

## MANAGEMENT AND TRANSITION AGREEMENT

THIS MANAGEMENT AND TRANSITION AGREEMENT ("Agreement"), dated as of \_\_\_\_\_, is made by and among \_\_\_\_\_, a \_\_\_\_\_ ("Licensee"), \_\_\_\_\_, a \_\_\_\_\_ ("Manager"), \_\_\_\_\_, a \_\_\_\_\_ corporation ("Licensee Parent"), and \_\_\_\_\_, a \_\_\_\_\_ ("New Operator"); and joined by \_\_\_\_\_, a \_\_\_\_\_ ("Owner") solely for the purposes of acknowledging its rights hereunder and approving this agreement between the other parties.

### RECITALS:

A. Owner owns the real estate, improvements, fixtures, furniture and equipment of that certain skilled nursing facility and related operations known as \_\_\_\_\_ located at \_\_\_\_\_ (the "Facility").

B. Pursuant to the terms of that [Lease Agreement] by and between Owner and Licensee dated \_\_\_\_\_, \_\_\_\_\_ (the "Lease") Licensee previously leased the Facility from Owner on terms more fully described therein.

C. On or about \_\_\_\_\_, \_\_\_\_\_, Owner terminated the Lease in accordance with the terms thereof and applicable law.

D. Licensee currently remains in possession of the Facility as a holdover tenant and tenant at sufferance and licensed operator of the Facility and is party to certain Medicare and Medicaid Provider Agreements concerning the rendering of goods and services to beneficiaries of the Medicare and Medicaid programs at the Facility.

E. On \_\_\_\_\_ Licensee, along with various affiliated and subsidiary entities (collectively, the "Debtors"), including Licensee Parent and Manager, each filed for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of \_\_\_\_\_, \_\_\_\_\_ Division (the "Bankruptcy Court" and such court proceedings, collectively, the "Bankruptcy Proceedings" or "Bankruptcy Case") and Licensee continues in business as debtor and debtor in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

F. The parties desire, subject to obtaining the approval of the Bankruptcy Court with respect to the Bankruptcy Proceedings, to arrange for the orderly transition of the operation of the Facility from the Licensee to the New Operator and to document certain terms and conditions relevant to the transition of operational and financial responsibility for the Facility.

G. In order to facilitate the expedient and efficient transfer of the operations to the New Operator as soon as possible, Licensee and New Operator desire that commencing at 12:01 A. M. in time zone applicable to such Facility, on the Effective Date (as hereinafter defined), New Operator shall manage the operation of the Facility pursuant to the terms of this Agreement on an interim basis until the Closing Date (as herein defined) has occurred. For purposes hereof, the "Closing Date shall be the later of: (1) the date New Operator secures such acceptable written

assurances from the appropriate governing authorities as it may deem to be necessary and appropriate to confirm that New Operator has been duly licensed and permitted to operate the Facility under its own operating license (the “New License”), or (2) the date New Operator is duly authorized and certified to participate in the Medicare and Medicaid Programs at the Facility under the assumed and assigned provider agreements (collectively the “Licensure and Certification Approvals”), at which time Licensee will surrender any remaining right, title and interest in, to and under the Facility and its operations to New Operator or its designee and the New Operator shall lease the Facility directly from Owner under the terms of a new lease. The period commencing on the Effective Date and ending on the Closing Date shall be referred to herein as the “Management Period”.

H. For purposes hereof, the “Effective Date” shall be the later of \_\_\_\_\_, or that date on which the Approval Order (as defined below) is entered by the Bankruptcy Court. For purposes of this Agreement, “Approval Order” shall mean an order of the Bankruptcy Court, in form and substance acceptable to both Debtors, New Operator and Owner: (a) approving this Agreement, and authorizing and directing the Debtors party hereto to execute and perform this Agreement, as well as any and all additional documents, instruments, notices or waivers that may be necessary in furtherance thereof (collectively the “Related Agreements”); (b) approving the assumption by Licensee and assignment to New Operator of Licensee’s Medicare and Medicaid Provider Agreements pursuant to Bankruptcy Code Section 365 on the Closing Date; (c) granting Owner an administrative expense claim against the Debtors’ bankruptcy estates pursuant to Bankruptcy Code Sections 365(d)(3) and 503(b)(1)(A) with respect to rent owed in connection with Licensee’s post-petition occupancy of the Facility, the amount of which claim shall either be: (i) consented to by both Licensee and Owner or (ii) determined by the Bankruptcy Court after notice and a hearing prior to the entry of such Approval Order (the “Post-Petition Rent Claim”); (d) authorizing and directing Licensee to pay to Owner the full amount of such Post-Petition Rent Claim in cash or cash equivalent on or before fifteen (15) calendar days after the entry of such Approval Order; (e) approving the provisions for indemnification set forth within Section \_\_\_\_\_ of this Agreement; (f) approving the compromises and settlements between Licensee and Owner that are reflected within this Agreement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); (g) lifting any and all stays or injunctions imposed by Bankruptcy Code Sections 105 or 362 or otherwise as necessary to permit each of Licensee, Owner and New Operator to perform the terms of this Agreement; and (h) waiving application of Bankruptcy Rules 4001(a)(3) and 6004(g) with respect to such Approval Order.

I. Licensee has agreed herein to assume and assign, under the terms of Bankruptcy Code Section 365, its Medicare and Medicaid provider agreements with the Centers for Medicare and Medicaid Services (“CMS”) and the appropriate state agency (the “Existing Provider Agreements”) to New Operator as of the Closing Date. In order to ensure the continued reimbursement to New Operator for services rendered and goods sold by New Operator to Medicare and Medicaid beneficiaries from and after the Effective Date until the Closing Date, Licensee has agreed herein to allow New Operator to bill for such services and goods rendered from and after the Effective Date by New Operator under the Existing Provider Agreements and provider numbers and further agrees that all revenues billed or received by New Operator under the Existing Provider Agreements for services rendered by the New Operator from and after the

Effective Date shall be the sole and absolute property of the New Operator, free and clear of all liens of any nature whatsoever.

**NOW, THEREFORE,** in consideration of the foregoing premises, the mutual obligations and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties set forth herein, **IT IS HEREBY AGREED AS FOLLOWS:**

**Article I**  
**General Provisions**

1. **General Provisions.**

1.1 **Authorization to Manage Facility.** New Operator agrees to manage and, on behalf of Licensee, to operate the Facility in accordance with the terms of this Agreement, during the Management Period on a full time basis, subject to and in accordance with the terms of this Agreement and with all applicable laws. New Operator shall prepare all reports and follow all procedures necessary to maintain, in full force, the Existing Provider Agreements and state licenses necessary to maintain the operation of the Facility as the Facility was previously conducted prior to the Effective Date. Licensee hereby engages New Operator and authorizes it to so manage and operate the Facility during the Management Period.

1.2 **Continued Responsibility of Licensee for Pre-Effective Date Operations.** It is understood that subject to the Bankruptcy Proceedings, during the Management Period, the Licensee is and will remain the responsible licensee of the Facility and, as such, is fully liable and legally accountable at all times to all patients, residents and governmental organizations for all patient and resident care and funds, and all other aspects of the operation and maintenance of the Facility. In this regard, it is specifically emphasized that during the Management Period, the Licensee remains fully liable and legally accountable to the governments of the United States and the State of \_\_\_\_\_, and the agents of said governments, with respect to all matters concerning the Facility's continued participation in the Medicaid and Medicare programs under Title XVIII and XIX of the Social Security Act (42 U.S.C. 1395 et seq.; 42 U.S.C. 1396 et seq.). Notwithstanding the legal and statutory liability and responsibility of Licensee for the continued operation of the Facility, it is recognized that New Operator under this Agreement shall be actually in day-to-day charge of the operation and maintenance of the Facility and of patient and resident care and of their funds in accordance with the terms of this Agreement. In the event that any violation of any statute, law, regulation or obligation or claim is made, for any reason by any person or entity, arising from or applicable to the operation or maintenance of the Facility during the Management Period, including but not limited to patient/resident care, or the handling of their funds, whether such violations or claims may result in the imposition of penalties, fines, court or administrative orders, litigation, including third party and governmental claims, or license revocation or de-certification as to the Facility or as to Licensee, New Operator shall (i) immediately notify Licensee and Owner of any such event, (ii) take all actions necessary to protect the Owner's and Licensee's interest in the Facility, including but not limited to the contesting of any such actions against the Licensee and the Facility, whether administrative or court proceedings, and (iii) after contesting such action(s), indemnify and hold harmless the Licensee and Owner from and pay to Licensee and Owner all direct and indirect losses, costs, expenses, attorneys' fees, fines,

judgments, liens or sums incurred by Licensee and Owner which are caused by such violation or contests. Such amounts shall be payable by New Operator upon demand of Licensee or Owner. New Operator retains the right to join Licensee in contesting said actions upon providing Licensee with such notice.

### 1.3 Application – New License.

(a) New Operator or its designee shall promptly apply for, and diligently pursue, the issuance of the New License. If possible, New Operator shall utilize any “fast track” procedure to attempt to obtain the issuance of the New License.

