



**Rock
Island
County**

Rock Island County
1504 Third Avenue
Rock Island, IL 61201
(309) 558-3605

**SPECIAL MEETING
[REVISED]
County Board Agenda
Tuesday, February 25, 2020 at 5:30 pm**

The Rock Island County Board will meet at the above date and time in the Board Chambers on the third floor of the County Building, 1504 Third Ave, Rock Island, IL. Agenda as follows:

- 1) Call to order and roll call
- 2) Public Comment
- 3) [Consider Resolution authorizing the sale of the Rock Island County's Hope Creek Care Center nursing home to Aperion Care, Inc., an Illinois Corporation, or its permitted assignee](#)
 - a. [Summary of the Asset Purchase Agreement and Operational Transfer Agreement with Aperion Care by Attorney Chuck Sheets of Polsinelli Law](#)
 - b. [Asset Purchase Agreement \(APA\)](#)
 - c. [Operational Transfer Agreement \(OTA\)](#)
- 4) Recess

RESOLUTION NO _____

RESOLUTION AUTHORIZING THE SALE OF THE ROCK ISLAND COUNTY'S HOPE CREEK CARE CENTER COUNTY NURSING HOME (HCCC) TO APERION CARE INC., AN ILLINOIS CORPORATION, OR ITS PERMITTED ASSIGNEE

WHEREAS, on September 17, 2019, the Rock Island County Board approved a Representation Agreement with Marcus & Millichap Real Estate Investment Services, Inc. to seek proposals for the sale of HCCC; and

WHEREAS, as of December 1, 2019, two verbal and two written proposals to purchase HCCC were received by Marcus and Millichap; the highest being \$6,000,000 from Aperion Care, Inc.; and

WHEREAS, on December 1, 2019, a signed Letter of Intent (LOI) to outline the general terms and conditions upon which Aperion Care, Inc., an Illinois corporation, would be prepared to purchase HCCC, subject to final negotiations; and

WHEREAS, the terms for the sale of HCCC to Aperion Care, Inc. an Illinois corporation, are further documented in the Asset Purchase Agreement and Operations Transfer Agreement, included as Attachments to this Resolution;

NOW, THEREFORE BE IT RESOLVED by the County Board of Rock Island County, Illinois, that the sale of the HCCC to Aperion Care, Inc., an Illinois corporation, or its permitted assignee, is hereby approved; and

BE IT FURTHER RESOLVED that the conditions and terms of the sale are subject to the Asset Purchase Agreement and Operations Transfer Agreement, included as Attachments to this Resolution, and hereby approved by the County Board as documented.

PRESENTED, ADOPTED, APPROVED, AND RECORDED this 25th of February, 2020.

Richard H. Brunk
Rock Island County Board Chairman

ATTEST:

Karen Kinney
Rock Island County Clerk

Summary of the Asset Purchase Agreement and Operational Transfer Agreement with Aperion Care:

The Sale of Hope Creek Care Center by the County is broken up into two transactional documents that are before you this evening. The purchaser has approved both of these documents and sent signatures to us to be held in escrow and released when and if the County approves the transaction. The first document is the Asset Purchase Agreement commonly referred to as the "APA". This document governs the sale of the real estate, the building, and all of the other assets of the Nursing Home, including furniture, fixtures, equipment and systems that are contained in the building and on the premises. The second document is called the Operations Transfer Agreement which is commonly referred to as the "OTA". This document governs the transfer of nursing home operations between the County and the buyers, such as how the new license is handled, how the employees may be rehired, and the division of monies that are collected from payor sources after the closing. I have included a brief summary herein of each document and weather permitting, will be available to answer any questions at the meeting.

OTA

1. Commencement Date is the Closing Date or the date upon which the operations of the nursing home will legally change ownership.
2. Conditions Precedent are the conditions that have to be met before the New Operator's (subparagraph a) and the Seller's (subparagraph b) obligations are effective. The important New Operator's obligations are that they have obtained all necessary government approvals to receive a license to operate the nursing home. The County's obligations under this paragraph are to ensure that the property is in the same condition as it was during the inspection period and to represent that it does not have any material government action or court action that would materially or adversely affect the purchaser's ability to operate the nursing home.
3. Sets for the conveyance of the personal property, supplies and other intangibles.
4. Sets forth any property that is excluded from the conveyance. This property would include accounts receivable and payable and bank accounts associated with the operation of the facility prior to the closing. It also includes the residents' personal property.
5. Governs the transfer of management of residents' funds.
6. Sets forth the applications and documents that must be filed by the purchasers in order to obtain governments approvals at least 30 days before the closing.
7. Sets forth the transfer of the Medicare and Medicaid certification to the New Operator. These paragraph's essentially divide up the proceeds with a line in the sand. Those monies received for operations that occur prior to the closing date will belong to the County, those monies received for operations after belong to the New Operator. Any related taxes or fees that become due are treated the same way. Those for operations prior to closing are obligations of the County, those after are owed by the New Operator.

8. Sets forth the contracts that the nursing home is a party to and provides which contracts the New Operator will assume. As of today's date the New Operator is not assuming any contracts.
9. Provides that the New Operator will not assume any liabilities of the County.
10. Further provides the methodology by which the parties will divide up monies received and monies owed after the closing.
11. Provides that process for employees to be rehired by the New Operator. Provides that New Operator is not assuming collective bargaining agreement.
12. Provides that the County must leave the Residents' records and employee records for the New Operator.
13. Access provisions to allow New Operator to prepare for take over.
14. Provides for prorations of any revenues and expenses.
15. Provides that the County will leave one copy of its policy and procedure manual for historical purposes which may not be disseminated or duplicated by New Operator.
16. Contains the indemnification provisions for breach by either party of the representations contained in the OTA.
17. Representations and warranties made by New Operator.
18. Representations and warranties made by the County.
19. provides that there is no joint venture in this sale.
20. Provides that the exhibits and schedules may be updated later.
21. Provides procedure by either party to declare default and demand cure due to a breach under this agreement.
22. Best efforts, notice and provisions that state the law of Illinois will govern this agreement.

APA

1. Describes the transaction or purchase and sale of the property.
2. Describes the what is included in the transfer such as land and improvements, personal property and intangible property.
3. Describes excluded property.

4. Describes the closing date (August 31, 2020) and the Title Company to be used.
5. Purchase Price and deposit, \$10k in escrow now and an additional \$250k placed in escrow within 3 days of execution.
6. Describes how costs and credits will be handled at the closing.
7. Describes the proration of RE Taxes, utilities and other operational expenses.
8. Describes due diligence and its timeframe (Inspection Period) which runs 20 business days from the date of execution of the documents.
9. Describes the Title and Survey requirements.
10. Describes the pre-closing covenants (or promises) the parties make to each other.
11. Provides that the Real Property will be conveyed by Warranty Deed with full warranties of title.
12. Describes the parties closing deliveries (documents, signatures, etc.)
13. Describes the specific representations and warranties of the County regarding the conveyance of the property.
14. Describes the specific representations and warranties of the Purchaser regarding the acceptance of the conveyance of the property.
15. Conditions precedent to Purchaser's obligations.
16. Conditions precedent to Seller's obligations.
17. Provides that the Seller shall leave the records of the employees and the residents.
18. Provides the process by which any casualty damage or notice of condemnation received prior to closing would be handled.
19. Provides the indemnification provisions between the parties for liabilities or losses suffered that belong to the other party.
20. Provides the conditions under which the agreement may be terminated.
21. Sets for liabilities and the parties agreement not to assume each other's liabilities.
22. Has been deleted.
23. Provides how notices and communications between the parties will be handled.
24. Broker provision.

- 25. Consent
- 26. Assignment restrictions
- 27. Has been deleted.
- 28. Exhibits and Schedules.
- 29. Time is of the essence.
- 30. Amendments must be in writing.
- 31 – 41 Legal boilerplate

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Polsinelli PC, Polsinelli LLP in California

Please note our new address



ASSET PURCHASE AGREEMENT

by and between

THE COUNTY OF ROCK ISLAND, ILLINOIS,
a public body corporate and politic of the State of Illinois, as Seller

and

APERION CARE, INC.,
an Illinois corporation, as Purchaser

February __, 2020

**Hope Creek Care Center
4343 Kennedy Dr.
East Moline, Illinois 61244**

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “*Agreement*”) is made and entered into as of this ____ day of February, 2020 (the “*Effective Date*”), by and between **THE COUNTY OF ROCK ISLAND, ILLINOIS**, a public body corporate and politic of the State of Illinois (“*Seller*”), as seller, and **APERION CARE, INC.**, an Illinois corporation, or its permitted assignee (“*Purchaser*”), as purchaser.

RECITALS

A. Seller owns and is the licensed operator of that certain 245-bed nursing facility (20 bed of which are Medicare beds), which is licensed for 245 skilled nursing beds, commonly known as Hope Creek Care Center Nursing Home, 4343 Kennedy Drive, East Moline, Illinois 61244 (the “*Facility*”), including (i) the land on which the Facility is located, which is legally described on **Exhibit A** attached hereto and made a part hereof, together with all easements, hereditaments, privileges and appurtenances appurtenant thereto (collectively, the “*Land*”), (ii) the buildings and improvements located on the Land, including the Facility and any patios, courtyards, fences, parking areas and storage structures (the “*Improvements*”), and (iii) the furniture, fixtures, equipment and systems located in the Improvements and used in connection with the ownership and operation of the Facility (the “*FF&E*”).

B. Seller desires to sell and transfer the Property (as hereinafter defined) to Purchaser and Purchaser desires to purchase the Property from Seller on the terms and conditions set forth in this Agreement.

C. Concurrent with the closing of the transactions contemplated herein, Purchaser may, as lessor, enter into a new lease agreement for the Facility with Purchaser’s assignee (“*New Operator*”), pursuant to which New Operator, as lessee, shall be the new licensed operator of the Facility.

D. Certain operational matters related to the transfer of the operations of the Facility from Seller to New Operator not otherwise addressed herein shall be handled pursuant to the terms of a separate operations transfer agreement (the “*OTA*”) to be entered into by and between Seller and New Operator which shall govern with respect to the transfer of the operations of the Facility from Seller to New Operator and shall provide for a closing thereunder concurrent with the Closing (as hereinafter defined) under this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the Purchase Price (as hereinafter defined) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound hereby, agree as follows:

1. **PURCHASE AND SALE.** On the terms and conditions set forth herein, (a) Seller shall sell, assign, transfer, convey and deliver fee simple title in the Real Property to Purchaser on the Closing Date and Purchaser shall purchase the Real Property from Seller free and clear of all liens other than Permitted Exceptions (as defined herein), (b) Seller shall sell, assign, transfer, convey and deliver the Personal Property to Purchaser and Purchaser shall purchase, receive and accept the Personal Property from Seller free and clear of all liens, and (c) Seller shall assign, transfer, convey and deliver the Intangible Property to Purchaser, and Purchaser shall purchase, receive and accept the Intangible Property from Seller free and clear of all liens.

2. **THE PROPERTY.** The “*Property*” shall collectively be the following:

a. **Real Property.** The real property shall consist of all of Seller’s right, title and interest in: (i) the Land, (ii) the Improvements, (iii) the FF&E, (iv) any other interest of Seller in all easements, if any, to the extent of any such interest of Seller, and (v) any other structure or improvements located on the Land (collectively, the “*Real Property*”).

b. **Personal Property.** The personal property shall consist of all of Seller’s right, title and interest in the computer hardware, telephones and telephone systems, non-proprietary marketing and promotional materials relating to the Facility, including data from websites or internet domains associated with the Facility, non-proprietary stationery, kitchen equipment, resident room furnishings in the possession of Seller or relating to the Real Property or the Improvements and all other tangible property and assets (except for FF&E) that is located on the Real Property and utilized in connection with the owning, operating or managing of the Facility (collectively, the “*Personal Property*”).

c. **Intangible Property.** The intangible property being assigned, set over and transferred by Seller to Purchaser shall consist of (i) any special use permits from the city or municipality, (ii) any certificate of need, (iii) goodwill associated with the business and the reputation of the Facility, and (iv) any third party warranties or guaranties associated with the Property, all to the extent related specifically to the Facility and as assignable by law (collectively, the “*Intangible Property*”).

3. **EXCLUDED PROPERTY.** Notwithstanding those items set forth in **Section 2** above, the following shall be excluded from the sale by Seller to Purchaser hereunder (collectively, the “*Excluded Property*”): (a) cash and cash equivalents, short-term investments and third-party payor settlements, (b) Seller’s rights under this Agreement and the agreements to be executed in connection herewith, (c) Seller’s organizational documents, (d) personal property owned by residents of the Facility and not by Seller, (e) personal property owned by third party vendors and leased to Seller or any entity providing services at the Facility for use in connection with the operations of the Facility, except to the extent Seller’s interest in such leased property is legally transferable and expressly assumed by Purchaser or New Operator under this Agreement or the OTA, (f) any confidential or proprietary information of Seller or Seller’s affiliates that is not primarily used or held in connection with the Facility, (g) any accounts receivable, accounts payable or liabilities associated with the operation of the Facility prior to the Closing Date, (h) any property or confidential or proprietary information of Seller or any of its affiliates that is not primarily used or held in connection with the Facility, and (i) any items transferred pursuant to the terms of the OTA.

4. **CLOSING.**

a. **Closing Date.** The closing of the purchase and sale pursuant to this Agreement (the “*Closing*”) shall take place through an escrow (the “*Closing Escrow*”) to be established with Chicago Title Insurance Company (the “*Title Company*”), pursuant to escrow instructions that conform to the terms hereof, on August 31, 2020, to be effective at 12:01 a.m. on the following day (the “*Closing Date*”), provided that all other conditions to close as set forth herein have been satisfied or waived pursuant to the terms of this Agreement prior to the Closing Date.

b. **Possession.** All FF&E and Personal Property shall be located at the Facility on the Closing Date. After the Closing, Purchaser shall have free and clear title to the Property, subject to the Permitted Exceptions, and be entitled to possession of the Property, subject only to the possessory rights of the residents at the Facility in accordance with ordinary course operation of the Facility.

