights under Article XVIII of the Contract.

16. Petersen only learned relatively recently that Heritage was trying to not honor its contractual obligations.

17. Petersen has contacted Heritage, through counsel and otherwise, to attempt to generously resolve the matter short of Court intervention. In response, Heritage has made extortionate payment demands.

18. It's high time that Heritage's misconduct be resolved so that Petersen can move forward with the Court-approved sale, including with the Illini Property. Petersen is also now constrained to also seek its reimbursable indemnified expenses under Section 5.01 of the Contract, which exceed \$200,000.

**COUNT I – BREACH OF CONTRACT**

19. Petersen restates and re-alleges paragraphs 1 – 18 as if fully set forth herein.

20. Heritage has breached the Contract as alleged herein, including, without limitation, by failing to cooperate with the closing and transfer title, and failing to pay the sums due under the indemnity.

21. As a consequence of Heritage's breaches of the Contract, Petersen has suffered, and continues to suffer, substantial financial damages and equitable harm, as well as attorneys' fees and costs.

22. Petersen has at all times complied with the terms and conditions set forth in the Contract.

23. For the equitable relief component, Petersen has no adequate remedy at law and public policy favors the imposition of an injunction.

**PRAYER FOR RELIEF**

WHEREFORE, Petersen respectfully requests that the Court enter a judgment for Petersen and against Heritage including the following relief:

A. A permanent injunction requiring Heritage to turnover to Petersen the title to the

Illini Property and any other actions necessary to finalize the closing;

- B. Actual damages in an amount exceeding \$200,000;
- C. Attorneys' fees and costs; and
- D. Any other relief the Court deems just and proper.

*[Signature Page Follows]*

Dated: August 30, 2024

Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

*/s/ Andrew L. Magaziner*

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*Counsel for the Debtors and Debtors in  
Possession*

**Exhibit A**

**The Contract**



**ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT** (the "Agreement") is made and entered into on the \_\_\_\_\_ day of May, 2007 by and between Heritage Nursing Center, Inc. and Jackson Heights Nursing Center, Inc., each Illinois corporations ( jointly and severally referred to as the "Seller"), and Petersen Farmer City, LLC, Petersen Champaign, LLC, Petersen Health Care – Farmer City, LLC And Petersen Health Care – Illini, LLC, all Illinois limited liability companies (jointly and severally the "Buyer").

**WITNESSETH:**

**WHEREAS**, Seller is the owner of the Jackson Heights Nursing Center, a 56 bed skilled nursing facility located at 10 Brookview Drive, Farmer City, Il and Heritage Nursing Center, a 60 bed skilled nursing facility located at 1315 Curt Drive, P.O. Box 6179, Champaign, Il; (collectively the "Facilities");

**WHEREAS**, Heritage Nursing Center, LLC, as borrower, entered into that certain Loan Agreement dated August 6, 2002 with GMAC Commercial Mortgage Corporation, as Lender, secured by a Mortgage on the facility referred to above as Heritage Nursing Center together with a Security Agreement and various ancillary documents (the "Heritage HUD Loan).

**WHEREAS**, Jackson Heights Nursing Center, LLC, as borrower, entered into that certain Loan Agreement dated November 1, 2002 with GMAC Commercial Mortgage Corporation, as Lender, secured by a Mortgage on the facility referred to above as Jackson Heights Nursing Center together with a Security Agreement and various ancillary documents (the Jackson Heights HUD Loan).

**WHEREAS**, the Heritage HUD Loan and the Jackson Heights HUD Loan are hereinafter jointly referred to as the Loan Agreements)

**WHEREAS**, Seller desires to sell the Assets (as hereinafter defined) to Buyer upon the terms set forth in this Agreement.

**WHEREAS**, Buyer desires to acquire the Assets and assume the Loan Agreements upon the terms set forth in this Agreement herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements of the parties contained herein, the parties hereto agree as follows:

**ARTICLE I**  
**DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings set forth in this Article. All Article and Section numbers and Schedule references used in this Agreement refer to Articles and Sections of this Agreement and Schedules attached hereto or delivered simultaneously herewith, unless otherwise specifically described.

1.01 "Assets" mean the assets being sold by Seller to Buyer hereunder as described in Section 2.01 and shall include all properties and rights of every kind or nature owned or held by Seller, wherever located, whether or not specifically referred to in this Agreement, and whether under Seller's direct or indirect control or under the control of others, which relate to the Facilities; provided, however, that the Assets shall not include the Excluded Assets (as hereinafter defined).

1.02 "Closing" means the actions to be taken pursuant to Article XIII and as provided in Section 3.01.

1.03 "Excluded Assets" mean those assets of Seller set forth on **Schedule 1.03** which are not being purchased by Buyer, together with such other of the Assets which Buyer, in its sole discretion, elects not to purchase at Closing.

1.05 "Purchase Price" means the purchase price as set forth in Section 2.02.

## **ARTICLE II** **PURCHASE AND SALE; INVENTORY; CONSIDERATION**

2.01 On the terms and subject to all of the conditions hereof, at Closing, Seller shall sell, assign, transfer and deliver to Buyer, and Buyer shall purchase, for the Purchase Price, all of Seller's right, title, and interest in and to all of the Assets, including, but not limited to, the following:

- (a) All right, title and interest of Seller in, to and under the real property legally described on **Schedule 2.01(a)**, together with all improvements thereon and the appurtenances thereunto, subject only to the Permitted Exceptions set forth on **Schedule 17.02** (the "Real Property");
- (b) All right, title and interest of Seller, if any, in and to all of the inventories of food and beverages which are used in the normal and customary operation of the Facilities (collectively, the "Dietary Inventory");
- (c) All right, title and interest of Seller, if any, in and to all of the supplies, including, without limitation, paper goods, linens, bed ware, cleaning, cooking and other supplies, chinaware, dishes, glassware, utensils, and medical supplies, which are used in the normal and customary operation of the Facilities (collectively, the "General Inventory");
- (d) All right, title and interest of Seller, if any, in, to and under the names set forth on **Schedule 2.01(d)**, including the right to the use thereof in connection with the operation of the Facilities, together with all right, title, and interest of Seller in, to and under any and all trade names, trademarks, trademark licenses, trademark registrations and applications for trademark registrations, service marks, service mark licenses, service mark registrations and applications for service mark registrations used in connection with the operation of the Facilities (collectively, the "Specified Trade Names");
- (e) All right, title and interest of Seller, if any, in, to and under such purchase

orders and commitments for the purchase of food, beverages, supplies, chinaware, dishes, glassware, utensils and linens set forth on **Schedule 2.01(e)** which relate to the operation of the Facilities which Buyer deems necessary, in its sole discretion, for the continued operation of the Facilities after the Closing (collectively, the "Purchase Orders");

(f) All right, title and interest of Seller, if any, in, to and under the service and maintenance contracts, leases, contracts or commitments relating solely to the operation of the Facilities which Buyer deems necessary, in its sole discretion, for the continued operation of the Facilities after the Closing as set forth on **Schedule 2.01(f)**, (collectively, the "Assigned Contracts");

(g) All right, title and interest of Seller, if any, in and to all resident contracts and patient and resident records for all residents of the Facilities and all applications for residents pending as of the Closing Date (collectively, the "Resident Contracts");

