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**AND DEBTORS-IN-POSSESSION**

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE NORTHERN DISTRICT OF TEXAS**
**FORT WORTH DIVISION**

| | | |
|---|---|---|
| **In re:** | § | **Chapter 11** |
| | § | |
| **PREFERRED CARE INC., *et. al.*** | § | **Case No.: 17-44642-mxm11** |
| | § | |
| **Debtors.** | § | **Jointly Administered** |
| | § | |

**MOTION FOR ORDER (A) GRANTING AUTHORITY TO: (I) TRANSFER THE OPERATIONS AND RELATED ASSETS OF THE KENTUCKY FACILITIES FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; (II) ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) REJECT AND TERMINATE THE KENTUCKY FACILITY LEASES; (B) APPROVING THE FORM OF OPERATING TRANSFER AGREEMENT; AND (C) GRANTING RELATED RELIEF AND BRIEF IN SUPPORT**

**[THE KENTUCKY TRANSFER MOTION]**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON JULY 23, 2018 AT 1:00 PM.**

**IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-ONE (21) DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THIS NOTICE; OTHERWISE THE COURT MAY TREAT THE**

**PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.**

Preferred Care Inc. ("**Preferred Care**") and certain of its debtor affiliates, as debtors and debtors in possession (collectively, the "**Debtors**")[1] file this *Motion for Order (A) Granting Authority to (I) Transfer the Operations and Related Assets of the Kentucky Facilities Free and Clear of All Liens, Claims, Encumbrances, and Interests, (II) Assume and Assign Certain Executory Contracts and Unexpired Leases, and; (III) Reject and Terminate the Kentucky Facility Leases; (B) Approving the Form of Operating Transfer Agreement; and (C) Granting Related Relief* (the "**Motion**"), requesting entry of an order pursuant to 11 U.S.C. §§ 105, 363, 365, and 1146 and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure:

(a) authorizing the transfer of the operations and related assets (the "**Assets**")[2] of the Kentucky Debtors to the Purchaser(s) of the Kentucky Facilities free and clear of liens, claims, encumbrances, and interests;

(b) approving the *Operating Transfer Agreements* (each an "**OTA**" and, collectively, the "**OTAs**"), substantially in the form attached hereto, by and between the Kentucky Debtors and the Purchaser(s) of the Kentucky Facilities;

(c) approving the assumption and assignment of the Accepted Contracts (defined in the OTAs) to the Purchaser(s);

(d) approving the rejection and termination of the real property leases associated with each facility being transferred herein, including the Master Leases and Subleases; and

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[1] A list of all of the Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, is attached hereto. This Kentucky Transfer Motion is being filed by the entities listed as the Kentucky LP Debtors (the "**Kentucky Debtors**"), including Elsmere Health Facilities L.P. and Henderson Health Facilities, L.P. (the "**HUD Debtors**"), and joined by PCI as described below.

[2] The OTA (defined below) for each respective Kentucky Facility contemplates the transfer of all of the Assets of each respective Debtor—except those listed specifically as Excluded Assets—to the Purchaser. As set forth above, the Kentucky Debtors' pre-closing accounts receivable are Excluded Assets under the OTAs. As noted below, the Debtors will separately file the specific OTA for each Kentucky Facility no later than seven (7) days before the hearing set for July 23, 2018 (the "**Hearing**"), and make such OTAs available free of charge on the Debtors' informational website.

(e) granting related relief, including relief related to the proposed Cure Costs associated with the Accepted Contracts.

In support of the Motion, the Debtors respectfully state as follows:

## I.
## EXECUTIVE SUMMARY

1. Preferred Care leases twenty-one (21) facilities in Kentucky (the "**Kentucky Facilities**") pursuant to two master leases (the "**Master Leases**") with FC Domino Acquisition, LLC and its affiliates ("**FC Domino**"). Preferred Care subleases the Kentucky Facilities through individual subleases (the "**Subleases**") to twenty-one (21) of the Debtors (the "**Kentucky Debtors**"). The Kentucky Debtors are the current operators of the Kentucky Facilities.

2. Preferred Care proposes to enter into operation transfer agreements ("**OTAs**"), substantially in the form attached as **Exhibit A**[3] with twenty-one (21) new operators (collectively, the "**Purchaser**") for the transfer of operations and assets used in the operations of the Kentucky Facilities. The Purchaser was identified through an extensive search conducted by FC Domino at the request of the Debtors.[4] Additionally, the Debtors' financial advisor, Focus

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[3] A copy of the proposed order granting this Motion is included in that document as Exhibit C.

[4] FC Domino's involvement in the transfer process was critical because of its extensive industry knowledge and economic interest in the Kentucky Facilities. FC Domino, as lessor under the Master Leases, was incentivized to identify a new operator with the financial resources and other capabilities required for the seamless transfer and continued operation of the Kentucky Facilities. Notably, the rent FC Domino will receive under the new leases with the Purchaser is substantially less than the rent under the existing Master Leases. FC Domino would not have agreed to enter into new leases for significantly less rent if the parties had been able to identify other operators interested in and capable of operating the Kentucky Facilities for more value. Furthermore, due to the requirements of § 365 of the Bankruptcy Code and the existence of the Master Leases and Subleases, FC Domino's consent is required to extend the deadline to assume or reject the Master Leases. Section 365(d)(4)(A) requires the Debtors to assume or reject the Master Leases and Subleases one hundred and twenty (120) days after the bankruptcy filings, and allows the Court to extend that deadline by ninety (90) days for cause. No further extensions are allowed without the lessor's consent. The 210 days provided for in section 365(d)(4)(A) expired on June 11, 2018. FC Domino consented to an extension to August 1, 2018, only to allow for the transfers provided for herein. *See Stipulation and Agreed Order* [Docket No. 773]. In connection with the transfer of the Kentucky Facilities pursuant to the OTAs, Preferred Care proposes to terminate and reject the Master Leases with FC Domino, and to terminate and reject the Subleases with the Kentucky Debtors effective upon the closing of the transfers.

Management Group USA, Inc., established a virtual data room and coordinated with FC Domino to identify and assess potential new operators. In the Debtors' opinion, the Purchaser is the only viable potential new operator that is (a) capable of taking over the operations of the Kentucky Facilities within a timetable that will maximize the value of the Debtors' estates and (b) approved by FC Domino.

3. As part of the transfer process, FD Domino will enter into a new master lease or master leases pursuant to which the Purchaser will lease, or sublease, the Kentucky Facilities and agree to take over the operations of the Kentucky Facilities from the Kentucky Debtors. Accordingly, the Kentucky Debtors propose to sell and assign the right to operate the Kentucky Facilities, as well as to transfer the Assets used in connection with the operation of the Kentucky Facilities, to the Purchaser pursuant to the OTAs.

4. Generally, the OTAs and related agreements provide that:

a. Preferred Care and the Kentucky Debtors shall reject and terminate the Master Leases and Subleases associated with each Kentucky Facility by (the "**Lease Terminations**") to allow the Purchaser to lease (or sublease) the Kentucky Facilities under new lease(s) with FC Domino for the Kentucky Facilities;

b. the Kentucky Debtors shall sell and transfer the operations and Assets of the Kentucky Facilities, including, to the extent such personal property is the property of Kentucky Debtors upon termination of the Master Leases and Subleases, all inventory, supplies, and other assets necessary for the operation of each Facility, to the Purchaser;

c. the Kentucky Debtors shall assume and assign certain contracts and unexpired leases[5] related to operation of the Kentucky Facilities (the "**Accepted Contracts**" defined in the OTAs) to the Purchaser; and

d. the Purchaser shall employ at least 70% of the Kentucky Debtors' employees at each Facility upon completion of the transfer.

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[5] For the avoidance of doubt, the Kentucky debtors are not a party to any real property leases other than the Subleases.

5. In connection with the transfer of the Kentucky Facilities pursuant to the OTAs, the Kentucky Debtors and Thomas Scott have reached a settlement with FC Domino pursuant to which, among other things, FC Domino has agreed to waive any claim it might have for lease rejection damages against the Debtors, subject to and conditioned upon the closing of the OTA pursuant to this Motion (the "**FC Domino Settlement**"). The FC Domino Settlement also includes an agreement between FC Domino and Thomas Scott to settle all guaranty claims FC Domino has against Thomas Scott. Approval of the FC Domino Settlement will be sought in a separate motion to be filed contemporaneously.

6. The Debtors believe that the value of the Assets being transferred pursuant to the OTAs is *de minimis* due to the fact that substantially all of the personal property utilized in the day-to-day operations of the Kentucky Facilities does not actually belong to the Debtors.[6] The Debtors' only valuable assets—receivables generated prior to the closing of the transfer—will be retained as Excluded Assets[7] under the OTAs and, with the exception of the receivables generated by the two (2) HUD Debtors, applied to the outstanding balance of the line of credit and/or debtor-in-possession financing facility (the "**DIP Facility**") with Wells Fargo Bank, N.A. ("**Wells Fargo**") as they are collected. The non-HUD Kentucky Debtors are borrowers under the Wells Fargo line of credit and DIP Facility and have pledged all or substantially all of their assets to secure the indebtedness owed thereby. The HUD Debtors will collect and retain the

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[6] Under the terms of the Subleases (as defined below), all items of furniture, fixtures, supplies and equipment which are necessary or reasonably appropriate to operate the Kentucky Facilities in compliance with applicable legal and insurance requirements or otherwise in compliance with industry standards, and which are owned by the Kentucky Debtors, become the property of Preferred Care upon the expiration or earlier termination of the Subleases. The Master Leases provide, in turn, that such items of personal property which are owned by Preferred Care become the property of FC Domino upon the expiration or earlier termination of the Master Leases.

[7] Any capitalized terms not specifically defined herein shall have the meaning assigned to them in the OTAs.

proceeds of the pre-closing accounts receivable in the ordinary course of their businesses.

7. As further discussed below, the Debtors believe the transfer of the Kentucky Facilities to the Purchaser pursuant to the OTAs, in connection with the FC Domino Settlement, constitutes the best transaction available for the transfer of the Kentucky Facilities, maximizes the value of the Debtors' estates, and is in the best interests of the Debtors' stakeholders, including the residents of the Kentucky Facilities. Accordingly, the Debtors request the Court approve the OTAs substantially in the form attached hereto, authorize the Debtors to transfer of the Kentucky Facilities and related Assets through the transactions contemplated by the OTAs, and authorize the Debtors to take all actions reasonably necessary or desirable to implement the transactions

## II.
## JURISDICTION AND VENUE

8. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

9. The statutory predicates for the relief requested herein are §§ 105, 363, and 365 of the Bankruptcy Code,[8] and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

[8] The term "**Bankruptcy Code**" shall mean 11 U.S.C. §§ 101 *et seq.*, and all references to "§" shall mean the Bankruptcy Code unless otherwise noted.

## III.
## BACKGROUND

### A. The Preferred Care Group

10. The partnerships referred to herein as the "**Preferred Care Group**" operate one hundred and eight (108) skilled nursing, assisted and independent living, and mental health facilities (the **"Facilities"**) in twelve (12) states with approximately 11,400 rentable beds. There are currently approximately 9,200 residents in the Preferred Care Group Facilities. The Preferred Care Group constitutes one of the largest nursing home groups in the United States.

11. Each of the partnerships is a Texas limited partnership that is structured such that a Texas limited liability company functions as the 1% general partner and Mr. Thomas Scott is the 99% limited partner. Twenty-one (21) of the Debtor partnerships operate the Kentucky Facilities, and twelve (12) of the Debtor partnerships operate twelve (12) skilled nursing facilities in New Mexico (the "**New Mexico Facilities**"). The remaining seventy-five (75) partnerships operate facilities in nine (9) other states.

12. On November 13, 2017 (the "**Petition Date**"), the limited partnerships operating the Kentucky and New Mexico Facilities filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**"). Preferred Care, a holding company for numerous wholly owned, non-debtor subsidiaries,[9] also filed a voluntary petition on the Petition Date, and the resulting bankruptcy cases for all of the Debtors (the "**Chapter 11 Cases**") were procedurally consolidated under Case No. 17-44642.

13. The Debtors continue to operate and to manage their business as "debtors-in-possession" pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner

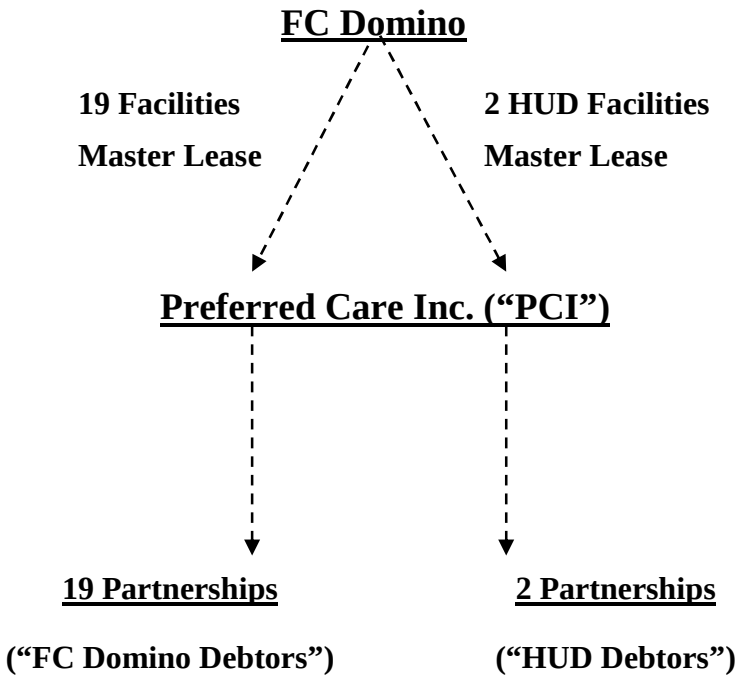
[9] Preferred Care Inc. does not own any interest in, nor participate in the management of, the limited partnerships that own and operate the facilities in the Preferred Care Group.

has been appointed in the Chapter 11 Case pursuant to section 1104 of the Bankruptcy Code.

14. Additional details concerning the Debtors and the circumstances leading to the commencement of these chapter 11 cases can be found in the *Declaration of Alan Weiner in Support of First-Day Motions* (the "**Weiner Declaration**") [Docket No. 22].

**B. Real Property Leases**

15. Preferred Care leases the real property and substantially all of the personal property utilized in the operations of the Kentucky Facilities from FC Domino pursuant to two (2) master leases (the "**Master Leases**") and then subleases each of the Kentucky Facilities to the Kentucky Debtors pursuant to twenty-one (21) separate subleases (the "**Subleases**"). The chart below summarizes the relationships of the parties regarding the Master Leases and Subleases covering the Kentucky Facilities.



### C. Asserted Liens and Priorities

16. The Kentucky Debtors have granted liens and security interests on certain of their assets to various parties. In order to analyze the asserted liens and their priorities for purposes of this Motion, the following chart is helpful:

| Debtor(s) | Operations | Asserted Liens & Priorities[10] |
|---|---|---|
| **Kentucky Debtors** | | |
| a) 2 HUD Debtors | Two (2) facilities in Kentucky leased from FC Domino, which financed the facilities through a program with the Department of Housing and Urban Development ("**HUD**"). | 1st — HUD<br>2nd — FC Domino |
| b) 19 Non-HUD Debtors | Nineteen (19) facilities in Kentucky leased from FC Domino. | 1st — Wells Fargo[11]<br>2nd — FC Domino<br>3rd — FSF DIP, LLC |

## IV.
## PROPOSED SALE AND TRANSFER OF KENTUCKY FACILITIES

17. Throughout these bankruptcy cases, the Debtors have maintained their intention to transfer their operations at the Kentucky and New Mexico Facilities to new operators in order to prevent those facilities from ceasing operation and so as to protect the interests of their residents. Everything the Debtors have done or attempted to do in these bankruptcy cases—

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[10] The liens listed are those for which UCC-1 financing statements were filed as of the Petition Date or that have been subsequently granted by the Debtors with the approval of the Bankruptcy Court. Except as otherwise prohibited by the Wells Fargo and/or Back-Up DIP Orders, the Debtors reserve the right to dispute the validity, enforceability, and/or priority of all pre-petition liens.

[11] Extendicare Homes, Inc. ("**Extendicare**") and/or its affiliates filed UCC-1 financing statements against all of the FC Domino Debtors except Owensboro Health Facilities, L.P. on or about November 16, 2012 to secure obligations owed to Extendicare as a result of the transfer of operations to the Preferred Care Group. The Debtors believe that no indebtedness to Extendicare existed as of the Petition Date; thus the asserted liens secured no outstanding indebtedness and have been removed from this chart.

procuring debtor-in-possession financing from both Wells Fargo and the Back-Up DIP Lender, stabilizing their operations, and settling significant threatened litigation with various parties-in-interest—has been designed to allow for an orderly, responsible transfer of the facilities to new operators.

