

ROB BONTA
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 210-7806
Facsimile: (916) 327-2319
E-Mail: Heidi.Lehrman@doj.ca.gov

December 20, 2023

Paul T. Smith
Hooper Lundy Bookman
44 Montgomery Street, Suite 3500
San Francisco, CA 94104
psmith@hooperlundy.com

Sent via email

RE: Proposed Change in Control of Mercy Retirement and Care Center

Dear Mr. Smith:

Pursuant to Corporations Code section 5920 et seq., the Attorney General hereby conditionally consents to the proposed change in control and governance of the Mercy Retirement and Care Center skilled nursing facility pursuant to the terms of the Affiliation Agreement dated July 28, 2023, between Elder Care Alliance, a California nonprofit public benefit corporation, and Transforming Age, a Washington nonprofit corporation.

Corporations Code section 5923 and California Code of Regulations, title 11, section 999.5, subdivision (f) set forth factors that the Attorney General shall consider in determining whether to consent to a proposed transaction between nonprofit corporations or entities. The Attorney General has considered such factors and approves the proposed transaction subject to the attached conditions that are incorporated by reference herein.

Sincerely,

Heidi Lehrman

HEIDI LEHRMAN
Deputy Attorney General

For ROB BONTA
Attorney General

HLL:
SA2023305047
37581509.docx

SUMMARY OF CONDITIONS

Condition I: Identifies the parties, entities, and facility that are legally bound by the conditions.

Condition II: Identifies the transaction documents.

Condition III: Requires sixty days' notice of either transfer or transfer of governance or control of the facility.

Condition IV: Requires continued employment of all staff in good standing as of the applicable closing date of the Affiliation Agreement.

Condition V: Prohibits discrimination on the basis of protected personal characteristics.

Condition VI: Requires the entities listed in Condition I to create, maintain, and consult with a Community Advisory Board at the facility.

Condition VII: Requires the entities listed in Condition I to abide by all resident agreements in place on the applicable closing date of the Affiliation Agreement.

Condition VIII: Requires Mercy Retirement and Care Center to operate and be maintained for the next five years at the same types and levels of skilled nursing services.

Condition IX: Requires the continuation of Medicare and Medi-Cal participation at the facility.

Condition X: Requires the entities listed in Condition I to submit annual compliance reports to the Attorney General's Office and Community Advisory Board for five years after the applicable closing date.

Condition XI: Requires the entities listed in Condition I to submit any requested information necessary to monitor compliance to the Attorney General's Office.

Condition XII: Deems the entities listed in Condition I to have consented to and to have waived any right to seek judicial relief regarding these Conditions. The Attorney General reserves the right to enforce each and every condition and to recover fees and costs associated with enforcement.

Attorney General's Conditions to Proposed Change in Control of Mercy Retirement and Care Center by Elder Care Alliance, a California Nonprofit Public Benefit Corporation, to Transforming Age, a Washington Nonprofit Corporation.

I.

These Conditions shall be legally binding on the following parties: Elder Care Alliance (ECA), a California nonprofit public benefit corporation; Mercy Retirement and Care Center, a California nonprofit public benefit corporation; Transforming Age (TA), a Washington nonprofit corporation, and any other subsidiary, parent, general partner, limited partner, member, affiliate, successor, successor in interest, assignee, or person or entity serving in a similar capacity of Transforming Age or any entity succeeding thereto as a result of consolidation, affiliation, merger, or acquisition of all or substantially all of the real property or operating assets of the skilled nursing facility (SNF) or the real property on which that facility is located; any and all current and future owners, lessees, licensees, or operators of the SNF and any and all current and future lessees and owners of the real property on which that facility is located. The facility is located at 3431 Foothill Boulevard, Oakland, CA, 94601.

II.

The transaction conditionally approved by the Attorney General consists of the Affiliation Agreement executed on July 28, 2023, by and between ECA and TA, and any and all amendments, agreements, or documents referenced in or attached as an exhibit or schedule to any of the foregoing agreements (collectively, the AA, attached hereto as Exhibit 1).

The entities listed in Condition I shall fulfil the terms of the AA including, but not limited to, any exhibits or schedules to the AA, and shall notify the Attorney General in writing of any proposed modifications or rescissions. Such notifications shall be provided at least sixty (60) days prior to their effective date in order to allow the Attorney General to consider whether they affect the factors set forth in Corporations Code section 5923 and require the Attorney General's approval.

III.

For five (5) years from the closing date of the AA, the entities listed in Condition I shall be required to provide written notice to the Attorney General sixty (60) days prior to entering into any agreement or transaction to do any of the following:

- (a) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of the SNF or any portion thereof.
- (b) Transfer control, responsibility, or governance of a material amount of the assets or operations of the SNF or portions thereof. The substitution, merger, or addition of a new member of the governing body, general partner, or limited partner of any of the entities listed in Condition I that transfers the control of, responsibility for, or governance of the SNF, or any portion thereof, shall be deemed a transfer for purposes of this Condition. The substitution or addition of one or more members of the governing body, general partner, or limited partners of any of the entities in Condition I or any arrangement, written or oral, that would transfer voting control of the members of the governing body,

general partner, or limited partners of any of the entities listed in Condition I shall also be deemed a transfer for purposes of this Condition.

IV.

For five (5) years from the applicable closing date of the AA, the entities listed in Condition I shall offer employment to staff at the facility who are and remain in good standing. This condition is not intended to preclude staff leadership changes as warranted for operational flexibility.

V.

The entities listed in Condition I shall prohibit unlawful discrimination in their services and programs at the facility on the basis of any protected personal characteristic identified in state and federal civil rights laws, including section 51 of the California Civil Code and title 42, section 18116 of the United States Code. Categories of protected personal characteristics include:

- a) Gender, including sex, gender, gender identity, and gender expression;
- b) Intimate relationships, including sexual orientation and marital status;
- c) Ethnicity, including race, color, ancestry, national origin, citizenship, primary language, and immigration status;
- d) Religion;
- e) Age; and
- f) Disability, including disability, protected medical condition, and protected genetic information.

VI.

For five (5) years from the closing date of the AA, the entities listed in Condition I shall cause to be created and thereafter maintain a Community Advisory Board at the facility with which it shall consult on a quarterly basis. The Community Advisory Board shall consist of no fewer than 5-7 volunteer residents at the facility chosen by the residents of the facility. An existing resident advisory board will suffice if it meets the specifications in this Condition. The Community Advisory Board will provide feedback and comments on a quarterly basis on the quality of care and quality of life being provided to the residents and patients at the facility. The entities listed in Condition I shall provide a copy of each annual report described in Condition X to the Community Advisory Board. The Community Advisory Board may provide comments on all reports to the Attorney General regarding compliance with these Conditions and any such comments shall be included in the written report provided to the Attorney General pursuant to Condition X.

VII.

The entities listed in Condition I shall abide by all resident admission agreements, leases, and other agreements relating to the occupancy of the facility in place on the applicable closing date of the AA.

VIII.

For five (5) years from the closing date of the AA, the SNF shall be operated and maintained as a SNF with 59 skilled nursing beds, and shall maintain the same licensure, types, and levels of services being provided as its current licensure and types and levels of services including, but not limited to occupational therapy, physical therapy, and speech therapy.

MRCC, or any other operator or licensee of the SNF shall not place all or any portion of the licensed-bed capacity or services in voluntary suspension or surrender its license for any SNF beds or services.

IX.

For five (5) years from the closing date of the AA, the entities listed in Condition I shall be certified to participate in the Medi-Cal and Medicare programs and have Medi-Cal and Medicare Provider Numbers (or provider number for any successors to Medi-Cal or Medicare) to provide the same types and levels of skilled nursing services to Medi-Cal and Medicare beneficiaries (both Traditional and Managed Care) at the facility as required in these Conditions.

X.

For five (5) years from the applicable closing date of the AA, ECA, TA, MRCC, and any subsidiaries and operators or licensees of the facility shall annually submit to the Attorney General, no later than four (4) months after each anniversary of the applicable closing date of the AA, a report describing in detail its compliance with each Condition set forth herein. The Chief Executive Officer or their equivalents at ECA, TA, MRCC, and any subsidiaries and operators or licensees of any portion of the facility shall certify that the report is true, accurate, and complete. The entities listed in Condition I shall ensure a copy of the report is provided to the Community Advisory Board or equivalent at the time of submission of the report to the Attorney General.

XI.

At the request of the Attorney General, the entities listed in Condition I shall provide such information as is reasonably necessary for the Attorney General to monitor compliance with these Conditions and the terms of the transaction as set forth herein. The Attorney General will, at the request of any entity listed in Condition I and to the extent provided by law, keep confidential any information so produced to the extent that such information is a trade secret or is privileged under state or federal law, or if the private interest in maintaining confidentiality clearly outweighs the public interest in disclosure.

XII.

Once the relevant portions of the AA have closed, the entities listed in Condition I are deemed to have explicitly and implicitly consented to the applicability of and compliance with each and every Condition and to have waived any right to seek judicial relief with respect to each and every Condition.

The Attorney General reserves the right to enforce each and every Condition set forth herein to the fullest extent provided by law. In addition to any legal remedies the Attorney General may have, the Attorney General shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court may deem appropriate for breach of any of these Conditions.

Pursuant to Government Code section 12598, the Attorney General shall also be entitled to recover its attorney fees and costs incurred in remedying each and every violation.

SA2023305047
37682463.docx

Exhibit 1 to Conditions:
Affiliation Agreement between
Elder Care Alliance and Transforming Age

Affiliation Agreement
by and between
Transforming Age
and
Elder Care Alliance

THIS AFFILIATION AGREEMENT (this "Agreement") is dated as of July 28, 2023 (the "Effective Date"), by and among Transforming Age, a Washington nonprofit corporation with a principal place of business at 1980 112th Avenue NE, Suite 210, Bellevue, WA 98004 ("TA") doing business as Transforming Age, on its behalf, and Elder Care Alliance ("ECA"), a California nonprofit public benefit corporation with a principal place of business at 1301 Marina Village Pkwy Suite #210, Alameda, CA, 94501 on its behalf, together the parties to this Agreement.

WHEREAS, ECA is a California non-profit public benefit corporation that is the sole corporate member of five corporations, each of which operates a senior community in California rooted in holistic wellness (collectively, the "ECA Subsidiaries"). The ECA Subsidiaries are: Elder Care Alliance of Camarillo, Elder Care Alliance of San Francisco, Elder Care Alliance of San Mateo and Elder Care Alliance of San Rafael (collectively, the "AlmaVia Operators"), and Mercy Retirement and Care Center (the "Mercy Operator," and with the AlmaVia Operators, the "ECA Operators"). Each of the ECA Operators except for Elder Care Alliance of San Mateo ("ECASM") operates a residential care facility for the elderly ("RCFE") licensed by the California Department of Social Services ("DSS"), and the Mercy Operator and ECA operate a continuing care retirement community under a Certificate of Authority issued by DSS, including a residential care facility, and a skilled nursing facility with a licensed bed capacity of 59 (the "Mercy SNF") licensed by the California Department of Public Health ("CDPH") (ECASM, the RCFEs and the Mercy SNF being referred to individually as an "ECA Facility," and collectively as the "ECA Facilities");

WHEREAS, ECA offers its residents independent living, assisted living, memory care, and a skilled nursing program and engages community services for the elderly such as the Mercy Brown Bag Program;

WHEREAS, ECA has concluded that it is in the best interests of its existing residents, staff, and the constituents it serves, and in the public interest, to enter into an Affiliation with TA for the purpose of: (i) enhancing the provision of high quality and cost-effective care for its existing and future residents; (ii) ensuring ECA's financial viability; and (iii) expanding ECA's holistic wellbeing beyond buildings;

WHEREAS, ECA desires that TA should be the sole member and corporate parent of its corporation;

WHEREAS, TA desires to become the sole member and corporate parent of ECA and to provide the support described below;

WHEREAS, this Agreement is intended to memorialize the actions that each of ECA and TA must take in order to effect the structure described above (the "Affiliation"); and

WHEREAS, the Boards of Directors of each of ECA and TA have approved, adopted and authorized this Agreement and the Affiliation of ECA with TA, upon the terms and subject to the conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the representations, warranties, promises and the mutual covenants and agreements hereinafter contained each of the parties hereto, intending to be legally bound, hereby agree as follows:

1. General Provisions.

- a) "Affiliation Documents" means and includes:
 - (i) This Agreement;
 - (ii) The Seventh Amended and Restated Bylaws of ECA in the form attached hereto as Exhibit A (the "Restated ECA Bylaws"); and
 - (iii) Any exhibit attached to this Agreement shall be deemed incorporated into this Agreement by reference.
- b) Any reference in this Agreement to the adoption of an Affiliation Document means the adoption or approval of such Document by the governing body or bodies of ECA or TA, as the case may be, validly authorized to take any such action.
- c) Each of ECA and TA agrees that it will take all requisite actions to authorize the filing or adoption, as the case may be, of each of the other documents described in Section 2 hereof as and when provided in this Agreement.

2. Conditions Precedent to the Affiliation.

- a) The obligation of the parties to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction or waiver of the following conditions precedent (provided that a party may not waive its own satisfaction of any such condition):
 - (i) The boards of directors or trustees and, if their consent is required, the members of each of the parties shall have approved the Affiliation, and shall have approved or authorized the approval of the Transaction Documents, and any approval so authorized shall have been given. Without limiting the foregoing, the board of directors of ECA shall have approved the filing of the Restated ECA Articles of Incorporation upon the Closing (as defined below), and shall have approved and adopted the Restated ECA Bylaws, to be effective upon the Closing (and not otherwise).
 - (ii) The Institute of the Sisters of Mercy of the Americas, a public juridic person of the Roman Catholic Church (the "Sisters of Mercy"), shall have approved the Affiliation.
 - (iii) ECA shall have obtained the written consent of the Attorney-General of the State of California (the "Attorney-General") to the Affiliation pursuant to California Corporations Code section 5920(a), or the Attorney General shall have given ECA a written waiver as to the Affiliation pursuant to California Corporations Code section 5920(c).
 - (iv) The parties shall have applied for and received such approvals as may be necessary for the consummation of the Affiliation from the California

Department of Social Services, the California Department of Public Health, and any other government agency or private party whose approval or consent is necessary as a matter of law or contract for the consummation of the Affiliation.

