

**BABC DRAFT-12/3/23**

***[Items in bolded italics need specific input from Seller]***

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**ASSET PURCHASE AGREEMENT**

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**BLOUNT MEMORIAL HOSPITAL, INCORPORATED (a Tennessee Nonprofit Corporation) D/B/A BLOUNT MEMORIAL TRANSITIONAL CARE CENTER (A/K/A TRANSITIONAL CARE CENTER AT MORNINGVIEW VILLAGE), MARYVILLE, TENNESSEE**

**BLOUNT MEMORIAL HOSPITAL, INCORPORATED (a Tennessee Nonprofit Corporation) D/B/A MORNINGVIEW VILLAGE (A/K/A MORNINGVIEW VILLAGE SENIOR COMMUNITY), MARYVILLE, TENNESSEE**

**AND**

**[OCOEE FOUNDATION, INC. (a Tennessee Nonprofit Corporation) AFFILIATED ENTITIES]**

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December \_\_\_, 2023

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## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (“Agreement”), is entered into as December \_\_, 2023 (the “Contract Date”) between ***[Ocoee Foundation, Inc. (a Tennessee Nonprofit corporation) Affiliated Entities]*** (collectively, whether referring to one entity or all entities, the “Buyer”) in accordance with the assignment rights set forth below, and Blount Memorial Hospital, Incorporated (a Tennessee Nonprofit corporation) D/B/A Blount Memorial Transitional Care Center (A/K/A Transitional Care Center At Morningview Village), Maryville, Tennessee (“TCC”) and Blount Memorial Hospital, Incorporated (a Tennessee Nonprofit corporation) D/B/A Morningview Village (A/K/A Morningview Village Senior Community), Maryville, Tennessee (“MVV”) (TCC and MVV are collectively sometimes referred to as the “Seller”). ***[ADD? Additionally, the Blount County Board of Commissions joins in this Agreement for purposes of acknowledging its consent to the transactions contemplated hereby.]***

### WITNESSETH:

WHEREAS, the business of Seller includes owning and operating two long term care facilities commonly known as Blount Memorial Transitional Care Center (A/K/A Transitional Care Center At Morningview Village), a skilled nursing facility licensed for 76 beds, and Morningview Village (A/K/A Morningview Village Senior Community), an assisted living facility licensed for 85 beds) (collectively the “Seller’s Business”), with the locations being set forth on Exhibit A attached hereto (individually the “TCC Facility” or the “MVV Facility” or collectively a “Facility” or the “Facilities”);

WHEREAS, Buyer desires to purchase substantially all of the assets of Seller regarding the Facility, and Seller desires to sell such assets to Buyer, all as more fully set forth below (the “Purchase”); and

NOW, THEREFORE, for and in consideration of the premises, and the agreements, covenants, representations and warranties hereinafter set forth, and other good and valuable consideration, the receipt and adequacy all of which are forever acknowledged and confessed, the parties hereto hereby agree as follows:

### ARTICLE 1 DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply:

“**Affiliate**” means with respect to Buyer and/or Seller, any entity that controls, is controlled by, or is under common control with either party all as more fully set forth in the rules and regulations of the Securities and Exchange Commission under the Securities Act of 1933, as amended.

“**Agreement**” is defined in the Preamble.

“**Assets**” means all of Seller’s right, title and interest in and to the following assets by Seller and located at the Facility, other than Excluded Assets, which will be transferred to either ***[Ocoee***



***TCC PropCo, Ocoee TCC PropCo, Ocoee MVV OpCo or Ocoee MVV OpCo*** as further set forth below or in the Operations Transfer Agreement:

- (a) the real property and improvements owned by Seller on which the Facility is situated described in Appendix 1A (the “Real Property”);
- (b) all furnishings, fixtures and equipment, and other tangible personal property, owned by Seller, located at the Facility, and used in the operation of the Facility, to the extent assignable, including, without limitation, the items listed in Appendix 1B (the “FF&E”);
- (c) all licenses and intangible rights of Seller related to the Facility, if any, to the extent transferable;
- (d) any goodwill of Seller in or arising from the ownership or leasing of the Facility; and
- (e) all other assets, personal or mixed, tangible or intangible, used in connection with the operation of Seller’s Business, if any, other than the Excluded Assets.

“**Benefit Plans**” is defined in § 3.21.

“**Best Efforts**” means the reasonable commercial efforts that a prudent Person desirous of achieving a result would use in similar circumstances to achieve that result as expeditiously as possible; provided, however, that a Person required to use Best Efforts under this Agreement will not be thereby required to take actions that would result in a material adverse change in the benefits to such Person of this Agreement and the Contemplated Transactions or to dispose of or make any change to its business, expend any material funds or incur any other material burden.

“**Blount County Board of Commissioners**” or “**BCBC**” means the legislative branch of Blount County, Tennessee *[describe relationship and transactional requirements as between BCBC and BMH]*.

“**Buyer**” means *[Ocoee TCC PropCo, LLC and Ocoee MVV PropCo, LLC]*, both Tennessee Nonprofit limited liability companies.

“**Purchase Price**” means Twenty-Two Million Seven Hundred Fifty Thousand and No/100 Dollars (\$22,750,000.00), as described in § 2.4(b).

“**CERCLA**” is defined in § 3.20.

“**Closing**” and “**Closing Date**” are defined in § 2.11.

“**Closing Statement**” is defined in § 2.9.

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

**“Contemplated Transactions”** means all of the transactions contemplated by this Agreement.

**“Contract Date”** is defined in the Preamble.

**“Ocoee TCC OpCo”** is defined in the Preamble and in the definition of “New Operator.”

**“Ocoee MVV OpCo”** is defined in the Preamble and in the definition of “New Operator.”

**“Deposit”** is defined in § 2.4(a).

**“Due Diligence Checklist”** is defined in § 2.8.

**“Due Diligence Period”** is defined in § 2.8.

**“Effective Time”** is defined in § 2.11.

**“Environmental”** is defined in § 11.1(e).

**“Environmental Laws”** is defined in § 3.20.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended.

**“Escrow Agent”** is defined in § 2.4(a).

**“Excluded Assets”** is defined in § 2.3.

**“Excluded Liabilities”** is defined in § 2.5.

**“Exhibit Volume”** means the volume of Exhibits referred to in this Agreement prepared and delivered by Seller.

**“Extended Closing Date”** is defined in § 2.11.

**“Facility”** or **“Facilities”** has the meaning set forth in the Recitals.

**“FF&E”** is defined in the definition of “Assets” above.

**“GAAP”** means generally accepted accounting principles for financial reporting in the United States, applied on a basis consistent with the basis on which the Seller Audited Financial Statements were prepared.

**“Governing Documents”** means, with respect to any particular entity, (a) if a corporation, the articles or certificate of incorporation and the bylaws; (b) if a general partnership, the partnership agreement and any statement of partnership; (c) if a limited partnership, the limited partnership agreement and the certificate of limited partnership; (d) if a limited liability company, the articles of organization and operating agreement; (e) if a governmental or quasi-governmental entity, */the \_\_\_\_\_/*; (f) if another type of Person, any other charter or similar document adopted or filed in connection with the creation, formation or

organization of the Person; (g) all equity holders' agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of any Person or relating to the rights, duties and obligations of the equity holders of any Person; and (h) any amendment or supplement to any of the foregoing.

**“Governmental Authorization”** means any consent, license, registration or permit issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

**“Governmental Body”** means any:

- (a) nation, state, county, city, town, borough, village, district or other jurisdiction;
- (b) federal, state, local, municipal, foreign or other government;
- (c) governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers);
- (d) multinational organization or body;
- (e) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or
- (f) official of any of the foregoing.

**“Hazardous Substance”** is defined in § 3.20.

**“IRS”** means the Internal Revenue Service.

**“Lists”** is defined in § 3.19.

**“Material Damage”** is defined in § 11.3(a).

**“New Operator”** means *[Ocoee TCC Opco, LLC]* (“Ocoee TCC OpCo”) and *[Ocoee MVV Opco, LLC]* (“Ocoee MVV OpCo”), both Tennessee Nonprofit limited liability companies.

**“Operations Transfer Agreement”** or **“OTA”** means two separate Operations Transfer Agreements in substantially the form of that attached hereto as Exhibit OTA between Seller and the New Operator (one for Ocoee TCC OpCo and one for Ocoee MVV OpCo). *[Depending on the exact agreed format of the OTA this draft Agreement and/or the draft OTA previously provided by Ocoee to Seller will require revisions as to items such as employee benefits, vendor contracts, shared services between the BMH Hospital and the Facilities, liability insurance (including “tail” insurance for post-closing insurance coverage regarding the Facilities), etc]*

**“Order”** and **“Orders”** is defined in § 3.19.

**“Ordinary Course of Business”** means an action taken by a Person will be deemed to have been taken in the “Ordinary Course of Business” only if that action:

- (a) is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal, day-to-day operations of such Person; and
- (b) does not require authorization by the board of directors or shareholders of such Person (or by any Person or group of Persons exercising similar authority) and does not require any other separate or special authorization of any nature.

**“Permitted Encumbrances”** is defined in § 3.7.

**“Person”** means any individual, corporation, partnership, joint venture, association, joint stock company, trust or unincorporated organization.

**“Purchase”** is defined in the Recitals.

**“RCRA”** is defined in § 3.20.

**“Real Property”** is defined in the definition of “Assets” above.

**“Seller”** or **“BMH”** means, collectively, Blount Memorial Hospital, Incorporated (a Tennessee Nonprofit corporation) D/B/A Blount Memorial Transitional Care Center (A/K/A Transitional Care Center At Morningview Village), Maryville, Tennessee and Blount Memorial Hospital, Incorporated (a Tennessee Nonprofit corporation) D/B/A Morningview Village (A/K/A Morningview Village Senior Community). *[as needed, describe relationship and transactional requirements as between BMH and BCBC].*

**“Seller Financial Statements”** is defined in § 3.3.

**“Seller Restricted Person”** is defined in § 11.5.

**“Seller’s Business”** is defined in the Recitals.

**“Seller’s Knowledge Individuals”** is defined in § 3.30.

**“Surviving Obligations”** is defined in § 9.4(a).

**“TI Inspection”** is defined in § 11.1(f).

**“Title Insurance Company”** is \_\_\_\_\_ Title Insurance Company, a nationally recognized title insurance company which has been acknowledged as being acceptable to Buyer.

**“Title Policy”** is defined in § 11.1(b).

## **ARTICLE 2**

### **SALE AND TRANSFER OF ASSETS**

#### **2.1.   Sale and Transfer of Assets.**

Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, but effective as of the Effective Time, Seller shall sell, convey, assign, transfer and deliver to Buyer and New Operator, and Buyer and New Operator shall purchase and acquire from Seller, as further set forth below or in the Operations Transfer Agreement, free and clear of any encumbrances other than Permitted Encumbrances, all of Seller's right, title and interest in and to the Assets.

#### **2.2.   Assets Free and Clear; Undertaking.**

The Assets shall be sold free and clear of all liabilities, liens and encumbrances except those liabilities of Seller expressly assumed or agreed to be discharged by Buyer as set forth in this Agreement or in the Operations Transfer Agreement. Except as provided herein, Buyer shall not assume any other liability or obligation of Seller, fixed or contingent, disclosed or undisclosed. Seller agrees to satisfy, when due, all of its liabilities, indebtedness and obligations not assumed by Buyer pursuant to this Agreement. Buyer will pay, perform and discharge when due in accordance with their terms all obligations, indebtedness and liabilities of the Facility and/or Seller assumed by it pursuant to this Agreement or the Operations Transfer Agreement.

#### **2.3.   Excluded Assets.**

Seller is not selling and Buyer is not purchasing or assuming obligations with respect to the following, pursuant to this Agreement or the Operations Transfer Agreement (collectively, the "Excluded Assets"):

- (a) Seller's bank accounts, cash, cash reserves, cash deposits and escrows, and all other cash equivalent items.
- (b) Seller's business and fiscal records and other records that Seller is required by law to retain in its possession; however, after Closing, Buyer or Buyer's representatives will have reasonable access upon reasonable prior notice during normal business hours to such portions of such business and fiscal records and other records related to the prior operation of the Facility as may be necessary or convenient for the operations of the Facility by Buyer.
- (c) Seller's accounts receivable.
- (d) All prepaid expenses (said prepaid expenses shall be prorated as of the Closing Date and Buyer shall pay to Seller the portion thereof attributable to periods from and after the Closing Date).
- (e) All leases, contracts and agreements not expressly assumed hereunder or under the OTA.

- (f) The additional items on Schedule 2.3(f), including, without limitation, vendor-owner equipment and property owned by the patients and residents.