(h) All right, title and interest of Seller, if any, in and to all permits and licenses owned and held by Seller in connection with the operation of the Facilities, to the extent that such permits and licenses are assignable (collectively, the "Permits and Licenses");

(i) All right, title and interest of Seller in and to all buildings, furniture, fixtures, furnishings, equipment, machinery, computer hardware, decorations, and leasehold improvements used in the normal and customary operation of the Facilities (collectively, the "Buildings, Furniture, Fixtures and Equipment"); and

(j) All right, title and interest of Seller, if any, in and to all books, records, computer programs and software, manuals and other materials (except for Seller's partnership records and the books and records of Seller's general partner, to the extent not necessary for the operation of the Facilities in the ordinary course and any materials belonging to any entity other than Seller), including without limitation, all records and materials maintained at the headquarters of Seller and the Facilities, advertising materials, menus, correspondence, mailing lists, resident lists, photographs, artwork, promotional materials and records, purchasing materials and records, operating manuals, scheduling manuals, and all other written material and information used or useful in the operation of the Facilities (collectively, the "Books and Records").

2.02 Buyer hereby agrees to pay to Seller for the Assets a total purchase price (the "Purchase Price") which shall be the amount of Three Hundred Eighty Six Thousand Dollars (\$386,000) together with an amount equal to the balances in the escrow accounts including without limitation, escrows for taxes, insurance, replacement reserves and MIP held by the intermediary for the Department of Housing and Urban Development ("HUD") on the date of closing (the "Cash Portion"), together with the assumption of the current HUD loans (with a current balance of \$2,882,000). After deduction for all appropriate credits as provided hereunder, the Cash Portion of the Purchase Price shall be paid in full, in immediately available collected funds, at the Closing.

2.03 Within five (5) business days after the date this Agreement has been fully executed

by the parties, Buyer shall deposit the sum of \$100,000.00 as earnest money (the "Earnest Money") payable to and held by Chicago Title Company, (hereinafter referred to as the "Escrowee") pursuant to a joint order escrow trust agreement, for the benefit of the parties hereto. The Earnest Money shall be returned to Buyer, forfeited to Seller or applied toward the Purchase Price at the time of Closing (as hereinafter defined), in accordance with the terms hereof. Earnest Money shall be invested as directed by Buyer and all interest earned thereon shall be credited to Buyer.

**ARTICLE III**  
**CLOSING**

3.01 The Closing for the sale and purchase of the Assets shall be held at the offices of Seller on or before October 1, 2007; provided, however, that all conditions precedent to Closing as provided herein have either been satisfied or waived, or at such other time, date, and place as the parties hereto shall mutually agree in writing (the "Closing Date"). In the event such contingencies have not been satisfied by the abovesaid date, the Closing Date shall be extended to allow the condition to be met, not to exceed ninety (90) days. Possession of the Assets shall be delivered by Seller to Buyer at Closing; provided, however, that for allocation purposes, Closing shall be deemed to have occurred as of 12:00 midnight of the Closing Date. Unless Closing is extended as set forth herein, in which case Closing shall be deemed to have occurred at 12:00 a.m., midnight, on the date of Closing.

**ARTICLE IV**  
**APPORTIONMENT**

4.01 The following liabilities shall be apportioned between Seller and the Buyer as of 12:00 midnight of the Closing Date, except as otherwise specifically provided herein:

(a) All lease payments, percentage rents, real estate taxes, special assessments, utility charges, insurance premiums and any other charges to be paid or payable by Seller upon a calendar year basis as such taxes may be levied or assessed, which shall be estimated on the basis of the last year's payments if the actual amounts cannot be determined on the Closing Date. Should any apportionment based on estimates be different from what that apportionment would be based upon the actual bill received, then at the time the actual bill is received, the party receiving the same shall give notice to the other, and the taxes payments shall then be reapportioned based upon the actual bill received.

(b) Seller shall pay all real estate taxes and assessments legally levied or imposed upon the Facilities and due prior to Closing and Buyer shall receive a credit for all real estate taxes accrued but not yet due and payable. Seller shall be responsible for the payment of any settlement or other amount due for taxes assessed prior to the closing date.

**ARTICLE V**  
**ASSUMPTION OF LIABILITIES**

5.01 Buyer shall not assume nor be liable for any liabilities of Seller except as specifically set forth in this Agreement. All liabilities of any kind or nature incurred by Seller prior to the Closing Date shall continue to be the responsibility of Seller and Seller shall timely pay as and when due all such liabilities to the extent required by law. Seller shall indemnify and save Buyer harmless of and from any liability, obligation, or expense arising, existing or relating to the period, prior to Closing for which Seller would be liable or which relate to the operation of the Facilities including, without limitation, any obligations owing or to be owing related to services provided before the Closing Date under any provider agreement, any obligations under any patient trust accounts existing through the Closing Date, any obligations owing for failure by Seller to timely file all Medicare or Medicaid Cost Reports when due, and any reimbursements due the Medicare or Medicaid Program for services rendered by Seller through the Closing Date. Buyer shall indemnify and save Seller harmless of and from any liability, obligation, or expense relating to the operation of the Facilities arising after Closing, including, without limitation, patient trust fund matters.

**ARTICLE VI**  
**ACCOUNTS RECEIVABLE**

6.01 The following assets are specifically excluded herefrom and Seller shall retain all cash, cash equivalents, bank accounts, tax and Medicare and Medicaid refunds, accounts and contract rights receivable (the "Excluded Assets").

**ARTICLE VII**  
**EMPLOYMENT MATTERS**

7.01 Seller shall terminate all employees of the Facilities effective as of the Closing Date. Seller shall pay to each employee, on that date which, but for Closing, would have been the next regularly scheduled payroll date for such employee following the Closing, an amount equal to any and all accrued and unpaid salary, vacation, paid time off and/or sick time applicable to such employee as of the Closing Date, together with all such other amounts as may be due and payable to such employee under applicable law. Buyer shall not be obligated to offer any employees which it hires credit for any paid time off which was accrued by or awarded to them but unused as of the Closing Date. Buyer shall rehire at least two-thirds (2/3's) of the employees who, as of the Closing Date, work at the Facilities and have been employed on an average of twenty (20) hours or more per week and have provided services solely to the Facilities (excluding those employees employed through an agency or who are employed by Seller to work at multiple facilities.) Such continued employment shall be on terms which require such retained employees to perform comparable services in a comparable position at substantially the same base salary at which such employee was employed at the Facilities prior to Closing.

7.02 Seller shall be responsible for any and all service awards, health insurance premiums, dental insurance premiums, attendance, hiring or any other incentive or bonuses, or 401(k) or 403(b) retirement plan contributions earned to due and owing to Facilities' employees as of the Closing Date.

7.03 Seller shall make available group health plan continuation coverage pursuant to the requirements of Section 601, et seq. of ERISA and Section 4980B of the Internal Revenue Code, as amended ("COBRA"), to all of the Facilities Employees to whom it is required to offer the same under applicable law. Seller acknowledges and agrees that Buyer is not assuming any of the Seller's obligations to its employees under COBRA or otherwise. Subsequent to Closing, all eligible employees hired by Buyer shall be offered participation in Buyer's existing group health plan pursuant to the terms and conditions thereof.