5. **PURCHASE PRICE.**

a. **Purchase Price.** In consideration for the conveyance of the Property, Purchaser shall pay to Seller the amount of Six Million Dollars (\$ 6,000,000.00) (the “*Purchase Price*”), payable in immediately available funds on the Closing Date, plus or minus the credits and proration’s set forth in this Agreement.

b. **Escrow Deposit.** Purchaser previously deposited with Seller the amount of Ten Thousand Dollars (\$10,000.00), as earnest money (the “*Initial Escrow Deposit*”). Within one (1) business days after the Effective Date, Seller and Purchaser shall execute the Strict Joint Order Escrow Instructions in the form of **Exhibit B**. Within three (3) business days of the execution of this Agreement, Seller shall transfer the Initial Escrow Deposit into the escrow established with the Title Company and Purchaser shall deposit with Title Company the additional amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) (the “*Additional Escrow Deposit*” and, collectively with the Initial Escrow Deposit, the “*Escrow Deposit*”). The Escrow Deposit and any interest earned thereon shall be credited to Purchaser against the Purchase Price at Closing and transferred to the Closing Escrow for disbursement as provided herein.

c. **Purchase Price Allocation.** Prior to the Closing, the parties to this Agreement expressly agree to use best efforts to allocate the Purchase Price of the Property and among the real, personal and intangible property for all tax purposes. Seller’s proposal for an allocation shall be delivered to Purchaser at least five (5) business days prior to the Closing Date. Any such agreed upon allocation shall be memorialized in writing prior to the Closing. After the Closing, the parties shall make consistent use of the agreed upon allocation, fair market value and useful lives for all tax purposes and in all filings, declarations and reports with the IRS in respect thereof, including the reports required to be filed under Section 1060 of the Internal Revenue Code. In any proceeding related to the determination of any tax, neither party shall contend or represent that such allocation is not a correct allocation.

6. **COSTS AND CREDITS.**

a. **Purchaser’s Charges.** On the Closing Date, Purchaser shall be responsible for the cost of the Title Commitment, Title Policy (both as hereinafter defined) and recording fees for the Deed.

b. **Seller’s Charges.** On the Closing Date, Seller shall be responsible for the cost of recording fees for the Removable Exceptions (as hereinafter defined) and Survey Defects (as hereinafter defined) which Seller is obligated or agreed to correct per **Section 9(d)**.

c. **Attorney’s Fees.** Except as otherwise expressly set forth herein, each party hereto shall each pay their own attorney’s and other professional fees in connection with this matter.

d. **Escrow Fees.** Seller and Purchaser shall equally pay any Closing escrow fees.

e. **Additional Fees.** Except as expressly provided otherwise in this Agreement, all other transaction costs shall be allocated between Seller and Purchaser in the manner customary for transactions in the location of the Facility.

7. **PRORATIONS.** The following shall be prorated as of the Closing Date (so that Purchaser receives all of the benefits and revenues, and is responsible for all of the expenses, commencing on the Closing Date and thereafter) and shall be settled by a credit or debit against the Purchase Price at the Closing:

a. **Real Estate Taxes.** The parties acknowledge there are no real estate taxes accrued, due or payable for the period prior to the Closing Date so there shall be no proration of real estate taxes made at Closing.

b. **Utilities.** Seller shall pay all utility charges attributable to the Property through and including the Closing Date that are not otherwise paid or prorated by Seller pursuant to the terms of the OTA. Charges and deposits for water, fuel, gas, oil, heat, electricity and other utility and operating charges and prepaid service contracts will be based upon the last available invoice. Seller will attempt to obtain final utility meter readings as close as possible to the Closing Date.

c. **Operational Prorations.** The operational prorations shall occur pursuant to the terms of the OTA including, without limitation, revenues and expenses pertaining to the Facility, utility charges for the billing period in which the Closing Date occurs, assumed contracts, utilities, prepaid income and expenses, bed taxes, security deposits, employee accruals, resident trust funds and other related items of revenue or expense attributable to the Facility, if any, which shall be prorated as of the Closing Date per the terms of the OTA.

8. DUE DILIGENCE.

a. **Due Diligence Items.** Purchaser and Seller acknowledge that prior to the Effective Date, Seller has provided Purchaser with access to an online data room containing copies of due diligence materials in Seller's possession.

b. **Third Party Reports.** Purchaser shall have twenty (20) business days from the Effective Date ("**Inspection Period**") to conduct a property condition report and environmental study on the Property. Seller shall permit Purchaser and its representatives, lender and lender's representatives, contractors, land surveyors, environmental companies and other agents ("**Representatives**") access to the Real Property in connection with Purchaser's third party reports, provided that such access rights are not disruptive to the operations at the Facility, provided Purchaser has delivered proof of insurance to Seller, and further provided that Purchaser and its Representatives are at all times in compliance with all state and federal laws governing the rights of the residents of the Facility.

c. **Indemnification.** Purchaser agrees to indemnify, defend, protect and hold harmless Seller, and Seller's respective affiliates, members, officers, directors and agents from and against any loss, injury, damage, claim, lien, cost or expense, including reasonable attorneys' fees and costs, arising from or related to the access rights exercised by Purchaser or its employees, consultants, agents or Representatives under this Agreement. Purchaser shall carry, and shall cause any of its agents or representatives entering onto the Real Property to carry, workers' compensation and general liability insurance in the amount of One Million Dollars (\$1,000,000.00) per occurrence, which insurance shall name Seller as an additional insured. Purchaser shall keep the Property free and clear of any mechanic's or materialmen's liens arising out of any entry onto or inspection of the Property by or on behalf of Purchaser.

d. **Notice of Termination.** If Purchaser's third party reports disclose over One Hundred Fifty Thousand Dollars (\$150,000.00) in immediate repairs at the Property (required in the aggregate in the next six months), then Purchaser shall have the right, in its sole discretion, to terminate this Agreement by written notice to Seller, at any time before the end of the Inspection Period ("**Inspection Termination Notice**"), in which event Seller shall promptly direct the Title Company to refund the Escrow Deposit to Purchaser less a Fifty Thousand Dollar (\$50,000.00) termination fee, and all further rights and obligations of the parties hereto shall cease and terminate without any further liability of either party to the other (except those obligations which expressly survive such termination as provided in this Agreement). If Purchaser does not provide an Inspection

Termination Notice on or before the end of the Inspection Period, this specific right of termination shall be itself terminated and, thereafter, Purchaser shall not have any right to terminate this Agreement based on this **Section 8(d)** and the Escrow Deposit shall be nonrefundable except as otherwise expressly provided in this Agreement.

9. **TITLE AND SURVEY.**

a. **Title Policy.** Purchaser acknowledges that Seller has delivered to it a commitment to issue standard Owner's Title Insurance Policy for the Property (the "**Title Commitment**") from the Title Company showing title to the Real Property vested in Seller. Seller covenants to reasonably cooperate with Purchaser to have the Title Company at Closing issue a title policy from the Title Commitment ("**Title Policy**") or a markup or pro forma of the Title Commitment, subject only to the Permitted Exceptions (as hereinafter defined).

b. **Survey.** Purchaser acknowledges that Seller has delivered to Purchaser a proposed Plat of Subdivision for the Property that it intends to have recorded on or prior to the Closing Date. Purchaser may order a new ALTA Survey for the Real Property (the "**Survey**") at its cost.

c. **Permitted Exceptions and Removable Exceptions.** The term "**Permitted Exceptions**" shall mean (i) the liens of real estate taxes that are not yet due and payable on the Closing Date, (ii) those items set forth on Schedule B to the Title Commitment and set forth on **Schedule 9(c)(ii)**, (iii) easements and covenants mutually agreed between Seller and Purchaser, which agreement shall not be unreasonably withheld or delayed, with respect to the Land and adjoining parcels as applicable, (iv) matters disclosed by the Survey without Survey Defects or that are otherwise accepted by Purchaser per the terms of this Agreement, and (v) the rights of residents in possession. The term "**Removable Exceptions**" shall mean title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount that Seller will remove by the payment of money on the Closing Date.

d. **Correction of Survey Defects.** Within thirty (30) days after the Effective Date (the "**Objection Deadline**"), Purchaser shall notify Seller in writing if the Plat of Subdivision or a Survey discloses any material encroachments, any material lack of compliance with applicable requirements, or any other items that prevent the Property from being operated in substantially the same manner as it is being operated on the Effective Date ("**Survey Defects**"). After receipt of notice from Purchaser, Seller shall have five (5) business days to provide written notice to Purchaser as to whether Seller elects to (i) correct such Survey Defects before the Closing, (ii) have the Title Company commit to insure over the Survey Defect, or (iii) not remove or correct any such Survey Defects. If Seller fails to timely respond or elects not to remove or correct any such Survey Defects, then Purchaser may elect within five (5) business days with written notice to Seller to (i) take the Property as it then is, or (ii) terminate this Agreement by written notice to Seller (which shall be deemed a termination pursuant to **Section 20(a)(i)** of this Agreement) and in which event the Escrow Deposit shall be returned to Purchaser.

10. **PRE-CLOSING COVENANTS.**

a. **Seller's Covenants.** Seller hereby agrees and covenants to Purchaser that between the Effective Date and the Closing Date, except as otherwise contemplated by this Agreement or with the prior written consent of Purchaser:

i. Seller shall use its commercially reasonable effort to timely obtain any necessary third party consents for the valid conveyance, transfer, assignment or delivery of the Property being transferred per this Agreement.

ii. Seller shall notify the Illinois Department of Revenue (the "**IDR**") and shall request tax clearance certificates from IDR. No later than ten (10) business days prior to the Closing Date, Seller shall (A) obtain either a full release of claims from the IDR with respect to all debts owed by Seller or a statement setting forth all IDR debts owed by Seller, and (B) provide Purchaser with a statement setting forth the amount owed by Seller with respect to all Illinois and federal payroll, assessment and other taxes and all license fees, including supporting materials.

iii. Seller shall maintain all of its books and records related to the Facility in accordance with past practices.

iv. Seller shall pay when due all taxes, assessments and charges imposed upon Seller with respect to the Facility.

v. Seller will satisfy and discharge or contest in good faith all claims, liens, security interests and encumbrances on the Property, except for the Permitted Exceptions.

vi. Seller shall deliver the Property to Purchaser on the Closing Date in substantially the same condition and repair as on the Effective Date, ordinary wear and tear excepted.

vii. Seller will not sell any items of machinery, equipment, or other assets or Property used in connection with the Facility, other than in the ordinary course of business.

viii. Seller shall not make any capital expenditures on the Facility, except (A) in the event of a casualty or condemnation as permitted per the terms of this Agreement, (B) to make ordinary and necessary repairs to the Facility, or (C) to comply with a governmental or Life Safety Code regulation.

ix. Seller shall not change employment terms for the Facility employees, or institute, amend, or terminate its employment benefit plans, except for normal and customary raises or amendments consistent with prior business practices.

x. Seller shall maintain in force and renew as necessary on commercially reasonable terms the existing insurance policies as are now in effect for the Property.

xi. From the Effective Date until through the earliest of the Closing Date or the termination of this Agreement, Seller has not and shall not, directly or indirectly, (a) enter into negotiations with any party other than Purchaser regarding the sale of the Property, or (b) provide information to any party other than Purchaser regarding the sale of the Property.

b. **Purchaser's Covenants.** Purchaser hereby agrees and covenants that between the Effective Date and the Closing Date, Purchaser will (i) require New Operator to make all required applications, file such notices and pay such fees as are necessary in connection with New Operator's

efforts to obtain all necessary licenses including, without limitation, the IDPH Licenses, certificate of need, Medicare and Medicaid provider certification and provider agreements (collectively, the “*Facility Licenses*”), and (ii) cooperate with all reasonable requests from Seller with respect to obtaining any other consents or authorizations related to the sale of the Facility.

c. **General Joint Covenants.** Each party shall promptly notify the other party of any information delivered to or obtained by such party which would impair or prevent the consummation of the transactions contemplated hereby.

11. **CONVEYANCES.** Conveyance of the Real Property to Purchaser shall be by Special Warranty Deed (the “*Deed*”), containing full warranties of title for matters affecting title that occurred during Seller’s ownership of the Property, free and clear of all liens, encumbrance and security interests, subject only to the Permitted Exceptions. Conveyance of the FF&E and Personal Property shall be by Bill of Sale (the “*Bill of Sale*”) from Seller to Purchaser containing full warranties of title free and clear of all liens, encumbrances and security interests other than the Permitted Exceptions. Conveyance of the Intangible Property shall be by General Assignment (the “*General Assignment*”) from Seller to Purchaser, containing full warranties of title and free and clear of all liens, encumbrances and security interest other than the Permitted Exceptions. Purchaser agrees that the presence of the Personal Property at the Facility on the Closing Date shall constitute delivery thereof.