#### 2.4. Consideration for Sale and Transfer.

- (a) Buyer has begun its “Due Diligence” with respect to the Assets (as further described in § 2.9) and upon execution and delivery of this Agreement by all parties, Buyer shall deposit Five Hundred Thousand and No/100 Dollars (\$500,000.00) in cash with the Title Insurance Company (“Escrow Agent”), and the parties direct the Escrow Agent to retain such deposit as escrow agent, to be applied against the Cash Purchase Price at Closing (the “Deposit”), pursuant to the terms of the Escrow Agreement attached hereto as Exhibit 2.4(a). The Deposit shall be refundable to Buyer only if (i) Buyer has given written notice to Seller and Escrow Agent, prior to the expiration of Due Diligence Period, that it does not wish to proceed with the Transaction, in its sole and absolute discretion, (ii) Seller fails to perform any of its obligations pursuant to this Agreement in any material respects, (iii) the failure of any of the conditions precedent to Buyer’s obligation to close as of the last date provided for herein for Closing, including, but not limited to, that all representations, warranties and covenants of Seller in this Agreement are true and correct as of the Closing Date, and/or (iv) this Agreement otherwise provides for the refund of such Deposit.
- (b) The purchase price for the Assets shall be Twenty-Two Million Eight Hundred Twenty-Five Thousand and No/100 Dollars (\$22,825,000.00) (the “Cash Purchase Price”), which Buyer shall deliver at Closing (less the Deposit, which shall become part of the Cash Purchase Price), by wire transfer of immediately available funds, subject to the prorations and adjustments set forth in this Agreement and/or the OTA, to Seller.

#### 2.5. Excluded Liabilities.

Buyer shall not assume and under no circumstances shall Buyer be obligated to pay or assume, and none of the assets of Buyer shall be or become liable for or subject to, any liability, indebtedness, commitment, or obligation of Seller, whether known or unknown, fixed or contingent, recorded or unrecorded, currently existing or hereafter arising or otherwise (collectively, the “Excluded Liabilities”), including, without limitation, the following Excluded Liabilities:

- (a) all suits, claims, indemnities, judgments, stipulation agreements, mortgages, taxes (other than prorated property taxes for 2024 which Buyer is agreeing to pay in full after allocation and appropriate credits), contingent liabilities and other obligations of Seller, including, without limitation, any and all investment tax credit recapture, depreciation recapture, and all impositions of income tax and other taxes for all time periods prior to the Effective Time;

- (b) all suits, claims, indemnities, judgments, stipulation agreements, contingent liabilities and other obligations of Seller based upon any tort or breach of contract claim asserted by any party that is based upon acts or omissions or events for all time periods prior to the Effective Time;
- (c) all suits, claims, indemnities, judgments, stipulation agreements, contingent liabilities and other obligations of Seller attributable to any time periods arising out of any lease, contract or agreement of Seller not expressly assumed by Buyer hereunder or by New Operator under the OTA;
- (d) all suits, claims, indemnities, judgments, stipulation agreements, contingent liabilities and other obligations of Seller attributable to any time periods prior to the Effective Time arising out of any lease, contract or agreement of Seller (or otherwise related to the Assets or Facilities) assumed by Buyer hereunder or by New Operator under the OTA;
- (e) all claims with respect to employee (and former employee) wages, salaries and benefits not specifically assumed by Buyer or New Operator hereunder or under the OTA;
- (f) any liability of Seller arising out of the injury to or death of any person, or damage to or destruction of any property, whether based on negligence, breach of warranty, strict liability, enterprise liability or any other legal or equitable theory arising from or related to services provided by Seller, to the extent any of such liabilities arose prior to the Closing;
- (g) all obligations pursuant to or related to any loan or debt obligations; and
- (h) all amounts owed by any Seller to any third party payors, including Medicare and Medicaid, for the periods prior to Closing as a result of any settlement or other adjustment process used by such third party payors, including cost reports filed or to be filed.

The parties agree and expressly understand that Buyer is not responsible for and is not assuming any liabilities or obligations of Seller or relating to the Assets except for the specific obligations listed in this Agreement and/or the OTA relating to periods on and after Closing, and Seller will hold Buyer harmless from same. Similarly, the parties agree and expressly understand that Seller is not responsible for and is not to be liable for any liabilities or obligations of Buyer or New Operator relating to periods on and after Closing, and Buyer will hold Seller harmless from same.

## 2.6. Allocation of Purchase Price.

- (a) Tax Purposes. The parties agree that the consideration paid to Seller pursuant to § 2.4 shall be allocated among the Assets as set forth on Exhibit 2.6 attached hereto. The parties hereto make this allocation with the knowledge and understanding that it will be used by them for all purposes, including tax purposes. Each party hereto agrees that it will report the transaction in accordance with such allocation, including under Section

1060 of the Internal Revenue Code of 1986, as amended (the “Code”), and that it will not take a position inconsistent with such allocation except with the written consent of the other party hereto. Each party agrees to cooperate with the other so that the information shown on Form 8594 filed with the IRS by such party will be consistent with the information on the other party’s Form 8594. At least three (3) business days prior to Closing, the Parties agree to arrive at an allocation of purchase price. If the Parties cannot arrive at a mutually agreeable allocation, the Parties agree to select an independent accounting service to choose an allocation that is most beneficial to both Parties.

## 2.7. Proration of Real Estate Closing Adjustments.

At the Closing, the parties shall calculate the proration of expenses related to ownership of Real Property between the parties through the Effective Time, and, as appropriate, adjust the Cash Purchase Price accordingly pursuant to a Closing Statement in customary form setting forth the debits and credits applicable to each party. With respect thereto, the following provisions shall apply:

- (a) Property Taxes. Ad valorem taxes and special assessments against the Real Property and the personal property shall be prorated at Closing based on the tax bills for the tax year of the Closing. In the event the real estate tax bill for the current year has not yet been received by Seller, taxes assessed upon the Real Property and the personal property for the current calendar year shall be prorated based on 105% of the previous year’s tax rate, however, Seller and Buyer agree that once the current year’s tax rate has been established, within thirty (30) days Buyer shall pay to Seller, or Seller shall pay to Buyer, as applicable, the difference between the estimate based on 105% of the previous year’s tax rate and the actual taxes for such period. ***[Address current property tax exemption status, and continued property tax exemption for Buyer as a nonprofit entity or through the use of a PILOT]***
- (b) Utilities. Utility charges shall not be prorated but shall be adjusted in the manner of other accounts payable and accounts receivable of Seller in accordance with the provisions of the Operations Transfer Agreement. Without modifying the obligations set forth in this § 2.7, Seller and Buyer shall cooperate to coordinate an orderly transfer of all utilities into the name of the applicable Buyer or New Operator, and Seller shall not take any action to terminate the existing utilities serving the Facility prior to thirty (30) days after the Closing. All utility deposits made by Seller shall be returned to Seller. ***[Address any shared services between the Facilities and the Hospital as to utilities]***
- (c) Post-Closing. If any charges or expenses are unavailable at the Closing, a readjustment shall be made within ten (10) days following the availability of accurate bills and figures. Taxes prorated at Closing shall be re-prorated



between Buyer and Seller promptly upon the receipt of the real estate tax bill for the current year and Buyer shall refund to Seller any amount overpaid by Seller or Seller shall pay to Buyer the amount of any deficiency in the proration.

## 2.8. Due Diligence Period.

Buyer shall have until 9:00 a.m. Eastern Time on \_\_\_\_\_, 2024 (the “Due Diligence Period”) to conduct such due diligence investigation as may be deemed appropriate by Buyer, and finalize and place in escrow the Operations Transfer Agreement. To facilitate Buyer’s due diligence investigation, Buyer has identified certain items of diligence, as are listed on a due diligence checklist attached as Schedule 2.8 (the “Due Diligence Checklist”). If not already delivered pursuant to the Letter of Intent previously executed by the Seller and an affiliate of the Buyer, Seller shall promptly deliver to Buyer (a) all items on the Due Diligence Checklist in the possession of Seller which have previously been prepared by Seller, and (b) all items in the possession of or readily accessible to Seller and reasonably requested by Buyer which may assist Buyer in obtaining new or updated similar items (such as environmental studies, appraisals, feasibility studies, insurance reviews, and title insurance policies), if any. Title insurance commitments and policies will be obtained from the Title Insurance Company (the “Title Insurance Company,” which is also serving as Escrow Agent). Buyer may add to the Due Diligence Checklist during the Due Diligence Period by delivering either (x) an amended written Due Diligence Checklist, or (y) a request for additional information, which may be by email or fax, to Seller from time to time. Buyer may, at its discretion, prior to the expiration of the Due Diligence Period, terminate this Agreement by notice to Seller and receive a full refund of the Deposit. Buyer shall have the right to terminate this Agreement during the Due Diligence Period by delivering written notice to Seller and Escrow Agent pursuant to § 11.9 of this Agreement at any time before the end of the Due Diligence Period, in its sole and absolute discretion. If such notice is timely received by Seller, the Deposit shall promptly be fully refunded to Buyer. If no such notice is sent by Buyer and received by Seller before the end of the Due Diligence Period, Buyer shall be obligated to close, subject to satisfaction of each of the conditions set forth in Article 8 hereof, and if any such condition is not satisfied, the Deposit shall promptly be fully refunded to Buyer. The Deposit shall become non-refundable at the end of the Due Diligence Period, except as otherwise set forth herein or in the Escrow Agreement. In conducting due diligence, Buyer shall abide by the provisions of § 6.1 below, and otherwise preserve the confidentiality of the transaction contemplated herein and shall use its Best Efforts to avoid disrupting normal operations of the Facility. If any title defects or other matters objectionable to Buyer are discovered during the Due Diligence Period, Buyer shall give Seller written notice of such defects or objections in accordance with the provisions of § 11.1 below, and Seller shall be allowed to cure such defects or objections in accordance with the provisions of § 11.1 below.

## 2.9. Closing Statement.

At Closing, Buyer shall prepare and deliver to Seller a closing statement (“Closing Statement”) as of the Closing Date mutually agreeable to both Buyer and Seller, and their representatives shall be provided access to the books and records of Buyer as necessary to verify the accuracy of such calculations. Upon the request of either party, a revised post-closing Closing

Statement shall be prepared to reflect any post-closing adjustments made pursuant to the terms of this Agreement.

2.10. Employee Matters.

Nothing in this Agreement shall create any rights in favor of any person not a party hereto, including the persons working at the Facility, or constitute an employment agreement or condition of employment for any person. All matters as to employment by Buyer of persons working at the Facility shall be governed by the Operations Transfer Agreement.

2.11. Closing.

Buyer shall use Best Efforts to close the sale, purchase and other activities provided for herein (the "Closing"), effective as of 12:00:01 AM Eastern Time, on \_\_\_\_\_ 1, 2024 (the "Closing Date") (such effective time is herein referred to as the "Effective Time"), and all expenses attributable to the ownership of the Assets to the Effective Time shall be for the account of Seller and thereafter for the account of Buyer. Closing shall occur at such time (and date, if the Closing Date is not a Business Day) as the parties may agree, at the offices of ***[Bradley Arant Boult Cummings LLP, in Nashville, Tennessee]***, or such other place as the parties may agree, or through escrow by mail. However, in the event Buyer has been unable to obtain reasonable assurances by the tenth (10th) day before the Closing Date that the licenses necessary to operate the Facility will be issued as of the Closing Date, after having used all reasonable good faith efforts in connection therewith, the Closing Date will be postponed until \_\_\_\_\_, 2024, or a date that is mutually agreed upon by Buyer and Seller (the "Extended Closing Date"); provided, however, that notwithstanding anything to the contrary herein, (a) if any ***[joint consent of BMH and BCBC as to the Closing of the Transaction, which shall be satisfactory to the Title Company, has not been received by the tenth (10th) day before the Closing Date]***, Seller shall direct the Escrow Agent to promptly refund the full Deposit to the Buyer, and (b) in the event any ***[joint consent of BMH and BCBC as to the Closing of the Transaction, which shall be satisfactory to the Title Company, has not been received by \_\_\_\_\_, 2024]***, Seller shall pay Buyer \$\_\_\_\_\_ as partial reimbursement for the expenses incurred by Buyer regarding its due diligence and other costs and expenses incurred by Buyer in preparing for the Closing of the Contemplated Transactions, and this Agreement shall be deemed terminated, as provided in Section 9.1(c) hereof. While the parties desire that the Closing pursuant to this Agreement be simultaneous as to both Facilities which comprise the collective definition of Facility used in this Agreement, in the event the parties are ready to Close as to one Facility but not the other Facility (for a reason set forth above as to either obtaining all licenses necessary to operate, or otherwise), the Closing of both Facilities shall be postponed to the Extended Closing Date.

Each party, at any time and from time to time at and after the Closing, upon request of the other party, take any and all steps necessary to place Buyer in possession of the Assets and will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be required for the better transferring and confirming to Buyer or to its successors or assigns, or for reducing to possession, any or all of the Assets.

2.12. Accounts Receivable and Bank Accounts.

Seller's accounts receivable and Seller's bank accounts shall remain the sole and exclusive property of Seller, and Seller's accounts receivable shall be subject to the provisions of the Operations Transfer Agreement as to assistance by Buyer in the collection thereof.

**ARTICLE 3**  
**REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants to Buyer as follows:

3.1. Organization, Corporate Power and Qualification.

BMH is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State Tennessee. Seller has full corporate power and authority and all authorizations, licenses and permits necessary to own, operate and, as applicable, lease, the properties and assets and to carry on Seller's Business as and where it is now being conducted, to enter into this Agreement, and to consummate the transactions contemplated hereby. Seller is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned or leased by it or the nature of the business transacted by it makes such qualification necessary. No jurisdiction where Seller is not presently qualified as a foreign corporation has made any assertion that Seller's Business or ownership of property makes qualification as a foreign corporation in such jurisdiction necessary. A copy of Seller's charter and all amendments thereto as of the date hereof (certified by the applicable Secretary of State), and a copy of Seller's bylaws and all amendments thereto, are included as Exhibit 3.1 of the Exhibit Volume and are true, accurate and complete as of the date hereof. Seller is not in default under or in violation of any provision of its charter or bylaws.