#### ARTICLE VIII ALLOCATION OF PURCHASE PRICE

8.01 Within 60 days from the execution of this Agreement Buyer and Seller shall reach an agreement with respect to any allocations of the Purchase Price as may be required by Section 1060 of the Internal Revenue Code of 1986 and the Treasury Regulations promulgated there under. As to the division of the purchase price between the two facilities, the purchase price shall be allocated as follows: the cash portion of the Purchase Price shall be allocated \$308,800 to Heritage Nursing Center and \$77,200 to Jackson Heights Nursing Center.

#### ARTICLE IX REPRESENTATIONS AND WARRANTIES OF SELLER

As used in this Article, "To Seller's knowledge" means to the actual knowledge of the Seller's officers to which such representation applies, without such person having undertaken any special inquiry or investigation with respect to this Agreement, unless otherwise indicated below. Seller does hereby represent and warrant to Buyer as follows:

9.01 Sellers are Illinois corporations duly organized, validly existing and in good standing under the laws of the State of Illinois, and are authorized and in good standing in each jurisdiction and state where such authorization is required for the transaction of the Seller's business therein. Seller has the full power to enter into this Agreement and to consummate the transactions contemplated hereby and to perform its obligations hereunder.

9.02 The execution and delivery of this Agreement and all other agreements executed in connection herewith by Seller, and the performance by Seller of its respective obligations hereunder, has been duly and validly authorized by all necessary action on the part of Seller's shareholders. This Agreement and all agreements to be executed by Seller in connection herewith shall: (a) be duly executed and validly delivered; (b) subject to Buyer's right to terminate this Agreement and any other agreements, constitute the valid and binding obligations of Seller duly enforceable in accordance with their terms; and (c) upon consummation of the transactions contemplated by them, shall not result in the material breach of (or constitute a default under) any contract, agreement, instrument or obligations by which Seller or any of the Assets may be bound or affected.

9.03 Except as has been disclosed to Buyer on **Schedule 9.03**, and except as may be disclosed to Buyer in writing after the date hereof and prior to the Closing, no written notice from any governmental body or other person has been served upon the Seller claiming that any of the Assets, or the ownership, leasing, occupancy or operation thereof, is in material violation of any applicable law, code, rule, regulation, ordinance, license or permit, including, but not limited to, those related to buildings, zoning, environmental, or public or employee health and safety matters, or claiming any

other failure by Seller to comply with any law, rule, regulation, ordinance, code, order, license or permit relating to any of its Assets, including, but not limited to, the labor, equal employment opportunity, public or employee safety and health, alcoholic beverages, environmental, antitrust, Medicaid, Fraud and Abuse, Stark or other health laws nor, to Seller's knowledge, has such a notice been served on Seller with respect the Facilities, except as disclosed to Buyer on **Schedule 9.03**. Following the execution of this Agreement, Seller shall deliver to Buyer, within one (1) business day following Seller's receipt, a copy of each such notice received by Seller in respect of any of the foregoing.

9.04 Seller represents that as of the Closing Date no person claiming under Seller (other than the residents at the Facilities and providers of services in the normal course of business, if any) shall be entitled to the present or future possession of all or any part of the Facilities.

9.05 Seller represents that there is sufficient utility service available to the Facilities, including without limitation, gas, electricity, water, sewer capacity and telephone service, for the operation of the Facilities as presently conducted.

9.06 Seller represents that to the best of its knowledge it is in compliance with all terms, obligations and conditions required by the Loan Agreements with HUD.

9.07 Seller represents that the Facilities has free, uninterrupted access to and from one or more publicly dedicated streets, highways or roads and is zoned to permit its present use.

9.08 Seller represents that the operation of the Facilities has been approved by the appropriate federal and state governmental agency in the state in which such Facilities is located and that the Facilities satisfies the minimum standards for licensure by the appropriate federal and state governmental agency in the state in which such Facilities is located. Seller further represents that to Seller's knowledge, the Facilities satisfies all requirements of all governmental authorities having jurisdiction in order for its to continue to be certified to participate in the Medicaid program and that there is no pending or threatened adverse action (i.e. including any substandard licenses or de-certification proceedings) with respect to such Facilities' licenses and that such Facilities are otherwise in compliance with all laws, ordinances and regulations applicable to such Facilities, subject to any permitted waivers granted by officials of the various applicable governmental authorities.

9.09 Seller represents to the best of its knowledge there are no underground storage tanks located on the Real Property and no presence of any dangerous or toxic materials or conditions affecting the Real Property, except as disclosed on **Schedule 9.09**.

9.10 That at the Closing, Seller will convey to Buyer good and marketable title to the Real Property, free and clear of all liens, claims and encumbrances, except municipal and zoning ordinances, recorded easements serving the Facilities, recorded building and use restrictions and covenants, general taxes levied in the year of the Closing (as hereinafter defined) and other matters disclosed on the Title Binders and Surveys delivered to Buyer in accordance with Sections 17.01 and 17.02, subject only to the Permitted Exceptions set forth on **Schedule 17.02**.

9.11 Seller represents that there are no known planned or commenced public improvements to the Real Property which may result in special assessments or otherwise materially

affect such properties and there is no governmental agency, court order or insurance company requiring repair, alteration or correction of any existing condition to the Real Property, nor to Seller's knowledge does there exist any condition which might result in such requirement, except as disclosed on **Schedule 9.11**.

9.12 Seller represents that there have been no repairs or improvements which have been made to the Real Property which are unpaid as of the date of this Agreement which could result in the filing of a mechanic's lien or similar claim against any Facilities, nor are there any such repairs or improvements scheduled to be made to such Facilities, except as disclosed on **Schedule 9.12**.

9.13 Seller represents that to the best of its knowledge there are no material defects in any of the roofs, equipment, appliances, fixtures, tools or furniture included in this transaction, and there shall be no such material defects on the Closing Date.

9.14 Seller represents that there is no litigation or governmental proceeding of any kind or nature in progress or being threatened against or relating to the Facilities or Seller, except as disclosed to Buyer on **Schedule 9.13**. To the best of Seller's knowledge there is no pending investigation of any kind or nature in progress or being threatened against or relating to the Facilities or Seller.

9.15 Seller represents that, to the best of its knowledge, all information provided in the Schedules attached to this Agreement is true, correct and complete.

9.16 Seller represents that, to the best of its knowledge, there are no facts or circumstances that would render any of the representations or warranties made by Seller in connection with this Agreement inaccurate or misleading in any respect.

9.17 Seller's representations and warranties contained in this Agreement shall be updated and shall be true and correct as of the Closing Date as a condition precedent to Buyer's obligations to close.

9.18 That (a) Seller is not engaged in any unfair labor practice; (b) no unfair labor practice complaint against the Seller is pending before any Governmental or regulatory authority; (c) there is no organized labor strike, dispute, slowdown or stoppage actually pending or to the knowledge of the Seller threatened against or involving the Seller; (d) there are no labor unions representing or, to the knowledge of the Seller attempting to represent employees of the Seller; (e) no claim or grievance nor any arbitration proceeding arising out of or under any collective bargaining agreement is pending and to the knowledge of the Seller, no such claim or grievance has been threatened; (f) no collective bargaining agreement is currently being negotiated by the Seller; and (g) the Seller has not experienced any work stoppage or similar organized labor dispute in the last three years. There is no legal action, suit, proceeding or claim pending or, to the knowledge of the Seller, threatened between the Seller and any of its employees, former employees, agents, former agents, job applicants or any association or group of any of its employees.