- (v) No injunction or restraining order shall be in effect to forbid or enjoin the consummation of the transactions contemplated by this Agreement and no Federal, state, local or foreign statute, rule or regulation shall have been enacted which prohibits, restricts or unreasonably delays the consummation hereof.
 - (vi) The parties shall have executed and delivered each of the Transaction Documents, and where necessary, filed any such document with the appropriate authority.
- b) The obligation of TA to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction by ECA or waiver by TA of the following conditions precedent:
- (i) Each of the directors of ECA and each of the ECA Subsidiaries shall have submitted his or her resignation from the board of directors of ECA or such ECA Subsidiary, as the case may be, to be effective upon the Closing (and not otherwise).
 - (ii) The representations and warranties of ECA in this Agreement shall be true, complete and correct in all material respects on and as of the Closing Date, and TA shall have received a certificate to that effect dated the Closing Date and executed on behalf of ECA.
 - (iii) Each of the agreements and covenants of ECA to be performed under this Agreement at or prior to the Closing Date shall have been duly performed in all material respects and TA shall have received a certificate to that effect dated the Closing Date and executed on behalf of ECA.
- c) The obligation of ECA to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction by TA or waiver by ECA of the following conditions precedent:
- (i) The representations and warranties of TA in this Agreement shall be true, complete and correct in all material respects on and as of the Closing Date, and ECA shall have received a certificate to that effect dated the Closing Date and executed on behalf of TA.
 - (ii) Each of the agreements and covenants of the TA to be performed under this Agreement at or prior to the Closing Date shall have been duly performed in all material respects, and ECA shall have received a certificate to that effect dated the Closing Date and executed on behalf of TA.

3. Closing: Subject to the parties' termination rights in Section 4, the closing of the transactions contemplated by this Agreement (the "Closing") shall take place as soon as practicable after the conditions set forth in Section 2.c)(ii) are satisfied or waived (the date on which the Closing occurs being referred to as the "Closing Date"). The Closing shall be held on the Closing Date by the electronic exchange of documents or at such location as may be agreed to by the Purchaser and the Sellers. Upon the Closing:

- a) The Restated ECA Bylaws shall go into effect;
- b) The resignations of the members of the board of directors of ECA and the ECA Subsidiaries referred to in Section 2.b)(i) shall go into effect;
- c) TA, as sole corporate member under the ECA Bylaws, shall elect the persons listed on Exhibit B as directors of ECA; and, ECA, as the sole corporate member of each of the ECA Subsidiaries, shall elect the persons listed on Exhibit B as directors of each of the ECA Subsidiaries.

4. Termination. Prior to Closing, this Agreement shall terminate and the transactions contemplated hereby abandoned upon any one of the following:

- a) By the mutual written agreement of the Parties;
- b) By ECA if TA shall have materially breached its representations or warranties contained in this Agreement, or defaulted in the performance of its covenants contained in this Agreement, and such breach or noncompliance continues uncured through the date that is ten (10) days after delivery of written notice to Purchaser specifying such breach or noncompliance;
- c) By TA if ECA shall have materially breached its representations or warranties contained in this Agreement, or defaulted in the performance of their covenants contained in this Agreement, and such breach or noncompliance continues uncured through the date that is ten (10) days after delivery of written notice to Sellers specifying such breach or noncompliance;
- d) By either party on written notice to the other, if the Attorney General notifies ECA that he does not consent to the Affiliation as set forth in this Agreement;
- e) By either party, upon delivery of written notice of termination to the other, at any time after the date that is 180 days after the Effective Date (the "Outside Closing Date"), if the Closing has not occurred by that date; provided that a party may not give notice of termination under this subsection e) unless at the time of delivery of the notice it is in compliance with its obligations under this agreement; and provided, further, that if the breach by a party (the "Breaching Party") of its obligations under this Agreement has caused delay in the Closing, then, for purposes of the Breaching Party's right to give notice of termination under this subsection, the Outside Closing Date shall be extended by the period of such delay.

- f) Liability Upon Termination. Upon the termination of this Agreement in accordance with this Section 4, neither of the Parties shall have any further liability hereunder upon such termination, except that each Party shall remain liable to the other for any breach by it of this Agreement or of any representation, warranty or covenant contained herein.

5. Obligations Pending Closing.

- a) From the Effective Date through the Closing (but without prejudice to the right of a party to terminate this Agreement in accordance with Section 4) the parties shall use commercially reasonable efforts to take, or cause to be taken, all actions and do or cause to be done all things necessary to consummate the transactions contemplated by this Agreement, including, without limitation, to obtain all consents, approvals and authorizations of third parties and to make all filings with, and give all notices to, third parties which may be necessary or required in order to effectuate the transactions contemplated hereby; and each of the parties shall cooperate reasonably with the other in connection with the consummation of the Affiliation.
- b) TA and ECA acknowledge and agree that Torsten Hirche is hereby authorized to execute any and all documents necessary to facilitate the Affiliation on behalf of TA, and Adriene Iverson is hereby authorized to execute any and all documents necessary to facilitate the Affiliation on behalf of ECA, provided that the chair of the board of trustees of ECA shall countersign this Agreement.

6. Affiliation of ECA with TA.

- a) The Affiliation. The Affiliation notwithstanding, ECA shall continue its corporate existence under California state law with all of its rights, privileges, immunities, powers and franchises.
- b) Affiliation Closing. Subject to the satisfaction or waiver of the conditions set forth in Section 2, the Closing of the Affiliation shall occur on the date determined pursuant to Section 3 at the ECA offices – 1301 Marina Village Pkwy Suite #210, Alameda, CA, 94501, unless another date, time or place is mutually agreed to in writing by ECA and TA.
- c) Affiliation Provisions. TA and ECA acknowledge and agree to the following Affiliation Provisions which shall be binding on the parties hereto:
 - (i) Operational Commitments. TA shall comply with the following provisions for a period of five (5) years following the Closing insofar as the following commitments relate to or affect the Mercy Operator or the Mercy SNF, and otherwise for a period of two (2) years following the Closing (provided, that, with the written approval of the Attorney-General of California as required, the following commitments may be terminated or amended insofar as they relate to the Mercy Operator or the Mercy SNF prior to the

expiration of the foregoing five-year period, and if required, as approved by the Attorney General):

- 1) TA acknowledges that the Mercy Operator receives its nonprofit status as a sponsored Catholic ministry and its Catholic identity from its Facility and Program Sponsor, the Institute of the Sisters of Mercy of the Americas, a public juridic person of the Roman Catholic Church (the “Facility and Program Sponsor”). TA will support ECA in ensuring that the Mercy Operator supports the religious and charitable mission of its Facility and Program Sponsor and conducts its activities in a manner consistent with and supportive of the mission and philosophy stated in the MRCC Statement of Catholic Identity of the Facility and Program Sponsor, a copy of which is attached hereto as Exhibit C, and in adherence to and in compliance with the Ethical and Religious Directives for Catholic Healthcare Facilities.

In addition, TA acknowledges that the Facility and Program Sponsor has certain approval rights with respect to material actions that may impact MRCC, which are contained in a Governance and Affiliation Agreement, dated May 23, 2023, by and among ECA, MRCC and the Facility and Program Sponsor, as well as the governing documents of ECA and MRCC (together, the “Sponsorship Documents”), and TA and ECA agree that they will refrain from taking action, or causing MRCC from taking action, that could impact the Facility and Program Sponsor’s sponsorship of MRCC or diminish their reserved authority and approval rights under the Sponsorship Documents.”

- 2) TA shall sustain a robust spiritual care program in each of ECA’s RCFE Facilities.
- 3) TA shall maintain and continue to employ staff at each ECA Facility who are in good standing as of the Closing Date, and shall maintain all staff wages and benefits at present levels subject to market adjustments, adjustments based on any law or regulation, or merit based increases. ECA acknowledges that no existing staff member is paid grossly above market under a special arrangement or employment contract.
- 4) TA shall—
 - a. Maintain and support the corporate existence, charitable mission and tax-exempt status of ECA and each of the ECA Subsidiaries, including:
 - i. Providing services at the ECA Facilities to a broad cross-section of the communities served by ECA and its subsidiaries, including Medicare and Medi-Cal beneficiaries in the Mercy SNF, without unlawful discrimination in services or programs on the basis of

any protected personal characteristic identified in state or federal civil rights laws, including section 51 of the California Civil Code and title 42, section 18116 of the United States Code;

- ii. Complying with the charity care policies of ECA and its subsidiaries as of the Closing, or with charity care policies no less favorable than ECA's charity care policy as of the Closing;
- b. Maintain and operate the Mercy SNF and each of the RCFEs as a licensed skilled nursing facility or residential care facility for the elderly, as applicable, and maintain the same licensure, types, and or levels of services being provided at each such facility as its current licensure and types and levels of service.
- c. Not place all or any portion of any ECA Facility's licensed bed or resident capacity or services in voluntary suspension or surrender its license for any beds or services.
- d. Maintain the certification of the Mercy SNF to participate in the Medi-Cal program, and maintain a Medi-Cal Provider Number to provide the same types and levels of skilled nursing services at the Mercy SNF to Medi-Cal beneficiaries as required by this Agreement to be provided to its patients generally; and maintain the certification of the Mercy SNF to participate in the Medicare program and have a Medicare Provider Number to provide the same types and levels of skilled nursing services at Mercy SNF to Medicare beneficiaries (both traditional and managed care) as required by this Agreement to be provided to its patients generally.
- e. If required as a condition of approval by the Attorney-General, for five (5) years from the closing date of the Purchase and Sale Agreement, consult on a quarterly basis with a community Advisory Board consisting of residents of the Mercy SNF and RCFE chosen by residents of the Mercy SNF and RCFE. The Community Advisory Board will provide advice and feedback on a quarterly basis on the quality of care and quality of life being provided to the residents and patients.
- f. Make commercially reasonable efforts to comply, or ensure compliance with, all applicable laws and regulations in the conduct of ECA and the ECA Subsidiaries, and the operation of the ECA Facilities.
- g. Abide by all resident admission agreements, leases, and other agreements relating to the occupancy of the ECA Facilities in place on the Closing Date.

- h. Continue to operate the ECA Facilities in a condition that is safe and inviting for its existing and future residents.
 - i. Maintain resident representation on the board of directors of the Mercy Operator, as required by applicable law and regulation.
 - j. To the extent that ECA is unable to fully fund its continuing operational expenses including payroll, service debt and liabilities, and/or make any necessary repairs or improvements to maintain ECA in a condition that is safe and inviting for its existing or future residents, or otherwise to comply with the undertakings set forth above, then TA agrees to provide the funding necessary to ensure those operational expenses are met through an intercompany loan.
 - k. Where commercially feasible and reasonable, new development or acquisition of licensed senior living facilities in California by TA or any of its subsidiaries will have ECA as its sole corporate member and be an affiliate of ECA.
- 5) ECA and TA shall work collaboratively to co-message the Affiliation to each organization's constituencies, including but not limited to: (a) making appropriate modifications to the ECA website to announce and highlight the Affiliation and related information; and (b) hosting one or more joint question and answer sessions with existing ECA residents.
- (ii) Employee Retention. TA acknowledges that ECA shall retain Adriene Iverson for a period of not less than two (2) years from the Affiliation Effective Date on the same or comparable terms of employment existing immediately prior to the Affiliation Effective Date in an at will employment relationship.
 - (iii) Retention of the Property. For a period of five (5) years following the Closing insofar as the following commitments relate to or affect the Mercy Operator or the Mercy SNF, and otherwise for a period of two (2) years following the Closing, (provided that, the written approval of the Attorney-General of California as required, the following commitments may be terminated or amended insofar as they relate to the Mercy Operator or the Mercy SNF prior to the expiration of the foregoing five-year period, and if required as approved by the Attorney General): TA agrees to retain the ECA Facilities as of the Affiliation Effective Date (the "Retention Period"), and not to transfer control or a material part of the assets of ECA, any ECA Subsidiary or any ECA Facility to any third party. The Retention Period shall be binding upon any successor to or affiliate of TA. A subsequent reorganization of ECA (including a merger or liquidation thereof) shall not reduce or eliminate the Retention Period. Following the Retention Period, TA shall use "best efforts" to retain the ECA Facilities indefinitely. "Best

efforts” means that when considering a sale of the ECA real property following the Retention Period TA shall: (a) act in good faith; (b) exercise reasonable commercial standards for the completion of relevant due diligence with regard to such potential sale; and balance (c) ECA’s desire that the ECA Facilities be retained indefinitely; with (d) the potential economic and organizational benefits and risks to TA and ECA respectively of a sale of the ECA Facilities.

- (iv) Advisory Committee. For a period of five (5) years following the Closing insofar as the following commitments relate to or affect the Mercy Operator or the Mercy SNF, and otherwise for a period of two (2) years following the Closing (provided, that, with the written approval of the Attorney-General of California as required, the following commitments may be terminated or amended insofar as they relate to the Mercy Operator or the Mercy SNF prior to the expiration of the foregoing five-year period, and if required as approved by the Attorney General), an advisory committee (consisting of the former ECA board of trustees) shall be formed, having a Charter in the form attached hereto as Exhibit D. The Advisory Committee shall have the status of an unincorporated association under Title 3 of the California Corporations Code. The Advisory Committee shall be a third-party beneficiary of the obligations of TA under this Agreement, with the right to enforce the same in the name and at the expense of ECA. The purpose of the Advisory Committee is to monitor and enforce compliance by TA with its obligations under this Agreement; to ensure historical continuity, be a community advocate in support of the Agreement, and build goodwill within the local community for Transforming Age and ECA. Specifically, the Advisory Committee shall meet with TA management not less frequently than quarterly for two years and semi-annually for years 3 through 5, for the period during which the commitments of TA under Section c) are required to remain in effect. At each meeting the Advisory Committee shall: (a) report on the sufficiency of ongoing co-messaging regarding the Affiliation (b) report any resident or community concerns to TA and ECA management; (c) receive at each meeting a report of TA’s compliance with its obligations under this Agreement, and such other updates or reports from TA management regarding other matters that TA management determines is necessary, prudent or desirable to share with or seek input from the Advisory Committee, or that the Advisory Committee requests in order to monitor compliance by TA with its obligations under this Agreement; and (d) engage in a question and answer session with TA management.

7. Expenses. Except as otherwise provided in this Agreement, each of ECA and TA, and their respective Affiliates, shall bear their own expenses incurred in connection with the negotiation and execution of this Agreement and the Affiliation Documents (“Expenses”), it being understood that TA shall authorize ECA to pay all such ECA Expenses.