(b) New Operator shall promptly advise Owner and Licensee of the status of the application for the New License upon request.

(c) New Operator shall have until \_\_\_\_\_, to obtain the New License (“Outside Date”). If New Operator does not obtain the New License on or before the Outside Date, then this Agreement, at the option of New Operator or Licensee, shall terminate and be of no further force and effect and the parties shall have no further rights hereunder.

1.4 Surrender of Licensee. At any time on or after the Effective Date, upon request of New Operator, Licensee shall furnish to New Operator or its designee, in connection with New Operator's application for such Facility license, a letter addressed to the appropriate governing licensing authority stating that the present license will be relinquished to such authority for cancellation upon issuance of the new license and other necessary documentation.

1.5 No Assumption of Liability/ Indemnification Against Operational Claims. In consideration for the agreements of Licensee and Manager set forth herein, New Operator agrees (i) to proceed with all due diligence to secure the Licensure and Certification Approvals. New Operator does not, other than as stated herein, assume any liability of Licensee, the Manager or any other party, person or entity of any nature and shall have no responsibility for any liability of Licensee or Manager or any other party, person or entity of any nature incurred as a result of the operation of the Facility by Licensee or Manager or any other party, person or entity of any nature prior to the Effective Date (collectively the “Operational Claims”), including but not limited to (a) malpractice or other tort claims to the extent based on acts or omissions of Licensee or Manager or any other party, person or entity of any nature occurring on or before the Effective Date, or claims for breach of contract to the extent based on acts or omissions of Licensee or Manager or any other party, person or entity of any nature occurring on or before the Effective Date; (b) any claim relating to the trust funds under Licensee’s or Manager’s or any other party’s, person’s or entity’s control prior to the Effective Date; (c) any accounts payable, taxes or other obligation or liability of Licensee or Manager or any other party, person or entity of any nature to pay money incurred by Licensee or Manager or any other party, person or entity on or before the Effective Date; and (d) any liability to any employees for COBRA benefits and worker’s compensation or employment related issues occurring prior to the Effective Date. Licensee, Licensee Parent and Manager jointly and severally agree to indemnify, defend and hold New Operator harmless for, from and against any and all loss, cost, damage, injury, penalty or expense, including without limitation reasonable attorneys’ fees and expenses, suffered or

incurred by New Operator because of any such Operational Claims or liabilities thereof, but only to the extent such Operational Claims or liabilities relate to a period prior to the Effective Date.

1.6. Assumption and Assignment of Provider Agreements/ Change of Ownership. Licensee agrees to assume and assign, under the terms of Bankruptcy Code Section 365, the Existing Provider Agreements to New Operator as of the Closing Date and the New Operator agrees to assume the same as of the Closing Date.

1.7. Use of Existing Provider Agreements During Management Period. In order to ensure the continued reimbursement to New Operator for services rendered and goods sold by New Operator to Medicare and Medicaid beneficiaries during the Management Period, Licensee has agreed to allow New Operator to bill for such services and goods rendered under the Existing Provider Agreements and provider numbers and further agrees that all revenues billed or received by New Operator or Licensee under the Existing Provider Agreements for services rendered by the New Operator during the Management Period shall be the sole and absolute property of the New Operator, free and clear of all liens of any nature whatsoever.

1.8. Change of Ownership Expenses. New Operator shall be responsible for any and all costs associated with the change of ownership licensing process.

## **ARTICLE II**

### **Management Duties of New Operator During Management Period**

#### **2. New Operator Management Duties**

##### **2.1 Operation of the Facility.**

(a) Best Efforts. During the Management Period, New Operator shall use best efforts to operate the Facility in a commercially reasonable and cost efficient manner.

(b) Standard of Performance. In performing its obligations under this Agreement, New Operator shall use its best efforts and act in good faith and with professionalism in accordance with applicable state and federal rules and regulations, acceptable and prevailing standards of health care. New Operator will not divert patients to any other nursing home facility if such patients can reasonably be admitted and cared for by the Facility consistent with its admission and operating policies and state law.

2.2 Description of Services. During the Management Period, New Operator shall perform the following services in furtherance of the objectives of this Agreement at the sole cost and expense of New Operator:

(a) New Operator shall, in the name of and for the account of New Operator (and not Licensee), perform all those obligations and responsibilities which must be performed in order to operate the Facility in compliance with the terms of this Agreement (except those specifically required by law to be performed by the party licensed to operate the Facility pursuant to applicable state and federal rules and regulations). Notwithstanding anything in this Agreement to the contrary, Licensee shall only be required to perform those obligations specifically required

by law to be performed by the party licensed to operate the Facility pursuant to applicable state and federal rules and regulations and those specifically reserved to Licensee hereunder.

(b) New Operator shall have the obligation and authority to conduct the daily operations of the Facility; provided, however, that, New Operator shall take no action and follow no course of conduct that is illegal or which will or may cause any of the Facility to lose its certification or licensure as a nursing home or its provider numbers under the terms of the applicable regulations, or to suffer a loss of licensed beds at the Facility. New Operator shall take use best efforts to comply with all requirements of the federal government and the state where the Facility are located in order to maintain eligibility for reimbursement from government and private insurers or third party payors. Except with respect to the implementation of any existing plan of correction, New Operator shall not be responsible for any certification deficiencies of the Facility relating to activities prior to the Effective Date.

(c) New Operator shall manage, supervise and conduct a program of regular maintenance and repair at the Facility and at all times during the Management Period operate and maintain the Facility in good operating condition, including all equipment, furnishings and furniture for the Facility and all capital improvements in and to the Facility.

(d) At New Operator's expense, New Operator shall purchase and maintain additional adequate inventory of supplies reasonably anticipated to be used for the operation of the Facility during the Management Period, including, but not limited to, raw food and dietary supplies; nursing, medical, drugs and pharmaceutical supplies; housekeeping and laundry supplies; office supplies; and supplies necessary for repair and maintenance of plant and equipment.

(e) New Operator shall supervise the operation of dietary services.

(f) New Operator shall make periodic evaluations of the performance of all the departments of the Facility.

(g) New Operator shall conduct marketing activities with respect to the Facility, as New Operator deems appropriate.

(h) New Operator may enter into contract services for the Facility, including but not limited to insurance, dietary and social service consulting, contract maintenance, pharmacy, medical, medical supply, patient therapy and rehabilitation services. All such services shall be provided on competitive, arms length terms. At New Operator's option, New Operator may, but shall not be obligated to, continue contracts with existing vendors ("Continued Contracts"). A list of the Continued Contracts is attached hereto as Exhibit "\_\_\_". With respect to those contracts with vendors that are not Continued Contracts, Licensee shall terminate such contracts as of the Effective Date at its own expense.

## 2.3 Payment of Post-Petition Rent

(a) New Operator shall pay directly to Owner, on behalf of Licensee, all post-petition rent as and when due as ordered by the Bankruptcy Court pursuant to Bankruptcy Code Sections 365(d)(3) and 503(b)(1)(A) with respect to rent owed in connection with Licensee's post-petition occupancy of the Facility that is attributable to the Management Period.

#### 2.4 Taxes, Charges and Assessments.

(a) New Operator will not create or suffer to be created any lien, encumbrance or charge against the Facility, except with the consent of the Owner. This paragraph shall not apply to liens, encumbrances, and charges against the Facility in effect as of the Effective Date.

(b) On the Closing Date or as soon as practicable thereafter, New Operator or its designee, as tenant under the Lease, will post new utility deposits. On the Closing Date, Licensee shall be entitled to receive the return of the utility deposits that were posted by it, less any outstanding Pre-Effective Date utility charges.

#### 2.5 Use of the Facility.

(a) The Facility shall only be used as nursing home and for no other purposes. New Operator will not do or permit any act or thing which would reasonably be expected to result in a cancellation of the insurance on the Facility, nor shall New Operator cause or permit any waste of the Facility or any part thereof.

(b) New Operator shall use its commercially reasonable efforts to cause all acts and things done in and about the Facility to be done as required by any statute, ordinance, law, rule, regulation or order of any governmental or regulatory body having jurisdiction of the premises respecting the use or manner of use of the Facility, regulations pertaining to employment and for services for persons unable to pay or pertaining to discrimination or the construction, maintenance or operation thereof, as well as with all orders and requirements of the local Board of Fire Underwriters or any other body which may hereafter exercise similar functions.

2.6 Insurance. During the Management Period, New Operator shall purchase insurance in compliance with the requirements set forth in Exhibit "\_\_\_". On the Effective Date and throughout the term of this Agreement, New Operator shall provide to Owner and Licensee certificates evidencing such insurance. Owner and Licensee shall be named as additional named insureds with respect to the insurance described above.

2.7 Accounts Payable/ Working Capital/ Profits. Except as otherwise provided in this Agreement, Licensee shall have no responsibility for the financial obligations for the operations of the Facility during the Management Period. New Operator shall provide adequate working capital and funds to pay, in the ordinary course of business, all obligations and expenses of any nature incurred in connection with the operation of the Facility during the Management Period, irrespective of whether or not cash receipts of the Facility are sufficient to cover such obligations. New Operator shall not be entitled to any other separate compensation from

Licensee or Owner inasmuch as New Operator is entitled to the Facility profits, if any, after collecting the revenues and bearing the expenses pertaining to the Facility during the Management Period.

