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DEPARTMENT OF JUSTICE



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November 21, 2023

Jim Owens, Partner
McDermott Will & Emery LLP
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Sent via email

RE: ProMedica Health System Operations Transfer Agreement

Dear Mr. Owens:

Pursuant to Corporations Code section 5914 et seq., the Attorney General hereby conditionally approves the proposed May 4, 2023 Operations Transfer Agreement for seven skilled nursing facilities by subsidiaries of ProMedica Health System (ProMedica), an Ohio not-for-profit corporation, to subsidiaries of Providence Group, Inc. (Providence Group) as part of a joint venture between Welltower Inc. (Welltower) and Integra WIP Member LLC (Integra).

Corporations Code section 5917 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 a nonprofit corporation and a for-profit corporation or entity. The Attorney General has considered such factors and approves the proposed transaction subject to the attached conditions that are incorporated by reference herein.

Sincerely,

Lily Weaver

Lily Weaver
Deputy Attorney General

For ROB BONTA
Attorney General

LGW: Enclosure
LA2023302736/37628207

SUMMARY OF CONDITIONS

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

Condition II: Identifies the transaction documents.

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

Condition IV: Requires the skilled nursing facility (SNF) to be operate and maintained for the next five years at the same types and levels of skilled nursing services at each of the seven SNFs.

Condition V: Requires the continuation of Medicare and Medi-Cal participation at each SNF.

Condition VI: Requires continued employment of all staff in good standing as of the applicable closing dates.

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

Condition VIII: Requires the entities listed in Condition I to create and consult a Community Advisory Board at each facility.

Condition IX: Requires the entities listed in Condition I to submit annual compliance reports to the Attorney General's Office and respective Community Advisory Boards for five years after the applicable closing dates for each of the facilities.

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

Condition XI: 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 Operations Transfer Agreement of Seven Skilled Nursing Facilities by and between ProMedica Health System, an Ohio Nonprofit Corporation, to Providence Group, Inc., a For-Profit Corporation.

I.

These Conditions shall be legally binding on Providence Group, Inc. (Providence Group); Integra WIP Member LLC (Integra); Welltower Inc. (Welltower); Palm Desert Community Healthcare, LLC, Fountain Valley Community Healthcare, LLC, Citrus Heights Community Healthcare, LLC, Hemet Community Healthcare, LLC, Sunnyvale Community Healthcare, LLC, Tice Valley Community Healthcare, LLC, and Walnut Creek Community Healthcare, LLC; any subsidiary, parent, general partner, limited partner, member, affiliate, successor, successor in interest, assignee, or person or entity serving in a similar capacity to the above-listed entity;¹ 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 any one of the seven skilled nursing facilities (collectively the Transferred Facilities) or the real property on which any of the Transferred Facilities are located²; any and all current and future owners, lessees, licensees, assignees, managers, operators or providers of any of the facilities or units at any of the Transferred Facilities; and any and all current and future lessees and owners of the real property on which any of the Transferred Facilities are physically located.

II.

The transaction approved by the Attorney General consists of the Operations Transfer Agreement dated May 4, 2023, attached hereto as Exhibit 1, and any and all amendments, agreements, or documents referenced in or attached as an exhibit or schedule to these agreements. All entities listed in Condition I shall fulfill the terms of these agreements and any other agreements or documents referenced therein or attached thereto, including but not limited to Article VI.A of the Operations Transfer Agreement (“Transfer of Resident Trust Funds”), and shall notify the Attorney General in writing of any proposed modification or rescission of any

¹ It is understood that such entities include, but are not limited to SNF CA Holdco, LLC; WELL PM Holdco JV, LLC; 74350 Country Club Drive CA Owner, LLC; 11680 Warner Avenue CA Owner, LLC; 7807 Upland Way CA Owner, LLC; 1717 West Stetson Avenue CA Owner, LLC; 1150 Tilton Drive CA Owner, LLC; 1226 Rossmoor Parkway CA Owner, LLC; and 1975 Tice Valley Boulevard CA Owner, LLC.

² The seven skilled nursing facilities are ManorCare Health Services-Citrus Heights, 7807 Upland Way, Citrus Heights, CA 95610; ManorCare Health Services-Sunnyvale, 1150 Tilton Drive in Sunnyvale, CA 94087; ProMedica Skilled Nursing and Rehabilitation (Rossmoor), 1226 Rossmoor Parkway, Walnut Creek, CA 94595; ProMedica Skilled Nursing and Rehabilitation (Tice Valley), 1975 Tice Valley Boulevard in Walnut Creek, CA 94595; ManorCare Health Services-Fountain Valley, 11680 Warner Avenue in Fountain Valley, CA 92708; ManorCare Health Services-Hemet at 1717 West Stetson Avenue, Hemet, CA 92545; and ManorCare of Palm Desert, 74350 Country Club Drive, Palm Desert, CA.

terms of these agreements. Such notifications shall be provided at least sixty 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 5917.

III.

For five (5) years from the closing date of the Operations Transfer Agreement, the entities listed in Condition I shall 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, manage, or otherwise dispose of any of the Transferred Facilities or any portion thereof; or
- b) Transfer control, responsibility, management, or governance of any of the Transferred Facilities or any portion 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 any of the Transferred Facilities 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 listed 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 closing date of the Operations Transfer Agreement, each of the Transferred Facilities shall be operated and maintained as a skilled nursing facility with the same number of skilled nursing beds as the current³ number 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. It is understood that the current number of licensed skilled nursing beds at each of the Transferred Facilities is as follows:

- a) ManorCare Health Services-Citrus Heights: 162 beds;
- b) ManorCare Health Services-Sunnyvale: 140 beds;
- c) ProMedica Skilled Nursing and Rehabilitation (Rossmoor): 155 beds;
- d) ProMedica Skilled Nursing and Rehabilitation (Tice Valley): 120 beds;
- e) ManorCare Health Services-Fountain Valley: 151 beds;
- f) ManorCare Health Services-Hemet: 178 beds; and
- g) ManorCare of Palm Desert: 178 beds.

³ The term “current” or “currently” throughout this document means as of May 4, 2023.

The entities listed in Condition I and the operator or licensee of each of the Transferred Facilities shall not place all or any portion of any of the Transferred Facilities' licensed bed capacity or services in voluntary suspension or surrender any of the Transferred Facilities' license for any beds or services.

V.

For five (5) years from the closing date of the Operations Transfer Agreement, the entities listed in Condition I and the operator or licensee of each of the Transferred Facilities shall:

- a) Be certified to participate in the Medi-Cal program and have a Medi-Cal Provider Number to provide the same types and levels of skilled nursing services to Medi-Cal beneficiaries as required in these Conditions; and
- b) Be certified to participate in the Medicare program and have a Medicare Provider Number (or provider number for any successor program to Medicare) to provide the same types and levels of skilled nursing services to Medicare beneficiaries (both Traditional and Managed Care) as required in these Conditions.

VI.

For five (5) years from the closing date of the Operations Transfer Agreement, the entities listed in Condition I shall maintain and continue to employ staff at each of the Transferred Facilities who are in good standing as of the applicable closing date. This condition is not intended to preclude staff leadership changes as warranted for operational flexibility.

VII.

The entities listed in Condition I shall prohibit unlawful discrimination in their services and programs at each of the Transferred Facilities 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.

VIII.

For five (5) years from the closing date of the Operations Transfer Agreement, the entities listed in Condition I shall cause to be created and thereafter maintain a Community Advisory Board at each facility with which they shall consult on a quarterly basis. The Community Advisory Board shall consist of 7-12 volunteer SNF residents at the respective facility chosen by the residents of the respective facility. 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 respective facility. The entities listed in Condition I shall provide a copy of each annual report described in Condition IX to the respective Community Advisory Boards. The Community Advisory Boards may provide comments on all respective 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 IX.

IX.

For five (5) years from the closing date of the Operations Transfer Agreement, the entities listed in Condition I and any operators or licensees of any portion of any of the Transferred Facilities shall annually submit to the Attorney General, no later than four (4) months after each anniversary of the closing date of the Operations Transfer Agreement, a report describing in detail its compliance with each Condition set forth herein. The Chief Executive Officers or their equivalents at Providence Group and any operators or licensees of any portion of any of the Transferred Facilities shall each 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 each respective Community Advisory Board at the time of submission of the report to the Attorney General.

X.

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 the terms and conditions of the transaction as set forth herein. The Attorney General shall, at the request of a party 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.

XI.

At the close of the transaction, the entities listed in Condition I are deemed to have explicitly and implicitly consented to the applicability 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's Office shall also be entitled to recover its attorneys' fees and costs incurred in remedying each and every violation.

EXHIBIT 1

SNF OPERATIONS TRANSFER AGREEMENT

This SNF Operations Transfer Agreement (the “**Agreement**”) is made and entered into as of May 4, 2023 (the “**Agreement Date**”) by and among the entities listed as “Existing Operators” on Exhibit 1 attached hereto (each, an “**Existing Operator**” and, collectively, the “**Existing Operators**”), and the entities listed as “New Operators” on Exhibit 1 attached hereto (each, a “**New Operator**” and, collectively, the “**New Operators**”). Existing Operators and New Operators are sometimes each referred to herein as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, Each Existing Operator is the licensed operator of that certain skilled nursing facility set forth opposite its name on Exhibit 1 attached hereto (each, a “**Facility**” and, collectively, the “**Facilities**”). Each Facility is licensed for the number of beds listed opposite its name on Exhibit 1;

WHEREAS, in connection with a transaction between Integra WIP Member LLC, WELL PM Properties, LLC and certain affiliates of WELL PM Properties, LLC (the “**Real Estate Transaction**”), Existing Operators have agreed to transfer operational responsibility for the Facilities to New Operators; and

WHEREAS, Existing Operators and New Operators desire to document the terms and conditions under which the transfer of operational responsibility for the Facilities to New Operators will occur.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants of the Parties set forth herein, IT IS HEREBY AGREED AS FOLLOWS:

AGREEMENT**ARTICLE I**
DEFINITIONS

For purposes of this Agreement, the following terms have the meanings set forth in this Article I.

“**Assumed Liabilities**” will mean (i) all obligations and liabilities under the Assumed Operating Contracts that accrue and relate to the period from and after the Operations Closing Date (but excluding any liability or obligation arising out of or in connection with any breach thereof occurring before the Operations Closing Date); (ii) any liabilities or obligations arising on and after the Operations Closing Date related to the Resident Trust Funds that have been delivered to New Operators; (iii) except with respect to any Existing Operator responsibilities as expressly set forth under this Agreement, all expenses arising from the operation of the Facilities on and after the Operations Closing Date, including taxes, telephone and utility charges, and any other expense relating to New Operators’ operation of the Facilities on and after the Operations Closing Date; (iv) all expenses relating to the Hired Employees accrued or arising on or after the Operations Closing Date, including the obligations related to the Hired Employees set forth in this Agreement; provided, that any such expenses that become payable on or after the Operations Closing Date but are arising in whole or in part from prior to the Operations Closing Date shall be prorated between New Operator and Existing Operator based on days related to such expense in accordance with Section VI.G; and (v) the performance and operating obligations arising under the Permits assigned to New Operators relating to New Operators’ operation of the Facilities following the Operations Closing Date.

“**Assumed Operating Contracts**” will mean Contracts chosen by New Operators and set forth on Schedule I.A (which shall be attached hereto not less than 30 days prior to the Operations Closing Date)

relating exclusively to the Facilities (as the same may be updated by Existing Operators to reflect changes between the date hereof and the Operations Closing Date), including the Medicare and Medicaid provider agreements, and any other payor agreements, entered into by the Facilities to the extent such contracts can be assigned, transferred or conveyed or are deemed assigned, transferred or conveyed under applicable Law and approved by the appropriate governmental agencies and Other Payors.

“**Bill of Sale**” will mean the bills of sale and assignment and assumption agreements for the Purchased Assets relating to each Facility to each New Operator in the form attached as Exhibit “A” hereto.

“**Business Day**” will mean any day other than a Saturday, Sunday or all days observed by the federal or New Jersey government as legal holidays and all days on which commercial banks in New Jersey are required by law to be closed, and the following Jewish Holidays: Purim, Passover, Shavuot, from Shiva Asar Betamuz through Tisha Bav, Rosh Hashanah, Yom Kippur, Sukkos, Shemini Atzeres and Simchas Torah.

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

“**Contracts**” will mean all contracts, agreements, leases, commitments and arrangements (whether written or oral), including all service contracts, maintenance contracts and consulting agreements, and all of each Existing Operator’s duties, obligations, covenants, promises, rights and privileges therein or thereunder to which an Existing Operator or its predecessors or agents are a party and which relate to a Facility and the operations thereof.

“**Excluded Assets**” will mean (i) any of Existing Operator’s cash, cash-equivalents, or deposits in banks or other financial institutions existing as of the Operations Closing Date; (ii) any of Existing Operator’s accounts receivable (including, without limitation, Existing Operator’s Medicare/Medicaid payments or refunds, resulting from retroactive rate increases or otherwise) for services or goods performed or provided before the Operations Closing Date; (iii) any license agreements, copyrights, trademarks, trade names, service marks or other rights of Existing Operator in any intellectual property (including, without limitation, the names “Manor Care”, “ManorCare”, “HCR ManorCare”, “Heartland”, “MedBridge”, “Arcadia”, “Arden Courts”, “Springhouse”, “Hampton House”, “Fostrian Court Assisted Living”, “ProMedica”, “Total Rehab+” and/or “Heartland Health Care Center”, used along or in combination with other words, and the MedBridge, Arcadia, Arden Courts, Manor Care, ManorCare, HCR ManorCare, Heartland Health Care Center, ProMedica, Total Rehab+ and Heartland logos); (iv) deposits, letters of credit, and similar items of security, if any, provided to any third party, unless New Operator provided a credit for such items as part of the prorations hereunder; (v) all insurance policies owned by Existing Operator and all rights to collect insurance proceeds under such policies; (vi) any contracts other than the Assumed Operating Contracts; (vii) Existing Operator’s franchise to be a limited liability company, its certificate of formation, operating agreement, minute books, tax returns, books of account or other records having to do with the organization and capitalization of Existing Operator; (viii) all tax refunds for periods ending before the Operations Closing Date and all tax refunds for all periods on or after the Operations Closing Date to the extent not arising from New Operators’ operation of the Facilities on and after the Operations Closing Date; (ix) to the extent inseparable from systems of Existing Operator affiliates unrelated to Facilities being transferred, software, and (x) the following to the extent inseparable from systems of Existing Operator affiliates unrelated to Facilities being transferred: telecommunications equipment and circuits including, but not limited to, phone systems, desk phones, voicemail systems, MPLS circuits, broadband circuits, PRI circuits, and phone/fax circuits.