12. **CLOSING DELIVERIES**

a. **Purchaser’s Closing Deliveries.** On or before the Closing Date, Purchaser agrees that it will deliver into the Closing Escrow (except as otherwise set forth below) executed originals of the following documents, in form and substance reasonably satisfactory to counsel for Seller and Purchaser (“*Purchaser’s Closing Deliveries*”):

i. Deposit by wire transfer into the Closing Escrow, the balance of the Purchase Price due at Closing after crediting the Escrow Deposit, plus or minus the prorations and credits due at Closing.

ii. Such documents, certifications and statements as may be required by the Title Company to issue the Title Policy including, without limitation, a Title Company Disbursement Statement signed by Purchaser approving each and every one of the payments and disbursements made by the Title Company through the Closing Escrow.

iii. A Certificate of Good Standing or similar document for Purchaser from the Secretary of State of the state in which such Purchaser is organized, and certified copies of the resolutions of Purchaser authorizing the execution, delivery and consummation of this Agreement and the execution, delivery and consummation of all other agreements and documents executed in connection herewith, including all instruments required hereunder, sufficient in form and content to meet the requirements of law relevant to such transactions and certified by the managers of Purchaser as adopted and in full force and effect and unamended as of Closing.

iv. A bring-down certificate dated as of the Closing Date certifying that all of the representations and warranties made and given by Purchaser in this Agreement are true and correct as of the Closing Date.

v. Such further instruments and documents as are reasonably necessary to complete the transfer of the Property to Purchaser in accordance with the terms of this Agreement.

b. **Seller's Closing Deliveries.** On or before the Closing Date, Seller will deliver into the Closing Escrow (except as otherwise set forth below) executed originals of the following documents, in form and substance reasonably satisfactory to counsel for Purchaser and Seller ("**Seller's Closing Deliveries**"):

- i. The Deed conveying the Real Property from Seller to Purchaser, executed by Seller.
- ii. The Bill of Sale for the FF&E and Personal Property at the Facility from Seller to Purchaser.
- iii. The General Assignment for the Intangible Property, from Seller to Purchaser.
- iv. Resolutions of the Rock Island County Board (the "**Board**") authorizing Seller to execute the closing documents, sufficient in form and content to meet the requirements of law relevant to such transactions, which resolutions shall be certified to be true copies by the Clerk of the Board.
- v. Such documents, certifications and statements as may be required by the Title Company to issue the Title Policy including, without limitation, a copy of the Title Company Disbursement Statement signed by Seller approving the payments and disbursements made by the Title Company.
- vi. Any statement, affidavit or undertaking required by the Title Company in order to give Purchaser good and clear title to the Property per the requirements of this Agreement.
- vii. Real Estate Transfer Tax Declarations for the Real Property, if any.
- viii. A bring-down certificate certifying that all of the representations and warranties made and given by Seller in this Agreement are true and correct as of the Closing Date.
- ix. Copies of any payoff letters or releases with respect to any Removable Exceptions and any other mortgage secured by the Property.
- x. Such further instruments and documents as are reasonably necessary to complete the transfer of the Property to Purchaser in accordance with the terms of this Agreement.

13. **SELLER'S REPRESENTATIONS AND WARRANTIES.** Seller hereby represents and warrants to Purchaser that the following statements are true and correct as of the date hereof and will be true and correct on the Closing Date:

- a. **Status.** Seller is a public body corporate and politic under the laws of the State of Illinois and is duly qualified to own property and conduct business in the State of Illinois.
- b. **Authority.** Seller has the full right, power and authority to enter into this Agreement.
- c. **Necessary Action.** Seller has taken all action required under its organizational documents necessary to enter into this Agreement. This Agreement has been duly executed and delivered by Seller.
- d. **Compliance with Agreements.** The execution, delivery and performance of this Agreement and the consummation of the transaction contemplated herein, and all related documents will not result in a default under any deed of trust, mortgage, note, agreement,

organizational document, or other instrument or obligation to which Seller is a party or by which the Property may be bound or affected and which will not be released, paid off or otherwise satisfied in connection with or prior to the Closing.

e. **Binding Agreement.** This Agreement and all agreements to which Seller will become a party pursuant hereto are and will constitute the valid and legally binding obligations of Seller and are and will be enforceable against Seller in accordance with the respective terms hereof and thereof, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforceability of creditors' rights generally, general equitable principles and the discretion of courts in granting equitable remedies.

f. **Title.** Seller has fee simple title to the Real Property, free and clear of all liens, encumbrances, covenants, conditions, restrictions, leases, tenancies, licenses, claims and options, except for the Permitted Exceptions.

g. **No Default.** To Seller's knowledge, there is no default by Seller with respect to any obligations under any mortgage, contract, lease or other agreement affecting or relating to the Property.

h. **Litigation.** There are no lawsuits, investigations or other proceedings pending or, to Seller's knowledge, threatened against Seller related to the Facility or Seller's right to own the Property or Seller's right to enter into this Agreement, other than as set forth in **Schedule 13(h)**. To Seller's knowledge, there are no ongoing audits of the Facility's billing by any third-party payor.

i. **AS IS.** Purchaser acknowledges and agrees that neither Seller nor any agent or representative of Seller have made, and Seller is not liable or responsible for or bound in any manner by any express or implied representations, warranties, covenants, agreements, obligations, guarantees, statements, information or inducements pertaining to the physical condition of the Property, and specifically, the Facility, including all environmental matters, the quantity, character, fitness and quality thereof, merchantability, fitness for particular purpose, the income, expenses or operation thereof, the value and profitability thereof, the structural and mechanical condition of the buildings, structures and improvements situated thereon, the plumbing, heating, air conditioning, electric and ventilating systems serving the Property and any other matter or thing whatsoever with respect thereto. Purchaser acknowledges, agrees, represents and warrants that it has and shall have the opportunity to inspect the Property and all matters comprising the Property, including the Facility, and has or shall have access to information and data relating to all of same as Purchaser deems necessary, prudent, appropriate or desirable for the purposes of this transaction. Purchaser acknowledges that it is fully familiar with the Property and Purchaser expressly agrees to accept the Property "**AS IS, WHERE IS AND WITH ALL FAULTS,**" in its current condition, subject to reasonable wear and tear. In addition to, and without limiting the foregoing, Purchaser further acknowledges and agrees that the Property is conveyed in its "**AS IS**" condition with respect to environmental matters, and Purchaser hereby assumes the risk that adverse past, present or future conditions may not be revealed in its inspection or investigation.

j. **Financial Statements.** To Seller's knowledge, the financial statements furnished to New Operator and Purchaser are true, correct and complete in all respects, fairly represent the financial condition of New Operator and are not misleading in any respect.

k. **Survival of Representations or Warranties.** The representations and warranties of Seller under this Agreement shall survive the Closing of the transaction contemplated hereunder for the period of twelve (12) months after the Closing Date; provided, however, that the representations and warranties set forth in **Section 13(a)** (Status) and **Section 13(b)** (Authority), together with any

right to indemnification for breach thereof, shall survive the Closing and continue in full force and effect for the maximum period permitted by applicable law.

14. **PURCHASER'S REPRESENTATIONS AND WARRANTIES.** Purchaser hereby warrants and represents to Seller that the following statements are true and correct as of the date hereof and will be true and correct on the Closing Date:

- a. **Status.** Purchaser is a limited liability company duly formed and validly existing under the laws of the State of Illinois and is duly qualified to own property and conduct business in the State of Illinois.
- b. **Authority.** Purchaser has full right, power and authority to enter into this Agreement.
- c. **Necessary Action.** Purchaser has taken all action required under its organizational documents necessary to enter into this Agreement. This Agreement has been duly executed and delivered by Purchaser.
- d. **Survival of Representations and Warranties.** The representations and warranties of Purchaser under this Agreement shall survive the closing of the transactions completed hereunder for a period of twelve (12) months after the Closing Date; provided, however, that the representations and warranties set forth in **Section 14(a)** (Status of Seller) and **Section 14(b)** (Authority), together with any right to indemnification for breach thereof, shall survive the Closing and continue in full force and effect for the maximum period permitted by applicable law.

15. **CONDITIONS TO PURCHASER'S OBLIGATIONS.** Purchaser's obligations under this Agreement, including the obligation to pay the Purchase Price and close this transaction, are contingent and subject to fulfillment of each of the following conditions prior to the Closing Date, any one of which may be waived by Purchaser in writing (collectively, "**Purchaser's Conditions Precedent**"):

- a. **Certification.** Between the Effective Date and the Closing Date, there shall not have been any material adverse change in the regulatory status or condition of any of Seller's certifications for the Facility's participation in the Medicare and Medicaid reimbursement programs.
- b. **Seller's Representations, Warranties and Covenants.** Seller's representations, warranties and covenants contained in this Agreement or in any certificate or document delivered in connection with this Agreement or the transactions contemplated herein shall be true as of the Closing Date as though such representations, warranties and covenants were then again made. For the avoidance of doubt, and notwithstanding anything herein to the contrary, Seller shall have no liability for any inaccuracy or breach of any representation or warranty if Purchaser had knowledge of said inaccuracy or breach or the underlying facts giving rise to such inaccuracy or breach, before the Closing.
- c. **Seller's Performance.** Seller shall have performed all of its obligations and covenants under this Agreement that are to be performed prior to or at Closing.
- d. **Closing Deliveries.** Seller shall have executed and delivered all of Seller's Closing deliveries per **Section 12(b)**.
- e. **Title Insurance.** On the Closing Date, Seller shall deliver insurable fee simple title to the Real Property, subject only to the Permitted Exceptions.

- f. **Change in Ownership.** There has been no change in the ownership, operation or control of the Property (or any portion thereof) between the Effective Date and the Closing Date.
- g. **Absence of Litigation.** No action or proceeding has been instituted or, to Seller's knowledge, threatened before any court or governmental body or authority the result of which is reasonably likely to prevent the acquisition by Purchaser of the Property, or the consummation of the transaction contemplated hereby. There are no orders which are entered after execution of this Agreement and prior to Closing and which shall result in the immediate forced closing of the Facility prior to the Closing Date.
- h. **No Material Adverse Change.** Since the end of the Inspection Period, there shall have been no material adverse change in the physical condition of the Property. For purposes of this Agreement "material adverse change" shall mean any event, occurrence or change that is materially adverse to the physical condition of the Property, when taken as a whole, but shall exclude any adverse effect resulting from, arising out of or relation to (i) war or terrorism, (ii) acts of God, (iii) changes affecting the Illinois senior housing industry generally, (iv) changes in business or economic conditions in the United States generally, (v) actions made pursuant to the terms of this Agreement, the OTA or with Seller's express written consent, or (vi) any announcement or disclosure of the pendency of the transactions set forth herein or in the OTA.
- i. **Removal of Personal Property Liens.** The Property shall be free and clear of all liens, claims and encumbrances other than those expressly permitted herein or that will be paid or otherwise satisfied by Seller on the Closing Date.
- j. **Zoning.** Purchaser shall receive zoning compliance letters reflecting the Property's compliance with respect to the Facility and permitting the continued operation by Purchaser or New Operator of the Facility on the Property as a skilled nursing facility as well as compliance with minimum parking and all other zoning requirements, provided, Purchaser timely requested the same. There shall not be any change in the use of the Facility since the issuance of the zoning compliance letters to Purchaser.
- k. **New Licenses.** Provided New Operator timely applied to IDPH and used best efforts to submit a correct and complete application, New Operator shall have received adequate assurance of obtaining the IDPH License, which may occur by receipt of a letter or email from IDPH stating that the License shall be issued upon notification of the Closing.
- l. **Personal Property; FF&E.** All FF&E and other Personal Property shall be located at the Facility on the Closing Date. Unless specifically permitted pursuant to the terms of this Agreement, Seller shall not have removed any FF&E or Personal Property from the Facility.
- m. **Licenses.** To the extent required by law, as of the Closing Date:
- i. The Facility is licensed by IDPH, which license shall on the Closing Date be in good standing and full force and effect, permitting the operation of the Facility as a skilled nursing facility with 245 skilled nursing beds (20 beds of which are Medicare beds) (the "*Licensed Beds*").
 - ii. The Facility is not subject to a denial for payment of new admissions.
 - iii. The Facility shall be in substantial compliance with and certified for participation in Medicaid and Medicare programs, which certifications shall on the Closing Date be in good standing and full force and effect, subject to no waivers and limitations.

n. **Code Violations.** There shall be no outstanding Life Safety Code or IDPH violations with a scope and severity level that represents “substandard quality of care” as defined in 42 CFR § 488.301 that have not been corrected at least three (3) business day prior to the Closing Date.

o. **Schedules and Exhibits.** Purchaser shall have approved of any Exhibits or Schedules added hereto, or updated, following the Effective Date.

p. **Operations Transfer Agreement.** Seller and New Operator shall have entered into the OTA in the form of **Exhibit C**. All conditions precedent required for the consummation of the transactions set forth in the OTA shall have been met, except for the Closing hereunder.

q. **Special Use Permit.** The City of East Moline, Illinois shall have issued such opinions and/or new permits, if needed, allowing a non-governmental entity to own and operate the Property.

16. **CONDITIONS TO SELLER’S OBLIGATIONS.** All obligations of Seller under this Agreement are subject to fulfillment of each of the following conditions prior to the Closing Date (or on the Closing Date where so indicated), any one or all of which may be waived by Seller in writing (collectively, “*Seller’s Conditions Precedent*”):

a. **Purchaser’s Representations, Warranties and Covenants.** Purchaser’s representations, warranties and covenants contained in this Agreement or in any certificate or document delivered in connection with this Agreement or the transactions contemplated herein shall be true at the Effective Date and as of the date of Closing as though such representations, warranties and covenants were then again made.

b. **Purchaser’s Performance.** Purchaser shall have performed its obligations and covenants under this Agreement that are to be performed prior to or at Closing including, but not limited to, application for all appropriate licenses and delivery of all of Purchaser’s Closing deliveries.

c. **Absence of Litigation.** No action or proceeding shall have been instituted, nor any judgment, order or decree entered by any court or governmental body or authority preventing the acquisition by Purchaser of the Property or the acquisition by Purchaser of the Personal Property or the consummation of any other transaction contemplated hereby.

d. **Closing Deliveries.** On the Closing Date, Purchaser shall have executed and delivered to Seller all of Purchaser’s Closing Deliveries under **Section 12(a)**.

e. **Special Use Permit.** The City of East Moline, Illinois shall have issued such opinions and/or new permits, if needed, allowing a non-governmental entity to own and operate the Property.

17. **ACCESS TO RECORDS.**

a. **Facility Records.** On the Closing Date, Seller shall leave at the Facility for Purchaser or New Operator all of Seller’s records for the transferred Facility employees and residents.

b. **Seller’s Access to Records.** Subsequent to the Closing Date, Purchaser and New Operator shall grant Seller and its respective agents and representatives access to (upon reasonable prior notice and during normal business hours), including the right to make copies of, the books and records and supporting material of the Facility relating to the period prior to and including the Closing Date, at Seller’s own expense, to, among other things, enable Seller to investigate and defend audits, claims, litigation or to file or defend cost reports.

c. **Purchaser's and New Operator's Access to Records.** Subsequent to the Closing Date, Seller shall grant Purchaser, New Operator and their respective agents and representatives reasonable access to (upon reasonable prior notice and during normal business hours), including the right to make copies of, books and records and supporting material of the Facility relating to the three (3) year period prior to the Closing Date, at Purchaser's or New Operator's own expense and to the extent reasonably necessary to enable Purchaser and New Operator to investigate and defend audits, claims, litigation or to file or defend cost reports.