18. This Motion is the first of at least two motions designed to effectuate such transfers in these Chapter 11 Cases. Transferring the Kentucky Facilities to the Purchaser will ensure the continued operation of the Kentucky Facilities, which will protect the residents and allow the Kentucky Debtors to avoid sizeable potential lease rejection damage claims

**A. The Operating Transfer Agreements**

19. Attached hereto as **Exhibit A** is the form of OTA negotiated with the Purchaser for the Kentucky Facilities. The specific OTAs for each facility, when executed in final form, shall be filed separately and be made available free of charge on the Debtors' informational website at www.jndla.com/cases/preferred. The Debtors request that the Court approve the OTAs substantially in the form attached hereto.

20. Generally, the OTAs provide that:

a. Preferred Care and the Kentucky Debtors shall execute and effectuate the Lease Terminations. The Purchaser will then enter into new lease(s) with FC Domino for the Kentucky Facilities;

b. the Kentucky Debtors shall sell and transfer the operations and Assets for the Kentucky Facilities, including, to the extent such personal property is the property of Kentucky Debtors upon termination of the Master Leases and Subleases, all inventory, supplies, and other assets necessary for the operation of each Facility, to the Purchaser;

c. the Kentucky Debtors shall assume and assign certain contracts and unexpired leases related to the operations of the Kentucky Facilities to the Purchaser; and

d. the Purchaser shall employ at least 70% of the Kentucky Debtors' employees at each Facility upon completion of the transfer.[12]

**B. Benefit to the Estates.**

21. The OTAs and FC Domino Settlement are in the best interest of the Kentucky Debtors, who believe that the OTAs represent the best transaction available for the sale and transfer of their operations and Assets. The proposed transfers will allow the Movants to avoid: (1) significant future rent obligations, (2) sizable potential claims from the Kentucky residents if the Kentucky Facilities were shut down, and (3) significant lease rejection claims of FC Domino. Specifically, the OTAs require that all existing leases with respect to the Kentucky Facilities, including the Master Leases executed by and between Preferred Care and FC Domino, as well as the Subleases between Preferred Care and the Kentucky Debtors, be rejected and terminated. Preferred Care has reached a settlement with FC Domino regarding its obligations under the Master Leases and the waiver of lease rejection damage claims in the FC Domino Settlement. The Debtors intend to seek Court approval of the FC Domino Settlement contemporaneously with the approval of this Motion. The proposed sale and transfers under the OTAs are contingent on Court approval of the FC Domino Settlement.

## V.
## RELIEF REQUESTED AND BASIS THEREFOR

22. By this Motion, pursuant to sections 105, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9014, the Kentucky Debtors seek an order that:

a. authorizes the transfer of the Assets to the Purchaser free and clear of all liens, claims, interests, and encumbrances including, without limitation, any claims arising under doctrines of successor liability;

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[12] The description of the terms of the OTAs and all of the exhibits, schedules, and attachments thereto is intended solely to give the Court and all interested parties an overview of the significant terms of the OTAs. All parties are encouraged to review the OTAs for all terms.

b. approves the assumption and assignment of the Accepted Contracts to the Purchaser;

c. approves the termination and rejection of the Master Leases with FC Domino and the Subleases between Preferred Care and the Kentucky Debtors;

d. waives any fourteen (14)-day stay imposed by Bankruptcy Rules 6004 and 6006; and

e. grants such other and further relief as is just and proper.

23. At the hearing on this Motion (the "**Sale Hearing**"), the Kentucky Debtors will:

a. demonstrate that the transfer of their operations and the Assets to the Purchaser is a sound exercise of their business judgment, after arms' length negotiations, that is the best interest of the estates;

b. demonstrate that the Lease Terminations are in the best interests of the Estates due to the avoidance of ongoing rental obligations and potential sizeable rejection damages claims;

c. propose to transfer the operations and to sell all of their rights, title, and interests in the Assets free and clear of all liens, claims, encumbrances, and interests to the Purchaser. The Kentucky Debtors will also propose to assume and assign the Accepted Contracts (defined in the OTAs) to the Purchaser;

d. provide adequate assurance of future performance for the Accepted Contracts; and,

e. demonstrate that the terms of the OTAs are reasonable and appropriate.

24. Accordingly, the Kentucky Debtors request that the Motion be approved in all respects, including approval of the OTAs.

**B. The OTAs Represent the Exercise of Sound Business Judgment by the Debtors And Should Be Approved.**

25. Section 363 of the Bankruptcy Code authorizes a debtor to sell assets of the estate other than in the ordinary course of business and provides, in relevant part: "[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business,

property of the estate ...."[13]

26. Courts approve proposed sales of property pursuant to § 363 if the transaction represents the reasonable business judgment of the debtor.[14] If a valid business justification exists for the sale, as it does in these Chapter 11 Cases, a debtor's decision to sell property out of the ordinary course of business enjoys a strong presumption "that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in an honest belief that the action taken was in the best interests of the company."[15] Therefore, any party objecting to this Motion must make a showing of "bad faith, self-interest or gross negligence."[16]

27. In determining whether a proposed § 363(b)(1) sale satisfies the "business judgment standard," courts consider the following: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was given to interested parties; (c) whether the price is fair and reasonable; and (d) whether the parties have acted in

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[13] 11 U.S.C. § 363(b)(1).

[14] *See Inst. Creditors of Cont'l. Air Lines, Inc. v. Cont'l. Air Lines, Inc. (In re Cont'l. Air Lines)*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty … there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business."); *In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010) ("A sale of assets under § 363 … is subject to court approval and must be supported by an articulated business justification, good business judgment, or sound business reasons."); *In re Delaware & Hudson Rv. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (holding that a court must be satisfied that there is a "sound business reason" justifying the preconfirmation sale of assets); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that the elements necessary for approval of a section 363 sale in a Chapter 11 case are "that the proposed sale is fair and equitable, that there is a good business reason for completing the sale and the transaction is in good faith"); *see also Comm. of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d Cir. 1983); *Stephens Indus. Inc. v. McClung*, 789 F.2d 386, 391 (6th Cir. 1986).

[15] *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); *see also In re ASARCO, L.L.C.*, 650 F.3d 593, 601 (5th Cir. 2011) ("The business judgment standard in section 363 is flexible and encourages discretion."); *GBL Holding Co.v. Blackburn/Travis/Cole, Ltd.*, 331 B.R. 251, 254 (Bankr. N.D. Tex. 2005) ("Great judicial deference is given to the [t]rustee's exercise of business judgment" [in approving a proposed sale under section 363].).

[16] *In re Integrated Res., Inc.*, 147 B.R. at 656 (citing *Smith v. Van Gorkom*, 488 A.2d 858, 872-73 (Del. 1985)); *see also Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D. N.Y. 1986) ("Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct.").

good faith.[17] The Debtors will show the Court:

a. First, the Kentucky Debtors have approved the OTAs after thorough consideration of all viable alternatives and have concluded that the OTAs are supported by a number of sound business reasons. The Kentucky Debtors submit that the facts described above support an expeditious transfer of their Assets to preserve value for the estates and provide a strong business justification for the transfer of their Assets. The Kentucky Debtors believe that it is in the best interest of their estates to enter into and consummate the transactions provided for in the OTAs.

b. Second, the Kentucky Debtors have provided notice of the Motion as required by the Court pursuant to the *Order Granting Motion for Order Establishing Notice Procedures and Approving Form Notice of Commencement of Cases* [Docket No. 61] (the "**Notice Procedures Order**"), which notice constitutes adequate and reasonable notice to interested parties. Additionally, the Kentucky Debtors have been in contact with parties who have expressed an interest in the Kentucky Debtors' Assets and have informed these parties of the proposed transaction. The Kentucky Debtors believe that a more extended process would yield no higher or better offers for the operations and Assets.

c. Third, as described below, the Debtors will have provided notice of the proposed cure amounts for the Accepted Contracts to the parties to those contracts (the "**Cure Parties**") and an opportunity to object to same.

d. Fourth, the consideration to be received by the Kentucky Debtors for their operations and Assets as a going concern provides the highest possible value and provides significant benefit to the Estates.

e. Fifth, the Kentucky Debtors believe that the consideration to be obtained for the Assets pursuant to the OTAs and the FC Domino Settlement is fair and reasonable. Further, the Kentucky Debtors will show at the Sale Hearing that the proposed transfers to the Purchaser was negotiated in good faith.

28. For the foregoing reasons, the Kentucky Debtors submit that the approval of the proposed OTAs and the transactions contemplated thereby is appropriate and warranted under § 363 of the Bankruptcy Code.

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[17] *See, e.g., In re N. Am. Techs. Group, Inc.*, 2010 Bankr. LEXIS 5834, *7 (Bankr. E.D. Tex. Aug. 16, 2010) (citing *In re Condere*, 228 B.R. 615, 626 (Bankr. S.D. Miss. 1998)); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987). The Kentucky Debtors will show that the proposed Transfer satisfies all these factors.

**C. The Transfer of the Assets Will Be Free and Clear of Liens, Claims, Encumbrances, and Interests.**

29. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances in property of an entity other than the estate if:

a. applicable nonbankruptcy law permits a sale of such property free and clear of such interest;

b. such entity consents;

c. such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;

d. such interest is in *bona fide* dispute; or

e. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.[18]

Because section 363(f) of the Bankruptcy Code is drafted "in the disjunctive," satisfaction of any one of its five (5) requirements will suffice to permit the sale of the Assets "free and clear" of liens and interests.[19] The Court also may authorize the sale of a debtor's assets free and clear of any liens, claims, or encumbrances pursuant to section 105 of the Bankruptcy Code, even if section 363(f) did not apply.[20]

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[18] 11 U.S.C. § 363(f).

[19] *In re Nature Leisure Times, LLC*, 06-41357, 2007 WL 4554276, at *3 (Bankr. E.D. Tex. Dec. 19, 2007); *see also Michigan Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code section 363(f) is written in the disjunctive; holding that the court may approve the sale "free and clear" provided at least one of the subsections of Bankruptcy Code section 363(f) is met); *In re Dundee Equity Corp.*, No. 89-B-10233, 1992 WL 53743, at *4 (Bankr. S.D. N.Y. Mar. 6, 1992) ("[S]ection 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met."); *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D. N.Y. 1986).

[20] *See Matter of Selby Farms*, 15 B.R. 372, 375 (Bankr. S.D. Miss. 1981) ("The power of the Bankruptcy Court to sell property free and clear of liens has long been recognized." (citing *Van Huffel v. Harkelrode*, 284 U.S. 225, 227-28 (1931))); *In re Trans World Airlines. Inc.*, No. 01-0056, 2001 WL 1820325, at *3 (Bankr. D. Del. Mar. 27, 2001) ("Bankruptcy courts have long had the authority to authorize the sale of estate assets free and clear even in the absence of § 363(f)."); *see also Volvo White Truck Corp. v. Chambersberg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) ("Authority to conduct such sales [free and clear of liens] is within the court's equitable powers when necessary to carry out the provisions of Title 11.").

30. The Kentucky Debtors believe that at least one of the tests in § 363(f) will be satisfied with respect to both secured liens asserted against the Debtors' Assets *and* other interests that may be alleged by other parties. The Kentucky Debtors anticipate that the secured creditors will consent to the sale and transfer of operations and Assets pursuant to the OTAs. In addition, absent any objection to this Motion, all such secured creditors will be deemed to have consented to the relief requested herein.

31. Accordingly, the Kentucky Debtors request that the Assets be transferred free and clear of any liens, claims, encumbrances or other interests, including, without limitation, any claims arising under doctrines of successor liability.

**D. The Purchaser is Entitled to Protection as a Good-Faith Purchaser**

32. This Court has upheld § 363 purchase agreements "negotiated, proposed, and entered into … in good faith, without collusion … [resulting from] arm's-length bargaining with … parties represented by independent counsel."[21] A sale to a good-faith purchaser cannot be avoided under § 363(m), unless the sale authorization was stayed pending appeal.[22] However, "[t]he trustee may avoid a sale … if the sale price was controlled by an agreement among potential bidders…."[23] Additionally, for the sale to be considered in good-faith, consideration must: (1) be fair and reasonable; (2) be the highest and best offer for the property, and; (3) constitute reasonably equivalent value, fair value, and fair consideration.[24]

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21 *In re TriDimension Energy, L.P.*, 2010 Bankr. LEXIS 4838, *13 (Bankr. N.D. Tex. Nov. 19, 2010).

22 *See* 11 U.S.C. § 363(m) ("The reversal or modification of an authorization under subsection (b) of this section of a sale … does not affect the validity of [the] sale … to an entity that purchased … the property in good faith….").

23 *Id.* § 363(n).

24 *In re TriDimension Energy, L.P.*, 2010 Bankr. LEXIS 4838, at *13.

33. The Kentucky Debtors negotiated the OTAs at arm's length and in good faith to achieve the best results for their estates. The Purchaser was represented by counsel and is not an affiliate or insider of the Kentucky Debtors or otherwise related to the Kentucky Debtors. Moreover, no equity ownership or future compensation has been offered to the Kentucky Debtors' or any insider of the Kentucky Debtors. The Purchaser is entitled to the protections of a good-faith Purchaser under § 363(m) of the Bankruptcy Code, and none of the OTAs constitute an avoidable transaction pursuant to § 363(n).

34. The Kentucky Debtors submit that the OTAs will provide substantial value to the bankruptcy estates because they will facilitate an efficient and orderly transfer of operations, avoid any cessation of operations and displacement of residents, and avoid substantial potential claims of residents and lessors.[25]

**E. The Debtors May Enter into the OTAs and Other Agreements Related to or Associated with the Transfers.**

35. In connection with a sale of substantially all of a debtor's assets, courts routinely approve entry into asset purchase or similar agreements.[26] Such agreements are approved if they are an exercise of the debtor's sound business judgment.[27] The Kentucky Debtors will show that

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[25] *See In re TriDimension Energy, L.P.*, 2010 Bankr. LEXIS 4838, at *9 (finding that reasonably equivalent value existed under the Bankruptcy Code); *Mellon Bank, NA. v. Metro Communications, Inc.*, 945 F.2d 635 (3d Cir. 1991) (same), *cert. denied*, 503 U.S. 937 (1992); *see also Mellon Bank, N.A. v. Official Comm. of Unsecured Creditors (In re R.M.I., Inc.)*, 92 F.3d 139 (3d Cir. 1996); *Salisbury v. Texas Commerce Bank-Houston, N.A. (In re WCC Holding Corp.)*, 171 B.R. 972, 984 (Bankr. N.D. Tex. 1994) (reasonably equivalent value under Texas law) (citing *Besing v. Hawthorne (In re Besing)*, 981 F.2d 1488, 1495 (5th Cir.), *cert. denied*. 510 U.S. 821 (1993) and *Southmark Corp. v. Riddle (In re Southmark Corp.)*, 138 B.R. 820, 829 (Bankr. N.D. Tex. 1992)); *In re China Resource Prod. Ltd. v. Favda Intern., Inc.*, 856 F. Supp. 856, 866 (D. Del. 1994) (citing *Geyer v. Ingersoll Publications Co.*, 621 A.2d 784, 792 (Del. Ch. 1992)).

[26] *See, e.g.*, *In re Tridimension Energy, L.P.*, 2010 WL 5209233, at *2 (Bankr. N.D. Tex. Oct. 29, 2010) (approving the debtor's proposed asset purchase agreement); *In re Enron Corp.*, No. 01-16034, 2002 WL 32154269, at *4 (Bankr. S.D. N.Y. Apr. 24, 2002).

[27] *See, e.g.*, *Tridimension Energy*, 2010 WL 5209233, at *2 (finding that "the Debtors have demonstrated a compelling and sound business justification" for approval of the proposed asset purchase agreement); *In re*

the OTAs have been negotiated at arm's length and that the Kentucky Debtors utilized their business judgment in an attempt to maximize the recovery and/or minimize claims against their estates. In particular, the agreements with FC Domino regarding Lease Termination constitute an exercise of the Debtors' sound business judgment in that they allow for the avoidance of ongoing rental obligations by the Estates *and* significant future rejection claims pursuant to the proposed settlement with FC Domino. The Court should approve the OTAs and related agreements and all transactions contemplated therein in order to allow the proposed transfer of the Assets to the Purchaser to be consummated.

**F. The Lease Terminations Are Authorized By Section 365 of the Bankruptcy Code.**

36. Sections 365(a) and (b) of the Bankruptcy Code authorize a debtor-in-possession, subject to the court's approval, to assume or reject executory contracts or unexpired leases of the debtor.[28] Pursuant to the OTAs, Preferred Care and the Kentucky Debtors are required to execute the Lease Terminations, which will reject and terminate the Master Leases and Subleases effective upon the Closing of the OTAs. Because the Debtors were unable to find a party willing to assume the Master Leases or Subleases as written, the Debtors must reject such leases. The Lease Terminations reflect a sound exercise of the Debtors' business judgment because they allow the proposed transfers to occur pursuant to the OTAs and, as a result of the FC Domino Settlement, avoid ongoing rental obligations *and* significant future rejection claims against the Estates.

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*Decora Indus., Inc.*, No. 00-4459, 2002 WL 32332377, at *5 (Bankr. D. Del. May 17, 2002); *In re Arlco, Inc.*, 239 B.R. 261, 265 (Bankr. S.D. N.Y, 1999).