“**Excluded Liabilities**” will mean other than the Assumed Liabilities, any debts, liabilities, or obligations of any nature whatsoever of any Existing Operator, whether accrued, absolute, contingent or otherwise, whether known or unknown, whether due or to become due, whether or not related to a Facility,

including, without limitation, Recapture Claims, as well as any other debts, liabilities or obligations relating to any Facility with respect to (i) periods prior to the Operations Closing Date or (ii) subject to the New Operators' obligations pursuant to this Agreement, any Contracts that are not Assumed Operating Contracts.

“Governmental Entity” shall mean any (a) federal, state, county or municipal government, or city, town, borough, village, district or other jurisdiction; (b) governmental or quasi-governmental entity of any nature (including Medicare administrative contractors and any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers); and (c) anybody exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power.

“Hazardous Materials” means, in each case, other than medical supplies and medical waste held or generated in the ordinary course of business: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or man-made, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls and per- and poly-fluoroalkyl substances (PFAS) and other emerging contaminants.

“Hired Employees” will mean the employees of each Facility as of the Operations Closing Date who receive and elect to accept offers of employment with a New Operator effective as of the Operations Closing Date.

“Intangible Property” will mean, except as otherwise provided in the following two sentences, all of each Existing Operator's right, title and interest in any and all intangible property now or on the Operations Closing Date owned by such Existing Operator, including all rights under warranties and goodwill. Intangible Property will not include any rights under any patent, trademark, service mark, trade name, manuals, logos or copyrights owned by any Existing Operator, whether registered or unregistered, and any applications and registrations therefore and licenses thereof, all of which will be retained by each Existing Operator. Further, Intangible Property will not include any software and related documentation owned or leased by or licensed to any Existing Operator, including any and all object codes and source codes, all of which will be retained by such Existing Operator unless such leases or licenses are Assumed Operating Contracts.

“Laws” will mean all federal, state and local laws, moratoria, initiatives, referenda, ordinances, rules, regulations, standards, orders and other governmental requirements, including, without limitation, those relating to the environment, health and safety, or handicapped persons, where the failure to abide by the same would have a material adverse effect on any New Operator, Existing Operator, or the operation of any Facility.

“Loss” will mean any obligation, liability, lien, encumbrance, loss, damage, cost, expense or claim, including, without limitation, any claim for damage to the Purchased Assets or injury to or death of any person or persons.

“Operations Closing” will mean the transfer of ownership of each Facility's operation from the applicable Existing Operator to the applicable New Operator following the date upon which the Agency issues approval for the issuance of a new Permit to such New Operator for the Facility.

“Operations Closing Date” will mean the date on which the conditions precedent to the Operations

Closing occur hereunder.

“**Parties**” will mean, collectively, Existing Operators and New Operators.

“**Permits**” will mean all of each Existing Operator’s right and interest in all permits, licenses, approvals, entitlements and other governmental and quasi-governmental authorizations including, without limitation, certificates of occupancy required in connection with the operation of a Facility, to the extent such permits, licenses, approvals, entitlements, and authorizations are transferable under applicable Laws and approved by the appropriate governmental agencies.

“**Personal Property**” will mean all furnishings, equipment, tools, machinery, appliances, vehicles, computers, IT equipment, network equipment, and all other tangible personal property, other than fixtures, now or on the Operations Closing Date located at and used in connection with the operation of a Facility and owned by an Existing Operator as of the Operations Closing Date, provided, however, that Personal Property will not include the Excluded Assets.

“**Purchased Assets**” will mean the assets described in Article II.A.

“**Recapture Claim**” will mean, in connection with a Facility, (a) any determination by Medicare or Medicaid, any fiscal intermediary, or any federal or state governmental authority or any private third party payor that any amounts paid for any services provided at such Facility prior to the Operations Closing Date for the Facility resulted in (i) an overpayment, or (ii) any other recoupment or determination that funds previously paid by any third-party payor must be repaid, and (b) any fines, penalties, assessments, and other charges associated with any such determinations.

“**Resident Trust Funds**” will mean resident trust funds, patient deposits, or any residents’ property held by an Existing Operator on the Operations Closing Date for residents at a Facility.

ARTICLE II **PURCHASE AND SALE**

A. **Purchased Assets**. On the terms and subject to the conditions set forth in this Agreement, on the Operations Closing Date, each New Operator will purchase from the applicable Existing Operator, and such Existing Operator will sell, convey, assign, transfer, or deliver to the applicable New Operators all of such Existing Operator’s assets, properties, and rights of every kind, nature, character, and description, whether tangible or intangible, and wherever situated, to the extent owned by such Existing Operator and used solely in the operation of the applicable Facility, but specifically excluding the Excluded Assets (the “**Purchased Assets**”). The Purchased Assets shall include all of each Existing Operator’s right, title, and interest in and to the following:

1. **Inventory**. Existing Operator will convey all of its right, title and interest in and to the inventory of supplies in stock at the Facility to the extent not transferred to New Operator as of the Operations Closing Date. Existing Operator will have no obligation to deliver the inventory to any location other than the Facility, it being understood and agreed that the presence of the inventory at the Facility on the Closing Date will constitute delivery thereof.

2. **Assumed Operating Contracts**. Existing Operator will assign, and New Operator will assume and agree to be bound by, all of the terms and conditions of the Assumed Operating Contracts not assigned and assumed on the Operations Closing Date. Notwithstanding the foregoing, to the extent that Existing Operator’s rights under any Assumed Operating Contract to be assigned to New Operator hereunder may not be assigned without the consent of another person or entity that has not been obtained,

this Agreement will not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful. The Parties will use reasonable efforts to obtain each such required consent as promptly as possible. If any such consent is not obtained, New Operator will nevertheless pay and perform Existing Operator's obligations under each such Assumed Operating Contract subject to Existing Operator providing to or otherwise obtaining for New Operator the corresponding benefits thereunder, and the Parties will cooperate with one another in any reasonable arrangement proposed by either party to result in such effect, in each case to the extent permitted under applicable Law. Nothing herein will be construed as imposing any liability on New Operator with respect to any obligations under the Assumed Operating Contracts that relate to the period before the Operations Closing Date, it being specifically understood and agreed that New Operator's liability will be limited to its acts and omissions thereunder on and after the Operations Closing Date.

3. Personnel Records. Existing Operator will transfer relevant employee records of Hired Employees, provided, however, that Existing Operator may retain copies of all electronic records and data and provide to New Operator originals thereof.

4. Patient Records. Existing Operator will transfer all patient and customer lists associates solely with the Facility together with records relating to current patients of the Facility as of the Operations Closing Date, provided however, that Existing Operator may retain copies of any patient records stored electronically or as computer data and provide to New Operator the records in its original media.

5. Telephone Number. Each Existing Operator will assign the telephone and facsimile numbers of the Facility.

6. Permits. To the extent transferable under applicable Laws and approved by the appropriate Governmental Entities, each Existing Operator will assign or transfer all Permits necessary for the operation of each Facility.

7. Resident Trust Funds. Each Existing Operator will transfer or assign all rights and access to Resident Trust Funds in accordance with Article VI.A.

8. Intangible Property; Personal Property. Each Existing Operator will convey all rights and interest in the Intangible Property and Personal Property associated with the applicable Facility (and, provided, for the avoidance of doubt, that there shall be no charge to New Operator in connection therewith), including all owned vehicles used primarily in the operations of such Facility.

B. Excluded Assets. Notwithstanding the foregoing, the Excluded Assets are expressly excluded from the purchase and sale contemplated hereby, and as such, are not Purchased Assets.

C. Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, and as consideration for the Purchased Assets, on the Operations Closing Date, New Operators will assume the Assumed Liabilities. Notwithstanding anything in this Agreement to the contrary, New Operators are not assuming or will not assume or become liable for any Excluded Liabilities. Existing Operators hereby acknowledge that each is retaining, and is and will be liable for, the Excluded Liabilities, and Existing Operators will pay, discharge and perform all such Excluded Liabilities promptly when due. Without limiting the generality of the foregoing, Existing Operators will remain liable for (i) Recapture Claims, and (ii) all liabilities arising in connection with any third party payor provider numbers that constitute Purchased Assets to the extent that such liabilities relate to acts, failures to act, conditions, or circumstances before the Operations Closing Date.

ARTICLE III
INTERIM MANAGEMENT AND OTHER COVENANTS

A. **Change of Ownership Filings.** New Operators shall use commercially reasonable efforts to file or cause to be filed all applications (the “*CHOWs*”) with the applicable government department or agency having jurisdiction over the licensing of each Facility as a skilled nursing facility, and/or other applicable designation in the state where the Facilities are located (the “*Agency*”) within sixty (60) days after the Agreement Date, and will make all other notices or applications of change of ownership or other similar applications and notices (including but not limited to notices or applications related to certificates of need) required by any Governmental Entity having jurisdiction over the Facilities to obtain all permits, approvals, authorizations and consents of all such Governmental Entities required to consummate the transactions contemplated by this Agreement within all applicable legally required timeframes; provided, that in the case of the CHOW application, the foregoing shall be conditioned on Existing Operators having provided all Facility information reasonably necessary to apply for the CHOWs. Without limiting the foregoing, New Operators shall diligently pursue the CHOWs (including but not limited to using commercially reasonable efforts to promptly responding to licensing authority requests for information, to the extent such information is reasonably available; if such information is not reasonably available for New Operators, then New Operators shall use commercially reasonable, best efforts to obtain such information and respond to the licensing agency’s request using commercially reasonable efforts). Except as expressly permitted by this Agreement, New Operators further acknowledge that they will operate the Facilities under new names from and after the Operations Closing Date, it being the understanding of the Parties that the Facilities’ existing names are an Excluded Asset being retained by Existing Operators, and that any regulatory filing will accurately reflect each Facility’s new name. Existing Operators agree to cooperate with New Operators in filing any applications or forms necessary to facilitate a change of ownership in favor of New Operators, including, but not limited to, CMS’ 855A form. To the extent applicable, New Operators will also provide to Existing Operators a copy of all pre-closing notices from the Agency authorizing the closing of the transaction with respect to the CHOWs, provided that New Operators will be entitled to redact any personal information of officers, directors, or managing employees.

B. **Facility Access.** After the Agreement Date and prior to the Operations Closing Date, Existing Operators will permit New Operators and their authorized representatives to have access to the Facilities, employees, and the books and records of the Facilities, at reasonable times and in a manner so as not to interfere with the normal business operations of Existing Operators, subject to applicable regulations and guidelines, including, without limitation, regulations and guidelines promulgated by any governmental agency, including, without limitation, those implemented as a result of COVID-19 and the related pandemic, whether in currently in effect or put into effect after the Agreement Date. Existing Operators agree to cooperate with New Operators, and New Operators agree to cooperate with Existing Operators, to effect an orderly transfer of the operations of the Facilities. Each of the Parties hereto shall execute and deliver, at the reasonable request of the other Parties hereto, such additional documents, instruments, conveyances and assurances and take such further actions as such other Parties may reasonably request to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

C. **Interim Operations of the Facility prior to the Operations Closing Date.** From the Agreement Date until the Operations Closing Date, Existing Operators shall: (i) operate each Facility in the ordinary course of business in the current manner and in material compliance with all applicable Laws, subject to applicable regulations and guidelines, including, without limitation, regulations and guidelines promulgated by any government agency, including, without limitation, those implemented as a result of COVID-19 and the related pandemic, whether in currently in effect or put into effect after the Agreement Date; (ii) maintain each Facility and continue to make ordinary repairs, replacements and maintenance with respect to such Facility (including, without limitation, all machinery, sprinkler systems, air conditioners, equipment, partitions and fixtures); (iii) utilize its commercially-reasonable efforts to maintain each

Facility's licensure status and Medicare and Medicaid provider agreements; (iv) preserve the goodwill with all of the suppliers, residents and others having business relations with Existing Operators or the Facilities; (v) maintain in force or renew on substantially similar terms the existing hazard general liability and professional liability insurance policies as are now in effect for the Facilities; (vi) pay all taxes or other obligations and liabilities, which are due and payable with respect to the Facilities and Purchased Assets arising from operating the Facilities prior to the Operations Closing Date; (vii) maintain its normal inventory of Supplies, which shall be in quantities consistent with legal requirements and past practices for operation of the Facilities; (viii) prior to the end of each calendar month, provide New Operators with a resident census report for the previous calendar month; (ix) not transfer any employees and shall not transfer any residents to any business or facility owned or controlled by an affiliate of an Existing Operator, unless required to comply with legal requirements and (x) use commercially reasonable efforts to market the Facilities in a manner consistent with past practice. Existing Operators shall provide New Operators notice of any failure to materially comply with this Section III.C within five (5) Business Days after such event of non-compliance.

ARTICLE IV **RESTRICTIVE COVENANTS**

A. From the Agreement Date until such date that is twenty-four (24) months following the Operations Closing Date, Existing Operators shall not, and shall not permit any of their affiliates to: (i) directly or indirectly, hire, solicit, or entice any employees currently employed at any of the Facilities as of the Agreement Date, Hired Employees or any other employee of New Operators or their affiliates or encourage any such Hired Employee(s) or other employees of New Operators or their affiliates to leave such employment or hire any such Hired Employee or other employee of New Operators who has left such employment; (ii) directly or indirectly solicit, or entice any resident of the Facilities to leave the Facilities; and (iii) within a twenty five (25) mile radius surrounding each Facility, directly or indirectly open, own, operate, lease, or manage a skilled-nursing or similar facility that, in the reasonable discretion of New Operators, competes with a Facility, other than any facility that is owned, operated, leased or managed by an affiliate of Existing Operator as of the Agreement Date.