## 2.8 Reports.

(a) New Operator shall cause to be prepared such monthly operations and key factors reports, including financial and income statements, together with such other reports as reasonable and customary pertaining to the operation of the Facility and its performance of its obligations hereunder, including but not limited to, any reports required pursuant to any Medicaid, Medicare or any successor program of the federal Department of Health and Human Services or by the State where the Facility is located as the same relate to the Facility operations during the Management Period.

(b) New Operator shall promptly deliver to Licensee and/or Owner, within two (2) business days after request, an update with respect to any information requested pertaining to risk management and/or liability, and any other information reasonably requested by such party.

(c) New Operator shall promptly deliver to Licensee and Owner copies of all notices of any action, proposal or investigation by any agency or entity, or complaint to such agency or entity, known to New Operator, the result of which could be to (i) modify in a way adverse to New Operator or Licensee or revoke or suspend or terminate, or fail to renew or fully continue in effect, any license or certificate or operating authority pursuant to which the Facility are operated, or (ii) suspend, terminate, adversely modify, or fail to renew or fully continue in effect any cost reimbursement or cost sharing program by any state or federal governmental agency, including but not limited to Medicaid or Medicare or any successor or substitute therefor, or seek return of or reimbursement for any funds previously advanced or paid pursuant to any such program, or (iii) impose any bed hold, limitation on resident admission or similar restriction on the Facility, or (iv) prosecute any party with respect to the operation of any activity on the Facility or enjoin any party or seek any civil or criminal penalty.

2.9 Billing. New Operator shall cause the Facility to issue bills for services and materials furnished by the Facility from and after the Effective Date, re-issue bills (except for Medicare bills, which shall continue to be issued and re-issued by Licensee) for services and materials furnished by the Facility before the Effective Date, supervise directly and through others the collection of accounts and monies owed to the Facility for goods sold or services rendered by the Facility before, on and after Effective Date. New Operator shall cooperate with Licensee's efforts to collect such accounts and to enforce the rights of Licensee and/or Facility as creditor under any contract or in connection with the rendering of such services and the sale of such goods.

2.10 Accounting Records. New Operator shall cause the Facility to provide and maintain directly or indirectly through others, accounting, billing, patient and collection records, including, but not limited to, the preparation and filing of insurance, Medicare and Medicaid reports and billing, and any and all necessary reports, claims and rate increase requests related to goods sold or services provided at the Facility during the Management Period.



**ARTICLE III**  
**Facility Transition Matters**

3.1 Cooperation.

(a) Upon the Closing Date, Licensee and Manager shall surrender all of their remaining rights and interests in the Facility and its operations to New Operator or such other designee as acceptable to New Operator and Owner, and Licensee's and Manager's rights pursuant to this Agreement shall automatically terminate and be of no further force or effect. Nothing contained herein shall be construed in any way as a release of any liability or obligations of Licensee or Manager that accrued or arose prior to the Closing Date.

(b) Notwithstanding anything to the contrary contained in this Agreement, the parties shall:

(i) Cooperate with each other in connection with any claim, demand, lawsuit or proceeding arising out of or in any way relating to the ownership and operation of the Facility, including providing and making available for inspection and copying any information that either party reasonably deems useful in prosecuting or defending any such claim, demand, lawsuit or proceeding.

(ii) Make good faith efforts to maintain all licenses, permits and provider numbers relating to the Facility in full force and effect, including renewing such licenses, permits and provider numbers as required at New Operator's expense; and cooperate in transferring/obtaining such licenses, permits and provider numbers to New Operator or its designee, to the extent permitted by law, and assist New Operator or its designee in obtaining the Licensure and Certification Approvals.

(iii) Use reasonable efforts and act in good faith and with professionalism in accordance with applicable state and federal rules and regulations, acceptable and prevailing standards of the health care industry to transition operational responsibility for the Facility to New Operator as soon as possible.

(iv) Make good faith efforts to do and omit from doing such acts and things, in each case as may be necessary to obtain the consent of any public or private health care regulatory agency, Medicare, Medicaid, or third-party payor to the transactions provided for in this Agreement.

4. Conveyance of Transferred Assets/Facility Name.

For and in consideration of the sum of Ten Dollars (\$10.00), Licensee and Manager shall each sell, transfer and convey to New Operator as of the Effective Date (by the execution and delivery of a separate Bill of Sale by each of them in the form attached hereto as Exhibit "B"),

whatever interest each has in all of the inventory, goodwill, telephone numbers, patient lists, records, consumables, supplies and the Facility name, except for the “Retained Equipment” set forth on Exhibit “A” hereto, located at or pertaining to the Facility (the “Transferred Assets”) on an “AS IS WHERE IS” basis, free and clear of all claims and liens. The quantity of Transferred Assets conveyed by Licensee and Manager to New Operator shall be substantially equal to the quantity routinely maintained by Licensee and Manager in the normal course of their operations at the Facility. To the extent that any information comprising the Transferred Assets, including but not limited to patient records, and related financial records, is maintained on Licensee’s or Manager’s computers, which computers will be removed from the Facility on the Effective Date, such information shall be made available for transfer to the New Operator prior to the Effective Date and Licensee and Manager shall act reasonably in cooperating with the New Operator so as to allow New Operator to download such information to its computer systems as of the Effective Date. Neither Licensee nor Manager shall have any obligation to deliver the Transferred Assets to any location other than the Facility, it being understood and agreed that the presence of the Transferred Assets at the Facility on the Effective Date shall constitute delivery thereof.

5. Patient Trust Funds Accounting.

5.1. Patient Trust Funds. On or prior to the Effective Date, Licensee and Manager, at their expense, shall prepare a true, correct and complete accounting of any patient trust funds (collectively the “Patient Trust Funds”) and an inventory of all residents' property held by Licensee and/or Manager on the Effective Date for patients at the Facility and shall submit the same to New Operator for its review and approval. Such accounting of the Patient Trust Funds shall, be certified by an independent certified public accountant if necessary for submission in connection with the Change of Ownership Application, in accordance with applicable law.

5.2. Patient Trust Funds Transfers. Licensee and Manager hereby agrees to transfer such Patient Trust Funds and resident’s property to New Operator on the Effective Date, and New Operator hereby agrees that it will accept such Patient Trust Funds in trust for the patients, in accordance with applicable statutory and regulatory requirements.

5.3. Patient Trust Fund – Non-Liability. New Operator shall have no responsibility to the applicable resident/responsible party and regulatory authorities in the event the Patient Trust Funds delivered to New Operator pursuant to this Agreement are demonstrated to be less than the full amount of the Patient Trust Funds for such residents as of the Effective Date or for any irregularities, inconsistencies, inaccuracies or misapplication of the Patient Trust Funds or resident property prior to the Effective Date by Licensee or Manager or for claims which arise from actions or omissions of Licensee or Manager with respect to the Patient Trust Funds prior to the Effective Date (collectively the “Trust Fund Claims”). Licensee, Licensee Parent and Manager will jointly and severally indemnify, defend and hold New Operator harmless for, from and against all costs, liabilities and expenses arising from any Trust Fund Claims. Notwithstanding anything herein to the contrary, with respect to such indemnification, Licensee is only responsible for indemnification for above mentioned events or failures to act that occurred or accrued up through the transfer of the Patient Trust Funds to the New Operator.

6. Cost Reports and Reimbursement Matters/ Indemnification Against Certain Claims.

6.1. Cost Reports. Licensee and Manager with the assistance of New Operator shall timely prepare and file with the appropriate Medicare and Medicaid agencies its final cost reports and any other operational certifications of any nature (collectively the “Final Cost Reports”) with the applicable agencies with respect to its operation of the Facility as soon as practicable after the Effective Date, but in no event later than the date on which such Final Cost Reports are required to be filed by law under the terms of the Medicare and Medicaid Programs, and will provide the appropriate Medicare and Medicaid agencies with any information needed to support claims for reimbursement made under Licensee’s Existing Provider Agreements either in said Final Cost Reports or in any cost reports filed for prior cost reporting periods, it being specifically understood and agreed that the intent and purpose of this provision is to ensure that the reimbursement paid to New Operator after it becomes the licensed operator of the Facility is not reduced or offset in any manner as a result of the failure to timely file such Final Cost Reports or such supporting documentation with respect to any of Licensee’s or Manager’s operation of the Facility, the past reimbursement claims, including, but not limited to, those included in the Final Cost Report and other cost report adjustments. Licensee shall promptly provide New Operator with copies of such reports and supporting documentation.

6.2. Reimbursement Overpayment, Civil Monetary Penalty and Fraudulent Claims Act Claim Indemnification. In the event the federal or state agencies or other third party payors making payments to Licensee for services performed and goods sold on or prior to the Effective Date make any claim for reimbursement or overpayment occurring for any such period, including but not limited to Medicare and Medicaid overpayment or liabilities, including any depreciation recapture, or for civil monetary penalty or Fraudulent Claims Act liabilities, then Licensee, Licensee Parent and Manager, jointly and severally agree to indemnify, defend and hold New Operator harmless for, from and against any and all loss, cost, damage, injury, penalty or expense, including without limitation reasonable attorneys’ fees, suffered or incurred by New Operator because of any such overpayment or liability, but only to the extent such liability or overpayment relates to a period prior to the Effective Date.