9.19 That **Schedule 9.19** is an accurate and complete list showing (a) the names and positions of all employees who are currently being compensated by the Seller together with a statement of the current annual salary, and the annual salary, bonus and incentive compensation paid or payable with respect to the Seller's fiscal year ending December 31, 2006 and fiscal year



2007 year-to-date; (b) all bonus and incentive compensation paid or payable (whether by agreement, custom or understanding) to any employee of the Seller not listed in clause (a) above for services rendered during the Seller's fiscal year ending December 31, 2006 and fiscal year 2007 year-to-date; (c) the names of all retired employees, if any, of the Seller who are receiving or entitled to receive any healthcare or life insurance benefits or any payments from the Seller not covered by any pension plan to which the Seller is a party, their ages and current unfunded pension rate, if any; and, (d) a description of the current severance and vacation policy of the Seller. The Seller has not, because of past practices or previous commitments with respect to its employees, established any rights on the part of any of its employees to additional compensation with respect to any period after the Closing Date.

9.20 Seller represents that the Assets which are the subject of this sale are sufficient with which to operate the Facilities as 56 and 60 bed skilled care nursing homes and that Seller has no knowledge of any facts or events which may prohibit or materially impair the use of the Facilities as 56 and 60 bed skilled care nursing homes.

**ARTICLE X**  
**REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to Seller as follows:

10.01 Buyer is a limited liability company duly organized under the laws of the State of Illinois and has full power to enter into this Agreement and to consummate the transactions contemplated hereby and to perform its obligations hereunder.

10.02 The execution and delivery of this Agreement and all other agreements executed in connection herewith by Buyer, and the performance by Buyer of its obligations hereunder, have been duly and validly authorized by all necessary actions of Buyer. This Agreement and all agreements to be executed in connection herewith have been duly executed and validity delivered by Buyer and constitutes the valid and binding obligations of Buyer, enforceable in accordance with their terms.

10.03 Neither the execution or delivery of this Agreement by Buyer, nor the consummation of the transactions contemplated hereby by Buyer, will result in the breach of any terms or conditions of, or constitute a default under, any order or judgment of any court or government agency affecting Buyer, or any contract or other obligation to which Buyer is a party or by which it is bound.

10.04 Buyer has no knowledge of and is not aware of any fact or circumstance which would render any of the representations or warranties made by Buyer in connection with this Agreement inaccurate or misleading in any respect.

**ARTICLE XI**  
**SELLER'S COVENANTS:**  
**CONDUCT OF BUSINESS PRIOR TO THE CLOSING**

11.01 Seller does hereby covenant and agree that Seller will itself in good faith ensure that:

(a) Through the Closing Date the Assets shall be maintained in customary

repair, order and condition, reasonable wear and use and damage by fire or other unavoidable casualty excepted, and shall not be sold, assigned, encumbered or otherwise disposed of any Assets if used in connection with the operation of the Facilities, other than in the ordinary course of business. Through the Closing Date, Dietary and General Inventories shall be maintained at customary levels.

11.02 Seller shall, subject to any patient rights, give Buyer and its authorized representatives access at any and all reasonable times during normal business hours to the Facilities and to Seller's books and records pertaining to the Facilities, upon reasonable prior notice to Seller.

11.03 Seller, as soon as practical after the execution of this Agreement, shall take all reasonable steps necessary (but not including the expenditure of money) to assist Buyer in obtaining any certificates of need, licenses or such other approvals from governmental agencies as may be required for Buyer to operate the Facilities.

11.04 Seller, as soon as practical after the execution of this Agreement, shall take all reasonable steps necessary to transfer to Buyer fee simple title to the Facilities, subject only to the Permitted Exceptions, at Closing.

11.05 Seller, as soon as practical after the execution of this Agreement, shall take all reasonable steps necessary to assist Buyer in obtaining consent from HUD for the assignment and assumption of the Loan Agreements..

11.06 Seller shall maintain the insurance on the Assets currently in place, through the date of Closing.

11.07 Seller and Buyer anticipate that, after the Closing Date, Seller and Buyer may receive payments from private parties, social security, pension, annuity or other payments for residents at the Facilities, or third party payors (including payments from Medicare, Medicaid and private insurers) that may be due, in whole or in part, to the other party and each of Seller and Buyer may be subject to claims, setoffs, takebacks, obligations or other liabilities relating to the period during which that party did not operate the Facilities. Seller hereby agrees to deliver to Buyer immediately upon receipt (and in no event more than 5 days after receipt) any funds received by Seller, whether directly or by and through its management company on behalf of Seller, that relate to the period of operation of the Facilities commencing on and continuing after the Closing Date, including for the avoidance of doubt, social security or other payments for the patients direct deposited in Seller's account, payments received in cash, check or other form attributable to a patient, funds from Medicare, Medicaid, private insurers or private payors. Seller agrees and covenants to reimburse Buyer immediately (and in no event more than five (5) days after notice of the need for reimbursement) for any liability, claim, setoff, takeback, obligations or liabilities relating in any way to the operation of the Facilities during the period prior to the Closing Date for which Buyer may become responsible. Buyer shall deliver to Seller immediately upon receipt (and in no event more than five (5) days after receipt) any funds received by Buyer that relate to the period of operation of the Facilities prior to the Closing Date.

11.08 Seller shall prepare and timely file all Medicare and Medicaid cost reports related to the services provided at the Facilities prior to the Closing Date.

11.09 Seller shall pay the employees of the Facilities for all services rendered through the Closing Date on Seller's normal payroll payment dates and shall timely pay all employment taxes and other liabilities attributable to such employees through the Closing Date.

11.10 Notwithstanding any term herein to the contrary, the covenants contained in this Article XI shall survive closing for the period necessary to fulfill the covenant, but in no event less than the relevant statutes of limitations for the claims, setoffs, takebacks, obligations or other liabilities for which Buyer could be responsible related to the operation of the Facilities prior to the Closing Date.

### ARTICLE XII THIRD PARTY CONSENTS

12.01 Promptly following the execution of this Agreement, Buyer shall prepare and file with all appropriate licensing authorities any applications for the transfer or issuance to Buyer of all federal, state and local permits and licenses required for Buyer or its nominee to own the Facilities, and Buyer shall secure all such licenses and permits prior to the Closing Date.

### ARTICLE XIII DELIVERIES AT THE CLOSING

13.01 At the Closing (or, if so indicated, prior thereto), Seller shall deliver to Buyer, in addition to any and all other instruments required hereunder to be delivered to Buyer by Seller, or otherwise comply with, each of the following:

(a) A Warranty Deed duly executed by Seller, witnessed and attested for recording, in form and substance satisfactory to Buyer, in its reasonable discretion, conveying fee simple title to the Real Property to Buyer, free and clear of all liens, claims, encumbrances and interests, except for the Permitted Exceptions on Schedule 17.02, together with possession of the Real Property and an ALTA Owner's Title Insurance Policy which shall be provided at Seller's expense;

(b) Any transfer statement, declaration or other such document required by the State of Illinois, county or local municipality to be filed with such conveyance documents.