18. **CASUALTY/CONDEMNATION.**

a. **Notice.** Seller shall promptly notify Purchaser of any casualty damage it becomes aware of, or notice of condemnation that Seller receives prior to the Closing Date.

b. **Non-Substantial Damage from Casualty.** If (i) any portion of the Property is damaged by fire or casualty after the Effective Date and is not repaired and restored substantially to its original condition prior to Closing, and (ii) at the time of Closing the estimated cost of repairs is Two Hundred Fifty Thousand Dollars (\$250,000.00) or less, as determined by an independent adjuster engaged by Seller, and (iii) for other reasons Purchaser has not otherwise elected to terminate pursuant to **Section 20(a)(ii)**, Purchaser shall be required to purchase the Property in accordance with the terms of this Agreement, and at Seller's option, (x) Purchaser shall receive a credit at Closing of the estimated cost of repairs determined by the aforesaid independent adjuster and Seller shall retain all insurance claims and proceeds with respect thereto, or (y) at Closing, Seller shall (A) assign to Purchaser, without recourse, all insurance claims and proceeds with respect thereto (less sums theretofore expended in connection with such fire or casualty, if any, by Seller, including for temporary repairs or barricades) (in which event Purchaser shall have the right to participate in the adjustment and settlement of any insurance claim relating to said damage), and (B) credit Purchaser at Closing with an amount equal to Seller's insurance deductible. Seller shall have no liability or obligation with respect to the quantity or condition of the Property to the extent affected by such fire or casualty and shall be released from any representation and warranty regarding same to the extent affected by such fire or casualty. Notwithstanding the foregoing, Purchaser shall not be obligated to purchase the Property as set forth in this Section in the event that such casualty materially interferes with the ability to operate the Facility as a skilled nursing facility with the Licensed Beds, in the sole discretion of Purchaser.

c. **Substantial Damage from Casualty.** If, at the time of Closing, the estimated cost of repairing such damage is more than Two Hundred Fifty Thousand Dollars (\$250,000.00) with respect to the Facility, as determined by such independent adjuster, or Purchaser determines pursuant to the final sentence of the foregoing **Section 18(d)** that such casualty materially interferes with such ability to operate the Facility, then in either such case Purchaser may, in its sole discretion (i) terminate this Agreement by notice to Seller within ten (10) days after receipt of notice of such casualty (which shall be deemed a termination pursuant to **Section 20(a)(ii)** of this Agreement), or (ii) proceed to Closing in accordance with **Section 18(b)**.

d. **Condemnation.** If, prior to Closing, a "material" portion of the Property is taken by eminent domain, then Purchaser shall have the right, within fifteen (15) days after receipt of notice of such material taking, to terminate this Agreement (which shall be deemed a termination pursuant to **Section 20(a)(i)** of this Agreement). If Purchaser elects to proceed and to consummate the purchase despite said material taking (such election being deemed to have been made unless Purchaser notifies Seller in writing to the contrary within fifteen (15) days after notice from Seller to Purchaser of any taking), or if there is less than a material taking prior to Closing, there shall be no reduction in or abatement of the Purchase Price, Purchaser shall be required to purchase the Property in accordance with the terms of this Agreement and Seller shall assign to Purchaser,

without recourse, all of Seller's right, title and interest in and to any award made or to be made in the eminent domain proceeding (in which event Purchaser shall have the right to participate in the adjustment and settlement of such eminent domain proceeding). For the purpose of this Section, the term "material" shall mean any taking of in excess of ten percent (15%) of the square footage of the Facility or twenty percent (20%) of the Real Property associated with the Facility that would (i) adversely affect Purchaser's or New Operator's ability after said taking to operate the Facility in compliance with the IDPH License, or (ii) eliminate after said taking a means of egress and ingress to and from the Facility to a public right of way, or (iii) cause the use of the Facility after said taking to no longer be in compliance with all applicable zoning and building rules, regulations and ordinances.

19. **INDEMNIFICATION.**

a. **Indemnification by Purchaser.** Subject to the first dollar Basket and Ceiling described below, Purchaser agrees to indemnify and hold harmless Seller from and against all liabilities, claims, losses, demands and causes of action of any nature whatsoever (collectively, "**Losses**") arising out of (i) any breach by Purchaser of its obligations, representations, warranties or covenants hereunder, (ii) injury to or death of persons or loss of or damage to property occurring on the Property or at the Facility on or after the Closing Date, (iii) any Third Party Claims (as hereinafter defined), or (iv) any liability which may arise from ownership, use or condition of the Property after the Closing Date to the extent it relates to the ownership or use of the Property on or after the Closing Date. Purchaser further agrees to pay any reasonable attorneys' fees and expenses incident to the defense by Seller of any such Losses (as hereinafter defined).

b. **Indemnification by Seller.** Subject to the first dollar Basket and Ceiling described below, Seller hereby agrees to indemnify and hold harmless Purchaser from and against all Losses arising out of (i) any breach by Seller of its obligations, representations, warranties or covenants hereunder, (ii) injury to or death of persons or loss of or damage to property occurring on or at the Facility prior to the Closing Date or in any manner growing out of or connected with the use or occupancy of the Facility or the condition thereof, or the use of any adjoining sidewalks, streets or ways on or prior to the Closing Date, (iii) any Third Party Claims, or (iv) any liability which may arise from ownership, use or condition of the Property before the Closing Date to the extent it relates to the ownership or use of the Property before the Closing Date. Seller further agrees to pay any reasonable attorneys' fees and expenses incident to the defense by Purchaser of any such Losses.

c. **Indemnification Claims.** In the event that any liability, claim (including any Third Party Claim), demand or cause of action which is indemnified against by or under any term, provision, Section or paragraph of this Agreement ("**Indemnitee's Claim**") is made against or received by any indemnified party (hereinafter "**Indemnitee**") hereunder, said Indemnitee shall notify the indemnifying party (hereinafter "**Indemnitor**") in writing within twenty one (21) calendar days of Indemnitee's receipt of written notice of said Indemnitee's Claim; provided, however, that Indemnitee's failure to timely notify Indemnitor of Indemnitee's receipt of an Indemnitee's Claim shall not impair, void, vitiate or invalidate Indemnitor's indemnity hereunder nor release Indemnitor from the same, which duty, obligation and indemnity shall remain valid, binding, enforceable and in full force and effect so long as Indemnitee's delay in notifying Indemnitor does not, solely by itself, directly and materially prejudice Indemnitor's right or ability to defend the Indemnified Claim. Upon its receipt of any or all Indemnitee's Claim(s), Indemnitor shall diligently and vigorously defend, compromise or settle said Indemnitee's Claim at Indemnitor's sole and exclusive cost and expense and shall promptly provide Indemnitee evidence thereof within twenty one (21) calendar days of the final, unappealable resolution of said Indemnitee's Claim, provided such claim is for litigation only. In the event of an Indemnitee's Claim unrelated to litigation (e.g., Medicaid takeback), Indemnitor shall be responsible for any damages, costs or expenses to

Indemnitee, including, but not limited to, attorneys' fees incurred as a result of the indemnification event to be paid to Indemnitee within thirty (30) days of written demand for the same. Upon the receipt of the written request of Indemnitee, Indemnitor shall within fourteen (14) calendar days provide Indemnitee a true, correct, accurate and complete written status report regarding the then-current status of said Indemnitee's Claim. Indemnitee may not settle or compromise an Indemnitee's Claim without Indemnitor's prior written consent. Failure to obtain such consent shall be deemed forfeiture by Indemnitee of its indemnification rights hereunder.

d. **Third Party Claim.** As used herein, "**Third Party Claim**" shall mean any claim, suit, or proceeding that is instituted against an Indemnitee by a person or entity other than an Indemnitor and which, if prosecuted successfully, would result in a Loss for which such Indemnitee is entitled to indemnification hereunder.

e. **Basket.** Neither Seller nor Purchaser shall have the right to assert any Indemnitee's Claim unless the claim, in the aggregate with any other claims proposed to be asserted by such Indemnitee, exceeds Fifty Thousand Dollars (\$50,000.00) (the "**Basket**"); provided, however, that if and when such threshold is reached and thereafter, any and all claims shall be payable from the first dollar of such Losses; provided, further, the Basket shall not apply to indemnification for any Losses related to Recapture claims.

f. **Ceiling.** The maximum amount of liability that any party shall have to the other in all circumstances for any and all Losses or any other indemnification obligation related to this Agreement shall not exceed in the aggregate, an amount equal to One Million Dollars (\$1,000,000.00) (the "**Ceiling**").

g. **Indemnification Survival.**

i. The representations and warranties in **Section 13** and **Section 14** and the parties' obligations under this **Section 19** shall survive the Closing and remain effective for a period of for a period of twelve (12) months from the Closing Date, except for those related to the representations and warranties specifically surviving the Closing until barred by applicable law (collectively, the "**Survival Period**").

ii. Notwithstanding any provision herein to the contrary, no claim may be asserted from the breach of any representation, warranty, covenant, or agreement contained herein after the expiration of the Survival Period as set forth in **Section 19(c)(i)**. Notwithstanding any limitation set forth in **Section 19(c)**, neither party shall be precluded from continuing to seek a remedy for claims initiated prior to the expiration of the Survival Period or other deadline for the making of claims or for filing claims or counterclaims that arise out of claims made prior to the expiration of the Survival Period or other deadline for the making of claims.

20. **TERMINATION.**

a. **Termination.** This Agreement may be terminated at any time prior to the Closing under the following circumstances:

i. the mutual written consent of all parties hereto;

ii. by Purchaser, if a condition precedent to Purchaser's obligations hereunder is not satisfied prior to the Closing Date (as the same may be extended) as required by the terms of this Agreement or Seller is in breach of its obligation to consummate the transaction

contemplated by this Agreement pursuant to the terms hereof, and such breach has not been (A) waived in writing by Purchaser, or (B) cured by Seller within ten (10) days after notice to Seller of such breach; provided, however, that in lieu of the termination rights offered under this clause (B), Purchaser may instead seek specific performance of this transaction; or

iii. by Seller, if Purchaser is unable to meet a condition precedent prior to the Closing Date (as the same may be extended) as required by the terms of this Agreement, including, specifically Seller's receipt of Board approval per **Section 16(e)**, or if Purchaser is in breach of its obligation to consummate the transaction contemplated by this Agreement pursuant to the terms hereof, and such breach has not been (A) waived in writing by Seller, or (B) cured by Purchaser within ten (10) days after notice to Purchaser of such breach.

b. Effect of Termination.

i. In the event this Agreement is terminated in accordance with the terms of **Section 20(a)**, the provisions of this Agreement shall immediately become void and of no further force and effect, except with respect to this **Section 20** and as otherwise specifically provided for in this Agreement.

ii. In the event that this Agreement is terminated in accordance with the terms of **Section 20(a)(i)** (including provisions deemed a termination of this Agreement by virtue of that Section), the entire Escrow Deposit shall be delivered to Purchaser and each party will thereafter be relieved of any obligation to the other party with respect to this Agreement, except as otherwise specifically provided for in this Agreement.

iii. In the event that this Agreement is terminated in accordance with the terms of **Section 20(a)(ii)** (or provisions deemed a termination of this Agreement by virtue of that Section), the entire Escrow Deposit shall be returned to Purchaser and Purchaser shall be entitled to reimbursement from Seller of all of Purchaser's out-of-pocket costs and expenses related to the potential acquisition of the Facility including, without limitation, legal fees and fees paid to third parties in connection with Purchaser's Due Diligence Review.

iv. In the event that this Agreement is terminated in accordance with the terms of **Section 20(a)(iii)** (or provisions deemed a termination of this Agreement by virtue of that Section), the entire Escrow Deposit shall be delivered to Seller as Seller's sole and exclusive remedy; provided that the foregoing shall not apply with respect to a termination as a result of conditions under **Sections 16(e)** to be satisfied and in either such case the Escrow Deposit shall be returned to Purchaser, and shall only apply with respect to a termination as a result of the condition under **Section 16(c)** to be satisfied to the extent resulting from a breach by Purchaser of this Agreement.

21. LIABILITIES.

a. **Seller's Liabilities.** Except as otherwise set forth in this Agreement, Purchaser does not assume, and shall not be liable for, any debts, liabilities or obligations of Seller including, but not limited to, any (i) liabilities or obligations of Seller to its creditors, (ii) liabilities or obligations of Seller with respect to any acts, events or transactions occurring after the Closing Date, (iii) liabilities or obligations of Seller for any federal, state, county or local taxes applicable to or assessed against Seller or the assets or business of Seller, or applicable to, incurred by and accrued or assessed against the Facility for periods on or prior to the Closing Date, (iv) contingent liabilities

or obligations of Seller, whether known or unknown by Seller, Purchaser or New Operator, (v) any liabilities with respect to the Facility prior to the Closing Date, or (vi) any other liabilities resulting from any act or failure to act by Seller on or prior to the Closing Date.

b. **Purchaser's Liabilities.** Except as otherwise set forth in this Agreement, Seller does not assume, and shall not be liable for, any debts, liabilities or obligations of Purchaser including, but not limited to, any (i) liabilities or obligations of Purchaser to its creditors, (ii) liabilities or obligations of Purchaser with respect to any acts, events or transactions occurring on or after the Closing Date, (iii) liabilities or obligations of Purchaser for any federal, state, county or local taxes applicable to or assessed against Purchaser or the assets or business of Purchaser, or applicable to, incurred by and accrued or assessed against the Facility on or after the Closing Date, (iv) contingent liabilities or obligations of Purchaser, whether known or unknown by Purchaser, New Operator or Seller, or (v) any other liabilities resulting from any act or failure to act by Purchaser after the Closing Date.

c. **Anti-Sandbagging.** Notwithstanding anything herein to the contrary, neither party shall have liability for any inaccuracy or breach of any representation or warranty if, before the closing, the other party had knowledge of said inaccuracy or breach or the underlying facts giving rise to such inaccuracy or breach.