6.3 Change of “Pay To” Address. Licensee and Manager shall take the steps necessary to cause the “pay to” address for Medicaid and Medicare payments that relate to the period from and after the Effective Date to be changed as of the Effective Date to the address of the Facility, or such other address designated by New Operator.

## 7. Employees.

7.1. Termination of Employees. Licensee or Manager shall terminate all of the Facility employees effective as of the Effective Date. Licensee shall be responsible for all earned and accrued wages and benefits, including paid time off, due the employees up to and including the Effective Date. Licensee shall pay directly, as of the Effective Date, to such Employees all unpaid earned and accrued wages and benefits, including paid time off, earned and accrued by and due to the Employees for the period prior to the Effective Date, whether or not such Employees are hired by New Operator. Such payments shall be made within the timeframe that is required by applicable state and/or federal law. Licensee and Manager shall permit New Operator reasonable access to the Employee’s relevant employment information.

7.2. Hiring of Terminated Employees. New Operator shall offer to hire, on a probationary basis, upon the terms and conditions set forth herein, as employees of New Operator at the Facility at least two-thirds (2/3) of the employees of Licensee or Manager who, as of the Effective Date, work at the Facility and have been employed at the Facility on average for 20 hours or more per week. Such employees whose employment is offered to be continued shall be referred to as the “Retained Employees”. Any such employment of a Retained Employee by New Operator shall be on terms which require said Retained Employee to perform comparable services, in a comparable position and at substantially the same base salary as such Retained Employee enjoyed with the Facility prior to the Effective Date, provided that New Operator may offer compensation to such Retained Employees at levels commensurate with compensation levels paid to other Employees holding comparable positions, and provided further that any change in compensation levels does not result in any constructive discharge of such Retained Employees. Licensee or Manager or any of its affiliates shall have the right to employ or offer to employ any Retained Employee who declines to accept employment with New Operator. The Retained Employees who elect to accept employment with New Operator shall hereinafter be referred to as the “Hired Employees”, and as to each of the Hired Employees, New Operator shall recognize each such Hired Employee’s original hire date and shall continue to employ each such Hired Employee for a period of no less than ninety (90) days following the Effective Date unless the employment of such Hired Employee is terminated in accordance with New Operator’s personnel policies or as a result of such Hired Employee’s resignation.

7.3. WARN Act. New Operator, Licensee and Manager acknowledge and agree that the provisions of Section 7.2 are designed solely to ensure that neither Licensee nor Manager is required to give notice to the employees of the Facility of the “closure” thereof under the Worker Adjustment and Retraining Notification Act (the “WARN Act”) or under any comparable state law. Accordingly, New Operator agrees to indemnify, defend and hold harmless Licensee and Manager for, from and against any liability which it may incur under the WARN Act or under comparable state law in the event of a violation by New Operator of its obligations thereunder, including a violation which results from allegations that New Operator constructively terminated the employees of the Facility as a result of the terms and conditions of employment offered by New Operator; provided, however, that nothing herein shall be construed as imposing any obligation on New Operator to indemnify, defend or hold harmless either Licensee or Manager for, from and against any liability which it may incur under the WARN Act as a result of the acts or omissions of Licensee or Manager prior to the Effective Date, including any liability which may result from the aggregation of the acts of Licensee or Manager prior to the Effective Date and the acts of New Operator after the Effective Date, it being understood and agreed that New Operator shall only be liable for its own acts or omissions after the Effective Date. Nothing in Section 7 shall, however, create any rights in favor of any person not a party hereto, including the employees of the Facility, or constitute an employment agreement or condition of employment for any employee of Licensee or Manager or any affiliate of Licensee or Manager who is a Retained Employee or a Hired Employee.

7.4. COBRA. Licensee and Manager shall each offer and provide, as appropriate, group health plan continuation coverage pursuant to the requirements of Section 601, et seq. of ERISA and Section 498B of the Internal Revenue Code (“COBRA”) to all of the employees of the Facility to whom it is required to offer the same under applicable law. Licensee and Manager acknowledge and agree that New Operator is not assuming any of either Licensee’s or Manager’s

obligations to its employees under COBRA or otherwise, except as specifically provided in this Section 7. As of the Effective Date, all active employees of the Licensee and Manager: (i) who participate as of the Effective Date in group health insurance coverage sponsored by Licensee or Manager and (ii) who become employees of the New Operator after the Effective Date, shall be eligible for participation in a group health plan (as defined for purposes of Internal Revenue Code Section 4980B) established and maintained by New Operator for the general benefit of its employees and their dependents and all such employees shall, if permissible under the plan of New Operator, be covered without a waiting period and without regard to any pre-existing condition unless (A) they are under a waiting period with Licensee or Manager at the time of the Effective Date, in which case they shall be required to complete their waiting period while under New Operator's group health plan or (B) they were subject to a pre-existing condition exclusion while under Licensee's or Manager's group-health plan, in which case they shall be subject to the same exclusion while in New Operator's group health plan, which exclusion shall, if applicable, be subject to the same time limitation while in New Operator's employ as was applicable thereto while said employees were in either Licensee's or Manager's employ, with the time limit calculated from the date the same commenced while in either Licensee's or Manager's employ. Licensee, Manager and New Operator acknowledge and agree that it is the intent of this provision that neither Licensee or Manager shall be required to provide continued health coverage under ERISA or Section 4980 of the Internal Revenue Code to any of such employees of the Licensee or Manager who are hired by New Operator or to any qualified beneficiary (as defined for purposes of Section 4980B of the Internal Revenue Code) with respect to any such employees.

7.5. Non-Solicitation of Rehired Employees. Licensee, Licensee Parent and Manager agrees that the employment of the Hired Employees of the Facility will be important to the viability of New Operator's operations at the Facility. Accordingly, Licensee, Licensee Parent and Manager and their affiliates agree that for a period of one (1) year after the Effective Date they will not directly or indirectly solicit the employment of any of such Hired Employees nor shall it take any action to directly or indirectly interfere with their employment relationship with New Operator or to induce them in any manner to terminate their employment relationship with New Operator. Licensee, Licensee Parent and Manager acknowledge and agree that New Operator would not be fully compensated by damages in the event of a breach or threatened breach by either Licensee, Licensee Parent or Manager of this provision and accordingly agrees that New Operator shall be entitled, without the need to post a bond, to seek an injunction to restrain such violation or threatened violation of this Section 7.5. For purposes of this Section 7.5, the placement of employment notices or advertisements which identify employment opportunities at other facilities owned or operated by Licensee, Licensee Parent or Manager or any of its respective affiliates, in newspapers or other advertising media, or the conducting of interviews with persons who respond to such notices or advertisements shall not constitute direct solicitation in violation of this Section 7.5.

7.6. No Assumption of Employer Liability. New Operator is not assuming any liability (including without limitation, all administrative functions) for any employee claims, including but not limited to worker's compensation claims existing as of the Effective Date relating to any pending claims or claims made subsequent to the Effective Date with respect to incidents which occurred prior to the Effective Date by any present or former employee of Licensee or Manager in connection with their employment at the Facility; New Operator shall be responsible for

claims made subsequent to the Effective Date based on incidents or conditions arising subsequent to the Effective Date. Notwithstanding anything herein to the contrary, New Operator shall not have any liability or obligation under any benefit plan currently maintained by the Licensee and Manager for its employees.

8. Accounts Receivable.

8.1. Licensee's Receivables. Licensee and/or Manager shall retain their respective right, title and interest in and to all unpaid accounts receivable with respect to the Facility which relate to the period prior to the Effective Date, including, but not limited to, any accounts receivable arising from rate adjustments which relate to the period prior to the Effective Date even if such adjustments occur after the Effective Date and Licensee shall remain liable for any overpayments made to Licensee prior to the Effective Date for which payment is due to Medicare, Medicaid or any other third party payor after the Effective Date. On the Effective Date, or as soon thereafter as practical, Licensee and Manager shall provide New Operator with a schedule, setting forth by patient, its respective outstanding accounts receivable as of the Effective Date. Licensee and Manager will permit New Operator access to Licensee's and Manager's resident financial and medical records, during normal business hours, to audit and verify, at New Operator's sole expense, and without interference to Licensee's and Manager's business operations, certain factual matters for third party billing purposes. New Operator shall account for and transmit to the Manager and/ or Licensee any collections of receivables, received by New Operator, which relate to the period prior to the Effective Date.

8.2. Third Party Payments. Payments received by New Operator after the Effective Date from third party payors, such as Medicare, Medicaid, managed care organizations and VA, shall be handled as follows:

8.2.1. If such payments either specifically indicate on the accompanying remittance advice, or if the parties agree, that they relate to the period prior to the Effective Date, they shall be forwarded to Licensee, along with the applicable remittance advice, within five (5) days after receipt thereof; and

8.2.2. If such payments indicate on the accompanying remittance advice, or if the parties agree, that they relate to the period on or after the Effective Date, they shall be retained by New Operator.