(c) A bill of sale and such other instruments of assignment or conveyance duly executed by Seller, witnessed and, if appropriate, attested for recording, in form and substance satisfactory to Buyer, in its reasonable discretion, assigning and transferring to Buyer all Assets, other than the Real Property, whether tangible or intangible, to be sold hereunder, free and clear of all liens, claims, encumbrances and interests, together with the possession of such Assets;

(d) Assignments duly executed by Seller of all its right, title and interest in, to and under all Assigned Contracts and other agreements to be assigned and transferred to Buyer hereunder, in form and substance satisfactory to Buyer, in its reasonable discretion;

- (e) Assignments duly executed by Seller of all its right, title and interest, if any, in and to the Specified Trade Names, in form and substance satisfactory to Buyer, in its reasonable discretion;
- (f) An Assignment and Assumption Agreement duly executed by Seller and the HUD for the assignment of the underlying notes and mortgages in form and substance satisfactory to Buyer and HUD and Seller;
- (g) Evidence of Seller's compliance with all terms and conditions of the loan agreement and underlying documents from HUD;
- (g) Evidence of Seller's authority to execute and perform its obligations under this Agreement satisfactory to Buyer;
- (h) Evidence of the payment of all amounts required to be made under Section 19.02;
- (i) An Environmental Certificate which shall include a statement by Seller that Seller has not caused, nor to the best of Seller's knowledge has a prior owner caused, a Release of Hazardous Substances at the Facilities. As used herein, "Hazardous Substances" shall mean any pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials, or hazardous substances as defined in or pursuant to the Resource Conservation and Recovery Act (42 U.S.C. Section 6901, et seq.) as amended, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et seq.) as amended, the Clean Water Act (33 U.S.C. Section 1251, et seq.) as amended, or any other federal, state or local environmental law, ordinance, rule or regulation, and "Release" shall mean releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping;
- (i) An Indemnity Agreement, which shall be in a form satisfactory to Buyer, in its reasonable discretion, executed by Seller holding Buyer harmless from any and all claims or liabilities relating to the Facilities prior to Closing;
- (j) All resident trust funds in the possession of Seller on behalf of the Facilities, together with an appropriate accounting thereof;
- (k) Evidence of termination of the management agreement duly executed by Seller and the current manager of the Facilities terminating all agreements as of the Closing Date;
- (l) Such other certificates, opinions, consents, instruments, agreements, documents and other papers as are required under this Agreement.

13.02 At the Closing (or, if so indicated, prior thereto), Buyer shall deliver to Seller, in addition to any and all other instruments required hereunder to be so delivered to Seller by Buyer, or otherwise comply with, each of the following:

- (a) The Purchase Price in accordance with Section 2.02 hereof;
- (b) An Indemnity Agreement, which shall be in a form satisfactory to Seller, in its reasonable discretion, executed by Buyer holding Seller harmless from any and all claims or liabilities relating to the Facilities following the Closing;
- (c) Certified copy of Buyer's Articles of Organization, the resolutions adopted by Buyer, to the extent required by law, authorizing and approving the execution and performance of this Agreement and the sale and transfer of the Assets to be sold to Buyer hereunder, and Buyer's Operating Agreement, together with all amendments thereto, certified by an officer of Buyer as of the Closing Date;
- (d) All HUD TPA documentation, including but not limited to the release of Seller from the HUD mortgage and Note;
- (e) Certificate of Good Standing for Buyer issued by the Illinois Secretary of State not earlier than ninety (90) days prior to the date of Closing; and
- (f) Such other certificates, opinions, consents, instruments, agreements, documents, and other papers as are required under this Agreement.

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

The obligations of Buyer to consummate the Closing under this Agreement shall be subject, at Buyer's option, to the fulfillment prior to or at the Closing of each of the following conditions:

14.01 Seller shall have performed and complied in all material respects with all of its obligations as required by the Agreement prior to the Closing.

14.02 Each representation and warranty of Seller in this Agreement shall be true and accurate in all material respects as of the date when made, and shall be true and accurate in all material respects as of the Closing Date as if made at that time, except for changes permitted or contemplated by this Agreement and except to the extent that any such representation or warranty is made as of a specific date, in which case such representation or warranty shall have been true and accurate as of such date.

14.03 Buyer shall have received all agreements, certificates, instruments and other papers required to be delivered to Buyer at or prior to the Closing under any provision of this Agreement.

14.04 All statutory and other legal requirements for the valid consummation of the transactions contemplated by this Agreement shall have been fulfilled.

14.05 No suit, proceeding, or investigation by any governmental body shall have been

instituted or threatened and remain pending that seeks to restrain, enjoin or otherwise prohibit the transactions contemplated hereby, or that seeks significant money damages with respect thereto, or that could reasonably be expected to have a material adverse effect on the financial condition of the Facilities. No suit, action or other judicial proceeding or investigation by any administrative agency or governmental body shall have been instituted or threatened and remain pending which challenges the legality of, or seeks to restrain, enjoin or otherwise prohibit the transactions contemplated by this Agreement under the antitrust laws of the United States or any state. Buyer shall have determined, in its reasonable discretion, that none of the notices that may have been delivered to Buyer hereunder will have a material adverse effect on the financial condition of the Facilities.

14.06 Buyer shall have received all consents, approvals and agreements of governmental bodies and other third parties as Buyer may deem necessary, in its reasonable discretion, for the effective consummation of the transactions contemplated by this Agreement, including, but not limited to a CON/COE and license from the Illinois Department of Public Health effective on or before the Closing Date. Notwithstanding anything to the contrary contained in this Agreement, it shall in all events and circumstances of any and every nature whatsoever be an express condition precedent to the assignment of obligations hereunder that the Illinois nursing home licensing authority first grant its permission, approval and/or consent to the transaction contemplated herein. In the event that such consent cannot be obtained, any actions taken by the parties hereto pursuant to this Agreement shall immediately and forthwith be unwound/undone, and thereafter, except for the parties' indemnities, this Agreement and all of the parties' respective duties, obligations, promises, covenants, agreements, representations, warranties, rights, remedies and privileges shall be null, void, non-binding, invalid, unenforceable and of no force and/or effect and neither party hereto shall thereafter have any further liability of any nature whatsoever to the other party hereto;

14.07 Receipt of approval by Buyer of the assumption of the Loan Agreements by HUD.

14.08 Receipt of approval by Buyer from the appropriate state and federal agencies of the sale and purchase of the Facilities, if any such approval is required, and confirmation from the appropriate state agencies that Buyer will be entitled to a Medicaid rate which shall be in such amounts as are satisfactory to Buyer, in its reasonable discretion.

14.09. All actions and documents required to carry out the transactions contemplated by this Agreement, or incidental thereto, shall have been approved and accepted as to legal form, content and sufficiency by Buyer and its counsel, in their sole discretion.