[28] *See generally* 11 U.S.C. § 365(a) and (b); *In re Pilgrim's Pride Corp.*, 467 B.R. 871, 877 (Bankr. N.D. Tex. 2012) (citing *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985) (stating that "[i]t is well established that 'the question whether a lease should be rejected ... is one of business judgment.'").

**G. Assumption And Assignment of Accepted Contracts Is Authorized By Section 365 of The Bankruptcy Code.**

37. In addition to the foregoing, section 365(b)(1) of the Bankruptcy Code codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing as follows:

> (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee
>
> (A) cures or provides adequate assurance that the trustee will promptly cure, such default …;
>
> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provides adequate assurance of future performance under such contract or lease.[29]

38. In analyzing whether the assumption or rejection of an executory contract or unexpired lease pursuant to § 365(a) should be approved, courts apply the "business-judgment" test, which requires a determination that the requested assumption or rejection be "advantageous to the estate and the decision be based on sound business judgment."[30] In making this determination, courts generally will not second-guess a debtor's business judgment concerning

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[29] 11 U.S.C. § 365(b)(1).

[30] *In re McCommas LFG Processing Partners, LP*, 07-32219-HDH-11, 2007 WL 4234139, at *14 (Bankr. N.D. Tex. Nov. 29, 2007). *See, e.g., In re Group of Institutional Investors, Inc. v. Chicago, Milwaukee, St. Paul and Pac. R.R. Co.*, 318 U.S. 523, 550 (1943) ("The question [of assumption] is one of business judgment."); *In re Idearc, Inc.*, 423 B.R. at 162 ("Courts apply the 'business judgment test' [to a debtor's decision to assume and executory contract or lease], which requires a showing that the proposed course of action will be advantageous to the estate…."); *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098-99 (2d Cir. 1993) (holding that, when deciding whether to grant a motion to assume, a court must put itself in the trustee's position and determine whether such assumption would be a good decision or a bad one).

the assumption of an executory contract.[31]

39. Here, the Kentucky Debtors' assumption and assignment of the Accepted Contracts to the Purchaser meets the business-judgment standard and satisfies the requirements of § 365 of the Bankruptcy Code. As discussed above, the transactions contemplated by this Motion will provide significant benefit to the Kentucky Debtors and their estates. Because the Kentucky Debtors cannot obtain the benefits of the transactions without the assumption and assignment of the Accepted Contracts, the assumption of these Accepted Contracts is undoubtedly a sound exercise of the Kentucky Debtors' business judgment.

40. Further, a debtor-in-possession may assign an executory contract or an unexpired lease of the debtor if it assumes the agreement in accordance with § 365(a), and provides adequate assurance of future performance by the assignee, "whether or not there has been a default" under the agreement. 11 U.S.C. § 365(f)(2). Significantly, among other things, adequate assurance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned.[32] The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but it should be given

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[31] *See In re McCommas LFG Processing Partners, LP*, 2007 WL 4234139, at *15 ("In the absence of a showing of bad faith or an abuse of business discretion, the debtor's business judgment will not be altered." (citing *NLRB v. Bildisco & Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir.), aff'd, 465 U.S. 513 (1984))). *See, e.g.*, *In re Paolo Gucci*, 193 B.R. 411, 414 (S.D.N.Y. 1996); *Sharon Steel Corp. v. National Gas Fuel Distrib. Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 40 (3d Cir. 1989); *In re III Enter., Inc.*, 163 B.R. 453, 469 (Bankr. E.D. Pa. 1994) ("Generally, a court will give great deference to a debtor's decision to assume or reject an executory contract. A debtor need only show that its decision to assume or reject the contract is an exercise of sound business judgment – a standard which we have concluded many times is not difficult to meet.").

[32] *See, e.g.*, *In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D. N.Y. 1986) (stating that adequate assurance of future performance is present when the prospective assignee of a lease from the debtor has financial resources and has expressed willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding); *In re Old S. Coors*, 27 B.R. 923, 926 (Bankr. N.D. Miss. 1983) (finding that the assignees' "long and successful business experience and financial strength" satisfied the "reasonable standards of adequate assurance of future performance").

"practical, pragmatic construction."[33] At the Sale Hearing, the Kentucky Debtors will demonstrate to the satisfaction of this Court that the Purchaser has sufficient assets to continue performance under any Accepted Contract. The Kentucky Debtors submit that the assumption and assignment of the Accepted Contracts as set forth herein should be approved.

41. To assist in the assumption and assignment of the Accepted Contracts, the Kentucky Debtors request that the Bankruptcy Court enter an order providing that anti-assignment provisions in the Accepted Contracts shall not restrict, limit, or prohibit the assumption and assignment of the Accepted Contracts and are deemed and found to be unenforceable anti-assignment provisions within the meaning of § 365(f) of the Bankruptcy Code. Section 365(f)(1) of the Bankruptcy Code permits a debtor-in-possession to assign unexpired leases and executory contracts free from such anti-assignment restrictions, providing, in pertinent part, that:

> [N]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection . . . .[34]

42. By operation of law, § 365(f)(1) invalidates provisions that prohibit, restrict, or condition assignment of an executory contract or unexpired lease.[35] Section 365(f)(3) goes

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33 *In re Liljeberg Enters, Inc.*, 304 F.3d 410, 438-39 (5th Cir. 2002) ("[T]o determine if the debtor in possession has provided 'adequate assurance of future performance'… courts must look to 'factual conditions,' including 'consider[ation of] whether the debtor's financial data indicated its ability to generate an income stream sufficient to meet its obligations, the general economic outlook in the debtor's industry, and the presence of a guarantee.") (internal citations omitted); *EBG Midtown South Corp. v. McLaren/Hart Environmental Eng'g. Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 592 (S.D.N.Y. 1992) (citations omitted), *aff'd*, 993 F.2d 300 (2d Cir. 1993).

34 11 U.S.C. § 365(f)(1).

35 *See In re Pin Oaks Apartments*, 7 B.R. 364, 367 (Bankr. S.D. Tex. 1980) (finding that § 365(f)(1) grants the debtor "rights to assign a lease to a third party who becomes fully liable thereunder, notwithstanding any contrary contractual provisions which restrict, prohibit or condition any such assignment"). *See, e.g.*,

beyond the scope of § 365(f)(1) by prohibiting enforcement of any clause creating a right to modify or terminate the contract or lease upon a proposed assumption or assignment thereof.[36]

43. Other courts have recognized that provisions that have the effect of restricting assignments also cannot be enforced.[37] Similarly, in *In re Mr. Grocer, Inc.*, the court noted that:

> [The] case law interpreting § 365(f)(1) of the Bankruptcy Code establishes that the court does retain some discretion in determining that lease provisions, which are not themselves ipso facto anti-assignment clauses, may still be refused enforcement in a bankruptcy context in which there is no substantial economic detriment to the landlord shown, and in which enforcement would preclude the bankruptcy estate from realizing the intrinsic value of its assets.[38]

Thus, the Kentucky Debtors request that any anti-assignment provisions be deemed not to restrict, limit, or prohibit the assumption and assignment of the Accepted Contracts and be deemed and found to be unenforceable anti-assignment provisions within the meaning of section 365(f) of the Bankruptcy Code.

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*Coleman Oil Co., Inc. v. The Circle K Corp. (In re The Circle K Corp.)*, 127 F. 3d 904, 910-11 (9th Cir. 1997) ("[N]o principle of bankruptcy or contract law precludes us from permitting the Debtors here to extend their leases in a manner contrary to the leases' terms, when to do so will effectuate the purposes of section 365.").

[36] *See, e.g., In re Jamesway Corp.*, 201 B.R. 73 (Bankr. S.D. N.Y. 1996) (finding that § 365(f)(3) prohibits enforcement of any lease clause creating right to terminate lease because it is being assumed or assigned, thereby indirectly barring assignment by debtor; all lease provisions, not merely those entitled anti-assignment clauses, are subject to court's scrutiny regarding anti-assignment effect).

[37] *See In re Rickel Home Centers, Inc.*, 240 B.R. 826, 831 (D. Del. 1998) ("In interpreting Section 365(f), courts and commentators alike have construed the terms to not only render unenforceable lease provisions which prohibit assignment outright, but also lease provisions that are so restrictive that they constitute de facto anti-assignment provisions."); *see also In re U.L Radio Corp.*, 19 B.R. 537, 543 (Bankr. S.D. N.Y. 1982) ("Any lease provision, not merely one entitled 'anti-assignment clause,' would be subject to the court's scrutiny regarding its anti-assignment effect.").

[38] 77 B.R. 349, 354 (Bankr. D. N.H. 1987).

**H. Proposed Notice of the Cure Costs Associated with the Accepted Contracts is Reasonable Under the Circumstances.**

44. Additionally, pursuant to § 365(b), all monetary defaults that must be cured (the "**Cure Costs**") as a pre-condition to the assumption and assignment of the Accepted Contracts will be cured prior to the proposed closing. The Debtors anticipate that the aggregate amount of the Cure Costs associated with the Accepted Contracts will be relatively small.

45. To allow the counterparties to the Accepted Contracts to protect their rights and facilitate the transfer process, the Debtors propose to file and serve a "**Cure Amount Notice**" on the non-Debtor parties to the Accepted Contracts on or before July 6, 2018 that will (a) contain a calculation of the Cure Costs that the Debtors believe must be paid to cure all prepetition defaults under the Accepted Contracts and (b) provide notice of the intent to assume and assign such contracts to the Purchaser. If a cure amount of $0.00 is listed on the Cure Amount Notice, then the Debtors believe that there is no Cure Cost. Unless the non-debtor party to an unexpired lease, license agreement or executory contract files and serves an objection (the "**Cure Amount Objection**") to its scheduled Cure Cost prior to the objection deadline for this Motion (currently **July 18, 2018**) upon counsel for the Debtor, the Debtors request that such non-debtor party be (i) forever barred from objecting to the Cure Cost and from asserting any additional cure or other amounts with respect to such unexpired lease, license agreement, or executory contract and the Debtors shall be entitled to rely solely on the Cure Cost; and (ii) be forever barred and estopped from asserting or claiming against the Debtors, their Estates, the Purchaser, or any other assignee of the relevant unexpired lease, or executory contract that any additional amounts are due or defaults exist, and from asserting any other objection to the assignment and/or assumption of such unexpired lease, license agreement or executory contract.

46. If a Cure Amount Objection is timely filed, the Cure Amount Objection must set forth (a) the basis for the objection; and (b) the amount the party asserts as the Cure Cost. After receipt of the Cure Amount Objection, the Debtors shall attempt to reconcile any differences in the Cure Cost believed by the non-debtor party to exist. If the Debtors and the non-debtor party cannot consensually resolve the Cure Amount Objection then such Cure Amount Objection shall be adjudicated as part of the Sale Hearing or an amount sufficient to pay disputed cure amounts will be segregated by the Debtors pending resolution of such cure disputes.

47. The Debtors believe that the proposed notice outlined above will provide the non-Debtor parties to the Accepted Contracts more than sufficient opportunity to prosecute their rights with respect to the assumption and assignment of the Accepted Contracts. Accordingly, the Debtors request that the Court approve the assumption and assignment of the Accepted Contracts to the Purchaser.

## I. Cause Exists To Eliminate Any Stay Imposed By The Bankruptcy Rules.

48. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property ... is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."[39] Bankruptcy Rule 6006 provides that an "order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."[40]

49. The Kentucky Debtors request that any order approving this Motion be effective immediately, thereby waiving the 14-day stays imposed by Bankruptcy Rules 6004 and 6006. These waivers or eliminations of the 14-day stays are necessary for the transactions to close as

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[39] Fed. R. Bankr. P. 6004(h).

[40] Fed. R. Bankr. P. 6006(d).

expeditiously as possible. The Kentucky Debtors respectfully submit that it is in the best interest of their estates to close the transactions as soon as possible after all closing conditions have been met or waived. Accordingly, the Kentucky Debtors request that the Court eliminate the 14-day stays imposed by Bankruptcy Rules 6004 and 6006.

## VI.
## CONCLUSION

**WHEREFORE**, Debtors respectfully request that this Court enter an order granting the Motion and awarding Debtors such other and further relief as this Court deems just and proper.

DATED: June 27, 2018

Respectfully submitted by:

*/s/ Mark C. Moore*

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Mark C. Moore (TX 24074751)
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**COUNSEL TO DEBTORS AND DEBTORS-IN-POSSESSION**

## CERTIFICATE OF SERVICE

I hereby certify that, on June 27, 2018 a true and correct copy of the foregoing document was served electronically by the Court's PACER system.

*/s/ Mark C. Moore*
Mark C. Moore

## Debtors

| Debtor | Last Four Digits of Federal Tax I.D. No. |
|---|---|
| Preferred Care Inc. | 7040 |
| **Kentucky LP Debtors** | |
| Bowling Green Health Facilities, L.P. | 5787 |
| Brandenburg Health Facilities, L.P. | 6699 |
| Cadiz Health Facilities, L.P. | 7640 |
| Campbellsville Health Facilities, L.P. | 4207 |
| Elizabethtown Health Facilities, L.P. | 6127 |
| Elsmere Health Facilities, L.P. | 7843 |
| Fordsville Health Facilities, L.P. | 3299 |
| Franklin Health Facilities, L.P. | 7307 |
| Hardinsburg Health Facilities, L.P. | 3640 |
| Henderson Health Facilities, L.P. | 8067 |
| Irvine Health Facilities, L.P. | 7418 |
| Morganfield Health Facilities, L.P. | 8320 |
| Owensboro Health Facilities, L.P. | 8145 |
| Paducah Health Facilities, L.P. | 3350 |
| Pembroke Health Facilities, L.P. | 8209 |
| Richmond Health Facilities - Kenwood, L.P. | 8235 |
| Richmond Health Facilities - Madison, L.P. | 8216 |
| Salyersville Health Facilities, L.P. | 8263 |
| Somerset Health Facilities, L.P. | 8739 |

| | |
|---|---|
| Springfield Health Facilities, L.P. | 8310 |
| Stanton Health Facilities, L.P. | 8704 |
| **New Mexico LP Debtors** | |
| Artesia Health Facilities, L.P. | 5383 |
| Bloomfield Health Facilities, L.P. | 7640 |
| Clayton Health Facilities, L.P. | 3609 |
| Desert Springs Health Facilities, L.P. | 2707 |
| Espanola Health Facilities, L.P. | 2102 |
| Gallup Health Facilities, L.P. | 2562 |
| Lordsburg Health Facilities, L.P. | 1449 |
| Pinnacle Health Facilities XXXIII, L.P. | 1389 |
| Raton Health Facilities, L.P. | 6759 |
| SF Health Facilities, L.P. | 2323 |
| SF Health Facilities-Casa Real, L.P. | 0716 |
| Silver City Health Facilities, L.P. | 6972 |

# EXHIBIT A

Gardere Draft
6/27/18
4:30 p.m.

# OPERATIONS TRANSFER AGREEMENT

**BY AND AMONG**

**_____, or its assigns**

**as Purchaser,**

**AND**

**_____ Health Facilities, L.P.**

**(d/b/a _____ Nursing and Rehabilitation Center),**

**as Seller**

**Dated as of June____, 2018**

Table of Contents

Exhibits



Schedules

* To be updated by Existing Operator on or before Effective Date
** To be provided by New Operator on or before July 5, 2018
*** To be provided by New Operator on or before July 20, 2018

# OPERATIONS TRANSFER AGREEMENT

This OPERATIONS TRANSFER AGREEMENT ("**Agreement**") is made and entered into as of the ____ day of _____, 2018, by and among _____, LP, a Texas limited ("**Existing Operator**"), and _____, LLC, a Kentucky limited liability company ("**New Operator**"),

## RECITALS

A. Existing Operator is the named subtenant under that certain Sublease Agreement dated as of July 1, 2012 by and between Preferred Care, Inc. ("**Preferred Care**") and the Existing Operator (the "**Existing Sublease**"), pursuant to which Existing Operator is the licensed operator of_____ Nursing and Rehabilitation Center located at _____, Kentucky (the "**Facility**").

B. The Sublease is subject to the terms and conditions of that certain Master Lease dated July 1, 2012 (the "**Existing Master Lease**") between Preferred Care as the master tenant and the landlords listed therein on Schedule 1 (individually and collectively, the "**Landlord**").

C. The Master Lease, and the Sublease, are being terminated as of the Effective Date (as defined below) (the "**Lease Termination**").

D. Certain affiliates of New Operator and Landlord desire to enter into a new Master Lease Agreement, effective as of the Effective Date (the "**New Master Lease**"), and the new master tenant shall sublease the Facility to the New Operator.

E. Simultaneously with the Lease Termination on the Effective Date, and as required by the Existing Master Lease and the Existing Sublease, Existing Operator and Preferred Care will transfer to Landlord all of their right, title and interest in and to all Essential Tenant Property (as defined in **Exhibit A**).