8.2.3. If such payments indicated on the accompanying remittance advice, or if the parties agree, that they relate to periods both prior to and after the Effective Date, the portion thereof which relates to the period on and after the Effective Date shall be retained by New Operator and the balance shall be remitted to Licensee within five (5) days after receipt thereof.

8.3. Specified Private Payments Received by Any Party. Any payments received by Licensee or Manager after the Effective Date from or on behalf of private pay patients with outstanding balances as of the Effective Date which specifically designate on such payment the period to which they relate, will first be applied to such specified period designated, with any excess applied to reduce the patient's oldest pre-Effective Date balances, within five (5) days after receipt thereof.

8.4. Unspecified Private Payments Received by Any Party. Any payments received by New Operator during the first thirty (30) days after the Effective Date from or on behalf of private pay patients with outstanding balances as of the Effective Date which fail to designate the period to which they relate, will first be applied for the benefit of the Licensee or the Manager to reduce the patient's oldest pre-Effective Date balances, with any excess applied to reduce any balances due for services rendered by New Operator after the Effective Date. After said thirty (30) day period after the Effective Date, such unspecified private pay payments will first be applied for the benefit of New Operator to reduce the patient's existing balances which arise or accrue from and after the Effective Date, with any excess applied to reduce any balances due for services rendered by Licensee or Manager prior to the Effective Date.

8.5. Recovery of Accounts Receivable. Nothing herein shall be deemed to limit in any way Licensee's, Manager's or New Operator's rights and remedies to recover accounts receivable due and owing such party under the terms of this Agreement.

8.6. Misapplied Payments. In the event the parties mutually determine that the parties hereunder misapplied any payment, the party that erroneously received, said payment shall remit the same to the other within five (5) days after said determination is made.

8.7. Access to Accounts Receivable Records. Upon reasonable notice and during normal business hours, Licensee, Manager and New Operator shall each have the right to inspect all receipts of the other party in order to confirm the other party's compliance with the obligations imposed on it under this Section.

8.8. Accounts Receivable Lock Box Account. Licensee and Manager acknowledge that all of the revenues from any accounts receivable or billings concerning the Facility are deposited into a lockbox account, # \_\_\_\_\_ located at \_\_\_\_\_ and known as \_\_\_\_\_ (the "Lock Box Account").

8.9. Right of Offset. New Operator shall have the right to offset against any such payments due to Licensee, Licensee Parent or Manager for any amounts that are due and owing to it from Licensee, Licensee Parent or Manager under the terms of this Agreement. Similarly, Licensee shall have the right to offset against any such payments due to New Operator for any amounts that are due and owing to it from New Operator under the terms of this Agreement.

## 9. Prorations.

9.1. Facility Expense and Revenues. Expenses pertaining to the billing period in which the Effective Date occurs, real and personal property taxes, prepaid expenses (excluding insurance premiums and licensing fees, which are accepted by New Operator at New Operator's sole discretion), utility charges and other related items of revenue or expense attributable to the Facility shall be prorated between Licensee and Manager on the one hand and New Operator on the other hand as of the Effective Date. With respect to prorations, all expenses incurred in the operation of the Facility prior to the Effective Date are subject to Licensee's Bankruptcy Proceedings. In general, such prorations shall be made so as to reimburse such party for prepaid expense items and to charge the responsible party for prepaid revenue items and expenses to the

extent that the same are attributable to periods after the Effective Date. The intent of this provision shall be implemented by New Operator remitting to Licensee and Manager any invoices which reflect an invoice prior to the Effective Date and by New Operator assuming responsibility for the payment of any invoices which reflect an invoice date on and after the Effective Date with any overage or shortage in payments by either party to be adjusted and paid as provided in Sections 9.2 and 9.3 below, provided that with respect to invoices which have a date after the Effective Date, such invoices are invoices for goods, products or services which were ordered by New Operator and not Licensee or Manager. To the extent Manager has ordered goods, products and services before the Effective Date, which are invoiced after the Effective Date, New Operator shall only assume responsibility for the payment of such invoices if New Operator has accepted such products, goods and services. Subject to the Bankruptcy Proceedings, Manager and Licensee shall be solely responsible to pay on a timely basis all claims or charges that are owed to third parties arising from the use, operation, or control of the Facility prior to the Effective Date.

9.2. Basis for Prorations. All such prorations shall be made on the basis of actual days elapsed in the relevant accounting, billing or revenue period and shall be based on the most recent information available. Utility charges that are not metered and read on the Effective Date shall be estimated based on prior charges, and shall be re-prorated upon receipt of statements therefor as of the Effective Date.

9.3. Settlement of Prorations. All amounts owing that require adjustment after the Effective Date shall be settled within thirty (30) days after the Effective Date or, in the event the information necessary for such adjustment is not available within said thirty (30) day period, then as soon thereafter as practicable.

## 10. Access to Records.

10.1 Delivery of Records. On the Effective Date Licensee and Manager shall deliver to New Operator all of the records of the Facility, including, but not limited to, patient medical and financial records and employee personnel and health records to comply with all state and federal laws and regulations. Nothing herein shall be construed as precluding either Licensee or Manager from removing from the Facility on the Effective Date (i) the financial records which relate to its operations at the Facility (provided that copies thereof will be made available to New Operator at the Effective Date) and/or to its overall corporate operations, (ii) copies of the records of employees of the Facility who will not be hired by New Operator, (iii) records of former employees of the Facility whose employment terminated three years or more before the Effective Date, (iv) records of former patients of the Facility who were discharged more than seven years prior to the Effective Date and (v) copies of the records of former patients of the Facility who were discharged more than 12 months prior to the Effective Date. Notwithstanding the foregoing, in the case of the records described in clauses (iii), (iv) and (v) the following provisions shall apply (A) within fourteen (14) days after the Effective Date, Licensee and Manager shall provide New Operator with a list of the records removed, (B) from time to time Licensee and Manager shall return to New Operator the original relevant file in the event New Operator subsequently receives an application for employment from or elects to re-hire any employee whose file was removed pursuant to clause (iii) or readmits any patient whose file was removed pursuant to clauses (iv) or (v), (C) unless otherwise required by applicable state or



federal law or regulation, on the seventh anniversary of the Effective Date New Operator shall forward to a location designated by Licensee and Manager, at Licensee's and Manager's sole cost and expense, all of their respective patient files which remained at the Facility on the Effective Date pursuant to clauses (iv) or (v) which relate to patients who have not, as of said anniversary date, been readmitted to the Facility and (D) Licensee and Manager shall give New Operator access to any information in any such removed records as New Operator may reasonably demonstrate is necessary for the efficient operation, maintenance and defense of the Facility and New Operator's business therein by New Operator.

10.2. Copies of Records for Investigations. For a period of three (3) years subsequent to the Effective Date, New Operator shall allow Licensee and Manager and their agents and representatives to have reasonable access to (upon reasonable prior notice and during normal business hours), and to make copies of, the books and records and supporting material of the Facility relating to the period prior to the Effective Date, to the extent reasonably necessary to enable Licensee and Manager to investigate and defend malpractice, employee or other claims, to file or defend cost reports and tax returns and to verify accounts receivable collections due Licensee and Manager.

10.3. Removal of Original Records. Licensee and Manager shall be entitled to remove the originals of any records delivered to New Operator, for purposes of litigation involving a patient or employee to whom such record relates, if an officer of or counsel for Licensee and Manager certifies that such original must be produced in order to comply with applicable law or the order of a court of competent jurisdiction in connection with such litigation and a complete copy is left at the Facility. Any record so removed shall promptly be returned to New Operator following its use, and nothing herein shall prohibit New Operator from retaining copies of such documents.

10.4. Maintenance of Records. New Operator agrees to maintain such books, records and other material comprising records of the Facility's operations prior to the Effective Date that have been received by New Operator from Licensee and Manager or otherwise, including, but not limited to, patient records and records of patient funds, to the extent required by law, but in no event less than three (3) years, and shall allow Licensee and Manager a reasonable opportunity to remove such documents, at Licensee's and Manager's expense, at such time after such record retention period as may be required by law as New Operator shall decide to dispose of such documents.

## 11. No Assumption of Operating Contracts.

Except for the Existing Provider Agreements, Licensee shall not assign and Licensee and Manager will terminate all of the contracts relating to the operation of the Facility effective as of the Effective Date (the "Operating Contracts") and New Operator shall not assume any of the Operating Contracts. The parties hereto recognize and agree that the Existing Provider Agreements will be assumed by Licensee and be automatically assigned from Licensee to the New Operator as a result of the New License Change of Ownership process, this Agreement and the Bankruptcy Court Order thereto, without the necessity for any further action, assignment or documentation on the part of the New Operator or Licensee and that until such time as the new Medicare and Medicaid provider numbers are issued to New Operator, New Operator shall be

permitted the right to bill for services rendered during the term of this Agreement utilizing Licensee's Medicare and Medicaid provider numbers relating to the Existing Provider Agreements, which have been assigned to the New Operator.