14.10 Seller's ability to keep the Facilities free of violations classified at a level "G" or above in scope and severity by the relevant state regulatory agency up to and including the Closing Date.

14.11 The Facilities shall continue to operate and function as a skilled long-term care Facilities through the Closing Date and no licenses to operate the Facilities shall be less than a standard license. As of the Closing Date the Facilities shall not be subject to any license or de-certification actions and no such actions will be threatened or pending against the Facilities. As of the Closing Date the Facilities shall continue to be certified for participation in the Medicare and Medicaid programs.

14.12 Seller hereby covenants to use its reasonable best efforts to obtain the satisfaction and fulfillment of the conditions set forth in Article XIV, which are susceptible of satisfaction and fulfillment by Seller.

Buyer may, in its sole discretion, waive in writing any or all of the above conditions to Closing.

**ARTICLE XV**  
**CONDITIONS PRECEDENT TO THE OBLIGATIONS OF SELLER**

The obligations of Seller to consummate the Closing shall be subject, at Seller's option, to the fulfillment prior to or at the Closing of each of the following conditions:

15.01 Buyer shall have performed in all material respects its obligations to be performed prior to the Closing pursuant to this Agreement.

15.02 Each representation and warranty of Buyer in this Agreement shall be true and accurate in all material respects as of the date when made, and shall be true and accurate in all respects as of the Closing Date as if made at that time except for changes permitted or contemplated by this Agreement and except to the extent that any such representation or warranty is made as of a specific date, in which case such representation or warranty shall have been true and accurate as of such date.

15.03 Seller shall have received all of the agreements, certificates, instruments and other papers required to be delivered to Seller at or prior to the Closing under any provision of this Agreement, including but not limited to a release under the HUD mortgage and note.

15.04 All statutory and other legal requirements for the valid consummation of the transactions contemplated by this Agreement shall have been fulfilled.

15.05 No suit, proceeding, or investigation by any governmental body shall have been instituted or threatened and remain pending that seeks to restrain, enjoin or otherwise prohibit the transactions contemplated hereby, or that seeks significant money damages with respect thereto. No suit, action or other judicial proceeding or investigation by any administrative agency or governmental body shall have been instituted or threatened and remain pending which challenges the legality of, or seeks to restrain, enjoin or otherwise prohibit the transactions contemplated by this Agreement under the antitrust laws of the United States or any state.

15.06 Seller shall have received such legal opinions of its counsel, or other assurances and evidence, as it deems necessary to establish the fulfillment of the requirements of this Agreement and the conditions contained in this Article.

15.07 Buyer hereby covenants to use its reasonable best efforts to obtain the satisfaction and fulfillment of the conditions set forth in this Article XV which are susceptible of satisfaction and fulfillment by Buyer.

Seller may, in its sole discretion, waive in writing any or all of the above conditions to Closing.

**ARTICLE XVI**  
**COOPERATION IN VARIOUS MATTERS**

16.01 Each party to this Agreement shall cooperate with the other, including the furnishing of testimony and other evidence, as reasonably requested in the prosecution or defense of any third party claim or any other issues which may arise which are related to the Facilities, the Assets or the Liabilities.

16.02 Buyer shall retain at the Facilities (i) all files and records pertaining to all residents of the Facilities as of the Closing Date; (ii) the files and records pertaining to residents discharged from the Facilities during the period commencing 18 months prior to the Closing Date and (iii) the files and records pertaining to all employees of the Facilities as of the Closing Date. (Collectively the "Current Facilities' Records") Buyer shall allow Seller reasonable access to the Current Facilities Records and the right to make copies and extracts there from at any time during normal business hours, at Seller's expense; provided, however, that commencing two (2) years after the Closing Date, Buyer may give Seller written notice of Buyer's intention to dispose of any part thereof, specifying the times to be disposed of in reasonable detail and Seller may within a period of sixty (60) calendar days from the receipt of any such notice, notify Buyer of the desire to retain one or more of the items. Buyer shall, upon the receipt of such notice, deliver to Seller, at Seller's expense, the items specified in such notice as those which Seller has elected to retain.

16.03 For a period of five (5) years after the Closing Date, Seller shall preserve all files and records relating to the Facilities, the Assets, and the Liabilities for the period prior to the Closing and allow Buyer reasonable access to such files and records and the right to make copies and extracts there from at any time during normal business hours, at Buyer's expense; provided, however, that commencing three (3) years after the Closing Date, Seller may give Buyer written notice of any intention by Seller to dispose of any part thereof, specifying the items to be disposed of in reasonable detail and Buyer may, within a period of sixty (60) calendar days from receipt of any such notice, notify Seller of the desire to retain one or more of the items to be disposed of. Seller shall, upon receipt of such a notice, deliver to Buyer, at Buyer's expense, the items specified in such notice as those which Buyer have elected to retain.

16.02 Buyer shall cooperate, and shall cause its employees to cooperate, in a reasonable manner, with Seller in providing Seller with reasonable access to the Facilities and books and records of the Facilities after the Closing to allow Seller to prepare all normal financial, tax and other reports reasonably required by Seller for the period prior to the Closing Date.

16.03 Tax and accounting records relating to the Facilities which are maintained by Seller shall remain the property of Seller, but shall be made available to Buyer after the Closing. Any Books and Records pertaining to the operation of the Facilities prior to Closing which are maintained at the offices of the Facilities shall be made available to Seller for a period of five (5) years after the Closing and shall be subject to the provisions of Section 16.02.



**ARTICLE XVII**  
**TITLE; SURVEY; ENVIRONMENTAL AUDIT; OTHER REPORTS**

17.01 Within five (5) business days after the execution of this Agreement, Seller shall order and as soon thereafter as possible shall deliver to Buyer: (a) a current ALTA 1970 Form B (Amended 10/17/70) title commitment for owner's policy of title insurance for the Real Property set forth on **Schedule 2.01(a)**, issued by Chicago Title Insurance Company (the "Title Company"), together with copies of all documents identified in the title commitment as Schedule B exceptions (the "Title Binder"); and (b) a current ALTA survey (the "Survey"). The Title Binder describes the Real Property set forth on **Schedule 2.01(a)**, names Buyer as the party to be insured hereunder and commits to insure Buyer with good and marketable fee simple title upon Closing.

17.02 Buyer shall have fifteen (15) days from the receipt of the last of the Title Binder and Survey, or such later time as may be agreed upon in writing by the parties (the "Title Review Period") in which to notify Seller in writing of any objections Buyer has to any matter shown or referred to in such Title Binder. Any title encumbrances or exceptions which are set forth in the Title Binder or Survey as to which Buyer does not object within the Title Review Period shall be deemed to be a permitted exception to the status of title to the Assets to be transferred by Seller to Buyer (collectively, the "Permitted Exceptions"), which shall be set forth on **Schedule 17.02**. With regard to items to which Buyer does object within the Title Review Period, Seller shall have a period of five (5) business days following receipt of Buyer's written notice in which to cure such objections. If Seller is unable to cure such objections within such period, Buyer may, at Buyer's option, waive the objections not cured or terminate this Agreement by written notice to Seller.