3.2. Subsidiaries, Affiliates, Affiliated Companies and Joint Venture.

Seller has no direct or indirect ownership interest in, by way of stock ownership or otherwise, any corporation, association or business enterprise.

3.3. Financial Statements.

Exhibit 3.3 consists of the financial statements of the Seller's Business for the annual periods ending December 31, 2021 and December 31, 2022, and for the interim eleven (11) month period ending November 30, 2023 (such financial statements being herein called "Seller Financial Statements").

The Seller Financial Statements are true, complete and accurate in all material respects, have been based upon the information contained in the books and records of Seller and present fairly the assets, liabilities and financial condition of Seller as at the respective dates thereof and the results of its operations for the periods ended at the respective dates thereof; however, Buyer specifically acknowledges that the Seller Financial Statements are unaudited, and do not contain "audit adjustments," corrections or footnotes. The Seller Financial Statements have been prepared substantially in accordance with GAAP, subject to normal year-end adjustments, corrections and review, and the absence of footnotes, as historically applied.

### 3.4. Absence of Undisclosed Liabilities.

Except as and to the extent reflected in the Seller Financial Statements and except for commitments and obligations incurred in the Ordinary Course of Business accruing after the date of the most recent Seller Financial Statements, to Seller's knowledge, Seller, as of the date of the most recent Seller Financial Statements, had, or will have at Closing, no liabilities, claims or obligations (whether accrued, absolute, contingent, unliquidated or otherwise, known to Seller or any directors or officers of Seller, whether due to become payable and regardless of when or by whom asserted), except for the litigation described on Exhibit 3.16.

### 3.5. Letters of Credit.

There are no outstanding letters of credit issued at the request of Seller to any person or entity with respect to the Seller's Business.

### 3.6. Absence of Certain Recent Changes.

Except as expressly provided in this Agreement or as set forth on Exhibit 3.6 in alphabetical order corresponding to the following subsections, since the date of the most recent Seller Financial Statements, and through the Effective Time, Seller has not and will use commercially reasonable efforts not to have:

- (a) except in the usual and Ordinary Course of its Business, consistent with past practice, and in an amount that is usual and normal, incurred any indebtedness or other liabilities (whether accrued, absolute, contingent or otherwise), guaranteed any indebtedness or sold any of its assets;
- (b) suffered any damage, destruction or physical loss, whether or not covered by insurance, in excess of Ten Thousand and No/100 Dollars (\$10,000.00) per any single Facility;
- (c) except with respect to liens or encumbrances arising by operation of law, permitted or allowed any of the Assets to be subjected to any mortgage, pledge, lien, security interest, encumbrance, restriction or charge of any kind;
- (d) written off any of the Assets, except for write-downs and write-offs in the Ordinary Course of Business and consistent with past practice, none of which are material;
- (e) paid, discharged or satisfied any claims, liabilities or obligations (absolute, accrued, contingent or otherwise) other than in the usual and Ordinary Course of Business;
- (f) suffered any extraordinary losses, canceled any debts or waived any claims or rights of substantial value, whether or not in the usual and Ordinary Course of Business;

- (g) paid, lent or advanced any amount to, or sold, transferred or leased any properties or assets (real, personal or mixed, tangible or intangible) to, or entered into any agreement or arrangement with, any member of Seller or any of the officers or directors of Seller or of any “affiliate” or “associate” of any of its officers or directors (as such terms are defined in the rules and regulations of the Securities and Exchange Commission under the Securities Act of 1933, as amended), except for reimbursement of ordinary and reasonable business expenses related to the business of Seller and compensation to officers at rates not exceeding the rates of compensation as of the date of the most recent Seller Financial Statements;
- (h) amended, terminated or otherwise altered (whether by action or inaction) any contract, agreement or license of significant value pertaining to the Seller’s Business or the Assets;
- (i) entered into a material transaction pertaining to the Seller’s Business or the Assets other than in the Ordinary Course of Business or made any change in any method of accounting or accounting practice; or
- (j) agreed, whether in writing or otherwise, to take any action described in this § 3.6.

### 3.7. Title to Real Property.

- (a) Except as disclosed in Exhibit 3.7(a) of the Exhibit Volume, or otherwise set forth on the title commitment described in § 11.1 below, Seller has, or will have at Closing, good and marketable title to all of the Real Property subject to no mortgage, pledge, lien, lease, conditional sales agreement, option, right of first refusal or to any other encumbrance or charge, including taxes, except Permitted Encumbrances, and all:
  - (i) liens in respect of taxes not yet due and payable;
  - (ii) such matters of record, imperfections of title and other encumbrances, if any, that do not in the aggregate materially interfere with the use of the Real Property or otherwise materially impair the Seller’s Business;
  - (iii) building, zoning, land use and subdivision laws and regulations;
  - (iv) easements of record for roads, rights-of-way, and public utilities serving the Real Property; and
  - (v) such non-monetary encumbrances with respect to the Real Property which are shown on the title commitment or the survey but are not objected to by Buyer in accordance with § 11.1 or which are otherwise deemed to be Permitted Encumbrances in accordance with this Agreement.

The term “Permitted Encumbrances” shall mean those items identified in § 3.7(a)(i) through § 3.7(a)(v) herein.

(b) Other Representations Respecting Real Property. Except as disclosed in Exhibit 3.7(b) of the Exhibit Volume:

- (i) Seller enjoys peaceful and undisturbed possession of the Real Property. To Seller’s knowledge, Seller’s use of the Real Property does not currently, and did not in the past, violate any existing zoning, building or use statutes, rules, ordinances or regulations of any federal, state, county or local entity, authority or agency the violation of which would have a material adverse effect on the Assets or the Seller’s Business as it is presently conducted. Seller has not received any notice of any violation of any law, zoning ordinance or regulation affecting the Real Property and has not received any notice of nor has any knowledge of or information as to any existing or threatened condemnation or other legal action of any kind involving the Real Property that may affect the use of the Real Property. To Seller’s knowledge, the use of the Real Property has been, and is proper and in compliance with all material applicable laws, rules and regulations with proper permits and licenses and the property has in effect a valid certificate of occupancy;
- (ii) there are no contracts, leases or agreements in effect with respect to the Real Property of any kind or nature whatsoever, whether or not of record, with the exception of and admission agreements and residential agreements entered into by Seller with patients and residents of the Facility in the Ordinary Course of Business of Seller;
- (iii) to Seller’s knowledge, there are no building, use or deed restrictions relating to the Real Property that are not of public record. To Seller’s knowledge, there are no latent structural defects in any buildings or improvements located on the Real Property;
- (iv) except as set forth on Exhibit 3.7(a), to Seller’s knowledge, there are no unrecorded easements relating to the Real Property, or special assessments or proposed special assessments relating to the Real Property, and no federal, state or local taxing authority has asserted any tax deficiency, lien or assessment against the Real Property that has not been paid;
- (v) there are no outstanding accounts payable or choate or inchoate mechanics’ liens or rights to claim a mechanic’s lien in favor of any contractor, materialman, laborer or any other Person in connection with any portion of the Real Property;

- (vi) to Seller's knowledge, the land adjacent, abutting or contiguous to the Real Property is not used for the benefit of the Real Property for any purpose, including, but not limited to, storm drainage, utility service or access to the Real Property and such land is not in any way necessary for the operation or use of the Real Property. Seller has rights of ingress and egress from the Real Property that are adequate for the purposes for which the Real Property currently is used;
- (vii) all service utilities, including gas, water, electricity, telephone and sewer, are presently available and serving the Real Property in an adequate manner for its current use;
- (viii) to Seller's knowledge, no part of any Improvement encroaches on any real property not included in the Real Property, and there are no buildings, structures, fixtures or other Improvements primarily situated on adjoining property which encroach on any part of the Real Property;
- (ix) the Real Property utilized by the Facility abuts on and has direct vehicular access to a public road or has access to a public road via a permanent, irrevocable, appurtenant easement benefiting the Real Property, is supplied with public or quasi-public utilities, and to Seller's knowledge is not located within any flood plain or area subject to wetlands regulation or any similar restriction; and
- (x) there is no existing, or to Seller's knowledge, proposed plan to modify or realign any street or highway, and Seller has not received written notice of proposed eminent domain proceeding that would result in the taking of all or any part of the Real Property or that would prevent or hinder the continued use of the Real Property as heretofore used.

None of the encumbrances set forth in the title report impairs or materially interferes with the use of the Real Property or the Facility. The Real Property described on Appendix 1A constitutes all real property used in connection with the operation of the Facility.

- (c) Personal Property. The Assets consisting of owned personal property, including the Equipment and Furnishings listed on Appendix 1B are subject to no liens or encumbrances except for the security interests of record set forth on Exhibit 3.7(c) of the Exhibit Volume. Seller agrees to remove all security interests encumbering the Assets reflected on Buyer's UCC search, if any, on or before the Closing Date (except those approved by Buyer in writing, but Buyer shall not be anticipated to accept or approve any leases or financing documents related to any vehicles and/or equipment used with respect to the Seller's Business) and to similarly remove any other security interests filed against Seller's interest with respect to the Assets between the

date of such UCC search or title search and the Closing Date. The bills of sale, special warranty deed, vehicle titles, assignments and other instruments to be executed and delivered by Seller at Closing will be valid and binding and enforceable in accordance with their respective terms, and will effectively vest in Buyer good and marketable title to all the Assets.

3.8. Contracts.

There are no contracts, leases, agreements or other instruments to which Seller is a party that could either singularly or in the aggregate have an adverse effect on the use of the Assets.

Other than the items described on Exhibit 3.7(a) and/or 3.8, Seller is not, as of the date of this Agreement, a party to or bound by:

- (a) Any material agreement or contract not made in the Ordinary Course of Seller's Business;
- (b) Any employee collective bargaining agreement or other contract with any labor union;
- (c) Any covenant not to compete;
- (d) Any lease or similar agreement under which Seller is a lessor or sublessor of any material real property owned or leased by Seller;
- (e) Any (i) lease or similar agreement under which (A) Seller is lessee of, or holds or uses, any machinery, equipment, vehicle or other tangible personal property owned by a third party or (B) Seller is a lessor or sublessor of any tangible personal property owned by Seller, (ii) continuing contract for the future purchase of materials, supplies or equipment pertaining to the Facility, or (iii) management, service, consulting or other similar type of contract pertaining to the Facility;
- (f) Any material license or other agreement relating in whole or in part to, trademarks;
- (g) Any agreement or contract under which Seller has borrowed or lent any money or issued any note, bond, indenture or other evidence of indebtedness or directly or indirectly guaranteed indebtedness, liabilities or obligations of others (other than endorsements for the purpose of collection in the Ordinary Course of Business);
- (h) Any mortgage, pledge, security agreement, deed of trust or other document granting a lien on the Assets or the Real Property (including liens upon properties acquired under conditional sales, capital leases or other title retention or security devices but excluding operating leases) other than Permitted Encumbrances and/or Permitted Exceptions; or



- (i) Any other material written agreement, contract, lease, license, commitment or instrument relating to the Assets to which Seller is a party.

### 3.9. Burdensome Agreements.

Other than the items described on Exhibit 3.8, Seller is not a party to, nor are the Assets subject to or bound or affected by, any provision of any order of any court or other agency of government or any indenture, agreement or other instrument or commitment that adversely affects the operations, earnings, assets, properties, liabilities, business or prospects of Seller or its condition, financial or otherwise.

### 3.10. Absence of Related Party Transactions.

Neither Seller, nor any shareholder, officer, director or affiliate of Seller, has any material direct or indirect financial or economic interest in any competitor or supplier of the Facility. Other than the items described on Exhibit 3.8, neither Seller nor any shareholder, officer, director or affiliate of Seller is a party to any transaction or proposed transaction related to the Facility, including, without limitation, the leasing of property, or the furnishing of its services; and Seller has not directly or indirectly entered into any agreement or commitment pertaining to the Facility that could result in Seller becoming obligated to provide funds in respect of or to assume any obligation of any such affiliated person or entity. There are no debts owing to Seller or any shareholder of Seller by, or any contractual agreements or understandings between Seller and, any member, director or officer of Seller, any member of their respective families, or any affiliate or associate of any of the foregoing individuals, as the term “affiliate” is defined for purposes of the Securities Act of 1933 and the rules and regulations thereunder, and none of the foregoing individuals or any affiliate or associate of them owns any property or rights, tangible or intangible (other than an equitable interest) used in or related to Seller’s Business. Except for loans that will be paid at Closing, neither Seller nor any shareholder of Seller is indebted to any member, officer or director of Seller, or to any member of their respective families, or to any affiliate or associate of any of the foregoing individuals, in any amount whatsoever.

### 3.11. Defaults.

- (a) Except as disclosed in Exhibit 3.11, Seller is not in default under, nor has any event occurred that, with the lapse of time or action by a third party, could result in a default under any outstanding indenture, mortgage, contract, instrument or agreement pertaining to the Assets to which Seller is a party.
- (b) Subject to Buyer’s obtaining the necessary regulatory approvals the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement will not violate any provision of, or result in the breach of, or constitute a default under, any law the violation of which would result in a significant liability to Buyer, or any order, writ, injunction or decree of any court, governmental agency or arbitration tribunal; constitute a violation of or a default under, or a conflict with, any contract, commitment, indenture, lease, instrument or

other agreement, or any other restriction of any kind to which Seller is a party; or cause, or give any party grounds to cause (with or without notice, the passage of time or both) the maturity of any liability or obligation of Seller, to be accelerated, or increase any such liability or obligation.