12. Policy and Procedure Manuals.

Licensee and Manager agree to leave their respective policy and procedure manuals at the Facility for a period of sixty (60) days after the Effective Date and New Operator agrees to forward such manuals to a location designated by Licensee and Manager, at New Operator's sole cost and expense, at the end of such sixty (60) day period, it being understood and agreed that the maintenance of such manuals until new manuals are delivered to the Facility by New Operator is critical to the ongoing compliance of the Facility after the Effective Date with applicable licensure and certification laws.

13. Computer Systems.

New Operator acknowledges and agrees that Licensee or Manager has advised it that Licensee intends to remove from the Facility all of the leased computers and time clock at the Facility listed on Exhibit "A" hereto, which are connected to Manager's corporate accounting and medical records network and the Retained Equipment. Within five (5) prior to the Effective Date, Licensee or Manager will provide a list of the computer systems and software that will be removed on or after the Effective Date. Each of Licensee and Manager acknowledges and agrees that in order to assist New Operator in ensuring the continued operation of the Facility after the Effective Date in compliance with applicable law and in a manner which does not jeopardize the health and welfare of the residents of the Facility, to leave such computer systems at the Facility for a period of up to ninety (90) days after the Effective Date, in order to enable New Operator to obtain the necessary copies of such records and orders. Licensee and Manager further acknowledge and agree that any computers and printers located within the Facility, which are not listed on Exhibit "A", shall remain at the Facility.

14. Representations and Warranties By New Operator. New Operator hereby represents and warrants as follows:

14.1. Power and Authority. New Operator has or as of the Effective Date will have all necessary power and authority to operate the Facility, to purchase and own the Transferred Assets and to carry on its business as contemplated hereunder. New Operator has all necessary power and authority to enter into this Agreement and to execute all documents and instruments referred to herein or contemplated hereby and all necessary action has been taken to authorize the individual executing this Agreement to do so. This Agreement has been duly and validly executed and delivered by New Operator and is enforceable against New Operator in accordance with its terms.

14.2. Completeness of Representation. Unless otherwise indicated in a specific representation or warranty contained herein, each representation and warranty of New Operator hereunder shall be true, complete and correct in all material respects as of the Effective Date with the same force and effect as though such representation or warranty was made on such date, and all representations and warranties shall survive the Effective Date for the period of one (1)

year; provided, however, that if Licensee notifies New Operator in writing of a claim prior to the expiration of such one (1) year period such representation or warranty shall survive until the resolution of such claim.

15. Representations and Warranties By Licensee.

Licensee hereby represents and warrants as follows:

15.1. Power and Authority. Licensee has all necessary power and authority subject to Bankruptcy Court approval, to enter into this Agreement and to execute all documents and instruments referred to herein or contemplated hereby and to consummate the transaction provided for herein, including, but not limited to, the sale to New Operator of the Transferred Assets, and all necessary action has been taken to authorize the individual executing this Agreement to do so. This Agreement has been duly and validly executed and delivered by Licensee and is enforceable against Licensee in accordance with its terms.

15.2. Organization. Licensee is a \_\_\_\_\_ validly existing under the laws of the State of \_\_\_\_\_, and has the power, limited liability company or otherwise, to own or lease and operate its properties and assets and conduct its business as such business is conducted. Licensee is duly qualified as a foreign company in the state where the Facility is located.

15.3. Litigation. There is no action, suit, inquiry, proceeding or investigation by or before any court or governmental or other regulatory or administrative agency or commission pending or to Licensee's knowledge threatened against or involving the Facility, which challenges the validity of this Agreement or any action taken or to be taken by Licensee pursuant to this Agreement or in connection with the transactions contemplated by this Agreement.

15.4. Broker's Fees. Licensee has not entered into or will enter into any agreement, arrangement or understanding with any person or firm which will result in the obligation of New Operator to pay any finder's fee, brokerage commission or similar payment with respect to the transactions contemplated by this Agreement.

15.5. Completeness of Representation. Unless otherwise indicated in a specific representation or warranty contained herein, each representation and warranty of Licensee hereunder shall be to the best of Licensee's knowledge true, complete and correct in all material respects as of the date hereof and as of the Effective Date with the same force and effect as though such representation or warranty was made on such date.

15.6. Compliance with Laws. Except as otherwise set out herein or in a writing delivered at or prior to the effective date of execution hereof, or as disclosed in state regulatory surveys, Licensee has complied in all respects with all laws, ordinances, regulation, licensing or certification requirements, rules, injunctions, writs, decrees, awards or orders applicable to the Facility, including, without limitation, any thereof relating to wages, hours, hiring, promotions, retirement, working conditions, nondiscrimination, health, safety, pensions, employee benefits, trade regulation, antitrust, warranties and the production, labeling, marketing or sale or distribution of products.

15.7 Environmental Matters. Licensee has not received written notice of the violation of any federal or state environmental statute, law, ordinance or regulation with respect to the Facility.

15.8 Conveyance of Transferred Assets.

(a) The Transferred Assets are either owned by Licensee or Manager and are not a replacement or a part of the Lease.

(b) Licensee has, subject to Bankruptcy Court approval all requisite power and authority to convey the Transferred Assets to New Operator.

(c) The sale and transfer of the Transferred Assets pursuant to this Agreement and the Approval Order approving same, shall be free and clear of all liens, claims, pledges, security interests, charges, mortgages, hypothecation, encumbrances, restrictions, title retention agreements, purchase options or any other claim or encumbrance of any nature whatsoever (collectively “Liens”).

15.9 Adverse Claims. Except for the Bankruptcy Proceedings, there is no (a) litigation, audit or proceeding pending against Licensee before or by any court, public board or body, governmental or administrative agency or instrumental or administrative agency or instrumentality regarding the Facility or the purchased assets, (b) unpaid property tax or assessment against the Facility or (c) pending condemnation proceeding or assessment against the Facility. All billed utility charges payable with respect to the Facility have been paid and no utility is making any claim for due or past due statements, and there are no mechanics', materialmen's or similar claims or liens currently claimed against the Facility for work performed prior to the date hereof.

15.10 Patient Trust Accounts; Resident Records. For the period of its operation of the Facility, Licensee has dealt with the resident and patient records and trust funds as prescribed by law.

15.11 No Conflicts. This Agreement and the consummation of the transactions contemplated hereby do not conflict with, cause a default under or require consent under any agreement, contract, judgment or other obligation bearing on Licensee other than the consent of the Bankruptcy Court anticipated to occur in the form of the Approval Order.

15.12 Cooperation. Licensee agrees to cooperate with New Operator by supplying any and all information, at New Operator's sole cost and expense, that may be reasonably required to effect an orderly transfer of the operations of the Facility, including but not limited to, any documents that may be necessary to complete the application for change of ownership and licensure of the Facility to the New Operator.

15.13 Medicare and Medicaid Provider Agreements. Licensee shall, on or prior to the Effective Date, assume the Medicare and Medicaid Provider Agreement and Provider Numbers relating to the Facility (the “Provider Agreements”) in the Bankruptcy Proceedings, and will, on

or before the Effective Date assign such Provider Agreements to the New Operator, subject to the terms hereof. If and to the extent that any payment or performance shall be required in order to cure any defaults as a condition to the assumption and assignment of any of the Provider Agreements, then, on or before the Effective Date, Licensee shall perform and/or pay for or to the applicable governmental authority or agency such acts and/or sums (if any) as shall be required to cure any such default and to permit the transfer of the Provider Agreements.

15.14 Payment of Operating Costs and Prorations. Licensee and Manager shall be responsible for, and shall pay on a timely basis, claims or charges which are owed to third parties arising from its ordinary use, operation or control of the Facility, including payroll, paid time off, utilities, etc., which claims or charges were incurred in and attributable to the period prior to the Effective Date.

15.15 Continuity of Business. Prior to the Effective Date:

(a) Licensee shall use commercially reasonable efforts to keep the business and organization of the Facility intact and to preserve for New Operator the goodwill of suppliers, distributors, residents and others having business relations with Licensee with respect to the Facility;

(b) Licensee shall engage only in transactions or other activities with respect to the Facility which are in the ordinary course of its business and the business of the Facility, shall maintain the Transferred Assets and supplies at normal operating levels and shall not sell or remove any personal property (other than the Retained Equipment) except in the ordinary course of business;

(c) Licensee shall keep in full force and effect, and shall maintain levels of insurance coverage consistent with, those required under the Lease; and

(d) Licensee shall maintain in force all permits and licenses and Licensee's Medicare and Medicaid certifications and provider agreements required for operation of the Facility, and shall renew any such permit which expires prior to the Effective Date. If, prior to the Effective Date, Licensee receives notice that any permit has expired and is not renewed, or has been suspended or revoked, Licensee shall promptly notify Owner or New Operator, as appropriate, and shall use reasonable efforts to have such permit reinstated or extended.