8. Representations and Warranties of ECA. ECA hereby represents and warrants to TA as follows:

- a) Organization and Good Standing. ECA is a nonprofit corporation duly organized, validly existing and in good standing and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now conducted.
- b) Authorization of Agreement. ECA has all requisite power, authority and legal capacity to execute and deliver, and has taken all corporate action, and has obtained all required corporate approvals, necessary for it to validly execute and deliver, this Agreement and each agreement, document, or instrument or certificate contemplated by this Agreement to be executed and delivered by ECA in connection with the consummation of the Affiliation (collectively, the "ECA Affiliation Documents") and to perform its obligations hereunder and thereunder and to consummate the Affiliation. This Agreement has been, and each ECA Affiliation Document shall be duly and validly executed and delivered by ECA and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each of the ECA Affiliation Documents when so executed and delivered shall constitute, legal, valid and binding obligations of ECA and the ECA Affiliates enforceable against ECA and the ECA Affiliates in accordance with their respective terms.
- c) Consents of Third Parties; Contractual Consents. Except for any consent expressly contemplated by or referenced in this Agreement (including the consents referred to on Schedule 8.c) ECA is not required to obtain any consent, approval, authorization, waiver, Order, license or Permit of or from, or to make any declaration or filing with, or to give any notification to, any Person (including any Governmental Body) in connection with the execution and delivery of this Agreement or the ECA Affiliation Documents by ECA, the compliance by ECA with any of the provisions hereof or thereof, the consummation of the Affiliation by ECA and the ECA Affiliates, or the taking by ECA or any of the ECA Affiliates of any other action contemplated hereby or thereby, except for such other consents, waivers, approvals, Orders, Permits, authorizations, declarations, filings and notifications of which the failure to have obtained or made same would not have a Material Adverse Effect.
- d) Tax Status; California Public Charity Status. ECA is a public charity that is tax exempt pursuant to Section 501(c)(3) of the Internal Revenue Code. ECA is registered with the California Secretary of State as a nonprofit. ECA has filed in a timely matter all annual reports and other filings it is required to file with the Secretary of State.
- e) Litigation. There are no Legal Proceedings pending or, to the knowledge of ECA, threatened against ECA or an ECA Affiliate, or to which ECA or an ECA Affiliate is otherwise a party before any Governmental Body, that, if adversely determined, would reasonably be expected to have a material adverse effect on

the ability of ECA to perform its obligations under this Agreement or to consummate the Affiliation. Neither ECA nor any ECA Affiliate is subject to any Order of any Governmental Body directed specifically to it except to the extent the same would not reasonably be expected to materially adversely affect the ability of ECA to perform its obligations under this Agreement or to consummate the Affiliation.

Nothing contained in this Section 5 shall impose or create a liability to or obligation of the pre-closing officers and directors of ECA.

EXCEPT AS EXPRESSLY SET FORTH ABOVE, ECA MAKES NO REPRESENTATIONS OR WARRANTIES WHATEVER, EXPRESS OR IMPLIED, CONCERNING ECA, ANY ECA SUBSIDIARY, OR ANY ECA FACILITY.

9. Representations and Warranties of TA. TA hereby represents and warrants to ECA as follows:

- a) Organization and Good Standing. TA is a nonprofit corporation duly organized, validly existing and in good standing under RCW 24.03 et. seq., and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now conducted.
- b) Authorization of Agreement. TA has all requisite power, authority and legal capacity to execute and deliver, and has taken all corporate action, and has obtained all required corporate approvals, necessary for it to validly execute and deliver, this Agreement and each agreement, document, or instrument or certificate contemplated by this Agreement to be executed and delivered by TA in connection with the consummation of the Affiliation (collectively, the "TA Affiliation Documents") and to perform its obligations hereunder and thereunder and to consummate the Affiliation. This Agreement has been, and each TA Affiliation Document shall be at or prior to the signing of the affiliation agreement, duly executed and delivered by TA and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each of the TA Affiliation Documents when so executed and delivered shall constitute, legal, valid and binding obligations of TA and the TA Affiliates enforceable against TA and the TA Affiliates in accordance with their respective terms.
- c) Consents of Third Parties; Conflicts.
 - (i) TA is not required to obtain any consent, approval, authorization, waiver, Order, license or Permit of or from, or to make any declaration or filing with, or to give any notification to, any Person (including any Governmental Body) in connection with the execution and delivery of this Agreement or the TA Affiliation Documents by TA, the compliance by TA with any of the provisions hereof or thereof, the consummation of the Affiliation TA and the TA Affiliates, or the taking by TA or any of the TA Affiliates of

any action contemplated hereby or thereby, except for the Healthcare Regulatory Consents.

- (ii) To TA's knowledge, none of the execution and delivery by TA of this Agreement or any of the TA Affiliation Documents, the consummation of the Affiliation by TA, or compliance by TA with any of the provisions hereof or thereof will conflict with, or result in any violation of or a default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of, any Contract or Permit to which TA or an TA Affiliate is a party or by which any of the properties or assets of TA or an TA Affiliate is bound, other than any such conflicts, violations, defaults, terminations or cancellations that would not materially adversely affect the ability of TA to consummate the Affiliation.
- d) Tax Status; Washington Public Charity Status. TA is a public charity that is tax exempt pursuant to Section 501(c)(3) of the Internal Revenue Code. TA is registered with the Washington Secretary of State as a nonprofit. TA has filed in a timely matter all annual reports and other filings it is required to file with the Secretary of State.
- e) Litigation. There are no Legal Proceedings pending or, to the knowledge of TA, threatened against TA or an TA Affiliate, or to which TA or an TA Affiliate is otherwise a party before any Governmental Body, that, if adversely determined, would reasonably be expected to have a material adverse effect on the ability of TA to perform its obligations under this Agreement or to consummate the Affiliation. Neither TA nor any TA Affiliate is subject to any Order of any Governmental Body except to the extent the same would not reasonably be expected to materially adversely affect the ability of TA to perform its obligations under this Agreement or to consummate the Affiliation.

10. Miscellaneous Provisions

- a) Dispute Resolution. In the event any disputes arise regarding the interpretation or enforcement of this Agreement, such disputes shall be resolved as follows:
 - (i) The parties shall first attempt to resolve a dispute by negotiating directly and in good faith. If any disputes cannot be resolved by direct negotiations within sixty (60) days or such longer time as is mutually agreed by the parties, then the parties shall submit such disputes to mediation, which shall focus on the needs of all the parties and seek to solve problems cooperatively, with an emphasis on dialogue and accommodation. The goal of the mediation shall be to fairly resolve each dispute in a manner which preserves and enhances the parties' relationships with an emphasis on carrying out the provisions of this Agreement. Any party desiring mediation may begin the process by giving the other party a written request to mediate which describes the issues involved and invites the other party to join in naming a mutually agreeable mediator and setting a timeframe for

the mediation. The parties and the mediator may adopt any procedural format that seems appropriate for the particular dispute. The contents of all discussions during the mediation shall be confidential and non-discoverable in subsequent arbitration or litigation, if any. If the parties can agree upon a mutually acceptable resolution to the disagreement, it shall be reduced to writing, signed by the parties, and the dispute shall be deemed resolved. The costs of mediation shall be divided equally among the parties to the dispute.

- (ii) If any dispute cannot be resolved through mediation, or if any party refuses to mediate or to name a mutually acceptable mediator or establish a timeframe for mediation within a period of time that is reasonable considering the urgency of the disputed matter, or fails to agree to procedures for the mediation, then any party who desires dispute resolution may seek binding arbitration to resolve the dispute as hereinafter provided.
 - (iii) All disputes among the parties arising out of or related to this Agreement which have not been settled by mediation shall be resolved by binding arbitration within the State of California. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Any arbitration award may be enforced by judgment entered in the Superior Court of the State of California for Alameda County.
 - (iv) The Advisory Committee shall have standing to proceed as the proper party on behalf of ECA if following the Affiliation Effective Date it is necessary for the parties to address any dispute under this Section 10. The parties acknowledge that the Advisory Committee will have no independent funding or resources to enforce this Agreement. Accordingly, ECA (or if it fails to do so, TA) shall be responsible for and shall promptly pay or reimburse the reasonable costs and expenses of the Advisory Committee, including reasonable attorneys' fees, incurred in connection with the enforcement of this Agreement (including the costs of consultation and mediation prior to the commencement of arbitration), whether or not arbitration is demanded and, if it is demanded, whether or not ECA (acting by and through the Advisory Committee) prevails; and, the provisions of clause (iii) notwithstanding, the Advisory Committee may apply to any court of competent jurisdiction for an order directing ECA or TA to provide the funding necessary to enable it to pursue enforcement of this Agreement.
- b) Indemnity. TA shall indemnify and hold harmless the officers and directors of ECA existing prior to Affiliation Closing from any and all liability arising out of the conduct of TA, ECA, or their officers and directors after Affiliation Closing, including the cost of attorney's fees incurred in the defense of such claims.

- c) Insurance. TA and ECA shall continue the presently existing policies of insurance relating to general liability and directors and officers liability for a period of five (5) years following Affiliation Closing.
- d) Tax Obligations. TA shall assume and hold ECA harmless from all tax obligations of any kind or nature arising out of or relating in any manner to this Affiliation Agreement.
- e) Entire Agreement: Amendments and Waivers. This Agreement (including the exhibits attached hereto), and the Affiliation Documents (collectively, the "Affiliation Agreements") represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the parties. No action taken pursuant to this Agreement, including without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, covenant or agreement contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.
- f) Legal Counsel. Each party hereby acknowledges that it has read this Agreement, understands its contents, and has had an opportunity to obtain separate and independent counsel of its own choosing prior to signing this Agreement, and either obtained such independent counsel, or waived such right, and is therefore executing this Agreement voluntarily.
- g) Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of California applicable to contracts made and performed in such California, without giving effect to of application of its principles of conflicts of laws.
- h) Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing, shall be addressed to the receiving party's address set forth below or to such other address as a party may designate by notice hereunder, and shall be either (i) delivered by hand (ii) made by facsimile transmission, (iii) sent by overnight courier, or (iv) sent by certified mail, return receipt requested, postage prepaid, or such other address as either party will advise the other party by notice delivered in accordance with the foregoing. All notices and other communications hereunder shall be deemed to have been given (i) if by hand, at the time of the delivery thereof to the receiving party at the

address of such party set forth above, (ii) if made by facsimile transmission, at the time that receipt thereof has been acknowledged by electronic confirmation or otherwise, (iii) if sent by courier, on the next Business Day; or (iv) if sent by certified mail, on the fifth (5th) Business Day following the day such mailing is made.

- i) Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Affiliation is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the Affiliation is consummated as originally contemplated to the greatest extent possible.
- j) Binding Effect: Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. No assignment of this Agreement or of any rights or obligations hereunder may be made by either party (by operation of law or otherwise) without the prior written consent of the other party hereto and any attempted assignment without the required consents shall be void.
- k) No Personal Liability. In entering into this Agreement, the parties understand, agree and acknowledge that no director, trustee, officer, member, employee, attorney, accountant, advisor or agent of any party hereto shall be personally liable or responsible to any other party or its Affiliates, directors, trustees, officers, members, employees, attorneys, accountants, advisors or agents for the performance of any obligation under this Agreement of any party to this Agreement or the truth, completeness or accuracy of any representation contained in this Agreement or any of the Affiliation Documents.
- l) No Third Party Beneficiaries. Nothing in this Agreement is intended to confer upon any person other than the parties any rights, benefits or remedies.
- m) Counterparts: Facsimiles. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement. Facsimile or other electronic transmission of any signed original document and/or retransmission of any signed facsimile or other electronic transmission will be deemed the same as delivery of an original.

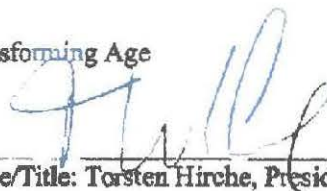
IN WITNESS WHEREOF, the parties hereto have caused this Master Affiliation Agreement to be executed and delivered as a sealed instrument by their respective officers thereunto duly authorized, as of the date first written above.

Elder Care Alliance

By: 
Name/Title: Adriene Iverson, President/CEO

By: _____
Name/Title: Joy Moore, Board Chair

Transforming Age

By: 
Name/Title: Torsten Hirche, President/CEO

Elder Care Alliance

By: Adriene Iverson
Name/Title: Adriene Iverson, President/CEO

By: Joy Moore
Name/Title: Joy Moore, Board Chair

Transforming Age

By: _____
Name/Title: Torsten Hirche, President/CEO

Exhibit A
Restated ECA Bylaws

Approved by ECA Board: _____

TO BE EFFECTIVE ONLY UPON APPROVAL OF THE CORPORATE MEMBER, AND
THE CLOSING OF THE TRANSACTIONS CONTEMPLATED BY
THE AFFILIATION AGREEMENT DATED JULY 28, 2023
BETWEEN ELDER CARE ALLIANCE AND
TRANSFORMING AGE, A WASHINGTON NONPROFIT CORPORATION

SEVENTH AMENDED AND RESTATED BYLAWS
OF
ELDER CARE ALLIANCE

ARTICLE I. NAME AND PRINCIPAL OFFICE

1.1 Name. The name of this corporation shall be Elder Care Alliance.

1.2 Principal Office. The principal office for the transaction of the business of the corporation shall be at a location determined from time to time by the board of directors; provided, that the officers of the corporation may relocate the principal office, or designate alternative principal offices, as necessary to continue the orderly conduct of the corporation's business in the event of an emergency as defined in Section 5140(n)(5) of the California Nonprofit Corporation Law.

ARTICLE II. PURPOSE

2.1 Purpose. The corporation is a nonprofit organization dedicated to supporting the provision of quality long term care and social services for older adults in a spiritually centered environment that emphasizes dignity and respect for the life and spirit of each individual, carried out by a system of organizations supported by the corporation (the "System"). The corporation strives to promote wellness in the surrounding communities through education and advocacy. The corporation conducts its activities in accordance with its mission and philosophy statement and its core values of dignity, caring, excellence, prudent stewardship and collaboration. The corporation shall conduct its activities in furtherance of the social ministries of its Corporate Members, which shall retain oversight to assure the maintenance of the corporation's Christian mission and service to the poor.

ARTICLE III. SOLE CORPORATE MEMBER

3.1 Corporate Members. The sole member of the Corporation is Transforming Age, a Washington Nonprofit Corporation (the "Member").

7368284.1

ECA Seventh Amended & Restated Bylaws 2023-07-20 v3 CleanDRAFT

ARTICLE IV. BOARD OF DIRECTORS

4.1 Powers. Subject to the rights of the Member set forth in these Bylaws or under law, the activities and affairs of the corporation shall be conducted and all corporate powers shall be exercised by or under the direction of its board of directors (hereafter, "board" or "directors"). Certain actions set forth in Exhibit 4.1 regarding Mercy Retirement and Care Center ("MRCC") shall require the approval of the Institute of the Sisters of Mercy of the Americas.