3.12. Equipment.

The present quantity of all FF&E owned by Seller is to be transferred and conveyed in “AS IS, WHERE IS” condition.

3.13. Powers of Attorney.

There are no outstanding powers of attorney related to Seller.

3.14. Guarantees.

There are no outstanding guarantees, matters of suretyship and contingent liabilities of Seller.

3.15. Permits and Licenses.

Included as Exhibit 3.15 in the Exhibit Volume is a schedule of permits, certifications, certificates of need and licenses of Seller, listing and briefly describing each permit, certification, license, certificate of need or similar authorization from each governmental authority issued with respect to the ownership of properties by Seller together with the designation of the respective expiration dates of each, if any. All of such permits, certifications, licenses, certificates of need and authorizations will continue to be valid and in full force and effect in accordance with their respective terms until the consummation of the transactions contemplated hereby. To Seller’s knowledge, Seller is not required to obtain any additional permits, certifications, licenses, certificates of need or similar authorizations (including, without limitation, any additional certificates of need) from any governmental authority for the proper conduct of the Seller’s Business, other than those listed on Exhibit 3.15 in the Exhibit Volume. In addition:

- (a) no default has occurred in any material respect in the due observance or condition of any permit, certifications, certificates of need or license that has not been heretofore corrected;
- (b) Seller has not received any notice from any source to the effect that Seller is lacking any permit, certifications, certificates of need or license needed in any material respect in connection with the operation of Seller’s Business; and
- (c) Seller has not received any notice that the Facility is out of compliance with the terms of all such permits, certifications, certificates of need and licenses held by Seller, or that such permits, certifications, certificates of need or licenses will not be renewed upon expiration, or that any material conditions will be imposed in order to receive any such renewal, nor has Seller received

any notice that it has not complied in all material respects with the terms of all permits, certifications, certificates of need and licenses held by Seller.

Notwithstanding anything herein to the contrary, Buyer acknowledges that skilled nursing facilities such as the Facility are subject to periodic surveys by Governmental Bodies, and the results of such surveys can, in the ordinary course include immaterial statements of deficiencies. No guaranty, representation or warranty is made that the Facility shall be free from such ordinary survey deficiencies at Closing.

3.16. Litigation, etc.

Except as set forth in Exhibit 3.16 of the Exhibit Volume, there is no litigation, arbitration, governmental claim, investigation or proceeding pending or, to Seller's knowledge, threatened against Seller or any shareholder of Seller, at law or in equity, before any court, arbitration tribunal or governmental agency. No such proceeding set forth in Exhibit 3.16 concerns the ownership or other rights with respect to the Assets. To Seller's knowledge, there are no facts based on which material claims may be hereafter made against Seller or any shareholder of Seller, pertaining to the Assets or otherwise. Any and all claims arising from incidents before the Effective Time shall be the sole responsibility of Seller, as set forth in this Agreement, or the Operations Transfer Agreement, and are specifically excluded from the liabilities to be assumed by Buyer hereunder. ***[Insert language as to dismissal/termination of BMH/BCBC litigation]***

3.17. Court Orders, Decrees and Laws.

There is not outstanding or threatened any order, writ, injunction or decree of any court, governmental agency or arbitration tribunal against or affecting Seller, or any shareholder of Seller, which would significantly interfere with the abilities to conduct the Seller's Business. Seller is in compliance in all material respects with all applicable federal, state and local laws, regulations and administrative orders that are material to its ownership and leasing of its Assets, and Seller has received no notices of alleged violations thereof which remain uncured, except as disclosed in Exhibit 3.17 hereof. To Seller's knowledge, no governmental authorities are presently conducting proceedings against Seller, and no such investigation or proceeding is pending or being threatened. ***[Insert language as to dismissal/termination of BMH/BCBC litigation]***

3.18. Taxes.

All federal, state and other tax returns of Seller, as an entity, required by law to be filed have been timely filed or will be filed as of Closing, and Seller, as an entity, has paid or will pay at Closing all taxes (including taxes on properties, income, franchises, licenses, sales and payrolls) which have become due pursuant to such returns of Seller or pursuant to any assessment against Seller, except for any taxes and assessments of which the amount, applicability or validity is currently being contested in good faith by appropriate proceedings and with respect to which Seller has set aside on its books adequate reserves. All such tax returns have been prepared in compliance with all applicable laws and regulations, to Seller's knowledge, and are true and accurate in all respects. There are no tax liens on any of the Assets except those with respect to taxes not yet due and payable and except for any taxes and assessments of which the amount, applicability or validity

is currently being contested in good faith by appropriate proceedings and with respect to which Seller has set aside on its books adequate reserves.

### 3.19. Non-Foreign Status; Patriot Act.

Seller is not a “foreign person” as such term is defined in Section 1445(f) of the Internal Revenue Code of 1986, as amended. Seller is a “United States person” within the meaning of Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended. Seller is in compliance with the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (the “Order”) and other similar requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury (OFAC) and in any enabling legislation or other Executive Orders or regulations in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the “Orders”). Neither Seller nor any beneficial owner of Seller: (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the “Lists”); (ii) is a Person who has been determined by competent authority to be subject to the prohibitions contained in the Orders; or (iii) is owned or controlled by, or acts for or on behalf of, any Person on the Lists or any other Person who has been determined by competent authority to be subject to the prohibitions contained in the Orders.

### 3.20. Environmental Matters.

Except as disclosed on Exhibit 3.20:

- (a) All federal, state and local permits, licenses and authorizations required for the use and operation of the Real Property have been obtained and are presently in effect, except to the extent such failure would not be reasonably expected to have a material adverse effect on the Facilities.
- (b) None of the Real Property has been used by Seller (and to Seller’s knowledge, by any other Person at any time) to handle, treat, store or dispose of any Hazardous Substance (as defined below), nor, to Seller’s knowledge, is any of the Real Property, including all soils, groundwaters and surface waters located on, in or under the Real Property, contaminated with pollutants or other substances which contamination may give rise to a clean-up obligation under any federal, state or local law, rule, regulation or ordinance, including, but not limited to, the federal Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601 et seq., and the common law.
- (c) All underground and aboveground tanks located in, on or under any Real Property are, to Seller’s knowledge, in a state of good condition and repair and have not leaked nor are they presently leaking any of the contents that they have held or presently hold. A list of all such tanks is set forth on Exhibit 3.20.

- (d) There are no outstanding violations or any consent decrees entered against Seller regarding environmental and land use matters, including, but not limited to, matters affecting the emission of air pollutants, the discharge of water pollutants, the management of hazardous or toxic substances or wastes, or noise.
- (e) There are no claimed, threatened or alleged violations by Seller with respect to any federal, state or local environmental law, rule, regulation, ordinance, permit, license or authorization, and there are no present discussions with any federal, state or local governmental agency concerning any alleged violation of environmental laws, rules, regulations, ordinances, permits, licenses or authorizations.
- (f) All operations conducted by Seller regarding the Real Property have been and are in compliance with all federal, state and local statutes, rules, regulations, ordinances, permits, licenses and authorizations relating to environmental compliance and control.
- (g) To Seller's knowledge, no part of the Real Property has been designated by any governmental agency having jurisdiction as wetlands or as inhabited by an endangered species.

For purposes hereof, "Hazardous Substances" means any of the following: (i) any "hazardous waste," "solid waste," "hazardous material," "hazardous substance," "toxic substance," "pollutant," or "contaminant" as those or similar terms are defined or regulated under any Environmental Laws; (ii) asbestos (whether or not friable) and asbestos-containing materials; (iii) any volatile organic compounds, including oil and petroleum products; (iv) any substances that because of their quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to health, safety or welfare of any person or to the environment, including any polychlorinated biphenyls (PCBs), infectious medical wastes (including tissue, syringes, needles, blood samples or any material contaminated with bodily fluids of any type), toxic metals, etchants, pickling and plating wastes, explosives, reactive metals and compounds, pesticides, herbicides, urea formaldehyde foam insulation and chemical, biological and radioactive wastes; (v) radon gas; (vi) any other substance the presence of which on the Premises is prohibited by any Environmental Laws; and (vii) any other substance that by any Environmental Laws requires special handling or notification of any Governmental Authority in its collection, storage, treatment, or disposal. However, for the purposes of the covenants and indemnification obligations set forth in this Agreement, the term "Hazardous Substances" shall not include quantities of materials, chemicals or substances normally used, in connection with the use, management or operation of the Facility, provided that such materials, chemicals or substances are generated, produced, stored, handled, used, transported and disposed in a safe and prudent manner in strict compliance with all Environmental Laws.

"Environmental Laws" means all laws, statutes, codes, ordinances, orders, interpretations, rules and regulations of any governmental authority relating to human health or the environment, including the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901, et seq.

("RCRA"); the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Toxic Substances Control Act, 15 U.S.C. Section 2601, et seq., the Federal Hazardous Materials Transportation Law, 49 U.S.C. Section 5101, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Clean Air Act, 42 U.S.C. Section 7401, et seq., the Occupational Safety and Health Act, 29 U.S.C. Section 651, et seq., and all similar state laws that are applicable, as well as all regulations promulgated thereunder and any common law or any other rule of law of any governmental authority applicable to the Real Property and/or Facility and relating to human health or the environment.

### 3.21. Employee Benefit Plans.

All matters as to sponsorship of or participation in pension, profit-sharing, stock bonus, deferred compensation, or other tax-qualified or nonqualified retirement plans; welfare benefit plans, including group health, life, disability, or similar plans; fringe benefit, cafeteria, flexible benefit, or educational assistance plans; executive compensation, bonus, or incentive plans; severance plans; vacation, holiday, sick-leave, paid-time-off, or other employee compensation-related plans, procedures, programs, payroll practices, policies, agreements, commitments, contracts, or understandings under which any of the benefits described above are provided to any Persons; or any trusts or other agreements related thereto (all collectively, the "Benefit Plans") regarding persons working at the Facility shall be governed by the Operations Transfer Agreement.

### 3.22. Insurance.

Exhibit 3.22 of the Exhibit Volume is a list and brief description of all policies of fire, general liability, environmental impairment liability, and other forms of insurance policies or binders currently in force insuring against risks of Seller. All insurance policies or binders of Seller are valid, outstanding and enforceable and will continue to be valid, binding and enforceable until the consummation of the transactions contemplated by this Agreement. Seller is not in default or breach with respect to any provision of any such insurance policies nor has any Seller failed to give any notice or to present any claim thereunder in due and timely fashion.

### 3.23. Labor Matters.

There are no collective bargaining agreements with any labor union to which Seller is a party or by which Seller is bound, and Seller is not currently negotiating with a labor union. Except as set forth on Exhibit 3.23, there is no pending or threatened labor dispute, work stoppage, unfair labor practice complaint, strike, administrative or court proceeding or order between Seller and any present or former employee(s) of Seller.

### 3.24. Improper Payments.

Neither Seller nor any officer or employee of Seller have made any bribes, kickbacks or other improper payments on behalf of the Facility or received any such payments from vendors, suppliers or other persons contracting with the Facility.

### 3.25. Books of Account; Reports.

The books of account and other financial Records of Seller, all of which have been made available to Buyer to the extent requested by Buyer, are complete and correct in all material respects and represent actual, bona fide transactions and have been maintained in accordance with sound business practices. Seller has filed all reports and returns required by any law or regulation to be filed by it.

3.26. No Finders or Brokers.

Neither Seller nor any officer or director of Seller has engaged any finder or broker in connection with the transactions contemplated hereunder, except for *[PYA and/or affiliates]*, and any fee or commission due to such broker shall be the sole responsibility of Seller.

3.27. Enforceability; Authority; No Conflict.

Seller has full power and authority to enter into this Agreement and to carry out the transactions contemplated herein, subject to Buyer's obtaining the necessary regulatory approvals. The execution, delivery, and performance of this Agreement constitute the valid and binding agreement of Seller enforceable in accordance with its terms.

3.28. Condition of the Property and Major Mechanical Components.

To Seller's knowledge, there currently exists no defective condition, structural or otherwise, with respect to the Real Property and/or Facility. In addition, to Seller's knowledge, Seller has not received any written notice during the twelve (12) months prior to the date of this Agreement from any insurance company which has issued a policy with respect to the Real Property and/or Facility or from any board of fire underwriters (or other body exercising similar functions) claiming any defects or deficiencies in the Real Property and/or Facility or suggesting or requesting the performance of any repairs, alterations or other work to the Real Property and/or Facility. To Seller's knowledge, the sewage or any waste water systems, life safety systems, the incinerators and the heating or air conditioning equipment located on the Real Property and/or Facility are in normal operating condition and in compliance with applicable federal, state, commonwealth or municipal laws, ordinances, orders, regulations or requirements. To Seller's knowledge, Seller has received no written notice that either of the sewage or any waste water systems, life safety systems, incinerators or the heating or air conditioning equipment located on the Real Property and/or Facility violate any applicable federal, state, commonwealth or municipal laws, ordinances, orders, regulations or requirements.

3.29. Purchased Assets; Liens.

All of the Assets to be transferred hereunder or by the OTA are owned or leased by Seller and are located at or on the Real Property and/or Facility. The Assets which are being transferred pursuant to this Agreement or the Operations Transfer Agreement are sufficient to operate the Facility in the manner conducted by Seller as of the date hereof and as of the Closing Date. All of the assets necessary to operate the Facility are owned by Seller or leased by Seller and Seller has good and marketable Fee title or leasehold title to the Assets. The Assets include all buildings,

machinery, equipment, and other tangible assets currently used in the operation of the Facility by Seller, but exclude vendor-owner equipment and property owned by the patients and residents.