F. This Agreement sets out the terms and conditions pursuant to which Existing Operator will transfer the operations of the Facility and the operating assets associated with the Facility to New Operator as more particularly described herein effective as of the Effective Date.

G. Upon the Closing (as hereinafter defined) (i) the Existing Sublease and the Existing Master Lease shall be terminated with respect to the Facility, (ii) the New Master Lease shall become effective, and (iii) the transactions contemplated by this Agreement shall be consummated.

H. Certain capitalized terms used herein have the meanings given to them on **Exhibit A** hereto.

## AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and subject to the conditions contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree that:

**ARTICLE 1**
**TRANSFER OF ASSETS**

1.1 Transfer of Assets. On the Effective Date, and upon the terms and subject to the conditions of this Agreement, the Existing Operator shall transfer, convey, assign and deliver to the New Operator, and the New Operator shall acquire from the Existing Operator, free and clear of all Liens (as defined in Exhibit A), all right, title and interest of the Existing Operator in and to the assets of Existing Operator (other than Excluded Assets, as defined below) that are owned or used by Existing Operator in connection with the operations of the Facility including, without limitation, the following (collectively, the "**Assets**"):

(a) the Accepted Contracts (as defined in Section 4.1 below);

(b) all books, records and supporting material of, or pertaining to the operation of, the Facility, including, but not limited to, resident records, records of resident funds, resident care records, employment records of all Hired Employees, maintenance logs and preventative maintenance records, electronic medical records, and plans and specifications (collectively, the "**Books and Records**");

(c) all inventories, consumable products (e.g., food, medical, pharmacy, office, maintenance and other supplies, including soaps, shampoos and similar items) and supply items (e.g., linen, china, glassware, silver, uniforms and similar items) owned or used by Existing Operator and located at the Facility (the "**Inventory and Supplies**");

(d) to the extent Existing Operator's interest is assignable and/or transferable pursuant to applicable law and orders, rules and regulations of the United States Department of Health and Human Services Centers for Medicare and Medicaid Services ("**CMS**") and the State of Kentucky, and to the extent New Operator in its sole discretion elects to accept the same, all licenses, permits, approvals, certifications, certificates of need (or the equivalent), Medicare and Medicaid provider numbers and other Health Care Authorizations (as defined in **Exhibit A**), which assignment is addressed further in ARTICLE 6 below;

(e) the name of the Facility set out in Recital A to this Agreement and any and all trade or service names, associated marks and logos associated therewith or derived therefrom, telephone and facsimile numbers relating to the Facility (including all "800" numbers), and all post office box addresses associated with the Facility; and

(f) the vehicles identified on Schedule 1.1 attached hereto.

In addition, Existing Operator shall cause Preferred Care to assign and transfer to New Operator any interest it may have in and to the Assets effective as of the Effective Date.

1.2 Excluded Assets. Notwithstanding anything to the contrary contained herein, the Assets shall not include the following items (collectively, the "**Excluded Assets**"):

(a) the rights of Existing Operator under this Agreement;

(b) all cash and cash equivalents;

(c) all accounts with any financial institutions other than accounts holding Resident Trust Funds (as defined below);

(d) all causes of action under applicable state law and Chapter 5 of the U.S. Bankruptcy Code.

(e) all amounts of any nature due to Existing Operator, whether billed or unbilled, for goods provided, services rendered, or any other transaction of any type prior to the Effective Date, including accounts receivable, notes receivable, and inter-company accounts receivable;

(f) all Rejected Contracts (as defined in **Exhibit A**);

(g) all prepaid deposits and expenses;

(h) any rights and interest in, including intellectual property rights in and to, the name "Preferred Care;"

(i) any of Existing Operator's employee plans;

(j) all computer software and software licenses, other than the American Health Tech ("**AHT**") software license which is identified in transferred Assets as an Accepted Contract; and

(k) all Additional Excluded Assets set forth on Schedule 1.2 attached hereto.

## ARTICLE 2
## TRANSFER OF OPERATIONS

2.1 Cooperation. Existing Operator agrees to cooperate fully with New Operator to effect an orderly transfer of the operation of the Facility. Following the execution hereof, Existing Operator shall cooperate with New Operator to furnish all requested documentation in Existing Operator's possession and to execute all documents and consents reasonably necessary for New Operator to obtain any required licenses, agreements, certificates and consents necessary to operate the Facility from third parties and government program agencies.

2.2 Surrender of the Facility. On and as of the Effective Date, Existing Operator shall relinquish any and all right, title and interest in and to the Facility and any of the Essential Tenant Property unto Landlord, and Existing Operator shall surrender possession thereof to New Operator.

2.3 New Tenant. New Operator shall take possession of and operate the Facility from and after the Effective Date subject to the terms and conditions of the New Master Lease. It is the express intention, understanding, acknowledgement and agreement of Existing Operator that New Operator, in its capacity as new subtenant of the Facility under the New Master Lease or otherwise is not succeeding to and shall be held harmless from any of the obligations or liabilities of Existing Operator (a) under the Existing Master Lease or (b) with respect to the Assets except to the extent expressly assumed or undertaken by New Operator under this Agreement.

2.4 Termination of Master Lease.

(a) On and as of the Effective Date, Preferred Care shall transfer, assign, convey, grant and deliver to its landlord under the Existing Master Lease all of its right, title and interest in and to all of the "Essential Tenant Property" free and clear of all Liens (as such term is defined in the Master Lease). From and after the Effective Date, Preferred Care and the debtors in the Existing Operator's Bankruptcy Proceeding shall have no interest in any of the Essential Tenant Property and shall release, remise and assign the same to and under the Master Lease.

(b) On and as of the Effective Date, Existing Operator shall transfer, assign, convey, grant and deliver to New Operator all of Existing Operator's right, title and interest in and to the Assets free and clear of all Liens. From and after the Effective Date, Existing Tenant shall have no interest in any of the Assets and shall release, remise and assign the same to New Operator.

## ARTICLE 3
## DELIVERY OF INFORMATION

3.1 Delivery of Information by Existing Operator on the Effective Date. On the Effective Date, Existing Operator shall deliver to New Operator, the following (collectively, the "**Schedules**"):

(a) Employee Information. A schedule that reflects the following for the Facility: (a) the names of all personnel employed by Existing Operator in connection with the operation of the Facility, (b) the positions, rates of pay, bonuses, commissions, severance pay, and accrued but unused paid time off benefits (including sick time, vacation time, holiday pay and comp time) of such personnel, and (c) any disciplinary actions or performance improvement plans (the "**Employee Schedule**");

(b) Prepayments Schedule. A schedule of payments received by Existing Operator for resident or other services to be provided at the Premises on or after the Effective Date, which shall include for each prepayment the name and address of each payor, the account number, and the amount received (the "**Prepayments Schedule**");

(c) Prepaid Expense Schedule. A schedule of all prepayments made by Existing Operator for services relating to the Facility to be provided after the Effective Date (the "**Prepaid Expense Schedule**");

(d) Utilities Schedule. A schedule of all utilities (together with copies of the most recent bills) for the Facility (the "**Utilities Schedule**");

(e) Authorizations Schedule. A schedule (together with copies) of Existing Operator's Authorizations with respect to the Facility (the "**Health Care Authorization Schedule**");

(f) Contracts. Copies of the Contracts but excluding any master agreement to which Existing Operator is a party (the "**Contracts Schedule**"); and

(g) Property Taxes. A schedule of all property taxes (together with copies of the most recent bills) for the Facility which are the responsibility of Existing Operator under the Master Lease (the "**Property Tax Schedule**");

together, in each case, with documentation detailing and supporting the payments and credits identified on the Schedules.

3.2 Delivery of Preliminary Information by Existing Operator. Prior to the execution of this Agreement, Existing Operator has delivered to New Operator, each of the Schedules with information presented as of a date within 30 days of the date of this Agreement and confirms that such information is, in all material respects, accurate and complete as presented to the best of Existing Operator's knowledge and will be updated as of the Effective Date in accordance with Section 3.1.

## ARTICLE 4
## CONTRACTS

4.1 Accepted Contracts; Consents for Assignment. On or before July 5, 2018, New Operator will provide Existing Operator a list of each of the Contracts to be assumed by Existing Operator and assigned to New Operator on the Effective Date (as updated from time to time prior to the Effective Date, the "**Accepted Contracts Schedule**"). Each of the Contracts referred to on the Accepted Contracts Schedule is referred to as an "**Accepted Contract**." Existing Operator shall pay all cure costs for the Accepted Contracts for each Existing Operator provided the aggregate amount of cure costs Existing Operator is required to pay (exclusive of the cure costs for the Accepted Contract pertaining to the AHT software license) under this Section 4.1 is limited to $5,000.00.

4.2 Rejected Contracts. Subject to Court approval, on the Effective Date, Existing Operator shall use reasonable commercial efforts to terminate all Rejected Contracts that pertain to the Facility, if possible, and remove from the Facility and relocate any goods, services, equipment and/or other personal property subject to the Rejected Contracts.

4.3 Contract Obligations. New Operator, in its capacity as new tenant or otherwise shall not be responsible for any obligation or liability under (a) the Rejected Contracts, including, but not limited to, any termination, cancellation, modification or similar fees, or (b) the Contracts relating to or resulting from acts or omissions occurring during the period ending on the Effective Date, it being specifically understood and agreed that New Operator's obligations and liabilities are only with respect to the Accepted Contracts and shall be limited to its acts and omissions thereunder for the period from and after the Effective Date.

4.4 Indemnification. New Operator agrees to indemnify and defend and hold harmless Existing Operator after the Effective Date from and against any and all Losses (as defined in Section 13.1 pertaining to any of the Accepted Contracts arising during or relating to the period from and after the Effective Date (other than as a result of acts or omissions prior to the Effective Date or acts or omissions of Existing Operator on or after the Effective Date). Existing Operator hereby indemnifies and agrees to defend and hold harmless New Operator from and against any and all Losses pertaining to any of (a) the Rejected Contracts and (b) the Contracts relating to the period prior to or on the Effective Date (including Losses arising after the Effective Date as a result of acts or omissions on or prior to the Effective Date or as a result of acts or omissions of Existing Operator).

## ARTICLE 5
## LIABILITIES; PRORATIONS

5.1 No Assumption of Liabilities. New Operator, in its capacity as new tenant or otherwise, shall not be obligated to pay, perform or otherwise be responsible for any liabilities, claims, obligations, judgments, orders or duties of any kind or nature whatsoever of Existing Operator (a) pertaining to the Facility and/or the Assets and relating to the period prior to or on the Effective Date (regardless of when such liability, claim, obligation, judgment, order or duty arises), or (b) pertaining to the ownership, operation and use of Facility (including any business conducted at or in connection with the Facility) relating to the period prior to or on the Effective Date (regardless of when such liability, claim, obligation, judgment, order or duty arises) or (c) under the Existing Master Lease (collectively, the "**Excluded Liabilities**"). The parties acknowledge and agree that New Operator, in its capacity as new tenant or otherwise, is not a successor of Existing Operator and shall have no liabilities or obligations imposed on it in connection with the transactions contemplated by this Agreement except those it expressly undertakes pursuant to and then only to the extent provided in this Agreement.

5.2 Revenues and Expenses; Pro-Rations. All revenues and expenses related to the operation of the Facility will be prorated as of the Effective Date, with Existing Operator entitled to such revenues and responsible for such expenses arising out of its operation of the Facility for the period prior to the Effective Date, and New Operator entitled to the revenues and responsible for the expenses arising out of its operation of the Facility from and after the Effective Date. All such pro-rations shall be made on the basis of the actual number of days elapsed in the relevant accounting or revenue period and shall be based on the most recent information available. Without limiting the generality of the foregoing, the items in Sections 5.3 through 5.7 of this Agreement shall be prorated as of the Effective Date.

Nothing herein shall be construed to require New Operator to assume an obligation or prorate any deposits, prepaid rent or prepaid expenses of whatever nature arising under the Master Lease or paid by New Operator under the New Master Lease, any obligation under a Contract not assigned to New Operator or any obligation arising on or before the Effective Date.

Except as otherwise provided in **Exhibit B**, all amounts owing from one party hereto to the other party hereto 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.

5.3 Administration of Accounts Receivable. From and after the Effective Date, the administration of collection of accounts receivable with respect to the Facility will be governed by the terms and conditions of Exhibit B. Existing Operator agrees to provide New Operator access to and permit New Operator to use the billing numbers and identifiers reasonably required for the submission of Medicare and Medicaid billings for payment during the Transition Period (as defined in **Exhibit B**) and to forward or otherwise make immediately available to New Operator all remittance advices or other claims processing information received from any payor to facilitate the administration of accounts receivable with respect to the Facility in accordance with **Exhibit B**.

5.4 Accounts Payable.

(a) Prior to Effective Date. Existing Operator is and shall be responsible for all accounts payable relating to goods (only to the extent used prior to the Effective Date) and services received by the Facility (only to the extent received prior to the Effective Date) or otherwise relating to the period prior to the Effective Date.

(b) From and After Effective Date. New Operator, as the new tenant, shall be responsible for payment of all accounts payable relating to goods (including those received prior to the Effective Date but not used until after the Effective Date, insofar as such goods constitute Assets) and services received by the Facility or otherwise arising from the operation of the Facility by New Operator from and after the Effective Date.

(c) Indemnification. Existing Operator hereby indemnifies and agrees to defend and hold harmless New Operator from and against any and all Losses relating to the payment of all accounts payable for (a) Inventory and Supplies received at the Facility prior to the Effective Date and (b) all other goods and services delivered, rendered or performed at the Facility prior to the Effective Date. New Operator hereby indemnifies and agrees to defend and hold harmless Existing Operator from and against any and all Losses relating to the payment of all accounts payable for (a) Inventory and Supplies received at the Facility on or after the Effective Date and (b) all other goods and services delivered, rendered or performed at the Facility on or after the Effective Date.

5.5 Property Taxes. All state, county, city, school, ad valorem, and other local real and personal property taxes and assessments relating to or assessed against the Facility shall be prorated as of the Effective Date. If the real and personal property tax rates for the current tax year are not established by the Effective Date, the pro-rations shall be made on the basis of the rates in effect for the preceding tax year and shall be adjusted when exact amounts are determined. Any such proration shall be based upon the most recent available assessed value of the Facility prior to the Effective Date.

5.6 Utilities. All utilities shall be prorated as of the Effective Date. Any such utility charges and rents 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.

5.7 Payroll. Any Employee Liabilities (as defined in Section 10.1 for the period prior to Effective Date shall be addressed as provided in ARTICLE 10 below.

5.8 Claims.

(a) Existing Operator. Existing Operator shall be responsible for all claims and obligations arising out of events occurring prior to the Effective Date.

(b) New Operator. New Operator shall be responsible for all claims and obligations arising out of events occurring during its operation of the Facility on or after the Effective Date.

## ARTICLE 6
## HEALTH CARE AUTHORIZATIONS

6.1 Use of Health Care Authorizations. Existing Operator holds the Health Care Authorizations set forth on Schedule 3.1 as of the date of this Agreement, and shall use reasonable efforts to continue to hold and maintain such Health Care Authorizations until the same are transferred to New Operator and to facilitate such transfer effective as of the Effective Date. Existing Operator shall use reasonable efforts not to commit any act or be remiss in the undertaking of any act that would jeopardize any Health Care Authorization for any portion of the Facility, and Existing Operator shall timely comply with all requests for correspondence, acknowledgements or other actions necessary or appropriate to promote the orderly transfer of any and all Health Care Authorizations with respect to the Facility to be effective at the time of any such transfer of possession. Existing Operator will provide New Operator full access to and authorizes New Operator to use Existing Operator's billing codes, usernames and other information New Operator deems reasonably necessary or appropriate in order to enable New Operator to operate and timely receive payment for services rendered and products provided at the Facility while any transfer of ownership of a Health Care Authorization is pending.

6.2 Indemnification. New Operator agrees to indemnify and hold harmless Existing Operator from and against any and all Losses relating to any acts or omissions by New Operator under the Health Care Authorizations relating to the period on and after the Effective Date. Existing Operator agrees to indemnify and hold harmless New Operator, in its capacity as new tenant or otherwise, from and against any and all Losses relating to any acts or omissions by Existing Operator under the Health Care Authorizations relating to the period prior to the Effective Date.

## ARTICLE 7
## RESIDENTS

7.1 Resident Census. On the Effective Date, Existing Operator shall prepare a true, correct and complete confidential resident census report (the "**Resident Census**"). The Resident Census shall be

initialed by Existing Operator and New Operator and provided to New Operator (not attached hereto) as Schedule 7.1.

7.2 Resident Trust Funds. On the Effective Date, Operator shall prepare a true, correct and complete confidential inventory of all residents' trust funds (the "**Resident Trust Funds**") held by Existing Operator on the Effective Date for residents at the Facility. The Resident Trust Funds shall be initialed by Existing Operator and New Operator and provided to New Operator (not attached hereto) as Schedule 7.2.