4.2 Number. The number of directors of the corporation shall be not less than seven (7) or greater than fourteen (14) individuals, the exact number to be fixed, within the limits specified, by the Member. Until the Member fixes a different number, the number shall be nine (9).

4.3 Elected Directors.

(a) The directors shall be elected by the Member, and shall serve for the terms specified in Section 4.5 hereof.

(b) Each director of the corporation shall take office at the annual meeting of the board held in November of the year in which such director's term is to commence.

4.4 Nomination of Directors. The corporation shall have a Board Development Committee which shall assist the Member in identifying and evaluating qualified individuals to serve as directors of the corporation and recommend them to the Member for election.

4.5 Term of Directors: Etc.

(a) Length of Term Year. Each director's term begins upon adjournment of the annual meeting of the board held in November of the first year for which he or she is appointed and continues until adjournment of the annual meeting of the board held in November in the last year of such term or until his or her replacement is appointed.

(b) Permissible Number of Consecutive Years. Except as otherwise provided in this Article IV, the following shall apply. Any director elected to the board for the first time or after having been off the board for the Hiatus Period defined below shall serve for a term of three (3) years. Thereafter, a director will be eligible for appointment for up to two (2) additional consecutive three-year terms; provided, however, that, at the election of the Member, any such term may be for less than three (3) years, to allow for the staggering of terms or to permit a director to serve the maximum number of consecutive years allowed hereunder; and provided, further, that if a director has served one or more terms of less than three years, he or she may be elected to a fourth consecutive term; provided, further, however, that no director may serve more than nine (9) consecutive years on the board; however, he or she will again be eligible for appointment under the provisions hereof one (1)

year after the conclusion of such a nine-year period (“Hiatus Period”).

(c) Performance Review. The board will review its own performance as a board, in accordance with policy as established by the Corporate Governance Committee, and the board will take such action to improve or correct its performance as the results of the review indicate. The board will also establish its own policies and procedures for the review of individual board members’ performances, with assistance from the Corporate Governance Committee.

4.6 Vacancies.

(a) Any vacancy occurring on the board shall be filled as soon as practicable by election by the Member, with advice and consultation from the Board Development Committee.

(b) Any individual appointed to fill a vacancy on the board in accordance with subsection (a) hereof shall serve until the end of the term of the director so replaced, and such service shall count towards the limit set forth in Section 4.5(b).

4.7 Removal. A director or directors may be removed at any time with or without cause by the Member.

4.8 Annual Meeting. The annual meeting of the board shall be held in November of each year at such time and place as the Chairperson may determine in consultation with the Member.

4.9 Regular Meetings. Regular meetings of the board shall be at the times fixed by resolution of the board and shall not require prior notice.

4.10 Special Meetings. Special meetings of the board for any purpose whatsoever may be called at any time by the Chairperson of the board, by the President/Chief Executive Officer, by any four (4) directors, or by the Member. Notice of any special meeting of the board shall be sufficient if: (a) mailed first class four (4) days prior to the meeting; or (b) delivered personally or by telephone or by electronic transmission by the corporation no less than forty-eight (48) hours prior to the meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board. In the event of an emergency as defined in Section 5140(n)(5) of the California Nonprofit Corporation Law, notice of meetings may be delivered in any manner practicable under the circumstances, including by publication or website posting, that may reasonably be expected to inform the directors of the time, date and manner of holding the meeting.

4.11 Quorum. A majority of the directors then in office shall constitute a quorum for the transaction of business at any meeting of the board; provided that the number shall not be less than the greater of (i) one-fifth the number of directors fixed pursuant to Section 4.2, and (ii) two. During an emergency as defined in Section 5140(n)(5) of the California Nonprofit Corporation Law the Board may deem that one or more officers of the corporation present at a board meeting is a director, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum for

that meeting.

4.12 Voting. Unless the vote of a greater number is required by these Bylaws, the articles of incorporation or the California Nonprofit Corporation Law, the following will constitute the act of the board of directors: (a) if a quorum is present, the affirmative vote of at least a majority of the directors present; or (b) if a quorum was initially present but enough directors then withdraw to leave less than a quorum, the affirmative vote of at least a majority of the original quorum. Voting by proxy is prohibited.

4.13 Action Without Meeting by Written Consent. Any action required or permitted to be taken by the board may be taken without a meeting, if all directors shall individually or collectively consent in writing to such action. The written consent shall be filed with the minutes of the proceedings of the board. Action by written consent shall have the same force and effect as the unanimous vote of the board.

4.14 Telephonic Meetings. Directors may participate in a meeting through use of a conference telephone, electronic video screen communication or electronic transmission by and to the corporation. Participation in a meeting through use of conference telephone or electronic video screen communication pursuant to this section constitutes presence in person at that meeting as long as all directors participating in the meeting are able to hear one another. Participation in a meeting through use of electronic transmission by and to the corporation, other than conference telephone and electronic video screen communication, constitutes presence in person at that meeting if both of the following apply:

(a) Each director participating in the meeting can communicate with all of the other directors concurrently.

(b) Each director is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

Meetings held in accordance with this section 4.14 shall constitute the valid action of the board, provided that the other requirements of this Article IV are met with respect to such meetings.

4.15 Duty to Support Mission. Each director of the corporation shall adhere to the highest standards of ethical and moral conduct in carrying out his or her duties for the corporation, shall act, in all respects, in the best interests of the corporation and shall fully support its mission and philosophy. Failure of any director to adhere to such standards or support such mission and philosophy may be grounds for his or her removal or termination in accordance with these Bylaws.

ARTICLE V. THE MEMBER

5.1 Manner of Acting. The member shall act through the Member's board of directors or a duly authorized committee thereof, or through a designated representative as and to the extent

7368284.1

BCA Seventh Amended & Restated Bylaws 2023-07-20 v3 CleanDRAFT

authorized from time to time by resolution adopted by the Member's board of directors or a duly authorized committee thereof.

5.2 Annual Meeting. The annual meeting of the Member for election of Board directors to succeed those whose terms expire, and for the transaction of such other business as may properly come before the meeting, shall be held each year during the month of October on the date and at the time each year as determined by the Member. If the date fixed for the annual meeting is a legal holiday, the meeting shall be held on the next succeeding business day. If the annual meeting is not held on the date designated therefor, the Member's board of directors shall cause the meeting to be held as soon thereafter as may be convenient.

5.3 Special Meetings. The President, the Board, or the Member may call special meetings of the Member for any purpose.

5.4 Action by Member Without a Meeting. Any action that could be taken at a meeting of the Member may be taken without a meeting if a consent, in the form of a record setting forth the action so taken, is executed by the Member. Such consent shall be inserted in the minute book as if it were the minutes of a meeting of the Member.

5.5 Place of Meetings. All meetings of the Member shall be held at the principal office of the Member or at such other place within or outside the State of Washington designated by the President, by the Member, or by a waiver of notice executed by the member.

5.6 Notice of Meetings. The President, the Secretary, or the Board shall cause to be delivered to the Member, in a tangible medium (e.g., a letter or facsimile) or by an electronic transmission (e.g., email) (as provided in Section 4.10), not less than three (3) nor more than thirty (30) days before the meeting, a notice stating the place, date and time of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. At any time, upon the request, in a tangible medium or by electronic transmission, of the Member calling for a special meeting pursuant to Section 5.3, it shall be the duty of the Secretary to give notice of the special meeting of the Member to be held at a date, time, and place fixed by the Secretary, such date not to be less than one (1) nor more than ten (10) days after receipt of such request. If the Secretary neglects or refuses to issue such notice, the person or persons making the request may do so and may fix the date, time, and place for such meeting. If notice is delivered in a tangible medium, it may be transmitted by mail, private carrier, or personal delivery; telegraph or teletype; or telephone, wire or wireless equipment that transmits a facsimile of the notice. If mailed, the notice shall be deemed delivered when deposited in the United States mail addressed to the Member at its address as it appears on the records of the Corporation with postage thereon prepaid. Other forms of notice in a tangible medium described in this paragraph are effective when received.

5.7 Notice by Electronic Transmission. If notice is provided in an electronic transmission, it must satisfy the requirements of Section 4.10 of these Bylaws.

5.8 Waiver of Notice.

(a) Waiver. Whenever any notice is required to be given to the Member under the provisions of these Bylaws, the Articles of Incorporation, or applicable Washington law, a waiver thereof in the form of a record executed by the member shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the member need be specified in the waiver of notice of such meeting.

(b) Waiver by Attendance. The attendance of the Member at a meeting shall constitute a waiver of notice of such meeting, except where the Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not properly called or convened.

5.9 Quorum. The presence of the Member is necessary and sufficient to constitute a quorum at a meeting of the Member.

5.10 Approval Rights. The provisions of Section 4.1 notwithstanding, the following actions on the part of the corporation shall require the approval of the Member:

- (a) The amendment of the corporation's articles of incorporation or bylaws;
- (b) The election or appointment and the removal of directors;
- (c) The sale, lease, conveyance, exchange, transfer or other disposition of all or substantially all of the assets of the corporation;
- (d) The merger or consolidation of the corporation with any other entity;
- (e) Adoption of a plan for the distribution of the assets of the Corporation; and
- (e) A voluntary election to wind up and dissolve the corporation.

ARTICLE VI. OFFICERS

6.1 Officers. The officers of the Corporation shall be the Chair, Vice-Chair, President, one or more Vice Presidents, Secretary, and Treasurer. The Chair and the Vice-Chair shall be the Chair and Vice-Chair, respectively, of the Transforming Age board of directors. The other officers (including the President) shall be the officers of Transforming Age, appointed by the Transforming Age board of directors. Any two or more offices may be held by the same person, except the offices of President and Secretary.

6.2 Nomination, Election, Terms of Office of Corporate Officers.

(a) Election and Terms of Office. The Corporate Officers shall be elected by the board. The term of office of the Chairperson, the Vice Chairperson shall be for one (1) year, beginning on the date of the board's annual meeting at which he or she is elected. The President shall not serve for any specific term of office, but rather at the discretion of the Board. The remaining officers will serve an indefinite term, subject to the discretion of the President.

6.3 Removal. Any Corporate Officer or subordinate officer may be removed by the board whenever, in its judgment, the best interests of the corporation will be served thereby; provided, however, that removal of a Corporate Officer shall be without prejudice to his or her contract rights, if any.

6.4 Vacancies in Corporate Offices. A vacancy in the office offices of Chair, Vice-Chair, or President created by the death, resignation, removal, disqualification, creation of a new office or any other cause may be filled by the member of the Corporation for the unexpired portion of the term or for a new term established by the member. A vacancy created in any of the offices appointed by the President shall be filled by the President.

6.5 Chairperson. The Chairperson must be a director. He or she shall direct the business of the board and shall preside at all meetings of the board. The Chairperson shall have such other powers and duties as may be prescribed by the board or these Bylaws.

6.6 Vice Chairperson. In the absence or disability of the Chairperson, the Vice Chairperson, who must be a director, shall perform all the duties of the Chairperson, and when so acting, shall have all of the powers of and be subject to all the restrictions upon the Chairperson. The Vice Chairperson shall have such other powers and perform such other duties from time to time as may be prescribed by the board or the Chairperson.

6.7 Secretary. The Secretary, who must be a director, shall (a) keep the minutes of all meetings of the board, (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law, (c) have charge of all the records of the board, (d) see that the execution of the foregoing on behalf of the corporation is duly authorized, and (e) in general, perform all of the duties incident to the office of Secretary, subject to the control of the board.

6.8 President/Chief Executive Officer. The President/Chief Executive Officer shall be the chief executive officer of the corporation. Subject to these Bylaws, corporate policy and control by the board, the President/Chief Executive Officer shall exercise executive supervision and control over the general business and affairs of the corporation and shall perform such other duties as may be prescribed from time to time by the board.

6.9 Treasurer. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and comprehensive books and records of the assets of the corporation and of its transactions. Such books and records shall be open to inspection by any director at all reasonable times. In addition, the Treasurer shall have charge of the funds and liquid assets of the corporation and shall deposit and/or invest such funds and liquid assets in accordance with the overall mission, policies, and plans of the corporation and in accordance with the directives of the President/Chief Executive Officer and the board. In addition, the Treasurer shall be responsible for all necessary and appropriate reporting and accounting.

6.10 Vice Presidents. The Corporate Officers may recommend for appointment by the Board such Vice Presidents or other subordinate officers as they deem necessary from time to time. Unless appointed as such pursuant to these Bylaws, Vice Presidents shall not be Corporate Officers. They shall have such powers and perform such duties as may be delegated to them by the board or by the President/Chief Executive Officer in accordance with policies duly adopted by the board.

6.11 Multiple Corporate Offices. Any number of Corporate Offices may be held by the same person, except that neither the Secretary nor the Chief Financial Officer may serve concurrently as the President/Chief Executive Officer or the Chairperson.

6.12 Duty to Support Mission. Each Corporate Officer and each Vice President of the corporation shall adhere to the highest standards of ethical and moral conduct in carrying out his or her duties for the corporation, shall act, in all respects, in the best interest of the corporation and shall fully support its mission and philosophy. Failure of any Corporate Officer or Vice President to adhere to such standards or support such mission and philosophy may be grounds for his or her removal in accordance with these bylaws.

ARTICLE VII. COMMITTEES

7.1 Standing or Temporary Committees. The Board, by resolution adopted by a majority of the directors in office, may designate and appoint from among its members one or more standing or temporary committees, each of which shall:

- (a) Consist of two (2) or more directors;
- (b) Be governed by the same rules regarding meetings, action without meetings, notice, and waiver of notice, and quorum and voting requirements as apply to the Board; and
- (c) To the extent provided in such resolution, have and may exercise the authority of the Board in the management of the Corporation; provided, however, that the Board may not delegate its authority to:
 - (i) approve any action for which the Code also requires approval of the

Member;

- (ii) amend, alter, or repeal these Bylaws;
- (iii) elect, appoint, or remove any member of any such committee or any director or officer of the Corporation;
- (iv) amend the Articles of Incorporation;
- (v) approve of any self-dealing transaction except as provided in paragraph (3) of subdivision (d) of Section 5233 of the Code;
- (vi) adopt a plan of merger or consolidation with another corporation;
- (vii) authorize the sale, lease, or exchange of all or substantially all of the property and assets of the Corporation, not in the ordinary course of business;
- (viii) authorize the voluntary dissolution of the Corporation or revoke proceedings therefor;
- (ix) adopt a plan for the distribution of the assets of the Corporation; or
- (x) amend, alter, or repeal any resolution of the Board which by its terms provides that it shall not be amended, altered or repealed by such committee.