22. **NOTICES.** Any notice, request or other communication to be given by any party hereunder shall be in writing and shall be deemed adequately given only if (a) sent by personal delivery, (b) by Federal Express or other overnight messenger service, (c) first-class registered or certified mail, postage prepaid, return receipt requested, or (d) by electronic mail, and addressed to the party for whom such notices are intended, addressed in each case as follows:

To Seller: Rock Island County Board
 c/o Richard Brunk, Chair
 1504 Third Avenue
 Rock Island, Illinois 61201
 Email: rbrunk@co.rock-island.il.us

Rock Island County Board
c/o Jim Snider, County Administrator
1504 Third Avenue
Rock Island, Illinois 61201
Email: jsnider@co.rock-island.il.us

with a copy to: Marcus & Millichap
 c/o Ray Giannini, Senior Managing Director
 13890 Bishops Drive, Ste. 300
 Brookfield, WI 53005

with a copy to: Polsinelli PC
 c/o Charles Sheets
 150 N. Riverside Plaza, Ste. 3000
 Chicago, IL 60606

To Purchaser: Aperion Care, Inc.
 4655 West Chase
 Lincolnwood, IL 60712

Attn: Frederick S. Frankel
Email: ffrankel@aperioncare.com

Each such notice and other communication under this Agreement shall be effective or deemed delivered or furnished (a) if given by mail, on the third business day after such communication is deposited in the mail, (b) if given by electronic mail, when such communication is transmitted to the email address specified above if sent before 5:00 p.m. (Central), otherwise on the following business day, and (c) if given by hand delivery, when left at the address specified above, and (d) if sent by recognized overnight carrier, then on the next business day immediately following the day sent. The above addresses may be changed by notice of such change, delivered as provided herein, to the last address designated.

23. **BROKERS.** Seller hereby represents, covenants, and warrants to Purchaser that, except for Marcus & Millichap, it has employed no broker with respect to the transactions contemplated under this Agreement, and Seller hereby indemnifies Purchaser with respect to any claims of brokers claiming to represent Seller with respect to the transactions contemplated under this Agreement. Purchaser hereby represents, covenants, and warrants to Seller that it has employed no broker with respect to the transactions contemplated under this Agreement, and Purchaser hereby indemnifies Seller with respect to any claims of brokers claiming to represent Purchaser with respect to the transactions contemplated under this Agreement.

24. **CONSENT.** Whenever the consent of a party is required hereunder, such consent shall not be unreasonably withheld, delayed or conditioned, unless this Agreement provides that such consent is given at the sole discretion of a party or as otherwise expressly provided for herein to the contrary.

25. **ASSIGNMENT.** Neither this Agreement nor the rights, duties or obligations arising hereunder shall be assignable or delegable by either party hereto without the express prior written consent of the other party hereto; provided, however, that Purchaser shall have the right to assign this Agreement to a newly formed entity such as East Moline Propco, LLC, an Illinois limited liability company or another entity affiliated with Purchaser formed for the purpose of being designated the permitted assignee of Purchaser's rights and obligations under this Agreement, and its rights, privileges and obligations hereunder shall be deemed assigned to such newly formed company. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

26. **EXHIBITS AND SCHEDULES.** Each Recital, Exhibit and Schedule shall be considered incorporated into this Agreement.

27. **TIME IS OF THE ESSENCE.** Time shall be of the essence in this Agreement.

28. **AMENDMENTS; SOLE AGREEMENT.** This Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed by the parties hereto. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter of this Agreement, and the parties acknowledge and understand that, upon completion, all such Schedules and Exhibits shall be deemed to be made a part collectively hereof.

29. **SUCCESSORS.** Subject to the limitations on assignment set forth above, all the terms of this Agreement shall be binding upon and inure to the benefit of and be enforceable by and against the heirs, successors and assigns of the parties hereto.

30. **CAPTIONS.** The captions and table of contents of this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

31. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to conflict of laws' provisions. Each party to this Agreement hereby irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement or any agreements or transactions contemplated hereby shall be brought exclusively in the state courts located in Rock Island County, Illinois, or the federal courts located in the Central District of Illinois, and hereby expressly submits to the personal jurisdiction and venue of such courts for the purposes thereof and expressly waives any claim of improper venue and any claim that such courts are an inconvenient forum. Each party hereby irrevocably consents to the service of process of any of the aforementioned courts in any such suit, action or proceeding by the mailing of copies thereof by certified mail, postage prepaid, to the address set forth in the notice Section hereof, such service to become effective three (3) business days after such mailing.

32. **SEVERABILITY.** Should any one or more of the provisions of this Agreement be determined to be invalid, unlawful or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby and each such provision shall be valid and remain in full force and effect.

33. **USAGE.** All nouns and pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons, firm or firms, corporation or corporations, entity or entities or any other thing or things may require. "Any" or "any" when used in this Agreement shall mean "any and all." The word "including" when used in this Agreement, means "including, without limitation."

34. **HOLIDAYS.** Whenever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday or nationally recognized legal holiday, such time for performance shall be extended to the next business day.

35. **COUNTERPARTS; .PDF SIGNATURES.** This Agreement may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument. Signatures exchanged by email in .pdf format shall be treated as original signatures of the parties for the purposes hereto.

36. **NO JOINT VENTURE.** Nothing contained herein shall 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 shall have any rights under this Agreement.

37. **NO STRICT CONSTRUCTION.** The language used in this Agreement is the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any of the parties hereto.

38. **ATTORNEYS FEES.** If any legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement is brought against any party hereto, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements (in addition to any other relief to which the prevailing party may be entitled).

39. **WAIVER OF JURY TRIAL. EACH PARTY HERETO WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED IN CONNECTION HERewith OR HEREAFTER AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.**

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by persons authorized to do so on behalf of each of them respectively as of the day and year first above written.

SELLER:

THE COUNTY OF ROCK ISLAND, ILLINOIS,
a public body corporate and politic of the
State of Illinois

Attest:

By: _____
Karen Kenney, County Clerk

By: _____
Richard Brunk, County Board Chair

PURCHASER:

APERION CARE, INC., an Illinois corporation

By: _____
Name: _____
Title: _____

Schedule 9(c)(ii)¹

PERMITTED TITLE EXCEPTIONS²

¹[**Note:** Outstanding amount with respect to Notice of Connection to be cleared prior to closing, acceptance of roadway easement subject to review of ALTA survey]

²[**Polsinelli Note:** To be updated upon receipt of new title commitment.]

Schedule 9(c)(iii)

PERMITTED EXCEPTIONS – EASEMENTS AND COVENANTS TO BE RECORDED

1. Declaration of Covenants and Restrictions dated as of even date herewith by the County of Rock Island for the benefit of the Property.

Schedule 13(h)

LITIGATION

None.

EXHIBIT A

LEGAL DESCRIPTION³

Lot 1 of Rock Island Nursing Home Subdivision, a part of the City of East Moline, Illinois, per plat recorded _____, 2018 as Document No. _____, in Rock Island County, Illinois.

Common Address: 4343 Kennedy Drive, East Moline, Illinois 61244
Parcel No.: [92-21-16-200-_____]

³[Polsinelli Note: To be updated.]

EXHIBIT B

STRICT JOINT ORDER ESCROW

EXHIBIT C

OPERATIONS TRANSFER AGREEMENT

Schedule 3(a)(i)

Vehicles

[List Vehicles with Make, Model, Year and VIN.]

Schedule 8(a)

Contracts

[List all Contracts.]

Schedule 8(b)

Assumed Contracts

None, besides payor contracts

Schedule 18(d)

Litigation

None.

OPERATIONS TRANSFER AGREEMENT

by and between

THE COUNTY OF ROCK ISLAND, ILLINOIS,
as Seller,

and

APERION CARE, INC.,
as New Operator

February __, 2020

**Hope Creek Care Center
4343 Kennedy Dr.
East Moline, Illinois 61244**

OPERATIONS TRANSFER AGREEMENT

THIS OPERATIONS TRANSFER AGREEMENT (this “*Agreement*”) is entered into as of the ____ day of February, 2020, by and between The County of Rock Island, Illinois, a public body corporate and politic of the State of Illinois (“*Seller*”), and Aperion Care, Inc., an Illinois corporation, or its permitted assignee (“*New Operator*”).

RECITALS

A. Seller is the owner and licensed operator of that certain 245 bed skilled nursing facility (20 beds of which are Medicare beds), which is licensed for 245 skilled nursing beds, commonly known as Hope Creek Care Center Nursing Home, 4343 Kennedy Drive, East Moline, Illinois 61244 (the “*Facility*”).

B. Seller has or will be entering into that certain Asset Purchase Agreement (the “*Purchase Agreement*”) with New Operator or its assignee (“*Purchaser*”), pursuant to which the Facility and its real and personal property shall be sold to Purchaser.

C. Concurrent with the closing of the transactions contemplated under the Purchase Agreement and this Agreement, on the Commencement Date, New Operator shall be the new licensed operator of the Facility.

D. In order to ensure a smooth transition of the operations of the Facility to New Operator, the parties desire to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, for the mutual promises, representations, warranties and covenants contained herein and in the Purchase Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged by the parties hereto, the parties hereto agree as follows:

1. **COMMENCEMENT DATE.** Although this Agreement shall be effective as of the date first written above, the transfer of operations contemplated by this Agreement shall commence and be effective on and as of the Closing Date, as defined in the Purchase Agreement (the “*Commencement Date*”), and New Operator agrees to cooperate with each other to affect an orderly transfer of the operations of the Facility as of the Commencement Date.
2. **CONDITIONS PRECEDENT.**
 - a. New Operator’s obligation to consummate the transactions contemplated in this Agreement shall be subject to the following conditions precedent on and as of the Commencement Date to the reasonable satisfaction of New Operator or the written waiver thereof by New Operator:
 - i. Seller shall have duly and timely materially performed and fulfilled all of its material duties, obligations, promises, covenants and agreements hereunder, shall not be in breach of any term of this Agreement and the representations and warranties given by Seller to New Operator hereunder shall be materially true and correct, as of such date.
 - ii. Delivery by Seller of a fully executed Bill of Sale for the Supplies (as hereinafter defined) of the Facility.

- iii. Delivery by Seller of a fully executed General Assignment of the Intangible Property (as hereinafter defined) of the Facility.
- iv. Delivery by Seller of a bring-down certificate certifying that all of the representations and warranties made and given by Seller in this Agreement are true and correct as of the Commencement Date.
- v. Consummation of the transactions contemplated under the Purchase Agreement.
- vi. New Operator shall have obtained all necessary government approvals that are required to operate the Facility as a skilled nursing facility under Illinois law (the “*License*”), which may be evidenced by a comfort letter from the Illinois Department of Public Health (“*IDPH*”) approving the transfer of ownership of the Facility contingent upon submission to IDPH of a recorded deed.
- vii. Seller shall notify the Illinois Department of Revenue (the “*IDR*”) and shall request tax clearance certificates from the IDR. No later than three (3) business days prior to the Commencement Date, Seller shall (A) obtain either a full release of claims from the IDR with respect to all debts owed by Seller or a statement setting forth all IDR debts owed by Seller, and (B) provide New Operator with a statement setting forth the amount owed by Seller with respect to all Illinois and federal payroll, assessment and other taxes and all license fees, including supporting materials.
- viii. Seller shall have obtained a Clearance Letter for the Illinois Department of Employment Security (“*IDES*”), and either a full release of claims from the IDES with respect to all debts owed by Seller thereunder, or a statement setting forth the amount to be withheld by Seller, and such amounts shall be held in escrow by Title Company pending the full release of claims by IDES.
- ix. No action or proceeding shall have been instituted, nor any judgment, order or decree entered by any court or governmental body or authority preventing the consummation of the transaction contemplated by this Agreement or the Purchase Agreement, or which could materially and adversely affect New Operator’s ability to operate the Facility as a skilled nursing facility with the same number and type of beds and units as are operating at the Facility on the date hereof.
- x. Since the end of the Inspection Period (as defined in the Purchase Agreement), there shall have been no material adverse change in the condition of the business operations of the Facility. For purposes of this Agreement “material adverse change” shall mean any event, occurrence or change that is materially adverse to the condition of the business operations of the Facility, when taken as a whole, but shall exclude any adverse effect resulting from, arising out of or relation to (A) war or terrorism, (B) acts of God, (C) changes affecting the Illinois senior housing industry generally, (D) changes in business or economic conditions in the United States generally, (E) actions made pursuant to the terms of this Agreement, the Purchase Agreement or with New Operator’s express written consent, or (F) any announcement or disclosure of the pendency of the transactions set forth herein or in the Purchase Agreement.
- xi. There shall be no outstanding Life Safety Code or IDPH violations with a scope and severity level that represents “substandard quality of care” as defined in 42 CFR § 488.301 that have not been corrected at least three (3) business day prior to the Closing Date.

b. Seller's obligations to consummate the transaction contemplated in this Agreement shall be subject to the following conditions precedent on and as of the Commencement Date to the reasonable satisfaction of Seller or the written waiver thereof:

i. New Operator shall have duly and timely materially performed and fulfilled all of its material duties, obligations, promises, covenants and agreements hereunder, shall not be in breach of any term of this Agreement and the representations and warranties given by New Operator to Seller hereunder shall be materially true and correct as of such date.

ii. Delivery by New Operator of a bring-down certificate certifying that all of the representations and warranties made and given by New Operator in this Agreement are true and correct as of the Commencement Date.

iii. Consummation of the transactions contemplated under the Purchase Agreement.

iv. Delivery by New Operator of Certificates of Good Standing from the State of Illinois Secretary of State, certified copies of the Articles of Organization of New Operator and any amendments thereto and a certified copy of the resolutions of New Operator, authorizing the execution, delivery and consummation of this Agreement and the execution, delivery and consummation of all other agreements and documents executed in connection herewith, including all instruments required hereunder, sufficient in form and content to meet the requirements of Illinois law relevant to such transactions and certified by an officer or manager of New Operator as adopted and in full force and effect and unamended as of the Commencement Date.

v. New Operator shall have obtained the License required to operate the Facility as a skilled nursing facility under Illinois law or the comfort letter described in **Section 2(a)(vi)**.