B. Existing Operators acknowledge that a breach or threatened breach of this Article IV. would give rise to irreparable harm to New Operators, for which monetary damages would not be an adequate remedy, and hereby agree that in the event of a breach or a threatened breach by any Existing Operator of any such obligations, New Operators shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to seek equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond). Existing Operators acknowledge that the restrictions contained in Article IV are reasonable and necessary to protect the legitimate interests of New Operators and constitute a material inducement to New Operators to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in Article IV should ever be adjudicated to exceed the time, geographic, product or service, or other limitations permitted by applicable law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service, or other limitations permitted by applicable Law. The covenants contained in Article IV and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

C. New Operators and Existing Operators agree and acknowledge that the employees at the

Facilities provide valuable services that are crucial for the success of the Facilities, and New Operators' decision to serve as certified operators of the Facilities is based upon the skills and qualifications of such employees. As such, in the event of a violation of Article IV. A(i) of this Agreement, then the applicable Existing Operator shall pay to the applicable New Operator an amount equal to the greater of (i) Fifty Thousand Dollars (\$50,000.00) or (ii) the annual salary for such Hired Employee as liquidated damages, for each such violation of that section. The parties agree and acknowledge that actual damages with respect to the foregoing would be difficult to ascertain and that such amount is a fair and reasonable approximation of such actual damages.

ARTICLE V **OPERATIONS CLOSING**

A. **Operations Closing.** The Operations Closing will take place by wire transfer of funds and electronic delivery of closing documents in a manner mutually agreeable to the Parties on the Operations Closing Date, which date shall be a date within five (5) Business Days after satisfaction or waiver of all conditions to Closing pursuant to Section V.D below, or such other date to be mutually agreed upon by the Parties.

B. **Operations Closing Deliveries.** Subject to the terms and conditions set forth herein, at the Operations Closing or as earlier required as set forth below:

1. **Bill of Sale for Regulatory Assets.** Each Existing Operator and New Operator will execute and deliver to the applicable Existing Operator or New Operator the executed Bill of Sale for Regulatory Assets.

2. **Medicaid Bond.** To the extent required by a Medicaid program, Existing Operators shall have provided New Operators with evidence that Existing Operators shall have posted an indemnity bond or a standby letter of credit or provided other security for any such Medicaid liability required by the Agency or other Medicaid authority; provided that it obtains written documentation from the Agency or Medicaid Authority or provides other assurances under applicable Laws that such other security (i) is satisfactory and alleviates the requirement to post a bond or a standby letter of credit or (ii) otherwise prevents New Operators from incurring any liability or obligation for any Medicaid liability of Existing Operators or otherwise related to periods prior to the Operations Closing Date.

3. **Payoff Letters.** No later than three business (3) days prior to the Operations Closing Date, Existing Operator shall deliver to New Operator, to the extent applicable:

(a) Payoff letters duly executed by any secured creditors of Existing Operator, if any, agreeing to the amounts owed in order for such creditors to have been paid in full and to release any liens, mortgages, pledges, deeds of trust, security interests, charges, encumbrances and other adverse claims or interests of any kind ("***Liens***") on any property or assets of Existing Operator in favor of such creditors;

(b) All UCC termination statements, releases of mortgages, and other releases of any Liens, as shall be required, in the commercially reasonable discretion of New Operator and its lenders, to release any such Liens; and

(c) For any Liens in favor of a secured creditor of Existing Operator that will not be paid off on or before the Operations Closing Date, an acknowledgement letter from the applicable creditor acknowledging that: (A) the operations of the Facility will be transferring from Existing Operator to New Operator as contemplated in this Agreement; (B) New Operator will grant its lender a perfected lien on the unpaid accounts receivable with respect to the Facility which relate solely to the period from and

after the Operations Closing Date; (C) in its capacity as a creditor of Existing Operator, such creditor has no interest in, or lien on, (i) the Purchased Assets as of the Operations Closing Date, or (ii) New Operator's accounts receivable, including those funds that may be deposited in the bank accounts of Existing Operator for some time after the Operations Closing Date; and (D) such letter may be relied upon by New Operator's lender and its successors, affiliates, or assigns.

(d) Existing Operator shall execute and deliver to New Operator's lender such reasonable documents related to the foregoing, including, but not limited to, a consent to a collateral assignment of this Agreement, in each case reasonably acceptable to Existing Operator.

C. **[Reserved]**.

D. **Conditions Precedent to Operations Closing.**

1. **Mutual.** Each Party's obligation to consummate the transactions contemplated in this Agreement shall be subject to the following conditions precedent on and as of the Operations Closing Date to the reasonable satisfaction of such Party or the waiver thereof by such Party, which waiver shall be binding upon such Party only to the extent made in writing and dated as of the Operations Closing Date:

(a) **Closing of the Real Estate Transaction.** The Real Estate Transaction shall have been consummated.

(b) **No Proceeding.** No regulatory authority will have enacted, issued, promulgated, enforced, entered, proposed or introduced any Laws that has, or would have, the effect of making the transactions contemplated by this agreement illegal or otherwise restraining or prohibiting the consummation of such transactions.

(c) **No Default.** The covenants and agreements contained in this agreement to be complied with by both parties at or before the Operations Closing will have been materially complied with.

(d) **California Attorney General Consent.** Existing Operators shall have received consent, conditional or otherwise, from the Attorney General of the State of California regarding the transactions contemplated by this Agreement.

(e) **Licensure.** A license to operate each Facility will have been issued to New Operator by the Agency effective on the Operations Closing Date or New Operator shall have received written assurance from the Agency, in form and substance acceptable to New Operator, authorizing the Parties to proceed with the change of ownership contemplated herein.

2. **New Operator's Conditions Precedent to Operations Closing Date.** New Operator's obligation to proceed with the Operations Closing shall be subject to the following conditions precedent on and as of the Operations Closing Date to the reasonable satisfaction of New Operator, or the waiver thereof by New Operator, which waiver shall be binding upon New Operator only to the extent made in writing and dated as of the Operations Closing Date: There shall not be imposed against Existing Operator or a Facility, nor shall they have received notice of: i) a survey with a citation of an "IJ" or more severe finding, which is outstanding at any time with respect to two (2) or more Facilities; or ii) a ban on admissions or denial of payment for new admissions, which is outstanding at any time with respect to two (2) or more Facilities (collectively, a "**Closing Condition Event**"). In the event that there is a Closing Condition Event with respect to two (2) Facilities (and no more than two (2) Facilities), then New Operator shall close on the five (5) Facilities without a Closing Condition Event (the "**First Operations Closing**").

Date) and then, upon the Remediation of the Closing Condition Events existing at both of the remaining two (2) Facilities with a Closing Condition Event, New Operator shall close on both of the remaining two (2) Facilities. For the purposes of this Section V.D.2, “**Remediation**” of a Closing Condition Event shall be considered remediated upon the acceptance by the California Department of Public Health (“**CDPH**”) of a plan of correction consented to by New Operator in good faith, which consent shall not be unreasonably withheld, conditioned, or delayed. For the avoidance of doubt, this closing condition only applies to the extent such matters are not remedied or paid prior to the Operations Closing Date. Notwithstanding anything to the contrary, in the event that all other conditions precedent for the Operations Closing have been satisfied and there is a Closing Condition Event at three (3) or more Facilities, New Operators shall not be obligated to proceed with the Operations Closing until there are Closing Condition Events at no more than two (2) Facilities, in which case, the New Operators shall be obligated to proceed with the Operations Closing (assuming all other conditions are met) in accordance with this Section V.D.2.

3. Prior to the Operations Closing Date, if CDPH determines that any New Operator will not be granted a new skilled nursing facility license for the Facility or the California Attorney General determines that consent to transactions contemplated by this Agreement will not be given (each a “**Default Event**”), New Operator agrees to promptly advise Existing Operator and the applicable Facility landlord (each an “**Owner**”) of the Default Event, and New Operator shall thereafter fully cooperate with Existing Operator and Owner in all respects to transition the operations of the Facility to an Approved Replacement Operator selected by Owner in its sole and absolute discretion.

3.1. If pursuant to the terms of Section V.D.3 above, New Operator is required to transition the operations of the Facility to an Approved Replacement Operator, New Operator agrees that it shall continue to perform all such agreements, covenants and obligations of New Operator under this Agreement, until Owner has identified an Approved Replacement Operator and until the date New Operator transfers and relinquishes the Facility to the Approved Replacement Operator.

3.2. In furtherance of the foregoing, New Operator agrees that it shall cooperate fully with Owner and Approved Replacement Operator with respect to the transfer and disposition of the Facility to the Approved Replacement Operator. Such cooperation from New Operator shall include, executing such assignment and other agreements and instruments to assign all of New Operator’s rights, obligations and duties under this Agreement to such Approved Replacement Operator, provided that such assignment of this Agreement is not prohibited by applicable laws. If, however, assignment of this Agreement to the Approved Replacement Operator is prohibited by any applicable laws, then New Operator agrees to continue to operate the Facility under the terms of this Agreement, and cooperate fully with Owner and Approved Replacement Operator, until Approved Replacement Operator has obtained all such approvals and consents required from such regulatory agencies to take over the operations of the Facility.

3.3. As used herein, “Approved Replacement Operator” means a proposed replacement operator for the Facility who is approved by Owner in its reasonable discretion and is reasonably acceptable to Existing Operator.

E. **Closing Costs.** Existing Operators will not be responsible for any bed or provider taxes accruing on or after the Operations Closing Date. All such taxes shall be paid by New Operators. Existing Operators shall be responsible for all bed or provider taxes relating to periods prior to the Operations Closing Date. Each Party is solely responsible for its respective legal, accounting, due diligence, financing, and other professional fees and expenses and the cost of all certificates, instruments, documents and papers required to be delivered, and the cost of all performances required of them to fulfill their obligations hereunder.

F. **Bulk Sales Compliance.** At New Operator's election, New Operator shall deliver to the applicable Governmental Entities (with simultaneous copies to Existing Operators) any notice of bulk sale required by and in accordance with the laws of the states where the Facilities are located. If any such governmental authority notifies New Operators prior to Operations Closing that taxes are due from any Existing Operator ("Owed Taxes"), such Existing Operator shall deposit in escrow with an escrow agent mutually agreed upon by the Parties the specified amount, pursuant to an escrow agreement reasonably satisfactory to New Operators, Existing Operators and Escrow Agent executed and delivered at the Operations Closing. Such withheld amount shall be (i) released to the applicable Existing Operator upon notification from the applicable Governmental Entity that there are no remaining unpaid taxes or (ii) such amount shall be paid at to the applicable Governmental Entity in satisfaction of such unpaid taxes in the event such amounts are required to be paid. Notwithstanding anything to the contrary in this subsection F, to the extent not submitted, Existing Operator shall still be responsible for any such Owed Taxes with respect to periods prior to the Operations Closing Date.

G. **Medicare Advance Payments; other COVID Funds; Retroactive Payments and Adjustments.** Notwithstanding anything in this Agreement to the contrary, and except for those programs announced prior to the Operations Closing Date, any and all grant payments, stimulus payments, retroactive rate adjustments, other retroactive payments or adjustments to reimbursement and any and all other payments and support paid with respect to the Facilities ("**Payments**"), including without limitation in relation to COVID-19 relief efforts ("**COVID Payments**"), even if based on, in return for, or calculated using data for dates of service prior to the Operations Closing Date that are paid on or after the Operations Closing Date, shall be the property of New Operators and shall be retained by and/or paid to the applicable New Operators in the same manner as New Operators' accounts receivable hereunder, subject to applicable Law and provided that such New Operators use any such COVID Payments solely for the benefit of the applicable Facilities and their residents and staff to the extent required for compliance with applicable Law. In the event that Existing Operators receive any COVID Payments following the Operations Closing Date, Existing Operators shall, at the applicable New Operators' election, subject to applicable Law, either: (i) pay such New Operators at Operations Closing a credit equal to 100% of such COVID Payments; (ii) spend such remaining COVID Payments on COVID-19 related expenses such as personal protective equipment in accordance with applicable Law; (iii) some combination of (i) and (ii); or (iv) otherwise cooperate with New Operators to ensure that such COVID Payments are used solely for the benefit of the applicable Facilities and their residents and staff to the extent required for compliance with applicable Law. To the extent that Existing Operators receive any COVID Payments after the Operations Closing Date that are not legally permitted to be transferred to the applicable New Operators for any reason, then Existing Operators shall otherwise cooperate with New Operators to ensure that such COVID Payments are used solely for the benefit of the applicable Facilities and their residents and staff required for compliance with applicable Law, or if New Operators determine that doing so is not legally permissible, then Existing Operators shall return such COVID Payments to the applicable Governmental Entity. In the event that Existing Operators received any advance on Medicare, Medicaid, or other third-party payor receivables ("**Advances**") at any time prior to the Operations Closing Date that has not been repaid to the issuing authority as of the Operations Closing Date, such Existing Operators shall cause such Advances to be repaid to the appropriate Governmental Entity as of the Operations Closing Date. Any Advance requested by an Existing Operator that is paid out on or after the Operations Closing Date shall be considered the applicable New Operator's accounts receivable hereunder, subject to applicable Law and provided that New Operator uses such Advances solely for the benefit of the applicable Facility and its residents and staff to the extent required for compliance with applicable Law; and provided that New Operator causes any such Advances to be repaid to the appropriate Governmental Entity as and when due. For avoidance of doubt, "**Payments**" other than "**COVID Payments**" under this Article V.G. shall not include outstanding receivables for payments at regular rates in effect (at the time the applicable services were provided) for services provided in the ordinary course prior to the Operations Closing Date, including, without limitation, all cost report adjustments and settlement amounts payable to Existing Operators after the Operations Closing Date, in

each case that are not the result of some retroactive adjustment or other additional payment beyond regular rates in effect at the time the applicable services were provided.