The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board, or any individual director, of any responsibility imposed upon it by law. The Board shall have the power at any time to change the members of any such committee, to fill vacancies, and to discharge any such committee.

7.2 Attendance. Board members who are not appointed to a committee may attend by invitation.

7.3 Resignation of Committee Member. Any member of any committee may resign at any time by delivering notice thereof, in the form of a record, to the Chair, the President, the Secretary, or the chair of such committee, or by giving such notice at any meeting of such committee. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon delivery thereof and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

7.4 Audit Committee. The corporation shall have an Audit Committee appointed by the

board of directors of the corporation and may include persons who are not members of the board of directors. The Audit Committee shall not include any members of the staff, including the president or chief executive officer and the treasurer or chief financial officer. Members of the finance committee may serve on the audit committee; however, the chairperson of the audit committee may not be a member of the finance committee and members of the finance committee shall constitute less than one-half of the membership of the audit committee. Members of the audit committee shall not receive any compensation from the corporation in excess of the compensation, if any, received by members of the board of directors for service on the board and shall not have a material financial interest in any entity doing business with the corporation. The Audit Committee shall perform the duties and adhere to the guidelines set forth from time to time by the Board. The Audit Committee shall perform the duties and adhere to the guidelines set forth from time to time by the Board. These duties include, but are not limited to: (i) assisting the Board in choosing an independent auditor and recommending termination of the auditor, if necessary, (ii) negotiating the auditor's compensation, (iii) conferring with the auditor regarding the corporation's financial affairs, (iv) reviewing and accepting or rejecting the audit, and approving performance of non-audit services by the auditing firm.

7.5 Additional Committees of the Board. The board may, by resolution adopted by a majority of the directors, designate one or more additional committees to serve at the pleasure of the board. Committees of the board shall have such authority as is given them in the authorizing resolution or in these Bylaws and shall have a director as chairperson. Except as otherwise provided in these Bylaws, the members of the committee may, but need not be, directors.

7.6 Removal of Members of Committees. The board, by resolution adopted by a majority of the directors in office, may remove at any time, with or without cause, the chairperson or any member of any committee, except those individuals appointed ex-officio in accordance with these Bylaws.

7.7 Meetings and Quorum. Meetings of committees shall be conducted in accordance with Sections 4.9 through 4.14 hereof. A majority of members of a committee shall constitute a quorum and any transaction of a committee shall require a majority vote of the committee members present at a meeting at which a quorum is present. Except as otherwise provided in these Bylaws, each member of a committee, including the person presiding at the meeting, shall be entitled to one (1) vote.

ARTICLE VIII. RECORDS, REPORTS AND FISCAL YEAR

8.1 Maintenance of Articles and Bylaws. The corporation shall keep at its principal executive office a copy of its articles of incorporation and these Bylaws, as amended to date.

8.2 Maintenance of Other Corporate Records. Minutes of proceedings of the board or committees of the board shall be kept in written or typed form, and the accounting books and records shall be kept either in written or typed form or in any other form capable of being converted into written, typed or printed form.

8.3 Annual Report. The corporation shall provide to all of its directors, to the Member, and to Mercy Retirement and Care Center's Facility Sponsor, within one hundred twenty (120) days after the close of its fiscal year, a report accompanied by the independent accountants' report required under Section 8.4 hereof, which shall include, but not be limited to, the following information in reasonable detail:

(a) The manner in which the Corporation has implemented its mission and philosophy.

(b) The assets and liabilities, including the trust funds, of the corporation as of the end of the fiscal year.

(c) The principal changes in assets and liabilities, including trust funds, during the fiscal year.

(d) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes, for the fiscal year.

(e) The expenses or disbursements of the corporation, for both general and restricted purposes, during the fiscal year.

(f) Any information required by Section 6322 of the California Nonprofit Corporation Law relating to interested persons and to indemnification.

8.4 Auditor's Report. An audited financial statement of the corporation shall be prepared annually by a firm of independent public accountants approved by the board.

8.5 Confidentiality. Except as otherwise publicly disclosed, or in order to appropriately conduct the corporation's business, the records and reports of the corporation shall be held in confidence by those persons with access to them.

8.6 Fiscal Year. The fiscal year of the corporation shall begin on the 1st day of July each calendar year and end on the 30th day of June in the subsequent calendar year.

ARTICLE IX. INDEMNIFICATION

9.1 Right of Indemnity. To the fullest extent permitted by law, the corporation shall indemnify its Member, directors, officers, employees, and other persons described in section 5238(a) of the California Nonprofit Corporation Law, including persons formerly occupying such positions, against all expenses, including but not limited to court costs and attorney fees, judgments, fines, settlements and other amounts actually and reasonably incurred by them in connection with any

7368284.1

ECA Seventh Amended & Restated Bylaws 2023-07-20 v3 CleanDRAFT

“proceeding,” as that term is used in that section, and including an action by or in the right of the corporation, by reason of the fact that the person is or was a person described in that section. “Expenses,” as used in this section, shall have the same meaning as in section 5238(a) of the California Nonprofit Corporation Law.

9.2 Approval of Indemnity. On written request to the board by any person seeking indemnification under section 5238(b) or section 5238(c) of the California Nonprofit Corporation Law, the board shall promptly determine under section 5238(e) of the California Nonprofit Corporation Law whether the applicable standard of conduct set forth in section 5238(b) or section 5238(c) has been met and, if so, the board shall authorize indemnification. If the board cannot authorize indemnification because the number of directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of directors who are not parties to that proceeding, the board or the attorney or other person rendering services in connection with the defense shall apply to the court in which such proceeding is or was pending to determine whether the applicable standard of conduct has been met. .

9.3 Advancement of Expenses. To the fullest extent permitted by law and except as otherwise determined by the board in a specific instance, expenses incurred by a person seeking indemnification under Sections 9.1 and 9.2 of this Article IX in defending any proceeding covered by those Sections shall be advanced by the corporation before final disposition of the proceeding, on receipt by the corporation of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately determined that the person is entitled to be indemnified by the corporation for those expenses.

9.4 Insurance. The corporation shall have the right to purchase and maintain insurance to the fullest extent permitted by law on behalf of its officers, directors, employees, and other agents, against any liability asserted against or incurred by any officer, director, employee or agent in such capacity or arising out of the officer’s, director’s, employee’s, or agents’ status as such.

9.5 Indemnification-Excess. The indemnity provided herein shall be in excess of all valid and collectible insurance or indemnity policies.

ARTICLE X. DISSOLUTION

10.1 Dissolution. In the event that, at any time, this corporation is wound up and dissolved in accordance with its Bylaws, including any special provisions regarding specific property of the corporation, all of the properties, monies and assets of this corporation remaining after provision has been made for payment of its known debts and liabilities, as provided by law, shall be distributed and transferred to such nonprofit funds, foundations or corporations, organized and operated for charitable, religious, or scientific purposes, as designated by the Member of this corporation, and approved by the Facility and Program Sponsor of Mercy Retirement and Care Center, a California nonprofit public benefit corporation, if any; provided,

however, that any such funds, foundations, and/or corporations shall qualify as an exempt organization or organizations and meet the requirements for exemption under § 214 of the California Revenue and Taxation Code and as shall at the time qualify as an exempt organization under Internal Revenue Code § 501(c)(3) and §23701d of the California Revenue and Taxation Code.

Notwithstanding the foregoing, the particular assets described in Section 9.2 hereof shall be distributed in accordance therewith.

10.2 Property Originally Owned by MRCC. In the event that, upon its dissolution, any of the property identified in Exhibit 9.2(a) is owned by the corporation, such property, subject to all liabilities and encumbrances thereupon, will be distributed upon dissolution of the corporation as designated by the Member and approved by the Facility and Program Sponsor of Mercy Retirement and Care Center, a California nonprofit public benefit corporation, if any; , provided, however that any such distributee is then organized and operated exclusively for charitable or religious purposes and is then exempt from federal income taxation under Section 501(c)(3) of the Code.

ARTICLE XI. REVIEW AND REVISION: AMENDMENTS

11.1 Review and Revision. These Bylaws shall be reviewed no less often than once every three (3) years, for compliance with applicable law, the objectives of the System, this corporation's articles of incorporation and the common values statement of the corporation and the System. Any necessary revisions of these Bylaws shall be made in accordance with Section 11.2.

11.2 Amendments. These Bylaws may only be amended by action of the Member.

EXHIBIT 4.1
APPROVAL RIGHTS OF FACILITY AND PROGRAM SPONSOR

The following actions regarding Mercy Retirement and Care Center (“MRCC”) shall require the approval of the Facility and Program Sponsor, i.e. the individuals in their canonical capacity (or their designees), who constitute the Institute Leadership Team of the Sisters of Mercy of the Americas, a public juridic person of the Roman Catholic Church:

- (a) Final approval of the appointments to the Board of Directors of MRCC;
- (b) Approval of any material conflict-of-interest, affiliate or similar transaction between MRCC, on the one hand, and the corporation and/or an affiliate of the corporation, on the other hand; provided that approval of the Facility and Program Sponsor shall not be required for commercial transactions between MRCC and the corporation and/or its affiliates, if such transaction is entered into in the ordinary course of business and at arm’s length terms and does not exceed monetary limits established from time to time by Elder Care Alliance and approved by the Facility and Program Sponsor;
- (c) Final approval of any deficit operating and/or capital budget of MRCC;
- (d) Approval of all unbudgeted operating and capital expenditures of MRCC in excess of monetary limits established from time to time in accordance with the policies and norms of the Facility and Program Sponsor;
- (e) Approval of the merger or reorganization of MRCC;
- (f) Approval of sale, transfer or disposition of all or any assets of MRCC in excess of monetary limits established from time to time by Facility and Program Sponsor and in accordance with the policies and norms of the Facility and Program Sponsor;
- (g) Approval of any debt or encumbrance of the corporate real estate of MRCC;
- (h) Approval of the dissolution of MRCC;
- (i) Approval of any amendments to the Articles of Incorporation or Bylaws of MRCC that would alter the corporate purpose, affiliation, reserved rights or any sponsor relationship of MRCC;
- (j) Approval of any changes to the mission and common values statement of MRCC;
- (k) Approval of any revision or amendment to the MRCC Statement of Catholic Identity;
- (l) Approval of all matters of MRCC impacting the Catholic Identity of MRCC and its programs and services, including , but not limited to, adherence to and compliance with the Ethical and Religious Directives for Catholic Health Care and the MRCC Statement of Catholic Identity;
- (m) Any other matters which may be required by civil or Roman Catholic canon law regarding MRCC to be submitted to the Institute of the Sisters of Mercy of the Americas, or which the MRCC board of directors may request be submitted.

EXHIBIT 9.2(a)

MRCC PROPERTY (LEGAL DESCRIPTION)

The Land referred to herein below is situated in the City of Oakland, County of Alameda, State of California, and is described as follows:

PARCEL ONE:

LOTS 34, 35, 36, 37 AND 38 OF BRAY TRACT IN THE TOWNSHIP OF BROOKLYN AS PER MAP THEREOF, FILED IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, CALIFORNIA, ON JUNE 23, 1886.

EXCEPTING THEREFROM: THAT PORTION DESCRIBED IN THE DEED DATED SEPTEMBER 21, 1915, FROM THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO, A CORPORATION TO THE CITY OF OAKLAND, A MUNICIPAL CORPORATION RECORDED OCTOBER 6, 1915, BOOK 2398 OF DEEDS AT PAGE 22, SERIES NO. Q17496, ALAMEDA COUNTY RECORDS.

ALSO EXCEPTING THEREFROM: THE INTEREST CONVEYED BY DEED DATED SEPTEMBER 18, 1924, FROM OUR LADY'S HOME TO THE CITY OF OAKLAND, A MUNICIPAL CORPORATION. RECORDED DECEMBER 17, 1924, BOOK 869, PAGE 197, SERIES NO. T175159, OFFICIAL RECORDS. SAID DEED WAS RE-RECORDED ON MARCH 12, 1925, SERIES NO. U19992, BOOK 957 PAGE 130 OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM: THAT PORTION OF SAID LAND THAT LIES WITHIN THE LINES OF 35TH AVENUE, FORMERLY REDWOOD AVENUE.

PARCEL TWO:

LOTS 11 AND 12, AS DELINEATED AND DESIGNATED UPON THAT CERTAIN MAP ENTITLED, MAP OF LAMP TRACT, FILED IN THE OFFICE OF THE RECORDER OF ALAMEDA COUNTY, JUNE 13, 1893, A SUBDIVISION OF THE BRAY TRACT.

EXCEPTING THEREFROM THAT PORTION THEREOF MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTHERN LINE OF EAST 18TH STREET, FORMERLY TOBLER STREET, DISTANT THEREON EASTERLY 224 FEET FROM THE POINT OF INTERSECTION THEREOF WITH THE EASTERN LINE OF 34TH AVENUE, FORMERLY BRAY AVENUE, AS SAID STREET AND AVENUE ARE SHOWN ON THE MAP HEREINAFTER REFERRED TO; RUNNING THENCE NORTHERLY ALONG THE DIVIDING LINE OF LOTS NUMBERED 10 AND 11, NORTH 21 DEG 30' EAST 150 FEET; THENCE SOUTH 68 DEG 09' 42" EAST 69.37 FEET TO THE EASTERLY LINE OF LOT NUMBERED 12; THENCE SOUTH 25 DEG 43' WEST 150 FEET PARALLEL WITH THE WESTERN LINE OF 35TH AVENUE, FORMERLY REDWOOD AVENUE, AS SHOWN ON SAID MAP TO THE NORTHERLY LINE OF EAST 18TH STREET AND THENCE ALONG

7368284.1

ECA Seventh Amended & Restated Bylaws 2023-07-20 v3 CleanDRAFT

SAID LINE OF EAST 18TH STREET, NORTH 68 DEG 30' WEST 58.34 TO THE POINT OF COMMENCEMENT. BEING THE SOUTHWESTERN PORTION OF LOTS NUMBERED 11 AND 12, AS SAID LOTS ARE SHOWN ON THAT CERTAIN MAP ENTITLED, MAP OF THE LAMP TRACT, BROOKLYN TOWNSHIP, ALAMEDA COUNTY, CALIFORNIA, FILED JUNE 13, 1893 IN THE OFFICE OF THE COUNTY RECORDER OF SAID ALAMEDA COUNTY.