3. CONVEYANCE OF PERSONAL PROPERTY, SUPPLIES AND INTANGIBLE PROPERTY.

a. The property being transferred by Seller to New Operator hereunder (the "**Property**"), which specifically excludes the Excluded Property (as hereinafter defined), shall consist of all of Seller's right, title and interest in and to the following:

i. All supplies used in the operation of the Facility and not otherwise transferred to Purchaser pursuant to the terms of the Purchase Agreement, but specifically excluding all personal property owned by residents of the Facility and all Personal Property and FF&E (as each are defined in the Purchase Agreement) and transferred to Purchaser thereunder) that are located at the Facility and utilized in connection with the operating or managing of the Facility (collectively, the "**Supplies**"). A list of any and all vehicles used in connection with the operation of the Facility is attached hereto and made a part hereof as **Schedule 3(a)(i)**, which shall be transferred from Seller to New Operator on the Commencement Date.

ii. To the extent assignable, the rights of Seller in the Assumed Contracts (as hereinafter defined).

iii. To the extent assignable by Seller, all licenses, permits (including any special use permits from any municipality or county where the Facility is located), certificates of need, accreditations, Medicaid and Medicare provider agreements and certificates of occupancy issued by any federal, state, municipal or local governmental authority relating to the use,

maintenance, management or operation of the Facility, running to or in favor of Seller (“*Assumed Licenses*”).

iv. All intangible property used in connection with the operation of the Facility, including: (A) all telephone numbers presently in use at the Facility, all telephone listings and any website data, (B) all books, files and records of the for current residents of the Facility in its possession (“*Resident Records*”), (C) all books, files and records of current employees of the Facility in its possession (the “*Employee Records*”), (D) any third party warranties associated with the Facility or the Property, to the extent assignable, (E) the rights of Seller under any provider agreements with any private third-party payor programs (excluding the right to any payments, reimbursement and/or recoupment accrued before the Commencement Date), but only to the extent assignable by Seller, (F) all policy and procedure manuals regarding the Facility, and (G) the business and the goodwill associated with the business and the reputation of the Facility (collectively, along with the Assumed Contracts, Assumed Licenses, Warranties and Resident Agreements (each as defined herein), the “*Intangible Property*”).

b. On the Commencement Date, Seller shall deliver to New Operator, at no cost to New Operator, a Bill of Sale for the Supplies of the Facility, which shall convey to New Operator good and marketable right, title and interest in and to the Supplies, free of all liens, encumbrances and security interests of any kind (the “*Bill of Sale*”). New Operator agrees that the presence of the Supplies at the Facility on the Commencement Date shall constitute delivery thereof.

c. On the Commencement Date, Seller shall deliver to New Operator, at no cost to New Operator, a General Assignment for the Intangible Property of the Facility, which shall convey to such New Operator good and marketable right, title and interest in and to the Intangible Property free of all liens, encumbrances and security interests of any kind (the “*General Assignment*”).

4. **EXCLUDED PROPERTY.** Notwithstanding the foregoing, the following shall be excluded from the transfer by Seller to New Operator hereunder (the “*Excluded Property*”): (a) any of Seller’s accounts receivable, accounts payable or liabilities associated with the operation of the Facility prior to the Commencement Date, (b) cash and cash equivalents and third party payor settlements, (c) Seller’s rights under this Agreement and the agreements to be executed in connection herewith, (d) Seller’s organizational documents, (e) personal property owned by residents of the Facility and not by Seller, (f) the Rejected Contracts (as hereinafter defined) and any other contract, agreement, commitment, lease or other arrangement to which Seller is a party or that affects the Facility and that is not assumed by New Operator, (g) any property or confidential or proprietary information of Seller or any of its affiliates that is not primarily used or held in connection with the Facility, (h) all software that cannot be legally assigned and other nontransferable licenses, and (i) personal property owned by third party vendors and leased to Seller or any entity providing services at the Facility for use in connection with the operations of the Facility.

5. **TRANSFER OF RESIDENT TRUST FUNDS.**

a. On or prior to the Commencement Date Seller shall provide to New Operator a true, correct and complete accounting (properly reconciled so that there are no negative balances), certified as being true, correct and complete by of any resident trust funds and an inventory of all residents’ property, if any, held by for residents at the Facility (collectively, the “*Resident Trust Funds*”).

b. Seller hereby agrees to transfer to New Operator the Resident Trust Funds on the Commencement Date shall comply with all governmental statutes, rules and regulations with respect to the transfer of such Resident Trust Funds. New Operator hereby agrees that it will accept the Resident Trust Funds in trust for the residents, in accordance with applicable statutory and

regulatory requirements; provided, however, such transfer shall not relieve Seller of its custodial and fiduciary responsibilities for such funds and property to the beneficiaries thereof for the period prior to the Commencement Date.

c. Seller will indemnify, defend and hold New Operator harmless from all liabilities, claims, demands and causes of action of any nature whatsoever, including reasonable attorneys' fees, in the event the amount of funds, if any, transferred to New Operator did not represent the full amount of the funds delivered to Seller as custodian or with respect to any Resident Trust Funds delivered, or claimed to have been delivered, to but which were not delivered by to New Operator, or for claims which arise from actions or omissions of Seller with respect to the Resident Trust Funds prior to the Commencement Date.

d. New Operator will indemnify, defend and hold Seller harmless from all liabilities, claims, demands and causes of action of any nature whatsoever, including reasonable attorneys' fees, in the event a Resident Trust Funds claim is made against Seller for funds that were transferred to New Operator pursuant to the terms hereof or relating to a Resident Trust Funds claim which arises from actions or omissions of New Operator after the Commencement Date.

6. **CHANGE OF OWNERSHIP APPROVAL.** At least thirty (30) days before the Commencement Date, New Operator shall execute and file any and all forms, notices, consents and applications as may be necessary to obtain (a) the Licenses, (b) the certificate of need approval ("**CON Approval**") required by the State of Illinois, and (c) if allowed, the necessary government approvals that are required to receive reimbursement under Medicaid and the issuance of a Medicaid contract to New Operator upon transfer of ownership (collectively, the "**Government Approvals**") prior to the Commencement Date, including any application with IDPH for approval to become the licensee of the Facility, and any application with the Illinois Department of Healthcare and Family Services ("**HFS**") to become a Medicaid enrolled provider. Seller shall cooperate with New Operator as necessary in the preparation of these applications. Each party hereto agrees to use its best efforts to prepare and deliver to each other party all appropriate information and documents necessary for governmental applications for approval of a change of ownership for the Facility. New Operator's obligations under this **Section 6** shall be at its sole cost and expense. Seller shall be reimbursed by New Operator for any out-of-pocket expenses reasonably incurred in connection with Seller's obligations under this **Section 6**.

7. **MEDICARE AND MEDICAID PROVIDER NUMBERS; FINAL COST REPORTS; RECAPTURE; TAXES AND FEES; CIVIL MONETARY PENALTIES.**

a. Effective on the Commencement Date, Seller shall sell, assign and convey to New Operator the Medicare provider number in use at the Facility (the "**Existing Medicare Provider Number**"), subject to the approval of the United States Department of Health and Human Services Centers for Medicare and Medicaid Services ("**CMS**"), by way of New Operator's submitted 855A Medicare Enrollment Application. New Operator acknowledges and agrees that it shall be prohibited from billing under the Existing Medicare Provider Number until the date of the issuance of the Medicare tie-in-notice by CMS. New Operator shall be permitted to bill all claims incurred during the period commencing on the Commencement Date upon issuance of the Medicare tie-in notice. Seller shall execute any and all documents necessary to and will otherwise cooperate in connection with the assignment of the Existing Medicare Provider Number including, but not limited to, submission of Seller's 855A Medicare Enrollment Application to terminate Seller's participation in the Medicare program. Promptly after the Commencement Date, New Operator will promptly complete its Medicaid Application with HFS to obtain its own Medicaid provider number (the "**Medicaid Provider Number**"). Notwithstanding the foregoing, Seller shall retain any and all rights and obligations relating to the Existing Medicare Provider Number and Medicaid Provider Number for all services rendered prior to the Commencement Date.

b. Seller shall prepare and file with the appropriate Medicare and Medicaid agencies its final cost reports with respect to the operation of the Facility prior to the Commencement Date prior to the deadline for the filing under the applicable third party payor program. Seller agrees to provide New Operator with a copy of the filed final costs reports within three (3) business days after written request from New Operator.

c. New Operator shall notify Seller New Operator, within five (5) business days after receipt of any notice of any claim by the United States Department of Health and Human Services, Office of Inspector General (“**OIG**”), CMS, IDPH, HFS or any other governmental or quasi-governmental agency or contractor for withholding, recoupment, repayment, recapture or recovery of or penalty related to any civil monetary penalty, any alleged overpayment by Medicaid or Medicare or related to any audit, including any alleged underpayment of any tax and/or assessment, if any (“**Provider Tax**”), or for bed taxes or assessments or any associated penalties (all of the foregoing, collectively, “**Recapture**”) for services rendered for the periods prior to the Commencement Date. In the event that the federal or state agencies making payments to New Operator for services performed at the Facility on or after the Commencement Date make any claim for Recapture for any period ending before the Commencement Date, then Seller shall save, indemnify, defend and hold New Operator harmless from and against any loss, damage, injury or expense incurred by New Operator arising from or related to any such claim. In connection with the foregoing indemnification obligation, in the event that OIG, CMS, IDPH, HFS, or any other governmental or quasi-governmental authority, contractor or agency or other third party payor source withholds amounts from New Operator’s reimbursement checks as a result of any Recapture claim, Seller shall pay such amounts to New Operator within thirty (30) days following New Operator’s demand therefor. Seller and shall be entitled to challenge any Recapture claim and if all or any part of such challenge is successful, New Operator will reimburse Seller for the amount received by New Operator from Seller related to the successfully challenged Recapture amount within thirty (30) days of receipt of credit or funds resulting from the successful challenge. Notwithstanding the foregoing, New Operator’s failure to timely notify or make demand on Seller with respect to any Recapture claim shall not void, vitiate or invalidate Seller’s obligations hereunder nor release Seller from any such duty or obligation. The provisions of this subsection shall survive the Commencement Date for a period of three (3) years.

d. Seller shall be and remain obligated for and shall pay on or before the date due thereof all fees, taxes or assessments, including all amounts of Illinois assessment tax or Illinois license fees/taxes accrued through the Commencement Date including, but not limited to, the Illinois licensed bed tax, occupied bed tax and any other bed tax or Provider Tax or assessment, it being acknowledged that bed taxes are based on the assessment month and not the month of reporting. If Seller fail to make said payments on a timely basis and New Operator is required to make said payments or funds are withheld from New Operator’s reimbursement payments, Seller shall pay such amounts and any interest or late fees to New Operator within thirty (30) days following New Operator’s demand therefor. New Operator shall be and remain obligated for and shall pay on or before the date due thereof all fees, taxes and assessments accrued on and after the Commencement Date including, but not limited to, any Provider Tax.

8. **CONTRACTS.**

a. New Operator acknowledges Seller has made available to it true, accurate and complete copies of all written equipment leases, service or maintenance contracts and agreements or other agreements affecting the Facility, including any pharmacy, therapy, managed care, service and employment contracts (collectively, the “*Contracts*”). A schedule of Contracts for the Facility is attached hereto as **Schedule 8(a)**. After execution of this Agreement, Seller shall provide contact information for all third party managed care and insurance providers to allow New Operator to make arrangements for the execution of assignments of contracts or new contracts with such providers.

b. Concurrent with the Commencement Date, this Agreement shall be deemed an assignment of the rights, title and interest by Seller, and an assumption of the duties and obligations by New Operator, of each of the Contracts selected by New Operator to be set forth on **Schedule 8(b)** (the Contracts assumed hereunder, collectively with the Resident Agreements and the Warranties (as each are hereinafter defined), are herein referred to as the “*Assumed Contracts*,” and the Contracts not assumed by New Operator shall be referred to as the “*Rejected Contracts*”). If New Operator desires to assume any Contract that is not an Assumed Contract and delivers to Seller notice of the same within ten (10) business days of the date of this Agreement, then **Schedule 8(b)** shall be updated accordingly. Seller shall remain responsible for all liabilities and obligations (i) under the Rejected Contracts, (ii) under the Assumed Contracts to the extent such liabilities and obligations accrue or arise prior to the Commencement Date, and (iii) for services that were performed or rendered prior to the Commencement Date.

c. To the extent any third party consent is required in connection with the assignment and assumption of the Assumed Contracts, Seller hereby covenant to request such third party consent prior to the Commencement Date, New Operator acknowledging that the failure to obtain such consent shall not be a default hereunder.

d. On the Commencement Date, Seller shall transfer, convey and assign to New Operator pursuant to the General Assignment all existing agreements with residents and, to the extent assignable, any guarantors thereof (“*Resident Agreements*”) and to the extent assignable, any warranties presently held by Seller with respect to the Facility, including any warranties on the heating, ventilation and air conditioning systems and the roof and foundation of the Facility (the “*Warranties*”).

9. **ASSUMPTION OF LIABILITIES.**

a. Except as otherwise set forth in this Agreement, New Operator shall not assume or be liable for any debts, liabilities or obligations of Seller, with respect to the Facility prior to the Commencement Date, including any (i) liabilities or obligations of Seller to its creditors, (ii) liabilities or obligations of Seller with respect to the Contracts for the period prior to the Commencement Date, (iii) liabilities or obligations of Seller with respect to Rejected Contracts, (iv) liabilities or obligations of Seller for any federal, state, county or local taxes applicable to or assessed against Seller, its assets or business, or the Property for periods prior to the Commencement Date, (v) Recapture, penalties, adjustments, overpayments, assessments or charges with respect to Seller’s Medicaid Provider Number or Medicare Provider Number for the period prior to the Commencement Date, (vi) any legal actions related to services provided before the Commencement Date, including any matters relating to cost reports, collections, audits, hearings or legal action arising therefrom, or (vii) any other liabilities resulting from any act or failure to act by Seller prior to the Commencement Date.

b. Except as otherwise set forth in this Agreement, Seller does not assume and shall not be liable for any debts, liabilities or obligations of New Operator or with respect to the Facility on or after the Commencement Date, including any (i) liabilities or obligations of New Operator to its creditors, (ii) liabilities or obligations of New Operator with respect to Assumed Contracts for services rendered on or after the Commencement Date, (iii) liabilities or obligations of New Operator for any federal, state, county or local taxes applicable to or assessed against New Operator or the assets or business of New Operator, or applicable to, incurred by and accrued or assessed against the Facility after the Commencement Date, (iv) Recapture, penalties, adjustments, overpayments, assessments or charges with respect to Seller's or New Operator's Medicaid Provider Numbers or Medicare Provider Numbers for the period on or after the Commencement Date, (v) any legal actions related to services provided on or after the Commencement Date, or (vi) any other liabilities resulting from any act or failure to act by New Operator on or after the Commencement Date.