### 3.30. “Life Care” and Other Residency Contracts.

Exhibit 3.30 includes a true and complete copy of each endowment, “life care,” or other lump sum monetary payment contract or agreement in connection with the use or occupancy of the Facility by any person. Except as specifically set forth in Exhibit 3.30, no person using or occupying any part of the Facility has paid any entrance fee, investment fee, endowment, “life care” fee, or other lump sum monetary payment in connection with his or her use or occupancy of the Facility. No person using or occupying any part of the Facility has been promised any special concessions or care except as fully set forth in contracts set forth in Exhibit 3.30, whether contractual or based upon the city or county of such person’s residence. All contracts set forth in Exhibit 3.30 are compliant with all applicable rules and regulations regarding such contracts, except as specifically disclosed on Exhibit 3.30.

### 3.31. Compliance Program.

Seller has provided to Buyer a copy of its current compliance program materials. Except as set forth on Exhibit 3.31, neither Seller nor the Facility (a) is a party to a Corporate Integrity Agreement with the Office of the Inspector General (“OIG”), (b) has any reporting obligations pursuant to any settlement agreement entered into with any Governmental Authority, (c) has been the subject of any government payor program investigation conducted by any federal or state enforcement agency, (d) has been a defendant in any qui tam/False Claims Act or similar litigation, (e) has been served with or received any search warrant, subpoena, civil investigative demand, contact letter, or telephone or personal contact by or from any federal or state enforcement agency (except in connection with medical services provided to third-parties who may be defendants or the subject of investigation into conduct unrelated to the operation of the business or any other health care businesses conducted by Seller), and/or (f) has received any written complaints or complaints through their telephonic hotlines from employees, independent contractors, vendors, physicians, or any other person that would indicate that Seller has in the past violated, or is currently in violation of, any law or regulation. Seller has performed all required OIG and/or LIE verifications of all employees, independent contractors and/or vendors and no current employees, vendors and/or independent contractors appear on the OIG and/or LIE lists. Buyer has been provided with a description of each audit and investigation conducted by Seller pursuant to its compliance program with respect to the business during the last three years. For purposes of this Agreement, the term “Compliance Program” refers to provider programs of the type described in the Compliance Program Guidance published by the OIG. The Facility has not received notice of inclusion or intended inclusion as a Federal Special Focus Facility or any State equivalent.

To its knowledge, the Seller’s operations are fully in compliance with and do not otherwise violate the Federal Medicare and Medicaid statutes regarding physician self-referrals, 42 U.S.C. §§ 1395nn and 1396b(s), the regulations promulgated pursuant to such statutes, or any related state or local Laws. Neither Seller, nor, to the Seller’s knowledge, any officers, directors, trustees, employees or agents of Seller and/or the Facility, have engaged in any activities that would be reasonably likely to violate such Laws.



To its knowledge, the Seller has not engaged in any activities that are prohibited under the Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., or the applicable regulations promulgated pursuant to such statute or any related Law concerning the dispensing and sale of controlled substances.

3.32. Knowledge; Miscellaneous.

As used in this Agreement, the term “to the knowledge of Seller” or any other reference to the knowledge of Seller shall mean and apply to the actual knowledge of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and the administrator of each Facility (the “Seller’s Knowledge Individuals”).

Notwithstanding anything contained in this Agreement to the contrary, all of the representations and warranties which are made by Seller and set forth herein or in any of the documents or instruments required to be delivered by Seller hereunder, shall be subject to the following conditions and limitations: (a) there shall be no liability on the part of Seller for any breach of a representation or warranty arising from any matter or circumstance of which Buyer had actual knowledge at Closing; and (b) if prior to the time of Closing, during the course of Buyer’s inspections, studies, tests and investigations, or through other sources, Buyer gains actual knowledge of a fact or circumstance which, by its nature, indicates that a representation or warranty was or has become untrue or inaccurate, Buyer’s sole and exclusive right and remedy shall be to terminate this Agreement, in which event Seller shall permit the Escrow Agent to refund to Buyer the Deposit, whereupon this Agreement shall be deemed cancelled and the parties hereto shall be released of all obligations and liabilities under this Agreement, except those that are expressly stated to survive the cancellation or termination of this Agreement; and Buyer shall have no rights of action against Seller, in law or in equity, for damages or specific performance.

3.33. Solvency.

Seller is not now insolvent and will not be rendered insolvent by any of the Contemplated Transactions. As used in this section, “insolvent” means that the sum of the debts and other probable Liabilities of Seller exceeds the present fair saleable value of Seller’s assets.

3.34. Disclosure.

No representation or warranty or other statement made by Seller in this Agreement, the Exhibits, the certificates delivered pursuant to § 8.1 or otherwise in connection with the Contemplated Transactions contains any statement which is not true in all material respects, or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading.

**ARTICLE 4**  
**REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants as follows:

4.1. Organization and Standing of Buyer.

Each Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of Tennessee; has full power and authority to conduct its business as now being conducted; and is duly qualified to do business in each jurisdiction in which the nature of the property owned or leased or the nature of its business requires such qualification.

4.2. Authority; Binding Effect.

Buyer has the power to execute and deliver this Agreement and consummate the transactions contemplated hereby and has taken (or by the Closing Date will have taken) all action required by law, its Articles of Incorporation, Bylaws or otherwise to authorize such execution and delivery and the consummation of the transactions contemplated hereby. The execution, delivery, and performance of this Agreement constitutes the valid and binding agreement of Buyer enforceable in accordance with its terms (except as the same may be restricted, limited or delayed by applicable bankruptcy or other laws affecting creditors' rights generally and except as to the remedy of specific performance that may not be available under the laws of various jurisdictions) assuming that this Agreement has been duly authorized, delivered and executed by Seller and constitutes the valid and binding obligation, enforceable against Seller in accordance with its terms (except as enforceability against Seller may be restricted, limited or delayed to the same extent as referred to in the parenthetical phrase immediately above).

Neither the execution, delivery or performance of this Agreement by Buyer, nor compliance with the terms and provisions hereof, will result in any breach of the terms, conditions or provisions of, or conflict with or constitute a default under, or result in the creation of any lien, charge or encumbrance upon any Assets or assets of Buyer, or any material agreement by which Buyer is bound. Except as may be necessary with regard to licenses and permits, Buyer is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any government or governmental authority or other third party in order to consummate the transactions contemplated herein.

4.3. No Finders or Brokers.

Neither Buyer nor any officer or director thereof has engaged any finder or broker in connection with the transactions contemplated hereunder, and if any person claims any finder's fee or commission in connection herewith on behalf of Buyer, any such finder's fee, commission or other compensation shall be the sole responsibility of Buyer, and Buyer shall indemnify Seller with regard thereto.

4.4. Pending Litigation.

There are no proceedings pending or, to the knowledge of Buyer, threatened, against or affecting Buyer in any court or before any governmental authority or arbitration board or tribunal that involve the possibility of materially and adversely affecting the properties, business, prospects, profits or condition (financial or otherwise) of Buyer considered as a whole. Buyer will promptly notify Seller of any lawsuits, claims, proceedings or investigations that are commenced against either it or any Affiliate thereof, between the date of this Agreement and the Closing Date, that may relate to, or affect, the Assets, the Liabilities or the Real Property.

4.5. Court Orders, Decrees and Laws.

There is not outstanding or, to Buyer's knowledge, threatened any order, writ, injunction or decree of any court, governmental agency or arbitration tribunal against or affecting Buyer or any of its assets that would significantly interfere with its ability to conduct its business. To Buyer's knowledge, Buyer is in compliance with all applicable federal, state and local laws, regulations and administrative orders that are material to the business of Buyer. No governmental authorities are presently conducting any investigation or proceeding against Buyer and, to Buyer's knowledge, no such investigation or proceeding is pending or being threatened.

4.6. Consents and Approvals of Governmental Authorities.

No characteristic of Buyer or of the nature of Seller's Business requires any consent, approval or authorization of, or declaration, filing or registration with any governmental or regulatory authority in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, other than with respect to the licenses and permits required to operate or own the Facility.

**ARTICLE 5**  
**COVENANTS OF BUYER**

Buyer hereby covenants and agrees as follows:

5.1. Best Efforts to Secure Consents.

Buyer shall take the necessary corporate action and shall use Best Efforts to secure before the Closing all necessary consents and approvals needed to satisfy all the conditions precedent to the obligations of Seller hereunder. Provided, however, that in the event Buyer has been unable to obtain reasonable assurances by at least ten (10) days before the Closing Date that the licenses necessary to operate the Facility will be issued as of the Closing Date, after having used all reasonable good faith efforts in connection therewith, the Closing Date will be postponed in accordance with the provisions of § 2.8 above.

5.2. Information.

Buyer shall promptly provide to Seller upon reasonable request any information or documents reasonably necessary for Seller or its members to make an informed judgment as to the advisability of consummating the transactions contemplated hereby or to verify the representations and warranties herein. Until the Closing Date, Buyer shall notify Seller of any matter that may be materially adverse to Buyer and its subsidiaries considered as a whole and shall keep Seller fully informed of such events.

5.3. Corporate Action.

Buyer will take all necessary action and use its Best Efforts to obtain all consents, approvals and amendments of agreements required of it to carry out the transactions contemplated by this Agreement and to satisfy the conditions specified herein.

5.4. Handling of Documents.

With respect to information provided by Seller pursuant to this Agreement prior to the Closing, Buyer shall keep all such information confidential that is not in the public domain, except to the extent that such information becomes generally available to the public other than as a result of a disclosure directly or indirectly by Buyer, was known by Buyer on a non-confidential basis prior to disclosure to Buyer by Seller pursuant to this Agreement or becomes available to Buyer on a non-confidential basis from a source (other than Seller) that is entitled to disclose the same, and to exercise the same care in handling such information as it would exercise with similar information of its own.

5.5. Non-Disclosure.

Buyer will keep confidential and not disclose to any third party any information relating to the Seller's Business, whether acquired by Buyer before or after the Closing Date, that Seller has not made generally available to the public. This provision shall survive Closing.

5.6. Records of Seller.

Buyer shall assure Seller that after Closing, Seller or Seller's representatives will have reasonable access upon reasonable prior notice during normal business hours to such portions of such records related to the prior operation of the Facility as may be necessary for the Seller to defend or otherwise adequately respond to any litigation, audits, or claims related to operations of the Facility by Seller, including the maintenance of historical records in an orderly fashion by New Operator, in accordance with the terms set forth in Section 3.04(b) of the OTA, which is incorporated herein by reference. Furthermore, Buyer shall assure Seller that such obligations noted above will become an obligation of any owner, lessor, lessee, or other operator of the Facility in the event the Buyer and/or New Operator transfer their respective interests in the Facility while such Section 3.04(b) of the OTA remains in effect.

**ARTICLE 6  
COVENANTS OF SELLER**

Seller hereby covenants and agrees as follows:

6.1. Access and Information.

Between the date of this Agreement and the Closing Date, Seller will provide to Buyer and its officers, attorneys, accountants and other representatives, during normal business hours, or upon Buyer's reasonable request:

- (a) reasonable access to the Facility upon at least two (2) business day's prior notice, in order to conduct engineering, environmental and related third party inspections of the Facility;
- (b) reasonable access to all of the agreements, commitments, books, records, accounts, tax returns, and documents of Seller, and permit Buyer to make

copies thereof (all subject to any restrictions as to privacy rights of Facility residents under Federal or state law);

- (c) furnish Buyer and its representatives with all information concerning Seller as Buyer reasonably requests; and
- (d) cause the independent public accountants of Seller to make available to Buyer and its representatives all financial information relating to the Seller's Business reasonably requested, including all working papers pertaining to audits and reviews made heretofore by such auditors.

Buyer shall use its Best Efforts to avoid disrupting the normal operations of the Facility and to preserve the confidential nature of the transaction contemplated herein.

#### 6.2. Conduct of Business.

Between the date hereof and the Closing Date, except as otherwise expressly approved in writing by Buyer, Seller shall conduct Seller's Business only in the ordinary course thereof consistent with past practice and in such a manner that the representations and warranties contained in Article 3 of this Agreement shall be true and correct in all material respects at and as of the Closing Date (except for changes contemplated, permitted or required by this Agreement) and so that the conditions to be satisfied by Seller at the Closing shall have been satisfied.

#### 6.3. Compliance with Agreement.

Seller shall not undertake any course of action inconsistent with satisfaction of the conditions applicable to it set forth in this Agreement, and shall do all such acts and take all such measures as may be reasonably necessary to comply with the representations, agreements, conditions and other provisions of this Agreement. Seller shall give Buyer prompt written notice of any change in any information contained in the representations and warranties made in Article 3 hereof and on the Exhibits referred to therein (provided, however, that such notice shall not limit Buyer's rights under § 9.1(c) hereof) and of any condition or event that constitutes a default of any covenant or agreement made in Article 6 or in any other section hereof.

#### 6.4. Best Efforts to Secure Consents.

Seller shall take the necessary corporate and other action and shall use its Best Efforts to secure before the Closing Date all necessary consents, and approvals required to carry out the transactions contemplated by the Agreement and to satisfy all other conditions precedent to the obligations of Buyer and Seller.