PARCEL THREE:

LOTS 1 AND 2, MAP OF THE LAMP TRACT, FILED JUNE 13, 1893, MAP BOOK 14, PAGE 13, ALAMEDA COUNTY RECORDS.

PARCEL FOUR:

LOT 8, MAP OF THE LAMP TRACT, FILED JUNE 13, 1893, MAP BOOK 14, PAGE 13, ALAMEDA COUNTY RECORDS.

PARCEL FIVE:

LOTS 9 AND 10, AS SAID LOTS ARE SHOWN ON THE "MAP OF THE LAMP TRACT", FILED JUNE 13, 1893, IN BOOK 14 OF MAPS, PAGE 13, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

PARCEL SIX:

LOT 3, MAP OF THE LAMP TRACT, FILED JUNE 13, 1893, MAP BOOK 14, PAGE 13, ALAMEDA COUNTY RECORDS.

CERTIFICATE OF SECRETARY

I, the undersigned, certify that I am presently the elected and acting Secretary of Elder Care Alliance, and that the foregoing Seventh Amended and Restated Bylaws are the current bylaws of Elder Care Alliance were duly approved by the Board of Directors on _____, 2023. The Resolution of the Board approving these Bylaws resolved that they would be effective only upon the consummation of the transactions contemplated by that certain Affiliation Agreement, dated July 28, 2023 between the corporation and the Member; and I further certify that the consummation of those transactions occurred, and the foregoing Bylaws became effective, on _____.

Executed on this ____ day of _____, at _____, California.

Secretary

Exhibit B

Directors of ECA and Affiliates upon Closing

TRANSFORMING AGE: ANTICIPATED BOARD MEMBERS AT CLOSING

BOARD MEMBERS		Terms
Mary Wagner Chair	Retired Senior Vice President, Starbucks	2018-2021, 2021-2024
Jesse Bond Vice Chair	Owner, Bond Financial, LLC	2017-2020, 2020-2023 2023-2026
Scott Lumsden Immediate Past Chair	Executive Presbyter, Seattle Presbytery	2015-2018 2021-2024
Barb Bennett	Retired President & COO of Vulcan Inc	2022-2025
Cathy Danigelis	Western Region Manager,	2020-2023 2023-2026
Joy Moore	CPO, OnLok	2023-2026
Torsten Hirche	President & CEO, Transforming Age	ex officio
Lisa Nelson	Finance Executive/Startup Advisor	2020-2023 2023-2026
Jim Melhorn	Retired President/CEO, Episcopal Ministries to the Aging	2018-2021, 2021-2024
Greg Russell	Partner, Peterson Russell Kelly PLLC	2019-2022 2022-2025

OFFICERS		Terms
Torsten Hirche	President & CEO	
Michael Connell	Treasurer & CFO	
Michele Luke	Secretary	

Exhibit C

MRCC Statement of Catholic Identity of the Facility and Program Sponsor

STATEMENT OF CATHOLIC IDENTITY

MERCY RETIREMENT AND CARE CENTER (“MRCC”)

Mercy Retirement and Care Center is a Catholic institution founded in 1872 in San Francisco by the Sisters of Mercy. MRCC was relocated to Oakland shortly after the 1906 San Francisco earthquake and fire. MRCC currently accommodates 166 residents in its assisted living, memory care and skilled nursing programs. Elder Care Alliance (“ECA”) is the sole corporate member of MRCC, and MRCC is sponsored by the Institute of the Sisters of Mercy of the Americas, West Midwest Community, a religious congregation of women in the Roman Catholic Church, or its successor congregation.

As members of the world-wide network of Mercy, the Sisters of Mercy believe:

- In the healing ministry of Jesus as an essential part of their mission in contemporary society.
- In the uniqueness and richness of the tradition of the foundress, Catherine McAuley, and in the collaborative efforts of the Institute of the Sisters of Mercy of the Americas to strengthen their ministry.
- In the sacredness of all life and, therefore, in the dignity of the human person and the promotion of human wholeness.
- In a spirit of compassion that care for the suffering and the dying.
- In the right to quality senior living services for each individual and their responsibility to act as advocates for the poor and for those with special needs.
- In the stewardship of resources for the enhancement of all life and for the common good.
- In a climate of mutual support, compassion, care and justice for those serving and being served within their ministry.
- In collaboration with others who support Judeo-Christian values in developing a creative response to need.
- In the values and principles of the *Ethical and Religious Directives for Catholic Health Care Services* as it pertains to senior living.

ECA's and MRCC's mission statement is:

“Expressing our faith heritage, Elder Care Alliance is an integrated system committed to serving and enriching the holistic wellness of older adults and those who care for them through education, innovation and a network of professionals, care communities and partners.”

ECA and MRCC's Vision is: *“Engaging hearts, Transforming lives, Erasing boundaries.”* This Vision statement came out of four statements that speak to the kind of communities ECA and MRCC want to create and impact they strive to achieve. They will be revealed further in this Statement.

The following elements are illustrative of some of the important ways in which MRCC lives out what they believe:

SENIOR LIVING - A LIFE-GIVING MINISTRY

Engaging hearts, Transforming lives, Erasing boundaries

- “We strive to transform ourselves, the lives we touch, the field of aging, and society’s view and value of older adults.”

The provision of senior living services is always a value-driven enterprise, and MRCC strives to sustain a live-giving community that provides dignity and quality of life for the frailest of their elders. All programs and activities must be seen as ministry. The beliefs stated above as well as the values of MRCC provide the framework for decision-making.

Mission and Values Integration is an important aspect of their ministry work. This is supported in their hiring processes, general orientation and onboarding, and in leadership development programs. MRCC’s core values of Dignity, Caring, Collaboration, Excellence, Learning and Prudent Stewardship have been translated into distinct behaviors to ensure a common definition, and these are measured annually.

An important contribution to note is that of ecumenism. MRCC, both as a co-founder of ECA and as an integral part of the ECA ministry, has profound influence beyond the campus of MRCC. The Mission, Vision and Values of ECA are the same as for MRCC, and how those get lived out are greatly informed by the history and legacy of MRCC and the charism and heritage of the Sisters of Mercy.

The name “Mercy” will be retained as long as the Sisters of Mercy are sponsors of this ministry or until they deem otherwise. The Sisters of Mercy shall be included in the social life of MRCC. The richness of the history of MRCC and that of the Sisters of Mercy who dedicated their lives to its ministry should be visible within the institution and should be celebrated appropriately, including:

- Mercy Day
- Foundation Day

Women religious continue to serve at MRCC and opportunities will be made available for future employment of women religious in appropriate positions.

An important component of their ministry is a commitment to care for those less fortunate. MRCC’s charitable care program aims to support MRCC residents who exhaust their savings and are no longer able to afford all of their care required. Fundraising for charitable care and the charitable care endowment funds is done every year.

As a ministry of the Catholic Church, MRCC will ensure that care is taken in all policies and communications to ensure alignment with Catholic teachings. This includes marketing, advertising, public relations, website, and other public communications. As appropriate, there will be intentional communication with the Oakland Diocese and the wider Catholic community regarding issues related to MRCC.

LIFE-GIVING COMMUNITY AND ENVIRONMENT

Engaging hearts, Transforming lives, Erasing boundaries

- “Partnering to create communities where people are empowered, engaged, and have a voice and a vocation.”

This is the type of community MRCC strives to create for their residents and their families, staff, the board of directors, benefactors and volunteers. They can help each other live life to its fullest, and this includes elders who are frail, suffering with chronic conditions, and who have cognitive impairment.

The things that bring a sense of well-being remain constant across the life span: love and belonging, honoring of one's dignity, self-determination, and a sense of purpose. In particular, their core values of Dignity and Caring are instrumental here.

Dignity: "We honor and celebrate the inherent worth of each person. We respect others regardless of cognitive ability, cultural background, religious affiliation, sexual orientation or economic means."

Caring: "We respond to each person with compassion and create an environment that fosters holistic wellness and empowerment."

Senior living communities are sacred places because elders are cared for here, live here, pray here, rejoice here, grieve here, and oftentimes die here. This is home – where new relationships are formed. Therefore, it is important that residents, families, friends, staff, and visitors experience a welcoming, attractive, and comfortable environment.

This also reflects their core value of ***Prudent Stewardship***: "We recognize the responsibility we hold for all resources entrusted to the organization, and exercise good judgment when making decisions that may affect these resources - all in support of our mission."

This commitment extends to the external community as well. MRCC has run the Brown Bag since the early 1990's, serving low income seniors throughout Alameda County two bags of groceries a month. This is an important ministry of MRCC, providing not just food but emotional connection, volunteering opportunities which support vocational wellness, and social engagement.

LIFE-GIVING CARE

Engaging hearts, Transforming lives, Erasing boundaries

- "Enriching human relationships, connecting people and community, providing environments that foster independence, allowing people to flourish and where there is joy."

Workers in Catholic senior living participate in a noble profession and ministry. It is a calling to care for the intimate care needs of a person. Many of the elders rely on workers at MRCC to assist them with activities of daily living which they used to perform for themselves. Many of the residents have led rich lives that the workers may never fully know or appreciate.

Every person cared for deserves competent, compassionate care and assistance which honors them as individuals with unique needs and preferences. When workers at MRCC provide care that is life-giving, it addresses the whole person – body, mind and spirit. It fully reflects MRCC's core values of:

- ***Dignity***: "honoring and celebrating the inherent worth of each person."
- ***Caring***: "responding to each person with compassion and creating an environment that fosters holistic wellness and empowerment."

- **Excellence:** “demonstrating a commitment and personal accountability to a high standard of quality, delivered through teams of dedicated sponsors, board members, employees, and volunteers.”

Spiritual care is central to the care MRCC provides. The workers at MRCC try to know and respect the religious affiliations and traditions of those served and make every effort to maintain residents’ connections with their faith communities. The MRCC spiritual care team provides pastoral care, daily chapel, weekly mass, and regular programming across assisted living, memory care and skilled nursing. Grief support and memorial services are another integral part of their ministry – for residents, families, friends and staff.

The MRCC’s skilled nursing is Eden Alternative – a philosophy founded on a belief that no matter how old one is or what challenges one lives with, life is about continuing to grow. It affirms that care is a collaborative partnership, focusing on supporting person-directed care. Additionally, the Compassionate Care for the dying program supports the training of care staff throughout MRCC, enabling them to shepherd residents and their families through the dying process with empathy, dignity, compassion.

MRCC is committed to continuous quality improvement and supports that work through interdisciplinary team meetings, clinical quality audits, quarterly Resident Care Committee meetings and other efforts.

LIFE-GIVING WORKPLACE

Engaging hearts, Transforming lives, Erasing boundaries

- “A key contribution we make to the field of aging is in developing leaders with a calling to deliver person-centered, high quality services in support of holistic wellness.”

The ministry of MRCC extends to the staff. All human life is sacred and good, so MRCC strives to:

- Develop a work environment that promotes trust, collaboration, learning and innovation.
- Encourage people to reach their God-given potential and to find meaning in their work.
- Give people a substantive voice to shape their work.
- Endeavor to treat everyone fairly in all aspects of employment.
- Recruit and hire individuals who are “mission” ready as well as technically competent.
- Ensure MRCC workplaces embody their core values, especially:
 - **Collaboration:** “Teamwork is critical to all we do. We are attentive to the voices of stakeholders. We actively seek out other innovative organizations that are aligned with our values to better benefit those whom we serve.”
 - **Learning:** “We are empowered through a culture of learning and growth, committed to providing opportunities for our employees and those we serve to grow in their vocations.”

MRCC will continue to express Catholic values in its policies and procedures and in the evaluations of employees. Evaluation programs such as *ECA’s Employee Engagement Survey* should include assessments of not only engagement but how well their core values are lived out in the workplace. Where opportunities for growth of a leader is in order, professional development action plans will be developed.

Best efforts will be exercised to assure that managers and supervisors have the skills and means to instill MRCC's core values into the daily operations of their departments.

Exhibit D

Advisory Committee Charter

BYLAWS OF THE ECA ADVISORY COMMITTEE,
a California Unincorporated Association

1. *Name of Committee.* The name of this committee is The ECA Advisory Committee. This committee is a nonprofit association organized under the provisions of Title 3 of the California Corporations Code (the "Code"), having all of the rights and privileges provided for therein.

2. *Principal Office.* The principal office for the transaction of the activities and affairs of this committee is located at 1301 Marina Village Pkwy Suite #210 Alameda, CA 94501. The members may later approve a new location of the principal office and this Section may be amended to state the new location.

3. *Purpose.* The purpose of this committee is to serve as the Advisory Committee established pursuant to the Affiliation Agreement dated as of July 28, 2023 by and between Transforming Age, a Washington nonprofit committee, and Elder Care Alliance, a California nonprofit public benefit corporation (the "Affiliation Agreement"), and in particular to monitor and enforce compliance by Transforming Age with its obligations under the Affiliation Agreement; and to ensure historical continuity, be a community advocate in support of the Affiliation Agreement, and build goodwill within the local community for Transforming Age and Elder Care Alliance. The Committee shall not act in a manner contrary to the Affiliation Agreement, and nothing in these bylaws shall be construed in a manner that is contradictory to the Affiliation Agreement.

4. *Not for Profit.* This committee is not to be operated for profit, and none of the earnings or assets of this committee shall inure or be distributed to any of its members. The assets of this committee shall be used solely for the purposes described above. Any assets of this committee remaining upon dissolution shall be contributed to Elder Care Alliance, or if Elder Care Alliance is no longer an organization described in Section 501(c)(3) of the Internal Revenue Code, to Transforming Age, or if Transforming Age is no longer an organization described in Section 501(c)(3) of the Internal Revenue Code, to an organization selected by the members that is an organization described in Section 501(c)(3) of the Internal Revenue Code, and that is dedicated to supporting the provision of quality long term care and social services for older adults.

5. *General Powers of Members.* Subject to the provisions and limitations of the Code and any other applicable laws, the committee's activities and affairs shall be managed, and all corporate powers shall be exercised, by or under the direction of the members.

6. *Membership.*

(a) *Eligibility.* This committee shall have two classes of members, voting members and a single non-voting member. The voting members shall be those persons who were members of the Board of Directors of Elder Care Alliance immediately prior to the consummation of the transactions contemplated by the Affiliation Agreement. The non-voting member shall be a person from time to time designated by Transforming Age. No other person shall be eligible for membership of this committee.