ARTICLE VI **OPERATIONS TRANSFER**

A. **Transfer of Resident Trust Funds.** On the Operations Closing Date, Existing Operators will provide to New Operators a true, correct, and complete accounting (properly reconciled) of the Resident Trust Funds. Existing Operators will deliver the Resident Trust Funds to New Operators on the Operations Closing Date.

1. New Operators agree that they will accept such Resident Trust Funds in trust for the residents of each Facility and will hold and disburse such Resident Trust Funds in accordance with applicable statutory and regulatory requirements.

2. Existing Operators will indemnify, defend, and hold New Operators harmless from all liabilities, claims and demands, including reasonable attorney's fees, in the event the amount of the Resident Trust Funds, if any, transferred to New Operators did not represent the full amount of the Resident Trust Funds shown to have been delivered to Existing Operators as custodian or with respect to any Resident Trust Funds delivered, or claimed to have been delivered, to Existing Operators, but which were not delivered by Existing Operators to New Operators, or for claims that arise from actions or omissions of Existing Operators with respect to the Resident Trust Funds before the Operations Closing Date.

3. New Operators will indemnify, defend and hold Existing Operators harmless from all liabilities, claims and demands, including reasonable attorneys' fees, in the event a claim is made against any Existing Operator due to acts or omissions of any New Operator or its agents or affiliates with respect to the Resident Trust Funds where such funds were transferred to a New Operator pursuant to the terms of Article VI.A hereof.

4. New Operators, as applicable, shall have provided Existing Operators with evidence that such New Operators shall have posted an indemnity bond or a standby letter of credit for the Transferred Resident Trust Funds wherever such security is required by applicable Law.

B. **Cost Reports.** Existing Operators will: (i) file accurate and timely final cost reports relating to the portion of the current fiscal year of the Facilities from the commencement of the fiscal year through the Operations Closing Date (i.e., "short period cost reports") with all applicable regulatory authorities and third party payors in accordance with the terms of all third party payor programs (collectively, the "***Final Cost Reports***"); (ii) provide copies of such Final Cost Reports to New Operators at the time of the filing; and (iii) promptly pay such amounts due and payable, if any, pursuant to the setting of final rates based upon the Final Cost Reports (including any final settlement or audit thereof).

C. **Reimbursement Matters.**

1. As of the Operations Closing Date, New Operators shall assume any and all of Existing Operators' rights and interests in and to Existing Operators' Medicare provider numbers and Medicare provider reimbursement agreements. Existing Operators and New Operators acknowledge and agree that New Operators are not expected to have received their "tie in" notices CMS with respect to Existing Operators' Medicare provider agreements or new Medicare provider agreements as of the Operations Closing Date. New Operators shall be permitted to bill under Existing Operators' Medicare provider agreements and provider numbers until the issuance of the Medicare "tie in" notices. Existing Operators agree to cooperate with New Operators in the assignment of Existing Operators' Medicare

provider agreements to New Operators, including completing those portions of CMS Form 855A that confirm the change of ownership of the Facilities and providing to New Operators or any Governmental Entity any information requested to effect the transfer of Existing Operators' Medicare provider numbers.

2. New Operators shall secure new Medicaid provider numbers and Medicaid provider reimbursement agreements in their own names, either by assumption of the foregoing from Transferee or application for new numbers and agreements as applicable (provided that in the event both assumption or new application are available, New Operators shall elect which to pursue). From and after the Operations Closing Date until any Medicaid provider agreements are obtained by New Operator, to the extent permitted under applicable Law, New Operator may bill for services provided on and after the Operations Closing Date under Existing Operator's Medicaid provider agreements using Existing Operator's Medicaid provider information in accordance with applicable Law. Existing Operators agree to cooperate with New Operators in the issuance of new Medicaid provider agreements to New Operators, including providing to New Operators or any Governmental Entity any information requested to effect the issuance to New Operators of new Medicaid provider numbers and Medicaid provider agreements.

3. With respect to any managed care and commercial third-party payor provider agreements (all of the foregoing, "Other Payors"), New Operators will obtain their own provider agreements (or take assumption of Existing Operator's provider agreements to the extent permitted by the applicable payor), but New Operators shall be permitted to bill under Existing Operators' provider agreements until New Operators have been fully credentialed and approved under their own provider agreements, in each case to the extent permitted by applicable Law; provided, however, that Existing Operators will cooperate with New Operators promptly after the Operations Closing Date and assist New Operators in seeking assignment of Existing Operators' provider agreements or obtaining a new provider agreement. Existing Operator shall not provide any notice or communication to any Other Payors with respect to the transaction set forth herein or otherwise take any action with respect to any cancellation or modification of any payor agreements other than to the extent Existing Operator is clearly required to do so by its contractual obligations to the Other Payors or by applicable Law (a "Required Notice"); provided that with respect to any Required Notice, Existing Operators shall first obtain written approval of New Operators for the contents of any communication to Other Payors, which approval shall not be unreasonably withheld, conditioned or delayed, and shall allow New Operators: (i) a reasonable opportunity to communicate first with the Other Payors prior to the outside Required Notice date or Operations Closing Date, whichever occurs first, and following reasonable prior notice to Existing Operators, or (ii) New Operators shall be able to join a conversation between Existing Operators and the Other Payors. Existing Operators shall be able to request a joint conversation among Existing Operators, New Operators and the Other Payors as it reasonably deems appropriate after any first communication to the Other Payor by New Operators described above.

4. New Operators expressly do not assume, and the assumption by New Operators of Existing Operators' Medicare provider number and agreements shall not be construed to impose upon New Operators, any obligations under Existing Operators' Medicare, Medicaid, managed care, or other third-party payor provider agreements arising from or related to any event occurring prior to the Operations Closing Date, including, without limitation, any Recapture Claim, refund or overpayment due to any third-party payor that is assessed as a result of services rendered by Existing Operators prior to the Operations Closing Date.

5. Nothing set forth herein shall be deemed to limit in any way (i) Existing Operators' right, title, and interest in its cash and accounts receivable for services rendered prior to the Operations Closing Date, which cash and accounts receivable are property of Existing Operators and shall be reimbursed or retained, as applicable, in accordance herewith, and (ii) Existing Operators' ability to complete any remaining billing for services rendered prior to the Operations Closing Date under Existing

Operators' Medicare and Medicaid provider numbers.

6. Existing Operators and New Operators understand that reimbursements from Medicare or Medicaid for items/services provided/rendered after the Operations Closing Date may continue to be issued to Existing Operators for a period of time. Existing Operators shall promptly forward to New Operators any payments received with respect to services rendered by New Operators from and after Operations Closing in accordance with Section 9 hereof. Any amounts not forwarded to New Operator within fifteen (15) days shall accrue interest at a rate of eight (8%) percent per annum.

D. **Intentionally Omitted.**

E. **Employees.** Existing Operators will deliver to New Operators Schedule VI.E (the "***Employee Schedule***") that reflects: (i) the name of all employees of the Facilities as of the Operations Closing Date, (ii) their positions and rates of pay, (iii) the accrued vacation, sick, holiday, personal time-off, and any other paid time off of all employees that remains unused ("***ETO***"), (iv) the exempt or non-exempt status of each employee (whether or not paid at an hourly or salary rate), (v) each employee's date of hire or commencement of most recent employment and (vi) the number of hours worked by each employee in the preceding twelve (12) months. New Operators shall not be bound by or assume any employment contracts to which Existing Operators may be a party. Other than consistent with past practice or required by law or the terms of any contract existing as of the date hereof, Existing Operators shall not make any material changes in the compensation or benefits of the employees at the Facility prior to the Operations Closing Date.

1. New Operators shall determine, in their sole discretion, which of the employees shall be offered employment with New Operators, pursuant to employment terms reasonably acceptable to New Operators, provided that New Operators shall offer employment to a sufficient number of the Employees as of the Operations Closing Date, so as to avoid any obligation of Existing Operator to provide advance notice under the Worker Adjustment and Retraining Notification ("**WARN Act**") Act, 29 U.S.C. § 2101 et seq. New Operators shall not discharge without cause any Hired Employees (other than the nursing home administrator or the director of nursing) for a period of sixty (60) days after the Employee Transition Date in accordance with California Health and Safety Code Section 1267.62. Further, during that sixty (60) day period, Hired Employees (other than the nursing home administrator or the director of nursing) at the Facility shall not suffer any reduction in wages, benefits, or other terms and conditions of employment as a result of the transfer or change of ownership in accordance with California Health and Safety Code section 1267.62.

2. New Operators and Existing Operators acknowledge and agree that because New Operators are hiring the Hired Employees pursuant to the terms and conditions set forth in subsection 1 immediately above, Existing Operators are not required to give notice to the employees of the Facilities of the "closure" thereof under the WARN Act or under any comparable Law of the state where the Facilities are located. Notwithstanding the foregoing, conditioned upon New Operators' compliance with subsection 1 above, Existing Operators agree to indemnify, defend and hold harmless New Operators from any liability that they may incur under the WARN Act or under comparable state Law in the event of a violation by Existing Operators or New Operators of their obligations thereunder with respect to the termination of employment of any employees by Existing Operator in connection with the consummation of the transactions contemplated hereby. New Operators agree to indemnify, defend and hold harmless Existing Operators from any liability that they may incur under the WARN Act or under comparable state Law in the event of a violation by Existing Operators or New Operators of their obligations thereunder with respect to any termination of employment of any employees by New Operators. Nothing in Article VI will, however, create any rights in favor of any person not a party hereto, including the employees of a Facility, or constitute an employment agreement or condition of employment for any employee of an Existing

Operator or any affiliate of an Existing Operator who is a Hired Employee.

3. Existing Operators shall be responsible for providing COBRA Notices and COBRA continuation healthcare coverage for all “M &A Qualified Beneficiaries” (as that term is defined in Section 4980B of the Code and Title 6 of ERISA and the regulations thereafter (COBRA’)) in connection with the transaction as of the Operations Closing Date.

4. **ETO Matters**

a. Existing Operators will, within fourteen (14) days after the Operations Closing Date, pay directly to the employees of each Facility all ETO required to be paid upon termination (for avoidance of doubt, regardless of whether any such amounts are due upon termination of employees under Existing Operators’ policies).

b. As of the Operations Closing Date, New Operators will grant and pay to Hired Employees as and when due all Benefits in accordance with New Operators’ personnel policies, it being agreed that the employees of the Facilities will be granted credit for service with Existing Operators under all benefit policies maintained by New Operators for the benefit of the Hired Employees for the purposes of participation and Benefits accrual to the extent allowed by New Operator’s benefit policies.

c. Existing Operator shall pay to Hired Employees any obligations of Existing Operator that accrue and vest prior to the Operations Closing Date that relate solely to operations of the Facilities prior to the Operations Closing Date.

5. Existing Operators acknowledge and agree that New Operators will have a reasonable opportunity to meet with “**Key Personnel**” including, but not limited to, the administrator, director of nursing, and all department heads within the Facility following the Agreement Date.

F. **Accounts Receivable.** Existing Operators will retain their right, title, and interest in and to all unpaid accounts receivable with respect to the Facilities that relate to any period before the Operations Closing Date, including, but not limited to, any accounts receivable arising from rate adjustments that relate to any period before the Operations Closing Date even if such adjustments occur on or after the Operations Closing Date. Existing Operators will remain liable for any Recapture Claims and any other overpayments made to Existing Operators before the Operations Closing Date for which payment is due to Medicare, Medicaid or any other third party payor on or after the Operations Closing Date.

1. Payments received by New Operators or Existing Operators on or after the Operations Closing Date from any payor will be handled as follows:

(a) If such payments either specifically indicate on the accompanying remittance advice, or if the Parties agree, that they relate to the period before the Operations Closing Date, they will be forwarded to Existing Operators by New Operators, along with the applicable remittance advice;

(b) If such payments indicate on the accompanying remittance advice, or if the Parties agree, that they relate to the period on or after the Operations Closing Date, they will be forwarded to or retained by New Operators, along with the applicable remittance advice; or

(c) If such payments indicated on the accompanying remittance advice, or if the Parties agree, that they relate to periods both before and after the Operations Closing Date, the portion

thereof that relates to the period on and after the Operations Closing Date will be forwarded to or retained by New Operators and the balance will be remitted to or retained by Existing Operators.

(d) For Social Security payments, they will be allocated to the month such payments are received.

(e) Notwithstanding the foregoing, for payments received by Existing Operators from private-pay patients relating to any period on or after the Operations Closing Date, Existing Operators will promptly remit such payments to New Operators.

2. Any payments received during the first thirty (30) days commencing on the Operations Closing Date from or on behalf of private pay residents with outstanding balances as of the Operations Closing Date that fail to designate the period to which they relate, will first be applied by New Operators to reduce the resident's pre- Operations Closing Date balances, with any excess applied to reduce any balances due for services rendered by New Operators on or after the Operations Closing Date. Thereafter all non-designated payments will first be applied to any post- Operations Closing Date balances, with the excess, if any, applied to the extent of any balances due for services rendered by Existing Operators before the Operations Closing Date.

3. Nothing herein will be deemed to limit in any way Existing Operators' rights and remedies to recover accounts receivable due and owing Existing Operators under the terms of this Agreement.

4. All amounts owing to Existing Operators or New Operators shall be remitted on the first (1st) and fifteenth (15th) day (or the next applicable Business Day) of each applicable month, together with applicable remittance advices, provided such transfer date is at least five (5) Business Days following receipt of such payment by Existing Operators or New Operators, as applicable.

5. In the event the Parties mutually determine that any third party payors or private pay residents are entitled to a refund of payments, the portion thereof that relates to the period from and after the Operations Closing Date shall be paid by New Operators and the portion thereof that relates to the period prior to the Operations Closing Date shall be paid by Existing Operators to such third party payor or private pay resident.

6. In the event the Parties mutually determine that any payment hereunder was misapplied by the Parties, the Party that erroneously received said payment will remit the same to the appropriate other Party within ten (10) days after said determination is made.

7. For a period of twelve (12) months after the Operations Closing Date, Existing Operators and New Operators shall provide each other with an accounting setting forth all amounts received during the preceding month with respect to payments from the residents of the Facilities which are due and owing to the other party in accordance with the terms of this Agreement.