7.3 Transfer Trust Funds. On the Effective Date, Existing Operator hereby agrees to transfer the Resident Trust Funds to New Operator and New Operator hereby agrees that it will accept such Resident Trust Funds in trust for the residents, in accordance with applicable statutory and regulatory requirements.

7.4 Trust Fund Indemnity. Existing Operator will indemnify, defend and hold New Operator harmless for, from and against all liabilities, claims and demands, including without limitation reasonable attorney's fees, in the event the amount of the Resident Trust Funds, if any, transferred to New Operator did not represent the full amount of the Resident Trust Funds shown to have been delivered to Operator as custodian or with respect to any Resident Trust Funds delivered, or claimed to have been delivered, to Existing Operator, but which were not delivered by Existing Operator to New Operator, or for claims which arise from actions or omissions of Existing Operator with respect to the Resident Trust Funds on or prior to the Effective Date.

## ARTICLE 8
## REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of Existing Operator. Existing Operator hereby represents and warrants to New Operator as of the date this Agreement is executed and as of the Effective Date as follows:

(a) Organization. Existing Operator is a duly organized and validly existing organized under the laws of the State of Texas.

(b) Due Formation, Authority and Valid Execution. Subject to the Court's Sale Order as described in Section 11.1(a), Existing Operator has all necessary power and authority to enter into this Agreement and to execute all agreements referred to herein or contemplated hereby, and all necessary partnership legal actions have been taken by Existing Operator to authorize the execution, delivery and performance of this Agreement by Existing Operator. Existing Operator has all requisite limited partnership power and authority to operate and lease the Facility, and to carry on its business as presently conducted. This Agreement has been duly and validly executed and delivered by Existing Operator, and assuming due execution and delivery by New Operator, is enforceable against Existing Operator in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, fraudulent transfer, fraudulent conveyance, moratorium or similar laws affecting the enforcement of creditors' rights generally and subject to general principals of equity, whether asserted in a proceeding at law or in equity.

(c) Compliance with Laws. Except as set forth in paragraph (c) of the disclosure memorandum delivered to New Operator by Existing Operator prior to the execution of this Agreement (the "Disclosure Memorandum"), Existing Operator has complied in all material respects with all laws, ordinances, regulation, licensing 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, the production, labeling, marketing or sale or distribution

of products, government payment program requirements and disclosure of ownership and related information requirements, quality and safety standards, accepted professional standards and principles, and requirements relating to the physical structure and condition of the Facility.

(d) Environmental Matters. Existing Operator has received written no notice of, and has no Actual Knowledge of, any violation of any federal or state environmental statute, law, ordinance or regulation with respect to the Facility or its operations.

(e) Adverse Claims. There is no (i) litigation, audit or proceeding pending or threatened against Existing Operator or the Facility before or by any court, public board or body, governmental or administrative agency or instrumental or administrative agency or instrumentality relating to Medicare, Medicaid or any other third party payor programs or employees of the Facility, except as described in paragraph (e) of the Disclosure Memorandum, (ii) unpaid property tax or assessment against the Facility which is due and payable or (iii) pending or threatened condemnation proceeding or assessment against the Facility. Except as set forth in paragraph (e) of the Disclosure Memorandum, there are no mechanics', materialmen's or similar claims or Liens currently claimed against the Facility or any assets located at the Facility for work performed prior to the date hereof. Existing Operator hereby agrees to indemnify, defend and hold harmless New Operator from and against any and all Losses relating to the litigation described in paragraph (e) of the Disclosure Memorandum, including without limitation, reimbursement for any third party expenses (but not wages, salaries or other compensation) for any employees of New Operator or its affiliates who are called to testify or otherwise participate in said litigation, audit or governmental proceeding.

(f) Contracts. To the best of Existing Operator's knowledge, all of the Contracts that are material to the operation of the Facility (the "**Material Contracts**") are in full force and effect. The Material Contracts constitute valid and legally binding obligations of Existing Operator, and, to the best of Existing Operator's knowledge, of the other parties thereto and are enforceable in accordance with their terms against Existing Operator, and, to the best of Existing Operator's knowledge, against the other parties thereto, except as enforceability may be limited by the impact, if any, with respect to the failure of Existing Operator to make timely payments under such Material Contracts and by applicable bankruptcy, insolvency, fraudulent transfer, fraudulent conveyance, moratorium or similar laws affecting the enforcement of creditors' rights generally and subject to general principals of equity, whether asserted in a proceeding at law or in equity.

(g) Health Care Authorizations. The Health Care Authorizations Schedule contains a true and complete list of all of the Health Care Authorizations currently owned or held by or issued to Existing Operator in connection with its operation of the Facility. Existing Operator is the duly authorized holder of such Health Care Authorizations, all of which, except as set forth in paragraph (g) of the Disclosure Memorandum, are in full force and effect. Other than regulatory surveys conducted in the normal course of business, for which acceptable plans of correction have been or will be submitted on a timely basis, Existing Operator has not received written notice of and has no Actual Knowledge of any threatened, action by or before any governmental authority, administrative agency or instrumentality to revoke, cancel, rescind, modify or refuse to renew any of such Health Care Authorizations.

(h) No Excluded Providers. Neither Existing Operator nor any of its officers, directors, partners, partner's representatives or, to Existing Operator's best knowledge, employees have been disqualified from participating in Medicare, Medicaid or any other state health care program. Without limitation of the foregoing, neither Existing Operator nor any of its officers, directors, partners or employees have been engaged in any activities that are prohibited under criminal law applicable to the operation of long term care facilities, or are cause for civil penalties or mandatory or permissive exclusion from Medicare, Medicaid or any other state health care program.

(i) No Recoupment Efforts. Existing Operator has not received any written notice of and has no Actual Knowledge of any are no current or pending recoupment efforts regarding Medicaid, Medicare or any other third party payor programs at (or with respect to) the Facility.

(j) Employee Relations. None of Existing Operator's employees of the Facility are members of a labor union and, to Existing Operator's best knowledge, there are no union organizing activities pending at the Facility.

(k) Accuracy of Warranties and Representations. To the best of Existing Operator's knowledge, each representation and warranty of Existing Operator herein shall be true, accurate and correct in all material respects as of the date hereof and the Effective Date, with the same force and effect as though made at such time. As used herein, the term "**Actual Knowledge**" or words of similar import shall mean only the actual or unimputed knowledge of Mike Gavin and Logan Sexton.

8.2 Representations and Warranties of New Operator. New Operator hereby represents and warrants to Existing Operator as of the date this Agreement is executed and as of the Effective Date as follows:

(a) Organization. New Operator is a validly existing limited liability company organized under the laws of the state of its formation.

(b) Due Formation, Authority and Valid Execution. New Operator has all necessary power and authority to enter into this Agreement and to execute all agreements referred to herein or contemplated hereby, and all necessary actions have been taken by New Operator. This Agreement has been duly and validly executed and delivered by New Operator, and assuming due execution and delivery by Existing Operator, is enforceable against New Operator in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, fraudulent transfer, fraudulent conveyance, moratorium or similar laws affecting the enforcement of creditors' rights generally and subject to general principals of equity, whether asserted in a proceeding at law or in equity.

(c) Accuracy of Warranties and Representations. It is a condition to Existing Operator's obligations under this Agreement that each representation and warranty of New Operator herein shall be true, accurate and correct in all material respects as of the date hereof and the Effective Date, with the same force and effect as though made at such time.

## ARTICLE 9
## COVENANTS

9.1 Covenants of Existing Operator. Existing Operator hereby covenants and agrees as follows:

(a) Access; Due Diligence. Between the date of this Agreement and the Effective Date, Existing Operator will afford to the authorized representatives and agents of New Operator reasonable access to and the right to inspect the Facility and the assets, books and records of Existing Operator (including those relating to Contracts, Health Care Authorizations and payment and reimbursement programs) to the extent related to Existing Operator, the Facility and its assets, personnel and operations upon prior notice to Existing Operator, and will furnish New Operator with such additional financial and operating data and other information regarding the same as New Operator may from time to time reasonably request. Existing Operator will make reasonably available for conference any of their respective officers and employees and will exercise its best efforts to make available its agents, vendors and suppliers who are involved in the operation of the Facility as reasonably requested by New Operator, and will supply to New Operator all other information that New Operator deems reasonably necessary to or appropriate in order to conduct its due diligence of the Facility and its business, to evaluate, identify

and meet with potential Hired Employees, to identify Accepted Contracts, to obtain any Health Care Authorizations or otherwise in connection with the transaction contemplated by this Agreement.

(b) Consents and Approvals. Existing Operator shall use its best efforts to: (i) provide, in coordination with New Operator, all notices and other information required of any Health Care Authorizations to consummate the transaction contemplated herein; (ii) obtain all governmental approvals (or exemptions therefrom) necessary or required to allow Existing Operator to perform their obligations under this Agreement; (iii) to secure any third party consents required in connection with the assignment of the Accepted Contracts to New Operator; and (iii) assist and cooperate with New Operator and its representatives and counsel in obtaining all certificates of need, governmental consents, approvals and governmental authorizations that New Operator deems necessary or appropriate and in the preparation of any document or other material that may be required by any governmental authority as a predicate to or as a result of the transactions contemplated by this Agreement.

(c) Health Care Authorizations. Existing Operator shall use best efforts to maintain in full force and effect all Health Care Authorizations required for operation of the Facility and to transfer the same to New Operator effective as of the Effective Date, and shall renew any of the foregoing to the extent the same expire prior to Effective Date.

(d) Cooperation. Existing Operator agrees to cooperate with Landlord and New Operator by using its best efforts to supply any and all information that may be reasonably requested to effectuate the transaction contemplated by this Agreement and an orderly transfer of the Transferred Property and the operations of the Facility.

(e) Cost Reports. Existing Operator shall prepare and file with the appropriate Medicare and Medicaid agencies its final cost reports within the time period required by applicable regulations with respect to its operation of the Facility. Within five (5) business days after request by New Operator, Existing Operator shall provide New Operator with copies of its final cost reports or any prior cost reports pertaining to the Facility, together with copies of any amendments thereto, and any additional information submitted in connection with or correspondence related to such cost reports. Existing Operator shall thereafter timely provide any information reasonably requested by New Operator with respect to such costs reports and any related Medicare or Medicaid audits. New Operator shall have no liability to any federal or state agency or any other payor for any cost report, overpayment, reimbursement or deficiency arising, or relating to any goods delivered or services performed at the Facility prior to the Effective Date. In the event a federal or state agency or any other payor making payment to Existing Operator for goods delivered or services performed at the Facility prior to the Effective Date shall make any claim against New Operator for reimbursement or overpayment occurring during such period, Existing Operator agrees to save, indemnify, defend and hold harmless New Operator from and against any and all Losses incurred by New Operator as a result of such claim.

(f) Records. Prior to the Effective Date, Existing Operator shall maintain Existing Operator's Books and Records at the Facility and in compliance with all applicable legal requirements and in accordance with sound business practices. On the Effective Date, Existing Operator's Books and Records shall remain with the Facility and be owned by New Operator. New Operator agrees to take and maintain such records in accordance with Section 9.2(a), below. Upon the request of New Operator Existing Operator shall download from any computers or related equipment, and store or otherwise preserve for New Operator in a format reasonably useable by New Operator, all information on such systems relating to the Facility, including without limitation, all resident care and employment information as described above.

(g) Conduct of Business. From the date of this Agreement until the Effective Date, Existing Operator will use its best efforts to preserve and maintain the Facility, the Assets and the Essential Tenant Property in the same operating condition and repair as they exist as of the date of this Agreement, keep available the services of its key employees and preserve its relationship with residents, suppliers and others having business dealings with it, and maintain, manage and operate the Facility in compliance in all material respects with the Health Care Authorizations, applicable law and the terms of the Sublease.

9.2 Covenants of New Operator. New Operator covenants and agrees as follows:

(a) Access to Facility's Records. After the Effective Date, upon reasonable advance notice, New Operator shall, subject to the terms and conditions of the New Master Lease, allow Existing Operator's agents and representatives to have reasonable access to, and to make copies of, the books, records and supporting material of the Facility (including, without limitation, any closed resident records) relating to any period prior to the Effective Date to the extent reasonably necessary to enable Existing Operator to investigate and defend resident and/or employee claims, to file or defend cost reports and tax returns, to verify accounts receivable collections due Existing Operator and to perform similar matters. Subject to the terms and conditions of the New Master Lease, New Operator agrees to maintain such books, records and other material relating to the Facility's operations prior to the Effective Date, including, but not limited to, resident records and records of resident funds, in the manner required by law.

(b) Cooperation. New Operator agrees to cooperate with Existing Operator by supplying any and all information that may be reasonably required to effectuate an orderly transfer of the operations of the Facility.

(c) Cost Reports. Existing Operator shall not have any liability to any federal or state agency for any cost report, overpayment, reimbursement or deficiency arising, or relating to goods delivered or services performed at the Facility by New Operator from and after to the Effective Date.

## ARTICLE 10
## EMPLOYEES

10.1 Employee Liabilities. Existing Operator shall be responsible for any and all obligations for wages, salaries, bonuses, commissions, "change of control" or similar payments, severance payments, and health and welfare benefits (including, without limitation, if applicable, health, dental, disability, life), accrued but unused paid time off benefits (including sick time, vacation time, and holiday pay), F.I.C.A., employee-related taxes and all other payroll expenses, unemployment insurance costs and taxes (collectively, the "**Employee Liabilities**") for its employees through the Effective Date. Existing Operator shall prepare payroll and expense checks, distribute and make payment under the same to employees on the next regularly scheduled pay period that includes the Effective Date. The Employee Liabilities shall be included in the Excluded Liabilities.

10.2 Hired Employees.

(a) Prior to the Effective Date, New Operator will deliver to Existing Operator a schedule (as the same may be updated, amended and modified from time to time prior to the Effective Date, the "**Hired Employee Schedule**") that identifies the names of all active employees of Existing Operator it intends to hire on the Effective Date ("**Hired Employees**"); provided, however, such employees meet the screening requirements of New Operator including drug screens. New Operator shall offer to rehire as "at-will" employees of the Facility on the Effective Date at least 70% of the employees of Existing Operator who, as of the Effective Date, work at the Facility and have been employed on average for

twenty (20) hours or more per week on terms which require at a minimum said Hired Employees to perform comparable services, in a comparable position and at substantially the same base salary as such Hired Employees enjoyed with the Facility prior to the Effective Date. Except as set forth in this Section, no obligations of Existing Operator to or with respect to any of employees of Existing Operator, including, but not limited to, obligations under employment contracts, employee benefit plans, collective bargaining agreements, and applicable laws (including liability for payroll taxes and other proper deductions and withholdings) are being assumed by New Operator, and except as may be specifically required by applicable law, New Operator shall not be obligated to continue any employment relationship with any employee for any specific period of time. For the avoidance of doubt, New Operator is not assuming any obligation or liability for any Employee Liabilities including any pertaining to vacation or sick leave or other paid time off and may change the terms of employment of Hired Employees in the future.

(b) Existing Operator shall terminate the employment of all Hired Employees effective as of midnight on the day immediately prior to the Effective Date and on the next regularly scheduled pay date of the Facility employees, Existing Operator shall deliver to the Hired Employees full payment for the all the accrued and unpaid vacation due them. Existing Operator will indemnify, defend and hold New Operator harmless from all liabilities, claims and demands, including reasonable attorney's fees, in connection with the Employee Liabilities. Failure to liquidate such liability shall give rise to the New Operator's right to offset any other amounts due to Existing Operator.

(c) Existing Operator 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, Existing Operator agrees that for a period of one year after the Effective Date neither Existing Operator nor Existing Operator's affiliates, successor or assigns will 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. Existing Operator acknowledges and agrees that New Operator would not be fully compensated by damages in the event of a breach or threatened breach by Existing Operator 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 10.2(c).

10.3 WARN ACT. Existing Operator and New Operator acknowledge and agree that the provisions of Section 10.2 is designed solely to ensure that Existing Operator is not 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 Existing Operator from any liability which Existing Operator may incur under the WARN Act or under comparable state law in the event of a violation by New Operator of its obligations under Section 10.2; provided, however, that nothing herein shall be construed as imposing any obligation on New Operator to indemnify, defend or hold harmless Existing Operator from any liability which Existing Operator may incur under the WARN Act as a result of the acts or omissions of Existing Operator prior to the Effective Date, including any liability which may result from the aggregation of the acts of Existing Operator 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; and provided further that nothing herein shall be construed as imposing any obligation on New Operator to hire or retain any employee who fails to meet the screening requirements of New Operator and New Operator shall not have any indemnification obligation for not hiring or terminating any such employee. Existing Operator agrees to indemnify, defend and hold harmless New Operator from any liability which New Operator may incur under the WARN Act or under comparable state law as a result of (i) the acts or omissions of Existing Operator prior to the Effective Date, including any liability which may result from the aggregation of the acts of

Existing Operator prior to the Effective Date and the acts of New Operator after the Effective Date, and (ii) the termination of employment, or the change in the terms of employment, of any Hired Employee who fails to meet the screening requirements of New Operator. Nothing in this Section 10.2 shall create any rights in favor of any person not a party hereto, including the employees of Facility, or constitute an employment agreement or condition of employment for any employee of New Operator who is a Hired Employee.