(b) *Dues, Fees, and Assessments.* The committee shall not levy any dues, fees, or assessments except with the unanimous approval of the members.

(c) *Termination of Membership.* A membership shall terminate on occurrence of either of the following events:

(i) Resignation of the member;

(ii) Termination of membership under Section (c) of these bylaws based on the good faith determination by the other members that the member has failed in a material and serious degree to observe the rules of conduct of the committee, or has engaged in conduct materially and seriously prejudicial to the committee's purposes and interests;

(iii) With respect to the non-voting member, his or her removal by Transforming Age.

(d) *Suspension of Membership.* A member may be suspended, under Section (e) of these bylaws, based on the good faith determination by the other members that the member has failed in a material and serious degree to observe the committee's rules of conduct, or has engaged in conduct materially and seriously prejudicial to the committee's purposes and interests.

A person whose membership is suspended shall not be a member during the period of suspension.

(e) *Procedure for Termination or Suspension.* If grounds appear to exist for suspending or terminating a member under Section (c) or Section (d) of these bylaws, the following procedure shall be followed:

(i) The committee shall give the member at least 15 days' prior notice of the proposed suspension or termination and the reasons for the proposed suspension or termination. Notice shall be given by any method reasonably calculated to provide actual notice. Notice given by mail shall be sent by first-class or registered mail to the member's last address as shown on the committee's records.

(ii) The member shall be given an opportunity to be heard, either orally or in writing, at least 5 days before the effective date of the proposed suspension or termination. The hearing shall be held, or the written statement considered, by the other members, or by a committee or person authorized by the other members to determine whether the suspension or termination should occur.

(iii) The members, committee, or person shall decide whether the member should be suspended, expelled, or sanctioned in any way. The decision of the members, committee, or person shall be final.

(iv) Any action challenging an expulsion, suspension, or termination of membership, including a claim alleging defective notice, must be commenced within 1 year after the date of the expulsion, suspension, or termination.

(f) *Memberships as Not Transferable.* No membership or right arising from membership shall be transferred. All membership rights cease on the member's resignation, expulsion or death.

(g) *No Liability.* As provided in Section 18605 of the Code, no member, director, or agent of the committee shall be liable for a debt, obligation, or liability of the committee solely by reason of being a member, director, officer, or agent of the committee.

7. *Meetings of the Committee*

(a) *Quarterly/Semi-Annual Meetings.* The committee shall meet quarterly for the first two years following Closing and semi-annually thereafter on dates to be determined by arrangement between the committee and Transforming Age, and more frequently as the committee may determine.

(b) *Location of Meetings.* Meetings of the members shall be held at any place within or outside California designated by the chairperson of the committee or by the written consent of all members entitled to vote at the meeting, given before or after the meeting. In the absence of any such designation, members' meetings shall be held at the committee's principal office. Meetings may be held by electronic transmission or electronic video communication. The chair of the committee may authorize members who are not present in person to participate by electronic transmission or electronic video communication.

(c) *Remote Participation in Meetings.* Participation by a member in a meeting by telephone or video communication shall constitute the presence of the member at the meeting, provided that all members participating in the meeting can hear one another, and the member participating by telephone or video communication has a reasonable opportunity to address the meeting. The committee may adopt guidelines and procedures for other means of participation by members not present physically or by proxy to participate in a meeting by other means of remote communication.

(d) *Special Meetings.* Special meetings of the committee may be called at any time by any of the following:

- (i) The chairperson, the treasurer or the secretary of the of the committee;
- (ii) 5 percent or more of the members;
- (iii) The president or chief executive officer of Elder Care Alliance or Transforming Age.

A special meeting called by any person entitled to call a meeting of the members shall be called by written request, specifying the general nature of the business proposed to be transacted,

and addressed to the attention of and submitted to the chairperson of the committee or any vice chairperson or the secretary of the committee. The officer receiving the request shall cause notice to be given promptly to the members stating that a meeting will be held at a specified time and date fixed by the board. If the notice is not given within 20 days after the request is received, the person or persons requesting the meeting may give the notice. No business, other than the business that was set forth in the notice of the meeting, may be transacted at a special meeting.

(e) *Written Notice Required.* Whenever members are required or permitted to take any action at a meeting, a written notice of the meeting shall be given to each member entitled to vote at the meeting. The notice shall specify the place, date, and hour of the meeting, and the means of electronic transmission by and to the committee, electronic video screen communication, conference telephone, or other means of remote communication, if any, by which members may participate in the meeting. For each quarterly meeting, the notice shall state the matters that the chairperson, at the time notice is given, intends to present for action by the members. For a special meeting, the notice shall state the general nature of the business to be transacted and shall state that no other business may be transacted.

(f) *Notice of Certain Agenda Items.* Approval by the members of any of the following proposals, other than by unanimous approval by those entitled to vote, is valid only if the notice or written waiver of notice states the general nature of the proposal or proposals:

- (i) Removing or suspending a member;
- (ii) Amending these Bylaws; or
- (iii) Electing to dissolve the committee.

(g) *Notice Requirements.* Notice of any meeting of members shall be in writing and shall be given at least two but no more than 90 days before the meeting date. The notice shall be given either personally, by electronic transmission by the committee, or by first-class, registered, or certified mail, or by other means of written communication, charges prepaid, and shall be addressed to each member entitled to vote, at the address of that member as it appears on the books of the committee or at the address given by the member to the committee for purposes of notice. If no address appears on the committee's books and no address has been so given, notice shall be deemed to have been given if either (1) notice is sent to that member by first-class mail or electronic or other written communication to the committee's principal office or (2) notice is published at least once in a newspaper of general circulation in the county in which the principal office is located.

(h) *Electronic Notice.* Notice given by electronic transmission by the committee shall be valid only if--

(i) Delivered by (a) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the committee; (b) posting on an electronic message board or network that the committee has designated for those communications, together with a separate notice to the

recipient of the posting, which transmission shall be validly delivered on the later of the posting or delivery of the separate notice of it; or (c) other means of electronic communication;

(ii) To a recipient who has provided an unrevoked consent to the use of those means of transmission for communications; and

(iii) That creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form.

Notwithstanding the foregoing, notice shall not be given by electronic transmission by the committee after either of the following: (a) the committee is unable to deliver two consecutive notices to the member by that means or (b) the inability so to deliver the notices to the member becomes known to the secretary, any assistant secretary, or any other person responsible for the giving of the notice.

(i) *Quorum.* A majority of the voting members shall constitute a quorum for the transaction of business at any meeting of members. The voting members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, even if enough members have withdrawn to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the voting members required to constitute a quorum.

(j) *Voting.* Each voting member entitled to vote may cast one vote on each matter submitted to a vote of the members. If a quorum is present, the affirmative vote of a majority of the voting power represented at the meeting, entitled to vote and voting on any matter, shall be deemed the act of the members. The non-voting member shall have not voting rights.

(k) *Waiver of Notice or Consent.* The transactions of any meeting of members, however called or noticed and wherever held, shall be as valid as though taken at a meeting duly held after standard call and notice, if (1) a quorum is present either in person or by proxy, and (2) either before or after the meeting, each member entitled to vote, not present in person or by proxy, signs a written waiver of notice, a consent to the holding of the meeting, or an approval of the minutes of the meeting. The waiver of notice, consent, or approval need not specify either the business to be transacted or the purpose of the meeting except that, if action is taken or proposed to be taken for approval of any matter specified in Section 7(f) of these bylaws, the waiver of notice, consent, or approval shall state the general nature of the proposal. All such waivers, consents, or approvals shall be filed with the committee's records or made a part of the minutes of the meeting.

A member's attendance at a meeting shall also constitute a waiver of notice of and presence at that meeting unless the member objects at the beginning of the meeting to the transaction of any business because the meeting was not lawfully called or convened. Also, attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be included in the notice of the meeting but not so included, if that objection is expressly made at the meeting.

(l) *Action by Unanimous Written Consent.* Any action required or permitted to be taken by the members may be taken without a meeting, if all voting members consent in writing to the action. The written consent or consents shall be filed with the minutes of the meeting. The action by written consent shall have the same force and effect as a unanimous vote of the members.

(m) *Proxies.* Each member entitled to vote shall have the right to do so either in person or by an agent authorized by a written proxy, signed by the member and filed with the secretary of the committee; provided that no person who is not a member may serve as agent or proxy for a member. A proxy shall be deemed signed if the member's name is placed on the proxy by the member or the member's attorney-in-fact, whether by manual signature, typewriting, electronic signature, or otherwise. A proxy shall be valid for a single meeting only.

(n) *Adjournment; Notice.* Any members' meeting, whether or not a quorum is present, may be adjourned from time to time by the vote of the majority of the members represented at the meeting, either in person or by proxy.

(o) *Exclusion of the Non-Voting Member.* The voting members may, by vote of a majority of the voting members, exclude the non-voting member from any discussion, deliberation or vote with respect to which the voting members determine that the non-voting member has a conflict of interest by reason of his or appointment by Transforming Age, and the inspection rights of the members set forth in Section 11(d) shall not be construed to permit the non-voting member to inspect or copy records of the committee relating to any such matter.

8. *Officers.*

(a) The officers of this committee shall be a chairperson, a secretary, and a treasurer. Any number of offices may be held by the same person, except that the secretary and the treasurer may not serve concurrently as the chair of the committee.

(b) *Election of Officers.* The officers of this committee shall be chosen by the members annually the first quarterly meeting of the committee, and thereafter at a the quarterly – and later semi-annual - meetings held most closely to the anniversary of the first meeting, and shall serve at the pleasure of the board, subject to the rights of any officer under any employment contract. The members may appoint and authorize the chair of the board or another officer to appoint any other officers that the committee may require. Each appointed officer shall have the title and authority, hold office for the period, and perform the duties specified in the bylaws or established by the members.

(c) *Removal of Officers.* Without prejudice to the rights of any officer under an employment contract, the members may remove any officer with or without cause. An officer who was not chosen by the members may be removed by any other officer on whom the board confers the power of removal.

(d) *Resignation of Officers.* Any officer may resign at any time by giving written notice to members or to the chairperson, or if the chairperson is resigning, to the members or to the secretary. The resignation shall take effect on the date the notice is received or at any later time specified in the notice. Unless otherwise specified in the notice, the resignation need not be

accepted to be effective. Any resignation shall be without prejudice to any rights of the committee under any contract to which the officer is a party.

(e) *Responsibilities of the Chairperson.* The chairperson shall preside at meetings of the committee and shall exercise and perform such other powers and duties as the members may assign from time to time. If there is no president or chief executive officer, the chairperson shall be the chief executive officer of the committee.

(f) *Responsibilities of Secretary.*

(i) The secretary shall keep or cause to be kept, at the committee's principal office or such other place as the members may direct, a book of minutes of all meetings, proceedings, and actions of the committee, of subcommittees, and of members' meetings. The minutes of meetings shall include the time and place that the meeting was held; whether the meeting was annual, general, or special, and, if special, how authorized; the notice given; the names of persons present at committee and subcommittee meetings; and the number of members present or represented at members' meetings.

(ii) The secretary shall keep or cause to be kept, at the principal California office, a copy of these bylaws, as amended to date.

(iii) The secretary shall keep or cause to be kept, at the committee's principal office or at a place determined by resolution of the committee, a record of the committee's members, showing each member's name and address.

(iv) The secretary shall give, or cause to be given, notice of all meetings of members and of subcommittees that these bylaws require to be given. The secretary shall have such other powers and perform such other duties as the board or the bylaws may require.

(g) *Responsibilities of the Treasurer.*

(i) The treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and accounts of the committee's properties and transactions. The treasurer shall send or cause to be given to the members such financial statements and reports as are required to be given by law, by these bylaws, or by the board. The books of account shall be open to inspection by any member at all reasonable times.

(ii) The treasurer shall (1) deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the committee with such depositories as the members may designate; (2) disburse the committee's funds as the members may order; (3) render to the members, when requested, an account of all transactions as treasurer and of the financial condition of the committee; and (4) have such other powers and perform such other duties as the members or the bylaws may require.

9. *Indemnification.* To the fullest extent permitted by law, this committee shall indemnify its members, and may indemnify employees and other agents, including persons formerly occupying any such positions, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any proceeding, and including an action by or in the right of the committee, by reason of the fact that the person is or was a person described in that section.

10. *Insurance.* The committee shall have the right to purchase and maintain insurance to the full extent permitted by law on behalf of its members, officers employees, and other agents, to cover any liability asserted against or incurred by any member, officer, employee, or agent in such capacity or arising from the member's officer's, employee's, or agent's status as such.

11. *Committee Records.* This committee shall keep the following:

- (a) Adequate and correct books and records of account;
- (b) Minutes of the proceedings of its members and subcommittees; and
- (c) A record of each member's name and address.

The minutes and other books and records shall be kept either in written form or in any other form capable of being converted into clearly legible tangible form or in any combination of the two.

(d) *Members' Inspection Rights.* Any member may upon not less than ten (10) business days' advance written notice, and for a purpose reasonably related to the member's interest as a member:

- (i) Obtain from the committee a copy of these bylaws, as amended to date;
- (ii) Obtain from the committee a list of names and addresses of members;
- (iii) Inspect, copy, and make extracts of the accounting books and records and the minutes of the proceedings of the members and committees.

If the committee reasonably believes that the information will be used for a purpose other than one reasonably related to a person's interest as a member, it may deny the member access to the membership list.

Any inspection and copying under this Section shall be made by the member in person. The right of inspection includes the right to copy and make extracts.

12. *Dissolution.* The committee shall dissolve upon the expiration of all of the commitments of Transforming Age set forth in Section 6 of the Affiliation Agreement; provided that it shall nevertheless continue to exist for the purpose of enforcing any commitment of Transforming Age that arose prior to such time.

13. *Amendment.* These bylaws may be amended by a vote of the members, but only with the approval of Transforming Age.

CERTIFICATION

The undersigned, Secretary of The ECA Advisory Committee, certifies that the foregoing Bylaws were duly approved by the members of the committee at a meeting duly held on _____, 2023.

Print name: _____

Date: _____

Schedule 8.c)

Required ECA Consents

Exhibit 3-B

Consulting and Shared Services Agreement



Agreement for Consulting and Support Services

This AGREEMENT is made between **Gerontological Services, LLC dba GSI Research & Consulting**, a Washington limited liability company (GSI) of Bellevue, Washington and **Elder Care Alliance**, a California nonprofit public benefit corporation (ECA) of Alameda, California (The "Parties").