8. For a period of twelve (12) months after the Operations Closing Date, each Party will have the right to inspect all cash receipts of the other appropriate Party in order to confirm compliance with the obligations imposed on it under this Article VI.F.

9. Each Party will have the right to offset any such payments for any amounts that are due and owing to it from the other appropriate Party.

G. **Prorations.** Revenues and expenses pertaining to Assumed Operating Contracts, utility charges for the billing period in which the Operations Closing Date occurs, prepaid expenses, taxes and other related items of revenue or expense attributable to the operation of the Facilities will be prorated between Existing Operators and New Operators as of 12:01 a.m. on the Operations Closing Date, provided that expenses related to benefits will be paid directly to the Hired Employees pursuant to Article VI.E. In general, such prorations will be made so as to reimburse Existing Operators for prepaid expense items, and to charge Existing Operators for prepaid revenue items, to the extent that the same are attributable to periods on or after the Operations Closing Date.

1. All such prorations will be made on the basis of actual days elapsed in the relevant accounting or revenue period and will be based on the most recent information available to Existing Operators. Utility charges that are not metered and read on the Operations Closing Date will be estimated based on prior charges, and will be re-prorated upon receipt of statements therefor.

2. All amounts owing from any Party hereto to any other Party hereto that require adjustment after the Operations Closing Date will be settled on the Operations Closing Date and shall be readjusted within ninety (90) days after the Operations Closing Date or, in the event the information necessary for such adjustment is not available within said ninety (90) day period, then as soon thereafter as practicable.

3. Funds received by New Operator which relate to the Quality and Accountability Supplemental Payment (“**QASP**”) owed to Existing Operator for dates prior to Operations Closing Date shall belong to the Existing Operator and shall be remitted by New Operator to the Existing Operator promptly within ten (10) days’ receipt of such QASP from the applicable regulatory agency. The amount of the QASP deemed owed to Existing Operator shall be calculated as follows: the QASP shall be multiplied by a fraction, the numerator of which shall be the number of days the Existing Operator operated the Facility in the year for which QASP are being made and the denominator of which shall be the number of days in the year for which QASP are being made. New Operator and Existing Operator hereby acknowledge that payments made for QASP fees are paid based on the state fiscal year of July 1-June 30 (the “**SFY**”), and that payments for the prior year are received in approximately April of the calendar year following the SFY. For example, payments made to operators in April 2023 will be for SFY July 1, 2021-June 30, 2022 and payments made to operators in April 2024 will be for SFY July 1, 2022-June 30, 2023. For the avoidance of doubt, New Operator has no obligation to assume any quality assurance fees assessed against the Facility for periods prior to the Operations Closing Date Given that the metrics of the Workforce and Quality Incentive Program (“**WQIP**”) program are not expected to be finalized until late 2022 and possibly mid to late 2023, New Operator and Existing Operator agree to confer in good faith and allocate each parties’ respective entitlements with respect to the WQIP after such payments, if any, have been received from the applicable health plan and/or regulatory agency, which allocations shall be based on each parties respective period of operations.

H. **Access to Records; Cooperation.** On and after the Operations Closing Date, both Parties will grant reasonable and prompt access to any Facility, patient, or employee records as any Party may request. In addition, the Parties agree as follows:

1. New Operators will allow Existing Operators and their agents and representatives, upon reasonable prior notice and during normal business hours, reasonable access to (a) the books and records and supporting materials relating the period before the Operations Closing Date and to make copies or scans of the same; and (b) the Hired Employees, to the extent such access is reasonably necessary to enable any Existing Operator to investigate and defend malpractice, employee or other claims, to file or defend cost reports and tax returns. Existing Operators will be entitled to any original records delivered to New Operators for purposes of litigation involving a patient or employee to whom such record relates, if an officer of or counsel for Existing Operators certified that such original must be produced in order to

comply with applicable Law or the order of a court of competent jurisdiction in connection with such litigation.

2. New Operators agree to maintain such books, records and other material comprising records of each Facility's operations before the Operations Closing Date that have been received by New Operators from Existing Operators or otherwise, including, but not limited to, patient records and records of Resident Trust Funds, to the extent required by Law and for a period not less than six (6) years, and will allow Existing Operators a reasonable opportunity to copy such documents, at Existing Operators' expense, at such time after such record retention period as may be required by Law as New Operator will decide to dispose of such documents.

3. New Operators agree to fully cooperate with Existing Operators, their agents, attorneys, employees, and other designated representatives in the defense of any claims, lawsuits, investigations, or reimbursement matters now existing or arising from or in connection with events occurring before the Operations Closing Date. "Fully cooperate" as used in this provision means that, to the extent permitted by applicable Law, New Operators will provide to Existing Operators within seven (7) days after request from Existing Operators: (i) access to all medical, business and other records of the Facilities for inspection and copying at Existing Operators' cost; (ii) access to Hired Employees and their personnel files; (iii) access to the Facilities and the equipment thereon; (iv) the last known names and addresses of former employees along with access to their personnel files; (v) access to any other documents and information necessary for the defense of any claim; and (vi) cooperation in re-opening or filing cost reports, including opening a filed cost report for the purpose of adjusting the filed cost reports in order accurately report Existing Operators' "bad debt". Existing Operators will pay any reasonable costs or damages incurred by New Operators in compliance with this Article.

I. **Self-Reporting.** In the event any Existing Operator becomes aware of any occurrence at a Facility that such Existing Operator would be required under applicable Laws to report to any Governmental Entity, such Existing Operator shall use commercially reasonable efforts to provide the appropriate New Operator with written notice of such occurrence within one (1) Business Day thereof but not later than the Operations Closing Date.

J. **Signage; Use of Names.** Within thirty (30) days following Operations Closing, New Operators will (i) remove all signage that in any way reference Existing Operators or the names of the Facilities prior to Operations Closing and (ii) claim each Facility's Google pages so that they are associated with New Operators. In the event that the Operations Closing Date has not occurred within eighteen (18) months after the Agreement Date, Existing Operators shall have the right, but not the obligation, to require the affected New Operators to change the d/b/a of the Facility within sixty (60) days after receiving written notice from Existing Operators, subject to any required regulatory approvals, and following such sixty (60) day prior notice to remove at New Operators' expense all signage that in any way references Existing Operators or the names of the Facilities as in effect on the Agreement Date.

K. **New Operator Insurance.** Beginning on the Operations Closing Date and continuing until the Operations Closing Date and for at least two (2) years thereafter, each New Operator, at New Operators' sole expense, shall maintain the following insurance coverages from insurers with an AM Best rating of A-, VII or better, or through self-insurance reasonably approved in writing by Existing Operators: (i) commercial general liability (CGL) of at least \$1 million per occurrence and \$3 million aggregate, including \$3 million products/completed operations aggregate; (ii) commercial auto liability of at least \$1 million combined single limit, including coverage for hired and non-owned vehicles; (iii) workers' compensation at the statutory limits; (iii) professional liability of at least \$1 million per occurrence and \$1.5 million aggregate; (iv) cyber liability of at least \$1 million per occurrence. The CGL, auto, umbrella, and professional policies shall name Existing Operators as additional insured.

L. **Existing Operator Insurance.** Existing Operators are, and shall maintain through the Operations Closing Date, the following insurance coverages, at Existing Operator's sole expense, through self insurance, insurers with an AM Best rating of A-, VII or better, or a combination thereof: (i) commercial general liability (CGL) of at least \$1 million per occurrence and \$3 million aggregate; (ii) commercial auto liability of at least \$1 million combined single limit, including coverage for hired and non-owned vehicles; (iii) workers' compensation at the statutory limits; (iv) excess liability of at least \$3 million per occurrence and in the aggregate; (v) professional liability of at least \$1 million per occurrence and \$3 million aggregate; (vi) cyber liability of at least \$5 million; and (vii) directors & officers liability with \$1 million per occurrence and in the aggregate. Existing Operators: (i) have not failed to give any notice or present any claim under any such policy or binder in due and timely fashion; (ii) have not received notice of cancellation or non-renewal of any such policy or binder; or (iii) are not aware of any threatened or proposed cancellation or non-renewal of any such policy or binder. There are no outstanding claims as to which the insurer has completely disclaimed liability. Prior to Closing, Existing Operators will obtain prior acts insurance coverage on a claims made basis, which may be provided by the same insurer as currently provides the current insurance coverage for the Facility, and will continue coverage for at least 3 years immediately following the date of Operations Closing Date.

M. **Survival.** The provisions of this Article VI will survive the Operations Closing.

ARTICLE VII **EXISTING OPERATOR REPRESENTATIONS AND WARRANTIES**

As an inducement to New Operators to enter into this Agreement, Existing Operators make the following representations and warranties, which are true and correct as of the date hereof and which shall be true and correct in all material respects as of the Operations Closing Date. Any applicable updates to the schedules hereunder shall be promptly provided to New Operators; provided that no such updates to schedules attached hereto as of the Agreement Date shall be deemed to cure a breach of representation or otherwise impact the rights of New Operators hereunder.

A. **No Notices of Non-Compliance.** Other than matters set out on Schedule VII.P, no Existing Operator has received written notice that, and no Existing Operator has knowledge that any Governmental Entity or any employee or official thereof considers that the operation of a Facility currently fails to substantially comply with any Law. No Existing Operator has received any written claim, requirement or demand of any licensing or certifying agency supervising or having authority over a Facility to rework or redesign such Facility so as to conform to or comply with any existing law, code or standard which has not been fully satisfied prior to the date hereof or which will not be satisfied prior to the Operations Closing Date.

B. **Due Authorization, Execution, Organization, Etc.**

1. This Agreement and all agreements, instruments and documents herein provided to be executed or to be caused to be executed by each Existing Operator are, or when executed by such Existing Operator on the Operations Closing Date will be, duly authorized, executed and delivered by such Existing Operator and are binding in accordance with its terms upon such Existing Operator, subject to the effect of bankruptcy, insolvency, reorganization, moratorium or other similar Laws of general application and of legal or equitable principles generally and covenants of fair dealing.

2. Each Existing Operator is duly organized, validly existing and in good standing under the Laws of Delaware and is duly qualified to do business in the state where the Facilities are located. Each Existing Operator has the power and authority to enter into this Agreement and all agreements,

instruments and documents herein provided and to consummate the transactions contemplated thereby.

3. Neither this Agreement nor any agreement, document or instrument executed or to be executed by an Existing Operator in connection with this Agreement, nor anything provided in or contemplated by this Agreement or any such other agreement, document or instrument, does now or will hereafter breach, invalidate, cancel, make inoperative, violate or interfere with, or result in the acceleration or maturity of, (i) any agreement, document, instrument, right or interest, affecting or relating to any Existing Operator or any Purchased Assets, (ii) any of the terms, conditions or provisions of any mortgage, indenture, note, license, agreement or other instrument or obligation related to any Existing Operator or to its abilities to consummate the transactions contemplated hereby or thereby, (iii) any Law applicable to an Existing Operator, or (iv) result in the creation of any claim upon the business of an Existing Operator or any Purchased Assets.

C. Financial Statements.

1. Attached hereto as Schedule VII.C.1 are each Existing Operator's unaudited profit and loss statements with respect to the operations of the Facilities for calendar years 2021 and 2022 (the "**Annual Financial Statements**") and for the year-to-date period through the month of March, 2023 (the "**Interim Financial Statements**" and collectively with the Annual Financial Statements, the "**Financial Statements**").

2. The Financial Statements were compiled from each Existing Operator's books and records, consistent with such Existing Operator's past practice, and are accurate in all material respects. All of the Financial Statements have been prepared in accordance with generally accepted accounting principles ("GAAP") consistently applied and were prepared from the books and records of each Existing Operator. The Financial Statements fairly present, in all material respects, the financial position of each Existing Operator as of the dates thereof and the results of its operations for the periods ended on the dates thereof.

D. Litigation; Proceedings. Other than those matters set out on Schedule VII.D attached hereto, there are no material (i) claims pending or, to each Existing Operator's knowledge, threatened against or affecting an Existing Operator or a Facility (whether or not an Existing Operator is a party or prospective party thereto), at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, including, without limitation, claims under the False Claims Act (31 U.S.C. § 3729 *et seq.*) for which Existing Operator does not have adequate insurance coverage; (ii) arbitrations proceeding or pending relating to an Existing Operator for which Existing Operator does not have adequate insurance coverage; (iii) to any Existing Operator's knowledge, governmental inquiry or investigation pending or threatened against or involving an Existing Operator. There are no outstanding orders, writs, judgments, injunctions or decrees served upon an Existing Operator by any court, governmental agency or arbitration tribunal against such Existing Operator, or (iv) any Recapture Claims. No Existing Operator is in default with respect to any order, writ, injunction or decree known to or served upon it from any court or of any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign. There is no action or suit by any Existing Operator pending against others. There have been no medical malpractice claims to which any Existing Operator, a Facility, or any of such Facility's employees were a party or that was otherwise brought by or on behalf of a resident of a Facility based on conduct that occurred within such Facility in the three (3) years immediately preceding the Agreement Date.

E. No Proceedings. There are no claims, actions, or proceedings pending against any Existing Operator that are reasonably likely to prevent or materially delay the consummation of the transactions contemplated herein. No Existing Operator has been convicted of or pleaded guilty or no contest to any criminal offense related to the operation of a Facility.

F. **Contracts.** Schedule VII. F.1. sets forth a true and accurate list of all Assumed Operating Contracts. True, correct, and complete copies of all such Assumed Operating Contracts have been, or will be, made available to New Operators to the extent such Contracts are in Existing Operators' possession or control and are assignable, with or without third-party consent, as part of the transactions contemplated by this Agreement. Existing Operators have complied with and performed all of their obligations required to be performed under all Assumed Operating Contracts (whether as an original party or as an assignee or successor) as of the date hereof, and are not in default under any Assumed Operating Contract. Complete and correct copies of all Assumed Operating Contracts, together with all modifications and amendments thereto, shall be made available to New Operators upon the earlier of (i) the Operations Closing Date or (ii) fourteen (14) days after the Agreement Date.