10. **ACCOUNTS RECEIVABLE; ACCOUNTS PAYABLE.**

a. Seller shall retain the right to collect all unpaid accounts receivable as of 11:59 p.m. on the day prior to the Commencement Date with respect to the Facility to the extent that such accounts receivable relate to services rendered prior to the Commencement Date.

b. To the extent Seller, or New Operator receives any payments for accounts receivable and the accompanying remittance advice or other payer designation does not indicate the period to which a payment relates or if there is no accompanying remittance advice or other payer designation and if the parties do not otherwise agree as to how to apply such payment, then, the parties will be deemed to have agreed that (i) any undesignated payments received during the first sixty (60) days after the Commencement Date shall be applied first to pre-Commencement Date balances for such resident until such balances have been reduced to zero, and any remaining portion shall be applied to post-Commencement Date balances, (ii) any undesignated payments received after the sixtieth (60th) day, but before the one hundred twentieth (120th) day after the Commencement Date, shall be split one-half to each of pre-Commencement Date balances and one-half to post-Commencement Date balances, and (iii) any undesignated payments received after the one hundred twentieth (120th) day after the Commencement Date shall be applied first to post-Commencement Date balances for such resident until such balances as of the date of funds' application have been reduced to zero, with any remaining portion applied to pre-Commencement Date balances, to the extent such resident has a pre-Commencement Date balance.

c. If at any time after the Commencement Date, Seller shall receive any payment from any federal or state agency for services rendered at the Facility on or after the Commencement Date, then Seller, as applicable, shall remit such payments (or an amount equal to such payments) to New Operator within thirty (30) days from identifying such payments. If at any time after the Commencement Date New Operator shall receive any payment from any federal or state agency for services rendered at the Facility prior to the Commencement Date, then New Operator shall remit such payments (or an amount equal to such payments) to Seller within thirty (30) days from identifying such payments.

d. To the extent either party receives payments for accounts receivable of the other party, both parties acknowledge that the party receiving the payment belonging to the other party shall hold the payment in trust, that neither party shall have any right to offset with respect to such accounts receivable, and that the party erroneously receiving the payment shall have no right, title or interest whatsoever in the payment and shall remit the same to the other within thirty (30) days from identifying such payments.

e. To the extent accounts payable have been accrued for a period that includes time both before and after the Commencement Date, the parties hereto shall apportion the responsibility for payment of the same on a pro rata basis based on number of days. Prior to the Commencement Date, Seller and New Operator agree to cooperate with each other to setup new accounts for utilities in New Operator's name and to notify the merchants, suppliers or other third parties that New Operator bears responsibility for accounts payable of the Facility with respect to the post-Commencement Date services related to the Assumed Contracts and utilities.

11. **EMPLOYEES.**

a. Seller shall terminate the employment of all employees providing services at the Facility (the "**Employees**") as of the Commencement Date. New Operator shall not assume any employment contracts to which Seller may be a party including, without limitation, that New Operator shall not assume any collective bargaining agreement of Seller. Seller shall not make any material changes in the compensation or benefits of any employee at the Facility prior to the Commencement Date.

b. Seller shall pay the salaries due to Employees for the period prior to the Commencement Date during its regular payroll cycle.

c. For the employees that the New Operator does not hire, concurrent with the payment of the salaries post-commencement date, Seller shall pay the Employees the amount of any of their sick and vacation pay that will have accrued prior to the Commencement Date.

d. For the employees that the New Operator does hire, Seller shall provide New Operator with a schedule of all the Employees' accrued sick and vacation pay plus the associated payroll taxes ("**Accrued PTO**"), which schedule shall include the value of the Accrued PTO for the fully vested Employees based on their then applicable wages. New Operator and Seller may update the schedule at any time prior to Commencement Date with the updated amounts then becoming the Accrued PTO amounts. The parties acknowledge that certain Accrued PTO will not be due and owing by New Operator to the Employees that New Operator does hire. On the Commencement Date, Seller shall pay to New Operator an amount equal to 85% of the Accrued PTO. New Operator shall assume responsibility for the payment of all of the Accrued PTO, but shall not pay the Employees any Accrued PTO outside the ordinary course of business. The Accrued PTO shall not be subject to adjustments as set forth in **Section 14(c)**. The provisions of this **Section 11(d)** shall survive Commencement Date.

12. **RECORDS.** Seller and shall leave at the Facility either the originals or full and complete copies of all Resident Records and Employee Records.

13. **ACCESS.**

a. Prior to the Commencement Date, Seller shall permit New Operator reasonable access to the Facility and any information reasonably requested in connection with New Operator's due diligence, provided that such access rights are not disruptive to the operations at the Facility and are at all times in compliance with all state and federal laws governing the rights of the residents of the Facility. After the Commencement Date, Seller shall allow New Operator and its agents and representatives reasonable access to (upon reasonable prior notice and during normal business hours) and to make copies of patient records, the books and records and supporting material of the Facility relating to the period prior to the Commencement Date, at New Operator's expense, as applicable, to allow New Operator to investigate and defend malpractice, employee or other claims, and to file or defend cost reports and tax returns.

b. After the Commencement Date, New Operator shall allow Seller and its agents and representatives reasonable access to (upon reasonable prior notice and during normal business hours) and to make copies of the patient records, books and records and supporting material of the Facility relating to the period prior to the Commencement Date, at Seller's expense, as applicable, to allow Seller to investigate and defend malpractice, employee or other claims, and to file or defend cost reports and tax returns.

14. **PRORATIONS.**

a. On and as of the Commencement Date, Seller and New Operator shall prorate revenues and expenses pertaining to the Facility, utility charges for the billing period in which the Commencement Date occurs, Assumed Contracts, prepaid income and expenses, Illinois bed taxes or assessments, personal property taxes, provider taxes and other related items of revenue or expense attributable to the Facility.

b. All prorations between the parties shall be made on the basis of actual days elapsed in the relevant accounting or revenue period and shall be based on the most recent information available to the parties hereto. Utility charges which are not metered and read on the Commencement Date shall be estimated based on prior charges, and shall be re- prorated within five business days after receipt of statements therefor. Seller and New Operator shall jointly arrange for the turnover of the utility services.

c. Except as otherwise set forth herein, all amounts owing from one party hereto to the other party hereto that require adjustment after the Commencement Date shall be settled within thirty (30) days after the Commencement Date or, in the event the information necessary for such adjustment is not available within said thirty (30) day period, within five (5) business day of such information being available, but no later than nine (9) months after the Commencement Date.

15. **POLICY AND PROCEDURE MANUALS.** Seller agree to leave one (1) copy of its policy and procedure manual at the Facility, except for those that are proprietary to Seller, to be retained by New Operator for historical purposes only (and not for ongoing operations) and which may not be duplicated or disseminated by New Operator. Neither Seller make any representation relating to the accuracy or completeness of the policy and procedure manual and any reliance upon the same shall be at New Operator's sole risk and liability.

16. **INDEMNIFICATION.**

a. In addition to any other indemnity set forth herein, but subject to the first dollar Basket and Ceiling described below, New Operator hereby indemnifies and agrees to defend and hold Seller and its successors, assigns, affiliates, managers, members, directors, officers, agents and employees harmless from and against any and all claims, demands, obligations, losses, liabilities, damages, recoveries and deficiencies (including interest, penalties and reasonable attorneys' fees, costs and expenses) (collectively, "**Losses**") which any of them may suffer as a result of:

i. the breach of the representations or the breach of any of the warranties of New Operator herein or given pursuant hereto, if the survival period for the same has not lapsed;

ii. any default by New Operator in the performance of any of its commitments, covenants or obligations under this Agreement;

- iii. any suits, arbitration proceedings, administrative actions or investigations to the extent relating to the operations at the Facility by New Operator on or after the Commencement Date;
- iv. claims which arise after the Commencement Date and relate to periods on or after the Commencement Date with respect to Resident Trust Funds; and
- v. any liability which may arise from operations at, or use or condition of, the Facility on or after the Commencement Date to the extent it relates to the operations at, or use or condition of, the Facility on or after the Commencement Date.

Within thirty (30) days after notice of a claim pursuant to **Section 16(c)**, New Operator shall promptly pay to Seller a sum of money sufficient to pay in full such claim or demand, or promptly cure such breach or contest such claim in accordance with **Section 16(c)** hereof.

b. In addition to any other indemnity set forth herein, but subject to the first dollar Basket and Ceiling described below, Seller hereby indemnifies and agrees to defend and hold New Operator and its successors, assigns, affiliates, managers, members, agents, servants and employees harmless from and against any and all Losses which any of them may suffer as a result of any of the following events:

- i. the breach of any of the representations or the breach of any of the warranties of Seller herein or given pursuant hereto, if the survival period for the same has not lapsed;
- ii. any default by Seller in the performance of any of its commitments, covenants or obligations under this Agreement;
- iii. any suits, arbitration proceedings, administrative actions, investigations or penalties to the extent relating to the operations at the Facility prior to the Commencement Date;
- iv. for claims with respect to the Resident Trust Funds which arise prior to the Commencement Date or relate to period prior to the Commencement Date;
- v. any obligations under any Contracts that shall accrue or relate to periods prior to the Commencement Date or for services that were performed or rendered prior the Commencement Date;
- vi. any claim for Recapture; and
- vii. any liability which may arise from operations at, or use or condition of, the Facility prior to the Commencement Date to the extent it relates to the operations at, or use or condition of, the Facility prior to the Commencement Date.

Within thirty (30) days after notice of a claim pursuant to **Section 16(c)**, Seller shall promptly pay to New Operator a sum of money sufficient to pay in full such claim or demand, or promptly cure such breach or contest such claim in accordance with **Section 16(c)** hereof.

c. In the event that any liability, claim, demand or cause of action which is indemnified against by or under any term, provision, Section or paragraph of this Agreement (“*Indemnitee’s Claim*”) is made against or received by any indemnified party (“*Indemnitee*”) hereunder, said Indemnitee shall notify the indemnifying party (“*Indemnitor*”) in writing within twenty one (21) calendar days of Indemnitee’s receipt of written notice of said Indemnitee’s Claim; provided,

however, that Indemnitee's failure to timely notify Indemnitor of Indemnitee's receipt of an Indemnitee's Claim shall not impair, void, vitiate or invalidate Indemnitor's indemnity hereunder nor release Indemnitor from the same, which duty, obligation and indemnity shall remain valid, binding, enforceable and in full force and effect so long as Indemnitee's delay in notifying Indemnitor does not, solely by itself, directly and materially prejudice Indemnitor's right or ability to defend the Indemnitee's Claim. Upon its receipt of any or all Indemnitee's Claim(s), Indemnitor shall diligently defend, compromise or settle said Indemnitee's Claim at Indemnitor's sole and exclusive cost and expense and shall promptly provide Indemnitee evidence thereof within twenty one (21) calendar days of the final, unappealable resolution of said Indemnitee's Claim, provided such claim is for litigation only. Notwithstanding any other provision hereof, in the event of an Indemnitee's Claim unrelated to litigation (e.g., Medicaid takeback), Indemnitor shall be responsible for any damages, costs or expenses to Indemnitee, including attorney's fees incurred as a result of the indemnification event, to be paid to Indemnitee within thirty (30) days of written demand for the same. Upon the receipt of the written request of Indemnitee, Indemnitor shall within fourteen (14) calendar days provide Indemnitee a true, correct, accurate and complete written status report regarding the then current status of said Indemnitee's Claim.

d. Indemnitee may not settle or compromise an Indemnitee's Claim without Indemnitor's prior written consent. Failure to obtain such consent shall be deemed forfeiture by Indemnitee of its indemnification rights hereunder.

e. Neither Seller nor New Operator shall have the right to assert any Indemnitee's Claim unless the claim, in the aggregate with any other claims proposed to be asserted by such Indemnitee, exceeds Twenty-Five Thousand Dollars (\$25,000.00) (the "**Basket**"); provided, however, that if and when such threshold is reached and thereafter, any and all claims shall be payable from the first dollar of such Losses; provided, further, the Basket shall not apply to indemnification for any Losses related to Recapture claims.

f. The maximum amount of liability that any party shall have to the other in all circumstances for any and all Losses or any other indemnification obligation related to this Agreement shall not exceed in the aggregate, an amount equal to One Million Dollars (\$1,000,000.00) (the "**Ceiling**").

g. The indemnification obligations under this **Section 16** shall survive the Commencement Date for a period of three (3) years.

17. **REPRESENTATIONS AND WARRANTIES OF NEW OPERATOR.** As an inducement to Seller to enter into this Agreement, New Operator covenants and makes the following representations and warranties set forth below, which are true and correct as of the date hereof and which shall be true and correct on the Commencement Date:

a. **Status.** New Operator is a limited liability company, duly organized and validly existing in good standing under the laws of the State of Illinois.

b. **Authority.** New Operator has the full right, power and authority to enter into this Agreement.

c. **Survival of Representations or Warranties.** The representations and warranties of New Operator under **Section 17(a)** (Status) and **Section 17(b)** (Authority) shall survive the Commencement Date of the transaction contemplated hereunder for the maximum period permitted by applicable law.