10.4 COBRA. . Existing Operator acknowledges and agrees that New Operator does not assume or agree to discharge any liability under Section 4980B of the Internal Revenue Code and Part 6 of Subtitle B of Title I of the Employee Retirement Income Security Act ("**COBRA**") with respect to any current or former employees of Existing Operator. Existing Operator agrees that they will not take any voluntary action, including the termination of any employee benefit plans, the effect of which would be, or might reasonably be expected to be, the imposition upon New Operator of COBRA liability for current or former employees of Existing Operator not hired by New Operator. Additionally, Existing Operator shall retain any and all liabilities under Section 4980B of the Code and Sections 601 through 608 of ERISA with respect to all current and former employees of Existing Operator. Existing Operator shall indemnify, defend, and hold harmless New Operator from and against any and all liabilities, damages, costs, and expenses with respect to any liability assessed upon or incurred by New Operator that is the responsibility of Existing Operator under this Article ARTICLE 10. Failure to timely liquidate such liability shall give rise to the New Operator's right to offset any other amounts due to Existing Operator.

## ARTICLE 11
## CONDITIONS PRECEDENT TO CLOSING; TERMINATION

11.1 Conditions Precedent. The obligation of each of Existing Operator and New Operator to consummate the transactions described in this Agreement, and to take the actions required to be taken by it, at the Closing and following the Effective Date is subject to the satisfaction, at or prior to Closing, of each of the following conditions:

(a) Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Sale Order approving the terms and conditions of this Agreement and the transfer and conveyance of the Assets and other transactions contemplated by this Agreement in Existing Operator's Chapter 11 Bankruptcy Proceeding substantially in the form attached hereto as **Exhibit C**.

(b) Lease Termination. The Lease Termination must occur and the New Master Lease must be effective on the Effective Date.

(c) Consents and Approvals. The parties have satisfied all notice and filing requirements of the Kentucky Cabinet for Health and Family Services ("**CHFS**") in order for New Operator to apply for licensure to operate the Facility as a skilled nursing facility, all applicable pre-Closing notice periods following such filings have lapsed and New Operator has received acknowledgement from CHFS of its notice to operate the Facility.

(d) Intercreditor Agreement. The parties' secured lenders shall have entered into an inter-creditor agreement in a form acceptable to the lenders and the parties including lenders' approval of the transition procedures for the administration of accounts receivable as generally described on Exhibit B.

11.2 Termination Right. New Operator shall have the right to terminate this Agreement at or prior to the Closing if (i) the New Master Lease is terminated or otherwise is not effective, (ii) any of the representations or warranties of Existing Operator in this Agreement is or becomes untrue in any material respect or if Existing Operator fails to perform in any material respect any obligation to be performed by

Existing Operator at or prior to Closing or (iii) an event has occurred or a circumstance has arisen that, individually or taken together with all other facts, circumstances and events, has had or is reasonably likely to have a material adverse effect on the Assets or the operations or condition of the Facility or the ability of Purchaser to operate the Facility as a skilled nursing facility upon the Closing.

## ARTICLE 12
## CLOSING

12.1 Closing and Effective Date. Subject to the terms and conditions of this Agreement, the closing of the transaction contemplated by this Agreement (the "**Closing**") shall occur simultaneously with the Lease Termination and the effective date of the New Master Lease on August 1, 2018 or such other date as the parties may mutually agree in writing (the "**Effective Date**").

12.2 Actions to Effect Closing

(a) Deliveries by Existing Operator. At Closing, Existing Operator shall deliver (i) the Schedules, (ii) evidence of the Lease Termination, and (iii) duly executed counterparts of the bill of sale in the form attached hereto as **Exhibit D** (the "**Bill of Sale**").

(b) Deliveries by New Operator. At Closing, New Operator shall deliver (i) duly executed and counterparts of the Bill of Sale, and (ii) evidence that it has obtained all permits, licenses, and approvals necessary to operate the Facility.

12.3 Further Assurances. Each of the parties hereto agrees to execute and deliver any and all further agreements, documents or instruments necessary to effectuate this Agreement and the transactions referred to herein or contemplated hereby or reasonably requested by the other party to perfect or evidence its rights hereunder or the New Operator's rights in and to the Assets at and after the Closing.

## ARTICLE 13
## INDEMNIFICATION

13.1 Indemnification by Existing Operator. In addition to any other indemnification provided for in this Agreement, Existing Operator hereby indemnifies and agrees to defend and hold harmless New Operator, and its respective affiliates, employees, partners, members, officers, managers, directors, stockholders, agents and representatives (each, a "**New Operator Indemnified Party**") from and against any and all demands, claims, causes of action, losses, damages, liabilities, judgments, costs and expenses (including, without limitation, interest, penalties and reasonable attorneys' fees and expenses) (collectively, "**Losses**") incurred by a New Operator Indemnified Party by reason of or resulting from (a) the breach or inaccuracy of any representation or warranty of Existing Operator contained in or made pursuant to this Agreement, including any schedule or exhibit attached or delivered by Existing Operator pursuant to this Agreement, (b) the breach by Existing Operator of any covenant or undertaking contained in or made pursuant to this Agreement and (c) the Excluded Liabilities.

13.2 Indemnification by New Operator. In addition to any other indemnification provided for in this Agreement, New Operator hereby indemnifies and agrees to defend and hold harmless Existing Operator, and its employees, partners, officers, directors, stockholders, agents and representatives (each, a **"Existing Operator Indemnified Party**") from and against any and all Losses incurred by a Existing Operator Indemnified Party by reason of or resulting from (a) the breach or inaccuracy of any representation or warranty of New Operator contained in or made pursuant to this Agreement, including any schedule or exhibit attached or delivered by New Operator pursuant to this Agreement, (b) the breach by New Operator of any covenant or undertaking contained in or made pursuant to this Agreement and (c)

the obligations and liabilities under the Accepted Contracts assumed by New Operator pursuant to this Agreement from and after the Effective Date (other than any obligations or liabilities that relate to pre-Effective Date acts or omissions, breaches or defaults).

13.3 Third Party Claim Indemnification Procedures.

(a) Notice. If a person entitled to indemnification hereunder (an "**Indemnified Party**") receives notice of the assertion of any claim by a third party (including a Governmental Authority) in respect of which indemnification shall be sought hereunder (a "**Third Party Claim**"), the Indemnified Party shall give the party obligated to provide such indemnification (the "**Indemnifying Party**") prompt written notice (a "**Claim Notice**") thereof describing in reasonable detail (based on the information then available to the Indemnified Party) the basis for the Third Party Claim and the basis on which indemnification is sought. Notwithstanding the foregoing, the delay of the Indemnified Party to give a Claim Notice shall not relieve the Indemnifying Party of its indemnification obligations hereunder except to the extent (and only to the extent) that the Indemnifying Party shall have been materially and adversely prejudiced by such failure.

(b) Defense. The Indemnifying Party shall have the right to elect to conduct and control the defense, compromise or settlement of any Third Party Claim, at its sole cost and expense and with counsel of its choice reasonably acceptable to the Indemnified Party, if the Indemnifying Party (i) has acknowledged in writing its indemnification obligations hereunder without qualification or reservation of rights and (ii) if requested by the Indemnified Party, has provided evidence reasonably satisfactory to the Indemnified Party of the Indemnifying Party's financial ability to pay any Losses resulting from the Third Party Claim; provided, however, that the Indemnified Party may participate therein through separate counsel chosen by it and at its sole cost and expense. Notwithstanding the foregoing, the Indemnified Party shall have the right to conduct and control the defense, compromise or settlement of any Third Party Claim with counsel of its choice and at the Indemnifying Party's sole cost and expense if: (A) the Indemnifying Party shall not have acknowledged in writing its indemnification obligations hereunder and given notice of its election to conduct and control the defense of the Third Party Claim within fifteen (15) days after the Indemnifying Party's receipt of a Claim Notice; (B) the Indemnifying Party shall fail to conduct such defense diligently and in good faith; (C) the Indemnified Party shall reasonably determine that use of counsel selected by the Indemnifying Party to represent the Indemnified Party would present such counsel with an actual or potential conflict of interest; (D) the Third Party Claim seeks injunctive, equitable or other non-monetary relief against the Indemnified Party; or (E) the Third Party Claim relates to or otherwise arises in connection with any criminal or regulatory proceeding.

(c) Cooperation. From and after delivery of a Claim Notice of a Third Party Claim, the Indemnifying Party and the Indemnified Party shall cooperate with the defense or prosecution of such Third Party Claim, including furnishing such records, information and testimony and attending such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by the Indemnifying Party or the Indemnified Party in connection therewith. In connection with any Third Party Claim, the Indemnifying Party and the Indemnified Party shall use commercially reasonable efforts to avoid production of confidential information to the extent permitted by Applicable Law and to cause all communications among employees, counsel and other third parties representing any party to a Third Party Claim to be made so as to preserve any applicable attorney-client or work-product privileges. The party controlling the defense of any Third Party Claim shall keep the non-controlling party advised of the status thereof and shall consider in good faith any recommendations made by the non-controlling party with respect thereto.

(d) Settlement Limitations. Except as set forth below, no Third Party Claim may be settled or compromised (i) by the Indemnified Party without the prior written consent of the Indemnifying Party

or (ii) by the Indemnifying Party without the prior written consent of the Indemnified Party, in each case which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing: (A) the Indemnified Party shall have the right to pay, settle or compromise any Third Party Claim, provided that in such event the Indemnified Party shall waive all rights against the Indemnifying Party to indemnification under this Article with respect to such Third Party Claim unless the Indemnified Party shall have sought the consent of the Indemnifying Party to such payment, settlement or compromise and such consent shall have been unreasonably withheld, conditioned or delayed; and (B) the Indemnifying Party shall have the right to consent to the entry of a judgment or enter into a settlement with respect to any Third Party Claim without the prior written consent of the Indemnified Party if the judgment or settlement (1) involves only the payment of money Losses (all of which will be paid in full by the Indemnifying Party concurrently with the effectiveness thereof), (2) does not encumber any of the assets of the Indemnified Party and does not contain any restriction or condition that would reasonably be expected to have a future adverse effect on the Indemnified Party or the conduct of its business, (3) does not include an admission of wrong doing, and (4) includes, as a condition to any settlement or other resolution, a complete and irrevocable release of the Indemnified Party from all liability in respect of such Third Party Claim.

(e) Payments. The Indemnified Party shall provide the Indemnifying Party(ies) prompt notice of all amounts payable pursuant to this Section 13.3, which notice shall include the bill or invoice, together with reasonable supporting documentation, for a Loss that is the subject of indemnification hereunder. The Indemnifying Party shall have fifteen (15) days following its receipt of such notice and accompanying documents to notify the Indemnified Party whether it in good faith disputes the Loss. In any event, the payment of the amount of any Loss for which an Indemnifying Party is liable hereunder shall be due and payable no later than ten (10) days following any final determination of such Loss and the Indemnifying Party's liability therefor. A "final determination" with respect to a dispute shall exist when (i) the parties to such dispute have reached an agreement in writing resolving such dispute, (ii) a court of competent jurisdiction shall have entered a final and non-appealable order or judgment resolving such dispute or (iii) an arbitration or like panel to which the parties have submitted such dispute shall have rendered a final and non-appealable determination with respect to such dispute. The Indemnifying Party shall pay such amount by wire transfer of immediately available funds to an account designated in writing by the Indemnified Party. Any amounts due hereunder that are required to be paid by wire transfer and are not paid when due shall bear interest from such due date until the payment date at the prime rate as published in The Wall Street Journal, Eastern Edition, on the due date.

13.4 Direct Claim Indemnification Procedures. If the Indemnified Party has a claim for indemnification hereunder that does not involve a Third Party Claim, the Indemnified Party shall give the Indemnifying Party prompt written notice thereof describing in reasonable detail (based on the information then available to the Indemnified Party) the basis for such claim, the amount of the Losses claimed by the Indemnified Party and the basis on which indemnification is demanded (the "**Claimed Amount**") in respect thereof. Notwithstanding the foregoing, the failure or delay of the Indemnified Party to give such notice promptly shall not relieve the Indemnifying Party of its indemnification obligations hereunder except to the extent (and only to the extent) that the Indemnifying Party shall have been materially and adversely prejudiced by such failure. Within thirty (30) days after delivery of such notice, the Indemnifying Party shall deliver to the Indemnified Party a written response in which the Indemnifying Party shall (i) agree that the Indemnified Party is entitled to receive all of the Claimed Amount (in which case payment shall be due at the time of the response), (ii) agree that the Indemnified Party is entitled to receive part, but not all, of the Claimed Amount (the "**Agreed Amount**") (in which case payment of the Agreed Amount shall be due at the time of the response), or (iii) in good faith dispute that the Indemnified Party is entitled to receive any of the Claimed Amount. If the Indemnifying Party timely disputes the payment of all or part of the Claimed Amount, the Indemnifying Party and the Indemnified Party shall negotiate in good faith to resolve such dispute as promptly as practicable. If such

dispute is not resolved within thirty (30) days following the delivery by the Indemnifying Party of such response, the Indemnified Party and the Indemnifying Party shall each have the right to submit such dispute for resolution to a court of competent jurisdiction.

13.5 Effect of Investigation. The right to indemnification and payment of Losses under this Article ARTICLE 13 based on a breach of any of the representations, warranties, covenants or agreements set forth in this Agreement shall not be affected by any investigation conducted at any time, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Effective Date, by or on behalf of any of the parties with respect to the accuracy or inaccuracy of or compliance with any such representations, warranties, covenants or agreements.

## ARTICLE 14
## CONFIDENTIALITY

14.1 Confidential Information. Existing Operator and New Operator agree that all non-public information relating to the Facility and its operations, in whatever form delivered, made available, or disclosed before or after the Effective Date (the "**Confidential Information**") is of a confidential and proprietary nature. Each party agrees: (i) that it will maintain the confidentiality of the Confidential Information, (ii) that it will protect and secure the Confidential Information in a commercially reasonable manner, and in any event in a manner no less protected and secure than such person's own confidential information, (iii) that it will not use the Confidential Information other than in connection with the consummation of the transactions contemplated by this Agreement (or to enforce its rights under this Agreement) or to own and operate the Facility, and (iv) that it will disclose the Confidential Information only: (x) as may be required by law, or (y) its directors, officers, employee, agents, and representatives (including potential lenders) on a need-to-know basis in order to consummate the transactions contemplated hereby (or to enforce its rights hereunder), or in connection with the ownership and operation of the Facility. Each party agrees to cause its directors, officers, employees, agents, and representatives to comply with the obligations of such Person under this Section.

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

## ARTICLE 15
## MISCELLANEOUS

15.1 Further Assurances. Each party hereto agrees to use all reasonable efforts and to proceed with due diligence to cause the conditions to its obligations herein set forth to be satisfied at or prior to the Effective Date. Each party hereto agrees to execute and deliver any and all further agreements, documents or instruments reasonably necessary to effectuate the transactions contemplated by this Agreement. All parties will make all reasonable efforts to effectuate an orderly transfer of control of the Facility and to complete the transactions contemplated by this Agreement as promptly as practicable. Each party will promptly notify all other parties of any information delivered to or obtained by such party which would prevent or delay the consummation of the transactions contemplated by the Agreement, or would indicate a breach of the representations or warranties of any party to this Agreement.

15.2 Announcements.

(a) Each of the parties agree that, before making any public announcement with respect to this Agreement, it will consult with the other and either agree upon the text of a joint announcement to be made by the parties or obtain the other's approval of the text of a public announcement to be made solely on behalf of the parties hereto except where such public announcement is required by law and it is impossible or impracticable (after good faith efforts) for the party required to make the public announcement to obtain the other parties' prior input or approval.

(b) Existing Operator agrees that it will consult with New Operator prior to any communications with employees, vendors, suppliers or governmental or third party payors with respect to the transaction contemplated with this Agreement and will allow New Operator the reasonable opportunity to approve in advance and participate in such communications as requested by New Operator.

15.3 Notices. Any notice, request, instruction or other document given hereunder by any party to the others shall be in writing and delivered personally, or by certified mail, postage prepaid, return receipt requested (such mailed notice to be effective three (3) days after deposit), or by overnight courier (to be effective the business day following deposit), by facsimile transmission (to be effective when receipt acknowledged unless sent after 5:00 p.m. on any business day or on the weekend, in which event it will be deemed received on the next business day), as follows:

If to Existing Operator:

5420 W. Plano Parkway
Plano, TX 75093
Attention: Thomas D. Scott
Facsimile: 972-931-3801

With a copy to (such copy shall not constitute notice):

General Counsel
5500 W. Plano Parkway, Suite 210
Plano, TX 75093
Attention: Robert J. Riek
Facsimile: 972-767-6253

If to New Operator:

Sapphire Care Group[1]
Attention: Aryeh Platschek
Facsimile: [insert]

With a copy to: (such copy shall not constitute notice)

Wyatt, Tarrant & Combs, LLP
500 W. Jefferson Street, Suite 2800
Louisville, KY 40202
Attention: Cynthia W. Young
Facsimile: 502-589-0309

[1] **NTD: confirming**

15.4 Expenses. New Operator and Existing Operator will each bear its own legal, accounting and other expenses and costs incurred in connection with the preparation of this Agreement and/or the consummation and carrying out of the transactions contemplated hereby, whether or not the transaction is consummated.