G. **Purchased Assets.** Existing Operators own or have lease or license rights to the Purchased Assets and Personal Property with good title, free and clear of all liens. The furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property comprising the Purchased Assets are in operating condition and repair, ordinary wear and tear excepted, and are adequate for the uses to which they are being put, and none of such furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost.

H. **Leases, Etc.** Except as disclosed on Schedule VII.H, no person or entity has any leasehold interest, license, or other right to occupy any part of any Facility by virtue of any oral or written agreement with an Existing Operator, other than residents of the Facilities under residency agreements.

I. **Taxes.** Existing Operators have filed all tax returns required to be filed with all applicable governmental authorities and have, to the best of Existing Operators' knowledge, paid or established adequate reserves for all taxes, including but not limited to real estate taxes, personal property taxes, and bed or provider taxes, and any assessments which have been received by it or otherwise. No Existing Operator is delinquent in the payment of any tax, and there is no tax asserted against any Existing Operator for which such Existing Operator has been notified as being due before the Operations Closing Date. All Taxes that any Existing Operator is or were required by any applicable legal requirements to withhold, deduct or collect have been duly withheld, deducted and collected. No examination of any Tax Return of an Existing Operator is currently in progress. There are no outstanding agreements or waivers extending the statutory period of limitations applicable to any such Tax Return. There are no encumbrances for Taxes upon the Purchased Assets other than statutory liens for Taxes not yet due or payable.

J. **Brokers.** No brokers or finders have been engaged by Existing Operators in connection with this Agreement or transaction.

K. **ERISA and Benefit Plans.** Except as set forth on Schedule VII.K, neither Existing Operator nor any affiliate is or ever has been a party to, participates in, has participated in or has any liability or contingent liability with respect to any of the following: (i) any "employee welfare benefit plan" or "employee pension benefit plan" as those terms are respectively defined in Sections 3(1) and 3(2) of ERISA; (ii) any retirement or deferred compensation plan, incentive compensation plan, stock plan, unemployment compensation plan, vacation pay, severance pay, bonus or benefit arrangement, insurance or hospitalization program or any other fringe benefit arrangements for any current or former employee, director, consultant or agent, whether pursuant to contract, arrangement, custom or informal understanding, written or unwritten, which does not constitute an "employee benefit plan" (as defined in Section 3(3) of ERISA); or (iii) any fringe benefit plans, as that term is defined in Section 6039D(d) of the Code (collectively, the "***Employee Plans***"), and under no circumstances will New Operator have any liability with respect to any Employee Plan. Except as otherwise set forth on Schedule VII.K, neither Existing Operator, nor any

ERISA Affiliate, is or has been a participant in, or is or has been obligated to maintain or to make contributions to, a multiemployer plan (within the meaning of ERISA Section 3(37) and ERISA Section 4001(a)(3) or an Employee Plan which is subject to Title IV of ERISA. Neither Existing Operator nor any ERISA Affiliate has incurred any withdrawal liability, nor do any of them have any liability for any potential withdrawal liability. Neither Existing Operator nor any ERISA Affiliate has sponsored, contributed to or been obligated under Title I or IV of ERISA to contribute to a “defined benefit plan” (as defined in ERISA Section 3(35)) or a plan that was ever subject to Sections 412 or 430 of the Code, or Part 3 of Title I of ERISA, and under no circumstances will New Operator have any liability with respect to any Employee Plan maintained by Existing Operator or any ERISA Affiliate, regardless of whether such Employee Plan relates to the Hired Employees. Except as set forth on Schedule VII. P, none of the Employee Plans promises or provides medical, life or other welfare benefits to any current or future retired employees, managers, members, directors or consultants (or any spouse or dependents thereof), except as required by the Consolidated Omnibus Budget Reconciliation Act (COBRA). Existing Operator has complied in all material respects with the notice and continuation coverage requirements of Section 4980B of the Code and the regulations thereunder with respect to each Employee Plan that is a group health plan within the meaning of Section 5000(b)(1) of the Code. Each Employee Plan that is a group health plan is in material compliance with the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act, to the extent applicable and Existing Operator has complied with all its obligations thereunder, including all reporting obligations, such that Existing Operator is not and will not be subject to any assessable payments under Code Section 498H or other penalties under the Code or other applicable law.

L. **Labor and Employment Matters.** Except as set forth on Schedule VII.L, no Existing Operator is a party to any collective bargaining agreement or other labor contract applicable to any employees of a Facility, and there are no pending or, to Existing Operators’ knowledge, threatened labor disputes at any Facility including, but not limited to, any strike, slowdown, picketing, work stoppage, organizational activities or employee grievance process affecting a Facility, including without limitation attempts to organize . Each Existing Operator has complied in all material respects with all applicable Laws governing wage, hour, payroll and all other employment and labor matters. To Existing Operators’ knowledge, no activity of any employee at a Facility as or while an employee of such Facility has caused a violation of any employment contract, confidentiality agreement, patent disclosure agreement or other contract to which such employee was a party.

M. **Liens.**

1. Each Existing Operator has good and marketable title to, or in the case of personal property held under a lease or other Assumed Operating Contract (subject to the terms of the lease or other Assumed Operating Contract), an enforceable leasehold interest in, or right to use, the Purchased Assets and Personal Property, and none of the Purchased Assets and Personal Property are subject to any liens or leasehold interests, other than those as set forth on Schedule VII.M.

2. All contractors, subcontractors and other persons engaged by an Existing Operator to furnish work, labor, materials or supplies for the development and construction of a Facility and/or Purchased Assets or Personal Property have been paid, or prior to the Operations Closing shall be paid, whether the work is in progress or completed, for all work performed, material, supplies and the like up to and including the Operations Closing, and there are no claims against any Existing Operator, any Facility, or any of the Purchased Assets or Personal Property in connection therewith which may give rise to a mechanic’s lien against a Facility, the Purchased Assets or any portion thereof.

N. **COVID Funds.** Existing Operator has applied for and utilized, as applicable, all COVID Payments in accordance with applicable Laws.

O. **Environmental.** Except for medical waste generated and disposed of in the ordinary course of business and in compliance with applicable Laws, no Existing Operator has generated, stored or disposed of any Hazardous Materials on the real property on which a Facility is located (collectively, the “Properties”), and, to Existing Operators’ knowledge, there are not currently any Hazardous Materials on the Properties. No Existing Operator has violated any Environmental Laws, in any material manner, in connection with the use, lease, maintenance or operation of a Facility and the Properties. Any and all environmental permits, licenses or approvals required by any applicable Law pertaining to each Facility are attached hereto as Schedule VII.O.

P. **Health Care Representations.**

1. Each Existing Operator owns and/or possesses, and holds free from restrictions or conflicts with the rights of others, all material Permits required by a Governmental Entity for the operation of the applicable Facility as a skilled nursing facility. All material Permits applicable to the operation of the Facilities are set forth on Schedule VII.P. No proceeding is pending or, to each Existing Operator’s knowledge, threatened, seeking the revocation or limitation of any such Permit. No Existing Operator has received any notice from any Governmental Entity, accrediting body, or other applicable authority of (a) any violation, non-renewal, suspension or revocation of any such Permit that has not been dismissed or cured, or (b) any failure by such Existing Operator to obtain any material Permit required by any applicable law for the ownership, maintenance, use, occupancy or operation of the applicable Facility as currently owned or operated.

2. Each Facility is licensed by the applicable Governmental Entity as a skilled nursing facility with the number and type of units and beds set forth on Schedule VII.P. Such license is unrestricted, unconditional, in good standing and in full force and effect and subject to no waivers or limitations. During the eighteen (18) month period preceding the Agreement Date, except as disclosed on Schedule VII.P., each Existing Operator has operated the Facility in material and substantial compliance with all laws necessary to operate the Facility as licensed by the applicable Governmental Entity.

3. Except as disclosed on Schedule VII.P., there are no outstanding inspections, surveys, or plans of correction. There are no implemented bans, remedies, sanctions, prohibitions on payment, or limitations in effect with respect to the Facilities, and no action has been taken or recommended, nor, to any Existing Operator’s knowledge, is there any basis for any action, by any Governmental Entity, either to revoke, withdraw or suspend its license to operate the Facilities or to terminate or decertify any participation of any Facility in the Medicare or Medicaid programs.

4. Each Existing Operator has furnished New Operator a summary of all surveys, inspection reports, any waivers of deficiencies, plans of correction, and any similar investigation or examination reports relating to any inspections, investigations or examinations by any Governmental Entity having jurisdiction over the Facility during the eighteen (18) month period preceding the Agreement Date (collectively, the “Facility Surveys”), and the Facility Surveys do not contain any deficiencies or violations of any applicable laws that, except as disclosed on Schedule VII.P., have not been determined by the applicable Governmental Entity to have been brought back into substantial compliance.

5. No Facility has: (i) been designated as a facility subject to the Special Focus Facility, Low-Rated Facility, or any successor or similar program (collectively, “SFF”) as defined by CMS or any other applicable Governmental Entity or, to Existing Operator’s knowledge, been placed on any “watch list” or other list for consideration for a SFF program within the three (3) year period immediately preceding the Agreement Date, (ii) been subject to enhanced penalties by the OIG or otherwise, (iii) been cited for any material deficiency that has not been cured that would result in a denial of payment for new

admissions, civil monetary penalties, termination, final revocation or cancellation of any license, or termination or other restriction of a provider agreement within the three (3) year period immediately preceding the Agreement Date.

6. No Existing Operator nor any current member, officer, director or employee of an Existing Operator has been (i) sanctioned pursuant to the Anti-Kickback Statute (42 U.S.C. §§1320a-7a or 1320a-8), the False Claims Act (31 U.S.C. §3729 et seq.), the Stark Law (42 U.S.C. §1395nn), or the regulations promulgated pursuant to such statutes, or any related or similar federal, state or local statutes or regulations governing referrals, fraud, waste, and abuse in the healthcare industry (“Health Care Fraud and Abuse Laws”); or (ii) convicted of a criminal offense under the Health Care Fraud and Abuse Laws. There are no pending or threatened Healthcare Fraud and Abuse Law investigations, proceedings, or actions (including any civil investigative demand, subpoena, or self-disclosure) involving Existing Operator, any current member, officer, director or employee of Existing Operator, or the Facility. Other than as set forth on Schedule VII.P, no Existing Operator has received, within the last three (3) years, any notice (i) of the commencement of any proceeding under the Health Care Fraud and Abuse Laws or (ii) that the Facility, Existing Operator, and/or any officer, director or employee of Existing Operator is under investigation or involved in proceedings regarding the Health Care Fraud and Abuse Laws, including as a result of a self-disclosure. Each Existing Operator, and all agreements, arrangements, and operations of the applicable Facility, have been in material compliance with all of the Health Care Fraud and Abuse Laws for the three (3) year period immediately preceding the Agreement Date.

7. Except as set forth on Schedule VII.P, neither Existing Operator nor any current director, officer, or managing employee of Existing Operator, is or has been party to a corporate integrity agreement, corporate compliance agreement, or other settlement agreement with the OIG, CMS, the United States Department of Justice, any state Department of Health (or similar Governmental Entity), any state Department of Medicaid (or similar Governmental Entity), or any state Attorney General, as a result of an alleged violation of any applicable law (and the Facility is not in any way subject to or liable with respect to any such corporate integrity agreement, corporate compliance agreement, or other settlement agreement). Neither Existing Operator nor any current director, officer or employee of Existing Operator, nor, to Existing Operator’s knowledge, any contractor or vendor of Existing Operator, is listed on the OIG List of Excluded Individuals and entities, any state Medicaid exclusion list, or has been suspended, excluded, or otherwise limited from participating in the Medicare program or any other government reimbursement program. There is currently no Department of Justice investigation or proceeding pending or, to the best of Existing Operator’s knowledge, threatened against Existing Operator and/or the Facility.

8. The Facility is certified for participation in the Medicare and Medicaid programs and Existing Operator has a provider agreement with each such government reimbursement program (collectively, the “Provider Agreements”). The Facility is in material compliance with the conditions of participation and conditions for coverage of the government reimbursement programs and with the terms, conditions, and provisions of the Provider Agreements. The Provider Agreements are each in full force and effect, and Existing Operator does not have any knowledge of any fact or circumstance that would cause any such Provider Agreement not to remain in force or be renewed on and after Operations Closing. Attached hereto on Schedule VII.P is a true, correct, and complete list of all Medicaid and Medicare provider numbers (the “Provider Numbers”) in the name of Existing Operator or the Facility. The Provider Numbers are active, in good standing and available for full use with CMS, the applicable Governmental Entity of the state where the Facility is located, and any other applicable Governmental Entity. There is no proceeding, audit, investigation or survey pending or, to Existing Operator’s knowledge, threatened, involving any of the government reimbursement program or any other third-party payor programs, with respect to the Facility, and Existing Operator has no reason to believe that any such proceedings, audits, investigations, or surveys are pending, threatened, or imminent.

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

10. All billing practices of Existing Operator with respect to all third-party payors have been in material compliance with all applicable laws and the policies of such third-party payors for the six (6) year period immediately preceding the Agreement Date. Neither any Existing Operator nor any Facility (i) has been subject to any audit by any third-party payor relating to false or fraudulent billing procedures or practices within the prior six (6) years, or (ii) has received notice of an alleged or actual breach of any commercial or other third-party payor agreement, or any notice of termination, suspension, or other limitation of any commercial or other third-party payor agreement within the prior six (6) years.

11. Schedule VII.P sets forth: (i) the number and type of Facility beds duly licensed by the applicable Governmental Entity; (ii) the number of beds actually located, and currently operational, at each Facility (iii) the number of Facility beds duly licensed or otherwise certified as required to bill Medicaid; and (iv) the number of Facility beds duly licensed or otherwise certified as required to bill Medicare.

12. Existing Operator has furnished New Operator a resident census report for the twelve (12)-month period prior to the Agreement Date, which is accurate and complete in all material respects.