## 16. Representations and Warranties By Manager.

Manager hereby represents and warrants as follows:

16.1. Power and Authority. Manager has all necessary power and authority to enter into this Agreement and to execute all documents and instruments referred to herein or contemplated hereby and to consummate the transaction provided for herein, including, but not limited to, the sale to New Operator of the Transferred Assets, and all necessary action has been taken to authorize the individual executing this Agreement to do so. This Agreement has been duly and validly executed and delivered by Manager and is enforceable against Manager in accordance with its terms.

16.2. Organization. Manager is a \_\_\_\_\_ validly existing under the laws of the State of \_\_\_\_\_, and has the power, limited liability company or otherwise, to own or lease and operate its properties and assets and conduct its business as such business is conducted. Manager is duly qualified as a foreign company in the state where the Facility is located.

16.3 Litigation. There is no action, suit, inquiry, proceeding or investigation by or before any court or governmental or other regulatory or administrative agency or commission pending or to Manager's knowledge threatened against or involving the Facility, which challenges the validity of this Agreement or any action taken or to be taken by Manager pursuant to this Agreement or in connection with the transactions contemplated by this Agreement.

16.4 Broker's Fees. Manager has not entered into or will enter into any agreement, arrangement or understanding with any person or firm which will result in the obligation of New Operator to pay any finder's fee, brokerage commission or similar payment with respect to the transactions contemplated by this Agreement.

16.5 Completeness of Representation. Unless otherwise indicated in a specific representation or warranty contained herein, each representation and warranty of Manager hereunder shall be to the best of Manager's knowledge true, complete and correct in all material respects as of the date hereof and as of the Effective Date with the same force and effect as though such representation or warranty was made on such date, and all representations and warranties shall survive the Effective Date for a period of one (1) year, provided, however, that if New Operator notifies Manager in writing of a claim prior to the expiration of such one (1) year period the claim under such representation or warranty shall survive until the resolution of such claim.

16.6 Compliance with Laws. Except as otherwise set out herein or in a writing delivered at or prior to the effective date of execution hereof, or as disclosed in state regulatory surveys, Manager has complied in all respects with all laws, ordinances, regulation, licensing or certification requirements, rules, injunctions, writs, decrees, awards or orders applicable to the Facility, including, without limitation, any thereof relating to wages, hours, hiring, promotions, retirement, working conditions, nondiscrimination, health, safety, pensions, employee benefits, trade regulation, antitrust, warranties and the production, labeling, marketing or sale or distribution of products.

16.7 Environmental Matters. Manager has not received written notice of the violation of any federal or state environmental statute, law, ordinance or regulation with respect to the Facility.

16.8 Conveyance of Transferred Assets.

(a) The Transferred Assets are either owned by Manager or Licensee and are not a replacement or a part of the Lease.

(b) Manager has all requisite power and authority to convey the Transferred Assets to New Operator.

(c) The sale and transfer of the Transferred Assets is free and clear of all Liens.

16.9 Patient Trust Accounts; Resident Records. For the period of its operation of the Facility, Manager has dealt with the resident and patient records and trust funds as prescribed by law.

16.10 Adverse Claims. Except for the Bankruptcy Proceedings, there is no (a) litigation, audit or proceeding pending against Manager before or by any court, public board or body, governmental or administrative agency or instrumental or administrative agency or instrumentality regarding the Facility or the purchased assets, (b) unpaid property tax or assessment against the Facility or (c) pending condemnation proceeding or assessment against the Facility. All billed utility charges payable with respect to the Facility have been paid and no utility is making any claim for due or past due statements, and there are no mechanics', materialmen's or similar claims or liens currently claimed against the Facility for work performed prior to the date hereof.

16.11 No Conflicts. This Agreement and the consummation of the transactions contemplated hereby do not conflict with, cause a default under or require consent under any agreement, contract, judgment or other obligation bearing on Manager other than the consent of the Bankruptcy Court anticipated to occur in the form of the Approval Order.

16.12 Continuity of Business. Prior to the Effective Date:

(a) Manager shall use commercially reasonable efforts to keep the business and organization of the Facility intact and to preserve for New Operator the goodwill of suppliers, distributors, residents and others having business relations with Licensee with respect to the Facility;

(b) Manager shall engage only in transactions or other activities with respect to the Facility which are in the ordinary course of its business and the business of the Facility, shall maintain the Transferred Assets and supplies at normal operating levels and shall not sell or remove any personal property (other than the Retained Equipment) except in the ordinary course of business;

(c) Manager shall keep in full force and effect, and shall maintain levels of insurance coverage consistent with, those required under the Lease; and

(d) Manager shall maintain in force all permits and licenses and Licensee's Medicare and Medicaid certifications and provider agreements required for operation of the Facility, and shall renew any such permit which expires prior to the Effective Date. If, prior to the Effective Date, Manager receives notice that any permit has expired and is not renewed, or has been suspended or revoked, Manager shall promptly notify Owner or New Operator, as appropriate, and shall use reasonable efforts to have such permit reinstated or extended.

16.13 Cooperation. Manager agrees to cooperate with New Operator by supplying any and all information, at New Operator's sole cost and expense, that may be reasonably required to effect an orderly transfer of the operations of the Facility, including but not limited to, any documents that may be necessary to complete the application for change of ownership and licensure of the Facility to the New Operator.

16.14 Payment of Operating Costs and Prorations. Manager shall be responsible for, and shall pay on a timely basis, claims or charges which are owed to third parties arising from its ordinary use, operation or control of the Facility, including payroll, paid time off, utilities, etc., which claims or charges were incurred in and attributable to the period prior to the Effective Date.

17. Closing Statement. On the Effective Date, Licensee, Manager and New Operator shall, to the extent either party so requests, execute and deliver a mutually prepared closing statement ("Closing Statement") reflecting prorations and other payments to be made as of the Effective Date in connection with the transactions herein contemplated. Any payments owing by any party hereto to the other as shown on the Closing Statement shall, after offset of mutual obligations, be made by check or by wire transfer to an account specified by the payee.

18. Access to Information and Records before the Effective Date. Licensee and Manager shall permit representatives of the New Operator to perform an investigation to prepare for the transition of the management and operations of the Facility to New Operator. Licensee and Manager shall cooperate with such investigation by making available to New Operator for review the Facility, its books and records and financial statements, regulatory inspections and reports, litigation reports and summaries, employment records and medical records and insurance certificates.

19. Pursuit of Approvals.

19.1 Licensure and Certification Approvals. New Operator shall use its best efforts to obtain, as soon as possible, the Licensure and Certification Approvals. New Operator shall file not later than five business days from the date hereof with the applicable governmental agency a substantially complete application for the New License. Licensee and Manager shall each fully cooperate with New Operator in connection with the obtaining of the New License and Medicare and Medicaid certifications and provider agreements.

19.2. Bankruptcy Court Approval. New Operator shall cooperate with Licensee and Licensee shall use its best efforts to obtain the Approval Order as soon as possible after the date hereof. Without limiting the generality of the foregoing, New Operator will agree to such technical changes to this Agreement, not inconsistent with the purposes hereof, as may be required to effect or facilitate obtaining the Approval Order.

20. Conditions Precedent to New Operator's Obligations. Unless waived by New Operator, its obligations to consummate the transactions contemplated by this Agreement is subject to the satisfaction, prior to or on the Effective Date, of each of the following conditions. Upon failure of any of the following conditions, the New Operator may terminate this Agreement.



20.1. Representations and Warranties. The representations and warranties of Licensee and Manager contained in this Agreement shall be true and correct in all material respects at and as of the Effective Date as though such representations and warranties were made at and as of such time.

20.2. Performance of Covenants. Licensee and Manager shall each have performed or complied in all material respects with each of its agreements and covenants required by this Agreements to be performed or complied with by it prior to or on the Effective Date.

20.3. Delivery of Closing Certificate. Licensee and Manager shall each have executed and delivered to New Operator a certificate of an officer of each dated the Effective Date upon which the New Operator may rely, certifying that the conditions referred to in this Agreement have been satisfied.

20.4. Transferred Assets at Closing. Licensee and Manager shall each have executed and delivered a Bill of Sale to New Operator for the Transferred Assets.

20.5. Resident Trust Funds. Manager shall have delivered the Resident Trust Funds with respect to the Facility.

20.6. Bankruptcy Court Approval. The Approval Order shall have been obtained.

20.7. Medicare and Medicaid Assurances. The appropriate governmental agency(ies) shall have issued a written assurances confirming the immediate use, as of the Effective Date, of the Medicare and Medicaid provider number and such other terms satisfactory to the parties thereto.

20.8. New License. The appropriate governmental agency(ies) shall have issued a license to the New Operator or alternatively, then such agency(ies) shall have issued a statement upon which the parties can reasonably rely that the license will be issued in due course, in which event Licensee and the New Operator shall have entered into a customary use and indemnity agreement regarding interim use by the New Operator of Licensee's License pending issuance of a new license to New Operator.

20.9. No Material Adverse Change. There shall be no materially adverse change in the condition or operation of the Facility from the date hereof.

20.10. New Lease and Indemnity Agreement. A New Lease between the Owner and New Operator shall have been executed and delivered on terms acceptable to each.