15.5 Entire Agreement; Modification; Waiver. This Agreement, including exhibits and schedules hereto, together with the other schedules and agreements referred to herein, including the Schedules, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior discussions, agreements, representations and understanding of the parties except as otherwise provided herein or therein. 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. No waiver shall be binding unless expressed as such in a document executed by the party making the waiver.

15.6 Assignment. Neither this Agreement nor the rights, duties or obligations arising hereunder shall be assignable or delegable by any party without the express prior written consent of the other parties hereto; provided, however, New Operator is expressly permitted to assign or delegate any of its rights, duties or obligations to one or more affiliates of New Operator but such assignment shall not in any way reduce or limit New Operator's obligations with respect to such duties or obligations.

15.7 Effect of Captions. The captions used in this Agreement have been inserted solely for convenience of reference, and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

15.8 Applicable Law. This Agreement shall be construed and enforced in accordance with the internal laws of the Commonwealth of Kentucky with the exception of its conflict of laws, provisions, which shall not apply.

15.9 Counterparts. This Agreement may be executed and delivered in counterparts and by electronic transmission, including by e-mail and PDF, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15.10 Time of the Essence. Time is of the essence of this Agreement.

15.11 Venue. So long as Existing Operator is subject to Existing Operator's Chapter 11 Bankruptcy Proceeding, venue of any dispute between Existing Operator and New Operator under this Agreement shall be in the United States Bankruptcy Court for the Norther District of Texas, Fort Worth Division.

15.12 Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than Existing Operator, Existing Operator Indemnified Parties, New Operator and New Operator Indemnified Parties and their respective successors and permitted assigns, nor shall any provisions give any third person any right or subrogation of action over or against any party to this Agreement.

Nothing contained herein shall be construed as forming a joint venture or partnership between the parties hereto with respect to the subject matter hereof.

15.13 Severability. If any provision of this Agreement or any of the documents executed and delivered pursuant hereto, or the application thereof to any particular circumstance, shall to any extent be invalid or

unenforceable, the remainder of this Agreement or such closing document, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement and the documents executed pursuant hereto shall be valid and enforceable to the fullest extent permitted by law.

This Agreement is hereby executed by the parties hereto effective as of the date first above written.

[Signature blocks of parties to be added]

Exhibit A

Additional Definitions

"Contracts" means, individually and collectively, any (a) contracts relating to (i) the operation of the Facility (including Medicare, Medicaid and third party provider agreements and provider numbers to the extent assignable), (ii) goods and/or services being provided or to be provided in connection with the operation of the Facility, and (iii) equipment and other personal property (including, without limitation, computer equipment, telecommunication equipment, time clocks, nurse call/pager systems and motor vehicles) owned or leased by Existing Operator and used in connection with the operation of the Facility and (b) contracts for residency with residents of the Facility. The Contracts shall exclude the Rejected Contracts.

"Health Care Authorizations" means, individually and collectively, any and all Medicare and Medicaid provider numbers and provider agreements, licenses, permits, certifications and waivers issued or granted by any governmental or quasi-governmental authorities, administrative agencies or instrumentalities and private authorizations granted in connection with Existing Operator's operation of the Facility, including any waivers or variances granted in connection therewith, together with any and all other "Authorizations" (as defined in the Master Lease).

"Inventory and Supplies" means, individually and collectively, all inventories, consumable products (e.g., food, medical, pharmacy, office, maintenance and other supplies, including soaps, shampoos and similar items) and supply items (e.g., linen, china, glassware, silver, uniforms and similar items) owned or used by Existing Operator and located at the Facility.

"Essential Tenant Property" means, individually and collectively, all items of furniture, fixtures, supplies and equipment located at or used or useable in the operation of the Facility.

"Existing Operator's Chapter 11 Bankruptcy Proceeding" means that certain Chapter 11 Bankruptcy proceeding pending in the United States Bankruptcy Court (the "Bankruptcy Court") for the Northern District of Texas, Fort Worth Division (Case No.: 17-44642) in which Existing Operator is a debtor.

"Lien" shall mean any mortgage, lien (except for any lien for real property taxes not yet due and payable), charge, restriction, pledge, security interest, option, lease or sublease, claim, right of any third party, easement, encroachment or encumbrance.

"Rejected Contracts" means, individually and collectively, any (a) Contracts that are prohibited from being assigned to New Operator, (b) any employment agreements, and (c) any Contracts that are not identified on the Accepted Contracts Schedule delivered by New Operator pursuant to Section 4.1.

"Sale Hearing" means the hearing in the Bankruptcy Court requesting authority to sell the Assets free and clear of Liens.

"Sale Order" means an order of the Bankruptcy Court pursuant to Sections 363, 365 and 1146(c) of the Bankruptcy Code, which is not subject to a stay pending appeal, approving this Agreement and all of the terms and conditions hereof and authorizing Existing Operator to consummate the transactions contemplated hereby.

6/27/18
Gardere Draft
2:30 p.m.

Exhibit B

Transition Procedures for Administration of Accounts Receivable

1. Accounts Receivable. Existing Operator shall retain its right, title and interest in and to all unpaid accounts receivable (and the proceeds thereof) with respect to the Facility which relate to the period prior to the Effective Date ("**Existing Operator Accounts Receivable**"), 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 Existing Operator shall remain liable for any overpayments made to Existing Operator prior to the Effective Date for which payment is due to Medicaid or any other third party payor after the Effective Date.

New Operator will have all rights to accounts receivable (and the proceeds thereof) with respect to the Facility allocable to periods on and after the Effective Date ("**New Operator Accounts Receivable**"). Neither Existing Operator nor any of Existing Operator's creditors shall have any right to, interest in or claim against any New Operator Accounts Receivable. To the extent Existing Operator or any of Existing Operator's creditors obtains possession thereof, it shall hold the same solely as custodian for the benefit of New Operator.

2. Application of Receipts. Payments received on or after the Effective Date from third party payors, such as Medicaid, Medicare, VA and private pay providers, shall be handled as follows:

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 retained by or, if applicable, forwarded to Existing Operator, along with the applicable remittance advice; and

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 or, if applicable, forwarded to New Operator.

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 or, if applicable, forwarded to New Operator and the balance shall be retained or, if applicable, forwarded to Existing Operator.

2.4 If such payments do not indicate on an accompanying remittance advice the period to which they relate, they will first be applied to any post-Effective Date balances, and retained by or, if applicable, forwarded to New Operator, with the excess, if any, applied to the extent of any balances due for services rendered by Existing Operator prior to the Effective Date.

2.5 Any payments received during the first fifteen (15) 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 to reduce the patient's pre-Effective Date balances, with any excess applied to reduce any balances due for services rendered by New Operator after the Effective Date. Thereafter all non-designated payments will first be applied to any post-Effective Date balances, with the excess, if any, applied to the extent of any balances due for services rendered by Existing Operator prior to the Effective Date.

2.6 Nothing herein shall be deemed to limit in any way Existing Operator's rights and remedies to recover accounts receivable due and owing Existing Operator under the terms of this Agreement.

2.7 In the event the parties mutually determine that any payment hereunder was misapplied by the parties, the party which erroneously received said payment shall remit the same to the other as provided for herein.

3. Inspection Rights. New Operator and Existing Operator shall have the right to inspect all cash receipts of the other in order to confirm compliance with the obligations imposed under this Exhibit B. New Operator and Existing Operator shall have the right to inspect cash receipts, accounts receivable billings and remittances of the other in order to confirm their respective right to cash receipts under this Exhibit B.

4. Control Account.

4.1 Existing Operator Accounts Receivable under Medicare or Medicaid are deposited into a control account (the "**Government Receivables Account**") at Wells Fargo Bank, National Association ("**Wells Fargo**") and swept daily by Wells Fargo and applied to the indebtedness of the Preferred Care Group under its line of credit with Wells Fargo.

4.2 The parties acknowledge that New Operator will use the Existing Operator's Medicare and/or Medicaid provider numbers for New Operator Accounts Receivable under Medicare and/or Medicaid (collectively, "**Government Receivables**"), and that the Government Receivables representing New Operator Accounts Receivable will be paid to the account currently designated for Existing Operator's Medicare and/or Medicaid provider numbers and swept by Wells Fargo until New Operator receives acknowledgement of the ownership change from Medicare and/or Medicaid, as the case may be (the "**tie-in notices**"). On the Effective Date, Existing Operator shall provide New Operator with its NPI number and cooperate with Medicaid to provide access to the Medicaid portal to enable New Operator to submit billings and receive remittance advice for Medicaid Receivables payable on or after the Effective Date and until New Operator receives the tie-in notices (the "**Transition Period**").

4.3 The deposit of funds in the Government Receivables Account will not alter any person's right to or interest in or create a claim against such funds that does not otherwise exist. However, funds deposited in the Existing Operator's Government Receivables Account are swept by Wells Fargo and applied to the outstanding indebtedness of the Preferred Care Group under Wells Fargo line of credit. Existing Operator shall determine the allocation of all Post Effective Date collections pursuant to the terms and provisions of this Agreement and pay funds to New Operator consistent with this **Exhibit B**.

4.4 As soon (i) as practicable, and in any event, on or before Friday of each week, Existing Operator will determine the amount of the prior week's deposits that represent payments of New Operator Accounts Receivable, and (ii) pay that amount that to the Operator.

4.5 All remittance advices from government payors to Existing Operator shall be sent to New Operator within twenty-four (24) hours of receipt.

4.6 The parties shall reconcile amounts due to New Operator from Existing Operator, and amounts due from New Operator to Existing Operator, twice per month.

4.7 Deposits in the Government Receivables Account under Existing Operator's Medicare and/or Medicaid provider numbers will terminate once tie-in notices are issued by Medicare or Medicaid, as the case may be, such that New Operator Accounts Receivable from that government payor will thereafter be deposited directly into to an account owned only by New Operator. For each government payor, New Operator will promptly provide Wells Fargo and Existing Operator written notice when this condition is met.

5. Cooperation. Existing Operator will cooperate with New Operator in order to implement the procedures outlined in this **Exhibit B**.

**EXHIBIT C**

6/27/18
4:30 p.m.
Foley DRAFT

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE NORTHERN DISTRICT OF TEXAS**
**FORT WORTH DIVISION**

| | | |
|---|---|---|
| **In re:** | **§** | **Chapter 11** |
| | **§** | |
| **PREFERRED CARE INC., *et al.*,** | **§** | **Case No.: 17-44642** |
| | **§** | |
| **Debtors.** | **§** | **Jointly Administered** |
| | **§** | |

**ORDER (A) GRANTING AUTHORITY TO: (I) TRANSFER THE OPERATIONS AND RELATED ASSETS OF THE KENTUCKY FACILITIES FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; (II) ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) REJECT AND TERMINATE THE KENTUCKY FACILITY LEASES; (B) APPROVING THE FORM OF OPERATING TRANSFER AGREEMENT; AND (C) GRANTING RELATED RELIEF**

This matter has come before the Court on the *Motion for Order (A) Granting Authority to (I) Transfer the Operations and Related Assets of the Kentucky Facilities Free and Clear of All Liens, Claims, Encumbrances, and Interests, (II) Assume and Assign Certain Executory Contracts and Unexpired Leases, and; (III) Reject and Terminate the Kentucky Facility Leases;*

*(B) Approving the Form of Operating Transfer Agreement; and (C) Granting Related Relief* [Docket No. __] (the "**Motion**").[1] The Motion was filed by Preferred Care Inc. ("**Preferred Care**") and twenty-one (21) limited partnerships (the "**Kentucky Debtors**") that operate twenty-one (21) skilled nursing homes in Kentucky (the "**Kentucky Facilities**"). Preferred Care and the Kentucky Debtors are debtors and debtors-in-possession in the bankruptcy cases jointly administered in Case No. 17-44642 (the Kentucky Debtors and Preferred Care are collectively referred to as "**Movants**"). The Movants have requested, pursuant to sections 363, 365, and 1146 of Title 11 of the United States Code (the "**Bankruptcy Code**") and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), the entry of this order (the "**Sale Order**"):

(a) authorizing the sale and transfer of the operations of the Kentucky Facilities and assets necessary for the operations of the Kentucky Facilities (defined more fully in the Operating Transfer Agreements as the "**Assets**"), free and clear of liens, claims, encumbrances, and interests;

(b) approving the *Operating Transfer Agreements* (each an "**OTA**" and, collectively, the "**OTAs**"), substantially in the form attached to the Motion, by and between the Kentucky Debtors and the Purchaser(s) of the Kentucky Facilities;

(c) approving the assumption and assignment of certain executory contracts and unexpired leases, including licenses and permits (the "**Accepted Contracts**");

(d) approving the rejection and termination of the real property leases associated with each of the Kentucky Facilities (the "**Lease Terminations**"); and

(e) granting related relief, including relief related to the proposed Cure Costs associated with the Accepted Contracts.

[1] Capitalized terms not defined herein shall carry the meanings ascribed to them in the Motion or the Transfer Documents, as applicable.

On July 23, 2018, the Court conducted a hearing on the Motion (the "**Sale Hearing**"), and, having considered: (a) the Motion and the relief requested therein and transactions contemplated thereby; (b) all objections, if any, to the Motion; and (c) all matters brought to the Court's attention at the Sale Hearing, including the arguments of counsel; and having taken judicial notice of the materials on file in the above-enumerated Chapter 11 cases, the Court has determined that the Movants have established just cause for the relief granted herein. Accordingly;

**THE COURT HEREBY FINDS AND DETERMINES THAT:**[2]

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought in the Motion are sections 105(a), 363(b), (f), and (m), 365, and 1146(c) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014.

3. The Kentucky Debtors have Medicare Provider Agreements with the U.S. Department of Health and Human Services' Centers for Medicare & Medicaid Services ("**CMS**") (collectively, the "**Provider Agreements**"). The Kentucky Debtors are subject to Medicare Statutes, Regulations, procedures and policies.

[2] This Sale Order constitutes the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. All findings of fact and conclusions of law announced by the Court at the Sale Hearing shall be deemed additional findings of fact and conclusions of law in this matter and are incorporated herein. When appropriate, all findings of fact shall be construed as conclusions of law, and all conclusions of law shall be construed as findings of fact.

4. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just cause for delay and that the Sale Order shall be effective and enforceable immediately upon entry based upon the representations and facts presented.

5. The Motion has been served on the parties listed on the *Certificate of Service* filed at Docket No. ___, as well as all parties having filed a Notice of Appearance in the Chapter 11 Cases and/or registered to receive electronic service.

6. The Court finds that the scope and manner of the service provided by the Movants was proper, timely, adequate, and sufficient, in accordance with Bankruptcy Code §§ 363 and 365, Bankruptcy Rules 2002, 2002(i), 6004, 6006, and 9014, and in compliance with all prior orders of the Court related to the Assets, including the *Order Granting Motion for Order Establishing Notice Procedures and Approving Form Notice of Commencement of Cases* [Docket No. 61] (the "**Notice Procedures Order**"). No further notice of the Motion or the Sale Hearing was required. The Court further finds that a reasonable opportunity to object or to be heard regarding the relief requested in the Motion has been afforded to all creditors and parties in interest.

7. The Movants have the full power and authority to execute the OTAs and all other documents that are: 1) referenced in or contemplated by the OTA or 2) necessary or appropriate to effectuate the transfers of the Kentucky Debtors' operations and Assets. All actions contemplated by the OTAs have been duly and validly authorized, and the Movants have the full power and authority to consummate the transactions contemplated by the OTAs. No further consents or approvals, other than entry of this Sale Order, are required for the Movants to consummate the OTAs, except as specifically provided for in this Sale Order.

8. The relief sought by the Movants in the Motion, including, but not limited to, the authorization of the sale and transfer of the operations and Assets of the Kentucky Facilities, approval of the OTAs, approval of the assumption and assignment of the Accepted Contracts; and approval of the Lease Terminations, is, at this time, in the best interests of the Movants, their bankruptcy estates, their creditors and their interest holders.

9. The Movants have demonstrated both (i) good, sufficient, and sound business purpose and justification for the subject transaction and (ii) compelling circumstances for approval of the OTAs pursuant to Bankruptcy Code §§ 363(b), and (f) and 365.

10. The OTAs were proposed and entered into by the Movants and the Purchaser in good faith. The consideration set forth in the OTAs constitutes fair value for the Assets. Neither the Movants nor the Purchaser have engaged in any conduct that would cause or permit the OTA to be avoided under Bankruptcy Code § 363(n). The Purchaser is not an "insider" of the Kentucky Debtors, as that term is defined in Bankruptcy Code § 101. The Purchaser has no connections, is not affiliates or an insider of, nor does it have any undisclosed agreements with either the Kentucky Debtors, or any of their insiders or affiliates.

11. The Purchaser is a good faith transferee of the Assets under Bankruptcy Code § 363(m) and, as such, is entitled to all of the protections afforded thereby. The Purchaser has acted in good faith within the meaning of Bankruptcy Code § 363(m) and will rely on entry of this Sale Order and this good faith determination in consummating and closing the transactions.

12. The OTAs were not entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession or the District of Columbia.

13. The consideration provided for the Assets (i) is fair and reasonable, and (ii) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and applicable non-bankruptcy law.

14. Affiliates of FC Domino Acquisition, LLC, the lessors under the Master Leases to PCI, would not have agreed to terminate the Master Leases and to release claims against the Movants if the Purchaser had not agreed to the OTAs and entered into new master leases for the Kentucky Facilities. The Purchaser would not have agreed to the OTAs if the transfers provided for therein were not to be made pursuant to § 363(f) and §365 of the Bankruptcy Code, free and clear of all claims, liens encumbrances and other interests of any kind or nature whatsoever, except as specified in this Order, or if the Purchaser would, or in the future could, be liable for any of the claims, liens, encumbrances or other interests against the Kentucky Debtors or the Assets, except as specified in this Order. Pursuant to § 363(f) of the Bankruptcy Code, the Purchaser is entitled to know that the Assets are not infected with latent claims that will be asserted against the Purchaser after the closing.

15. As of the closing and execution of the OTAs (the "**Closing**"),[3] the transfer of the Assets to the Purchaser will be a legal, valid and effective transfer of the Assets and will vest the Purchaser with all right, title and interest of the Kentucky Debtors in the Assets, free and clear of any and all liens (statutory or otherwise), pledges, mortgages, deeds of trust, security interests, claims, reclamation claims, charges, hypothecations, assignments, licenses, liabilities, beneficial interests, options, rights or first or last refusal, options to purchase, priority or other security agreements or preferential arrangements of any kind or nature, rights of rescission (statutory or

[3] The date that the Closing occurs is referred to herein as the "Closing Date."

otherwise), causes of action, covenants, restrictions, easements, rights of setoff, defects in title or other encumbrances of any kind, whether legal or equitable, secured or unsecured, material or immaterial, contingent or non-contingent, arising out of or in connection with or in any way related to the Kentucky Debtors, the Assets, or the operation of the business of the Kentucky Debtors prior to Closing, including any claim as defined in § 101(5) of the Bankruptcy Code, whether arising prior to or subsequent to the commencement of this case (but not on or subsequent to the Closing Date), and whether imposed by agreement, law, equity or otherwise, including, without limitation, any claims arising under doctrines of successor liability with respect to the Assets (collectively, the "**Claims**"), except as specifically provided in paragraphs 38-42 of this Sale Order. The Claims are hereinafter referred to as the "**Interests**."

16. The Movants are authorized to transfer the Assets free and clear of the Interests because one or more of the standards set forth in Bankruptcy Code § 363(f) has been satisfied with respect to each such interest. Any objection of a secured creditor or other holder of an Interest that timely objected to the transfer of the Assets is overruled, as one or more of the other subsections of Bankruptcy Code § 363(f) is met with respect to such party.

17. The sale and transfer of the Assets to the Purchaser is made in connection with a plan of reorganization that is to be filed by the Kentucky Debtors and constitutes a transfer pursuant to § 1146(c) of the Bankruptcy Code, which shall not be taxed under any law imposing a stamp tax or similar tax.

18. The Accepted Contracts are an integral part of the Assets and are included in the OTA. All cure costs, if any, under the Accepted Contracts will be paid by the Kentucky Debtors within 30 days of the entry of this Sale Order. The Purchaser has demonstrated adequate assurance of future performance under the Accepted Contracts.

19. The Closing under the OTA and the transactions related thereto, including the Lease Terminations, are conditioned upon entry of this Sale Order, and the assumption and assignment of the Provider Agreements is subject to the Medicare Statutes, Regulations, procedures and policies.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

20. The Motion is GRANTED as set forth herein and the transfer of the Assets and the assumption and assignment of the Accepted Contracts to the Purchaser is hereby authorized as set forth in this Sale Order.

21. All objections to the Motion, if any, that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled on the merits.

**A. Approval of the Operations Transfer Agreements**

22. The OTAs, all exhibits and schedules thereto, and all of the terms and conditions thereof are hereby approved.

23. Pursuant to Bankruptcy Code §§ 363(b), and (f), and 365, the Movants, as debtors-in-possession, are authorized to consummate the transfer of the Assets, pursuant to and in accordance with the terms and conditions of the OTAs, including, without limitation, to convey the Assets to the Purchaser and to assume and assign the Accepted Contracts to the Purchaser. The terms of the OTAs are approved in all respects.

24. Without the need for any additional order of this Court, the Movants and their employees and agents are authorized to execute and deliver, and empowered to perform under, consummate and implement the OTA, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the transactions, and to take all

further actions as may be reasonably requested by the Purchaser or otherwise required under the OTA, including without limitation the requirements set forth on Exhibit B to the OTA entitled "Transition Procedures for Administration of Accounts Receivable".

25. Without the need for any additional order of this Court, Wells Fargo Bank, National Association, is authorized and directed to comply with the provisions of the Transition Procedures for Administration of Account Receivable attached as Exhibit B to the OTA, including without limitation, recognition of the ownership interest of Purchaser in funds deposited to the Government Receivables Account which are proceeds of Purchaser's accounts receivable generates after the Closing Date, and the transfer of the amount of such funds to Purchaser in accordance with written instructions to be provided by Purchaser, all as more fully described on Exhibit B to the OTA.

**B. Approval of the Lease Terminations**

26. The Lease Terminations are hereby approved pursuant to 11 U.S.C. § 365. Subject to the *Stipulation and Agreed Order* [Dkt. No. 773] extending the lease rejection deadline with respect to the Master Leases through August 1, 2018, the Master Leases and Subleases are hereby rejected and terminated as of the Closing Date.

27. With respect to each Master Lease and/or Sublease, the Motion constitutes a separate contested matter as contemplated by Bankruptcy Rule 9014. This Sale Order shall be deemed a separate order with respect to the rejection and termination of each such Master Lease or Sublease.

**C. Transfer of the Assets Free and Clear of Interests**

28. The Kentucky Debtors are authorized to transfer the Assets to Purchaser in accordance with the terms of the OTA. The Kentucky Debtor shall transfer the Assets to the

Purchaser on the Closing Date, in accordance with the OTA, and such transfer shall constitute a legal, valid, binding and effective transfer of the Assets and shall vest the Purchaser with good title and all right, title and interest in the Assets in accordance with the OTA free and clear of all Interests, except as specifically provided in paragraphs 38-42 of this Sale Order. The Assets shall include all of the Kentucky Debtors' Books and Records, which shall remain with the facility and be owned by the Purchaser on and after the Closing Date.

29. Pursuant to §§ 105(a) and 363(f) of the Bankruptcy Code, the transfer of the Assets to the Purchaser shall be, and hereby is, free and clear of any and all Interests, rights and encumbrances whatsoever, except as may otherwise be set forth explicitly in the OTAs or this Sale Order.

30. Except as expressly permitted by the OTAs or this Sale Order, all persons and entities holding or asserting Interests arising under or out of, in connection with, or in any way relating to the Kentucky Debtors, the Assets, the operation of the Kentucky Debtors' businesses prior to the Closing Date or the transfer of the Assets to the Purchaser, are hereby forever barred, estopped and permanently enjoined from asserting such Interests against the Purchaser or any of the Assets. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Kentucky Debtors to transfer the Assets to the Purchaser in accordance with the terms of the OTA and this Sale Order.

31. This Sale Order is and shall be effective as a determination that, upon transfer of the Assets to the Purchaser, pursuant to the OTA, all Interests in, against or relating to any of the Assets conveyed to the Purchaser have been and hereby are terminated and declared to be unconditionally released, discharged and terminated, except as specifically provided in paragraphs 38-42 of this Sale Order. This Sale Order is and shall be binding upon and shall

govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, insurance companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the OTA, except as provided in paragraphs 38-42 of this Sale Order.

**D. Assumption and Assignment of Accepted Contracts**

32. The Kentucky Debtors are hereby authorized and directed, pursuant to Bankruptcy Code §§ 105(a), 363 and 365 to assume, then transfer and assign the Accepted Contracts (as defined more fully in the OTA) to the Purchaser, subject to the terms of the OTA, which shall vest the Purchaser with all right, title and interest in and to the Accepted Contracts, free and clear of all Interests which have, or could have been, asserted by the Kentucky Debtors or their creditors in connection with their bankruptcy cases, except as specifically provided in paragraphs 38-42 of this Sale Order.

33. Within 30 days of the entry of this Sale Order, the Kentucky Debtors shall pay in accordance with the OTA and pursuant to § 365(b)(1)(B) of the Bankruptcy Code, the Cure Costs set forth in the Exhibit A attached to Docket No. ____ (the "**Cure Cost Notice**") rendering the Accepted Contracts current in payment and performance. All defaults of the Debtor under the Designated Contracts arising or accruing prior to Closing shall be deemed cured and all other

requirements of § 365(b) shall be deemed satisfied upon payment of the Cure Amounts, if any, listed on the Cure Cost Notice.

34. The Purchaser and the Kentucky Debtors have provided adequate assurance of future performance under the Accepted Contracts and the proposed assumption and assignment of these contracts and leases satisfies the requirements of the Bankruptcy Code, including, *inter alia*, §§ 365(b)(1) and (3) and 365(f), to the extent applicable. Any counterparty to any Accepted Contract that did not object to the proposed assumption and assignment of its agreement is hereby deemed to have consented to the assumption and assignment contemplated herein and any cure amount proposed by the Kentucky Debtors.

35. On the Closing Date, the Accepted Contracts will be assigned to the Purchaser, subject to the terms of the OTA, and will remain valid and binding and in full force and effect in accordance with their respective terms for the benefit of the Purchaser, notwithstanding any provision in such contracts or leases, or under applicable law (including those described in Bankruptcy Code §§ 365(b)(2), (f)(1), and (3), that prohibits, restricts, or conditions such assignment or transfer, or that terminates or modifies, or permits a party other than the Kentucky Debtors to terminate or modify such contracts or leases on account of such assignment or transfer pursuant to Bankruptcy Code § 365(f).

36. Except as otherwise provided herein, pursuant to § 365(k), upon Closing and payment of the Cure Costs by the Debtors, the Debtors are relieved of any liability for any claims of any kind arising from any of the Accepted Contracts assigned to the Purchaser, and any counterparty to any such contract or lease is hereby forever barred and estopped from asserting any default existing prior to the Closing Date against the Kentucky Debtors, their estates, or the Purchaser, except as specifically provided in paragraphs 38-42 of this Sale Order.

37. The Kentucky Debtors are further authorized to undertake any and all actions necessary or appropriate to consummate the proposed assignment of the Accepted Contracts to the Purchaser, as specified in the Motion and the OTA.

**E. Additional Provisions**

38. The Kentucky Debtors shall assume the Provider Agreements and shall assign the relevant Provider Agreement(s) to the Purchasers, effective on the date(s) that operation of each of the Kentucky Debtors is transferred to the relevant Purchasers (the "**Effective Date**") and subject to the Kentucky Debtors' payments to the United States of America (the "**United States**") as specified below.

39. The Provider Agreements shall be automatically assigned to the Purchaser upon a change in ownership pursuant to 42 C.F.R. § 489.18(c). Upon assignment, the Provider Agreements shall be subject to all applicable Medicare statutes, regulations, policies, procedures and rules, and reimbursements thereunder shall be subject to the terms and conditions under which the Provider Agreements were originally issued, including, but not limited to, recoupment for the repayment of all pre-assignment Medicare overpayments and all other monetary liabilities, regardless of whether yet determined by CMS. The Provider Agreements and Purchasers shall be subject to compliance with applicable health and safety standards pursuant to all Medicare statutes, regulations, policies, procedures and rules.

40. The Kentucky Debtors shall submit a 2017 year-end cost report for each Provider Agreement on or before _____, 2018. The Kentucky Debtors shall submit a terminating cost report for each Provider Agreement assigned to a Purchaser for the fiscal period that began January 1, 2016, through the Effective Date of the assignment of each Provider Agreement on or before 90 days after the Effective Date of each assignment of each Provider Agreement. Should

the Kentucky Debtors fail to comply with their obligations of this paragraph, the United States shall be entitled to suspend payments to the Purchasers under the applicable Provider Agreement in accordance with Medicare Statute and Regulations until such time as the required cost reports are filed by the Kentucky Debtors or the Purchasers. The Kentucky Debtors shall cooperate with the Purchaser in the filing of the required cost reports.

41. Nothing in this Sale Order as so ordered by the Court shall relieve or be construed to relieve the Kentucky Debtors or any Purchasers from complying with all Medicare Statutes, regulations, policies, procedures and rules, including, but not limited to, the requirement that the Kentucky Debtors and any Purchaser apply for and obtain CMS approval of a change of ownership by the filing of Form CMS-855A.

42. Nothing in this Sale Order shall constitute a compromise or waiver by the United States of its ability to take any affirmative or defensive action in these bankruptcy proceedings that is not inconsistent with this Sale Order. The United States shall retain its authority under the Medicare Statutes, regulations, procedures, policies and rules to review, approve, deny, or pay Medicare claims made by the Kentucky Debtors or any Purchaser in the ordinary course of business. Nothing in this Sale Order shall impair or affect the United States' right, claim, defense or ability to recoup, set off, or otherwise recover Medicare overpayments from the Kentucky Debtors or from funds payable to any Purchaser in accordance with the Medicare Statues, regulations, procedures, policies and rules.

43. The transactions are undertaken by the Purchaser in good faith, as that term is used in Bankruptcy Code § 363(m). Accordingly, the reversal or modification of the authorization provided herein to consummate the transfer shall not affect the validity of the sale of the Assets to the Purchaser, unless such authorization is duly stayed prior to the Closing Date.

The Purchaser is a transferee in good faith of the Assets and, upon the Closing Date, is entitled to all of the protections afforded by Bankruptcy Code § 363(m).

44. The failure to specifically reference any particular provision of the OTA in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the OTA be authorized and approved in its entirety.

45. The OTA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of this Court, provided that such modification, amendment, or supplement shall not have a material adverse effect on the Movants' bankruptcy estates, the United States, or on any one of the Movants' creditors.

46. The provisions of this Sale Order are non-severable and mutually dependent.

47. In the event of any inconsistency between the terms and provisions of this Sale Order and the OTA, the terms and provisions of this Sale Order shall control. To the extent this Sale Order does not include, or otherwise address, any provision contained in both the Motion and the OTA and where such provision in the Motion and the OTA is inconsistent, the OTA shall govern. In the event of any inconsistency between the terms and provisions of paragraphs 38 – 44 of this Sale Order on the one hand, and the terms and provisions of any other paragraph in this Sale Order, the OTA, and any related Transfer Documents or exhibits on the other hand, the terms and provisions of paragraphs 38 – 44 of this Sale Order shall control.

48. Subject to paragraph 39 of this Sale Order, this Court shall retain jurisdiction to: (i) enforce and implement the terms and provisions of the OTA (including any breach of the OTA), all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith in all respects; and (ii) determine (by motion and without the

necessity for an adversary proceeding, where appropriate) any proceeding, dispute or controversy arising out of or related to this Sale Order, the Transaction Documents or the OTA.

49. Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d), there is no stay pursuant to Bankruptcy Rule 6004(h) or 6006(d) and this Sale Order shall be effective and enforceable immediately upon entry.

**###END OF ORDER###**

Respectfully submitted by:

*/s/ Stephen A. McCartin*
Stephen A. McCartin (TX 13374700)
Mark C. Moore (TX 24074751)
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**COUNSEL TO DEBTORS**
**AND DEBTORS-IN-POSSESSION**

Exhibit D

**BILL OF SALE AND ASSIGNMENT**

This BILL OF SALE is made and entered into as of _____, 2018 between _____., a _____ ("**New Operator**"), and _____ Health Facilities, L.P.,, a Texas limited partnership ("**Existing Operator**").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Existing Operator has transferred, assigned and conveyed, and by these presents does transfer, assign and convey unto New Operator any and all right, title and interest which Seller possesses in and to, all and singular, the Assets as defined in the Operations Transfer Agreement ("**OTA**") dated as of April ____, 2018 between Existing Operator and New Operator.

By acceptance of this Bill of Sale, New Operator acknowledges that it is acquiring the Assets strictly on an as "AS IS" basis, and New Operator acknowledges and agrees that, except for those representations and warranties set forth in the OTA, neither Existing Operator, nor its agents, contractors or representatives have made any representations, warranties, promises, covenants, agreements or guarantees of any kind or character whatsoever, whether express of implied, oral or written, past, present or future, of, as to, concerning or with respect to the nature, quality or condition of the Assets. EXISTING OPERATOR EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE ASSETS.

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

*[SIGNATURE PAGE TO FOLLOW]*