#### 6.5. Unusual Events.

Until the Closing Date, Seller shall supplement or amend all relevant Exhibits in the Exhibit Volume with respect to any matter thereafter arising or discovered that, if existing or known at the date of this Agreement, would have been required to be set forth or described in such Exhibits. The submitted supplemental Exhibits shall be deemed accepted and thereby become an Exhibit to this Agreement unless: (i) such proposed Exhibit would, individually or in aggregate with the

effect of items disclosed in other supplemental Exhibits which were first submitted after signing of this Agreement, could reasonably be determined to constitute a material adverse effect, and (ii) within five (5) business days after receipt of such proposed supplemental Exhibit, Buyer provides written notice to Seller reasonably detailing the objection thereof and changes in such proposed Exhibit which would make the same acceptable. Should the parties not be able to resolve written objections within ten (10) business days thereafter, then either party may withdraw from this Agreement and terminate it without any obligation or liability of any sort and this Agreement shall be treated as never having been executed or delivered and the Deposit shall be returned to Buyer.

6.6. Real Property Assessments.

If, on the Closing Date, the property or assets of Seller is or will be subject to any real property assessment or assessments that are or may become payable in annual installments, of which the first installment is then a charge or lien, or has been paid, then for the purposes of this Agreement all the unpaid installments of any such assessment, including those that are to become due and payable, shall be paid and prorated on the same basis as property taxes hereunder, as provided between Seller and Buyer as of the Closing Date.

6.7. Maintain Insurance Coverage.

From the date hereof until the Closing, Seller shall maintain in full force and effect the existing insurance on the Assets and the operations of the Facility and shall provide, upon request by Buyer, evidence satisfactory to Buyer that such insurance continues to be in effect and that all premiums due have been paid.

6.8. Non-Disclosure.

Buyer will keep confidential and not disclose to any third party any information relating to the Seller's Business or the Facility, whether acquired by Buyer before or after the Closing Date, that Seller has not made generally available to the public, except for regulatory filings in connection with the transactions described herein and in the OTA, and except that Buyer shall be entitled to disclose such information and the terms of this Agreement to its attorneys, accountants, financing sources, third party agents, investors, and other advisors; provided, such persons agree to keep such information and the terms of this Agreement confidential. ***[Revise as needed regarding Section 8.8 allowing Buyer, at its sole cost and expense, to file a Certificate of Need application with the HFC before the Closing Date seeking to add up to 18 additional skilled nursing beds at TCC after the Closing Date, to specifically require Seller to provided information and data required by the HFC, and allowing disclosures thereof regardless of this non-disclosure provisions, etc].***

**ARTICLE 7  
CONDITIONS PRECEDENT TO THE OBLIGATIONS OF SELLER**

All obligations of Seller that are to be discharged under this Agreement at the Closing are subject to the performance, at or prior to the Closing, of all covenants and agreements contained herein that are to be performed by Buyer at or prior to the Closing and to the fulfillment at, or prior to, the Closing, of each of the following conditions (unless expressly waived in writing by Seller at any time at or prior to the Closing):

7.1. Representations and Warranties True.

All of the representations and warranties made by Buyer contained in Article 4 of this Agreement shall be true as of the date of this Agreement, shall be deemed to have been made again at and as of the date of Closing, and shall be true at and as of the date of Closing in all material respects; Buyer shall have performed and complied in all material respects with all covenants and conditions required by this Agreement to be performed or complied with by them prior to or at the Closing; and Seller shall have been furnished with a certificate of the President or any Vice President of Buyer, dated the Closing Date, in such officer's capacity, certifying to the truth of such representations and warranties as of the Closing and to the fulfillment of such covenants and conditions.

7.2. Authority.

All action required to be taken by or on the part of Buyer to authorize the execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions contemplated hereby shall have been duly and validly taken by the Board of Directors of Buyer.

7.3. No Obstructive Proceeding.

No action or proceedings shall have been instituted against, and no order, decree or judgment of any court, agency, commission or governmental authority shall be subsisting against Seller, or the officers or directors of Seller, that seeks to, or would, render it unlawful as of the Closing to effect the transactions contemplated hereby in accordance with the terms hereof, and no such action shall seek damages in a material amount by reason of the transactions contemplated hereby. Also, no substantive legal objection to the transactions contemplated by this Agreement shall have been received from or threatened by any governmental department or agency.

7.4. Proceedings and Documents Satisfactory.

All proceedings in connection with the transactions contemplated hereby and all certificates and documents delivered to Seller pursuant to this Agreement shall be satisfactory in form and substance to Seller and its counsel acting reasonably and in good faith.

7.5. BCBC *[and other?]* Consent.

Seller shall have received prior to Closing, in a form satisfactory to Buyer, *[insert requirement as to BCBC/BMH dispute resolution, and any other consents-i.e, Tennessee Attorney General (if deemed required), if BMH was created by a Private Act of the Tennessee Legislature, any amendments needed to the Private Act, any amendments/consents related to BCBC and/or BMH bond financings, etc].*

7.6. Scholarship Approval

No later than five (5) days before Closing, Buyer shall provide to Seller an executed resolution of the Board of Directors of Ocoee Foundation, Inc. ("OFI"), confirming that OFI has amended its current Scholarship Agreement with the Community Foundation of Cleveland and Bradley County (to be effective upon Closing) to require OFI to provide, pursuant to the Ocoee Foundation

Scholarship Fund, two (2) college scholarships per year for high school students graduating from any Blount County high school for as long as an affiliate of OFI owns and operates TCC, such scholarship program to exist for not less than ten (10) years and make scholarships to qualifying candidates who desire to pursue a degree in a healthcare-related field, in the amount of at least \$25,000 per student (\$6,250 per year towards the cost of a four-year degree) for each of those ten (10) years).

7.7. No Agency Proceedings.

There shall not be pending or, to the knowledge of Buyer, threatened, any claim, suit, action or other proceeding brought by a governmental agency before any court or governmental agency, seeking to prohibit or restrain the transactions contemplated by this Agreement or material damages in connection therewith.

7.8. Casualty Prior to Closing.

If, at any time prior to the Closing Date, any of the Assets are missing or damaged in material amounts (materiality for such purposes meaning any loss in book value on the books of Seller in excess of Fifty Thousand and No/100 Dollars (\$50,000.00) (per any single Facility) and the Seller's Business is materially interrupted or likely will be materially interrupted for a period in excess of sixty (60) days, except for damage or loss through use and wear in the Ordinary Course of Business, Buyer shall have the right, at its option, to complete the purchase of the Assets pursuant to this Agreement and receive the insurance proceeds (if any) payable to Seller or Buyer as a result of such damage or loss or, in the alternative, to terminate this Agreement, in which event it shall have no further claim against Seller or to any insurance proceeds and neither Seller nor Buyer shall have any claim against the other, and Buyer shall receive back the Deposit in full.

7.9. Failure of Condition Precedent.

If there is a failure of any of the conditions precedent to either party's obligation to close which is not due to a material breach of representation or other material default by the party in whose favor such condition runs, then the party in whose favor such condition runs shall have the right to terminate this Agreement by giving written notice thereof to the other party at or prior to the Closing Date, in which event neither party shall have any further obligations or liabilities to the other party hereunder except for the Surviving Obligations; provided, however, if the failure of any of the conditions precedent to either party's obligation to close is due to a material breach of a representation or other material default by the other party, then § 9.4 shall control.

## **ARTICLE 8**

### **CONDITIONS PRECEDENT TO THE OBLIGATIONS OF BUYER**

All obligations of Buyer that are to be discharged under this Agreement at the Closing are subject to the performance, at or prior to the Closing, of all covenants and agreements contained herein that are to be performed by Seller at or prior to the Closing and to the fulfillment at or prior to the Closing of each of the following conditions (unless expressly waived in writing by Buyer at any time at or prior to the Closing):

8.1. Representations and Warranties True.



All of the representations and warranties of Seller contained in Article 3 of this Agreement shall be true as of the date of this Agreement, shall be deemed to have been made again at and as of the Closing, and shall be true at and as of the date of Closing in all material respects; Seller shall have performed or complied in all material respects with all covenants and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing; and Buyer shall be furnished with a certificate of the President of Seller, dated the Closing Date, in such person's corporate capacity certifying to the truth of such representations and warranties as of the time of the Closing and to the fulfillment of such covenants and conditions.

8.2. No Obstructive Proceeding.

No action or proceedings shall have been instituted against, and no order, decree or judgment of any court, agency, commission or governmental authority shall be subsisting against Buyer or the officers or directors of Buyer that seeks to, or would, render it unlawful as of the Closing to effect the transactions contemplated hereby in accordance with the terms hereof, and no such action shall seek damages in a material amount by reason of the transaction contemplated hereby. Also, no substantive legal objection to the transactions contemplated by this Agreement shall have been received from or threatened by any governmental department or agency.

8.3. Documents of Transfer.

Buyer shall have been furnished with all Closing documents required by this Agreement, including, but not limited to, the following documents from Seller:

- (a) Deed. A fully executed Special Warranty Deed conveying good and marketable fee simple title to the Real Property, free and clear of all liens, encumbrances, easements, and restrictions of every nature and description except as permitted by this Agreement.
- (b) Bill of Sale. A fully executed Bill of Sale conveying good and marketable fee simple title to the personal property portion of the Assets, in "as is, where is" condition, free and clear of all liens, encumbrances, easements, and restrictions of every nature and description except as specially permitted by this Agreement.
- (c) Assignments and Assumptions. Fully executed assignments and assumptions with all representations contemplated by this Agreement, assigning to the fullest extent legally assignable, the intangible property portion of the Assets, free and clear of all liens, encumbrances, easements, and restrictions of every nature and description except as specially permitted by this Agreement.
- (d) Operations Transfer Agreements. Fully executed Operations Transfer Agreements, each in the form attached hereto as Exhibit OTA.
- (e) Closing Statement. A fully executed closing statement.

- (f) Closing Certificate. A fully executed closing certificate confirming that Seller has taken all necessary corporate and other action for the transaction which is the subject of this Agreement, including securing all necessary consents and approvals required to carry out the transactions contemplated by this Agreement and satisfying all other conditions precedent to the obligations of Seller pursuant to the terms of this Agreement, or otherwise.
- (g) Other Documents. Such other documents and instruments as Buyer, any lender to Buyer or the Title Insurance Company may reasonably request to accomplish the transaction which is the subject of this Agreement or to evidence compliance with the covenants and agreements of Seller contained in this Agreement ***[Insert language as to dismissal/termination of BMH/BCBC litigation]***

Seller shall have been furnished with all Closing documents required by this Agreement, including, but not limited to (A) counterparts of the documents noted above requiring a counter-signature of the Buyer (Assignments and Assumptions, Operations Transfer Agreements, and Closing Statement) and (B) closing certificate confirming that Buyer has taken all necessary corporate and other action for the transaction which is the subject of this Agreement, including securing all necessary consents and approvals required to carry out the transactions contemplated by this Agreement and satisfying all other conditions precedent to the obligations of Buyer pursuant to the terms of this Agreement, or otherwise, and such other documents and instruments as Seller or the Title Insurance Company may reasonably request to accomplish the transaction which is the subject of this Agreement or to evidence compliance with the covenants and agreements of Buyer contained in this Agreement.

#### 8.4. Loan Agreements.

Seller shall have caused to be delivered to Buyer prior to the Closing payoff letters and lien releases from each lender, mortgagee or creditor of Seller who is a party to any loan agreements, notes, mortgages, deeds of trust, security agreements and other evidences of secured indebtedness of Seller to be paid off at Closing, in form satisfactory to Buyer and its lender. ***[address any need for an intercreditor or similar agreement between any lender to Seller and any lender to Buyer, including collections of accounts receivable during transition]***

#### 8.5. Non-Assignable Property Interests.

To the extent that any lease, contract, permit or other property interest that would otherwise constitute a part of the Assets is not capable of being assigned, transferred or subleased or if such assignment, transfer or sublease or attempted assignment, transfer or sublease would constitute a breach thereof or a violation of any law, decree, order, regulation or other governmental edict, neither this Agreement nor the Closing shall constitute an assignment, transfer or sublease thereof, or an attempted assignment, transfer or sublease thereof.

#### 8.6. Consents and Approvals.

Each of the parties to any agreement or instrument under which the transactions contemplated hereby would constitute or result in a default or acceleration of obligations shall

have given such consent as may be necessary to permit the consummation of the transactions contemplated hereby without constituting or resulting in a default or acceleration under such agreement or instrument, and any consents required from any public or regulatory agency or organization having jurisdiction shall have been given. Also, Buyer shall have received releases, waivers of default and consents to assignment in form satisfactory to it from all parties to contracts and agreements to be assumed by Buyer hereunder.

8.7. No Adverse Change.

From the date of this Agreement until the Closing, the Seller's Business shall have been conducted in the Ordinary Course of Business consistent with past practice; no event shall have occurred or have been threatened that has or would have a material and adverse effect upon the financial condition, assets, liabilities, operations, prospects or business of Seller; and Seller shall have not sustained any loss or damage to the Assets, whether or not insured.

8.8. Federal and State Approvals; Licensing.

Within ten (10) days of the execution of this Agreement, Buyer, or its affiliates, shall provide a notice or "change of ownership" application to the applicable state authorities for licensure of the Facility, and on or before the Closing Date, Buyer shall have received such reissuance of the licenses, certificates and other regulatory approvals and provider numbers listed in Exhibit 3.15 in the Exhibit Volume as are otherwise necessary to operate the Facility, or evidence reasonably satisfactory to Buyer that such licenses, certificates and other regulatory approvals will be timely issued upon providing documentation to such applicable state authorities that the Closing has occurred. Upon request, Seller shall provide acknowledgement of the Contemplated Transactions and/or similar documentation to the applicable state authorities for licensure of the Facility.