NOTE FOR 17.03-17.05 INCLUSIVE: BUYER SHALL BE SOLELY AND EXCLUSIVELY RESPONSIBLE FOR ANY DAMAGES, INJURY, LOSS OR CASUALTY TO ANY PERSON AND/OR PROPERTY AND RESTORATION OF PROPERTY TO PRIOR CONDITION.

17.03 Buyer may order a Phase I Environmental Audit (the "Environmental Audit") to be performed upon the Facilities by a company acceptable to Buyer. The Environmental Audit shall discuss, among other things, whether there has been or currently is any environmental contamination or other toxic material stored or located at the Facilities, including any asbestos.

17.04 Buyer may order an engineering report to be prepared by a company acceptable to Buyer which discusses condition of the physical plant of the Facilities (the "Engineering Report").

17.05 Buyer may order a termite and wood boring insect report to be performed upon the Facilities by a licensed and bonded exterminator to determine the existence of active infestation or structural damage caused by existing or prior infestations (the "Termite Report").

17.06 Seller shall provide Buyer with copies of all of the loan documents relating to the Sellers' financing with HUD (the "Loan Documents") within 5 days of the execution of this Asset Purchase Agreement.

**ARTICLE XVIII**  
**TERMINATION; REMEDIES UPON DEFAULT**

18.01 In addition to Buyer's rights to terminate this Agreement as otherwise provided herein, Buyer may terminate this Agreement, in its sole discretion, upon written notice to Seller upon the occurrence of any of the following events which are not timely cured in accordance with the time period provided herein:

- (a) The material breach of any covenant contained in this Agreement which is not cured by Seller within five (5) business days following receipt of written notice from Buyer.

In the event that one or more of the matters referenced in Section 18.01 cannot be cured within the time period specified herein, Seller shall be given a reasonable period of time in which to attempt to cure such matter; provided, however, that Seller commences action to cure such matter within the applicable time period and provides Buyer with reasonable assurance, in writing, that such matter will be cured by Seller prior to Closing.

18.02 Notwithstanding any other provision of this Agreement, at any time prior to the Closing Date, Seller shall have the right to terminate this Agreement if Seller determines, in Seller's reasonable judgment, that the costs required to complete the obligations hereunder in order for the Closing to occur shall exceed the sum of \$20,000; provided, however, that Seller shall give Buyer written notice of such termination and Buyer shall thereafter have the right to reinstate this Agreement by delivering to Seller within three (3) days after the delivery of a notice that Buyer waives all of Seller's obligations relating to Closing which exceed the sum of \$20,000.00. If Seller exercises its right to terminate this Agreement under Section 18.02 and Buyer does not elect to reinstate the Agreement in accordance herewith, Buyer shall be entitled to an immediate return of the Earnest Money Deposit and all interest accrued thereon.

18.03 In the event Buyer is in material default under this Agreement and such material default, following notice to Buyer, has not been timely cured within twenty (20) days following receipt of such notice, or Buyer otherwise wrongfully refuses to proceed to Closing, then the entire Earnest Money Deposit, including accrued interest thereon, shall hereinafter belong to and shall be paid to Seller unless Seller, in its sole discretion, notifies Escrow Agent in writing, with copy to Buyer, that Seller will seek specific performance of this Agreement against Seller. In the event Seller is in material default under this Agreement and such material default has not been timely cured, or Seller otherwise wrongfully refuses to proceed to Closing, then the entire Earnest Money Deposit, including all accrued interest thereon, shall belong to and shall be paid to Buyer, unless Buyer, in its sole discretion, notifies Escrow Agent in writing, with copy to Seller, that Buyer will seek specific performance of this Agreement against Seller. In which case, specific performance shall be buyer's sole and exclusive remedy.

18.04 In the event the Closing is delayed or hindered by reason of strikes, lockouts, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason beyond the control of Buyer or Seller, the Closing Date shall be extended for a period equivalent to the delay.

**ARTICLE XIX**  
**EXPENSES; BROKERAGE FEES; SALES, TRANSFER**  
**AND OTHER TAXES**

19.01 Each party to this Agreement shall pay all expenses incurred by it or on its behalf in connection with the preparation, authorization, execution and performance of this Agreement, whether or not the sale hereunder shall be consummated or this Agreement shall subsequently be terminated, including, but not limited to, all fees and expenses of agents, representatives, counsel and accountants. Each party to this Agreement shall hold the other harmless with respect to any broker's, finder's or other similar agent's fees claimed to have been incurred with respect to the transactions contemplated hereby by any broker, finder or similar agent engaged or employed by the indemnifying party. Seller shall be solely responsible for the payment of any broker's commission upon the Closing.

19.02 Seller shall pay all use, sales, transfer, excise and other taxes arising out of the sale, assignment and conveyance to Buyer of the Assets, including all recording and other fees or charges imposed by state or local governments on the sale and transfer of the Assets to Buyer hereunder, including, without limitation, any recording fees, documentary stamps or similar taxes, fees or charges.

**ARTICLE XX**  
**FURTHER ASSURANCES**

20.01 At the Closing, and at any time or from time to time thereafter, each party shall at the request of another take all actions reasonably necessary to further effectuate the terms and provisions and purposes of this Agreement and shall execute and deliver such other instruments and documents and take such other action as another party may reasonably request in order to complete more effectively the sale and transfer of the Assets to Buyer hereunder and the assumption by Buyer of the Liabilities, if any, assumed hereunder by Buyer.

**ARTICLE XXI**  
**NOTICES**

21.01 All notices, requests, demands and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if telecopied, transmission confirmed, to the following numbers, or if given in writing and delivered personally or mailed first class, postage prepaid, registered or certified mail, to the following addresses:

If to Seller: Victor A. Horowitz  
4101 W. Main Street  
Skokie, IL 60076  
(847)677-7777 /16  
(847)677-7796 Fax

With a copy to: Lawrence Y. Schwartz, Ltd.  
7358 N. Lincoln Ave.  
Lincolnwood, IL 60712  
(847) 679-2011 (Telecopy)

If to Buyer: Petersen Companies, LLC.  
Mark B. Petersen  
830 West Trailcreek Drive  
Peoria, Illinois 61614  
(309) 691-8622 (Telecopy)

With a copy to: Marikay L. Snyder  
830 West Trailcreek Drive  
Peoria, Illinois 61614  
(309) 691-8622 (Telecopy)

Either party may change the address to which such notifications are to be directed to it by giving written notice to the other in the manner provided in this Section. Any notice given by mail as provided in this Section shall be deemed given as of the third (3rd) business day following the mailing.

**ARTICLE XXII**  
**CONDEMNATION; RISK OF LOSS; OTHER MATTERS**

22.01 In the event of condemnation of any of the Real Property, or any part thereof, before the Closing Date, which does not render a Facility located thereon inoperable as a an skilled long-term care facility, Buyer shall be required to close pursuant to this Agreement and Buyer shall receive the condemnation award as its sole remedy. In the event of condemnation of the Real Property, or any part thereof before the Closing Date, which renders a Facility located thereon inoperable as a skilled nursing facility, Buyer shall have the sole discretion to either proceed to close this transaction in accordance with this Agreement and receive the condemnation award as its sole remedy or to terminate this Agreement and receive the Earnest Money Deposit, including accrued interest thereon, as its sole remedy. As used in this section, "inoperable" shall mean the loss of any entrance or exit of a Facility or ten percent (10%) or more of the beds in such Facility.