13. Existing Operator and the policies, procedures, and systems of the Facility are in compliance in all material respects with HIPAA and the rules and regulations promulgated thereunder and such other applicable federal, state or local statutes or regulations governing medical records and the privacy of patient information, and any business associate agreements entered into by Facility in connection therewith. All protected health information (as defined under HIPAA) maintained by the Facility is maintained in all material respects in accordance with HIPAA's administrative, physical, and technical safeguard requirements. Except as disclosed on Schedule VII.P, Existing Operator has not received any complaint or notice of investigation (in writing or otherwise) from the Department of Health and Human Services Office for Civil Rights, or from any other person, entity or Governmental Entity regarding Existing Operator, the Facility, or, to its knowledge, any of its business associates' uses or disclosures of, or security practices or security incidents regarding, protected health information or HIPAA compliance. With regard to protected health information of the Facility's residents, there have not been to its knowledge any material non-permitted uses or disclosures, security incidents, or breaches involving Existing Operator, the Facility, or its business associates in the six (6) year period immediately preceding the Agreement Date. Existing Operator and the Facility are, and for the past six (6) years have been, in compliance in all material respects with all applicable legal requirements related to reporting to individuals, Governmental Entities, the media, or credit reporting agencies, as applicable, any reportable breaches involving protected health information under HIPAA.

14. Except as permitted by (or otherwise not in violation of) applicable law or regulation, neither the Existing Operator nor any of its members, directors, officers, affiliates or employees is a party to any contract, lease agreement or other arrangement related to the Existing Operator with any physician, physical or occupation therapist, health care facility, hospital, home health agency or other person who is in a position to make or influence referrals to or otherwise generate business for the Existing Operator to provide services, lease space, lease equipment or engage in any other venture or activity.

15. Existing Operator has paid, or will pay prior to the Operations Closing Date, all quality assurance fees and bed taxes, that are attributable to periods on or prior to the Closing Date, with

respect to the Facility to the applicable Governmental Entity, in accordance with its estimated calculations of such amounts consistent with past practices.

16. Existing Operator has not received notice from the Department of Health Care Access (formerly known as the “Office of Statewide Health and Planning Department” or “OSHPD”) (“*HCAI*”) or any other Governmental Entity, and Existing Operator does not have any other knowledge, that any Facility and/or the use thereof does not comply in all material respects with all applicable local, state, and federal building codes, fire codes, and other similar regulatory requirements and no waivers of such physical plant standards exist at any Facility, and Existing Operator has received any written notice from HCAI or any other Governmental Entity of any non-compliance with any applicable local, state, and federal building codes, fire codes, and other similar regulatory requirements affecting any Facility that remain unresolved. Except as set forth on Schedule VII.P, all HCAI-required permits and/or approvals for all repairs, replacements, refurbishments or improvements within the last two (2) years (“*HCAI Work*”) at any Facility were received by any Existing Operator in connection with all HCAI Work.

Q. **Absence of Change.** Since the date of the Interim Financial Statement, except as contemplated by this Agreement or as set forth on Schedule VII.Q, (a) the operation of the Facilities has been conducted in all material respects in the ordinary course consistent with past practice, (b) nothing has occurred which would constitute a material adverse effect, (c) all material obligations under the Assumed Operating Contracts have been performed, (d) the Facilities have been marketed and census has been maintained consistent with past practice, (e) no transaction or contractual obligation that would materially adversely impact Existing Operators’ abilities to perform their obligations under this Agreement has been entered into, (f) there has been no change in the condition (financial or otherwise), results of operations, business, prospects, assets or Liabilities of the Existing Operators or with respect to the manner in which the Existing Operators conduct their business or operations which has or is reasonably likely to have individually or in the aggregate, a material adverse effect, and (g) no employees or residents of the Facilities have been transferred to any business or facility owned or controlled by an affiliate of Existing Operators other than to another Facility, unless required to comply with applicable legal requirements or patient choice.

R. **Facilities.**

1. **Condition of the Facilities.** There exists no defective condition, structural or otherwise, with respect to any Facility that would reasonably be considered to interfered with any Existing Operator’s ability to operate such Facility as a skilled nursing facility. No Existing Operator has received any written notice from any insurance company which has issued a policy with respect to a Facility or from any board of fire underwriters (or other body exercising similar functions) and any Governmental Entity or any other third party claiming any defects or deficiencies in such Facility or suggesting or requesting the performance of any repairs, alterations or other work to such Facility.

2. **Sprinklers; Life Safety Code.** There is a sprinkler system at each Facility that is in full operational compliance with all applicable requirements. Each Facility is in compliance with all Life Safety Code and similar requirements related to the structural characteristics of the Facility.

S. **No Implied Representations or Warranties; Disclaimers.** EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT, EXISTING OPERATORS ENTER INTO THIS AGREEMENT WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY AND EXISTING OPERATORS ARE CONVEYING THE PURCHASED ASSETS AS IS, WHERE IS, AND WITH ALL FAULTS, AND WITHOUT REPRESENTATION OR WARRANTY (ALL OF WHICH EXISTING OPERATORS HEREBY DISCLAIM) AS TO FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY,

DESIGN, QUALITY, LAYOUT, PHYSICAL CONDITION, OPERATION, COMPLIANCE WITH SPECIFICATIONS, ABSENCE OF LATENT DEFECTS, OR COMPLIANCE WITH LAWS AND REGULATIONS (INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO HEALTH, SAFETY AND THE ENVIRONMENT) OR ANY OTHER MATTER AFFECTING OR RELATING TO THE CONDITION OF THE PURCHASED ASSETS. NEW OPERATORS HEREBY FURTHER ACKNOWLEDGE AND AGREE THAT, EXCEPT AS SPECIFICALLY SET FORTH HEREIN, NEW OPERATORS ARE RELYING SOLELY UPON THE INSPECTION, EXAMINATION, AND EVALUATION OF THE PURCHASED ASSETS BY NEW OPERATORS, AND NEW OPERATORS WILL HAVE NO RIGHT TO BE INDEMNIFIED BY OR OTHERWISE BRING ANY ACTION AGAINST EXISTING OPERATORS WITH RESPECT TO ANY MATTER AFFECTING OR RELATING TO THE CONDITION OF THE PURCHASED ASSETS, OR ANY PORTION THEREOF. THE PROVISIONS OF THIS ARTICLE VII WILL SURVIVE THE CLOSING.

Article VIII
NEW OPERATOR REPRESENTATIONS AND WARRANTIES

A. Due Authorization, Execution, Organization, Etc.

1. This Agreement and all agreements, instruments and documents herein provided to be executed or to be caused to be executed by New Operators are, or when executed by New Operators on the Operations Closing Date will be, duly authorized, executed and delivered by New Operators and are binding in accordance with their terms upon New Operators, subject to the effect of bankruptcy, insolvency, reorganization, moratorium or other similar Laws of general application and of legal or equitable principles generally and covenants of fair dealing.

2. Each New Operator is duly organized, validly existing and in good standing under the Laws of the state in which it has been formed and is duly qualified to do business in the state where the Facilities are located. Each New Operator has the power and authority to enter into this Agreement and all agreements, instruments and documents herein provided and to consummate the transactions contemplated thereby.

3. Neither this Agreement nor any agreement, document or instrument executed or to be executed by New Operators in connection with this Agreement, nor anything provided in or contemplated by this Agreement or any such other agreement, document or instrument, does now or will hereafter breach, invalidate, cancel, make inoperative or interfere with, or result in the acceleration or maturity of, any agreement, document, instrument, right or interest, affecting or relating to New Operators or the Purchased Assets.

B. No Proceedings. There are no claims, actions, proceedings pending, or to the knowledge of New Operators, threatened against any New Operator that are reasonably likely to prevent or materially delay the consummation of the transactions contemplated herein.

C. No Criminal Offense. No New Operator has been convicted of or pleaded guilty or no contest to any criminal offense.

D. False Claims. No director or officer of any New Operator or any employee of any New Operator, acting alone or together, has directly or indirectly within the last three (3) years: (a) given or taken any remuneration, rebates, payments, commissions, or promotional allowances to any customer, supplier, physician, or governmental employee with whom any New Operator has done business; or (b) knowingly and willfully made any false statement of material fact in any application for any benefit or payment.

ARTICLE IX
INDEMNIFICATION AND SURVIVAL

A. **Indemnification by Existing Operator.** Each Existing Operator will hold harmless and indemnify the applicable New Operator and its officers, directors, employees, members, affiliates, designees, successors and assigns from and against any Loss that (i) results from any breach by such Existing Operator of any of its representations, warranties, covenants or agreements in this Agreement or in any certificate delivered in connection with this Agreement, (ii) arises from any tort, general liability, or professional liability claim made by any third party other than any Governmental Entity with respect to the applicable Facility as a result of operation of such Facility prior to the Operations Closing Date, whether such obligation accrues before or after the Operations Closing Date, (iii) arises from any and all claims, including, without limitation, any civil monetary penalties or other fines, suit, action, or other proceeding brought by any Governmental Entities or other third party payors against such New Operator, the Purchased Assets or such Facility, as a result of operation of such Facility prior to the Operations Closing Date, including, without limitation, Recapture Claims and other overpayments made with respect to Medicare, Medicaid and any other third-party payor program, (iv) arises from any other Loss relating to, arising out of or resulting from any liability not expressly assumed by such New Operator hereunder, including the Excluded Liabilities or any activities of such Facility, Existing Operator, and its affiliates prior to the Operations Closing Date, or (v) arises out of any act, event, or omission relating to the operation of the Facility or the Purchased Assets and occurring or arising before the Operations Closing Date or is an Excluded Liability or an Excluded Asset, in each case subject to Article IX.C, or (vi) results from any Other Payors terminating payor agreements with respect to any of the Facilities or otherwise ceasing to make payments with respect thereto, with respect to the transactions set forth herein solely as a result of Existing Operator's breach of its obligations in Article VI.C.3. hereof (provided that Losses for such purpose shall constitute any reimbursement that would have been received from such Other Payors, provided that any amounts indemnified and subsequently recovered by New Operators shall be returned to Existing Operators).

B. **Indemnification by New Operator.** Each New Operator will hold harmless and indemnify the applicable Existing Operator from and against any Loss that (i) results from any material breach of any representations, warranties, covenants or agreements of such New Operator contained in this Agreement or in any document executed in connection with this Agreement; or (ii) arises out of any act, event or omission relating to the operation of the applicable Facility or the Purchased Assets and occurring or arising on or after the Operations Closing Date or is an Assumed Liability, in each case subject to Article IX.C.

C. **Limitation on Indemnification.**

1. Any claim for indemnity pursuant to Article IX of this Agreement must be made in writing by the party to be indemnified (the "***Indemnitee***") to the applicable other party (the "***Indemnitor***").

2. Notwithstanding anything in this Article IX to the contrary, no Indemnitor will not be required to indemnify any Indemnitee pursuant to Article IX.A. or Article IX.B. of this Agreement with respect to any individual claim of liability or damage unless the aggregate amount of all such claims for a Facility exceeds Twenty-Five Thousand Dollars (\$25,000) ("***Indemnity Threshold***"), and then shall be entitled to indemnification for all amounts, including the Indemnity Threshold. However, the indemnification obligations of any New Operator under this Agreement, as Indemnitor, and the indemnification obligations of any Existing Operator under this Agreement, as Indemnitor, respectively, will not exceed an amount equal to \$250,000 (the "***Cap***"). For purposes of this Article IX, in computing

the individual or aggregate amount of claims, the amount of each claim will be deemed to be an amount net of any insurance proceeds and any indemnity, contribution or other similar payments actually paid by a third party to the Indemnitee with respect thereto. Notwithstanding anything to the contrary contained herein, neither the Indemnity Threshold nor the Cap shall apply to (i) an Indemnitor's obligations with respect to claims based upon fraud or intentional misconduct by such Indemnitor, or (ii) any Excluded Liabilities, including, without limitation, Recapture Claims.

3. Notwithstanding anything to the contrary set forth herein, claims for indemnification pursuant to Article IX.A. or Article IX.B. must be made before the two-year anniversary of the Operations Closing Date; provided that such time limit shall not apply to an Indemnitor's obligations with respect to claims based upon fraud or intentional misconduct by such Indemnitor, or any Excluded Liabilities, including, without limitation, Recapture Claims.

D. **Defense of Claims.** In the event any indemnity obligation of an Existing Operator or a New Operator arises hereunder because of a claim of a Loss by a third party, the applicable Indemnitee will promptly provide written notice to the applicable Indemnitor. Such notice shall be given in sufficient time to allow the applicable Indemnitor to defend such claim, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Indemnitor under this Section except solely to the extent that such failure to so notify such Indemnitor results in the forfeiture by the Indemnitor of rights and defenses otherwise available to the Indemnitor. At the option of the Indemnitee, the Indemnitor may defend such third party claims at its sole cost and expense, or Indemnitee may defend such third party claims on its own and Indemnitor will reimburse Indemnitee all costs and expenses related to such defense. The Indemnitee will cooperate with the Indemnitor in all reasonable respects in the defense of such third party claims.

E. **Sole Remedy.** Except as expressly set forth herein, the indemnities provided for in this Article IX and in Article VI related to the post-closing operations transfer matters will be the sole and exclusive remedy of each Party.

F. **Payments.** Once the amount of a Loss is agreed to by the Indemnitor or finally adjudicated to be payable pursuant to this Article IX, the Indemnitor shall satisfy its obligations within fifteen (15) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds.

G. **Security of Indemnification Obligations.**

1. As an inducement to the New Operators to enter into and consummate the transactions contemplated under this Agreement, HCR ManorCare, Inc. has executed and will delivered to New Operator on the Operations Closing Date a Pledge Agreement (the "***Existing Operator Pledge Agreement***"). Pursuant to the Existing Operator Pledge Agreement, HCR ManorCare, Inc. has pledged its ownership interest of WELL PM Properties LLC, a Delaware limited liability company, to secure the payment of the indemnification obligations of each Existing Operator hereunder with respect to Excluded Liabilities.

2. As an inducement to the New Operators to enter into and consummate the transactions contemplated under this Agreement, ProMedica Health System, Inc. has executed and will deliver to New Operator on the Operations Closing Date an Indemnification Agreement.