In addition, after the Effective Date Buyer, at its sole cost and expense, may file a Certificate of Need application with the Tennessee Health Facilities Commission ("HFC") seeking to add up to eighteen (18) additional skilled nursing beds at TCC after the Closing Date. In the event Buyer files such application Seller shall promptly provide any information and data deemed reasonably necessary for a timely submission and review of such application, including a letter of support to the HFC, and shall cause the administrator of TCC to attend the HFC hearing for such application, to answer questions from members of the HFC and otherwise speak in support of such application.

8.9. Title Insurance.

Buyer shall have received a commitment for title insurance issued by the Title Insurance Company, pursuant to which the Title Insurance Company commits to issue an ALTA Owner's Policy regarding all of the Real Property, including each Facility, with extended coverage, insuring Buyer's title in and to all Real Property included in the Assets, in the amount of the Cash Purchase

Price allocated to such Real Property, subject only to such title exceptions as are expressly permitted hereunder in accordance with § 11.1.

8.10. Delivery of Certain Documents.

At the Closing, Seller shall have delivered to Buyer copies of resolutions of the directors of Seller, certified (not more than thirty (30) days prior to the Closing Date) by the secretary of Seller, approving and authorizing the execution and delivery of this Agreement and the consummation of the Contemplated Transactions *[similar documentation from BCBC as needed]*.

**ARTICLE 9  
TERMINATION; PRE-CLOSING BREACH**

9.1. Optional Termination.

This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing Date, as follows:

- (a) By the mutual consent of Buyer and Seller; or
- (b) By Seller, if any of the conditions set forth in Article 7 shall not have met at least five (5) days before the Closing Date; provided, that Seller shall not be entitled to terminate this Agreement pursuant to this § 9.1(b) if Seller's breach of this Agreement has prevented the consummation of the transactions contemplated hereby;
- (c) By Buyer, if *[joint consent of BMH and BCBC as to the Closing of the Transaction is not timely delivered and refund of deposit and reimbursement of Buyer diligence and other expenses not paid by Seller in accordance with Section 2.11 hereoff]*; or
- (d) By Buyer, if any of the conditions provided in Article 8 hereof have not been met at least five (5) days before the Closing Date; provided, that Buyer shall not be entitled to terminate this Agreement pursuant to this § 9.1(d) if Buyer's breach of this Agreement has prevented the consummation of the transactions contemplated hereby.

Notwithstanding anything to the contrary set forth herein, the parties acknowledge and agree that all the Exhibits and Schedules referred to herein were not prepared or delivered to Buyer prior to or contemporaneously with the execution of this Agreement. Within ten (10) days after the end of the Due Diligence Period Seller shall deliver to Buyer all the Exhibits and Schedules referred to herein which have not been previously delivered, to be prepared in accordance with the relevant provisions of this Agreement. Either party may terminate this Agreement by notice to the other party if any information contained in any of such Exhibits or Schedules, or any information obtained by Buyer pursuant to § 6.7 of this Agreement, shall establish that any representation or warranty of Seller contained in Article 3 of this Agreement or any information previously furnished to Buyer by Seller concerning Seller shall not be true and accurate in all material respects as of the date of the termination notice or in the opinion of Buyer, any of such Exhibits or Schedules

shall disclose facts that shall be materially adverse concerning the financial condition of Seller's Business.

9.2. Notice of Abandonment.

In the event of such termination by either Buyer or Seller pursuant to § 9.1 above, written notice shall forthwith be given to the other party hereto.

9.3. Termination.

In the event this Agreement is terminated as provided above, Buyer shall deliver to Seller all documents (and copies thereof in its possession) concerning Seller and its subsidiaries previously delivered by Seller to Buyer; and none of the parties nor any of their respective partners, members, directors, or officers shall have any liability to the other party for costs, expenses, loss of anticipated profits, consequential damages, or otherwise, except for any deliberate breach of any of the provisions of this Agreement.

9.4. Default.

- (a) Default by Seller. If Seller defaults on any obligation hereunder to Close, and such default continues for more than ten (10) days after written notice from Buyer, then Buyer, as the sole and exclusive remedy for Buyer may elect to either (a) terminate this Agreement and receive a refund of the Deposit and receive from Seller reimbursement for Buyer's actual, documented out-of-pocket expenses incurred in connection with this Agreement up to Fifty Thousand and No/100 Dollars (\$50,000.00) (whereupon this Agreement shall terminate and be of no further force and effect and neither party shall have any other obligation or liability to the other hereunder, except for those provisions which survive this Agreement and any transactions contemplated thereby, "Surviving Obligations"), or (b) pursue a suit for specific performance. Nothing contained in this § 9.4(a) shall operate to limit Buyer's rights or remedies under this Agreement with respect to any breach of representation or warranty, covenant or obligation which is first discovered (or which first occurs) after the Closing Date, all of which shall instead be governed by the provisions of Article 10 hereof, which shall constitute the exclusive rights and remedies available to Buyer after the Closing Date.
- (b) Default by Buyer. If Buyer defaults on any obligation hereunder to Close, and such default continues for more than ten (10) days after written notice from Seller, then Seller, as its sole and exclusive remedy against Buyer for such failure to close, may terminate this Agreement and retain the Deposit, as liquidated damages, whereupon this Agreement shall terminate and be of no further force and effect and neither party shall have any other obligation or liability to the other hereunder, except for Surviving Obligations. Nothing contained in this § 9.4(b) shall operate to limit Seller's rights or remedies under this Agreement with respect to any breach of representation,

warranty, covenant or obligation which is first discovered (or which first occurs) after the Closing Date, all of which shall instead be governed by the provisions of Article 10 hereof, which shall constitute the exclusive rights and remedies available to Seller after the Closing Date.

- (c) Surviving Obligations. Nothing in this § 9.4 shall limit, modify or abridge any Surviving Obligations.

## **ARTICLE 10 INDEMNIFICATION**

### **10.1. Indemnification of Buyer and Seller.**

Seller and Buyer agree and acknowledge that all indemnification obligations pursuant to this Agreement, as well as the separately executed Operations Transfer Agreement, shall be governed by Article VII of the OTA, including but not limited to all provisions concerning the scope of, and limitations to, the Parties' indemnity obligations.

## **ARTICLE 11 MISCELLANEOUS**

### **11.1. Survey, Title, Environmental Report and Termite Inspection.**

- (a) Survey. Promptly after execution of this Agreement, Buyer shall cause an as-built survey of the Real Property and surveyor's certificate, in form sufficient to remove the survey exception from the title insurance binder as more specifically provided in § 11.1(b) hereof, to be prepared by a licensed surveyor acceptable to Buyer, to be completed no later than five (5) days prior to the end of the Due Diligence Period. The survey shall be made in accordance with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys for a Class A survey. Such survey shall incorporate an exact description of the Real Property Assets, shall show the total area of the Real Property Assets in square feet, easements, if any, dimensions and locations of improvements, striped parking spaces and unlined parking areas, driveways, location of adjoining streets and rights of way, building setback lines, and such other details as may be required by Buyer. Once prepared and approved by Buyer, the survey description will replace Appendix 1A and will become a part of this Agreement identified as Appendix 1A.
- (b) Title Commitments. Immediately after execution of this Agreement, Buyer shall apply to the Title Insurance Company for a title insurance binder in the amount of \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_.00) that shall constitute the commitment of the Title Insurance Company to insure the title to the Real Property. The title commitment shall bind the Title Insurance Company to issue to Buyer an Owner's Policy of Title Insurance (the "Title Policy") issued on the standard ALTA form used in the State where the Real Property is located, insuring

good and indefeasible title to the Real Property in Buyer, subject only to the Permitted Encumbrances (as defined herein) and the standard printed exceptions appearing in the standard ALTA form of Owner's Policy of Title Insurance used in the state where the Real Property is located; provided, however, that: (a) the exception relating to restrictions against the Real Property shall be endorsed as evidenced by the Title Insurance Company to specify only such restrictions as may be included in the Permitted Exceptions; (b) at Buyer's election and expense, the exception relating to discrepancies, conflicts or shortages in area or boundary lines, or any encroachment or any overlapping of improvements that a survey might show shall be modified to delete such exception, except as to shortages in area; (c) the exception relating to ad valorem taxes shall except only to standby fees and taxes owing for the current and subsequent years; (d) there shall be no general exception for visible and apparent easements or roads and highways or similar items (with any specific exception to be specifically referenced to and shown on the Survey and identified by any applicable recording data); and (e) there shall be no exception for parties in possession.

- (c) Review of Title. Buyer shall have five (5) business days from the date it has received all of the following: the title insurance binder; copies of all documents referenced in title exceptions disclosed therein; the survey; and the UCC Search; but in any event no later than five (5) days prior to the end of the Due Diligence Period, within which to review same. If any title defects or other matters objectionable to Buyer, other than Permitted Encumbrances, are disclosed by any of the items listed in the previous sentence, Buyer shall give Seller written notice of same prior to the expiration of such five (5) day period. Seller shall be allowed a reasonable time, not in excess of ten (10) days, within which to cure such defects; provided, however, that in no event shall Seller's cure period extend beyond the Closing Date without the express written consent of Buyer. If the defects are not timely cured, or cannot be cured, to Buyer's satisfaction, Buyer may waive such defects and proceed to close, or Buyer may terminate this Contract by written notice to Seller.
- (d) Title at Closing. At Closing, such title insurance binder, as approved by Buyer, shall be modified as provided in § 11.1(b) above and any other matters to which Buyer has objected, to show title to the Real Property Assets vested in Buyer, and to update the effective date of such title insurance binder to the Closing Date.
- (e) Environmental Report. Promptly after execution of this Agreement, Buyer shall obtain a "Phase I environmental review" (the "Environmental") of the Real Property from an Environmental Engineering Firm acceptable to Buyer.
- (f) Termite and Insect Inspection. Promptly after execution of this Agreement, Seller shall cause an updated termite and insect inspection of the Real

Property and improvements to be prepared by a licensed pest control contractor, a copy of which is attached hereto as Exhibit 11.1(f) (the “TI Inspection”).

- (g) Copies. Copies of all reports and documents to be obtained by a party pursuant to this Article 11 shall be delivered to the other party promptly upon receipt.

#### 11.2. Condemnation.

If, prior to Closing, any governmental or similar authority shall institute eminent domain or similar proceedings or take any steps preliminary thereto (including the giving of any direct or indirect notice of intent to institute any such proceeding) with respect to the Facility which materially and adversely affect the Facility, Buyer may terminate this Agreement upon written notice to Seller prior to Closing, receive the refund of the Deposit, and the parties shall have no further obligations hereunder. If Buyer elects to proceed to Closing, Buyer shall either receive a credit at Closing equal to the condemnation proceeds received by Seller or receive an assignment of the condemnation proceeds from Seller.

#### 11.3. Risk of Loss.

- (a) Material Damage. “Material Damage” is defined as damage to the Facility of a nature such that the cost of restoring the improvements located on such Real Property to its condition prior to the fire or other casualty, as determined by Seller or as otherwise determined in accordance with this Agreement, will exceed an amount equal to Fifty Thousand and No/100 Dollars (\$50,000.00) at any single Facility, whether or not such damage is covered by insurance.
- (b) Procedure. If, prior to Closing, the Facility shall be destroyed or sustain Material Damage as mutually determined by Seller and Buyer as a result of fire or other casualty, then, at Buyer’s option exercised in the manner provided hereunder, the following shall occur with respect to such Facility:
  - (i) This Agreement shall terminate, Buyer shall receive the refund of the Deposit, and the parties shall have no further obligations hereunder; provided, that Buyer gives notice of such election at or prior to Closing, but in any event within ten (10) days following receipt by Buyer of notice of the occurrence of any such event; or
  - (ii) If Buyer does not timely make the election to terminate provided in subparagraph (i) immediately above and all other conditions precedent to Buyer’s obligation to close have been satisfied, the purchase and sale transaction contemplated by this Agreement shall close with a reduction in the cash portion of the Cash Purchase Price equal to the amount of the applicable insurance deductible (or the full amount of the cost to restore the Facility if such loss is an uninsured loss), and concurrently with the Closing, Seller and any



other named insured shall assign to Buyer, in form satisfactory to Buyer, all claims arising under any policy of insurance covering such casualty, and Seller shall have no further liability to Buyer with respect to such damage.

- (c) Damage Other Than Material Damage. In the event of any damage to the Facility in an amount less than Material Damage, the purchase and sale transaction contemplated by this Agreement shall close in accordance with and subject to the conditions of subparagraph (ii) above.

#### 11.4. Expenses.

All expenses of the preparation of this Agreement and of the transactions contemplated hereby, including, without limitation, counsel fees, accounting fees, investment adviser's fees, broker's fees, and related expenses and disbursements, shall be borne by the respective parties incurring such expense, whether or not the Contemplated Transactions are consummated. Seller shall bear the cost to record any instrument to clear Seller's title to the extent Seller is required to do so pursuant to this Agreement, any applicable state Real Estate Transfer Tax, the cost to record the Special Warranty Deed, the cost of the termite inspection, the cost of the initial title search and exam related to the owner's title insurance policy concerning the transfer of the Assets. Buyer and Seller shall share equally the cost of any owner's title insurance policies (including the cost of any endorsements). Buyer shall bear the cost of any sales tax on the sale of the Assets, the costs of the real estate survey, the cost of any environmental study, the cost of any mortgage tax and the cost of any lender's title insurance policy premiums concerning any loans obtained by Buyer, the cost of any appraisal, and the cost of any other due diligence performed by or on behalf of Buyer.