22.02 In the event a Facility is damaged by fire or elements or other cause prior to the Closing Date involving repair costs, as determined by Seller's insurance adjuster, in an amount of not more than five percent (5%) of the Purchase Price, Seller shall be obligated to use the insurance proceeds to repair such Facility and restore it to substantially the same condition that it was in on the date of this Agreement. In the event that such damage shall exceed such sum, this Agreement may be terminated at the option of Buyer. Should Buyer elect to carry out this Agreement despite such

damage, Seller shall not be obligated to restore but Buyer shall be entitled to the insurance proceeds relating to said damage to such Facility.

22.03 This Agreement, including all Schedules attached hereto, sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between Seller and Buyer relating to the subject matter hereof. All Schedules attached hereto shall be updated as of the Closing Date. If any Schedule is not attached at the time of the execution of this Agreement, the parties shall endeavor in good faith subsequently to create and attach such Schedule; provided, however, that if any Schedule is not attached or cannot be created, the failure to attach such Schedule shall not invalidate the effect or enforceability of this Agreement.

22.04 The Article headings contained in this Agreement are for convenient reference only, and shall not in any way affect the meaning or interpretation of this Agreement.

22.05 This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Illinois, excluding the conflict of laws provisions thereof.

22.06 All information given by any party hereto to any other party shall be used only for the purposes of this Agreement and the transactions contemplated hereunder and shall be treated as confidential and shall not be disclosed to others except insofar as such data or information has been published or is a matter of public knowledge or is required to be disclosed by law.

22.07 This Agreement may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute but one agreement.

22.08 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

22.09 This Agreement may be amended, superseded or canceled, and any of the terms hereof may be waived, only by a written instrument specifically referring to this Agreement and specifically stating that it amends, supersedes or cancels this Agreement or waives any of its terms, executed by an authorized officer of each party (or, in the case of a waiver, by the party waiving compliance). The failure of either party at any time or times to require performance of any provision of this Agreement shall in no manner affect the right at a later time to enforce the same. No waiver by either party of any breach of any term contained in this Agreement in any one or more instances shall be deemed to be or construed as a further or continuing waiver of such breach, or a waiver of any breach of any other term.

22.10 Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

22.11 In the event any terms or provisions of this Agreement shall be held to be illegal, invalid, or unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect.

22.12 No press releases or public disclosure, either written or oral, of the transactions contemplated by this Agreement, shall be made by either party without the prior knowledge and written consent of the other; provided, however, that each may disclose the existence of this Agreement and its terms and conditions to its lenders and such other parties whose consent or knowledge of this transaction may be required, whether by contract or pursuant to applicable law.

22.13 Any and all actions brought by either party in connection with or arising out of this Agreement shall be brought only in a court of appropriate jurisdiction in Peoria County, Illinois, or in the United States District Court for the Central District of Illinois. Seller hereby submits itself to the jurisdiction of any and all such courts for the purposes of any litigation between the parties in connection with or arising out of this Agreement.

22.14 Any and all service of process upon Seller or Buyer may be given by mailing the documents to be served by certified or registered mail, return receipt requested, with postage fully paid, to Seller or Buyer at the address stated in Article 21 of this Agreement (or to such other address established pursuant to that paragraph).

22.15 The recitals set forth above are incorporated by reference as if more fully set forth at length herein.

22.16 **SELLER AND BUYER ACKNOWLEDGE THAT TIME IS OF THE ESSENCE OF THIS AGREEMENT.**


**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

**Seller:**


**Heritage Nursing Center, Inc.**, an Illinois corporation

Date: \_\_\_\_\_

By:   
Victor Horowitz, President

**Jackson Heights Nursing Center, Inc.**, an Illinois corporation


Date: \_\_\_\_\_

By:   
Victor Horowitz, President

**Buyer:**

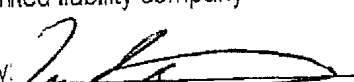
**PETERSEN FARMER CITY, LLC.**, an Illinois limited liability company

Date: \_\_\_\_\_

By:   
Mark B. Petersen  
Its: Manager

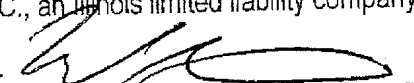
**PETERSEN CHAMPAIGN, LLC.**, an Illinois limited liability company

Date: \_\_\_\_\_

By:   
Mark B. Petersen  
Its: Manager

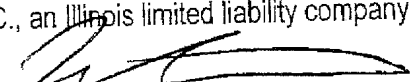
**PETERSEN HEALTH CARE – FARMER CITY, LLC.**, an Illinois limited liability company

Date: \_\_\_\_\_

By:   
Mark B. Petersen  
Its: Manager

**PETERSEN HEALTH CARE – ILLINI, LLC.**, an Illinois limited liability company

Date: \_\_\_\_\_

By:   
Mark B. Petersen  
Its: Manager

**SCHEDULE 1.03**

**EXCLUDED ASSETS**

1. All cash on hand, cash on deposit, cash equivalents, deposits or refunds.
2. All accounts receivable.
3. All causes of action or claims held against any party excepting only any causes of action or claims, which may relate directly to the Assets being transferred hereunder (e.g. warranty claims for defective personal property, etc.).
4. Any assets of a type not specifically described in Section 2.01 of this Agreement.



**SCHEDULE 2.01(a)**

**LEGAL DESCRIPTION**

SCHEDULE 2.01(d)

**SPECIFIED TRADE NAMES**

1. Jackson Heights Health Care Center
2. Heritage Health Care Center

**SCHEDULE 2.01(e)**

**PURCHASE ORDERS**

1. None.

SCHEDULE 2.01(f)

**ASSIGNED CONTRACTS**

1. None

**SCHEDULE 5.01(d)**

**LIABILITIES TO BE ASSUMED**

1. NONE

**SCHEDULE 9.03**

**DISCLOSURE OF MATERIAL MATTERS**

SCHEDULE 9.08

**DISCLOSURE OF UNDERGROUND TANKS AND  
DANGEROUS OR TOXIC MATERIALS OR CONDITIONS**

**SCHEDULE 9.10**

**DISCLOSURE OF PLANNED OR COMMENCED PUBLIC IMPROVEMENTS**



**SCHEDULE 9.11**

**DISCLOSURE OF KNOWN OR POTENTIAL MECHANIC'S LIENS**

SCHEDULE 9.13

**DISCLOSURE OF PENDING AND POTENTIAL LITIGATION,  
GOVERNMENTAL PROCEEDINGS OR INVESTIGATIONS**

SCHEDULE 9.18

**FACILITY EMPLOYEES AND BENEFITS**

**SCHEDULE 17.02**

**PERMITTED EXCEPTIONS**

1. All local, state and federal laws, ordinances, regulations, conditions and restrictions governing use of the Assets.
2. Taxes and assessments for the year 2006 and subsequent years.
3. All easements, rights-of-way, covenants, conditions, restrictions and all other matters that appear of record which do not adversely affect the use of the Real Property as a skilled care nursing home.
4. Rights of the public, the State of Illinois and/or municipality, and other entitled thereto, in and to that part of the Real Property taken or used for road purposes.