3. As an inducement to the Existing Operators to enter into and consummate the transactions contemplated under this Agreement, Welltower, New Operator Guarantors have executed and delivered to Existing Operator a joint Guaranty Agreement (the "***New Operator Guaranty Agreement***"). Pursuant to the New Operator Guaranty Agreement, New Operator Guarantors shall, jointly, severally,

absolutely, unconditionally, and irrevocably guarantee to the Existing Operators all indemnification obligations of New Operators under this Agreement.

I. **Survival.** The provisions of this Article IX will survive the Operations Closing.

Article X
TERMINATION, EFFECT OF TERMINATION, AND DISPUTES

A. **Termination.**

1. This Agreement may be terminated prior to the Operations Closing Date with respect to any Facility as follows:

- (a) By any Party if (a) mutually agreed by the Existing Operators and the New Operators; and (b) any Governmental Entity or court with jurisdiction over such matters will have issued a restraining order or otherwise prohibiting the sale of the Purchased Assets hereunder, provided that such was not caused by one of the Parties seeking to terminate this Agreement.
- (b) By New Operators in the event of a material breach by Existing Operators of any representation, warranty, or covenant contained herein that has not been cured within 30 days of receipt of written notice thereof.
- (c) By Existing Operators in the event of a material breach by New Operators of any representation, warranty, or covenant contained herein that has not been cured within 30 days of receipt of written notice thereof.

B. **Effect of Termination; Right to Proceed; Waiver.** In the event of termination of this Agreement with respect to a Facility for any reason, this Agreement will terminate without further liability on the part of any party.

C. **Disputes.** Any controversy, claim or dispute arising out of or relating to the Agreement, as amended, or the subject matter therein or the interpretation, performance or breach of the Agreement, as amended, shall be settled by final and binding arbitration before one arbitrator in Wilmington, Delaware. The arbitration will be initiated and conducted in accordance with the rules of the American Arbitration Association, except as modified herein, in effect at the time the request for arbitration is made. Any decision or award of the arbitrator shall be final, binding and conclusive on the Parties. The Parties may enforce a final arbitration award in any court of competent jurisdiction. The Parties agree to equally split the cost of any arbitration administrative fee and the compensation of the arbitrator.

Article XI
GENERAL PROVISIONS

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

B. **Notices.** All notices to be given by any Party to this Agreement to the other Parties hereto will be in writing, and will be (a) given in person, (b) deposited in the United States mail, certified or

registered, post-age prepaid, return receipt requested, (c) sent by national overnight courier service or (d) sent by facsimile or e-mail (followed by delivery by one of the other means identified in (a)-(c)), each addressed as follows:

To Existing Operators:

ProMedica Health System
MSC – S39938
100 Madison Ave.
Toledo, OH 43604
Attention: General Counsel
e-mail: steve.sadowski@promedica.org

To New Operators:

c/o PACS
262 N University Ave.
Farmington UT 84025
Attention: General Counsel
e-mail: legal@pacs.com

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

Sternshein Legal Group, LLP
5316 E. Chapman Ave.
Orange, CA 92869
Attention: Jennifer M. Sternshein
e-mail: jennifer@sternsheingroup.com

Any such notice personally delivered will be deemed delivered when actually received, any such notice deposited in the United States mail, registered or certified, return receipt requested, with all postage prepaid, will be deemed to have been given on the earlier of the date received or the date when delivery is first refused, and any notice deposited with an overnight courier service for deliver will be deemed delivered on the Business Day following such deposit. Any party to whom notices are to be sent pursuant to this Agreement may from time to time change its address for further communications thereunder by giving notice in the manner prescribed herein to all other Parties hereto.

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

D. **Assignment.** Neither this Agreement nor the rights, duties or obligations arising hereunder will be assignable or delegable by any Party hereto without the express prior written consent of the other Parties hereto, which will not be unreasonably withheld.

E. **Joint Venture; Third Party Beneficiaries.** Nothing contained herein will be construed as forming a joint venture or partnership between the Parties hereto with respect to the subject matter hereof. The Parties hereto do not intend that any third party will have any rights under this Agreement.

F. **Press Releases and Public Announcements.** Neither Party shall issue or cause the publication of any press release or other public announcement or announcement to employees or residents

with respect to this Agreement or the transactions contemplated hereby, without the prior written consent of the other Parties hereto. If any Party determines in good faith that the Law requires a public announcement of any kind concerning this Agreement or the transactions contemplated by it, such Party shall consult with the other Parties at least ten (10) Business Days prior to the announcement and such other Parties shall have the right to approve the content of all such announcements.

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

H. **Counterparts.** This Agreement may be executed in one or more counterparts and all such counterparts taken together will constitute a single original Agreement. Signatures exchanged electronically will be deemed original signatures.

I. **Confidentiality.**

1. Existing Operators acknowledge that certain of the information that has been and will be made available pursuant to this Agreement may be proprietary and include confidential information. Existing Operators shall hold all such information about New Operators in confidence and shall not disclose it to any person or entity (other than to their respective representatives, so long as those representatives agree to keep any such information in confidence) without the approval of New Operators supplying such information; provided, however, that the foregoing restriction shall not apply to any information that is, through no fault of Existing Operators, publicly known or which is lawfully obtained from a third party, disclosure to any Governmental Entity in connection with the CHOW, or to any disclosure required by any legal requirement or in connection with the enforcement of Existing Operators' or New Operators' rights under this Agreement.

2. New Operators acknowledge that certain of the information that has been and will be made available pursuant to this Agreement may be proprietary and include confidential information. New Operators shall hold all such information about Existing Operators in confidence and shall not disclose it to any person or entity (other than to their respective representatives, so long as those representatives agree to keep any such information in confidence) without the approval of Existing Operators supplying such information; provided, however, that the foregoing restriction shall not apply to any information that is, through no fault of New Operators, publicly known or which is lawfully obtained from a third party, or to any disclosure required by any legal requirement, disclosure to any Governmental Entity in connection with the CHOW, or in connection with the enforcement of New Operators' or Existing Operators' rights under this Agreement.

3. Each Party recognizes that irreparable injury will result from a breach of this Section XI.I, and that money damages will be inadequate to fully remedy such injury. Accordingly, in the event of a breach or threatened breach of such provisions, a non-breaching party shall be entitled to seek (in addition to any other remedies which may be available to such Party) one or more preliminary or permanent orders (i) restraining and enjoining any act which would constitute a breach or (ii) compelling the performance of any obligation which, if not performed, would constitute a breach.

J. **Specific Performance.** Each Party hereby acknowledges that the rights of each Party to consummate the transactions contemplated hereby are special, unique and of extraordinary character and that, in the event that any Party violates or fails or refuses to perform any covenant or agreement made by such Party herein, money damages may be inadequate and the non-breaching Parties may have no adequate remedy at law. Accordingly, each Party agrees that each other Party shall have the right, in addition to any other rights and remedies existing in its favor, to seek to enforce its rights and the other Party's obligations by an action or actions for equitable relief, including injunction and specific performance; provided,

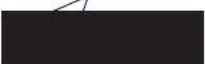
however, that, except in the case of fraud, no Party shall be entitled to seek money damages other than pursuant to Article IX or as otherwise expressly set forth elsewhere in this Agreement. If any such action is brought by a Party to enforce this Agreement, each other Party, as applicable, hereby waives the requirement for the posting of any bond or similar security

K. **Governing Law**. THIS AGREEMENT SHALL BE GOVERNED AND CONTROLLED BY THE INTERNAL LAWS OF THE STATE OF DELAWARE AS TO INTERPRETATION, ENFORCEMENT, VALIDITY, CONSTRUCTION, EFFECT, AND IN ALL OTHER RESPECTS BUT EXCLUSIVE OF ITS CONFLICTS OF LAWS PROVISIONS.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement as of the Agreement Date.

NEW OPERATOR:

CITRUS HEIGHTS COMMUNITY HEALTHCARE, LLC,
FOUNTAIN VALLEY COMMUNITY HEALTHCARE, LLC,
HEMET COMMUNITY HEALTHCARE, LLC,
PALM DESERT COMMUNITY HEALTHCARE, LLC,
SUNNYVALE COMMUNITY HEALTHCARE, LLC,
TICE VALLEY COMMUNITY HEALTHCARE, LLC, and
WALNUT CREEK COMMUNITY HEALTHCARE LLC,
each a California limited liability company

By: 
Name: Derick Apt
Title: Assistant Treasurer

[Signatures Continue of the Following Page]

EXISTING OPERATORS:

MANOR CARE OF CITRUS HEIGHTS CA, LLC
MANOR CARE OF FOUNTAIN VALLEY CA, LLC
MANOR CARE OF HEMET CA, LLC
MANOR CARE OF PALM DESERT CA, LLC
MANOR CARE OF SUNNYVALE CA, LLC
MANOR CARE-TICE VALLEY CA, LLC, and
MANOR CARE OF WALNUT CREEK CA, LLC,
each a Delaware limited liability company


By: 
Name: Luke Pile
Title: President

EXHIBIT "A"

**BILL OF SALE AND
ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Bill of Sale and Assignment and Assumption Agreement is entered into in connection with that certain Operations Transfer Agreement, by and between [_____, LLC, a Delaware limited liability company] ("**Existing Operator**"), and [_____] ("**New Operator**") dated [____], 2023 ("**Agreement**"), pursuant to which Existing Operator has agreed to assign, convey, and transfer to New Operator certain Purchased Assets and Personal Property located at the Facility that are not Excluded Assets. Capitalized terms not otherwise defined will have the meaning set forth in the Agreement.

NOW, THEREFORE, for good and valuable consideration, Existing Operator does hereby ASSIGN, TRANSFER, SET OVER, CONVEY AND DELIVER to New Operator, the Purchased Assets, including without limitation, :

1. Assumed Operating Contracts. All obligations and liabilities of Existing Operator under the Assumed Operating Contracts, as defined in the Agreement, to the extent such obligations and liabilities relate to any period of time commencing on or after the Operations Closing Date. Notwithstanding the foregoing, to the extent that Existing Operator's rights under any Assumed Operating Contract to be assigned to New Operator hereunder may not be assigned without the consent of another person or entity that has not been obtained, this Agreement will not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful. New Operator at its expense will use its reasonable efforts to obtain each such required consent as promptly as possible. If any such consent is not obtained, New Operator will nevertheless pay and perform Existing Operator's obligations under each such Assumed Operating Contract subject to Existing Operator providing to or otherwise obtaining for New Operator the corresponding benefits thereunder, and the parties will cooperate with one another in any reasonable arrangement proposed by either party to result in such effect, in each case to the extent permitted under applicable Law.
2. Purchased Assets and Personal Property. All Purchased Assets and Personal Property located at the Facility that are not Excluded Assets.
3. Patient Records. All records relating to current patients of the Facility as of the Operations Closing Date, provided however, that Existing Operator may retain any patient records stored electronically or as computer data in its original media and provide to New Operator copies thereof, and provided further that Existing Operator may retain the original media or copies of such patient records conveyed to New Operator.
4. Telephone Number. The telephone and facsimile numbers of the Facility.
5. Intangible Property. All rights and interest in the Intangible Property associated exclusively with the Facility.
6. Permits. To the extent transferable under applicable Laws and approved by the appropriate Governmental Entities, all Permits necessary for the operation of the Facility.

New Operator hereby covenants and agrees with Existing Operator that New Operator will duly

execute and deliver, from time to time upon the request of Existing Operator, such other and further assignments, instruments, assumptions, endorsements, or other documents as may be necessary to effectuate the purpose of this document and the intent of the parties as set forth in the Agreement.

New Operator, for itself and its successors and assigns under the Agreement, hereby accepts such assignment and hereby assumes the above listed liabilities and obligations, without limitation.

Existing Operator makes no representations or warranties whatsoever, express, implied, or arising by operation of law, with respect to the Purchased Assets, the Personal Property or the condition of the Purchased Assets or the Personal Property except as set forth in the Agreement

[Signatures appear on the next page.]

IN WITNESS WHEREOF, the undersigned have executed and delivered this Bill of Sale as of the date first written above.

NEW OPERATOR:

_____,
a _____

By: _____
Name: _____
Title: _____

EXISTING OPERATOR:

[_____]

By: _____
Name: _____
Title: _____

Exhibit 1

Existing Operators, New Operators and Facilities

Existing Operator	New Operator	Facility Name	Facility Address	Facility Beds
Manor Care of Citrus Heights CA, LLC	Citrus Heights Community Healthcare, LLC	ProMedica Skilled Nursing and Rehabilitation (Citrus Heights)	7807 Upland Way, Sacramento County, Citrus Heights, California 95610-7500, United States	162
Manor Care of Fountain Valley CA, LLC	Fountain Valley Community Healthcare, LLC	ProMedica Skilled Nursing and Rehabilitation (Fountain Valley)	11680 Warner Avenue, Orange County, Fountain Valley, California 92708-2513, United States	151
Manor Care of Hemet CA, LLC	Hemet Community Healthcare, LLC	ProMedica Skilled Nursing and Rehabilitation (Hemet)	1717 West Stetson Avenue, Riverside County, Hemet, California 92545-6882, United States	178
Manor Care of Palm Desert CA, LLC	Palm Desert Community Healthcare, LLC	ProMedica Skilled Nursing and Rehabilitation (Palm Desert)	74350 Country Club Drive, Riverside County, Palm Desert, California 92260-1608, United States	178
Manor Care of Sunnyvale CA, LLC	Sunnyvale Community Healthcare, LLC	ProMedica Skilled Nursing and Rehabilitation (Sunnyvale)	1150 Tilton Drive, Santa Clara County, Sunnyvale, California 94087-2440, United States	140
Manor Care-Tice Valley CA, LLC	Tice Valley Community Healthcare, LLC	ProMedica Skilled Nursing and Rehabilitation (Tice Valley)	1975 Tice Valley Boulevard, W. Contra Costa County, Walnut Creek, California 94595-2201, United States	120
Manor Care of Walnut Creek CA, LLC	Walnut Creek Community Healthcare LLC	ProMedica Skilled Nursing and Rehabilitation (Rossmoor)	1226 Rossmoor Parkway, W. Contra Costa County, Walnut Creek, California 94595-2538, United States	155