18. **REPRESENTATIONS AND WARRANTIES OF SELLER.** As an inducement to New Operator to enter into this Agreement, Seller covenants and makes the following representations and warranties, which are true and correct as of the date hereof and which shall be true and correct as of the Commencement Date:

- a. **Status.** Seller is a public body corporate and politic under the laws of the State of Illinois and is duly qualified to own property and conduct business in the State of Illinois.
- b. **Authority.** Seller has the full right, power and authority to enter into this Agreement.
- c. **Litigation; Claims.** There are no lawsuits, investigations, unpaid penalties, unpaid fines, claims or other proceedings pending or, to Seller's knowledge, threatened against Seller specifically related to the Facility or Seller's right to own the Property or Seller's right to enter into this Agreement, other than as set forth in **Schedule 18(d)**. To Seller's knowledge, there are no ongoing audits of the Facility's billing by any third-party payor or any material outstanding claims against Seller by any third party payor.
- d. **Contracts.** Seller has made available to New Operator a copy of each written Contract that affects the Facility. To Seller's knowledge, each of the Contracts is legal, valid, binding and enforceable. Seller knows of no reason why it would be in default under any Contracts related to the Facility.
- e. **Property and Supplies.** Unless specifically permitted pursuant to the terms of this Agreement, Seller has not removed any items of personal property or Supplies from the Facility. Except for the Resident Trust Funds, Seller does not have possession of any other personal property owned by any resident of the Facility.
- f. **AS IS.** New Operator acknowledges and agrees that neither Seller nor any agent or representative of Seller have made, and Seller is not liable or responsible for or bound in any manner by any express or implied representations, warranties, covenants, agreements, obligations, guarantees, statements, information or inducements pertaining to the physical condition of the Supplies, Property or the Facility, including the quantity, character, fitness and quality thereof, merchantability, fitness for particular purpose, the income, expenses or operation thereof, the value and profitability thereof, the structural and mechanical condition of the buildings, structures and improvements situated thereon, the plumbing, heating, air conditioning, electric and ventilating systems serving the Property and any other matter or thing whatsoever with respect thereto. Purchaser acknowledges, agrees, represents and warrants that it has and shall have the opportunity to inspect the Property and all matters comprising the Property, including the Supplies and Facility, and has or shall have access to information and data relating to all of same as Purchaser deems necessary, prudent, appropriate or desirable for the purposes of this transaction. Purchaser acknowledges that it is fully familiar with the Property and Purchaser expressly agrees to accept the Supplies, Property and the Facility "**AS IS, WHERE IS AND WITH ALL FAULTS,**" in its current condition, subject to reasonable wear and tear.
- g. **Life Care Contracts.** The Facility is not a party to any life care contract with any resident of the Facility.
- h. **Audits.** There are no current desk audits or full audits by OIG, CMS, IDPH, HFS, or any other applicable governmental or quasi-governmental regulatory agency in connection with any cost reports filed by Seller.

i. **Licensure.** The Facility is and shall be on the Commencement Date licensed by IDPH as a skilled nursing facility with 245 skilled nursing beds (20 beds of which are Medicare beds). Such license is unrestricted, unconditional, in good standing and in full force and effect and subject to no waivers or limitations. There are no outstanding Life Safety Code deficiencies or violations cited by IDPH, CMS or any state or local building, fire safety or health authorities that have not been corrected as of the date of this Agreement.

j. **Certification.** The Facility is certified for participation in the Medicare and Medicaid reimbursement programs. Such certifications are in good standing and full force and effect and subject to no restrictions or limitations. There are no written claims, demands or other notices of or action alleging the overpayment of Medicare, Medicaid or other governmental or quasi-governmental reimbursements or demands for the return of such alleged overpayments by any third party payor with respect to the Facility.

k. **Violations.** Seller has not received notice that with respect to the Facility it has been charged or implicated in any violation of any state or federal statute or regulation involving false, fraudulent or abusive practices relating to its participation in state or federally sponsored reimbursement programs including, but not limited to, false or fraudulent billing practices. The Facility is not in an open survey cycle (i.e., received violations but not yet found to be in substantial compliance). Seller has not received notice of, nor is aware of facts that may give rise to, any action that has been threatened, taken or recommended by any government authority to revoke, withdraw or suspend its license to operate the Facility or to terminate or decertify any participation of the Facility in the Medicaid or Medicare programs.

l. **Surveys.** Seller has furnished New Operator with true, accurate and complete copies of all surveys, inspection reports and similar examination reports related to the Facility in its possession as of the date of this Agreement (collectively, the “*Surveys*”). Any violations on the Surveys have been cured and addressed by a plan of corrective action.

m. **Utilities.** All utility services, including heat, air conditioning, hot and cold water, telephones, gas and electricity are available at the Facility in quantities sufficient for the present use of the Property. The Facility has not experienced any material disruptions to its operations arising out of any recurring loss of electrical power, flooding, limitations to access to public sewer and water or restrictions on septic service.

n. **Permits.** To Seller’s knowledge, all of the licenses and permits are valid and in full force and effect, and Seller has not received any notice of any violation of such permit or license.

o. **Survival of Representations or Warranties.** The representations and warranties of Seller under this Agreement shall survive the Commencement Date of the transaction contemplated hereunder for the period of twelve (12) months after the Closing Date; except the representations and warranties set forth in **Section 18(a)** (Status) and **Section 18(b)** (Authority), together with any right to indemnification for breach thereof, shall survive the Commencement Date and continue in full force and effect for the maximum period permitted by applicable law.

19. **NO JOINT VENTURE.** Nothing contained herein shall 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 shall have any rights under this Agreement.

20. **EXHIBITS AND SCHEDULES.** If any exhibits or schedules are not attached to this Agreement on the date of execution, the parties agree to attach such exhibits and schedules as soon as reasonably practicable. This Agreement is subject to New Operator approving all exhibits and schedules not attached

hereto on the date hereof, within five business days of submission thereof to New Operator. The parties hereto agree that the party charged with providing an exhibit or schedule to this Agreement shall, to the extent necessary after delivery thereof, amend or supplement all exhibits and schedules in order for the same to be current, true and correct as of the Commencement Date.

21. **EVENTS OF DEFAULT; REMEDIES.** The breach by either Seller or New Operator (as applicable, “*Defaulting Party*”) of any term, provision, condition, promise, covenant, representation, warranty, indemnity, duty or obligation if not cured within ten (10) business days of the earlier of said Defaulting Party’s receipt or refusal of written notice of the same from the other party (“*Non-Defaulting Party*”) shall automatically and without further notice hereunder be an immediate event of default (“*Event of Default*”) entitling Non-Defaulting Party to exercise any remedies available to it hereunder or in law or equity. Non-Defaulting Party’s rights and remedies hereunder shall be cumulative and not mutually exclusive and the exercise by Non-Defaulting Party of one or more rights or remedies shall not be deemed, interpreted or construed as an election of the same or to bar, prevent or preclude the simultaneous or consecutive exercise of any other right or remedy available to Non-Defaulting Party, including the simultaneous or successive pursuit of money damages and injunctive relief. Non-Defaulting Party shall not be required to post any bond, surety or security of any nature whatsoever to pursue injunctive relief, the necessity or requirement for the same being hereby waived by Defaulting Party.

22. **GENERAL PROVISIONS.**

a. Seller and New Operator each agree to use their best efforts to cause the conditions to their obligations and to the other party’s obligations herein set forth to be satisfied at or prior to the Commencement Date. Each agrees to execute and deliver any 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 party to perfect or evidence their rights hereunder. Each shall promptly notify the other party of any information delivered to or obtained by such party which would prevent the consummation of the transactions contemplated hereby, or which would indicate a breach of the representations or warranties of any other party hereto.

b. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be sent by recognized overnight courier, electronic mail or registered or certified mail to the addressed as follows:

To Seller: Rock Island County Board
 c/o Richard Brunk, Chair
 1504 Third Avenue
 Rock Island, Illinois 61201
 Email: rbrunk@co.rock-island.il.us

 Rock Island County Board
 c/o Jim Snider, County Administrator
 1504 Third Avenue
 Rock Island, Illinois 61201
 Email: jsnider@co.rock-island.il.us

with a copy to: Marcus & Millichap
 c/o Ray Giannini, Senior Managing Director
 13890 Bishops Drive, Ste. 300
 Brookfield, WI 53005

with a copy to: Polsinelli PC
c/o Charles Sheets
150 N. Riverside Plaza, Ste. 3000
Chicago, IL 60606

To New Operator: Aperion Care, Inc.
4655 West Chase
Lincolnwood, IL 60712
Attn: Frederick S. Frankel
Email: ffrankel@aperioncare.com

or if written notification of a change of address has been sent, to such other party or to such other address as may be designated in that written notification. Each such notice and other communication under this Agreement shall be effective or deemed delivered or furnished (i) if given by mail, on the third business day after such communication is deposited in the mail, (ii) if given by electronic mail, effective upon transmission if before 5:00 p.m. (Central), otherwise effective the next business day, and (iii) if given by hand delivery or overnight courier, when delivered to the address specified above. Notwithstanding anything herein to the contrary, any notice received by a recipient on a day when the federal banks are closed in Chicago, Illinois shall automatically be deemed and construed to be received on the next regular business day following its receipt.

c. Each party hereto shall bear its own legal, accounting and other expenses incurred in connection with the preparation and negotiation of this Agreement and the consummation of the transaction contemplated hereby, whether or not the transaction is consummated.

d. This Agreement, together with all exhibits and schedules attached hereto and any other agreements referred to herein, constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements.

e. This Agreement may not be modified or amended except in writing signed by the parties hereto.

f. Notwithstanding anything herein to the contrary, neither party shall have liability for any inaccuracy or breach of any representation or warranty if, before the closing, the other party had knowledge of said inaccuracy or breach or the underlying facts giving rise to such inaccuracy or breach.

g. The parties agree that time is of the essence.

h. No waiver of any term, provision or condition of this Agreement, in any one or more instances, shall be deemed to be or be construed as a further or continuing waiver of any such term, provision or condition of this Agreement. No failure to act shall be construed as a waiver of any term, provision, condition or rights granted hereunder.

i. Neither this Agreement nor the rights, duties or obligations arising hereunder shall be assignable or delegable by either party hereto without the express prior written consent of the other party hereto; provided, however, that notwithstanding the foregoing New Operator shall have the right to assign this Agreement to a newly formed entity such as Operator of Quad City Rehab Center, LLC, an Illinois limited liability company, or another entity affiliated with New Operator formed for the purpose of being designated the permitted assignee of New Operator's rights and

obligations under this Agreement, and its rights, privileges and obligations hereunder shall be deemed assigned to such newly formed company. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

j. Captions of paragraphs are for convenience only and are not part of this Agreement and do not affect, change or modify the paragraphs they precede.

k. All understandings and agreements heretofore and between the parties are merged in this Agreement and all exhibits and schedules attached hereto, which alone fully and completely expresses their agreement.

l. This Agreement shall be construed in accordance with the laws of the State of Illinois.

m. EACH PARTY HERETO WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED IN CONNECTION HERewith OR HEREAFTER AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

n. THIS AGREEMENT AND THE OTHER DOCUMENTS EXECUTED IN CONNECTION HERewith SHALL BE GOVERNED AND CONTROLLED BY THE INTERNAL LAWS OF THE STATE OF ILLINOIS AS TO INTERPRETATION, ENFORCEMENT, VALIDITY, CONSTRUCTION, EFFECT, AND IN ALL OTHER RESPECTS. ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE BROUGHT EXCLUSIVELY IN THE STATE OR FEDERAL COURTS LOCATED IN ROCK ISLAND COUNTY, ILLINOIS, AND EACH PARTY HERETO EXPRESSLY SUBMITS TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURT FOR THE PURPOSES THEREOF. TO THE EXTENT LEGALLY WAIVABLE, EACH OF THE PARTIES HERETO HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH PARTIES BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH PARTY, AT THE ADDRESS SET FOR NOTICE IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST SUCH PARTY IN ACCORDANCE WITH THIS SECTION.

o. This Agreement may be executed in counterparts, or by facsimile or electronic submission, each of which shall for all purposes be deemed an original, and all of such counterparts shall together constitute one and the same agreement.

p. All of the provisions of this Agreement shall be deemed and construed to be "conditions" and "covenants" as though the words specifically expressing or importing covenants and conditions were used in each separate provision hereof.

q. The recitals set forth at the beginning of this Agreement constitute an integral part of this Agreement and are hereby incorporated by reference herein and made in the Purchase Agreement hereof as if fully set forth herein.

r. All nouns and pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons, firm or firms, corporation or corporations, entity or entities or any other thing or things may require, or “any” shall mean “any and all,” “or” shall mean “and/or,” and “including” shall mean “including, without limitation.”

s. As used in this Agreement, an individual will be deemed to have “knowledge” of a particular fact or other matter if such individual is actually aware or should have been aware after due inquiry. An entity other than an individual will be deemed to have “knowledge” of a particular fact or other matter if any individual who is serving as a member, manager, director or officer of such entity is actually aware or should have been aware after due inquiry of such fact or other matter. Notwithstanding and without limiting the foregoing, Seller shall be deemed to have knowledge of a particular fact or other matter under this Agreement if Rick Snider has actual knowledge of such fact or other matter.

t. Whenever the under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday or nationally recognized legal holiday, such time for performance shall be extended to the next business day. Unless otherwise specified, in computing any period of time described herein, the day of the act or event on which the designated period of time begins to run shall not be included and the last day of the period so computed shall be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the next day which is not a Saturday, Sunday or a legal holiday. Further, unless otherwise specified, any reference to a specified number of days shall be deemed to refer to calendar days.

u. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but, each term and provision shall be valid and be enforced to the fullest extent permitted by law.

v. The language used in this Agreement is the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any of the parties hereto.

w. The parties hereto, and each of them, represent that in effecting and executing this Agreement, each has received from legal counsel advice as to its and their respective legal rights, irrespective as to whether they have legal counsel at the time of executing this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by persons authorized to do so on behalf of each of them respectively as of the day and year first above written.

SELLER:

THE COUNTY OF ROCK ISLAND, ILLINOIS,
a public body corporate and politic of the
State of Illinois

Attest:

By: _____
Karen Kenney, County Clerk

By: _____
Richard Brunk, County Board Chair

NEW OPERATOR:

APERION CARE, INC., an Illinois corporation

By: _____
Name: _____
Title: _____