20.11. Other Documents. Licensee and Manager shall have furnished the New Operator with all documents, certificates and other instruments required to be delivered to the New Operator by such Licensee pursuant to the terms hereof.

21. Conditions Precedent to Licensee's Obligations. Unless waived by the Licensee, its obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction, prior to or on the Closing Date, of each of the following conditions.

21.1. Representations and Warranties. The representations and warranties of New Operator contained in this Agreement shall be true and correct in all material respects at and as of the Effective Date as though such representations and warranties were made at and as of such time.

21.2. Performance of Covenants. New Operator shall have performed or complied in all material respects with each of its agreements and conditions required by this Agreement to be performed or complied with by it prior to the Effective Date.

21.3. Delivery of Closing Certificate. New Operator shall have delivered to the Licensee a certificate, signed by an officer or authorized representative of New Operator dated the Effective Date, upon which Licensee can rely, certifying that the conditions referred to in this Agreement have been satisfied.

21.4. Bankruptcy Court Approval. The Approval Order shall have been obtained.

21.5. Medicare and Medicaid Assurances. The appropriate governmental agency(ies) shall have issued a letter with the terms hereof confirming the immediate use, as of the Effective Date, of the Medicare and Medicaid provider number and such other terms satisfactory to the parties thereto.

21.6. New License. The appropriate governmental agency(ies) shall have issued a license to the New Operator or alternatively, the such agency(ies) shall have issued a statement upon which the parties can reasonably rely that the license will be issued in due course, in which event Licensee and the New Operator shall have entered into a customary use and indemnity agreement regarding interim use by the New Operator of Licensee's License pending issuance of a new license to New Operator.

21.7. Other Documents. New Operator shall have furnished Licensee with all documents, certificates and other instruments required to be delivered to the New Operator by such Licensee pursuant to the terms hereof.

22. Further Assurances.

22.1. Cooperation. Each of the parties hereto agrees to execute and deliver any and all further agreements, documents or instruments necessary to effectuate this Agreement and the transactions referred to herein or contemplated hereby or reasonably requested by the other party to perfect or evidence their rights hereunder, including without limitation, the filing of a stipulation or motion with the Bankruptcy Court in connection with the Bankruptcy Case seeking approval of this Agreement and any related agreements.

22.2. Notices.

All notices to be given by either party to this Agreement to the other party hereto shall be in writing, and shall be (a) given in person, (b) deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, (c) sent by national overnight courier service, or (d) by facsimile, each addressed as follows:

If to Licensee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile: \_\_\_\_\_

With a copy to: [Owner]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn.: Legal Department  
Facsimile: \_\_\_\_\_

If to Licensee Parent: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile: \_\_\_\_\_

With a copy to: [Owner]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn.: Legal Department  
Facsimile: \_\_\_\_\_

If to Manager: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile: \_\_\_\_\_

With a copy to: [Owner]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn.: Legal Department  
Facsimile: \_\_\_\_\_

If to New Operator: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Facsimile: \_\_\_\_\_

With a copy to: [Owner]  
\_\_\_\_\_  
\_\_\_\_\_

Attn.: Legal Department  
Facsimile: \_\_\_\_\_

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

22.3. Payment of Legal Expenses.

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.

22.4. Entire Agreement; Amendment; Waiver.

This Agreement, together with the other agreements referred to herein, constitute the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements. This Agreement may not be modified or amended except in writing signed by the parties hereto. No waiver of any term, provision or condition of this Agreement in any one or more instances, 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.

22.5. No 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.

22.6. Joint Venture; Third Party Beneficiaries.

Nothing contained herein shall be construed as forming a joint venture or partnership between the parties hereto with respect to the subject matter hereof. The parties hereto do not intend that any third party shall have any rights under this Agreement except Owner.

22.7. Captions.

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

22.8. Counterparts.

This Agreement may be executed in one or more counterparts and all such counterparts taken together shall constitute a single original Agreement.

22.9. Governing Law.

This Agreement shall be governed in accordance with the laws of the state where the Facility is located, without regard to principals of conflicts of law.

22.10. Conduct of Business.

From the date of this Agreement until the Effective Date, Licensee and Manager shall use their best efforts to maintain, manage and operate the Facility in accordance with applicable law in all material respects and consistent with its historical practices. There shall be no material adverse change in the condition or operation of the Facility from the date of this Agreement to the Effective Date.

22.11. Incorporation of Recitals.

The Recitals set forth in this Agreement are incorporated into and made a part of this Agreement.

22.12. Opening Mail.

New Operator shall be authorized to open mail addressed to Licensee or Manager and received at the Facility. All mail received at the Facility related to Licensee's or Manager's operation of the Facility prior to the Effective Date shall be promptly delivered to Licensee or Manager by New Operator at the address set forth in herein.

22.13. Name Change.

New Operator shall have the right to change the name of the Facility after the Effective Date.

22.14. Payment Deposits.

Licensee and Manager, each authorizes New Operator to deposit into New Operator's general account any and all checks made payable to the Facility and received by New Operator for services rendered or goods sold by New Operator on and after the Effective Date.

22.15. Survival.

The representations, warranties and indemnifications contained in this Agreement, and in any agreements, certificates or other instruments delivered pursuant hereto, shall survive the closing hereunder and the consummation of the transactions contemplated hereby and shall remain in full force and effect for a period of two (2) years following the Effective Date, regardless of any investigation made by, or on behalf of, any party hereto, but subject to all limitations and other provisions contained in this Agreement. Notwithstanding anything herein to the contrary, representations, warranties or indemnities contained in this Agreement and in any other agreement, certificates or other instruments that are, pursuant hereto, which relate to the payment of taxes or Medicare or Medicaid cost reports and indemnities related thereto shall survive the Effective Date for a period of six months following the expiration of the applicable statute of limitations in which any governmental entity in connection with matters related to taxes or Medicare or Medicaid cost reports and reimbursements thereunder could assert a claim against Licensee.

22.16. Termination.

If any condition precedent to New Operator's obligations hereunder is not satisfied and such condition is not waived by New Operator at or prior to \_\_\_\_\_, New Operator may terminate this Agreement at its option by notice to the other parties. In the event of the termination of the Agreement by New Operator pursuant to this Section 22.16, New Operator shall not have any liability hereunder of any nature whatsoever to the other parties, including, without limitation, any liability for damages, unless another party has acted in bad faith and knowingly and willfully failed to perform its obligations hereunder, in which event the party in default shall be liable to the other parties for such default.

*(signatures on following page)*

## MANAGEMENT AND TRANSITION AGREEMENT

*-signature page*

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

### **Licensee:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

### **Licensee Parent:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

### **Manager:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

### **New Operator:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

The Agreement signed by Owner solely for the purposes of acknowledging its rights hereunder and approving this agreement between the other parties.

### **Owner:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Exhibit “A”**  
**Retained Equipment**  
**(To be supplied by Licensee/ Manager)**

Machine

Serial Number



**EXHIBIT “B”  
BILL OF SALE**

In consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, \_\_\_\_\_, a \_\_\_\_\_ (“Licensee”) does hereby grant, bargain, sell, convey and transfer to \_\_\_\_\_, a \_\_\_\_\_ (“New Operator”), all of its right, title and interest in and to, all and singular, the Transferred Assets, as defined in that certain Management and Transition Agreement dated as of \_\_\_\_\_, among Licensee, Licensee Parent, Manager and New Operator (the “Transfer Agreement”).

TO HAVE AND TO HOLD, all and singular, the Transferred Assets hereby sold, assigned, transferred and conveyed to New Operator and its successors and assigns, to and for its own use and benefit.

Licensee hereby represents and warrants to New Operator that Licensee is the owner of the Transferred Assets, that Licensee has full right, power and authority to sell the Transferred Assets and to make this Bill of Sale, and that the Transferred Assets are free and clear of all liens and encumbrances. With the exception of the representations and warranties set forth in the immediately preceding sentence, the Transferred Assets are transferred in their “AS IS, WHERE IS” condition, WITH ALL FAULTS, and without any other representation or warranty of any kind.

**Licensee**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

## BILL OF SALE

In consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, \_\_\_\_\_, a \_\_\_\_\_ (“Manager”), does hereby grant, bargain, sell, convey and transfer to \_\_\_\_\_, a \_\_\_\_\_ (“New Operator”), all of its right, title and interest in and to, all and singular, the Transferred Assets, as defined in that certain Management and Transition Agreement dated as of \_\_\_\_\_, among Licensee, Licensee Parent, Manager and New Operator (the “Transfer Agreement”).

TO HAVE AND TO HOLD, all and singular, the Transferred Assets hereby sold, assigned, transferred and conveyed to New Operator and its successors and assigns, to and for its own use and benefit.

Manager hereby represents and warrants to New Operator that Manager is the owner of the Transferred Assets, that Manager has full right, power and authority to sell the Transferred Assets and to make this Bill of Sale, and that the Transferred Assets are free and clear of all liens and encumbrances. With the exception of the representations and warranties set forth in the immediately preceding sentence, the Transferred Assets are transferred in their “AS IS, WHERE IS” condition, WITH ALL FAULTS, and without any other representation or warranty of any kind.

**Manager:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_