ARTICLE 1: SCOPE OF WORK

GSI will provide the following consulting and support services (the "Services") to ECA and its subsidiaries for the duration of the engagement. All Services shall be provided in a competent and professional manner, and to the reasonable satisfaction of ECA, acting through its Chief Executive Officer. ECA shall retain full governance and management authority of its assets and operations, and all Services shall be provided in accordance with the policies, procedures and directives from time to time adopted or issued by the Board of Directors of ECA; provided that ECA shall not direct the manner or means by which Consultant is to provide the Services. ECA retains the right to make an independent evaluation of the Services, and to adopt or implement them, or refrain from adopting or implementing them, in its sole discretion.

1.1. Operations Support Services:

- **Sales Team Guidance and Support:** Support includes sales system and tools, KPI and metrics sharing and measurement, ongoing support, training and coaching; team accountability.
- **Philanthropy:** Support includes strategic support and guidance from Executive Director of TA Foundation with over 35 years of experience, philanthropic opportunity assessment, support with donor database, and related services.
- **Facility and Project Management:** Support includes guidance from SVP of Operations with over 30 years in strategy, development, operations and construction experience, CTIO and GSI facilities and asset management resources.
- **Risk Management:** Support includes risk management and compliance program assessment and support from General Counsel with over 15 years of legal strategy, compliance, risk management, and litigation experience.
- **Culinary:** Support includes menu cycle consultation, training, and program evaluation.

1.2. IT Support Services:

- **IT Strategy and Leadership:** High level strategic support and guidance from very experienced Chief Technology & Information Officer with over 20 years of information technology, consumer technology and digital transformation experience.
- **IT Consultation and Project Input:** participates in Project Governance as IT subject matter expert to assist in proper project planning, implementation, and adoption.

- **Troubleshooting and Issue Resolution:** IT support provides assistance in diagnosing and resolving technical problems that users encounter with their computers, software applications, networks, or other IT infrastructure. This includes addressing hardware or software failures, connectivity issues, and system crashes.
- **User Account Management:** IT support manages user accounts, including creating new accounts, granting or revoking access privileges, resetting passwords, and ensuring proper user authentication and authorization for various systems and applications.
- **Software Installation and Configuration:** IT support helps users with installing, configuring, and updating software applications, ensuring they are properly set up and compatible with the user's system. They also assist in resolving any conflicts or errors that may arise during the installation or configuration process.
- **Hardware Maintenance, Upgrades and Purchases:** IT support assists with hardware maintenance tasks such as replacing faulty components, upgrading system memory or storage capacity, and ensuring the overall health and functionality of computer systems, servers, and networking equipment as well as any necessary technology purchases.
- **Data Backup and Recovery:** IT support helps users with data backup solutions, ensuring that critical files and information are regularly backed up to prevent loss in the event of hardware failure, accidental deletion, or other data disasters.

1.3. Mercy Market Assessment:

- **Assessment Phase**

The purpose of this phase will be for GSI to analyze the work that has completed thus far regarding the campus enhancements and to gain an understanding and view of the Community and its current situation in the market. This will include assessment of the current plant, market, programming strengths and weaknesses, site limitations or opportunities, and regulatory issues. The assessment phase will include GSI:

Step 1: Obtaining and reviewing all relevant studies and plans completed to date.

Step 2: Assessing the site, building constraints and programs currently in place.

Step 3: Preparing a Preliminary Market Assessment to study the demographic and competitive characteristics of the Community's market area by calculating a market penetration rate and demand analysis.

Step 4: Conducting a conference call with ECA's team in order to review progress, documents, findings and assessment meeting preparation.

Once the assessment work is complete, GSI will schedule a meeting to present the assessment findings. During this meeting, GSI will provide recommendations for Mercy's pricing and positioning in the market, focused on driving fill-up of assisted living.

- **Delivery Phase**

The final stage of the Market Assessment culminates with the creation of the Market Assessment report and recommendations. This document is intended to serve as the cornerstone for directing the strategic marketing of the Community.

ARTICLE 2: FEES

- 2.1 Please refer to Appendix A for fees.
- 2.2 Fee does not include reimbursable expenses (i.e. travel time, mileage, meals).
- 2.3. If additional services beyond the scope of this Agreement are required, time will be billed at \$200.00 per hour. Any additional time will be agreed to in writing, in advance.

ARTICLE 3: TERM AND TERMINATION

- 3.1. The term of this Agreement is for 6 months, beginning August 1, 2023 until January 31, 2024. This Agreement will renew automatically for six (6) month terms, until such time as written notice of termination is provided as outlined in 3.3.2.
- 3.3. Termination
 - 3.3.1. This Agreement may be terminated by ECA, without cause on 30 days written notice to GSI.
 - 3.3.2. This Agreement may be terminated by GSI upon 30 days written notice to ECA should ECA fail to substantially meet its financial obligation in accordance with the terms hereto through no fault of GSI.
 - 3.3.3. In the event of termination under above paragraphs, GSI shall receive compensation for services performed to the date of termination and reimbursable expenses incurred and return to ECA all documents provided by ECA as set forth herein.

ARTICLE 4: OTHER TERMS AND CONDITIONS

- 4.1. Neither party will directly or indirectly recruit any employee from the other.
- 4.2. GSI's role is as an advisory consultant, and its role is limited to scope and subject to indemnification as outlined in this Agreement.
- 4.3. The Parties agree that information provided by ECA or GSI under this Agreement to GSI or ECA is confidential and will not be shared by GSI or ECA with another party.
- 4.4. Ownership of Deliverables. All materials produced by GSI in the course of providing the Services shall be owned by and be the exclusive property of ECA, and GSI hereby assigns all rights therein to ECA; provided that GSI shall retain the ownership of the templates, forms and know-how used to create such materials. GSI represents and warrants to ECA that GSI has all necessary

licenses and consents to deliver services to ECA; that ECA shall have full and unrestricted rights to use and exploit the same, and that they will not violate or infringe upon the intellectual or other property rights of third parties.

- 4.5. Independent Contractor. GSI shall at all times be an independent contractor of ECA, and ECA shall not assume any liability for the withholding or payment of any federal, state or local taxes in connection with its payments to GSI for the Services. GSI shall be responsible for the payment of all wages, payroll taxes, fringe benefits and any other expenses that may become owing to or on behalf of all persons employed by GSI in providing the Services. Prior to commencing the Services, GSI shall provide ECA with a duly executed IRS Form W 9 and provide GSI's Employer Identification Number to ECA.
- 4.6. No Agency. GSI is not the agent of ECA, and has no authority to enter into contracts or make commitments on behalf of ECA.
- 4.7. Protected Health Information. GSI shall execute and deliver to ECA a Business Associate Agreement in the form attached hereto as Appendix B (the "Business Associate Agreement"). The provisions of the Business Associate Agreement shall survive termination of this Agreement.

ARTICLE 5: INDEMNIFICATION

Each party (the "Indemnifying Party" agrees to indemnify and hold harmless the other (the "Indemnified Party") from and against any and all losses, claims, damages, liabilities, judgments, charges and expenses (including all legal or other expenses reasonably incurred by the Indemnified Party) in connection with investigating or defending against or providing evidence in any litigation, whether commenced or threatened, in connection with any claim, action or proceeding to which the Indemnified Party becomes subject, resulting in any liability, caused by, or arising out of the failure of the Indemnifying Party to comply with applicable law or regulation, or with any term of this Agreement; provided, however, that the Indemnifying Party shall not be liable in any such case to the extent that any such loss, claim, damage or liability is found to have resulted from the negligence, bad faith, fraud or misconduct of the Indemnifying Party.

ARTICLE 6: DISPUTE RESOLUTION

Parties agree to negotiate in good faith any dispute claimed by one party arising from or relating to the performance, breach, termination, enforcement, interpretation or validity of this Agreement. The Parties agree to meet by phone or in person within twenty-four hours of notice of dispute to negotiate settlement. In the event a mutually agreed settlement is not reached, the dispute (including the determination of the scope or applicability of this agreement to arbitrate), shall be determined by arbitration in Oakland, California before a single arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

Article VII: ENTIRETY OF AGREEMENT

This Agreement sets forth the entire agreement and understanding of the Parties relating to the subject matter contained herein and merges all prior discussions and agreements between them, and no Party shall be bound by any representation other than as expressly stated in this Agreement or a written amendment to this Agreement signed by authorized representatives of each of the Parties.

This Agreement is executed the day and year written below and effective in accordance with its terms and conditions.

Accepted by:

Name: Adriene Iverson

Name: David Knight

Title: President & CEO

Title: President

Company: Elder Care Alliance

Company: GSI Research & Consulting

Signature: 

Signature: 

Date: 7/28/23

Date: 07/28/23

We would appreciate the appropriate contact information for billing purposes. Thank you.

Attention: Adriene Iverson Ph: 510-769-2700 Email: aiverson@eldercarealliance.org

Mailing Address: Elder Care Alliance

1301 Marina Village Pkwy., Suite 210, Alameda, CA 94501

Appendix A – Pricing

Operations Support Services: \$10,000 flat fee per month

IT Services Support: Per user fee of \$110 per user

Mercy Market Assessment:

Upon execution of Engagement Letter	\$2,500
<u>Upon delivery of final Market Assessment</u>	<u>\$2,500</u>
Total	\$5,000

Appendix B Business Associate Agreement

This Business Associate Agreement is entered into by and between is entered into as of August 1, 2023 (the "Effective Date"), by and between Gerontological Services, LLC dba GSI Research & Consulting, a Washington limited liability company (GSI) of Bellevue, Washington ("Business Associate") and Elder Care Alliance, a California nonprofit public benefit corporation (ECA) of Alameda, California, acting on behalf of its affiliate Mercy Retirement and Care Center, a California nonprofit public bene ("Covered Entity").

Recitals

Covered Entity is a covered entity under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The parties are entering into a Consulting Agreement (the "Consulting Agreement") for the provision of certain services by Consultant (the "Services"). In the performance of the Services, Business Associate may obtain or have access to individually identifiable health information of Covered Entity.

The parties are entering into this agreement to assist the Covered Entity in complying with HIPAA, and to set forth Business Associate's obligations under the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), and 45 CFR Parts 160 and 164, Subpart C (the "Security Rule"), Subpart D (the "Data Breach Notification Rule"), and Subpart E (the "Privacy Rule") (collectively, the "HIPAA Regulations"). Terms used in this Agreement have the meanings given them in the HIPAA Regulations. This agreement applies to any protected health information Business Associate receives from Covered Entity, or creates, receives or maintains on behalf of Covered Entity, under the Consulting Agreement.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledges, the parties agree as follows:

Agreement

1. Business Associate may use and disclose Covered Entity's protected health information to provide Covered Entity with the goods and services contemplated by the Consulting Agreement. Except as expressly provided below, this agreement does not authorize Business Associate make any use or disclosure of protected health information that Covered Entity would not be permitted to make.
2. Business Associate will:
 - (a) Not use or further disclose Covered Entity's protected health information except as permitted by the Consulting Agreement or this Agreement, or as required by law;
 - (b) Use appropriate safeguards, and comply, where applicable, with the HIPAA Security Rule with respect to electronic protected health information, to prevent use or disclosure of Covered Entity's protected health information other than as provided for by the Consulting Agreement or this Agreement;
 - (c) Report to Covered Entity within two business days of discovery any use or disclosure of Covered Entity's protected health information not provided for by the Consulting Agreement or this Agreement of which it becomes aware, including breaches of unsecured protected health information as required by the Data Breach Notification Rule (45 CFR § 164.410), and any security incident of which Business Associate becomes aware.
 - (d) Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of protected health information by Business Associate in violation of this Agreement or the HIPAA Regulations.
 - (e) Ensure that any of Business Associate's subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such information, including compliance with the HIPAA Security Rule with respect to electronic protected health information;

(f) Make any protected health information in a designated record set available to Covered Entity to enable Covered Entity to meet its obligation to provide access to the information in accordance with 45 CFR § 164.524;

(g) Make any protected health information in a designated record set available for amendment and incorporate any amendments to protected health information as directed by Covered Entity pursuant to 45 CFR § 164.526;

(h) Make available to Covered Entity the information concerning disclosures that Business Associate makes of Covered Entity's protected health information required to enable Covered Entity to provide an accounting of disclosures in accordance with 45 CFR § 164.528;

(i) To the extent that Business Associate carries out Covered Entity's obligations under the Privacy Rule, comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations;

(j) Make Business Associate's internal practices, books, and records relating to Business Associate's use and disclosure of protected health information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary of the United States Department of Health and Human Services for purposes of determining Covered Entity's compliance with the HIPAA Regulations, and to the Covered Entity for purposes of determining Business Associate's compliance with this Agreement;

(k) Limit its requests for and uses and disclosures of Covered Entity's protected health information to the minimum necessary, and comply with any minimum necessary policies and procedures that covered entity provides to Business Associate;

(l) Upon termination of the Consulting Agreement, return or destroy all Covered Entity's protected health information that Business Associate still maintains in any form and retain no copies of such information or, if return or destruction is not feasible, extend the protections of this agreement to that information and limit further use and disclosure to those purposes that make the return or destruction of the information infeasible.

3. Business Associate may use Covered Entity's protected health information for the management and administration of Business Associate's company and to carry out Business Associate's own legal responsibilities, and Business Associate may disclose the information for these purposes if Business Associate is required to do so by law, or if Business Associate obtains reasonable written assurances from the recipient of the information (1) that it will be held confidentially, and used or further disclosed only as required by law or for the purpose for which it was disclosed to the recipient, and (2) that the recipient will notify Business Associate of any instances of which the recipient is aware in which the confidentiality of the information is breached.

4. If ECA determines that Business Associate has violated a material term of this agreement, ECA may immediately terminate the Consulting Agreements. However, this Agreement shall remain in effect as long as Business Associate maintains or has access to Covered Entity's protected health information, regardless of the termination of the Consulting Agreement.

5. Each party to this agreement shall defend, indemnify and hold the other harmless against any claim, cost or liability arising from the negligence or willful misconduct of the indemnifying party in connection with the performance of its obligations under this Agreement, or its breach of any provision of this Agreement.

6. The provisions of Section 2(l) and Section 5 shall survive termination of this Agreement.

7. This agreement is to be interpreted in accordance with HIPAA, the HITECH Act, and the regulations promulgated thereunder, as amended from time to time.

For Elder Care Alliance:

For Gerontological Services, LLC
dba GSI Research & Consulting

Name: Adriene Iverson

Title: President & CEO

Company: Elder Care Alliance

Signature: 

Date: 7/28/23

Name: David Knight

Title: President

Company: GSI Research & Consulting

Signature: 

Date: 07/28/23