#### 11.5. Non-Solicitation.

For a period of two (2) years from and after the Closing Date, Seller nor any Affiliate of Seller ("Seller Restricted Person") shall directly or indirectly induce or solicit, or directly or indirectly aid or assist any other person or entity to induce or solicit, current employees, salesmen, agents, consultants, distributors, representatives, advisors, customers, patients (or their family members), residents (or their family members) or suppliers of the Facility to terminate their employment or business relations with the Facility, nor for a period of two (2) years from and after the Closing Date, shall any Seller Restricted Person employ any employees or agents of Seller. Nothing contained in this paragraph shall prevent any Seller Restricted Person from hiring any individual who responds, without personal inducement or solicitation, to a general advertisement of employment opportunities. In the event of a breach or threatened breach of this section, Buyer shall be entitled to an injunction restraining such breach; but nothing herein shall be construed as prohibiting Buyer from pursuing any other remedy available to Buyer as a result of such breach or threatened breach. Buyer and Seller acknowledge and agree that since a remedy at law for any breach or attempted breach of the provisions of this § 11.5 shall be inadequate, Buyer shall be entitled to specific performance and injunctive or other equitable relief in case of any such breach or attempted breach, in addition to whatever other remedies may exist at law. All parties hereto also waive any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief. The provisions of this § 11.5 shall be deemed to be valid to the extent of any lesser area and for any lesser duration permitted by law if

the area and duration set forth herein is deemed to be too broad by a court of competent jurisdiction. The invalidity or non-enforceability of this § 11.5 in any respect shall not affect the validity or enforceability of this section in any other respect or of any other provisions of this Agreement.

11.6. Prohibition on Use of Name; Consent.

Neither Buyer, nor any member, parent, subsidiary, or affiliate of same, nor any person controlling, controlled by, or under common control with same, shall on any date after the Closing use the words *[name use to be determined]* or any similar names in the conduct of a trade or business in the State of Tennessee.

11.7. Cooperation by Buyer.

In the event Seller is required to defend against any claim, action, suit or proceeding arising out of a claim pertaining to the operations of Seller's Business, or the operations of the Facility (including, but not limited to, the preparation of cost reports and other financial and/or regulatory documents), Buyer shall provide such assistance and cooperation, including, without limitation, witnesses and documentary or other evidence as may reasonably be requested by Seller in connection with any such defense and/or the preparation or defense of any such cost reports and/or other financial and/or regulatory documents. Seller shall reimburse Buyer for its reasonable out-of-pocket expenses incurred in providing such assistance and cooperation.

11.8. Cooperation by Seller.

In the event Buyer is required to defend against any claim, action, suit or proceeding arising out of a claim pertaining to a liability assumed by Buyer pursuant to this Agreement relating to the operations of Seller's Business, Seller shall provide such assistance and cooperation, including, without limitation, witnesses and documentary or other evidence, as may reasonably be requested by Buyer in connection with its defense. Buyer shall reimburse Seller for its reasonable out-of-pocket expenses incurred in providing such assistance.

11.9. Notices.

All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered in person or mailed by certified mail or registered mail (postage prepaid), sent by reputable overnight courier service (charges prepaid) or sent via facsimile:

To Seller:

With copies to each of:

To Buyer:

John Sheehan, President  
Ocoee Foundation, Inc.  
3555 Keith Street, NW  
Suite 101  
Cleveland, TN 37312  
Email: john@ocoeefoundation.org

With a copy to:

Bradley Arant Boult Cummings, LLP  
1221 Broadway, Suite 2400  
Nashville, TN 37203  
Attn: Michael Brent  
Email: mbrent@bradley.com

To Title Insurance Company  
and Escrow Agent:

or to such other address as either Seller or Buyer or Escrow Agent may designate by notice to the others.

11.10. Entire Agreement.

This Agreement and the Appendices, Exhibits, schedules and documents delivered pursuant hereto constitute the entire contract between the parties hereto pertaining to the subject matter hereof (except for Buyer's obligations under any confidentiality agreements executed by Buyer, which shall continue to apply) and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether written or oral, of the parties, and there are no representations, warranties or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the parties to be bound thereby.

11.11. Governing Law.

The validity and construction of this Agreement shall be governed by the laws of the State of Tennessee.

11.12. Waiver of Trial by Jury.

To the extent permitted by applicable law, each party hereby unconditionally and irrevocably waives all right of jury in any action, proceeding or counterclaim arising out of or in connection with this Agreement, or to any matter arising hereunder.

11.13. Legal Fees and Costs.

In the event either party elects to incur legal expenses to enforce or interpret any provision of this Agreement, the prevailing party will be entitled to recover from the other party such legal expenses, including, without limitation, reasonable attorneys' fees, costs and necessary disbursements, in addition to any other relief to which such party shall be entitled.

11.14. Time.

Time is of the essence for purposes of each and every provision of this Agreement, except that if Buyer has provided the appropriate agency with all filings required for the License Transfer, and said transfer has not occurred due to no fault of Buyer, the Parties agree to a reasonable adjournment of the Closing to effectuate the transfer of such licenses, certificates and other regulatory approvals as may be required.

11.15. Section Headings.

The headings contained in this Agreement are for reference only and shall not limit or control the meaning of any provision of this Agreement.

11.16. Waiver.

Any waiver of any term or condition of this Agreement, or of the breach of any covenant, representation or warranty contained herein, in any one instance, shall not operate as or be deemed to be or construed as a further or continuing waiver of any other breach of such term, condition, covenant, representation or warranty, nor shall any delay or omission on the part of any party hereto in exercising any right hereunder shall operate as a waiver of such right or any other right under this Agreement.

11.17. Nature and Survival of Representations.

All statements contained in any certificate delivered by or on behalf of any of the parties to this Agreement pursuant hereto in connection with the transactions contemplated hereby shall be deemed to be representations and warranties made by the respective parties hereunder. The covenants, representations and warranties made by the parties each to the other in this Agreement or pursuant hereto and all provisions of this Article 11 shall survive the transactions contemplated hereby for a period of two (2) years.

11.18. Exhibits.

All Exhibits, Appendices, schedules and documents referred to in or attached to this Agreement are integral parts of this Agreement as if fully set forth herein and all statements appearing therein shall be deemed to be representations. If any exhibits or schedules are not completed or attached hereto as of the date of this Agreement, the parties hereto agree to attach

such exhibits and schedules as soon as reasonably practicable, but in any event, this Agreement is subject to Buyer approving all exhibits and schedules or subsequent updates thereto within seven (7) days of submission thereof to Buyer. The parties hereto agree that the party charged with providing an exhibit or schedule to this Agreement shall, to the extent necessary after delivery thereof, amend or supplement all exhibits and schedules in order for the same to be current, true and correct as of the Closing Date. All items disclosed hereunder shall be deemed disclosed only in connection with the specific representation to that they are explicitly referenced.

#### 11.19. Assignment.

Seller shall not assign this Agreement without first obtaining the written consent of Buyer. Buyer shall not assign this Agreement without first obtaining the written consent of Seller, except that Buyer shall have the unilateral right to assign this Agreement only to one or more entities created by (or with the consent of) Buyer, and Buyer or such assignee, shall have the right to collaterally assign the rights of Buyer respecting remedies in the event of breaches of Seller's representations, warranties and covenants and rights of indemnification hereunder to any lender. The parties acknowledge that the rights to acquire the Real Property and/or FF&E may be assigned to a separate entity than the entity acquiring the Facility operations pursuant to the Operations Transfer Agreement, and any other documents which may be required by the Operations Transfer Agreement, the operating assets and intangible assets associated with the Facility. Furthermore, Buyer shall have the right to collaterally assign the rights of Buyer respecting remedies in the event of breaches of Seller's representations, warranties and covenants and rights of indemnification hereunder to Buyer's lender. However, in any such event the original party named as Buyer in this Agreement shall remain jointly and severally liable with such assignee for any breaches of this Agreement by Buyer and/or any such assignee, and for all indemnification obligations of Buyer and/or any such assignee.

#### 11.20. Binding on Successors and Assigns.

Subject to § 11.22, this Agreement shall inure to the benefit of and bind the respective heirs, administrators, successors and assigns of the parties hereto. Nothing expressed or referred to in this Agreement is intended or shall be construed to give any person other than the parties to this Agreement or their respective successors or permitted assigns any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein, it being the intention of the parties to this Agreement that this Agreement shall be for the sole and exclusive benefit of such parties or such successors and assigns and not for the benefit of any other person.

#### 11.21. Parties in Interest.

Nothing in this Agreement is intended to confer any right on any person other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to modify or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over against any party to this Agreement.

#### 11.22. Amendments.

This Agreement may be amended, but only in writing, signed by the parties hereto, at any time prior to the Closing, before or after approval hereof by the members of Seller, with respect to any of the terms contained herein, but after such member approval, no amendment shall be made that reduces the consideration per share paid each such member without the further approval of such members.

11.23. Drafting Party.

The provisions of this Agreement, and the documents and instruments referred to herein, have been examined, negotiated, drafted and revised by counsel for each party hereto and no implication shall be drawn nor made against any party hereto by virtue of the drafting of this Agreement.

11.24. Counterparts.

This Agreement may be executed in two or more counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument. The words "execution," "signed," "signature," and words of like import in this Agreement or in any other certificate, agreement or document related to this Agreement, shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf," "tif" or "jpg") and other electronic signatures (including, without limitation, DocuSign and AdobeSign). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including any state law (including Tennessee) based on the Uniform Electronic Transactions Act.

11.25. Reproduction of Documents.

This Agreement and all documents relating thereto, including, without limitation, consents, waivers and modifications that may hereafter be executed, the Exhibits and documents delivered at the Closing, and financial statements, certificates and other information previously or hereafter furnished to Buyer may be reproduced by Buyer by any photographic, photostatic, microfilm, microcard, miniature photographic or other similar process and Buyer may destroy any original documents so reproduced. Seller agrees and stipulates that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by Buyer in the Ordinary Course of Business) and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

11.26. Press Releases.

Buyer and Seller shall cooperate with each other in releasing information concerning this Agreement and the transactions contemplated hereby. Each of the parties to this Agreement shall furnish to the others drafts of all releases prior to publication. Nothing contained in this Agreement shall prevent any party to this Agreement at any time from furnishing any information to any governmental body or agency.

11.27. Waiver of Special, Exemplary, Punitive and Consequential Damages.

Each party hereby irrevocably waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any claim, action or proceeding referred to in this Agreement any special, exemplary, punitive or consequential damages. The foregoing sentence shall survive the Closing or the termination of this Agreement for any reason. Each party acknowledges that it knowingly and voluntarily makes these waivers.

11.28. “As Is”.

Except as otherwise expressly provided in this Agreement, Seller has not made (and Buyer has not relied upon), any promise, representation or warranty, express or implied, regarding the Assets, the Facility, the Seller, the Excluded Assets, or any other matter, whether made by Seller, on Seller’s behalf or otherwise. Buyer acknowledges and agrees that Buyer (a) has entered into this Agreement with the intention of making and relying solely upon its own investigation or that of third parties with respect to the physical, environmental, economic and legal condition of the Assets and (b) is not relying upon any statements, representations or warranties of any kind by Seller or anyone acting or claiming to act on Seller’s behalf. Without limiting the foregoing, Seller makes no warranty of merchantability or fitness for any purpose with respect to the Assets, and the Assets are sold “AS IS, WHERE IS”, with all faults. All of the provisions of this § 11.28 shall survive the Closing or the earlier termination of this Agreement for a period of two (2) years.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the day and year first above written.

*[Signature blocks be added for all parties]*



**Appendixes** *[this list to be updated before execution]*

Appendix 1A	Real Property
Appendix 1B	FF&E

**Schedules**

Schedule 2.3(f)	Excluded Assets
Schedule 2.8	Due Diligence Checklist

**Exhibits**

Exhibit A	Facility Locations
Exhibit OTA	Form of Operations Transfer Agreement
Exhibit 2.6	Asset Allocations
Exhibit 3.1	Bylaws
Exhibit 3.3	Financial Statements
Exhibit 3.6	Recent Changes
Exhibit 3.7(a)	Title Exceptions
Exhibit 3.7(b)	Other Representations Respecting Real Property
Exhibit 3.7(c)	Security Interests
Exhibit 3.8	Leases and Contracts
Exhibit 3.11	Defaults
Exhibit 3.15	Permits and Licenses
Exhibit 3.16	Litigation
Exhibit 3.17	Court Orders, Decrees and Laws
Exhibit 3.20	Environmental Matters
Exhibit 3.22	Insurance
Exhibit 3.23	Labor Matters
Exhibit 11.1(f)	TI Inspection

Appendix 1A  
Real Property

*[insert full addresses, map and parcel numbers, and legal descriptions for all real property utilized by Blount Memorial Transitional Care Center and MorningView Village Senior Community, and Lot 1 (all as described in the Letter of Intent), plus any necessary easements/cross-easements regarding other real property of Seller which has shared use for the Facilities and Lot 1]*

Exhibit 2.6

Asset Allocations

Breakdown per facility: