

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**

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IN RE:

FAIRPORT BAPTIST HOMES, *ET AL.*

DEBTORS.

CHAPTER 11

CASE No. 22-20220-PRW

(JOINTLY ADMINISTERED)

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**NOTICE OF FILING OF  
AMENDED AND RESTATED ASSET PURCHASE AGREEMENT**

COME NOW Fairport Baptist Homes, Fairport Baptist Homes Adult Care Facility Inc., FBH Community Ministries, and FBH Distinctive Living Communities Inc. (collectively, the “Debtors”), as debtors and debtors-in-possession in this Chapter 11 Case,<sup>1</sup> and pursuant to Section III.4 of the Bid Procedures Order entered by this Court on August 11, 2022 [Dkt. No. 246] and consultation with the Consultation Parties, submits the attached *Amended and Restated Asset Purchase Agreement*, along with document exhibits (collectively, the “Amended APA”). A Word version of the Amended APA will be made available to all interested parties via the Due Diligence Data Room.

Dated: August 23, 2022  
Buffalo, New York

**LIPPES MATHIAS LLP**

*/s/ John A. Mueller*

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in either the Bid Procedures Order or corresponding Motion [Dkt. No. 142].

**AMENDED AND RESTATED  
ASSET PURCHASE AGREEMENT**

**Dated as of \_\_\_\_\_, 2022**

**by and among**

**FAIRPORT BAPTIST HOMES,  
FAIRPORT BAPTIST HOMES ADULT CARE FACILITY, INC.,  
FBH COMMUNITY MINISTRIES,**

**AND**

**FBH DISTINCTIVE LIVING COMMUNITIES, INC.**

**as Sellers**

**and**

**EASTSIDE SENIOR CARE, INC.**

**as Buyer**

**AMENDED AND RESTATED**

**ASSET PURCHASE AGREEMENT**

THIS AMENDED AND RESTATED ASSET PURCHASE AGREEMENT (this “Agreement”) is made and entered into as of \_\_\_\_\_, 2022 (the “Effective Date”), by and among FAIRPORT BAPTIST HOMES, a New York not-for-profit corporation (“FBH”), FAIRPORT BAPTIST HOMES ADULT CARE FACILITY, INC., a New York not-for-profit corporation (“ACF”), FBH COMMUNITY MINISTRIES, a New York not-for-profit corporation (“Ministries”), and FBH DISTINCTIVE LIVING COMMUNITIES, a New York not-for-profit corporation (“Distinctive Living,” and together with FBH, ACF and Ministries, “Sellers”) and EASTSIDE SENIOR CARE, INC., a New York not-for-profit corporation (“Buyer”). Capitalized terms used in this Agreement have the meanings set forth in Article I or in the applicable section cross-referenced in Article I.

**RECITALS**

A. WHEREAS, Buyer and Sellers entered into that certain Asset Purchase Agreement, dated May 13, 2022 (the “Original Agreement”), wherein Buyer agreed to purchase from Sellers, and Sellers agreed to sell to Buyer, substantially all of Sellers’ assets except those that were expressly excluded as provided in the Original Agreement.

B. WHEREAS, after discussions with various stakeholders, Buyer and Sellers now desire to amend and restate the Original Agreement to incorporate new terms and conditions.

C. WHEREAS, (i) FBH operates a 142-bed nursing facility, (ii) ACF operates a 42-bed adult home which includes 11 ALP beds and an associated limited license LHCSA, (iii) Ministries provides community-based services such as case management, housing services, and transportation services, and (iv) Distinctive Living operates a 41-unit independent living community (such facilities and programs referred to herein collectively as the “Facilities”).

D. WHEREAS, Sellers will file voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Western District of New York, (the “Bankruptcy Court”) on or about May 6, 2022 (the “Filing”).

E. WHEREAS, Sellers desire to sell to Buyer substantially all of Sellers’ assets except those that are expressly excluded as provided herein, and Buyer desires to purchase from Sellers such assets and assume certain specified liabilities of Sellers, and no others, upon the terms and conditions set forth herein.

F. WHEREAS, Buyer and Sellers intend to effectuate the transactions contemplated by this Agreement (the “Transactions”) through a sale pursuant to Sections 363 and 365 of the Bankruptcy Code.

G. WHEREAS, the execution and delivery of this Agreement, Sellers’ ability to consummate the Transactions, and Buyer’s obligations hereunder, are subject, among other things, to a Sale Order (as such term is hereafter defined) entered by the Bankruptcy Court.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the Parties agree as follows:

## TERMS AND CONDITIONS

### ARTICLE I. DEFINITIONS

1.1 Definitions. In this Agreement, the following terms have the meanings specified or referred to in this Section 1.1 and shall be equally applicable to both the singular and plural forms. Any agreement referred to below shall mean such agreement as amended, supplemented and modified from time to time to the extent permitted by the applicable provisions thereof and by this Agreement.

“Action” means any legal action, suit or arbitration, or any inquiry, audit, proceeding or investigation, by or before any Governmental Authority or any contractor acting on behalf of a Governmental Authority.

“Adult Home” means the 42-bed adult home which includes the 11 ALP beds and associated limited license LHCSA operated by ACF.

“Affected Assets” has the meaning set forth in Section 7.4.

“Affiliate” has the meaning set forth in Section 101(2) of the Bankruptcy Code.

“ALP” means assisted living program licensed by the NYSDOH.

“Alternative Proposal” shall mean an alternative proposal or offer to purchase any or all of the Purchased Assets received by Sellers prior to the hearing seeking entry of the Sale Order.

“Ancillary Documents” means the Bill of Sale, Deeds and Assignment and Assumption Agreement.

“Approving Order” shall mean the written order from the New York State Supreme Court and/or Office of the Attorney General pursuant to Sections 510 and 511/511-a of the Not-For-Profit Corporation Law authorizing the sale of the Purchased Assets in accordance with the terms hereof.

“Assumed Liabilities” has the meaning specified in Section 2.4.

“Bankruptcy Case” shall mean the jointly administered cases commenced upon Sellers’ filings of voluntary petitions for relief under the Bankruptcy Code on or about May 6, 2022 in the Bankruptcy Court.

“Bankruptcy Code” shall have the meaning specified in the Recitals of this Agreement.

“Bankruptcy Court” shall have the meaning specified in the Recitals of this Agreement.

“Benefit Plans” means, collectively, any (i) deferred compensation plan, (ii) profit sharing, bonus, or incentive compensation plan, (iii) equity compensation plan, (iv) “welfare plan” (within the meaning of Section 3(1) of ERISA), whether or not subject to ERISA, (v) “pension plan” (within the meaning of Section 3(2) of ERISA), whether or not subject to ERISA, (vi) “employee benefit plan” (within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA), (vii) employment, retirement, retainer, compensation, consulting, retention, indemnification, Section 125, termination, severance or “change in control” agreement or arrangement, (viii) plan, agreement or arrangement providing for “fringe benefits” or perquisites to employees, officers, directors or agents, including but not limited to benefits relating to automobiles, clubs, vacation, child care, parenting, sabbatical, sick leave, tuition reimbursement, medical, dental, hospitalization, life insurance, disability insurance and other types of insurance, whether written or unwritten, and (ix) other employee benefit plan, fund, program, agreement or arrangement, in each case of the preceding clauses, that is or has ever been sponsored, maintained or contributed to or required to be contributed to by Sellers, or to which Sellers are party, or to which contributions have are made or have ever been made, or for which obligations have been incurred, for the benefit of any employee or director or any former employee or director of Sellers, or with respect to which Sellers could have any Liability.

“Break-up Fee” means a fee payable as set forth in Section 10.2(d) herein in an amount equal to three percent (3%) of the Purchase Price.

“Business Day” means any day of the year on which national banking institutions in New York are open to the public for conducting business and are not required or authorized to close.

“Business Intellectual Property” means all Intellectual Property owned or licensed by Sellers and used in connection with the Facilities.

“Buyer” has the meaning specified in the Preamble of this Agreement.

“Buyer’s Discretion” means the discretion of Buyer, reasonably exercised, based on the Buyer’s business goals and objectives in pursuing the mission set forth in its organizational documents.

“Claim” has the meaning set forth in Section 101(5) of the Bankruptcy Code, including all rights, claims, causes of action, defenses, debts, demands, damages, rights of setoff, recoupment rights, obligations and liabilities of any kind or nature under contract, at law or in equity, known or unknown, contingent or matured, liquidated or unliquidated, and all rights and remedies with respect thereof.

“Closing” has the meaning specified in Section 4.2.

“Closing Date” has the meaning specified in Section 4.2.

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985.

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

“Collective Bargaining Agreement” means any contract or other binding agreement or arrangement (written or oral) with any labor union or organization, collective bargaining agent or other similar employee representative.

“Community-Based Services” means community-based services such as case management, housing services, and transportation services.

“CON Approval” has the meaning specified in Section 7.2(a).

“Contract” means any agreement, contract, obligation, promise, instrument, undertaking or other arrangement (whether written or oral) that is legally binding, other than any Benefit Plan or Lease, to which any Sellers are party.

“Deposit” has the meaning specified in Section 3.2.

“DIP Credit Agreement” means any and all agreements or documents executed in connection with post-petition financing from the Buyer to the Sellers, to the extent any such financing is provided.

“Disclosure Schedule” has the meaning specified in Article V.

“Documents” means, in any form, paper, electronic, or otherwise, all books, records, files, invoices, Inventory records, documents, cost and pricing information, supplier lists, business plans, catalogs, advertising and marketing materials, administrative libraries, quality control records and manuals, policies and procedures, research and development files, records and laboratory books, operating materials, personnel and employee records and financial records (including all data and other information stored on discs, tapes or other media) to the extent used in or to the extent relating to the assets, properties (including the Intellectual Property and the Permits), business or operations of the Facilities.

“Effective Date” has the meaning specified in the Preamble of this Agreement.

“Encumbrance” means, to the extent not considered a Lien, any security interest, lien, collateral assignment, right of setoff, debt, pledge, levy, charge, encumbrance, option, right of refusal, restriction (whether on transfer, disposition or otherwise), other similar agreement terms tending to limit any right or privilege of Sellers under any Contract, conditional sale contract, title retention contract, mortgage, lease, deed of trust, hypothecation, indenture, security agreement, easement, license, servitude, proxy, voting trust, transfer restriction under any shareholder or similar agreement, or any other agreement, arrangement, contract, commitment or binding obligation of any kind whatsoever, whether oral or written, or imposed by any applicable law, equity or otherwise.

“Environment” means all air, water vapor, surface water, groundwater, drinking water supply or land, including land surface or subsurface, and includes all fish, wildlife, biota and all other natural resources.

“Environmental Laws” means all federal, state or local environmental, land use, health, chemical use, safety and sanitation laws, statutes, ordinances, regulations or rule of common law

(including with respect to the Facilities, specific Environmental Permits and Orders), as in effect on the date hereof, relating to the protection of the Environment or governing the discharge of pollutants or the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances, including but not limited to the Resource Conservation and Recovery Act of 1976, as amended, the Clean Air Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Toxic Substances Control Act, as amended, the Occupational Safety and Health Act of 1970 and state statutes similar to or based upon the foregoing, as the same are in effect on the date hereof.

“Environmental Permits” means all permits, licenses, certificates, approvals, authorizations, consent or registrations issued by a Governmental Authority pursuant to an Environmental Law.

“Equipment” means all furniture, fixtures, equipment, computers, operating systems software, registry software, machinery, apparatus, appliances, implements, spare parts, signage, supplies, and all other tangible personal property of every kind and description in which Sellers have an interest.

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

“Escrow Agent” has the meaning specified in Section 3.2.

“Escrow Period” has the meaning specified in Section 3.3.

“Excluded Assets” has the meaning specified in Section 2.2.

“Excluded Liabilities” has the meaning specified in Section 2.3.

“Facilities” has the meaning specified in the Recitals of this Agreement.

“Filing” has the meaning specified in the Recitals of this Agreement.

“Friendly Home System” means Rochester Friendly Home, Rochester Friendly Senior Services, Cloverwood Senior Living, Inc. and Linden Knoll, Inc.

“Governmental Authority” means any United States federal, state or local governmental authority, regulatory or administrative authority or any court, tribunal or judicial body having jurisdiction.

“Government Programs” means all Medicare and Medicaid programs offered under Title XVIII or Title XIX of the Social Security Act, including without limitation, Medicare Part A, Medicare Part B, Medicare Advantage (also known as Medicare Part C), and the Medicare Prescription Drug Program (Medicare Part D), and any state program of Medical Assistance and any Medicaid fee for service or Medical Managed Care program.

“Hazardous Substance” means any “pollutant”, “contaminant”, “solid waste”, “hazardous waste”, “hazardous material” or “hazardous substance” as defined under any Environmental Law,

including medical wastes, toxic or hazardous air or water pollutants or any other toxic, infectious or noxious substances or any waste or recycled products thereof or asbestos or mold (including biological agents, such as mold or fungi that can or are known to produce mycotoxins or other bioaerosols such as antigens, bacteria, amoebae and microbial volatile organic compounds).

“HRSA Provider Relief Fund” has the meaning set forth in Section 2.6.

“Insurance Policies” has the meaning specified in Section 5.8.

“Intellectual Property” means all intellectual property rights of any kind, throughout the world, all rights of privacy and rights to personal information, all telephone numbers and Internet protocol addresses, all email domain addresses and social media accounts, all documentation and media constituting, describing or relating to the above, including memoranda, manuals, technical specifications and other records wherever created throughout the world, all rights in the foregoing and in other similar intangible assets, and all rights and remedies (including the right to sue for and recover damages, profits and any other remedy for past, present, or future infringement, misappropriation or other violation relating to any of the foregoing.

“Interest” means “interest” as that term is used in Section 363(f) of the Bankruptcy Code.

“Interim Consulting Agreements” has the meaning specified in Section 7.3.

“Inventory” has the meaning specified in Section 2.1(a).

“Knowledge” means with respect to any matter in question, if any of Sellers’ or Buyer’s (as applicable) officers have actual knowledge, or with respect to which Sellers or Buyer (as applicable) has received actual written notice, of the matter in question (but without imposing any requirement or obligation on any of the executives not either a party to this Agreement or a director, officer or employee of Sellers or Buyer).

“Lease” means all leases, subleases, licenses or other use or occupancy agreements to which any Seller is a party as lessee, sublessee, tenant, subtenant or in a similar capacity.

“Lease Security Deposits” means all security deposits that (i) are under the control of any one of the Sellers or The Woodlands at Stonebrook LLC and (ii) relate to any leases assumed and assigned as part of the Purchased Assets.

“Legal Requirement” means any federal, state, local, municipal or other administrative Order, constitution, law, ordinance, principle of common law, regulation, rule, statute or treaty. The term “Legal Requirement” shall include, without limitation, the federal Antikickback Law; 42 USC Section 1320a-7b; the Physician Self-Referral law and regulations 42 USC Section 1395nn and 42 CFR Part 411, Subpart J; the Civil Monetary Penalties Law, 42 USC 1320a-7a and the Civil False Claims Act 31 USC Section 3729, et seq.

“LHCSA” means licensed home care services agency licensed by the NYSDOH.



“Liability” means any liability or obligation (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due and regardless of when asserted).

“Lien” has the meaning ascribed to such term in Section 101(37) of the Bankruptcy Code.

“Loss” has the meaning set forth in Section 7.4.

“Material Adverse Effect” means any fact, condition, change, violation, inaccuracy, circumstance or event, individually or in the aggregate, that, in Buyer’s Discretion, (i) has, or is reasonably likely to have, an adverse effect on or impairs the Purchased Assets or the Facilities, in each case that has an impact, result, effect, loss or value that individually or in the aggregate exceeds Two Hundred Fifty Thousand Dollars (\$250,000); (ii) results in the Facilities ceasing or closing all or any material portion of its operations, or otherwise impairs or causes any material licenses to lapse; or (iii) materially impedes or delays, or is reasonably likely to materially impede or delay, the consummation of the transactions contemplated by this Agreement, in each case except to the extent that any such fact, condition, change, violation, inaccuracy, circumstance or event results from or arises out of changes in general economic, legal or financial conditions or changes affecting the industry in which the Facilities operate generally (except to the extent that such developments have a disproportionate effect on the Purchased Assets or the Facilities).

“Medicaid” has the meaning specified in Section 5.9(b).

“Medicare” has the meaning specified in Section 5.9(b).

“Medicaid Provider Agreements” means any Medicaid provider agreement to which any of Sellers is a party.

“Medicare Provider Agreements” means any Medicare provider agreement to which any of Sellers is a party.

“Mortgage Debt” shall mean the indebtedness owed by FBH to Berkadia/HUD in the approximate amount of Six Million Four Hundred Thousand Dollars (\$6,400,000).

“Mortgage Financing” has the meaning specified in Section 7.8.

“Nursing Facility” means the 142-bed nursing facility operated by FBH.

“NYSDOH” means the New York State Department of Health.

“Order” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Authority.

“Original Agreement” has the meaning set forth in the preamble.

“Party” or “Parties” means, individually or collectively, Buyer and Sellers.

“Periodic Taxes” has the meaning specified in Section 8.1(a).

“Permits” means all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates of need, operating certificates, certificates of exemption, accreditations, registrations, approvals, clearances and orders of any Governmental Authority which are necessary or customary for Sellers to own, lease and operate its properties and assets or to carry on operations at the Facilities as they are now being conducted or proposed to be conducted.

“Permitted Encumbrances” means: (i) statutory liens for current property Taxes and assessments not yet due and payable, including, without limitation, liens for ad valorem Taxes and statutory liens not yet due and payable arising other than by reason of any default by Sellers, provided, however, that Buyer shall receive a credit towards the Purchase Price on account of all such Taxes paid by Buyer; (ii) Taxes, assessments, fees and other charges being contested in good faith by Sellers or Affiliate of Sellers in appropriate proceedings for which an adequate reserve has been made with respect thereto, as required by GAAP, provided, however, they do not create a lien or encumbrance on the property that would survive the Sale Order; and (iii) easements, covenants, conditions, restrictions and other similar matters of record on real property, leasehold estates or personalty that do not in any material respect detract from the value thereof and do not individually or in the aggregate in any material respect interfere with the use or ownership thereof, or otherwise make title to such property uninsurable.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization or Governmental Authority.

“PHHPC” means the New York State Public Health and Health Planning Council.

“Post-Closing Employment Transition Period” has the meaning specified in Section 8.2(a).

“Post-Closing Straddle Period” has the meaning specified in Section 8.1(a).

“Pre-Closing Straddle Period” has the meaning specified in Section 8.1(a).

“Proceeding” means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative or investigative) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority, arbitrator or contractor acting on behalf of a Governmental Authority.

“Purchase Price” has the meaning specified in Section 3.1.

“Purchased Assets” has the meaning specified in Section 2.1.

“Purchased Receivables” means: (i) as to amounts due from non-government entities, all revenues, monies, payments, notes, accounts receivable, rents, occupancy fees, fees, proceeds, and other rights to receive payment for goods and services provided by Sellers; and (ii) as to amounts due from government entities, the right to receive from Sellers an amount of money equal to the collection of all revenues, monies, payments, notes, accounts receivable, rents, occupancy fees, fees, proceeds, and other rights to receive payment for goods and services provided by Sellers (including without limitation the rendering of services and provision of medicine, drugs and

supplies to residents or patients pursuant to the Medicare, Medicaid, or similar programs); all in connection with the Facilities prior to the Closing, including any such accounts receivable that have been charged off as bad debt.

“Real Property” has the meaning specified in Section 5.4(a).

“Receivables Escrow” has the meaning specified in Section 3.3.

“Receivables Target Amount” has the meaning specified in Section 3.3.

“Release” means any past or present spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of a Hazardous Substance into the Environment (including the abandonment or discharging of barrels, containers and other closed receptacles containing any Hazardous Substance).

“Representative” means with respect to a particular Person, any director, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants and financial advisors.

“Resident Contracts” means all residency agreements between Sellers and occupants of the Facilities.

“Sale Order” means the Order of the Bankruptcy Court which, pursuant to, inter alia, Bankruptcy Code sections 363 and 365, as may be amended, modified or supplemented from time to time by the Bankruptcy Court, in such form and substance reasonably acceptable to Sellers and Buyer containing provisions, including without limitation, among other things, (1) authorizing and approving, the sale of the Purchased Assets to Buyer on the terms and conditions set forth herein, free and clear of all Liens, Claims, Interests and Encumbrances, to the fullest extent permissible under the Bankruptcy Code, (2) authorizing and approving, the assumption and assignment of the Assumed Liabilities, and (3) providing that this Agreement and the transactions contemplated herein are undertaken by Buyer and Sellers at arm’s length, without collusion, and in good faith within the meaning of Section 363(m) of the Bankruptcy Code, that Buyer and Sellers are entitled to the protections of Section 363(m) of the Bankruptcy Code, and that the provisions of Section 363(n) of the Bankruptcy Code are not applicable.

“Sellers” has the meaning specified in the Preamble of this Agreement.

“Sellers’ Title Notice” has the meaning specified in Section 5.5(c).

“Service Agreements for NYSDOH-Regulated Entities” has the meaning set forth in Section 7.2(b).

“Service Agreements for Non-NYSDOH-Regulated Entities” has the meaning set forth in Section 7.2(c).

“Stimulus Payment” means any payments used by the federal government intended to address the economic impact of COVID-19 that have been received, but not used or repaid, by the Sellers by the Closing Date.

“Straddle Period” has the meaning specified in Section 8.1(a).

“Survey” has the meaning specified in Section 5.5(c).

“Tax” or “Taxes” (and with correlative meaning, “Taxable” and “Taxing”) means (i) any federal, state, provincial, local, foreign or other income, alternative, minimum, add-on minimum, accumulated earnings, personal holding company, franchise, capital stock, net worth, capital, profits, intangibles, windfall profits, gross receipts, value added, sales, use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, environmental, natural resources, real property, personal property, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers’ compensation, payroll, health care, withholding, estimated or other similar taxes, duties, levies or other governmental charge or assessment or deficiencies thereof (including all interest and penalties thereon and additions thereto whether disputed or not) and (ii) any liability of another Person under Treasury Regulation § 1.1502-6, as a transferee or successor, by contract or otherwise in respect of any items described in clause (i) hereof.

“Tax Return” means any return, report or similar statement filed or required to be filed with respect to any Taxes (including any attached schedules or documents), including any information return, claim for refund, amended return or declaration of estimated Tax, or any Form 990 or similar state or local return.

“Title Company” has the meaning specified in Section 5.5(c).

“Title Objection Notice” has the meaning specified in Section 5.5(c).

“Title Report” has the meaning specified in Section 5.5(c).

“Transactions” has the meaning specified in the Recitals of this Agreement.

“Transfer Taxes” has the meaning specified in Section 8.1(b).

“WARN Act” means the Worker Adjustment and Retraining Notification Act, and any similar state or local law relating to plant closings and layoffs.

## 1.2 Other Definitional and Interpretive Matters.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(i) Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(ii) Dollars. Any reference in this Agreement to \$ shall mean U.S. dollars.

(iii) Exhibits/Schedules. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(iv) Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(v) Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any “Section” or “Article” are to the corresponding Section or Article of this Agreement unless otherwise specified.

(vi) Herein. The words such as “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(vii) Including. The word “including” or any variation thereof means “including, without limitation” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(b) No Strict Construction. The Parties participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

## **ARTICLE II. PURCHASE AND SALE OF ASSETS**

2.1 Purchased Assets. Upon the terms and subject to the conditions of this Agreement, on the Closing Date, Sellers shall sell, transfer, assign, convey and deliver, or cause to be sold, transferred, assigned, conveyed and delivered, to Buyer, free and clear of all Liens, Claims and Encumbrances (other than Permitted Encumbrances and Assumed Liabilities) to the fullest extent permissible under Section 363(f) of the Bankruptcy Code, all right, title and interest of Sellers in all of the properties and assets of Sellers (other than the Excluded Assets) of every kind and description, wherever located, real, personal or mixed, tangible or intangible, owned, leased, licensed, used or held for use in or relating to the Real Property and the Facilities (herein, collectively referred to as the “Purchased Assets”), including all right, title and interest of Sellers in, to and/or under:

- (a) all inventories of medical supplies, drugs and pharmaceuticals, food, janitorial and office supplies and other disposables and consumables relating to the Facilities and maintained, held or stored by or for Sellers in connection with the Facilities (the “Inventory”);
- (b) all Equipment owned by Sellers;
- (c) all real property of Sellers, including without limitation the Real Property listed on Schedule 2.1(c), and any land lying in the bed of any highway, street, road or avenue, open or proposed, adjoining the Real Property;
- (d) in addition to the Real Property, all real, personal and intangible property of Sellers, or of any entity in which any Seller has an ownership, membership or governance interest, or of which any Seller is a sole member, including without limitation Fairport/Perinton Senior Living Council, Inc.;
- (e) each of Sellers’ Permits that are assignable pursuant to applicable law (with or without approval of a Governmental Authority) and pending applications therefor;
- (f) all Business Intellectual Property (including all goodwill associated therewith or symbolized thereby) and any website addresses, social media accounts and email domain addresses;
- (g) all Documents;
- (h) all telephone and facsimile numbers, remote access portals and other directory listings used in connection with the Facilities;
- (i) all Lease Security Deposits;
- (j) all Purchased Receivables;
- (k) all insurance policies, and rights to proceeds thereof, relating or allocable to any Purchased Asset or Assumed Liability, in each case to the extent assignable to Buyer;
- (l) all Tax refunds and Tax credits relating to the Real Property;
- (m) Any and all membership, ownership or investment interests owned by Sellers in any business enterprise including but not limited to, Pandion Optimization Alliance and/or any affiliates thereof;
- (n) Except as otherwise expressly set forth in Section 2.2 herein, all other or additional privileges, rights and interests associated with the Purchased Assets of every kind and description and wherever located that are used or intended for use in connection with, or that are necessary to the continued operation of, the Facilities;
- (o) all goodwill associated with the Facilities or the Purchased Assets;

(p) all right, title and interest of Sellers in and to all easements, tenements, hereditaments, privileges and appurtenances in any way belonging to the Real Property;

(q) all fixtures, chattels, equipment and articles of personal property owned by Sellers which are currently located upon or attached to the Real Property and used in connection with the Real Property and the Facilities; and

(r) all rights and interests to Sellers' Medicare Provider Agreements and Sellers' Medicaid Provider Agreements, including the provider numbers assigned under such programs.

At any time prior to three (3) Business Days prior to the Closing Date, Buyer may, in its discretion by written notice to Seller, designate any of the Purchased Assets as additional Excluded Assets, which notice shall set forth in reasonable detail the Purchased Assets so designated. Buyer acknowledges and agrees that there shall be no reduction in the Purchase Price if it elects to designate any Purchased Assets as Excluded Assets. For the avoidance of doubt, if something is identified in this Section 2.1 as a Purchased Asset, but it also fits the description of an Excluded Asset under Section 2.2 herein, it shall be considered a Purchased Asset. Notwithstanding any other provision hereof, the Liabilities of Sellers under or related to any Purchased Asset excluded under this paragraph will constitute Excluded Liabilities.

2.2 Excluded Assets. Nothing contained herein shall be deemed to sell, transfer, assign or convey the Excluded Assets to Buyer, and Sellers shall retain all right, title and interest to, in and under the Excluded Assets. For all purposes of and under this Agreement, the term "Excluded Assets" shall mean:

(a) all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit and other bank deposits;

(b) all minute books, ledgers, corporate seals and member certificates, if any, of Sellers that are not otherwise included in the Documents;

(c) all Contracts;

(d) the Purchase Price and all rights of Sellers under this Agreement;

(e) all Benefit Plans;

(f) any and all rights, claims or causes of action of Sellers against third parties arising out of events occurring prior to the Closing Date and any and all rights, claims or causes of action of Sellers against third parties with respect to the Excluded Assets arising out of events occurring after the Closing Date;

(g) all rights under insurance policies for any refunds for unearned premiums and all rights relating to claims for losses related exclusively to any Excluded Asset;

(h) any deposits or prepaid charges and expenses paid prior to the Closing Date that are not Lease Security Deposits;

- (i) all personnel records and other records and files that Sellers are required by law to retain in its possession;
- (j) all operating licenses of Sellers;
- (k) all Permits that are not assignable pursuant to applicable law and pending applications therefore;
- (l) all rights with respect to any Proceeding pending as of the Closing Date;  
and
- (m) all Documents relating exclusively to an Excluded Asset.

2.3 Excluded Liabilities. Notwithstanding any provision in this Agreement to the contrary, Buyer shall not assume and shall not be obligated to assume or be obliged to pay, perform or otherwise discharge any Liability of Sellers, whether presently in existence or arising hereafter, known or unknown, disputed or undisputed, contingent or non-contingent, liquidated or unliquidated, or otherwise, and Sellers shall be solely and exclusively liable with respect to all Liabilities of Sellers, other than the Assumed Liabilities (collectively the “Excluded Liabilities”). For the avoidance of doubt, the concept of Excluded Liabilities is intended to be construed as broadly as possibly under applicable law, including Section 363 of the Bankruptcy Code as interpreted, and shall include, without limitation, the following:

(a) any Liability of Sellers or their directors, officers, members, or agents (acting in such capacities), arising out of, or relating to, this Agreement or the transactions contemplated by this Agreement, whether incurred prior to, at or subsequent to the Closing Date, including, without limitation, all finder’s or broker’s fees and expenses and any and all fees and expenses of any Representatives of Sellers;

(b) any Liability relating to events or conditions occurring or existing in connection with or arising out of the Facilities as operated by Sellers, or the ownership, possession, use, operation or sale or other disposition prior to the Closing Date of any Purchased Assets (or any other assets, properties, rights or interests associated, at any time prior to the Closing Date, with the Facilities), including trade obligations, accrued payroll and other compensation;

(c) any Liability to any Persons at any time employed by Sellers or its predecessors-in-interest at any time or to any such Person’s spouses, children, other dependents or beneficiaries, with respect to incidents, events, exposures or circumstances occurring at any time during the period or periods of any such person’s employment by Sellers or its predecessors-in-interest, whenever such claims mature or are asserted, including without limitation, all Liabilities arising (i) under the Benefit Plans, (ii) under any employment, wage and hour restriction, equal opportunity, discrimination, plant closing or immigration and naturalization laws, (iii) under any collective bargaining laws, agreements or arrangements or (iv) in connection with any workers’ compensation or any other employee health, accident, disability or safety claims;



(d) all Liabilities of Sellers, or with respect to the Facilities, in connection with claims of professional malpractice or tort;

(e) all Liabilities of Sellers, or with respect to the Facilities, for violations of any Legal Requirement;

(f) any Liability of Sellers relating to the Purchased Assets connected with, arising out of or relating to: (i) Hazardous Substances or Environmental Laws, (ii) claims relating to employee health and safety, including claims for injury, sickness, disease or death of any Person or (iii) compliance with any Legal Requirement relating to any of the foregoing;

(g) any Liability of Sellers under the WARN Act or similar state law, including Liability caused by any action of any Seller prior to Closing or by Buyer's decision not to hire previous employees of Sellers;

(h) any Liability arising under or related to the Benefit Plans;

(i) all Liabilities owed by Sellers to Sellers' employees;

(j) any Liability, known or unknown, fixed, contingent or otherwise, the existence of which is a breach of, or inconsistent with, any representation, warranty, covenant, obligation or agreement of Sellers set forth in this Agreement or in any of the other Ancillary Documents;

(k) any Liability of Sellers for Taxes, including, without limitation, Taxes attributable to, resulting from, or otherwise arising from the transaction contemplated by this Agreement or any sales tax owed by Sellers or any Affiliate of Sellers;

(l) any Liability to any Person or Sellers on account of any Action or Proceeding;

(m) any Liability of Sellers under any Collective Bargaining Agreements;

(n) any Liability of Sellers in connection with any workers' compensation trust;

(o) any Liability of Sellers on account of any private sector cost reimbursement programs or insurance coverage;

(p) any Liabilities arising out of or pursuant to the Medicare Provider Agreements or Medicaid Provider Agreements for services rendered prior to the Closing Date, excepting Liabilities as required by applicable regulatory requirements or Governmental Authority;

(q) any experience ratings of Sellers maintained by taxing authorities such as unemployment boards;

(r) any Liability of Sellers relating to or arising out of the ownership or operation of an Excluded Asset;

(s) all Liabilities arising out of or pursuant to the Sellers' participation in Government Programs or receipt of payments from those programs, excepting Liabilities as required by applicable regulatory requirements or Governmental Authority; and

(t) any Liabilities of Sellers arising out of Resident Contracts.

2.4 Assumed Liabilities. Upon the terms and subject to the conditions of this Agreement, on the Closing Date, Buyer shall execute and deliver to Sellers the Assignment and Assumption Agreement pursuant to which Buyer shall assume all obligations and Liabilities listed on Schedule 2.4 (the "Assumed Liabilities") and no others.

2.5 Assignments.

(a) Buyer shall have no right to designate any Contracts or Leases for assumption and assignment pursuant to Bankruptcy Code Section 365. All Contracts and Leases shall be rejected effective as of the Closing Date.

(b) In the case of licenses, certificates, approvals, authorizations, and other commitments included in the Purchased Assets (i) that cannot be transferred or assigned effectively without the consent of third parties, including Governmental Authorities, which consent has not been obtained prior to the Closing (after giving effect to the Sale Order and the Bankruptcy Code), Sellers shall, subject to any approval of the Bankruptcy Court that may be required, reasonably cooperate with Buyer, at the sole cost and expense of Buyer, in endeavoring to obtain such consent and, if any such consent is not obtained, Sellers shall, subject to any approval of the Bankruptcy Court that may be required, cooperate with Buyer in all reasonable respects and at Buyer's sole cost and expense, to provide to Buyer the benefits thereof in some other manner, or (ii) that are otherwise not transferable or assignable (after giving effect to the Sale Order and the Bankruptcy Code), Sellers shall, subject to any approval of the Bankruptcy Court that may be required, reasonably cooperate with Buyer, at the sole cost and expense of Buyer, to provide to Buyer the benefits thereof in some other manner (including the exercise of the rights of Sellers thereunder).

(c) Subject to Section 2.3(p), Buyer will accept, and will not take any steps to affirmatively reject, the automatic assignment of Sellers' Medicare Provider Agreements and the transfer of Sellers' Medicaid Provider Agreements. Prior to the Closing, Sellers and Buyer shall act diligently and reasonably, and shall cooperate with each other, to do or cause to be done, all things necessary, proper or advisable consistent with applicable Legal Requirements to effect the assignment of Sellers' Medicare Provider Agreements and the transfer of Sellers' Medicaid Provider Agreements to Buyer as of the Closing Date.

2.6 HRSA Provider Relief Fund. Except to the extent permitted by applicable non-bankruptcy law, this Agreement shall not be construed to authorize the transfer to, or use by, Buyer of any Health Resources and Services Administration Provider Relief Funds ("HRSA Provider Relief Fund") Stimulus Payment, including without limitation any distributions received by the

Sellers, either before or after the entry of the Sale Order, from the HRSA Provider Relief Fund, or to permit the use of any HRSA Provider Relief Fund distributions in a manner inconsistent with the associated statutory or regulatory requirements or the terms and conditions associated therewith.

### **ARTICLE III. PURCHASE PRICE**

3.1 Purchase Price. The consideration for the sale, assignment and conveyance of Sellers' right, title and interest in, to and under the Purchased Assets shall be Eight Million Two Hundred Fifty Thousand Dollars (\$8,250,000) (the "Purchase Price").

3.2 Deposit. Within three (3) business days of the Effective Date, Buyer shall deliver to Sellers by electronic transfer an aggregate amount equal to Four Hundred Twelve Thousand Five Hundred Dollars (\$412,500) (the "Deposit"), to be held by an escrow agent to be mutually agreed upon by the Parties (the "Escrow Agent") in a non-interest-bearing account of the Escrow Agent until the Closing. If the Closing takes place as provided herein, then the Deposit will be credited in favor of Buyer against the Purchase Price paid by Buyer at Closing. If this Agreement is terminated prior to the Closing, then the Deposit shall be returned to Buyer.

3.3 Escrow. At the Closing, Two Hundred Fifty Thousand Dollars (\$250,000) of the Purchase Price will be delivered by Buyer to a non-interest-bearing account of, and held by, the Escrow Agent (the "Receivables Escrow"), for a period of one hundred eighty (180) days (the "Escrow Period") for the sole purpose of ensuring the collection by Buyer of at least One Million Dollars of the Purchased Receivables (the "Receivables Target Amount"). If at the expiration of the Escrow Period Buyer has collected the Receivables Target Amount, then the Escrow Agent shall be directed by Buyer to disburse the Receivables Escrow to Sellers. If at the expiration of the Escrow Period Buyer has collected less than the Receivables Target Amount, then the Escrow Agent shall be directed to disburse from the Receivables Escrow to Buyer an amount equal to the difference between the Receivables Target Amount and the total amount of Purchased Receivables collected by Buyer during the Escrow Period. Any amount in excess of the Receivables Target Amount that is collected by Buyer during the Escrow Period shall be remitted by Buyer to Sellers within thirty (30) days of the end of the Escrow Period.

3.4 Withholding. Buyer shall be entitled to deduct and withhold from all payments made pursuant to this Agreement such amounts (if any) as Buyer is required to deduct and withhold under the Code or any provision of state, local or foreign law. To the extent that amounts are so withheld and paid over to the appropriate Governmental Authority, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to Seller from which such deduction and withholding was made.

3.5 Allocation of Purchase Price. The Purchase Price shall be allocated among the Purchased Assets in a manner prescribed by Buyer by notice given to Sellers at least sixty (60) days prior to the due date (including any extensions) of Buyer's tax return for the tax year in which the Closing occurs. Each of Buyer and Sellers (and any Affiliates thereof) agrees that it will (and will cause its Affiliates to) (a) file Tax Returns (including, as applicable, Internal Revenue Service Form 8594) in a manner consistent in all respects with Buyer's allocation; (b) not take (and will cause its Affiliates not to take) any position that is inconsistent with Buyer's allocation. Buyer and

Sellers acknowledge that such allocation shall be without prejudice to the valuation ascribed to specific assets for federal bankruptcy purposes; provided, however, that any such valuation of specific assets shall be limited in scope, extent and applicability to what is necessary to achieve confirmation of the Sellers' Chapter 11 plan.

3.6 DIP Financing. As permitted by the Bankruptcy Court and with the approval and consent of any application Governmental Authorities, if the Closing takes place as provided herein, then any amounts outstanding and payable to Buyer under the DIP Credit Agreement shall be a credit in favor of Buyer against the Purchase Price paid by Buyer at Closing.

#### ARTICLE IV. CLOSING.

4.1 Closing Mechanics. Buyer and Sellers intend to consummate Buyer's purchase of the Purchased Assets and assumption of the Assumed Liabilities pursuant to Sections 363 and 365 of the Bankruptcy Code, which includes at the Closing:

- (a) the payment of the Purchase Price as provided in Section 3.1; and
- (b) the assumption by Buyer of the Assumed Liabilities.

4.2 Closing Date. Except as provided in Article X, upon the terms and subject to the satisfaction of the conditions and contingencies contained in Article IX (or the waiver thereof by the Party entitled to waive the condition), the closing of the sale of the Purchased Assets and the assumption of the Assumed Liabilities contemplated hereby (the "Closing") shall take place at a location and time mutually agreed upon by the Parties, in no event later than the tenth (10th) Business Day following the date on which the conditions set forth in Article IX have been satisfied or waived (other than the conditions which by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), and shall be deemed to have occurred at 12:01 a.m. on such day. Such date and time is hereinafter referred to as the "Closing Date."

4.3 Buyer's Additional Deliveries. At or prior to the Closing, Buyer shall deliver to Sellers:

- (a) the Assignment and Assumption Agreement;
- (b) a certificate of the Secretary of Buyer certifying, as complete and accurate as of the Closing, attached copies of the charter and by-laws of Buyer and certifying and attaching all requisite resolutions approving the execution and delivery of this Agreement, the Ancillary Documents to which Buyer is a party and the consummation of the transaction contemplated hereby;
- (c) the certificates required to be delivered pursuant to Sections 9.2(a) and 9.2(b); and
- (d) such other assignments and other good and sufficient instruments of assumption and transfer, in form reasonably satisfactory to Sellers, as Sellers may reasonably request to transfer and assign the Assumed Liabilities to Buyer.

4.4 Sellers' Deliveries. At or prior to (as specified below) the Closing, Sellers shall deliver to Buyer all the following:

- (a) the Sale Order;
- (b) the Approving Order;
- (c) a duly executed and acknowledged Bargain and Sale Deed (the "Deed") conveying fee simple title to the Real Property to Buyer;
- (d) the Bill of Sale and Assignment and Assumption Agreement, duly executed by Sellers;
- (e) the certificates required to be delivered pursuant to Sections 9.3(a) and 9.3(b);
- (f) certificates executed by each of the Sellers, in the form prescribed under Treasury Regulation Section 1.1445-2(b), that each Seller is not a foreign person within the meaning of Section 1445(f)(3) of the Code; and
- (g) such other bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Buyer, as are necessary or otherwise customary to vest in Buyer all the right, title and interest of Sellers in, to or under any or all the Purchased Assets and other transfer tax forms, affidavits and certificates customarily delivered in connection therewith.

## **ARTICLE V. REPRESENTATIONS AND WARRANTIES OF SELLERS**

As an inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Sellers jointly and severally represent and warrant to Buyer that the statements contained in this Article V are correct and complete as of the Effective Date and will be correct and complete as of the Closing, except as set forth in the disclosure schedule accompanying this Agreement (the "Disclosure Schedule"). The Disclosure Schedule will be arranged in sections corresponding to the lettered and numbered sections and subsections contained in this Article V.

5.1 Organization and Standing. Each Seller is duly organized and validity existing and in good standing under the laws of the State of New York and has the requisite authority to own the Purchased Assets owned by it and to carry on its respective business as the same is now being conducted. Sellers have full corporate power and authority to own or lease and to operate and use the Purchased Assets and to carry on the Facilities as now conducted, subject to the Bankruptcy Code and/or the approval or consent of any Governmental Authority.

5.2 Authority.

(a) Sellers have full power and authority to execute, deliver and, subject only to the Sale Order, the Approving Order and the CON Approval, perform this Agreement and each of the Ancillary Documents to which Sellers are a party. The execution, delivery

and performance of this Agreement and such Ancillary Documents by Sellers have been duly authorized and approved by Sellers' boards of directors (or similar governing bodies) and members, is in accordance with the Bankruptcy Code and the Sale Order, and, subject to the entry of the Sale Order and the Approving Order, does not require any authorization or consent of Sellers' governing board or members or Governmental Authority that has not been obtained. This Agreement has been duly authorized, executed and delivered by Sellers and, subject to the entry of the Sale Order, the Approving Order and the CON Approval, is the legal, valid and binding obligation of Sellers enforceable in accordance with its terms, and each of the Ancillary Documents to which Sellers is a party has been duly authorized by Sellers and upon execution and delivery by Sellers and subject to the entry of the Sale Order, the Approving Order and the CON Approval, will be a legal, valid and binding obligation of Sellers enforceable in accordance with its terms.

(b) Subject to the entry of the Sale Order and the Approving Order, neither the execution and delivery of this Agreement or any of the Ancillary Documents or the consummation of any of the transactions contemplated hereby or thereby nor compliance with or fulfillment of the terms, conditions and provisions hereof or thereof will conflict with, result in a breach of the terms, conditions or provisions of, or constitute a violation, default or an event of default, or permit the acceleration of any Liability or obligation, under (i) any charter (or similar governing instrument) or by-laws (or similar governing document) of Sellers, (ii) any Permits, (iii) any Order to which Sellers are bound or any Purchased Asset is subject, or (iv) any Legal Requirement affecting Sellers or the Purchased Assets (subject to Buyer's compliance with Section 3.4).

5.3 Subsidiaries and Investments. Except as set forth in Schedule 5.3, Sellers do not, directly or indirectly, own, of record or beneficially or through a nominee agreement, any outstanding voting securities, membership interests or other equity interests in any Person.

5.4 Real Property.

(a) Schedule 2.1(c) lists and sets forth a complete and accurate list of addresses and legal descriptions of all real property owned or leased by Sellers (collectively, the "Real Property"). Except as set forth on Schedule 5.4(a), the properties listed on Schedule 2.1(c), and no others, are required for the operation of the Facilities as they are operated as of the Effective Date.

(i) Except for the Liens, Claims and Encumbrances described in Schedule 5.4(a): (A) Sellers have good and marketable title to such parcels, together with good and marketable title to all rights, privileges, interests, easements and appurtenances now or hereafter belonging or in any way pertaining to the Real Property, subject only to Permitted Encumbrances; (B) all buildings and other improvements situated on the Real Property form a part of the Real Property and are owned by Sellers subject only to Permitted Encumbrances; and (C) no Person, other than Sellers, as the owners, and the residents residing at the Real Property, has any occupancy or use rights with respect to the Real Property and no option, right of first refusal or any other right to purchase exists, or has been granted, with respect to the Real Property.

(ii) Sellers have not received written notice, nor is there pending or, to Sellers' Knowledge, is there threatened any imposition of any special assessments for public betterments affecting the Real Property.

(iii) True, correct, and complete copies of the Leases have been delivered to Buyer. To Sellers' Knowledge, the Leases are in good standing and in full force and effect in accordance with their respective terms and have not been modified, amended, terminated, renewed, or extended, except as set forth in the applicable Lease. To Sellers' Knowledge, none of the parties to any Lease is in default of any of its obligations thereunder and no event has occurred that, with the giving of notice or passage of time, or both, would constitute a default thereunder.

(iv) To Sellers' Knowledge, the improvements and fixtures on the Real Property, including roofs, structures and HVAC equipment, are in good operating condition and in a state of good maintenance and repair, ordinary wear and tear excepted. Sellers have not received written notice of any condemnation, expropriation or similar proceeding pending or, to Sellers' Knowledge, threatened against any of the Real Property or any improvement thereon.

(v) Sellers have not received written notice that the Real Property is in violation of any law, rule, regulation, ordinance or statute, including those relating to zoning, building, land use, environmental, health and safety, fire, air, sanitation and noise control. To Sellers' Knowledge, no Real Property is subject to any governmental decree or order (or, to Sellers' Knowledge, threatened or proposed order) to be sold or taken by public authority. To Sellers' Knowledge, there is no existing or proposed plan to modify or realign any street or highway.

(b) Except as set forth in Schedule 5.4(b), to Sellers' Knowledge,

(i) Sellers have all Environmental Permits necessary for the lawful operation of the Facilities.

(ii) There has been no Release or threatened Release of any Hazardous Substances at, on or under any of the Real Property, and none of such properties has been used by any Person as landfill or storage, treatment or disposal site for any type of Hazardous Substance or non-hazardous solid wastes as defined under any Environmental Laws.

(iii) Any storage tanks that have existed or presently exist on, at or under any of the Real Property were or have been operated and maintained in accordance with all Environmental Laws and none of them has or is Releasing any Hazardous Substance.

(iv) Sellers have provided Buyer with copies of all material documents, records and information in Sellers' possession concerning the condition of the Environment at any of the Real Property that constitutes a Purchased Asset, whether

generated by Sellers or others, including environmental audits and environmental site assessments.

#### 5.5 Title to Purchased Assets; Due Diligence.

(a) Upon delivery to Buyer on the Closing Date of the instruments of transfer contemplated by Section 4.4, and subject to the terms of the Sale Order, Sellers will thereby transfer to Buyer, good and marketable title to all of the Purchased Assets, free and clear of all Liens, Claims, Interests and Encumbrances (other than Permitted Encumbrances and Assumed Liabilities).

(b) Within five (5) Business Days of the Effective Date, Sellers shall deliver to Buyer copies of the following Documents, to the extent that such documents exist and are in Seller's possession, custody or control:

(i) Any Phase I or other environmental reports relating the Real Property;

(ii) Any existing title insurance commitments or policies relating to the Real Property; and

(iii) Any existing surveys relating the Real Property.

(c) Within five (5) Business Days of the Effective Date, as evidence of title, Sellers shall order an updated title report for the Real Property (the "Title Report") from a title company licensed to do business in the State of New York (the "Title Company") and cause a copy thereof to be simultaneously sent to Buyer and Buyer's attorney. Buyer shall have the right to order an updated survey of the Real Property (the "Survey"), at Buyer's sole cost and expense and shall deliver copies of the Survey to Sellers and the Title Company upon receipt. Within twenty (20) days of Buyer's receipt of the Title Report and Survey, Buyer shall advise Sellers of any objections to the Title Report or Survey other than the Permitted Encumbrances (the "Title Objection Notice"); provided, however, that receipt by Sellers' counsel of a copy of the Title Report shall be deemed notice of Buyer's objections to title. Sellers shall have five (5) Business Days after its receipt of the Title Objection Notice to notify Buyer ("Sellers' Title Notice") that Sellers have decided to either: (i) remedy such title defects; or (ii) notify Buyer that Sellers are unable or unwilling to cure any such title defect, provided that if Sellers fail to provide the Sellers' Title Notice within the time period stated herein, Sellers shall be deemed to have elected not to cure or otherwise resolve Buyer's title objections. Buyer may elect, by written notice to Sellers within three (3) Business Days of Buyer's receipt of Sellers' Title Notice, to waive such defects and proceed with the Closing subject thereto. If Sellers are unable or unwilling to remedy the title objections and Buyer does not elect to waive such defects, then Buyer may terminate this Agreement by providing written notice thereof to Sellers no later than three (3) Business Days after receiving Sellers' Title Notice or after Sellers are deemed to have elected not to cure any objections, whichever is later, in which event the Deposit shall be refunded forthwith in full termination of this Agreement. In the event a continuation of title at Closing reveals additional title defects, Buyer shall be entitled to adjourn the Closing for



a reasonable period of time and Sellers and Buyer shall have the same rights with respect to such additional title defects as if they had appeared in the original Title Report and Survey.

(d) Subject to the terms and conditions contained herein, Buyer and its agents shall have a period of thirty (30) days following the Effective Date (the “Inspection Period”) to inspect or cause to be inspected all of the physical and economic conditions of the Real Property, access to which shall be granted to Buyer and/or Buyer’s agents and representatives, at all reasonable times, provided that Buyer shall provide Sellers with at least twenty-four (24) hours’ prior notice of each on-site inspection at the Real Property. Buyer shall have the right hereunder to conduct any environmental or other assessment of the Real Property including sampling of environmental media, and in addition, Buyer at its own cost may cause a Phase I Environmental Assessment of the Real Property to be conducted by an environmental consultant of Buyer’s choice. Buyer shall not undertake any invasive testing procedures with respect to the Improvements or any portion of the Real Property without Sellers’ additional prior written consent. Sellers shall cause their Representatives to reasonably cooperate with Buyer and its representatives in connection with such investigation and examination. If Buyer is not satisfied with the results of such inspections, Buyer may terminate this Agreement for any reason or no reason by providing written notice (in the manner set forth herein) to Sellers on or before 5:00 p.m. (EST) on the last day of the Inspection Period and shall thereupon promptly receive a refund of the Deposit and interest accumulated thereon and be relieved of any and all liability hereunder except as to Buyer’s restoration obligations under this Section and Buyer’s indemnification obligations as set forth in this Agreement. Buyer agrees that in conducting any inspections, investigations or tests of the Real Property, Buyer and its Representatives will (i) not unreasonably interfere with the operation and maintenance of the Real Property; (ii) not damage any part of the Real Property or any personal property owned or held by any third party; (iii) maintain commercial general liability insurance of One Million Dollars (\$1,000,000) combined single limit for bodily injury, death, or property damage, covering any accident arising in connection with the presence of Buyer, its agents or representatives, on the Real Property; (iv) promptly pay when due the costs of all tests, investigations and examinations done with regard to the Real Property; (v) not permit any liens to attach to the Real Property or any part thereof by reason of the exercise of Buyer’s rights hereunder; (vi) fully restore the Real Property to the condition in which the same were found before any such inspections or tests were undertaken; and (vii) notify Sellers of its inspections such that Sellers may be present during any such inspection, investigation or test. Except as a result of Sellers’ negligence or willful misconduct, Buyer shall indemnify, defend, and hold Sellers harmless from all losses, costs, liens, claims, causes of action, liability, damages and expenses, including, without limitation, reasonable attorneys’ fees, incurred by Sellers as a result of any entry by Buyer (or its agents or representatives) onto the Real Property, including, without limitation, any damage to the Real Property or injury to persons resulting from entry upon or inspections, tests or investigations of the Real Property conducted by or on behalf of Buyer; provided that the foregoing indemnification shall not include any losses, costs, liens, claims, causes of action, liability, damages or expenses that result from the mere discovery, by Buyer or its Representatives, of existing conditions on the Real Property during such inspections or tests conducted pursuant to the terms of this Agreement. The provisions of this Section and Buyer’s indemnification

obligations contained herein shall survive the Closing or the termination of this Agreement, as applicable.

5.6 Taxes.

(a) Sellers are, and have been, since their incorporation, entities exempt from federal income Tax as an organization described in Section 501(c)(3) of the Code, and have not and do not now, carry on its activities in such a manner that have required (or would require) the filing of any Tax Return and the payment of any Taxes (under Section 511 of the Code or otherwise, including any provision of state, local or foreign income tax law). Except as set forth on Schedule 5.6(a), Sellers and its Affiliates have (a) timely filed all Tax Returns required to be filed with the appropriate Governmental Authority in all jurisdictions in which such Tax Returns are required to be filed (taking into account any extension of time to file granted, or to be obtained on behalf of, Sellers), which were complete and accurate in all material respects, (b) all Taxes due with respect to the periods covered by such Tax Returns have been paid, and (c) there are no liens for Taxes against any of the Purchased Assets (other than liens for current Taxes not yet due and payable).

(b) Sellers have withheld and paid all Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, member or other third party, and all Forms W-2 and 1099 (and state form equivalents thereof) required with respect thereto have been properly completed and timely filed. Sellers are not the beneficiary of any extension of time within which to file any Tax Return. There are no ongoing actions, audits, suits, claims, other legal proceedings or investigations relating to Taxes of Sellers. Sellers have not received from any Governmental Authority (including jurisdictions where Sellers have not filed Tax Returns) any (i) notice indicating an intent to open an audit or other review of Taxes, (ii) request for information related to Tax matters, or (iii) notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted, or assessed by any Governmental Authority against Sellers. Sellers have not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency. Sellers have timely and properly maintained all certificates and documents required to qualify for any exemption from income taxes or the collection of sales taxes. Sellers are not a party to any deferred compensation arrangements within the meaning of Section 409A of the Code. Sellers are not a party to any transaction that may be treated as an excess benefit transaction within the meaning of Section 4958 of the Code.

5.7 Litigation. Except: (i) for the Filing, and any and all Proceedings pending in the Bankruptcy Court arising therefrom or related thereto; (ii) as set forth in Schedule 5.7; and (iii) to the extent that any Action or Proceeding constitutes an Excluded Liability, as of the date hereof there is no pending Action or Proceeding by or against Sellers or relating to the Facilities or any of the Purchased Assets, or, to Sellers' Knowledge, threatened against or affecting Sellers and relating to the Facilities or any of the Purchased Assets. None of the Actions set forth on Schedule 5.7 would have an adverse effect on the Facilities or any of the Purchased Assets after taking into account the operation of the Sale Order.

5.8 Insurance. Set forth on Schedule 5.8 is an accurate and complete list of each insurance policy and insurance arrangement, including any that covers Sellers' businesses properties, assets (including the Purchased Assets), Liabilities (including Assumed Liabilities) or employees or others providing services (including medical malpractice insurance, self-insurance, but excluding insurance policies providing benefits under Benefit Plans) of or with respect to the Facilities (the "Insurance Policies"). Except as set forth on Schedule 5.8, the Insurance Policies are in full force and effect, all premiums thereon have been paid, and Sellers are otherwise in compliance in all material respects with the payment and other terms and provisions of such policies. Sellers are not in default under any of the Insurance Policies (or any policy required to be set forth on Schedule 5.8) and there exists no event, occurrence, condition or act (including the purchase of the Purchased Assets hereunder) that, with the giving of notice, the lapse of time of the happening of any other event or condition, would become a default thereunder. Except as set forth on Schedule 5.8, Sellers have not received any notice of cancellation or non-renewal of any such Insurance Policies nor has the termination of any such Insurance Policies been threatened, and there exists no event, occurrence, condition or act (including the purchase of the Purchased Assets hereunder) that, with the giving of notice, the lapse of time or the happening of any other event or condition, would entitle any insurer or administrator of such Insurance Policy to terminate or cancel any such Insurance Policies. Each of the Insurance Policies is of a type and in such amount and covers such risks as are consistent with customary practice and standards of companies engaged in businesses and operations similar to the Facilities. There has not been, nor is there pending or to Sellers' Knowledge is there threatened, any material adverse change in Sellers' relationship with its insurers, in the premiums payable, or the coverage provided pursuant to such Insurance Policies. Buyer has been provided an electronic file containing a list of all pending claims and the claims history with respect to the Facilities during the past five (5) years (including with respect to insurance obtained but not currently maintained).

5.9 Accreditation.

(a) Except as otherwise set forth on Schedule 5.9(a), the Facilities have all required accreditations with no material contingencies. Without limiting the generality of the foregoing, the facilities, Equipment, and staffing and operations of the Facilities satisfy the accreditation standards, including in the case of FBH the CMS Conditions of Participation for Long Term Care Facilities (42 CFR Part 483) and the NYSDOH's Minimum Standards for Nursing Homes (10 NYCRR Part 415). Sellers have previously delivered to Buyer true, correct and complete copies of: (i) the Facilities' most recent accreditation survey report, and deficiency list; (ii) the Facilities' boiler inspection reports for the past two (2) years and list of deficiencies, if any. Sellers have taken all reasonable steps to correct all such deficiencies and a description of any uncorrected deficiency is set forth in Schedule 5.9(a). The most recent accreditation survey report resulted in continued accreditation of the Facilities and did not require the capital expenditures aggregating in excess of Ten Thousand Dollars (\$10,000) be made in order to ensure continued accreditation.

(b) Except as set forth on Schedule 5.9(b), the Facilities are eligible to receive payment without restriction under Title XVIII of the Social Security Act ("Medicare") and Title XIX of the Social Security Act ("Medicaid") and are "providers" with valid and current provider agreements and with one or more provider numbers with applicable

Government Programs through intermediaries. Except as set forth on Schedule 5.9(b), each part of the Facilities that historically has received Medicare or Medicaid reimbursement is eligible to receive payment without restriction under Medicare and Medicaid and is a “provider” with a valid and current provider agreement and with one or more provider numbers with the Government Programs through intermediaries or carriers, as applicable. Except as set forth on Schedule 5.9(b), the Facilities are “providers” with valid and current provider agreements and with one or more provider numbers. The Facilities are in compliance with the conditions of participation for the Government Programs in all material respects. Without limiting the generality of the foregoing, the Facilities, Equipment, staffing and operations of the Facilities satisfy all conditions of Medicare and Medicaid participation. There is not pending, or to Sellers’ Knowledge, threatened any proceeding or investigation under the Government Programs involving Sellers or any of the Purchased Assets.

(c) To Sellers’ Knowledge, no employee or independent contractor of Sellers or any of its Affiliates (whether an individual or entity) has been excluded from participating in any federal health care program and neither the Facilities nor Sellers’ or any of its Affiliates’ officers, directors, agents or managing employees has been excluded from Medicare or any federal health care program or been subject to sanction or been convicted of a crime involving health care Legal Requirements.

5.10 Affiliate Transactions. Except as disclosed on Schedule 5.10, no Affiliate of Sellers (a) is an officer, director, employee, consultant, competitor, creditor, debtor, customer, distributor, supplier or vendor of Sellers, (b) is a party to any Contract with Sellers, (c) has any Proceeding against Sellers, or (d) has a loan outstanding from Sellers.

5.11 No Broker. Except as described on Schedule 5.11, no broker, investment banker, financial advisor or other Person is entitled to any broker’s, finder’s, financial advisor’s or other similar fee or commission in connection with the transactions contemplated by this Agreement, based upon arrangements made by or on behalf of Sellers or any of its respective Affiliates. Sellers are solely responsible for the compensation of such Persons described on Schedule 5.11.

5.12 Employment Matters.

(a) Except as disclosed on Schedule 5.12(a), for the past six (6) years, Sellers have complied in all material respects with all applicable law respecting employment and employment practices, terms and conditions of employment and wages and hour.

(b) To Sellers’ Knowledge, Sellers are not engaged in any unfair labor practice or other unlawful employment practice. Except as disclosed on Schedule 5.12(b), within the past six (6) years, there have been no unfair labor practice charges or other employee-related complaints or claims against Sellers pending or, to Sellers’ Knowledge, threatened before the National Labor Relations Board, the Equal Employment Opportunity Commission, the Occupational Safety and Health Review Commission, the Department of Labor or any other Governmental Authority by or concerning the employees, independent contractors or consultants of Sellers, that if decided adversely would reasonably be expected to have a Material Adverse Effect. Except as disclosed on Schedule 5.12(b),

within the past six (6) years, Sellers have not (i) been notified by any Governmental Authority of any alleged violation by Sellers of applicable law that remains unresolved respecting employment, employment practices or terms and conditions of employment, or (ii) received any notice of the intent of any Government Authority to conduct an investigation of Sellers and, to Sellers' Knowledge, no such investigation is in progress.

(c) Schedule 5.12(c) of the Disclosure Schedules sets forth a true and complete list of all employees (whether full-time, part-time or otherwise) and independent contractors of Sellers as of the date hereof, setting forth the name, position, job location, salary or wage rate, bonuses and other incentive compensation, date of hire, full- or part-time status, active or leave status (including any individual absent due to short-term disability, family or medical leave, military leave or other approved absence), overtime "exempt" or "non-exempt" status and the basis for each employee classified as exempt (e.g., Administrative, Executive, Professional, etc.), which basis is proper under applicable laws. Except as disclosed on Schedule 5.12(c), Sellers do not owe to any current or former independent contractors of Sellers any amounts for any period other than the current payment period.

(d) Except as provided on Schedule 5.12(d), Sellers are not party to any Collective Bargaining Agreement.

(e) There are no strikes, slowdowns or work stoppages pending or, to Sellers' Knowledge, threatened with respect to Sellers' employees, nor has any such strike, slowdown or work stoppage occurred or, to Sellers' Knowledge, been threatened within three (3) years prior to the date hereof. There are no material arbitrations, grievances or other labor disputes pending or, to Sellers' Knowledge, threatened with respect to Sellers' employees.

(f) Sellers have not promised any of its management or other employees that any of such persons will be employed or engaged subsequent to the date hereof or the Closing Date. The execution of this Agreement and the consummation of the transactions contemplated hereby will not result in the breach or other violation of any employment agreement, consulting agreement or other labor-related agreement to which Sellers are a party. With respect to the transactions contemplated by this Agreement, any notice to employees or their representatives required by applicable law to be given by Sellers has been given or prior to Closing will be given by Sellers.

(g) Except as disclosed on Schedule 5.12(g), all material levies, assessments and penalties made against Sellers pursuant to all applicable workers compensation legislation as of the date hereof have been paid by Sellers, and Sellers have not been reassessed under any such legislation.

(h) Schedule 5.12(h) identifies, as of the date of this Agreement, a true and complete list of all Benefit Plans.

(i) No Benefit Plan is a "multiemployer pension plan," as defined in Section 3(37) of ERISA, nor is any Benefit Plan a plan described in Section 4063(a) of ERISA and

(ii) Sellers have not made or suffered a “complete withdrawal” or a “partial withdrawal,” as such terms are respectively defined in Sections 4203 and 4205 of ERISA (or any liability resulting therefrom has been satisfied in full).

(j) No present or former employee, agent, contractor, consultant or volunteer providing items or services to or on behalf of Sellers related to Governmental Programs was, at the time the items or services were provided debarred, suspended, excluded or otherwise ineligible to participate in a Government Program.

5.13 Compliance with Laws; Permits.

(a) Except as provided in Schedule 5.13(a), to Sellers’ Knowledge, Sellers are, and have been, in compliance, in all material respects, with all Legal Requirements applicable to its respective operations or the Facilities, including all appropriate health care facility licensing agencies. Except as set forth on Schedule 5.13(a), since January 1, 2020, Sellers have not received written notice from any Governmental Authority with respect to, or been charged with, the violation of any Legal Requirement.

(b) Schedule 5.13(b) sets forth a current, complete and accurate list of all Permits issued to Sellers, including the expiration dates thereof, if any. Sellers have all Permits required by all Legal Requirements from all applicable Governmental Authorities and any other regulatory agencies necessary or proper in order to own or lease the Purchased Assets and to conduct and operate the Facilities as presently operated. Sellers previously have complied and are currently complying in all respects with its obligations under each of the Permits listed in Schedule 5.13(b) and all such Permits are in full force and effect. No notice from any Governmental Authority or other Person in respect to the threatened, pending or possible revocation, termination, suspension or limitation of any of the Permits has been issued or given, nor are Sellers aware of the proposed or threatened issuance of any such notice. There is no basis known to Sellers for any such action that would have an adverse effect upon the Facilities or the Purchased Assets, or upon Sellers’ right to conduct and operate the Facilities as presently conducted and operated. The Facilities are licensed for 142 skilled nursing beds and a 42-bed adult home which includes 11 ALP beds and an associated limited license LHCSA.

5.14 Inventory. Except as set forth in Schedule 5.14, all Inventory of Sellers are in safe condition and currently usable in the ordinary course of business.

5.15 Intellectual Property. There are no conditions existing which would prevent the Business Intellectual Property (other than intellectual property included in Excluded Assets) from transferring to Sellers pursuant to this Agreement.

5.16 Full Disclosure. To Sellers’ Knowledge, no representations or warranties by Sellers in this Agreement, and no statement contained in any document (including financial statements and the Disclosure Schedules), certificate, or other writing furnished or to be furnished by Sellers to Buyer or any of its Representatives pursuant to the provisions hereof or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of material fact or omits or shall omit to state any material fact necessary, in light of the circumstances

under which it was made, in order to make the statements herein or therein not misleading, and all of the foregoing accurately, completely and correctly present the information required or purported to be set forth herein or therein. There is no material fact or circumstance known to Sellers and related to Sellers or the Facilities which has not been disclosed in writing to Buyer.

## **ARTICLE VI. REPRESENTATIONS AND WARRANTIES OF BUYER**

As an inducement to Sellers to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer hereby represents and warrants to Sellers and agrees as follows:

6.1 Organization and Standing. Buyer is duly organized pursuant to the laws of the State of New York and is validly existing under the laws of the State of New York. Buyer has full power and authority to own or lease and to operate and use its properties and assets and to carry on its business as now conducted, except as requiring approval or consent of any Governmental Authority.

6.2 Capacity; Authority; Consents.

(a) Subject to the entry of the Sale Order, the Approving Order, and the CON Approval, Buyer has full power and authority to execute, deliver and perform this Agreement and all of the Ancillary Documents to which it is a party. The execution, delivery and performance of this Agreement and such Ancillary Documents by Buyer have been duly authorized and approved by Buyer's governing body and do not require any further authorization or consent of Buyer or its members. This Agreement has been duly authorized, executed and delivered by Buyer and is the legal, valid and binding agreement of Buyer enforceable against Buyer in accordance with its terms, and each Ancillary Document to which Buyer is a party has been duly authorized by Buyer and upon execution and delivery by Buyer, subject to the entry of the Sale Order, the Approving Order and the CON Approval, will be a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as (i) enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses.

(b) Subject to the entry of the Sale Order, the Approving Order and the CON Approval, and as otherwise noted in Section 6.1 above, neither the execution and delivery of this Agreement or any of such Ancillary Documents or the consummation of any of the transactions contemplated hereby or thereby nor compliance with or fulfillment of the terms, conditions and provisions hereof or thereof will:

(i) conflict with, result in a breach of the terms, conditions or provisions of, or constitute a default, or an event of default under (1) Buyer's organizational documents, (2) any Order to which Buyer is a party or by which it is bound or (3) any Legal Requirement affecting Buyer; or

(ii) require the approval, consent, authorization or act of, or the making by Buyer of any declaration, filing or registration with, any Person, other than filings with the Bankruptcy Court or under anti-trust or competition laws.

6.3 No Brokers or Finders. Neither Buyer nor any affiliate of Buyer has engaged any finder or broker in connection with the transactions contemplated hereby.

6.4 Ability to Perform. Buyer has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing have immediately available funds in cash, which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement.

6.5 Full Disclosure. All of Buyer's warranties, representations or covenants in this Agreement: (a) constitute a material part of the consideration hereunder; (b) are true and complete, current and accurate as of the date hereof; (c) shall be true, complete, current and accurate as of the Closing; and (d) shall survive the Closing and delivery of the Purchased Assets to Buyer. None of the statements, representations or warranties of Buyer misstates or omits any fact which would make such statements, representations or warranties incomplete, misleading or incorrect in any material respect. Buyer shall inform Sellers if any statement, representation or warranty becomes incorrect, misleading or incomplete subsequent to the date hereof.

## **ARTICLE VII. ACTION PRIOR TO CLOSING DATE**

7.1 Third Party Consents; Permits. Sellers shall use best efforts to cooperate with Buyer to secure, before the Closing Date, any third party consents that Buyer reasonably deems necessary to consummate the transactions contemplated hereby, to the extent such consents are not provided for or satisfied by the Sale Order; provided that neither Sellers nor Buyer shall have any obligation to offer or pay any consideration in order to obtain any such consents, approvals or waivers. The Parties will cooperate with each other so that each provides all necessary change of ownership notices, if applicable, pursuant to governing regulations.

7.2 Governmental Approvals.

(a) Commencing as of the date of entry of the Sale Order, Buyer shall file any required applications with Governmental Authorities, as may be necessary (i) for Buyer to obtain all Permits necessary to operate the Facilities conducted by Sellers, including, but not limited to, submitting to the NYSDOH a Certificate of Need application and Part I and Part II Adult Care Facility Common Applications seeking establishment and licensure of Buyer as the operator of the Facilities and obtaining non-contingent approval of same (collectively, the "CON Approval"), and (ii) to enable Buyer to obtain on or as soon as practicable after the Closing Date, any additional licenses, permits, approvals, consents, certificates, registrations, and authorizations (whether governmental, regulatory, or otherwise) as may be necessary for the lawful operation of the Facilities from and after the Closing Date.



(b) Commencing as of the date of entry of the Sale Order, Buyer shall submit to NYSDOH one or more services agreements relevant or applicable to NYSDOH-regulated entities of Sellers (i.e., FBH/Nursing Facility and ACF/Adult Home) in substantially the form attached hereto as Exhibit A, with such titles and parties as required or appropriate (“Service Agreements for NYSDOH-Regulated Entities”) providing for the provision of administrative and consulting services by Buyer or any entity in the Friendly Home System, to NYSDOH-regulated Sellers to assist such Sellers in the continued operation of the NYSDOH-regulated Facilities until such time as CON Approval is received.

(c) Commencing as of the date of entry of the Sale Order, Buyer shall enter into services agreements relevant or applicable to non-NYSDOH-regulated entities of Sellers (i.e., Ministries/Community-Based Services and Distinctive Living/independent living community operated by Distinctive Living) in substantially the form attached hereto as Exhibit B, with such titles and parties as required or appropriate (“Service Agreements for Non-NYSDOH-Regulated Entities”) providing for the provision of administrative and consulting services by Buyer or any entity in the Friendly Home System, to non-NYSDOH-regulated Sellers to assist Sellers in the continued operation of the non-NYSDOH-regulated Facilities.

(d) Sellers shall submit any required documentation in order to obtain the Approving Order within fifteen (15) days of entry of the Sale Order. Any filing or other fees and other out-of-pocket expenses associated with Sellers obtaining the Approving Order shall be paid by Sellers. Sellers shall take no action prior to the Closing that might prevent the issuance of the Approving Order.

(e) During the period prior to the Closing Date, Sellers and Buyer shall act diligently and reasonably, and shall cooperate with each other, to do or cause to be done, all things necessary, proper or advisable consistent with applicable Legal Requirements to cause the contingencies and conditions precedent to the Closing to be satisfied and to cause the Closing to occur, including, to secure any consents and approvals of any Governmental Authority required to be obtained by them in order to assign, transfer or obtain any Permits issued by any Governmental Authority, to permit the consummation of the transactions contemplated by this Agreement or to otherwise satisfy the conditions set forth in Article IX, in each case as necessary to the extent such consents are not provided for or satisfied by the Sale Order. Notwithstanding anything to the contrary herein, any delay of the Buyer in obtaining approvals from any Governmental Authority shall not constitute a breach of this Agreement.

(f) To the extent practicable, Sellers and Buyer (i) shall promptly inform each other of any communication from any Governmental Authority concerning this Agreement, the transactions contemplated hereby, and any filing, notification or request for approval and (ii) shall permit the other Party to review in advance any proposed written communication or information submitted to any such Governmental Authority in response thereto. In addition, neither Party shall agree to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry with respect to this Agreement, or the transactions contemplated hereby, notification or request

for approval, unless it consults with the other Party in advance and, to the extent permitted by any such Governmental Authority, gives the other party the opportunity to attend and participate thereat, in each case to the maximum extent practicable. Subject to any restrictions under applicable laws, rules or regulations, each Party shall furnish the other with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective representatives on the one hand, and the Governmental Authority or members of its staff on the other hand, with respect to this Agreement, the transactions contemplated hereby (excluding documents and communications which are subject to preexisting confidentiality agreements or to the attorney-client privilege or work product doctrine) or any such filing, notification or request for approval. Each Party shall also furnish the other party with such necessary information and assistance as such other party and its Affiliates may reasonably request in connection with their preparation of necessary filings, registration or submissions of information to the Governmental Authority in connection with this Agreement, the transactions contemplated hereby and any such filing, notification or request for approval. Sellers and Buyer shall prosecute all required requests for approval with all necessary diligence and otherwise use their respective reasonable best efforts to obtain the grant thereof by an Order as soon as possible. Notwithstanding anything to the contrary herein, any failure to comply with this Section 7.2(f) shall not constitute a breach of this Agreement.

7.3 Operations Prior to the Closing Date. Prior to the Closing, Sellers shall maintain the Purchased Assets and operate the Facilities only in the ordinary course consistent with past practice in conformance with all Legal Requirements and any approved budget, including maintain proper business records, maintaining sufficient Inventory levels for operation of the Facilities in accordance with applicable laws and regulations, and maintaining the Purchased Assets in good operating condition, except as otherwise expressly provided in this Agreement. Consistent with the foregoing, Sellers shall use best efforts to continue operating the Facilities as going concerns, and to maintain the business organization of the Facilities intact. Commencing as of the date of entry of the Sale Order, and subject to any necessary Bankruptcy Court approval or consent related thereto, Buyer shall enter into one or more interim consulting agreements in substantially the form attached hereto as Exhibit C, with such titles and parties as required or appropriate (the “Interim Consulting Agreements”) with NYSDOH-regulated Sellers whereby Buyer or any entity in the Friendly Home System would provide consulting services to assist NYSDOH-regulated Sellers in the continued operation of the NYSDOH-regulated Facilities until such time as (i) Buyer receives approval from the NYSDOH or PHHPC, as applicable, of one or more Service Agreements for NYSDOH-Regulated Entities, or (ii) CON Approval is received, whichever occurs earlier.

7.4 Insurance; Damage; Destruction. Until the Closing, Sellers shall maintain (including necessary renewals thereof) insurance policies against risk and liabilities to the extent and in the manner and at the levels heretofore maintained by Sellers with respect to the Facilities and the Purchased Assets. Until the Closing, the Purchased Assets shall remain at the risk of Sellers. In the event of any material damage to or destruction of any Purchased Asset (other than normal wear and tear) after the date hereof and prior to the Closing (in any such case, a “Loss”), Sellers shall give notice thereof to Buyer. If any such Loss is covered by policies of insurance, all right and claim of Sellers to any proceeds of insurance for such Loss shall be assigned and (if previously received by Sellers and not used prior to the Closing Date to repair any damage or

destruction) paid to Buyer at Closing, and Buyer shall complete the transactions contemplated by this Agreement without any reduction in the Purchase Price with respect to such Loss, though Buyer shall receive a credit against the Purchase Price of any uninsured or underinsured amounts and any deductible. If any such Loss is not recovered by policies of insurance, Buyer shall have the right to reduce the Purchase Price by an amount equal to (y) the estimated cost to repair or restore the Purchased Assets affected by such Loss (the “Affected Assets”) to substantially repair or restore their condition immediately prior to the occurrence of such Loss, or (z) if such Affected Assets are destroyed or damaged beyond repair, the replacement cost of the Affected Assets and, in either case Buyer shall complete the transactions contemplated by this Agreement and all compensation payable on account of such Loss shall be retained by Sellers. If Buyer elects to reduce the Purchase Price pursuant to this Section 7.4, Sellers and Buyer shall negotiate in good faith in an effort to agree upon the amount of such reduction. If the Parties are unable to reach agreement within five (5) Business Days after notice of the Loss is given by Sellers, then the amount of the reduction shall be determined by an independent, qualified insurance adjuster selected by the Parties (or, if they are unable to agree on such selection, one appointed by the Bankruptcy Court upon application of either Party).

7.5 Confidentiality. The Parties agree and acknowledge that the Purchased Assets include confidential information of the Facilities which will be transferred to Buyer at the Closing. Subject to the requirements of the Bankruptcy Code or as may be imposed by the Bankruptcy Court, from and after the Closing: (a) Sellers shall, and shall cause its Affiliates to, hold in confidence all confidential information (including patient information, marketing plans and pricing information) included in the Purchased Assets and transferred to Buyer; (b) in the event that Sellers or its Affiliates shall be legally compelled to disclose any such information, Sellers shall provide Buyer with prompt written notice of such requirement so that Buyer may seek a protective order or other remedy; and (c) in the event that such protective order or other remedy is not obtained, Sellers or its Affiliates shall furnish only such information as is legally required to be provided.

7.6 Bankruptcy Court Matters.

(a) Sellers and Buyer acknowledge that this Agreement and the sale of the Purchased Assets are subject to Bankruptcy Court approval.

(b) From and after the date hereof, Sellers shall not take any action that is intended to result in, or fail to take any action the intent of which failure to act would result in, the reversal, voiding, modification or staying of the Sale Order.

(c) Sellers shall promptly make any filings, take all actions and use reasonable best efforts to obtain any and all relief from the Bankruptcy Court that is necessary or appropriate to consummate the transactions contemplated by this Agreement. Sellers shall provide Buyer with drafts of any and all pleadings and proposed orders to be filed or submitted in connection with this Agreement for Buyer’s prior review and comment and shall cooperate with Buyer to make reasonable changes. In the event the entry of the Sale Order is appealed, Sellers shall immediately consult with their legal counsel and if deemed appropriate, diligently defend such appeal and any stay pending appeal that may be filed in connection therewith. Notwithstanding the foregoing, any resulting changes to this

Agreement or any other Ancillary Agreement or any resulting changes to the Sale Order shall be subject to Buyer's approval in its sole and absolute discretion.

7.7 Notification of Breach; Disclosure. Sellers shall promptly notify Buyer of (a) any event, condition or circumstance of which Sellers become aware after the date hereof and prior to the Closing Date that would constitute a violation or breach of this Agreement (or a breach of any representation or warranty contained in this Agreement) or, if the same were to continue to exist as of the Closing Date, would constitute the nonsatisfaction of any of the conditions set forth in Article IX, as the case may be or (b) any event, occurrence, transaction or other item of which Sellers become aware which would have been required to have been disclosed on any scheduled attached hereto had such event, occurrence, transaction or item existed as of the date hereof. During the period prior to Closing Date, Sellers will promptly advise Buyer in writing of any written notice from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement.

7.8 Financing. Buyer shall use its reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to obtain mortgage financing on commercially reasonable terms with the intent to refinance the Mortgage Debt at the Closing (the "Mortgage Financing"). Sellers shall use its and their reasonable best efforts to provide such cooperation as may be reasonably requested by Buyer in connection with the Mortgage Financing.

7.9 Condemnation. If, between the date hereof and the Closing, any condemnation or eminent domain proceedings are initiated which would result in the taking of all or any material portion of the Real Property, then Buyer may elect to terminate this Agreement by giving written notice of its election to Sellers within fifteen (15) days after receiving notice of such prospective taking. For purposes of this Agreement a condemnation or eminent domain proceeding has been "initiated" if Sellers has received a written notice from the applicable authority that all or any portion of the Premises is to be taken from any of the Sellers. If Buyer shall so elect to terminate this Agreement then (i) Buyer shall be entitled to the return of the Deposit and (ii) neither party hereto shall have any further obligations or liabilities to the other under this Agreement, except for those which expressly survive the termination of this Agreement. In such event, all of Sellers' right, title and interest in and to any condemnation proceeds paid or payable in connection therewith shall be assigned to Buyer, and Sellers shall cooperate with Buyer in taking all steps necessary or appropriate to effect such assignment. For the purposes of this Paragraph, "material portion" shall mean any taking that takes more than five (5%) of the net rentable area of the Real Property or 5% of the parking area of the Real Property. If, between the date hereof and the Closing, any condemnation or eminent domain proceedings are initiated which would result in the taking of less than, a material portion of the Premises or enough to entitle any tenant to terminate its lease, then neither Sellers nor Buyer may terminate this Agreement and the parties shall proceed to the Closing without reduction of or offset against the Purchase Price and Buyer shall have no other claim against Sellers. In such event, all of Sellers' right, title and interest in and to any condemnation proceeds paid or payable in connection therewith shall be assigned to Buyer, and Sellers shall cooperate with Buyer in taking all steps necessary or appropriate to effect such assignment.

## ARTICLE VIII. ADDITIONAL AGREEMENTS

### 8.1 Taxes.

(a) To the extent applicable, all Real Property Taxes and similar ad valorem obligations levied with respect to the Real Property portion of the Purchased Assets, whether imposed or assessed before or after the Closing Date (“Periodic Taxes”) for a taxable period that includes (but does not end on) the Closing Date (the “Straddle Period”), shall be apportioned between Sellers and Buyer as of the Closing Date based on the number of days of such taxable period included in the period ending with and including the Closing Date divided by the number of days in the taxable period (the “Pre-Closing Straddle Period”), and the number of days of such taxable period beginning after the Closing Date divided by the number of days in the taxable period (the “Post-Closing Straddle Period”). Sellers shall be responsible for all Periodic Taxes for the Pre-Closing Straddle Period (and any taxable periods ending prior to the Closing Date) and shall, as soon as practicable, provide Buyer with such documentation, as Buyer may reasonably request, evidencing the payment of such Periodic Taxes, and Buyer shall be responsible for all Periodic Taxes for the Post-Closing Straddle Period (and any taxable periods ending after the Post-Closing Straddle Period). At the Closing, Buyer shall be credited with an amount equal to any unpaid Periodic Taxes attributable to Pre-Closing Straddle Period and Sellers shall be credited with an amount equal to any Periodic Taxes paid by Sellers but apportioned hereunder to the Post-Closing Straddle Period (each determined in accordance with the foregoing principles). Buyer shall be responsible for the payment of unpaid Periodic Taxes to the applicable Governmental Authority, but nothing herein shall relieve Sellers from liability for the payment of Periodic Taxes as provided in this Section 8.1. Sellers shall be responsible for Tax Returns required to be filed for taxable periods ending prior to the Closing Date and Buyer shall be responsible for preparing and filing all Tax Returns required to be filed for all taxable periods ending after the Closing Date (including the Straddle Period).

(b) Any sales Tax, use Tax, real property transfer or gains Tax, documentary stamp Tax or similar Tax attributable to the sale or transfer of the Purchased Assets and not exempted under the Sale Order or exemptions under laws applicable to the parties (“Transfer Taxes”) shall be borne by Sellers. Sellers and Buyer shall use reasonable efforts and cooperate in good faith to exempt the sale and transfer of the Purchased Assets from any such Transfer Taxes. Sellers shall prepare and file all necessary Tax Returns or other documents with respect to all such Transfer Taxes; provided, however, that in the event any such Tax Return requires execution by Buyer, Sellers shall prepare and deliver to Buyer a copy of such Tax Return prior to closing. Buyer shall promptly execute such Tax Return and deliver it to Sellers at Closing for deliver to Title Company, which shall cause it to be filed.

(c) Except for Periodic Taxes credited at Closing in accordance with Section 8.1(a), Sellers or Buyer, as the case may be, shall provide reimbursement for any Tax paid by one Party all or a portion of which is the responsibility of the other Party in accordance with the terms of this Section 8.1. Within a reasonable time prior to the payment of any said Tax, the Party paying such Tax shall give notice to the other of the Tax payable and

each Party's respective liability therefor, although failure to do so will not relieve the other Party from its liability hereunder.

(d) Buyer and Sellers agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Facilities and the Purchased Assets (including access to books and records) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any taxing authority and the prosecution or defense of any claims, suit or proceeding relating to any Tax; provided, however, that neither Buyer nor Sellers shall be required to disclose the contents of its income tax returns to any Person. Any expenses incurred in furnishing such information or assistance pursuant to this Section 8.1(d) shall be borne by the Party requesting it.

(e) Notwithstanding anything set forth in this Section 8.1, Buyer shall be entitled to all Tax refunds and Tax credits related to the Real Property that are first refunded or credited on or after the Closing Date, irrespective of whether such Tax refunds or Tax credits relate to the pre-Closing period.

## 8.2 Employees.

(a) Sellers shall terminate the employment of all employees at the Facilities effective as of the Closing Date. Buyer shall offer employment from and after the Closing Date to Sellers' employees. Following the Closing Date, Buyer shall retain all such employees for at least sixty (60) days (the "Post-Closing Employment Transition Period") except with regard to (i) termination of employment for cause or (ii) the nursing home administrator, the director of nursing or any other supervisors. Buyer shall not reduce wages or benefits, or modify any other terms and conditions of employment, economic or otherwise during the Post-Closing Employment Transition Period. Notwithstanding the foregoing, following the expiration of the Post-Closing Employment Transition Period, nothing contained in this Agreement shall be construed to prevent the termination of employment of any individual, require minimum benefit or compensation levels or prevent any change in the employee benefits provided to any employee hired by Buyer. Any offer of employment will be subject to Sellers' employee's successful completion of clearances required by law or by Buyers internal policies. To assist Buyer in the evaluation of Sellers' employees, and consistent with applicable Law, Sellers shall provide Buyer access to the personnel records and personnel files of such employees, and shall provide such other information regarding their employees as Buyer may reasonably request. No provision of this Agreement shall create any third-party beneficiary rights in any employee or former employee of Sellers or any other Person or entities (including any beneficiary or dependent thereof) of any nature or kind whatsoever, including without limitation, in respect of continued employment (or resumed employment) for any specified period.

(b) Sellers shall provide to Buyer all information as reasonably requested by Buyer to provide notices and COBRA continuation coverage to the extent applicable.

8.3 Collections on Purchased Assets. If, after the Closing Date, Sellers shall receive payment with respect to any Purchased Assets, Sellers shall immediately deliver such funds or

assets to Buyer and take all steps necessary to vest title to such funds or assets in Buyer. Sellers hereby designate Buyer and its respective officers as Sellers' true and lawful attorney-in-fact, with full power of substitution, to execute and endorse for the benefit of Buyer all checks, notes or other documents received by Sellers in payment of or in substitution or exchange for any of the Purchased Assets. Sellers hereby acknowledge and agree that the power of attorney set forth in the preceding sentence in favor of Buyer is coupled with an interest, and further agrees to execute and deliver to Buyer from time to time any documents or other instruments reasonably requested by Buyer to evidence such power of attorney. If after the Closing Date, Buyer shall receive payment with respect to any Excluded Assets, Buyer shall immediately deliver such funds or assets to Sellers on mutually agreeable terms.

8.4 Real Property Proration. At the Closing, all items of income and expense with respect to the Real Property listed on Schedule 2.1(c) shall be prorated by the parties as of 12:01 a.m. on the Closing Date. With respect to any amounts that have not yet been billed or otherwise determined, Sellers and Buyer shall prorate such amounts based on the most recent ascertainable bill.

8.5 Access to Excluded Assets and Excluded Liabilities. From time to time during the period following the Closing, upon no less than two (2) Business Days prior request specifying the scope of the access, Buyer shall provide Sellers with reasonable access to the Purchased Assets and Buyer's personnel during normal business hours to assist Sellers in the administration, settlement, collection, payment and disposition of the Excluded Assets and the Excluded Liabilities, as applicable. Such access shall not interfere with the operation of the Facilities and shall be at Sellers' sole cost and expense for any out-of-pocket costs or charges. Sellers acknowledge that Buyer shall have no obligation to maintain or continue any Contracts, Leases, Intellectual Property or other Purchased Assets after the Closing for any such purposes of Sellers.

## **ARTICLE IX. CONDITIONS AND CONTINGENCIES TO CLOSING**

9.1 Conditions and Contingencies to Obligations of Each Party. The respective obligations of each Party under this Agreement, including the obligation to effect the sale and purchase of the Purchased Assets, shall be subject to the fulfillment on or prior to the Closing Date, of the following conditions and contingencies:

(a) the Bankruptcy Court shall have entered the Sale Order in the Bankruptcy Case, and the Bankruptcy Court shall have waived the stay imposed by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure as to the Sale Order, authorizing the Transactions and approving this Agreement under Sections 105(a), 363 and 365 of the Bankruptcy Code, in form and substance reasonably acceptable to Sellers and Buyer, and the Sale Order shall contain findings that Buyer acquired the Purchased Assets in good faith, for fair value, in an arm's length transaction, and as of the Closing Date the Sale Order shall be in full force and effect, shall not then be stayed, and shall not have been vacated, amended or reversed;

(b) the Sale Order and the Approving Order shall have been obtained, or waiting periods following such governmental filings, if applicable, shall have expired; and

(c) no Governmental Authority shall have enacted, issued, promulgated or entered any Order that is in effect and has the effect of enjoining, making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement that has not been withdrawn or terminated.

9.2 Conditions and Contingencies to Obligations of Buyer. The obligations of Buyer under this Agreement, including the obligation to effect the purchase of the Purchased Assets contemplated by this Agreement shall be subject to the fulfillment on or prior to the Closing Date of the following additional conditions and contingencies:

(a) the representations and warranties of Sellers contained in this Agreement must be true and correct in all material respects on and as of the date hereof and the Closing date, except that any such representations or warranties which expressly relate only to an earlier date need only have been accurate in all material respects as of such date, and Buyer shall have received a certificate of Sellers to such effect signed by a duly authorized officer thereof;

(b) each covenant and obligation that Sellers is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been duly performed and complied with in all material respects, and Buyer shall have received a certificate of Sellers to such effect signed by a duly authorized officer thereof;

(c) Buyer shall have obtained from all relevant Governmental Authorities, including the NYSDOH and the PHHPC, (i) approval for the Buyer to enter into the transactions contemplated by this Agreement, (ii) and all necessary non-contingent licenses, CON Approvals and Permits for Buyer to operate the Purchased Assets and the Facilities as they are currently operated; provided that approval of the Service Agreements for NYSDOH-Regulated Entities shall not be a condition to Closing;

(d) Buyer and Sellers shall have filed such required forms and met applicable regulatory and Government Authority requirements in order to effect the assignment of Sellers' Medicare Provider Agreements and the transfer of Sellers' Medicaid Provider Agreements to Buyer to bill and receive payment for services rendered to Medicare and Medicaid beneficiaries using the Purchased Assets, effective as of Closing, including receipt of tie-in letters and such other appropriate documentation;

(e) since the date hereof, there shall not have occurred any changes, effects or circumstances constituting, or which would reasonably be likely to result in, individually or in the aggregate, a Material Adverse Effect;

(f) Buyer shall have received assurances from a lender, on commercially reasonable terms and in Buyer's Discretion, of the Mortgage Financing;

(g) Buyer shall have received (i) policies of title insurance on forms of, and issued by, a title company acceptable to Buyer, in Buyer's Discretion, in amounts and otherwise in form acceptable to Buyer, in Buyer's Discretion, insuring the title of Buyer to the Real Property described in Schedule 5.4(a), which policies shall be subject only to such



Permitted Encumbrances and such other exceptions as are reasonably satisfactory to Buyer, in Buyer's Discretion, and shall include such endorsements as Buyer, in Buyer's Discretion, shall request, and (ii) surveys that are satisfactory to Buyer, in Buyer's Discretion, sufficient to allow the removal of any survey exceptions from any title insurance policies that Buyer obtains on the Real Property described in Schedule 5.4(a);

(h) As of the Closing, the Sale Order shall not have been reversed, stayed, vacated, modified or amended without the prior written consent of the Buyer;

(i) Sellers shall not have sold, transferred, or made any other disposition, directly or indirectly, of any material portion of the Facilities in connection with the closure, liquidation or winding up of the Facilities, nor shall Sellers have sought any relief from the Bankruptcy Court permitting it to do any of the foregoing;

(j) a trustee under Chapter 11 of the Bankruptcy Code shall not have been appointed for Sellers and rejected the transactions contemplated by this Agreement;

(k) each of the deliveries required to be made to Buyer pursuant to Section 4.4 shall have been so delivered;

(l) Buyer shall have obtained the concurrences of the necessary Governmental Authorities to the effect that Buyer will not be required to comply with any additional Legal Requirements concerning construction, physical plant, structural requirements and physical integrity as a result of Sellers' transfer of the Purchased Assets to Buyer, and Buyer shall have obtained, or have a reasonable belief that it will obtain, from all of the necessary Governmental Authorities, including the zoning board, all governmental approvals, Permits, clearances and contracts necessary or appropriate for the Buyer's operation of the Facilities as previously operated following the Closing;

(m) Buyer shall have been provided with the opportunity to conduct a pre-Closing inspection of the Purchased Assets;

(n) Buyer shall have received a Phase I Environmental Assessment for the Real Property, which Buyer may waive; and

(o) Sellers shall have prepared the Schedules to this Agreement which are satisfactory to Buyer, in Buyer's Discretion, containing information which Buyer, in Buyer's Discretion finds acceptable, and the Parties have completed the Exhibits to this Agreement, acceptable to the Buyer, in Buyer's Discretion.

Any condition or contingency specified in this Section 9.2 may be waived by Buyer, in whole or in part; provided that no such waiver shall be effective against Buyer unless it is set forth in a writing.

9.3 Conditions and Contingencies to Obligations of Sellers. The obligation of Sellers to effect the sale of the Purchased Assets contemplated by this Agreement shall be subject to the fulfillment on or prior to the Closing Date of the following additional conditions and contingencies:

(a) the representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on and as of the date hereof and the Closing date (without giving effect to any materiality qualifiers therein), except that any such representations or warranties which expressly relate to an earlier date need only have been accurate as of such date, and Sellers shall have received a certificate of Buyer to such effect signed by a duly authorized officer thereof;

(b) each covenant and obligation that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been duly performed and complied with in all material respects (without giving effect to any materiality qualifiers therein), and Seller shall have received a certificate of Buyer to such effect signed by a duly authorized officer thereof;

(c) the Sale Order shall not have been reversed, stayed, vacated, modified or amended without the prior written consent of the Buyer;

(d) each of the deliveries required to be made to Sellers pursuant to Section 4.3 shall have been so delivered; and

(e) the Purchase Price shall have been delivered as set forth in Article III.

Any condition or contingency specified in this Section 9.3 may be waived by Sellers; provided that no such waiver shall be effective against Sellers unless it is set forth in writing executed by Sellers.

9.4 Acceleration of Closing. In the event that all conditions and contingencies to Closing have been met or waived other than (a) the CON Approval with respect to the Adult Home and/or the Approving Order with respect to the transfer of assets by ACF or (b) Section 9.2(d) with respect to the Adult Home, the Parties will proceed to Closing, including payment of the Purchase Price in full, within such timeframe as required by applicable law or Governmental Authority requirements for the change of ownership of the Nursing Facility. In such event, following the Closing, the Parties agree that (i) the transfer of ownership and operations of the Adult Home and the Purchased Assets used in connection with or related to the operation of the Adult Home to Buyer, and Buyer's assumption of any Assumed Liabilities related to the operation of the Adult Home, will occur at such time as the requisite CON Approval for the Adult Home is received and Section 9.2(d) has been satisfied with respect to the operations of the Adult Home, (ii) any failure to obtain CON Approval with respect to the Adult Home or any failure to satisfy Section 9.2(d) with respect to the Adult Home after the Closing shall not give rise to any breach by Sellers under this Agreement or any right for either Party to terminate under Article X, unless such failures are due, in whole or in part, to the actions or inactions of Sellers, (iii) in the immediately foregoing event, the Parties will work forwards a mutually agreeable transition plan, and (iv) in such case, in the event such transition plan results in the transfer of the Adult Home to another entity for value, the proceeds of such transfer shall be payable to Buyer.

## ARTICLE X. TERMINATION

10.1 Termination. Anything contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated at any time prior to the Closing Date:

- (a) by the mutual consent of Buyer and Sellers;
- (b) by either Party if a Governmental Authority issues a ruling or Order prohibiting the transactions contemplated hereby or if Buyer's application for establishment approval or any other approval, including but not limited to the CON Approval, has been proposed for disapproval by the PHHPC or disapproved by the NYSDOH; provided that the disapproval or failure to approve any Service Agreement for NYSDOH-Regulated Entities shall not be grounds for termination hereunder;
- (c) by Buyer in the event of any material breach by Sellers of any of Sellers' agreements, covenants, representations or warranties contained herein or in the Sale Order, and the failure of Sellers to cure such breach within seven (7) days after receipt of notice thereof; provided, however, that Buyer (i) notifies Sellers in writing of its intention to exercise its termination rights under this Agreement as a result of the breach and (ii) specifies in such termination notice the representation, warranty or covenant contained herein or in the Sale Order of which Sellers is allegedly in material breach;
- (d) by Sellers in the event of any material breach by Buyer of any of Buyer's agreements, representations or warranties contained herein or in the Sale Order, and the failure of Buyer to cure such breach within seven (7) days after receipt of notice thereof; provided, however, that Sellers (i) is not itself in material breach of any of its representations, warranties or covenants contained herein or in the Sale Order, (ii) notifies Buyer in writing of its intention to exercise its termination rights under this Agreement as a result of the breach, and (iii) specifies in such termination notice the representation, warranty or covenant contained herein or in the Sale Order of which Buyer is allegedly in material breach;
- (e) by Sellers, if (i) Sellers execute a definitive agreement with a third party (other than Buyer) for an Alternative Proposal, and (ii) the Bankruptcy Court enters an order in the Bankruptcy Case approving such definitive agreement;
- (f) by Buyer if (i) in Buyer's Discretion, any Person seeks authority to withdraw, amend, modify or vacate the Sale Order or (ii) Sellers cease to operate the Facilities as a going concern;
- (g) by Buyer, if Buyer is not the successful bidder at the auction; whether or not Buyer's bid is determined to be the backup bid;
- (h) by Buyer, if Sellers seeks authority from the Bankruptcy Court to sell, transfer or otherwise dispose, directly or indirectly, of any portion of the Purchased Assets, other than as provided herein;

(i) by Buyer, if a trustee is appointed for Sellers under Chapter 11 of the Bankruptcy Code and such trustee rejects the transactions contemplated by this Agreement;

(j) by Buyer if the DIP Credit Agreement is terminated before the Closing Date;

(k) by Buyer, if any condition or contingency to the obligations of Buyer under this Agreement set forth in Sections 9.1 or 9.2 shall not have been fulfilled, as determined by Buyer, in Buyer's Discretion, other than as a result of a breach by Buyer of any covenant or agreement contained in this Agreement and other than as described in Section 9.4;

(l) by Buyer, if an event in excess of Two Hundred Fifty Thousand Dollars (\$250,000) threshold occurs pursuant to Section 7.4; and

(m) by either Party, if the Closing has not occurred on or before June 30, 2023, provided that such date may be extended by mutual agreement of the Parties, both acting in good faith to work towards the Closing.

#### 10.2 Effect of Termination.

(a) In the event of termination of this Agreement by either Party, except as otherwise provided in this Section 10.2, all rights and obligations of the Parties under this Agreement shall terminate without any liability of any party to any other party, except that nothing in this Agreement will relieve any party from liability for any willful breach of any representation, warranty, covenant or agreement set forth in this Agreement prior to such termination. The provisions of Sections 10.2 and 11.11 shall expressly survive the expiration or termination of this Agreement.

(b) In the event of a termination of this Agreement pursuant to Sections 10.1(a), (b), (c), (e), (f), (g), (h), (i), (j), (k), (l), (m), or Section 7.9, the Deposit shall be released to Buyer by the Escrow Agent.

(c) In the event of a termination of this Agreement by Sellers pursuant to Section 10.1(d), the Deposit shall be released to Sellers by the Escrow Agent in full satisfaction of all damages incurred by Sellers. Except for being allowed to keep the Deposit, Sellers shall be entitled to no further direct or indirect or consequential damages, or otherwise.

(d) In the event of a termination of this Agreement pursuant to Section 10(e), and subject to the consummation of the Alternative Proposal, Buyer shall be entitled to the payment of the Break-Up Fee via wire transfer of immediately available funds at the closing of the Alternative Proposal.

10.3 Specific Performance. In the event that the Sale Order is entered by the Bankruptcy Court, Buyer shall be entitled to seek specific performance for a breach by Sellers of its obligations hereunder.

### **ARTICLE XI. GENERAL PROVISIONS**

11.1 Survival of Obligations. The representations and warranties respectively made by the Parties in this Agreement and in any certificate delivered hereunder will expire as of the Closing. Subsequent to Closing, no Claim with respect to any breach of any representation or warranty contained in this Agreement and no Claim with respect to any known breach of a covenant to be performed at or prior to Closing contained in this Agreement may be pursued or maintained (either hereunder or otherwise) against any Party. The Parties hereto agree that the covenants contained in this Agreement to be performed after the Closing shall survive the Closing hereunder, and each Party hereto shall be liable to the other after the Closing for any breach thereof.

11.2 No Public Announcement. Neither Sellers nor Buyer shall, without the approval of the other, make any press release or other public announcement concerning the transactions contemplated by this Agreement, except as and to the extent that any such Party shall be so obligated by law, in which case the other Party shall be advised and the Parties shall use their best efforts to cause a mutually agreeable release or announcement to be issued.

11.3 Notices. Except as otherwise expressly provided for in this Agreement, all notices or other communications required or permitted hereunder shall be in writing and shall be given or delivered by personal delivery, or by facsimile or by a nationally recognized private overnight courier service addressed as follows:

If to Buyer, to:

Eastside Senior Care, Inc.  
3156 East Avenue  
Rochester, NY 14618  
Attn: Glen Cooper  
Tel: (585) 789-3351  
Email: gcooper@friendlyseniorliving.org

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

Harter Secrest & Emery LLP  
1600 Bausch & Lomb Place  
Rochester, NY 14604  
Attn: Joseph Casion, Esq.  
Tel: (585) 231-1407  
Email: jcasion@hselaw.com

If to Sellers, to:

Fairport Baptist Homes  
4646 Nine Mile Point Road  
Fairport, NY 14450  
Attn: Tom Poelma  
Tel: (585) 388-2300  
Email: tpoelma@fbhcm.org

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

Lippes Mathias LLP  
50 Fountain Plaza, Suite 1700  
Buffalo, NY 14202  
Attn: John A. Mueller, Esq.  
Tel: (716) 362-7614  
Email: jmueller@lippes.com

or to such other address as such party may indicate by a notice delivered to the other party hereto.

Any notice, consent, authorization, direction or other communication delivered as aforesaid shall be deemed to have been effectively delivered and received, if sent by a nationally recognized private overnight courier service, on the Business Day following the Business Day upon which it is delivered for overnight delivery to such courier service, if sent by facsimile, on the date of confirmation of transmission, or, if delivered personally, on the date of such delivery.

#### 11.4 Successors and Assigns.

(a) The rights of each Party under this Agreement shall not be assignable by such Party prior to the Closing without the written consent of the other Party, except that all or any portion of the rights of Buyer hereunder may be assigned prior to the Closing, without the consent of Sellers, to any Affiliate of Buyer.

(b) This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns. The successors and permitted assigns hereunder shall include any permitted assignee as well as the successors in interest to such permitted assignee (whether by merger, consolidation, liquidation (including successive mergers, consolidations or liquidations) or otherwise). Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any Person other than the parties and successors and assigns permitted by this Section 11.4 any right, remedy or claim under or by reason of this Agreement.

11.5 Entire Agreement; Amendments. This Agreement and the Exhibits and Schedules referred to herein and the documents delivered pursuant hereto contain the entire understanding of the Parties with regard to the subject matter contained herein or therein, and supersede all prior agreements, understandings or letters of intent between or among any of the Parties. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of the Parties.

11.6 Waivers. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, in whole or in part, by the Party entitled to the benefit thereof. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any Party, it is authorized in writing by an authorized representative of such Party. There shall be no implied waiver of any term or condition of this Agreement resulting from the action or inaction of any Party. The failure of any Party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the

validity of this Agreement or any part hereof or the right of any Party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

11.7 Expenses. Except as otherwise provided herein, each Party will pay all costs and expenses incident to its negotiation and preparation of this Agreement and to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel and accountants.

11.8 Partial Invalidity. Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

11.9 Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by and delivered to each of the Parties. Delivery of an executed counterpart of a signature page to this Agreement by facsimile, email, portable document format (PDF) or electronic signature software shall be effective as delivery of a manually executed counterpart of this Agreement.

11.10 Further Assurances. At the Closing, and at all times thereafter as may be necessary, and subject to any approval of the Bankruptcy Court that may be required, Seller and Buyer shall execute and deliver, or cause to be executed and delivered, such other documents, including instruments of conveyance and transfer, as shall be reasonably necessary or appropriate to vest in Buyer title to the Purchased Assets free and clear of all Liens, Claims, Interests and Encumbrances (other than Permitted Encumbrances and Assumed Liabilities), and to comply with the purposes and intent of this Agreement and the Ancillary Documents. Sellers and Buyer shall cooperate with one another to execute and deliver such other documents and instruments as may be reasonably required to carry out the transactions contemplated by this Agreement and the Ancillary Documents.

11.11 Governing Law.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed in and to be performed in the State of New York, without regard to conflicts-of-laws principles (whether of the State of New York or any other jurisdiction) that would require the application of the laws of any jurisdiction other than the State of New York.

(b) Without limiting any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be

connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereunder, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 11.3 hereof. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each of the Parties hereto hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 11.3.

(c) THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF SELLER, BUYER OR THEIR RESPECTIVE REPRESENTATIVES IN THE NEGOTIATION OR PERFORMANCE HEREOF.

11.12 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

[SIGNATURE PAGE TO FOLLOW]



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

**SELLERS:**

**Fairport Baptist Homes**

By: \_\_\_\_\_  
Name:  
Title:

**Fairport Baptist Homes Adult Care Facility, Inc.**

By: \_\_\_\_\_  
Name:  
Title:

**FBH Community Ministries**

By: \_\_\_\_\_  
Name:  
Title:

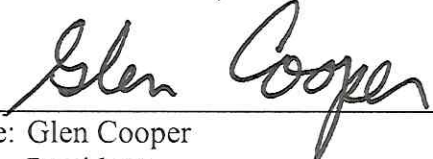
**FBH Distinctive Living Communities, Inc.**

By: \_\_\_\_\_  
Name:  
Title:

Execution Pending

**BUYER:**

**Eastside Senior Care, Inc.**

By:   
Name: Glen Cooper  
Title: President

[Signature Page to A&R Asset Purchase Agreement - Buyer]

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Case 2-22-20220-PRW, Doc 253-1, Filed 08/23/22, Entered 08/23/22 16:30:35,  
Description: Amended APA, Page 49 of 117

**Schedule 2.1(c)**  
**Real Property**

See attached.

**EXHIBIT A**  
**LEGAL DESCRIPTION**

**PARCEL ONE**

ALL THAT TRACT OR PARCEL OF LAND containing 7.612 acres of land, more or less, situate in Township 12, Range 4 in Town Lot No. 42 in the Town of Perinton, County of Monroe and State of New York, as shown on a drawing entitled "Fairport Baptist Homes - H. U. D. Project # 014 - 43117, ALTA/ACSM Land Title Survey", prepared by BME Associates, dated April, 2013 and last revised September 18, 2014, having drawing number 9534A-01 (Sheet 1 of 2), being more particularly bounded and described as follows:

Commencing at a point, said point being a rebar at the intersection of the center line of Fairport-Nine Mile Point Road (NYS Route 250) {width varies} with the centerline of Whitney Road (County Route 17)(66" wide right-of-way);

thence (A) N 89° 47' 49" E, along the center line of Whitney Road, a distance of 455.30 feet to the intersection of said center line with the southerly extension of the westerly line of lands now or formerly owned by Fairport Apartments, Inc. (Tax Account No. 153.050-01-014);

thence (B) N 00° 08' 03" W, along said extension of the westerly line of Fairport Apartments, Inc., a distance of 33.00 feet to a point on the northerly right-of-way line of Whitney Road, said point being the Point of Beginning:

thence (1) S 89° 47' 49" W, along said northerly line of Whitney Road, a distance of 402.30 feet to the westerly corner of a triangular parcel of land acquired by the County of Monroe at the northeasterly corner of said Whitney Road and said Fairport-Nine Mile Point Road (as shown on a plan prepared by the Monroe County Department of Engineering, Map No. 19, Parcel No. 19, dated February 19, 1985);

thence (2) N 45° 10' 07" W, along the northeasterly line of said parcel of land acquired by the County of Monroe, a distance of 28.27 feet to the northerly corner thereof;  
thence the following five courses along the easterly right-of-way line of said Fairport-Nine Mile Point Road (NYS Route 250);

(3) N 00° 08' 03" W a distance of 352.53 feet to a point;

(4) N 16° 00' 03" E a distance of 43.18 feet to a point;

(5) N 00° 07' 12" W a distance of 349.99 feet to a point;

(6) N 05° 18' 43" W a distance of 132.55 feet to a point;

(7) N 00° 07' 03" W a distance of 88.09 feet to a point on the southerly line of lands now or formerly owned by Lawrence and Elaine Kleinhenz (Tax Account No. 153.05-01-017);

thence (8) N 89° 43' 57" E. along said southerly line of Kleinhenz, a distance of 222.15 feet to the northwesterly corner of other lands to me mortgaged by Fairport Baptist Homes;  
thence the following five courses along the westerly line of Parcel Two herein being mortgaged;

(9) S 00° 08' 03" E a distance of 369.10 feet to a point;

(10) N 89° 51' 57" E a distance of 105.00 feet to a point;

(11) S 00° 08' 03" E a distance of 50.00 feet to a point;

(12) N 89° 51' 57" E a distance of 95.00 feet to a point;

(13) S 00° 08' 03" E a distance of 65.00 feet to the northwesterly corner of said lands now or formerly of Fairport apartments, Inc.;

thence (14) S 00° 08' 03" E and along said westerly line of lands of Fairport Apartments, a distance of 500.00 feet to the point or place of beginning.

#### PARCEL TWO

ALL THAT TRACT OR PARCEL OF LAND containing 10.976 acres of land, more or less, situate in Township 12, Range 4, Town Lot 42 in the Town of Perinton, County of Monroe, and State of New York as shown on a drawing entitled "Fairport Baptist Homes - H. U. D. Project # 014 - 43117 ALTA/ACSM Land Title Survey", prepared by BME Associates, dated April, 2013 and last revised September 18, 2014, having drawing number 9534A (Sheet 2 of 2), being more particularly bounded and described as follows:

Commencing at a Point, said point being a rebar at the intersection of the center line of Fairport-Nine Mile Point Road (NYS Route 250) (width varies) with the center line of Whitney Road (County Route 17) (66' wide right-of-way);

thence (A) N 89° 47' 49" E and along said center line of Whitney Road, a distance of 855.30 feet to the intersection of said center line with the southerly extension of easterly line of lands now or formerly owned by Fairport Apartments, Inc. (Tax Account No. 153.040-01-014);

thence (B) N 00° 08' 03" W and along said extension of the easterly line of Fairport Apartments, Inc., a distance of 33.00 feet to a point on the northerly right-of-way line of Whitney Road, said point being the Point of Beginning;

thence (1) N 00° 08' 03" W, along said easterly line of Fairport Apartments, Inc., a distance of 500.00 feet to the northeasterly corner thereof;

thence 2) S 89° 47' 49" W, along the northerly line of said Fairport Apartments, Inc., a distance of 400.00 feet to the northwesterly corner thereof;

thence the following five courses follow the easterly line of Parcel One herein being mortgaged by Fairport Baptist Homes;

(3) N 00° 08' 03" W a distance of 65.00 feet to a point;

(4) S 89° 51' 57" W a distance of 95.00 feet to a point;

(5) N 00° 08' 03" W a distance of 50.00 feet to a point;

(6) S 89° 51' 57" W a distance of 105.00 feet to a point;

(7) N 00° 08' 03" W a distance of 369.10 feet to a point on the southerly line of lands now or formerly owned by Lawrence and Elaine Kleinhenz (Tax Account No. 153.05-01-017);

thence (8) N 89° 43' 57" E, along said southerly of Kleinhenz and along the southerly line of other lands to be mortgaged by Fairport Baptist Homes, a distance of 403.40 feet to the southwesterly corner of Whitney Farms Subdivision, Section 4 (See Liber 175 of Maps at page 71);

thence(9) N 89° 46' 57" E, along said Whitney Farms Subdivision, Section 4, a distance of 233.32 feet to a point on the westerly line of lands now or formerly owned by Larry J. and Beatrice A. Fisher (as conveyed per Liber 7403 of Deeds, Page 194);

thence (10) S 08° 22' 00" W, along said westerly line of Fisher, a distance of 27.00 feet to the southwesterly corner thereof;

thence (11) S 88° 32' 30" E, along the southerly line of said lands of Fisher, a distance of 78.68 feet to an angle point;

thence (12) S 89° 56' 00" E, containing along said southerly line, a distance of 55.51 feet to the southeasterly corner thereof;

thence (13) N 12° 25' 00" B, along the easterly line of said lands of Fisher, a distance of 24.08 feet to a point on the southerly line of lands now or formerly owned by John and Mary Guariglia (as conveyed per Liber 7927 of Deeds, Page 94);

thence (14) S 42° 17' 00" E, along said southwesterly line of Guariglia, a distance of 62.27 feet to a point on the westerly line of Whitney Farms Subdivision, Section 3 (See Liber 171 of Maps, Page 96);

thence (15) S 00° 08' 03" E, along said westerly line of Whitney Farms Subdivision, Section 3, a distance of 932.89 feet to a point on said westerly right-of-way line of Whitney Road;

thence (16) S 89° 47' 49" W, along said westerly right-of-way line of Whitney Road, a distance of 213.90 feet to the Point of Place of Beginning.

4646 Nine Mile Point Road, Perinton

153.05-1-13.111

Schedule A

Lot C of the Durant Place Subdivision  
AS PER MAP FILED IN LIBER 291 OF MAPS, PAGE 16

All that tract or parcel of land being part of Town Lot 41, Township 12, Range 4, Phelps and Gorham Purchase, Situate in the Village of Fairport, Town of Perinton, County of Monroe, State of New York and being more particularly described as follows.

Beginning at a point, said point being the intersection of the westerly right of way line of Durant Place (40' ROW) and the northerly boundary line of lands now or formerly owned by F. & R. Agway Cooperative, Inc. as shown on an unrecorded map prepared on March 29, 1974 by McIntosh and McIntosh, Land Surveyors, Job No. M-4293, thence

- 1) N 89-48-20 E on a grid bearing, along the northerly boundary line of said lands owned by F. & R. Agway Cooperative, Inc. and along the southerly boundary line, extended easterly, of the Snow and Parce's Subdivision as shown on a map filed in the Monroe County Clerks Office in Liber 7 of Maps at Page 43, a distance of 40.00' feet to a point, said point being in the easterly right of way line of Durant Place, thence
- 2) N 0-11-40 W along the easterly right of way line of Durant Place a distance of 138.00' feet to a point on the southerly boundary line of Lot 9 of the aforementioned Snow and Parce's Subdivision, thence
- 3) N 89-48-20 E along the southerly boundary line, extended easterly of said Lot 9 a distance of 267.36' feet to a point on the easterly boundary line of lands now or formerly owned by Herman W. Gensler as described in a deed recorded in the Monroe County Clerks Office at Liber 6763 of Deeds at Page 164, thence
- 4) S 00-11-40 E along the said easterly boundary line of lands now or formerly owned by Herman W. Gensler, extended southerly, a distance of 411.72' feet to a point on the northerly boundary line of lands now or formerly owned by Conrail, thence
- 5) N 48-30-31 W along said northerly boundary line of lands now or formerly owned by Conrail a distance of 411.58' feet to the point of beginning, containing 1.812 acres of land.

*Durant Place, Fairport  
153.040 03-0582*

**Schedule 2.4**  
**Assumed Liabilities**

None.



**Schedule 5.3**  
**Subsidiaries and Investments**

Tool Thrift Shop LLC  
Crafts, Bits & Pieces LLC

Interest in Pandion Sourcing National LLC (d/b/a Pandion Optimization Alliance)

**Schedule 5.4(a)**  
**Additional Properties Required to Operate the Facilities**

None.

**Schedule 5.4(b)**  
**Environmental Permits and Hazardous Substances**

None.

**Schedule 5.6(a)**  
**Taxes**

2021 Tax Return Filings Currently on Extension.

**Schedule 5.7  
Litigation**

See attached.

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 NYSCEF - New York State Courts Electronic Filing (Live System)
 

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**Case Search Results**










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 Business/Organization Name: **fairport baptist**


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**Sort By:** Claim/Index # 


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Case # Received Date	eFiling Status Case Status	Caption	Court Case Type
			
<a href="#">809000/2019</a> 07/22/2019	Partial Participation Recorded Partial Participation Recorded	New York State Workers Compensation Board et al v. Episcopal Church Home And Affiliates Inc et al	Erie County Supreme Court Commercial - Contract
<a href="#">905824-18</a> 09/14/2018	Full Participation Recorded Full Participation Recorded	Dry Harbor Nursing Home et al - v. - Howard Zucker M.D. et al	Albany County Supreme Court Special Proceedings - CPLR Article 78
<a href="#">E2020008279</a> 10/23/2020	Full Participation Recorded Full Participation Recorded	Robert E Lindner v. Fairport Baptist Homes et al	Monroe County Supreme Court Torts - Other Negligence
			

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**Schedule 5.8  
Insurance**

See attached.

Insurer	Named Insured	Address for Notices	Type	Number	Term
Beazley Group <ul style="list-style-type: none"> <li>Beazley Insurance Company, Inc.</li> </ul>	Fairport Baptist Homes	Notice of Claim, Lossor Circumstance: Beazley Group Attn: Cyber & Tech Claims Group 45 Rockefeller Plaza, 16th Floor New York, NY 10111 <a href="mailto:cyber&amp;techclaims@beazley.com">cyber&amp;techclaims@beazley.com</a>  Administrative Notice: Beazley USA Services, Inc. 30 Batterson Park Road Farmington, CT 06032 Tel: (860) 677-3700 Fax: (860) 679-0247	Breach Response	W322CA220101	5/1/2022 – 11/1/2022
AIX Specialty Insurance Company <ul style="list-style-type: none"> <li>USI Insurance Services</li> </ul>	Fairport Baptist Homes	AIX Specialty Insurance Company: 5 Waterside Crossing Suite 201 Windsor, Connecticut 06095  USI Insurance Services: 777 Canal View Blvd #100 Rochester NY 14623	Commercial General Liability and Professional Liability	L1S A603452 06	04/1/2021 – 7/1/2022
Chubb <ul style="list-style-type: none"> <li>Executive Risk Indemnity Inc.</li> </ul>	Fairport Baptist Homes Caring Ministries	To Underwriter: Vice President of Claims Executive Risk Management Associates P.O. Box 2002 Simsbury. CT. 06070  Administrative Offices/Mailing Address: 82 Hopmeadow Street Simsbury, Connecticut 06070-7683	Director, Officers, and Trustees Liability Insurance	8169-7522	7/1/2021 - 7/1/2022
Chubb	Fairport Baptist	Notice of Claim: National Claims Department	Executive Protection Policy	8221-2342	7/1/2021 - 7/1/2022



<ul style="list-style-type: none"> <li>Federal Insurance Company</li> </ul>	Homes Caring Ministries	<p>Chubb A division of Federal Insurance Company Manager 2028 Hall's Mill Road Whitehouse Station, NJ 08889</p> <p>All Other Notices: Executive Protection Department Chubb A division of Federal Insurance Company Manager 2028 Hall's Mill Road Whitehouse Station, NJ 08889</p>			
<p>Hartford Fire Insurance Company</p> <ul style="list-style-type: none"> <li>USI Insurance Services</li> </ul>	Fairport Baptist Homes	One Hartford Plaza Hartford, Connecticut 06155	Business Insurance Policy	01 UUN AS9134 K1	4/1/2022 - 4/1/2023
<p>The Hartford Insurance Group</p> <ul style="list-style-type: none"> <li>Trumbull Insurance Company</li> </ul>	Fairport Baptist Homes	One Hartford Plaza, Hartford, Connecticut 06155	<p>Special Multi-Flex Business Insurance Policy</p> <ul style="list-style-type: none"> <li>Commercial Auto</li> </ul>	01 UEN AS9532 K1	4/1/2022 - 4/1/2023
<p>AIX Specialty Insurance Company</p> <ul style="list-style-type: none"> <li>USI Insurance Services</li> </ul>	Fairport Baptist Homes	<p>AIX Specialty Insurance Company: 5 Waterside Crossing Suite 201 Windsor, Connecticut 06095</p> <p>USI Insurance Services: 777 Canal View Blvd #100 Rochester NY 14623</p>	Eldercare Commercial Excess Liability	L1S A603453 06	4/1/2021 - 7/1/2022

<p>The Hartford Insurance Group</p> <ul style="list-style-type: none"> <li>Hartford Fire Insurance Company</li> </ul>	<p>Tool Thrift Shop</p>	<p>One Hartford Plaza, Hartford, Connecticut 06155</p>	<p>Special Multi-Flex Business Insurance Policy</p> <ul style="list-style-type: none"> <li>Commercial Auto</li> </ul>	<p>01 UEN FH6392 K1</p>	<p>11/3/2021-11/3/2022</p>
<p>The Hartford Insurance Group</p> <ul style="list-style-type: none"> <li>Hartford Fire Insurance Company</li> </ul>	<p>Tool Thrift Shop</p>	<p>One Hartford Plaza Hartford, Connecticut 06155</p>	<p>Business Insurance Policy</p>	<p>01 UUN JX4378 K1</p>	<p>11/3/2021-11/3/2022</p>
<p>MEMIC</p> <ul style="list-style-type: none"> <li>MEMIC Casualty Company</li> </ul>	<p>Fairport Baptist Homes</p>	<p>650 Elm St, Suite 401 Manchester, NH 03101</p>	<p>Workers Compensation</p>	<p>6103800237</p>	<p>1/1/2022-1/1/2023</p>

**Schedule 5.9(a)**  
**Accreditation; Uncorrected Deficiencies**

None.

**Schedule 5.9(b)**  
**Medicare and Medicaid Eligibility Restrictions**

None.

**Schedule 5.10**  
**Affiliate Transactions**

None.

**Schedule 5.11**  
**Brokers**

None.

**Schedule 5.12(a)**  
**Employment Matters**

None.

**Schedule 5.12(b)**  
**Employee Complaints or Claims**

None.



**Schedule 5.12(c)**  
**Employees and Independent Contractors**

List of employees to be provided to Buyer prior to Closing.

**Schedule 5.12(d)**  
**Collective Bargaining Agreement**

None.

**Schedule 5.12(g)**  
**Workers Compensation Levies**

See Schedule 5.7.

**Schedule 5.12(h)**  
**Benefit Plans**

Fairport Baptist Homes Retirement Plan.

**Schedule 5.13(a)**  
**Compliance with Laws**

None.

**Schedule 5.13(b)**  
**Permits**

1. The current Operating Certificate for FBH's Residential Health Care Facility SNF (#2725300N) was issued by the New York State Department of Health ("DOH") on April 30, 2015, with no set expiration date.

2. The current Operating Certificate for FBH Adult Care's Adult Home ALP (#370-E-202) was issued by the DOH on December 1, 2021, with an expiration date of November 30, 2025.

3. The current Operating Certificate for FBH Adult Care's LHCSA (#1628L001) was issued by the DOH on December 2, 2009, with no set expiration date.

**Schedule 5.14  
Inventory**

None.

# Exhibit A



## SERVICE AGREEMENT

This **SERVICE AGREEMENT** (the "Agreement") is entered into \_\_\_\_\_, 2022 (the "Execution Date") by and between [\_\_\_\_\_] a New York not-for-profit corporation with a business address of [\_\_\_\_\_] ("Fairport") and Rochester Friendly Home, a New York not-for-profit corporation with a business address of 3156 East Avenue, Rochester, NY 14618 ("Company"). Each of Fairport and Company are referred to individually as a "Party" and collectively as the "Parties").

**WHEREAS**, capitalized terms used but not otherwise defined herein shall have the definitions ascribed to such terms in that certain Amended and Restated Asset Purchase Agreement, dated [\_\_\_\_\_] by and among Eastside Senior Care, Inc., a New York not-for-profit corporation ("Eastside"), Fairport, [\_\_\_\_\_] FBH Community Ministries and FBH Distinctive Living Communities, Inc., as amended (the "Purchase Agreement");

**WHEREAS**, senior leadership of Company serves as the governing board of Eastside;

**WHEREAS**, Fairport is licensed as a [\_\_\_\_\_] pursuant to [\_\_\_\_\_] (the "Facility");

**WHEREAS**, Fairport filed for Chapter 11 bankruptcy on May 6, 2022 (the "Bankruptcy");

**WHEREAS**, in connection with the Bankruptcy, pursuant to the Purchase Agreement, Eastside will acquire substantially all of the assets of Fairport related to the operation the Facility;

**WHEREAS**, the transactions contemplated by the Purchase Agreement with respect to the ownership and operation of the Facility is subject to certain conditions and contingencies, including, but not limited to, the prior approval of the New York State Department of Health ("DOH");

**WHEREAS**, in connection with the Bankruptcy proceeding, Eastside is in receipt of a Sale Order approving it as the purchaser of certain assets of Fairport and its affiliate entities;

**WHEREAS**, in light of the Bankruptcy and to ensure to continued operation of the Facility and continued access to quality patient care for the patients served by the Facility in a cost-effective and efficient manner, Fairport requires certain Services;

**WHEREAS**, Company is willing to provide such Services, on the terms and conditions set forth herein, until such time as the approval or disapproval of DOH is obtained and the Closing under the Purchase Agreement occurs; and

**WHEREAS**, Fairport is willing to accept such Services on the terms and conditions herein.

**NOW, THEREFORE**, in consideration of the promises and mutual covenants contained herein, and other good and valuable consideration, the sufficiency and receipt of which the Parties acknowledge, the Parties hereby agree as follows:

1. **Services**.

a. Engagement. Subject to the terms and conditions of this Agreement, Fairport hereby engages Company as the sole and exclusive Company to supervise, operate and manage the operations and affairs of Fairport, for the account of Fairport in a manner consistent with the directions of Fairport through the provision of the services set forth on the Statement of Work (as defined below) (the “Services”) to Fairport and Company agrees to provide such Services, commencing on the Effective Date.

b. Authority and Responsibility of the Board. The full authority and ultimate control of Fairport will at all times remain exclusively with the Fairport governing board (the “Board”). The Board will retain all authority placed on it by law, its bylaws, and any other governing documents of Fairport, all as may be amended from time to time, and the Board will retain such other authority as will not have been specifically delegated by it to Company as an independent contractor pursuant to the terms of this Agreement. Notwithstanding any other provision in this Agreement to the contrary, the Board remains responsible for ensuring that any service provided pursuant to this Agreement complies with all pertinent provisions of federal, state, and local statutes, rules and regulations. The responsibilities of the Board, whether based in statute, regulation or bylaw, will not be limited or diminished in any manner whatsoever by reason of having entered this Agreement. The Board will periodically evaluation the effectiveness of the Services provided by Company in meeting the goals and objectives of this Agreement.

c. Liaison. In connection with the provision of the Services hereunder, the Parties agree to each appoint and make known to the other the key individual through which operational details and issues relating to the Services may be communicated, arranged and resolved.

d. Statement of Work; Assessment to Set Priorities and Timing. Within ten (10) days of receipt of the Sale Order, the Parties will (i) conduct an assessment of Fairport operations with respect to the Facility for the purpose of establishing the scope of Services and establishing priorities and an implementation timeline, and (ii) based on that assessment, will enter into an amendment of this Agreement to incorporate, as Schedule A hereto, a description of the Services and the timing of implementing the Services (the “Statement of Work”). The Parties acknowledge and agree that the scope of the Services will be as necessary to improve financial and quality performance of the Facility and ensure access to quality patient care for the patients served by the Facility. The Parties acknowledge and agree that the Services will not all be implemented beginning immediately on the Effective Date but will be implemented on the timeline set forth in the Statement of Work.

e. Reserved Powers.<sup>1</sup> Notwithstanding anything to the contrary in this Agreement, Fairport retains full authority and responsibility for, and control over, the operations and

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<sup>1</sup> The provision set forth in the body of this form of agreement incorporates the required language for the Services Agreement to be entered into between Company and Fairport Baptist Homes, which operates the Nursing Facility (as defined in the Purchase Agreement). To meet the different regulatory requirements between the NYSDOH-Regulated Entities (as defined in the Purchase Agreement), this provision will be different for the Services Agreement to be entered into between Company and Fairport Baptist Homes Adult Care Facility, Inc. which operates the Adult Home (as defined in the Purchase Agreement) and will state the following: “Notwithstanding anything to the contrary in this Agreement, Fairport retains full authority and responsibility for, and control over, the day-to-day operations and management of the Facility. Further, notwithstanding anything to the contrary in this Agreement, the Services will not include, and Fairport will retain sole and exclusive authority over, all matters, services, and functions which is required by statute or regulation or DOH policy to be reserved to Fairport, including approving all matters pursuant

management of the Facility. Further, notwithstanding anything to the contrary in this Agreement, the Services will not include, and Fairport will retain sole and exclusive authority over, all matters, services, and functions which is required by statute or regulation or DOH policy to be reserved to Fairport, including approving all matters pursuant to 10 NYCRR 600.9, and all matters set forth in 10 NYCRR 405.3(f), as amended from time to time, and any successor statutes or regulations thereto. As of the Effective Date, the matters which Fairport retains sole and exclusive authority over, and which Company has no authority over and which may not be delegated, or shared by, Company or any other person, are:

- i. authority and ongoing responsibility for statutory and regulatory compliance with all federal, state, and local laws and regulations and agency accreditations;
- ii. responsibility for all powers not specifically delegated to Company;
- iii. sufficient authority and control to discharge its responsibility under DOH regulations 10 NYCRR Part 405;
- iv. direct independent authority to appoint and discharge the chief executive officer and other key management including, without limitation, the facility administrator, medical director, director of nursing, the Chief Financial Officer, and the Chief Operating Officer;
- v. adoption and approval of the Facility's operating and capital budgets
- vi. independent control and physical possession of the books and records and operating policies and procedures of Fairport;
- vii. independent adoption, approval, and enforcement over the disposition of assets and authority to incur debts;
- viii. approval of all contracts for management and/or clinical services;
- ix. approval of any facility debt;
- x. approval of any and all settlements of administrative proceeding or litigation to which Fairport is a party;
- xi. independent adoption, approval, and enforcement of policies affecting the delivery of health care services by Fairport;

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to 10 NYCRR 766.9 and 18 NYCRR 485.10, as amended from time to time, and any successor statutes or regulations thereto. As of the Effective Date, the matters which Fairport retains sole and exclusive authority over, and which Company has no authority over and which may not be delegated, or shared by, Company or any other person, are: (a) direct, independent authority to hire or fire the Facility's administrator or manager; (b) independent control of the Facility's books and records; (c) disposing of assets or incurring any liability on behalf of the Facility not associated normally with the day-to-day operation of the Facility; (d) adopting or enforcing policies regarding the delivery of health care services; (e) all powers not specifically delegated to Company, and (f) authority and ongoing responsibility for statutory and regulatory compliance with all federal, state, and local laws and regulations and agency accreditations.

- xii. independent adoption, approval, and enforcement over incurring liabilities not normally associated with the day-to-day operation of the Facility;
- xiii. assuring maintenance of the fiscal stability, level of Services, and quality of care rendered by Fairport; and
- xiv. direct, independent authority over the appointment and/or dismissal of all licensed or certified health care staff.

f. Access to Information. Subject to applicable law, Fairport hereby authorizes and grants to Company full and complete access during the Term to all information and documents relating to Fairport that may be reasonably requested by Company to perform its obligations hereunder, and will disclose and make available to representatives of Company for review and photocopying all relevant books, agreements, papers and records of Fairport.

g. Compliance.

i. Company will provide the Services, and will cause its personnel to provide services hereunder, in accordance with (A) all applicable laws, rules, regulations, and government orders and requirements, and (B) all of Fairport's policies and procedures and privacy and security requirements. In connection with the foregoing, the parties agree to enter into a business associate agreement in compliance with the Health Insurance Portability and Accountability Act of 1996. Notwithstanding any other provision in this Agreement, Fairport remains responsible for ensuring that any service provided pursuant to this Agreement complies with all pertinent provisions of federal, state and local statutes, rules and regulations.

ii. In all respects and at all times this Agreement will be interpreted and implemented so that any such Services provided hereunder and the management of the Facility will be at all times in full compliance with applicable DOH regulations, as presently promulgated or as hereinafter amended. In the event of any conflict between the provisions of this Agreement and applicable DOH regulations, the latter will control.

iii. Fairport and Company acknowledge and agree that, for so long as Fairport, and for so long as any member, or any of affiliate of a member, is a direct or indirect member of Fairport and is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 (as amended or modified from time to time, the "Code"), Fairport and the Facility will not be managed or operated in a manner that could, in the reasonable opinion of tax counsel to Fairport and/or such member, cause Fairport, such member or any affiliate of such member to act other than exclusively in furtherance of the tax-exempt purposes of such person or adversely affect their tax-exempt status under Section 501(c)(3) of the Code. Specifically, the Facility will be operated in a manner that provides access to patient care services based on medical necessity, without regard to the patient's race, creed, national origin, gender, payor source or ability to pay, and to individuals covered by Medicare and Medicaid.

h. Referrals. The Parties acknowledge and agree that the transactions contemplated hereunder are not, and will not at any time be, conditioned in any way on either Party referring patients to the other Party and each such Party will be permitted to refer patients to any other health care entities.

i. Notice Requirements. Company will promptly notify Fairport of all actual or threatened legal claims or actions affecting Fairport and will coordinate all legal matters and proceedings with counsel for Fairport.

**2. Effective Date; Term.**

a. Effective Date. This Agreement will become effective only with the prior written approval of DOH. Upon receipt of DOH's approval, the parties will mutually agree on the date thereafter upon which this agreement will become effective (the "Effective Date"), provided that such date will be no later than ten (10) days after receipt of DOH's approval of this Agreement.

b. Term. The term of this Agreement will commence on the Effective Date and will continue until the earlier of (a) two (2) years after the Effective Date, or (b) the closing of the transactions contemplated under the Purchase Agreement with respect to the Facility (the "Term"). The Parties may renew the Term of this Agreement only with the prior written approval of DOH and subject to applicable laws.

c. Termination on Mutual Agreement. The Parties may mutually agree to terminate this Agreement.

d. Termination on Notice. Fairport may terminate this Agreement with or without cause on at least ninety (90) days' prior written notice. In the event Fairport exercises its right to terminate under this Section 2(d), Fairport will simultaneously notify DOH and provide a plan for the operation of the Facility subsequent to the termination of this Agreement to DOH.

e. Termination Related to Purchase Agreement. Company may terminate this Agreement on sixty (60) days prior written notice to Fairport in the event (i) the application for CON Approval with respect to the Facility is disapproved by DOH, or (ii) the Purchase Agreement is terminated.

f. Termination for Default. Either Party may terminate this Agreement on at least sixty (60) days prior written notice to the other Party upon a breach of this Agreement by such other Party which has not been cured to the reasonable satisfaction of the notifying Party within such sixty (60) day period.

g. Termination under Special Circumstances. In the event that any term or condition of this Agreement jeopardizes or interferes with a Party's or any affiliate's licensure, participation in Medicare or Medicaid programs, accreditation, tax-exempt status, or ability to obtain, maintain, modify, or amend any tax-exempt financing, the Parties will meet and renegotiate the terms of this Agreement to eliminate the violation or non-compliant aspects hereof. If the Parties cannot promptly agree on such renegotiated terms, the affected Party may terminate this Agreement upon sixty (60) days written notice to the other Party.

h. Automatic Termination. Either Party may terminate this Agreement immediately upon written notice to the other Party in the event such other Party:

i. Loses or has suspended its license or other authority to perform its obligations hereunder; or

ii. Is excluded or suspended from participation in Medicare or Medicaid programs.

i. **Effect of Termination.** In the event of termination or expiration of this Agreement for any reason:

i. Fairport may request a continuation of this Agreement of up to an additional one hundred twenty (120) days if necessary for continued operations of the Facility or as necessary for Fairport to effect a closure plan for the Facility;

ii. Company will be entitled to its earned but unpaid Fees for all periods prior to the date of termination or expiration, provided however, upon any such termination Fairport will be entitled to offset from any such amounts due to Company any amounts which Company may owe Fairport hereunder;

iii. Neither Party will have any further obligation hereunder except for obligations accruing prior to the date of termination and those obligations, promises, or covenants which by their terms expressly survive the termination or expiration of this Agreement;

iv. Each Party will return to the other Party any assets, records, or confidential information of such other Party to which the Party was not given on-going rights and which relate to the Services, except to the extent a Party requires a copy of such records or information in order to comply with applicable laws; and

v. In order to allow for an orderly transition of, and to avoid any disruption or interruption in, patient care, Company will reasonably cooperate, at its sole cost and expense, in the transition of Services to an alternative provider.

### 3. **Compensation.**

a. **Fees.** During the Term of this Agreement, as compensation for the Services, Fairport will reimburse Company for the actual costs incurred in providing the Services (the "Fees"). For purposes of calculating the Fees, "cost" means:

i. with respect to Company personnel assigned to provide Services pursuant to this Agreement, such personnel's hourly compensation rate times the number of hours worked pursuant to this Agreement, plus the proportion of benefit costs attributed to the time worked pursuant to this Agreement; and

ii. any reasonable out of pocket expenses incurred by Company and its personnel pursuant to this Agreement, to the extent such expenses were included in the budget prepared by Company and approved by Fairport.

b. **Payment Terms.** Within fifteen (15) days of the end of each month, Company will provide Fairport with an invoice that documents the costs for the preceding month. Within thirty (30) days of receipt of the invoice described above, Fairport will pay the invoice amount to Company in the manner requested by Company.

c. Disputes. In the event of a good faith dispute between the Parties regarding any Fees due hereunder, Fairport will notify Company of the amount of and reason for the dispute promptly, but in no event later than the day on which the payment is due. Fairport may withhold the disputed portion of the Fees until resolution of the dispute, which the Parties will negotiate in good faith to resolve promptly.

d. Cash Flow Deficiency. In the event Fairport experiences a cash flow deficiency that renders Fairport unable to pay the Fees in whole or in part, the Parties will make good faith efforts to mutually agree upon a plan to address the future payment of such Fees. The foregoing does not preclude Company from exercising any termination rights available to it under this Agreement.

#### 4. Company Personnel Matters.

a. Authority and Control. Company will retain exclusive authority and sole discretion to select, hire and compensate, directly or through an affiliated entity, all Company personnel providing the Services. Company will retain full authority to evaluate, assign, supervise, discipline, and terminate such Company personnel, provided that, at Fairport's request, Company will immediately remove any such Company personnel whose qualifications do not meet the requirements of this Agreement, or whose performance is found by Fairport to negatively affect the operations of the Facility, and promptly replace such Company personnel as appropriate. If Company personnel leave the employment of Company or require replacement, such Company personnel will be replaced within a reasonable timeframe mutually agreed upon by the Parties.

b. Qualifications. Company's personnel will possess the requisite education, training and skills, as well as any licenses, certifications and registrations required to provide the Services. Company personnel will provide the Services faithfully and in a professional and capable manner, consistent with accepted industry standards and practices and in compliance with the terms and conditions of this Agreement. Company personnel will not be convicted of any criminal offense related to health care or the provision of Services paid for by Medicare or Medicaid programs or excluded or debarred from participation in Medicare or Medicaid programs. Company will promptly notify Fairport if any Company personnel fail to meet the qualifications under this Agreement.

c. Contractors. Company may, from time to time, facilitate the engagement of third-party contractors to provide certain Services to Fairport, subject to the written approval of Fairport's CEO and/or Board.

#### 5. Intellectual Property Matters

a. Confidentiality Obligations. Company acknowledges and agrees that due to the nature of this Agreement, Company, and its employees or representatives, may have access to information of a proprietary nature owned by Fairport or its affiliates, including without limitation practices, books, correspondence, records, operating manuals and similar materials, methods of doing business, administrative, advertising and marketing techniques and information regarding financial affairs. Consequently, Company acknowledges and agrees that Fairport has a proprietary interest in all such information and that all such information constitutes confidential and

proprietary information and the trade secret property of the other Party. Company expressly and knowingly waives any and all rights, title and interest in and to such trade secrets and confidential information of Fairport and will return at its own expense all copies of such trade secrets and confidential information to Fairport upon the expiration or earlier termination of this Agreement. Company will hold the trade secrets and confidential information of Fairport in strictest confidence and not disclose them or allow them to be disclosed, directly or indirectly, to any person or entity other than those persons or entities that are employed by or affiliated with Company or Fairport, except as otherwise required by law or upon the prior written consent of Fairport. If Company is requested or required to disclose in any manner whatsoever any of Fairport's trade secrets or confidential information, Company will promptly notify Fairport in writing, so that Fairport may seek an appropriate remedy to prevent the disclosure or waive compliance with the terms of this paragraph. Notwithstanding the foregoing, Company shall not be bound by any restrictions imposed by this Section 5(a) in connection with any confidential information that (i) was previously known to Company and concerning which Company was free of any obligation to keep such information confidential and free of any restriction on its use or disclosure, (ii) enters the public domain and thereby becomes public knowledge through no fault of Company, (iii) is or becomes available to Company on a non-confidential basis from a source other than Fairport, or (iv) Company is compelled to disclose by lawful process (whether by interrogatories, requests for information or documents, subpoena, civil investigative demands, court order or other process).

b. Defense Against Trade Secrets Act. Nothing in Section 5(a) will affect the Company's immunity under 18 United States Code Sections 1833(b) (1) or (2), which read as follows:

i. An individual will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

ii. An individual who files a lawsuit for retaliation by Company for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

c. Use of Name, Logos, etc. During the Term of this Agreement, neither Party will make any use of the name of the other Party, or any of the other Party's trademarks, logos or symbols (the "Marks"), without the prior written consent of the other Party, which consent may be given or withheld in such Party's sole discretion. Further the Parties acknowledge and agree that each Party and its respective affiliates are the owners of such Party's Marks. If either Party acquires any rights in the other Party's Marks, by operation of law, or otherwise, such rights will be deemed and are hereby irrevocably assigned to such other Party without further action by any of the Parties. Each Party agrees not to dispute or challenge or assist any person or entity in disputing or challenging the other Party's rights in and to such Party's Marks or the validity of such Party's Marks.



6. **Insurance.** During the Term, each Party will obtain and maintain general liability, and cyber liability insurance with minimum coverage for these insurances in the amounts of not less than \$1,000,000 for each claim and \$3,000,000 for the aggregate of all claims, property insurance in the amount of not less than \$2,000,000 for each claim and \$4,000,000 for the aggregate of all claims, and workers' compensation insurance for all such Party's personnel in accordance with state law. Each Party will name the other Party as an additional insured on its general liability, cyber liability, and property insurance policies. Each Party will provide the other Party with proof of all coverage required under this Section 6 prior to the Effective Date and thereafter upon request. Each Party agrees that no policy will be canceled or otherwise terminated without thirty (30) days' prior written notice to the other Party.

7. **Non-Solicitation.** During the Term of this Agreement and for the period of one year beginning with the date this Agreement terminates or expires (other than termination as a result of the closing under the Purchase Agreement) Company will not, without prior approval of the CEO and/or Board of Fairport, (a) induce, solicit, or encourage (or attempt to induce, solicit, or encourage) any employee, contractor, vendor, or supplier of Fairport or any affiliate thereof to terminate or reduce such relationship, or (b) induce, solicit, or encourage (or attempt to induce, solicit, or encourage) any patient, customer, client, or service recipient of Fairport or any affiliate thereof to terminate or adversely change its relationship with Fairport or such affiliate or otherwise interfere with any relationship between Fairport or such affiliate, on the one hand, and any of its patients, customers, clients, or service recipients on the other hand.

#### 8. **Reports and Records**

a. All business records relating to the operation of the Facility, including but not limited to, all books of account, admission agreements, general administrative records and individual patient records, will be retained at the office of the Facility and will remain the sole property of Fairport. In addition, all information generated under and/or contained in management information systems pertaining to the Facility will also be and remain the property of Fairport.

b. Upon written request of the Secretary of Health and Human Services or the Comptroller General or any of their duly authorized representatives, Company or any other related organization providing services with a value or cost of ten thousand dollars (\$10,000.00) or more over a twelve (12) month period, will make available to the Secretary the contracts, books, documents and records that are necessary to certify the nature and extent of the costs of providing such services. Such inspection will be available up to four (4) years after the rendering of such services. This paragraph is not intended to prohibit or impede any state audits pursuant to state law, or to waive any attorney-client or physician-patient privilege or any challenges to the applicability of this requirement. In the event the statutory amount reflected herein is revised during the term of this Agreement, this paragraph will be deemed to be amended, without further action required by the parties hereto, to reflect said revised statutory amount.

c. Company will maintain true and accurate financial and other records relating to the Facility in a commercially reasonable manner, on a current basis, so that Company can promptly provide Fairport with such reports and other information reasonably requested by Fairport.

d. Company will provide Fairport with access to all such books and records at all times upon request. In addition, Company will provide access to all such books, records and other information to DOH and any other state department or agency which may require such information. Company will cooperate with DOH in carrying out any DOH inspection and enforcement activities.

9. **Limitation of Liability.** Absent gross negligence, willful misconduct, or knowing violation of applicable law, Company's liability under this Agreement will be limited to the greater of (i) any insurance proceeds received by Company under any applicable policy, and (ii) the aggregate amount of Fees paid by Fairport to Company under this Agreement. The Company does not hereby assume any of the obligations, liabilities, or debts of Fairport or the Facility and will not, by virtue of its performance hereunder, assume or become liable for any such amounts.

10. **Equitable Remedies.** Each Party acknowledges and agrees that a breach of Section 5 or Section 7 will result in irreparable harm to the other Party and that the other Party cannot be reasonably or adequately compensated in damages therefor. Therefore, each Party will be entitled to equitable remedies, including without limitation injunctive relief, to prevent a breach and to secure enforcement thereof, in addition to any other relief or award to which it may be entitled.

11. **Independent Contractor.** In carrying out its duties hereunder, Company will be an independent contractor and will not be subject to any right of control, or any control in fact, of Fairport over the methods by which it carries out its duties. Neither this Agreement nor the exercise of any of the duties of Company hereunder will be deemed to create any partnership, joint venture, association or other relationship between the parties hereto other than that of independent contractors each as to the other.

12. **Assignment.** Neither Party may assign its rights, duties or obligations under this Agreement without the prior written consent of the other Party. All of the terms, provisions, covenants, conditions and obligations of this Agreement will be binding on and inure to the benefit of the successors and permitted assigns of the Parties hereto.

13. **Amendments.**<sup>2</sup> This Agreement will not be modified or amended except in writing, signed by the Parties. Any material amendment or modification to this Agreement must also be approved by DOH.

14. **Waivers.** The waiver by a Party of a breach or violation of any provision of this Agreement will not operate as, or be construed as, a waiver of any subsequent breach or violation hereof.

15. **Further Assurances.** Each Party will execute any and all instruments, releases, assignments and consents that may reasonably be requested by the other Party to carry out the provisions of this Agreement.

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<sup>2</sup> To meet the requirements of 10 NYCRR 766.9, this Section 13 would be modified in the Services Agreement to be entered into between Company and Fairport Baptist Homes Adult Care Facility, Inc. which operates the Adult Home (as defined in the Purchase Agreement) and would read in its entirety as follows: "This Agreement will not be modified or amended except in writing, signed by the Parties. Any amendments or revisions to the Agreement which increase the amount or extent of authority delegated to Company shall be effective only with the prior written consent of DOH."

16. **Entire Agreement.**<sup>3</sup> This Agreement, together with any schedules or exhibits, constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements or representations by or between the Parties, written or oral, to the extent they relate in any way to the subject matter hereof. The Agreement, as approved by DOH, is the sole agreement between Fairport and Company.

17. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

18. **Governing Law.** This Agreement will be governed by and construed and enforced in accordance with the laws of the State of New York without reference to the principles thereof respecting conflicts of laws.

19. **Severability.** If any part, term or provision of this Agreement will be held void, illegal or unenforceable, the validity of the remaining portions or provisions will not be affected thereby.

20. **Survival.** Sections 2(i), 3(c), 3(d), 5, 7, and 8-24 will survive the termination or expiration of this Agreement.

21. **Jurisdiction; Venue; Waiver of Jury Trial.** IN THE EVENT A PARTY MAY BRING AN ACTION AGAINST THE OTHER PARTY, IT IS AGREED THAT SUCH ACTION WILL BE LITIGATED IN COURTS HAVING SITUS IN THE COUNTY OF MONROE, STATE OF NEW YORK OR IF IN FEDERAL COURT, IN THE WESTERN DISTRICT OF NEW YORK. EACH PARTY HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURTS LOCATED WITHIN SUCH CITY AND STATE. EACH OF THE PARTIES HERETO HEREBY WAIVES PERSONAL SERVICE OF PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH PARTIES BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH PARTY, AT THE ADDRESS SET FORTH IN THE PREAMBLE OF THIS AGREEMENT AND SERVICE SO MADE WILL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST SUCH PARTY IN ACCORDANCE WITH THIS PARAGRAPH. EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, IRREVOCABLY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION BROUGHT ON OR WITH RESPECT TO THIS AGREEMENT, INCLUDING TO ENFORCE

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<sup>3</sup> To meet the requirements of 10 NYCRR 766.9, this Section 16 would be modified in the Services Agreement to be entered into between Company and Fairport Baptist Homes Adult Care Facility, Inc. which operates the Adult Home (as defined in the Purchase Agreement) and would read in its entirety as follows: "This Agreement, together with any schedules or exhibits, constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements or representations by or between the Parties, written or oral, to the extent they relate in any way to the subject matter hereof. The Agreement, as approved by DOH, is the sole agreement between Fairport and Company for the purpose of managing the day-to-day activities of the Facility."

OR DEFEND ANY RIGHTS HEREUNDER, AND AGREES THAT ANY SUCH ACTION will BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

22. **Drafting of the Agreement.** The Parties acknowledge and agree that because both Parties and their counsel participated in negotiating and drafting this Agreement, no rule of construction will apply to this Agreement which construes any language, whether ambiguous, unclear or otherwise, in favor of, or against any Party by reason of that Party's role in drafting this Agreement.

23. **Headings.** The headings of articles, sections and subsections in this Agreement are for reference only and will not affect the meaning of this Agreement.

24. **Counterparts and Facsimile Signatures.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission (to which a signed PDF copy is attached) will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the Execution Date.

**FAIRPORT:**

[ \_\_\_\_\_ ]

By: \_\_\_\_\_  
Name:  
Title:

**COMPANY:**

**Rochester Friendly Home**

By: \_\_\_\_\_  
Name:  
Title:

DRAFT

**Schedule A**  
**Services**  
**Statement of Work**

[To be agreed upon by the Parties].

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# Exhibit B

**SERVICE AGREEMENT  
FOR  
NON-NYSDOH-REGULATED ENTITY**

This **SERVICE AGREEMENT FOR NON-NYSDOH-REGULATED ENTITY** (the “Agreement”) is entered into \_\_\_\_\_, 2022 (the “Effective Date”) by and between [\_\_\_\_\_] , a New York not-for-profit corporation with a business address of [\_\_\_\_\_] (“Fairport”) and Rochester Friendly Home, a New York not-for-profit corporation with a business address of 3156 East Avenue, Rochester, NY 14618 (“Company”). Each of Fairport and Company are referred to individually as a “Party” and collectively as the “Parties”).

**WHEREAS**, capitalized terms used but not otherwise defined herein shall have the definitions ascribed to such terms in that certain Amended and Restated Purchase Agreement, dated [\_\_\_\_\_] , by and among Eastside Senior Care, Inc., a New York not-for-profit corporation (“Eastside”), Fairport Baptist Homes, Fairport Baptist Homes Adult Care Facility, Inc., [\_\_\_\_\_] and Fairport, as amended from time to time (the “Purchase Agreement”);

**WHEREAS**, senior leadership of Company serves as the governing board of Eastside;

**WHEREAS**, Fairport filed for Chapter 11 bankruptcy on May 6, 2022 (the “Bankruptcy”);

**WHEREAS**, in connection with the Bankruptcy, pursuant to the Purchase Agreement, Eastside will acquire substantially all of the assets of Fairport related to the operation of Fairport;

**WHEREAS**, in connection with the Bankruptcy proceeding, Eastside is in receipt of a Sale Order approving it as the purchaser of certain assets of Fairport and its affiliate entities;

**WHEREAS**, in light of the Bankruptcy and to ensure to continued operation of Fairport, Fairport requires certain Services;

**WHEREAS**, Company is willing to provide such Services, on the terms and conditions set forth herein; and

**WHEREAS**, Fairport is willing to accept such Services on the terms and conditions herein.

**NOW, THEREFORE**, in consideration of the promises and mutual covenants contained herein, and other good and valuable consideration, the sufficiency and receipt of which the Parties acknowledge, the Parties hereby agree as follows:

1. **Services**.

a. **Engagement**. Subject to the terms and conditions of this Agreement, Fairport hereby engages Company as the sole and exclusive Company to supervise, operate and manage the operations and affairs of Fairport, for the account of Fairport in a manner consistent with the directions of Fairport through the provision of the services set forth on the Statement of Work (as defined below) (the “Services”) to Fairport and Company agrees to provide such Services, commencing on the Effective Date.

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Case 2-22-20220-PRW, Doc 253-1, Filed 08/23/22, Entered 08/23/22 16:30:35,  
Description: Amended APA, Page 95 of 117



b. Liaison. In connection with the provision of the Services hereunder, the Parties agree to each appoint and make known to the other the key individual through which operational details and issues relating to the Services may be communicated, arranged and resolved.

c. Statement of Work; Assessment to Set Priorities and Timing. Within ten (10) days of receipt of the Sale Order, the Parties will (i) conduct an assessment of Fairport operations for the purpose of establishing the scope of Services and establishing priorities and an implementation timeline, and (ii) based on that assessment, will enter into an amendment of this Agreement to incorporate, as Schedule A hereto, a description of the Services and the timing of implementing the Services (the "Statement of Work"). The Parties acknowledge and agree that the Services will not all be implemented beginning immediately on the Effective Date but will be implemented on the timeline set forth in the Statement of Work.

d. Access to Information. Subject to applicable law, Fairport hereby authorizes and grants to Company full and complete access during the Term to all information and documents relating to Fairport that may be reasonably requested by Company to perform its obligations hereunder, and will disclose and make available to representatives of Company for review and photocopying all relevant books, agreements, papers and records of Fairport.

e. Compliance.

i. Company will provide the Services, and will cause its personnel to provide services hereunder, in accordance with (A) all applicable laws, rules, regulations, and government orders and requirements, and (B) all of Fairport's policies and procedures and privacy and security requirements. If required under applicable law, the parties agree to enter into a business associate agreement or subcontractor business associate agreement in compliance with the Health Insurance Portability and Accountability Act of 1996.

ii. Fairport and Company acknowledge and agree that, for so long as Fairport, and for so long as any member, or any of affiliate of a member, is a direct or indirect member of Fairport and is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 (as amended or modified from time to time, the "Code"), Fairport will not be managed or operated in a manner that could, in the reasonable opinion of tax counsel to Fairport and/or such member, cause Fairport, such member or any affiliate of such member to act other than exclusively in furtherance of the tax-exempt purposes of such person or adversely affect their tax-exempt status under Section 501(c)(3) of the Code.

f. Notice Requirements. Company will promptly notify Fairport of all actual or threatened legal claims or actions affecting Fairport and will coordinate all legal matters and proceedings with counsel for Fairport.

g. Referrals. The Parties acknowledge and agree that the transactions contemplated hereunder are not, and will not at any time be, conditioned in any way on either Party or their affiliates referring patients to the other Party or its affiliates and each Party or their affiliates will be permitted to refer payments to other health care entities.

## 2. Term.

a. Term. The term of this Agreement will commence on the Effective Date and will continue until the earlier of (a) two (2) years after the Effective Date, or (b) the closing of the transactions contemplated under the Purchase Agreement (the “Term”).

b. Termination on Mutual Agreement. The Parties may mutually agree to terminate this Agreement.

c. Termination on Notice. Fairport may terminate this Agreement with or without cause on at least ninety (90) days’ prior written notice.

d. Termination Related to Purchase Agreement. Company may terminate this Agreement on sixty (60) days prior written notice to Fairport in the event (i) the application for CON Approval (as defined in the Purchase Agreement) with respect to the Nursing Facility (as defined in the Purchase Agreement) is disapproved by DOH, or (ii) the Purchase Agreement is terminated.

e. Termination for Default. Either Party may terminate this Agreement on at least sixty (60) days prior written notice to the other Party upon a breach of this Agreement by such other Party which has not been cured to the reasonable satisfaction of the notifying Party within such sixty (60) day period.

f. Termination under Special Circumstances. In the event that any term or condition of this Agreement jeopardizes or interferes with a Party’s or any affiliate’s licensure, participation in Medicare or Medicaid programs, accreditation, tax-exempt status, or ability to obtain, maintain, modify, or amend any tax-exempt financing, the Parties will meet and renegotiate the terms of this Agreement to eliminate the violation or non-compliant aspects hereof. If the Parties cannot promptly agree on such renegotiated terms, the affected Party may terminate this Agreement upon sixty (60) days written notice to the other Party.

g. Effect of Termination. In the event of termination or expiration of this Agreement for any reason:

i. Fairport may request a continuation of this Agreement of up to an additional one hundred twenty (120) days if necessary for continued operations of Fairport or as necessary for Fairport to effect a closure plan for Fairport;

ii. Company will be entitled to its earned but unpaid Fees for all periods prior to the date of termination or expiration, provided however, upon any such termination Fairport will be entitled to offset from any such amounts due to Company any amounts which Company may owe Fairport hereunder;

iii. Neither Party will have any further obligation hereunder except for obligations accruing prior to the date of termination and those obligations, promises, or covenants which by their terms expressly survive the termination or expiration of this Agreement;

iv. Each Party will return to the other Party any assets, records, or confidential information of such other Party to which the Party was not given on-going rights and which relate

to the Services, except to the extent a Party requires a copy of such records or information in order to comply with applicable laws; and

v. In order to allow for an orderly transition of operations of Fairport, Company will reasonably cooperate, at its sole cost and expense, in the transition of Services to an alternative provider.

### 3. **Compensation.**

a. **Fees.** During the Term of this Agreement, as compensation for the Services, Fairport will reimburse Company for the actual costs incurred in providing the Services (the "Fees"). For purposes of calculating the Fees, "cost" means:

i. with respect to Company personnel assigned to provide Services pursuant to this Agreement, such personnel's hourly compensation rate times the number of hours worked pursuant to this Agreement, plus the proportion of benefit costs attributed to the time worked pursuant to this Agreement; and

ii. any reasonable out of pocket expenses incurred by Company and its personnel pursuant to this Agreement, to the extent such expenses were included in the budget prepared by Company and approved by Fairport.

b. **Payment Terms.** Within fifteen (15) days of the end of each month, Company will provide Fairport with an invoice that documents the costs for the preceding month. Within thirty (30) days of receipt of the invoice described above, Fairport will pay the invoice amount to Company in the manner requested by Company.

c. **Disputes.** In the event of a good faith dispute between the Parties regarding any Fees due hereunder, Fairport will notify Company of the amount of and reason for the dispute promptly, but in no event later than the day on which the payment is due. Fairport may withhold the disputed portion of the Fees until resolution of the dispute, which the Parties will negotiate in good faith to resolve promptly.

d. **Cash Flow Deficiency.** In the event Fairport experiences a cash flow deficiency that renders Fairport unable to pay the Fees in whole or in part, the Parties will make good faith efforts to mutually agree upon a plan to address the future payment of such Fees. The foregoing does not preclude Company from exercising any termination rights available to it under this Agreement.

### 4. **Company Personnel Matters.**

a. **Authority and Control.** Company will retain exclusive authority and sole discretion to select, hire and compensate, directly or through an affiliated entity, all Company personnel providing the Services. Company will retain full authority to evaluate, assign, supervise, discipline, and terminate such Company personnel, provided that, at Fairport's request, Company will immediately remove any such Company personnel whose qualifications do not meet the requirements of this Agreement, or whose performance is found by Fairport to negatively affect

the operations of Fairport, and promptly replace such Company personnel as appropriate. If Company personnel leave the employment of Company or require replacement, such Company personnel will be replaced within a reasonable timeframe mutually agreed upon by the Parties.

b. Qualifications. Company's personnel will possess the requisite education, training and skills, as well as any licenses, certifications and registrations required to provide the Services. Company personnel will provide the Services faithfully and in a professional and capable manner, consistent with accepted industry standards and practices and in compliance with the terms and conditions of this Agreement. Company will promptly notify Fairport if any Company personnel fail to meet the qualifications under this Agreement.

c. Contractors. Company may, from time to time, facilitate the engagement of third-party contractors to provide certain Services to Fairport, subject to the written approval of Fairport's CEO and/or Board.

## 5. Intellectual Property Matters

a. Confidentiality Obligations. Company acknowledges and agrees that due to the nature of this Agreement, Company, and its employees or representatives, may have access to information of a proprietary nature owned by Fairport or its affiliates, including without limitation practices, books, correspondence, records, operating manuals and similar materials, methods of doing business, administrative, advertising and marketing techniques and information regarding financial affairs. Consequently, Company acknowledges and agrees that Fairport has a proprietary interest in all such information and that all such information constitutes confidential and proprietary information and the trade secret property of the other Party. Company expressly and knowingly waives any and all rights, title and interest in and to such trade secrets and confidential information of Fairport and will return at its own expense all copies of such trade secrets and confidential information to Fairport upon the expiration or earlier termination of this Agreement. Company will hold the trade secrets and confidential information of Fairport in strictest confidence and not disclose them or allow them to be disclosed, directly or indirectly, to any person or entity other than those persons or entities that are employed by or affiliated with Company or Fairport, except as otherwise required by law or upon the prior written consent of Fairport. If Company is requested or required to disclose in any manner whatsoever any of Fairport's trade secrets or confidential information, Company will promptly notify Fairport in writing, so that Fairport may seek an appropriate remedy to prevent the disclosure or waive compliance with the terms of this paragraph. Notwithstanding the foregoing, Company shall not be bound by any restrictions imposed by this Section 5(a) in connection with any confidential information that (i) was previously known to Company and concerning which Company was free of any obligation to keep such information confidential and free of any restriction on its use or disclosure, (ii) enters the public domain and thereby becomes public knowledge through no fault of Company, (iii) is or becomes available to Company on a non-confidential basis from a source other than Fairport, or (iv) Company is compelled to disclose by lawful process (whether by interrogatories, requests for information or documents, subpoena, civil investigative demands, court order or other process).

b. Defense Against Trade Secrets Act. Nothing in Section 5(a) will affect the Company's immunity under 18 United States Code Sections 1833(b) (1) or (2), which read as follows:

i. An individual will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

ii. An individual who files a lawsuit for retaliation by Company for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

c. Use of Name, Logos, etc. During the Term of this Agreement, neither Party will make any use of the name of the other Party, or any of the other Party's trademarks, logos or symbols (the "Marks"), without the prior written consent of the other Party, which consent may be given or withheld in such Party's sole discretion. Further the Parties acknowledge and agree that each Party and its respective affiliates are the owners of such Party's Marks. If either Party acquires any rights in the other Party's Marks, by operation of law, or otherwise, such rights will be deemed and are hereby irrevocably assigned to such other Party without further action by any of the Parties. Each Party agrees not to dispute or challenge or assist any person or entity in disputing or challenging the other Party's rights in and to such Party's Marks or the validity of such Party's Marks.

6. **Insurance.** During the Term, each Party will obtain and maintain general liability, and cyber liability insurance with minimum coverage for these insurances in the amounts of not less than \$1,000,000 for each claim and \$3,000,000 for the aggregate of all claims, property insurance in the amount of not less than \$2,000,000 for each claim and \$4,000,000 for the aggregate of all claims, and workers' compensation insurance for all such Party's personnel in accordance with state law. Each Party will name the other Party as an additional insured on its general liability, cyber liability, and property insurance policies. Each Party will provide the other Party with proof of all coverage required under this Section 6 prior to the Effective Date and thereafter upon request. Each Party agrees that no policy will be canceled or otherwise terminated without thirty (30) days' prior written notice to the other Party.

7. **Non-Solicitation.** During the Term of this Agreement and for the period of one year beginning with the date this Agreement terminates or expires (other than termination as a result of the closing under the Purchase Agreement) Company will not, without prior approval of the CEO and/or Board of Fairport, (a) induce, solicit, or encourage (or attempt to induce, solicit, or encourage) any employee, contractor, vendor, or supplier of Fairport or any affiliate thereof to terminate or reduce such relationship, or (b) induce, solicit, or encourage (or attempt to induce, solicit, or encourage) any patient, customer, client, or service recipient of Fairport or any affiliate thereof to terminate or adversely change its relationship with Fairport or such affiliate or otherwise interfere with any relationship between Fairport or such affiliate, on the one hand, and any of its patients, customers, clients, or service recipients, on the other hand.

## 8. **Reports and Records**

a. All business records relating to the operation of Fairport, including but not limited to, all books of account, admission agreements, general administrative records and client or customer records, will be retained at the office of Fairport and will remain the sole property of Fairport. In addition, all information generated under and/or contained in management information systems pertaining to Fairport will also be and remain the property of Fairport.

b. Company will maintain true and accurate financial and other records relating to Fairport in a commercially reasonable manner, on a current basis, so that Company can promptly provide Fairport with such reports and other information reasonably requested by Fairport.

c. Company will provide Fairport with access to all such books and records at all times upon request.

9. **Limitation of Liability.** Absent gross negligence, willful misconduct, or knowing violation of applicable law, Company's liability under this Agreement will be limited to the greater of (i) any insurance proceeds received by Company under any applicable policy, and (ii) the aggregate amount of Fees paid by Fairport to Company under this Agreement. The Company does not hereby assume any of the obligations, liabilities, or debts of Fairport and will not, by virtue of its performance hereunder, assume or become liable for any such amounts.

10. **Equitable Remedies.** Each Party acknowledges and agrees that a breach of Section 5 or Section 7 will result in irreparable harm to the other Party and that the other Party cannot be reasonably or adequately compensated in damages therefor. Therefore, each Party will be entitled to equitable remedies, including without limitation injunctive relief, to prevent a breach and to secure enforcement thereof, in addition to any other relief or award to which it may be entitled.

11. **Independent Contractor.** In carrying out its duties hereunder, Company will be an independent contractor and will not be subject to any right of control, or any control in fact, of Fairport over the methods by which it carries out its duties. Neither this Agreement nor the exercise of any of the duties of Company hereunder will be deemed to create any partnership, joint venture, association or other relationship between the parties hereto other than that of independent contractors each as to the other.

12. **Assignment.** Neither Party may assign its rights, duties or obligations under this Agreement without the prior written consent of the other Party. All of the terms, provisions, covenants, conditions and obligations of this Agreement will be binding on and inure to the benefit of the successors and permitted assigns of the Parties hereto.

13. **Amendments.** This Agreement will not be modified or amended except in writing, signed by the Parties.

14. **Waivers.** The waiver by a Party of a breach or violation of any provision of this Agreement will not operate as, or be construed as, a waiver of any subsequent breach or violation hereof.

15. **Further Assurances.** Each Party will execute any and all instruments, releases, assignments and consents that may reasonably be requested by the other Party to carry out the provisions of this Agreement.

16. **Entire Agreement.** This Agreement, together with any schedules or exhibits, constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements or representations by or between the Parties, written or oral, to the extent they relate in any way to the subject matter hereof.

17. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

18. **Governing Law.** This Agreement will be governed by and construed and enforced in accordance with the laws of the State of New York without reference to the principles thereof respecting conflicts of laws.

19. **Severability.** If any part, term or provision of this Agreement will be held void, illegal or unenforceable, the validity of the remaining portions or provisions will not be affected thereby.

20. **Survival.** Sections 2(g), 3(c), 3(d), 5, 7, and 8-24 will survive the termination or expiration of this Agreement.

21. **Jurisdiction; Venue; Waiver of Jury Trial.** IN THE EVENT A PARTY MAY BRING AN ACTION AGAINST THE OTHER PARTY, IT IS AGREED THAT SUCH ACTION WILL BE LITIGATED IN COURTS HAVING SITUS IN THE COUNTY OF MONROE, STATE OF NEW YORK OR IF IN FEDERAL COURT, IN THE WESTERN DISTRICT OF NEW YORK. EACH PARTY HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURTS LOCATED WITHIN SUCH CITY AND STATE. EACH OF THE PARTIES HERETO HEREBY WAIVES PERSONAL SERVICE OF PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH PARTIES BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH PARTY, AT THE ADDRESS SET FORTH IN THE PREAMBLE OF THIS AGREEMENT AND SERVICE SO MADE WILL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST SUCH PARTY IN ACCORDANCE WITH THIS PARAGRAPH. EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, IRREVOCABLY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION BROUGHT ON OR WITH RESPECT TO THIS AGREEMENT, INCLUDING TO ENFORCE OR DEFEND ANY RIGHTS HEREUNDER, AND AGREES THAT ANY SUCH ACTION WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

22. **Drafting of the Agreement.** The Parties acknowledge and agree that because both Parties and their counsel participated in negotiating and drafting this Agreement, no rule of construction will apply to this Agreement which construes any language, whether ambiguous, unclear or otherwise, in favor of, or against any Party by reason of that Party's role in drafting this Agreement.

23. **Headings.** The headings of articles, sections and subsections in this Agreement are for reference only and will not affect the meaning of this Agreement.

24. **Counterparts and Facsimile Signatures.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission (to which a signed PDF copy is attached) will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

*[SIGNATURE PAGE FOLLOWS]*

DRAFT



**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the Effective Date.

**FAIRPORT:**

[ \_\_\_\_\_ ]

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

Name:

Title:

**COMPANY:**

**Rochester Friendly Home**

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

Name:

Title:

**DRAFT**

**Schedule A**  
**Services**  
**Statement of Work**

[To be agreed upon by the Parties].

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# Exhibit C

## INTERIM CONSULTING AGREEMENT

This Interim Consulting Agreement (this “Agreement”) is entered into as of \_\_\_\_\_, 2022 (the “Effective Date”), by and between [\_\_\_\_\_] , a New York not-for-profit corporation (“Fairport”) and Rochester Friendly Home, a New York not-for-profit corporation (“Company”). Fairport and Company may be referred to herein as the “parties.” Capitalized terms used but not otherwise defined herein shall have the definitions ascribed to such terms in that certain Amended and Restated Asset Purchase Agreement, [\_\_\_\_\_] , by and among Fairport, [\_\_\_\_\_] , FBH Community Ministries, FBH Distinctive Living Communities, Inc., and Eastside Senior Care, Inc. (“Eastside”), as amended (the “Purchase Agreement”).

### RECITALS

**WHEREAS**, Fairport, its affiliates and Eastside entered into the Purchase Agreement pursuant to which Eastside will purchase certain assets of Fairport and its affiliates;

**WHEREAS**, senior leadership of Company serves as the governing board of Eastside;

**WHEREAS**, Fairport is licensed as a [\_\_\_\_\_] pursuant to [\_\_\_\_\_] (the “Facility”);

**WHEREAS**, in connection with on-going bankruptcy proceedings of Fairport and its affiliates, Eastside is in receipt of a Sale Order approving Eastside as the purchaser of certain assets of Fairport and its affiliates; and

**WHEREAS**, in accordance with the Purchase Agreement and subject to the terms of any applicable order, approval or consent of the Bankruptcy Court (as such term is defined in the Purchase Agreement), Fairport desires to engage Company to provide certain consulting services to Fairport, and Company agrees to be so engaged, on the terms and conditions set forth in this Agreement.

#### 1. **Services.**

(a) **Scope.** Subject to the terms and conditions of this Agreement, Fairport hereby engages Company to provide certain consulting services to Fairport in a manner consistent with the directions of Fairport through the provision of the services set forth on the Statement of Work (as defined below) (the “Services”) and Company agrees to provide such Services, commencing on the Effective Date.

(b) **Statement of Work; Assessment to Set Priorities and Timing.** Within ten (10) days of receipt of the Sale Order, the parties will (i) conduct an assessment of Fairport’s operations with respect to the Facility for the purpose of establishing the scope of Services and establishing priorities and an implementation timeline, and (ii) based on that assessment, will enter into an amendment of this Agreement to incorporate, as Schedule A hereto, a description of the Services and the timing of implementing the Services (the “Statement of Work”). The parties acknowledge and agree that the scope of the Services will be as necessary to improve financial and quality performance of the Facility and ensure access to quality patient care for the patients served by the Facility. The Parties acknowledge and agree that the Services will not all be implemented

beginning immediately on the Effective Date but will be implemented on the timeline set forth in the Statement of Work.

(c) Compensation. During the Term of this Agreement, as compensation for the Services, Fairport will reimburse Company for the actual costs incurred in providing the Services (the “Fees”). For purposes of calculating the Fees, “cost” means:

i. with respect to Company personnel assigned to provide Services pursuant to this Agreement, such personnel’s hourly compensation rate times the number of hours worked pursuant to this Agreement, plus the proportion of benefit costs attributed to the time worked pursuant to this Agreement; and

ii. any reasonable out of pocket expenses incurred by Company and its personnel pursuant to this Agreement, to the extent such expenses were included in the budget to the extent such expenses were included in the budget adopted by Fairport.

(d) Payment Terms. Within fifteen (15) days of the end of each month, Company will provide Fairport with an invoice that documents the costs for the preceding month. Within thirty (30) days of receipt of the invoice described above, Fairport will pay the invoice amount to Company in the manner requested by Company.

(e) Disputes. In the event of a good faith dispute between the parties regarding any Fees due hereunder, Fairport will notify Company of the amount of and reason for the dispute promptly, but in no event later than the day on which the payment is due. Fairport may withhold the disputed portion of the Fees until resolution of the dispute, which the parties will negotiate in good faith to resolve promptly.

(f) Cash Flow Deficiency. In the event Fairport experiences a cash flow deficiency that renders Fairport unable to pay the Fees in whole or in part, the Parties will make good faith efforts to mutually agree upon a plan to address the future payment of such Fees. The foregoing does not preclude Company from exercising any termination rights available to it under this Agreement.

(g) Compliance. In all respects and at all times this Agreement will be interpreted and implemented so that any such Services provided hereunder and the management of Fairport will be at all times in full compliance with applicable New York State Department of Health (“DOH”) regulations, as presently promulgated or as hereinafter amended. In the event of any conflict between the provisions of this Agreement and applicable DOH regulations, the latter will control.

## **2. Communication and Cooperation.**

(a) Contact Persons. Company and Fairport will identify an individual to act as a principal contact person for the relationship. Company and Fairport may change its respective contact persons at any time by written notice to the other party.

(b) Personnel. Company will perform the Services using its own personnel and staff or the personnel and staff of its affiliates. Subject to the terms of this Section 2(b), Company will have sole and exclusive authority and discretion in connection with the hiring, compensation,

supervision, discipline, assignment, and termination of such personnel. Company will comply with standard industry practices to make commercially reasonable efforts to ensure that all staff or third-party contractors used to perform the Services have not been convicted of any criminal offense related to health care or the provision of Services paid for by Medicare or Medicaid programs or excluded or debarred from participation in Medicare or Medicaid programs, and will remove and replace any such individual who fails to meet such qualification. If Fairport believes an individual working on an assignment is not qualified to perform the Services or otherwise has concerns about staffing, Fairport must inform Company in writing. Company will work to promptly address the situation, including, if appropriate, ceasing the services of such individual to perform the Services and replacing such individual. Company may, from time to time, facilitate the engagement of third-party contractors to provide certain Services to Fairport, subject to the written approval of Fairport's CEO and/or Board.

(c) Cooperation. Fairport acknowledges that the effectiveness of an engagement depends in large part on the information provided and the actions undertaken. To that end, Fairport will cooperate with Company to execute the performance of Services, including, without limitation, providing Company with timely access to data, information, and personnel reasonably requested by Company, subject to applicable law. In connection with the foregoing, to the extent required by applicable law, the parties agree to enter into a business associate agreement in compliance with the Health Insurance Portability and Accountability Act of 1996.

### **3. Confidentiality.**

(a) Confidentiality Obligations. Company acknowledges and agrees that due to the nature of this Agreement, Company, and its employees or representatives, may have access to information of a proprietary nature owned by Fairport or its affiliates, including without limitation practices, books, correspondence, records, operating manuals and similar materials, methods of doing business, administrative, advertising and marketing techniques and information regarding financial affairs. Consequently, Company acknowledges and agrees that Fairport has a proprietary interest in all such information and that all such information constitutes confidential and proprietary information and the trade secret property of the other party. Company expressly and knowingly waives any and all rights, title and interest in and to such trade secrets and confidential information of Fairport and will return at its own expense all copies of such trade secrets and confidential information to Fairport upon the expiration or earlier termination of this Agreement. Company will hold the trade secrets and confidential information of Fairport in strictest confidence and not disclose them or allow them to be disclosed, directly or indirectly, to any person or entity other than those persons or entities that are employed by or affiliated with Company or Fairport, except as otherwise required by law or upon the prior written consent of Fairport. If Company is requested or required to disclose in any manner whatsoever any of Fairport's trade secrets or confidential information, Company will promptly notify Fairport in writing, so that Fairport may seek an appropriate remedy to prevent the disclosure or waive compliance with the terms of this paragraph. Notwithstanding the foregoing, Company shall not be bound by any restrictions imposed by this Section 3(a) in connection with any confidential information that (i) was previously known to Company and concerning which Company was free of any obligation to keep such information confidential and free of any restriction on its use or disclosure, (ii) enters the public domain and thereby becomes public knowledge through no fault of Company, (iii) is or becomes available to Company on a non-confidential basis from a source other than Fairport, or

(iv) Company is compelled to disclose by lawful process (whether by interrogatories, requests for information or documents, subpoena, civil investigative demands, court order or other process.

(b) Defense Against Trade Secrets Act. Nothing in Section 3(a) will affect the Company's immunity under 18 United States Code Sections 1833(b) (1) or (2), which read as follows:

i. An individual will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

ii. An individual who files a lawsuit for retaliation by Company for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

(c) Use of Name, Logos, etc. During the term of this Agreement, neither party will make any use of the name of the other party, or any of the other party's trademarks, logos or symbols (the "Marks"), without the prior written consent of the other party, which consent may be given or withheld in such party's sole discretion. Further the parties acknowledge and agree that each party and its respective affiliates are the owners of such party's Marks. If either party acquires any rights in the other party's Marks, by operation of law, or otherwise, such rights will be deemed and are hereby irrevocably assigned to such other party without further action by any of the parties. Each party agrees not to dispute or challenge or assist any person or entity in disputing or challenging the other party's rights in and to such party's Marks or the validity of such party's Marks.

(d) Non-Solicitation. During the Term of this Agreement and for the period of one year beginning with the date this Agreement terminates or expires (other than termination as a result of the closing under the Purchase Agreement) Company will not, without prior approval of the CEO and/or Board of Fairport, (a) induce, solicit, or encourage (or attempt to induce, solicit, or encourage) any employee, contractor, vendor, or supplier of Fairport or any affiliate thereof to terminate or reduce such relationship, or (b) induce, solicit, or encourage (or attempt to induce, solicit, or encourage) any patient, customer, client, or service recipient of Fairport or any affiliate thereof to terminate or adversely change its relationship with Fairport or such affiliate or otherwise interfere with any relationship between Fairport or such affiliate, on the one hand, and any of its patients, customers, clients, or service recipients on the other hand.

#### **4. Relationship.**

(a) Independent Contractor. In the performance of the Services, duties and obligations undertaken by Company under this Agreement, it is mutually understood and agreed that Company is at all times acting and performing as an independent contractor. Except for the establishment

of standards and parameters for the provision of Services hereunder, Fairport shall neither have nor exercise control over the methods by which Company shall perform the Services under this Agreement. However, this shall in no way interfere with the right of Fairport to have ultimate decision-making authority on all matters related to Fairport. In connection with the provision of Services, Company shall:

- i. Perform the Services (i) in a professional and workmanlike manner; (ii) in compliance with this Agreement, and (iii) in compliance with all applicable statutes, acts, ordinances, laws, rules, regulations, codes and standards, including all of Fairport's policies and procedures and privacy and security requirements that are provided to Company;
- ii. At all times, be solely responsible for all means, methods, techniques, sequences and procedures of the Services, and the acts and omissions of Company;
- iii. Provide all equipment and materials necessary to provide the Services;
- iv. Pay any and all required fees, permits, Unemployment Insurance contributions, Social Security and Medicare contributions, income tax withholding and any other insurance or taxes, including but not limited to federal and state taxes, for Company's staff performing the Services pursuant to this Agreement;
- v. Obtain and maintain, at its own cost and expense, insurance coverage as required by law and as is customary in the industry including, but not limited to, automobile, general liability, malpractice, workers' compensation, and/or disability insurance, as applicable;
- vi. Comply with all applicable equal employment opportunity and non-discrimination requirements;
- vii. Be available at reasonable times to consult with appropriate representatives of Fairport concerning any Services performed or to be performed by Company under this Agreement; and
- viii. Not assume or create any obligations, express or implied, debts or liabilities on behalf of or in the name of Fairport unless otherwise agreed between the parties.

(b) Nature of Services.<sup>1</sup> Notwithstanding anything to the contrary in this Agreement, Fairport retains full authority and responsibility for, and control over, the operations and

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<sup>1</sup> The provision set forth in the body of this form of agreement incorporates the required language for the Services Agreement to be entered into between Company and Fairport Baptist Homes, which operates the Nursing Facility (as defined in the Purchase Agreement). To meet the different regulatory requirements between the NYSDOH-Regulated Entities (as defined in the Purchase Agreement), this provision will be different for the Services Agreement to be entered into between Company and Fairport Baptist Homes Adult Care Facility, Inc. which operates the Adult Home (as defined in the Purchase Agreement) and will state the following: "Notwithstanding anything to the contrary in this Agreement, Fairport retains full authority and responsibility for, and control over, the day-to-day operations and management of the Facility. Further, notwithstanding anything to the contrary in this Agreement, the Services will not include, and Fairport will retain sole and exclusive authority over, all matters, services, and functions which is required by statute or regulation or DOH policy to be reserved to Fairport, including approving all matters pursuant to 10 NYCRR 766.9 and 18 NYCRR 485.10, as amended from time to time, and any successor statutes or regulations thereto. As of the Effective Date, the matters which Fairport retains sole and exclusive authority over, and which



management of the Facility. Further, notwithstanding anything to the contrary in this Agreement, the Services will not include, and Fairport will retain sole and exclusive authority over, all matters, services, and functions which is required by statute or regulation or DOH policy to be reserved to Fairport, including approving all matters pursuant to 10 NYCRR 600.9, and all matters set forth in 10 NYCRR 405.3(f), as amended from time to time, and any successor statutes or regulations thereto. As of the Effective Date, the matters which Fairport retains sole and exclusive authority over, and which Company has no authority over and which may not be delegated, or shared by, Company or any other person, are:

- i. authority and ongoing responsibility for statutory and regulatory compliance with all federal, state, and local laws and regulations and agency accreditations;
- ii. responsibility for all powers not specifically delegated to Company;
- iii. sufficient authority and control to discharge its responsibility under DOH regulations 10 NYCRR Part 405;
- iv. direct and independent authority to hire and fire any Fairport personnel, including, without limitation, the chief executive officer, the facility administrator, medical director, director of nursing, chief financial officer, and the chief operating officer;
- v. adoption and approval of the Facility's operating and capital budgets
- vi. maintenance and independent control and physical possession of the books and records and operating policies and procedures of Fairport;
- vii. independent adoption, approval, and enforcement over the disposition of assets and authority to incur debts and liabilities;
- viii. approval of all contracts for management and/or clinical services;
- ix. approval of any facility debt;
- x. approval of any and all settlements of administrative proceeding or litigation to which Fairport is a party;
- xi. independent adoption, approval or enforcement of policies affecting the operation of the Facility;
- xii. assuring maintenance of the fiscal stability, level of Services, and quality of care rendered by Fairport; and

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Company has no authority over and which may not be delegated, or shared by, Company or any other person, are: (a) hiring or firing any Facility personnel; (b) maintaining or controlling the Facility's books and records; (c) disposing of assets or incurring any liability on behalf of the Facility; (d) adopting or enforcing policies regarding the operation of the Facility; (e) all powers not specifically delegated to Company, and (f) authority and ongoing responsibility for statutory and regulatory compliance with all federal, state, and local laws and regulations and agency accreditations."

- xiii. direct, independent authority over the appointment and/or dismissal of all licensed or certified health care staff.

(c) Referrals. The parties acknowledge and agree that the transactions contemplated hereunder are not, and will not at any time be, conditioned in any way on either party referring patients to the other party and each such party will be permitted to refer patients to any other health care entities.

**5. Liability Limitation.** Absent gross negligence, willful misconduct, or knowing violation of applicable law, Company's liability under this Agreement will be limited to the greater of (i) any insurance proceeds received by Fairport under any applicable policy, and (ii) the aggregate amount of Fees paid by Fairport to Company under this Agreement. Fairport does not hereby assume any of the obligations, liabilities, or debts of Fairport or the Facility and will not, by virtue of its performance hereunder, assume or become liable for any such amounts.

**6. Term and Termination.** This Agreement is effective as of the date written above in the preamble. Except during the period which the application for CON Approval (as such term is defined in the Purchase Agreement) with respect to the change of ownership of Fairport under the Purchase Agreement is pending, either party may terminate this Agreement at any time by giving sixty (60) days prior written notice to the other party. In addition, either party may terminate this Agreement upon a material breach by the other party, provided that the party seeking to terminate the Agreement provides the other party with written notice of the breach and an opportunity to cure the breach at least twenty (20) days prior to termination. Notwithstanding the foregoing, this Agreement will automatically terminate upon the earlier of: (i) the closing of the transactions contemplated under the Purchase Agreement; or (ii) Eastside's receipt of approval or consent by DOH to that certain Service Agreement for NYSDOH-Regulated Entities (as such term is defined in the Purchase Agreement) between the parties; (iii) the termination of the Purchase Agreement for any reason; or (iv) eighteen (18) months from the Effective Date of this Agreement.

**7. General Provisions.**

(a) Recordkeeping. Upon written request of the Secretary of Health and Human Services or the Comptroller General or any of their duly authorized representatives, Company or any other related organization providing services with a value or cost of ten thousand dollars (\$10,000.00) or more over a twelve (12) month period, will make available to the Secretary the contracts, books, documents and records that are necessary to certify the nature and extent of the costs of providing such services. Such inspection will be available up to four (4) years after the rendering of such services. This paragraph is not intended to prohibit or impede any state audits pursuant to state law or to waive any attorney-client or physician-patient privilege or any challenges to the applicability of this requirement. In the event the statutory amount reflected herein is revised during the term of this Agreement, this paragraph will be deemed to be amended, without further action required by the parties hereto, to reflect said revised statutory amount.

(b) Entire Agreement; Amendment. This Agreement, together with all exhibits attached hereto, expresses the final, complete, and exclusive agreement between Fairport and Company solely with respect to the Services, and supersedes prior or contemporaneous written and oral agreements, negotiations, course of dealing, and communications between the parties

relating to the Services. This Agreement may be amended only as stated in a writing signed by both Fairport and Company which recites that it is an amendment to this Agreement.

(c) Equitable Remedies. Each Party acknowledges and agrees that a breach of Section 3 will result in irreparable harm to the other Party and that the other Party cannot be reasonably or adequately compensated in damages therefor. Therefore, each Party will be entitled to equitable remedies, including without limitation injunctive relief, to prevent a breach and to secure enforcement thereof, in addition to any other relief or award to which it may be entitled.

(d) Severability; Waiver. If any provision of this Agreement is held illegal, invalid, or unenforceable, all other provisions of this Agreement will nevertheless be effective, and the illegal, invalid, or unenforceable provision will be considered modified such that it is valid to the maximum extent permitted by law. Any waiver of the provisions of this Agreement must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this Agreement will not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

(e) Assignment. Neither party may assign its rights, duties or obligations under this Agreement without the prior written consent of the other party.

(f) Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of New York, without regard to its conflict of laws principles.

(g) Survival. Section 3 and Sections 5-7 will survive the termination or expiration of this Agreement.

(h) Jurisdiction; Venue; Waiver of Jury Trial. IN THE EVENT A PARTY MAY BRING AN ACTION AGAINST THE OTHER PARTY, IT IS AGREED THAT SUCH ACTION WILL BE LITIGATED IN COURTS HAVING SITUS IN THE COUNTY OF MONROE, STATE OF NEW YORK OR IF IN FEDERAL COURT, IN THE WESTERN DISTRICT OF NEW YORK. EACH PARTY HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURTS LOCATED WITHIN SUCH CITY AND STATE. EACH OF THE PARTIES HERETO HEREBY WAIVES PERSONAL SERVICE OF PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH PARTIES BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH PARTY, AT THE ADDRESS SET FORTH IN THE PREAMBLE OF THIS AGREEMENT AND SERVICE SO MADE WILL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST SUCH PARTY IN ACCORDANCE WITH THIS PARAGRAPH. EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, IRREVOCABLY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION BROUGHT ON OR WITH RESPECT TO THIS AGREEMENT, INCLUDING TO ENFORCE OR DEFEND ANY RIGHTS HEREUNDER, AND AGREES THAT ANY SUCH ACTION will BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

(i) Drafting of the Agreement. The parties acknowledge and agree that because both parties and their counsel participated in negotiating and drafting this Agreement, no rule of construction will apply to this Agreement which construes any language, whether ambiguous, unclear or otherwise, in favor of, or against any party by reason of that party's role in drafting this Agreement.

(j) Headings. The headings of articles, sections and subsections in this Agreement are for reference only and will not affect the meaning of this Agreement.

(k) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

*[Signature page follows]*

DRAFT

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

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name:  
Title:

**ROCHESTER FRIENDLY HOME**

By: \_\_\_\_\_  
Name:  
Title:

**Schedule A**  
**Services**  
**Statement of Work**

[To be agreed upon by the parties.]

**AMENDED AND RESTATED**

**ASSET PURCHASE AGREEMENT**

Dated as of ~~May 13~~           , 2022

by and among

**FAIRPORT BAPTIST HOMES,**

**FAIRPORT BAPTIST HOMES ADULT CARE FACILITY, INC.,**

**FBH COMMUNITY MINISTRIES,**

**AND**

**FBH DISTINCTIVE LIVING COMMUNITIES, INC.**

**as Sellers**

**and**

**EASTSIDE SENIOR CARE, INC.**

**as Buyer**

**AMENDED AND RESTATED**

**ASSET PURCHASE AGREEMENT**

THIS AMENDED AND RESTATED ASSET PURCHASE AGREEMENT (this “Agreement”) is made and entered into as of ~~May 13~~ \_\_\_\_\_, 2022 (the “Effective Date”), by and among FAIRPORT BAPTIST HOMES, a New York not-for-profit corporation (“FBH”), FAIRPORT BAPTIST HOMES ADULT CARE FACILITY, INC., a New York not-for-profit corporation (“ACF”), FBH COMMUNITY MINISTRIES, a New York not-for-profit corporation (“Ministries”), and FBH DISTINCTIVE LIVING COMMUNITIES, a New York not-for-profit corporation (“Distinctive Living,” and together with FBH, ACF and Ministries, “Sellers”) and EASTSIDE SENIOR CARE, INC., a New York not-for-profit corporation (“Buyer”). Capitalized terms used in this Agreement have the meanings set forth in Article I or in the applicable section cross-referenced in Article I.

**RECITALS**

A. WHEREAS, Buyer and Sellers entered into that certain Asset Purchase Agreement, dated May 13, 2022 (the “Original Agreement”), wherein Buyer agreed to purchase from Sellers, and Sellers agreed to sell to Buyer, substantially all of Sellers’ assets except those that were expressly excluded as provided in the Original Agreement.

B. WHEREAS, after discussions with various stakeholders, Buyer and Sellers now desire to amend and restate the Original Agreement to incorporate new terms and conditions.

C. WHEREAS, (i) FBH operates a 142-bed nursing facility, (ii) ACF operates a 42-bed adult home which includes 11 ALP beds and an associated limited license LHCSA, (iii) Ministries provides community-based services such as case management, housing services, and transportation services, and (iv) Distinctive Living operates a 41-unit independent living community (such facilities and programs referred to herein collectively as the “Facilities”).

~~B~~D. WHEREAS, Sellers will file voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Western District of New York, (the “Bankruptcy Court”) on or about May 6, 2022 (the “Filing”).

~~C~~E. WHEREAS, Sellers desire to sell to Buyer substantially all of Sellers’ assets except those that are expressly excluded as provided herein, and Buyer desires to purchase from Sellers such assets and assume certain specified liabilities of Sellers, and no others, upon the terms and conditions set forth herein.

~~D~~F. WHEREAS, Buyer and Sellers intend to effectuate the transactions contemplated by this Agreement (the “Transactions”) through a sale pursuant to Sections 363 and 365 of the Bankruptcy Code.



EG. WHEREAS, the execution and delivery of this Agreement, Sellers' ability to consummate the Transactions, and Buyer's obligations hereunder, are subject, among other things, to a Sale Order (as such term is hereafter defined) entered by the Bankruptcy Court.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the Parties agree as follows:

## TERMS AND CONDITIONS

### ARTICLE I. DEFINITIONS

1.1 Definitions. In this Agreement, the following terms have the meanings specified or referred to in this Section 1.1 and shall be equally applicable to both the singular and plural forms. Any agreement referred to below shall mean such agreement as amended, supplemented and modified from time to time to the extent permitted by the applicable provisions thereof and by this Agreement.

"Action" means any legal action, suit or arbitration, or any inquiry, audit, proceeding or investigation, by or before any Governmental Authority or any contractor acting on behalf of a Governmental Authority.

"Adult Home" means the 42-bed adult home which includes the 11 ALP beds and associated limited license LHCSA operated by ACF.

"Affected Assets" has the meaning set forth in Section 7.4.

"Affiliate" has the meaning set forth in Section 101(2) of the Bankruptcy Code.

"ALP" means ~~assist~~assisted living program licensed by the ~~New York State Department of Health~~NYSDOH.

"Alternative Proposal" shall mean an alternative proposal or offer to purchase any or all of the Purchased Assets received by Sellers prior to the hearing seeking entry of the Sale Order.

"Ancillary Documents" means the Bill of Sale, Deeds and Assignment and Assumption Agreement.

"Approving Order" shall mean the written order from the New York State Supreme Court and/or Office of the Attorney General pursuant to Sections 510 and 511/511-a of the Not-For-Profit Corporation Law authorizing the sale of the Purchased Assets in accordance with the terms hereof.

"Assumed Liabilities" has the meaning specified in Section 2.4.

"Bankruptcy Case" shall mean the jointly administered cases commenced upon Sellers' filings of voluntary petitions for relief under the Bankruptcy Code on or about May 6, 2022 in the Bankruptcy Court.

“Bankruptcy Code” shall have the meaning specified in the Recitals of this Agreement.

“Bankruptcy Court” shall have the meaning specified in the Recitals of this Agreement.

“Benefit Plans” means, collectively, any (i) deferred compensation plan, (ii) profit sharing, bonus, or incentive compensation plan, (iii) equity compensation plan, (iv) “welfare plan” (within the meaning of Section 3(1) of ERISA), whether or not subject to ERISA, (v) “pension plan” (within the meaning of Section 3(2) of ERISA), whether or not subject to ERISA, (vi) “employee benefit plan” (within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA), (vii) employment, retirement, retainer, compensation, consulting, retention, indemnification, Section 125, termination, severance or “change in control” agreement or arrangement, (viii) plan, agreement or arrangement providing for “fringe benefits” or perquisites to employees, officers, directors or agents, including but not limited to benefits relating to automobiles, clubs, vacation, child care, parenting, sabbatical, sick leave, tuition reimbursement, medical, dental, hospitalization, life insurance, disability insurance and other types of insurance, whether written or unwritten, and (ix) other employee benefit plan, fund, program, agreement or arrangement, in each case of the preceding clauses, that is or has ever been sponsored, maintained or contributed to or required to be contributed to by Sellers, or to which Sellers are party, or to which contributions have are made or have ever been made, or for which obligations have been incurred, for the benefit of any employee or director or any former employee or director of Sellers, or with respect to which Sellers could have any Liability.

“Break-up Fee” means a fee payable as set forth in Section 10.2(d) herein in an amount equal to three percent (3%) of the Purchase Price.

“Business Day” means any day of the year on which national banking institutions in New York are open to the public for conducting business and are not required or authorized to close.

“Business Intellectual Property” means all Intellectual Property owned or licensed by Sellers and used in connection with the Facilities.

“Buyer” has the meaning specified in the Preamble of this Agreement.

“Buyer’s Discretion” means the discretion of Buyer, reasonably exercised, based on the Buyer’s business goals and objectives in pursuing the mission set forth in its organizational documents.

“Claim” has the meaning set forth in Section 101(5) of the Bankruptcy Code, including all rights, claims, causes of action, defenses, debts, demands, damages, rights of setoff, recoupment rights, obligations and liabilities of any kind or nature under contract, at law or in equity, known or unknown, contingent or matured, liquidated or unliquidated, and all rights and remedies with respect thereof.

“Closing” has the meaning specified in Section 4.2.

“Closing Date” has the meaning specified in Section 4.2.

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985.

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

“Collective Bargaining Agreement” means any contract or other binding agreement or arrangement (written or oral) with any labor union or organization, collective bargaining agent or other similar employee representative.

“Community-Based Services” means community-based services such as case management, housing services, and transportation services.

“CON Approval” has the meaning specified in Section 7.2(a).

“Contract” means any agreement, contract, obligation, promise, instrument, undertaking or other arrangement (whether written or oral) that is legally binding, other than any Benefit Plan or Lease, to which any Sellers are party. ~~The term “Contract” shall, for the avoidance of doubt, include any Medicare Provider Agreements or similar agreements between any Sellers and any Governmental Authority.~~

“Deposit” has the meaning specified in Section 3.2.

“DIP Credit Agreement” means any and all agreements or documents executed in connection with post-petition financing from the Buyer to the Sellers, to the extent any such financing is provided.

“Disclosure Schedule” has the meaning specified in Article V.

“Documents” means, in any form, paper, electronic, or otherwise, all books, records, files, invoices, Inventory records, documents, cost and pricing information, supplier lists, business plans, catalogs, advertising and marketing materials, administrative libraries, quality control records and manuals, policies and procedures, research and development files, records and laboratory books, operating materials, personnel and employee records and financial records (including all data and other information stored on discs, tapes or other media) to the extent used in or to the extent relating to the assets, properties (including the Intellectual Property and the Permits), business or operations of the Facilities.

“Effective Date” has the meaning specified in the Preamble of this Agreement.

“Encumbrance” means, to the extent not considered a Lien, any security interest, lien, collateral assignment, right of setoff, debt, pledge, levy, charge, encumbrance, option, right of refusal, restriction (whether on transfer, disposition or otherwise), other similar agreement terms tending to limit any right or privilege of Sellers under any Contract, conditional sale contract, title retention contract, mortgage, lease, deed of trust, hypothecation, indenture, security agreement, easement, license, servitude, proxy, voting trust, transfer restriction under any shareholder or similar agreement, or any other agreement, arrangement, contract, commitment or binding obligation of any kind whatsoever, whether oral or written, or imposed by any applicable law, equity or otherwise.

“Environment” means all air, water vapor, surface water, groundwater, drinking water supply or land, including land surface or subsurface, and includes all fish, wildlife, biota and all other natural resources.

“Environmental Laws” means all federal, state or local environmental, land use, health, chemical use, safety and sanitation laws, statutes, ordinances, regulations or rule of common law (including with respect to the Facilities, specific Environmental Permits and Orders), as in effect on the date hereof, relating to the protection of the Environment or governing the discharge of pollutants or the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances, including but not limited to the Resource Conservation and Recovery Act of 1976, as amended, the Clean Air Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Toxic Substances Control Act, as amended, the Occupational Safety and Health Act of 1970 and state statutes similar to or based upon the foregoing, as the same are in effect on the date hereof.

“Environmental Permits” means all permits, licenses, certificates, approvals, authorizations, consent or registrations issued by a Governmental Authority pursuant to an Environmental Law.

“Equipment” means all furniture, fixtures, equipment, computers, operating systems software, registry software, machinery, apparatus, appliances, implements, spare parts, signage, supplies, and all other tangible personal property of every kind and description in which Sellers have an interest.

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

“Escrow Agent” has the meaning specified in Section 3.2.

“Escrow Period” has the meaning specified in Section 3.3.

“Excluded Assets” has the meaning specified in Section 2.2.

“Excluded Liabilities” has the meaning specified in Section 2.3.

~~“Expense Reimbursement” means an amount equal to the reasonable, documented, out of pocket expenses of Buyer (including the reasonable, documented expenses of Cicero Consulting Associates, The Bonadio Group, Mengel Metzger Barr & Co., LaBella Associates DPC, outside counsel and advisors, which shall be based on summary invoices, redacted to preserve privileged or confidential information, whose work product has or will benefit Sellers, up to a maximum aggregate amount equal to Two Hundred Fifty Thousand Dollars (\$250,000).~~

“Facilities” has the meaning specified in the Recitals of this Agreement.

“Filing” has the meaning specified in the Recitals of this Agreement.

[“Friendly Home System” means Rochester Friendly Home, Rochester Friendly Senior Services, Cloverwood Senior Living, Inc. and Linden Knoll, Inc.](#)

“Governmental Authority” means any United States federal, state or local governmental authority, regulatory or administrative authority or any court, tribunal or judicial body having jurisdiction.

“Government Programs” means all Medicare and Medicaid programs offered under Title XVIII or Title XIX of the Social Security Act, including without limitation, Medicare Part A, Medicare Part B, Medicare Advantage (also known as Medicare Part C), and the Medicare Prescription Drug Program (Medicare Part D), and any state program of Medical Assistance and any Medicaid fee for service or Medical Managed Care program.

“Hazardous Substance” means any “pollutant”, “contaminant”, “solid waste”, “hazardous waste”, “hazardous material” or “hazardous substance” as defined under any Environmental Law, including medical wastes, toxic or hazardous air or water pollutants or any other toxic, infectious or noxious substances or any waste or recycled products thereof or asbestos or mold (including biological agents, such as mold or fungi that can or are known to produce mycotoxins or other bioaerosols such as antigens, bacteria, amoebae and microbial volatile organic compounds).

[“HRSA Provider Relief Fund” has the meaning set forth in Section 2.6.](#)

“Insurance Policies” has the meaning specified in [Section 5-95.8](#).

“Intellectual Property” means all intellectual property rights of any kind, throughout the world, all rights of privacy and rights to personal information, all telephone numbers and Internet protocol addresses, all email domain addresses and social media accounts, all documentation and media constituting, describing or relating to the above, including memoranda, manuals, technical specifications and other records wherever created throughout the world, all rights in the foregoing and in other similar intangible assets, and all rights and remedies (including the right to sue for and recover damages, profits and any other remedy for past, present, or future infringement, misappropriation or other violation relating to any of the foregoing.

“Interest” means “interest” as that term is used in Section 363(f) of the Bankruptcy Code.

[“Interim Consulting Agreements” has the meaning specified in Section 7.3.](#)

“Inventory” has the meaning specified in [Section 2.1\(a\)](#).

“Knowledge” means with respect to any matter in question, if any of Sellers’ or Buyer’s (as applicable) officers have actual knowledge, or with respect to which Sellers or Buyer (as applicable) has received actual written notice, of the matter in question (but without imposing any requirement or obligation on any of the executives not either a party to this Agreement or a director, officer or employee of Sellers or Buyer).

“Lease” means all leases, subleases, licenses or other use or occupancy agreements to which any Seller is a party as lessee, sublessee, tenant, subtenant or in a similar capacity.

“Lease Security Deposits” means all security deposits that (i) are under the control of any one of the Sellers or The Woodlands at Stonebrook LLC and (ii) relate to any leases assumed and assigned as part of the Purchased Assets.

“Legal Requirement” means any federal, state, local, municipal or other administrative Order, constitution, law, ordinance, principle of common law, regulation, rule, statute or treaty. The term “Legal Requirement” shall include, without limitation, the federal Antikickback Law; 42 USC Section 1320a-7b; the Physician Self-Referral law and regulations 42 USC Section 1395nn and 42 CFR Part 411, Subpart J; the Civil Monetary Penalties Law, 42 USC 1320a-7a and the Civil False Claims Act 31 USC Section 3729, et seq.

“LHCSA” means licensed home care services agency licensed by the ~~New York State~~ Department of Health NYSDOH.

“Liability” means any liability or obligation (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due and regardless of when asserted).

“Lien” has the meaning ascribed to such term in Section 101(37) of the Bankruptcy Code.

“Loss” has the meaning set forth in Section 7.4.

“Material Adverse Effect” means any fact, condition, change, violation, inaccuracy, circumstance or event, individually or in the aggregate, that, in Buyer’s Discretion, (i) has, or is reasonably likely to have, an adverse effect on or impairs the Purchased Assets or the Facilities, in each case that has an impact, result, effect, loss or value that individually or in the aggregate exceeds Two Hundred Fifty Thousand Dollars (\$250,000); (ii) results in the Facilities ceasing or closing all or any material portion of its operations, or otherwise impairs or causes any material licenses to lapse; or (iii) materially impedes or delays, or is reasonably likely to materially impede or delay, the consummation of the transactions contemplated by this Agreement, in each case except to the extent that any such fact, condition, change, violation, inaccuracy, circumstance or event results from or arises out of changes in general economic, legal or financial conditions or changes affecting the industry in which the Facilities operate generally (except to the extent that such developments have a disproportionate effect on the Purchased Assets or the Facilities).

“Medicaid” has the meaning specified in Section 5.9(b).

“Medicare” has the meaning specified in Section 5.9(b).

“Medicaid Provider Agreements” means any Medicaid provider agreement to which any of Sellers is a party.

“Medicare Provider Agreements” means any Medicare provider agreement to which any of Sellers is a party.

“Mortgage Debt” shall mean the indebtedness owed by FBH to Berkadia/HUD in the approximate amount of Six Million Four Hundred Thousand Dollars (\$6,400,000).

“Mortgage Financing” has the meaning specified in Section 7.8.

“Nursing Facility” means the 142-bed nursing facility operated by FBH.

“NYSDOH” means the New York State Department of Health.

“Order” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Authority.

“Original Agreement” has the meaning set forth in the preamble.

“Party” or “Parties” means, individually or collectively, Buyer and Sellers.

“Periodic Taxes” has the meaning specified in Section 8.1(a).

“Permits” means all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates of need, operating certificates, certificates of exemption, accreditations, registrations, approvals, clearances and orders of any Governmental Authority which are necessary or customary for Sellers to own, lease and operate its properties and assets or to carry on operations at the Facilities as they are now being conducted or proposed to be conducted.

“Permitted Encumbrances” means: (i) statutory liens for current property Taxes and assessments not yet due and payable, including, without limitation, liens for ad valorem Taxes and statutory liens not yet due and payable arising other than by reason of any default by Sellers, provided, however, that Buyer shall receive a credit towards the Purchase Price on account of all such Taxes paid by Buyer; (ii) Taxes, assessments, fees and other charges being contested in good faith by Sellers or Affiliate of Sellers in appropriate proceedings for which an adequate reserve has been made with respect thereto, as required by GAAP, provided, however, they do not create a lien or encumbrance on the property that would survive the Sale Order; and (iii) easements, covenants, conditions, restrictions and other similar matters of record on real property, leasehold estates or personalty that do not in any material respect detract from the value thereof and do not individually or in the aggregate in any material respect interfere with the use or ownership thereof, or otherwise make title to such property uninsurable.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization or Governmental Authority.

“PHHPC” means the New York State Public Health and Health Planning Council.

“Post-Closing Employment Transition Period” has the meaning specified in Section 8.2(ba).

“Post-Closing Straddle Period” has the meaning specified in Section 8.1(a).

“Pre-Closing Straddle Period” has the meaning specified in Section 8.1(a).

“Proceeding” means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative or investigative) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority, arbitrator or contractor acting on behalf of a Governmental Authority.

“Purchase Price” has the meaning specified in Section 3.1.

“Purchased Assets” has the meaning specified in Section 2.1.

“Purchased Receivables” means: (i) as to amounts due from non-government entities, all revenues, monies, payments, notes, accounts receivable, rents, occupancy fees, fees, proceeds, and other rights to receive payment for goods and services provided by Sellers; and (ii) as to amounts due from government entities, the right to receive from Sellers an amount of money equal to the collection of all revenues, monies, payments, notes, accounts receivable, rents, occupancy fees, fees, proceeds, and other rights to receive payment for goods and services provided by Sellers (including without limitation the rendering of services and provision of medicine, drugs and supplies to residents or patients pursuant to the Medicare, Medicaid, or similar programs); all in connection with the Facilities prior to the Closing, including any such accounts receivable that have been charged off as bad debt.

“Real Property” has the meaning specified in Section 5.4(a).

“Receivables Escrow” has the meaning specified in Section 3.3.

“Receivables Target Amount” has the meaning specified in Section 3.3.

“Release” means any past or present spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of a Hazardous Substance into the Environment (including the abandonment or discharging of barrels, containers and other closed receptacles containing any Hazardous Substance).

“Representative” means with respect to a particular Person, any director, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants and financial advisors.

“Resident Contracts” means all residency agreements between Sellers and occupants of the Facilities.

“Sale Order” means the Order of the Bankruptcy Court which, pursuant to, inter alia, Bankruptcy Code sections 363 and 365, as may be amended, modified or supplemented from time to time by the Bankruptcy Court, in such form and substance reasonably acceptable to Sellers and Buyer containing provisions, including without limitation, among other things, (1) authorizing and approving, the sale of the Purchased Assets to Buyer on the terms and conditions set forth herein, free and clear of all Liens, Claims, Interests and Encumbrances, to the fullest extent permissible under the Bankruptcy Code, (2) authorizing and approving, the assumption and assignment of the Assumed Liabilities, and (3) providing that this Agreement and the transactions contemplated herein are undertaken by Buyer and Sellers at arm’s length, without collusion, and in good faith



within the meaning of Section 363(m) of the Bankruptcy Code, that Buyer and Sellers are entitled to the protections of Section 363(m) of the Bankruptcy Code, and that the provisions of Section 363(n) of the Bankruptcy Code are not applicable.

“Sellers” has the meaning specified in the Preamble of this Agreement.

“Sellers’ Title Notice” has the meaning specified in Section 5.5(c).

“Service Agreements for NYSDOH-Regulated Entities” has the meaning set forth in Section 7.2(b).

“Service Agreements for Non-NYSDOH-Regulated Entities” has the meaning set forth in Section 7.2(c).

“Stimulus Payment” means any payments used by the federal government intended to address the economic impact of COVID-19 that have been received, but not used or repaid, by the Sellers by the Closing Date.

“Straddle Period” has the meaning specified in Section 8.1(a).

“Survey” has the meaning specified in Section 5.5(c).

“Tax” or “Taxes” (and with correlative meaning, “Taxable” and “Taxing”) means (i) any federal, state, provincial, local, foreign or other income, alternative, minimum, add-on minimum, accumulated earnings, personal holding company, franchise, capital stock, net worth, capital, profits, intangibles, windfall profits, gross receipts, value added, sales, use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, environmental, natural resources, real property, personal property, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers’ compensation, payroll, health care, withholding, estimated or other similar taxes, duties, levies or other governmental charge or assessment or deficiencies thereof (including all interest and penalties thereon and additions thereto whether disputed or not) and (ii) any liability of another Person under Treasury Regulation § 1.1502-6, as a transferee or successor, by contract or otherwise in respect of any items described in clause (i) hereof.

“Tax Return” means any return, report or similar statement filed or required to be filed with respect to any Taxes (including any attached schedules or documents), including any information return, claim for refund, amended return or declaration of estimated Tax, or any Form 990 or similar state or local return.

“Title Company” has the meaning specified in Section 5.5(c).

“Title Objection Notice” has the meaning specified in Section 5.5(c).

“Title Report” has the meaning specified in Section 5.5(c).

“Transactions” has the meaning specified in the Recitals of this Agreement.

“Transfer Taxes” has the meaning specified in Section 8.1(b).

“WARN Act” means the Worker Adjustment and Retraining Notification Act, and any similar state or local law relating to plant closings and layoffs.

1.2 Other Definitional and Interpretive Matters.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(i) Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(ii) Dollars. Any reference in this Agreement to \$ shall mean U.S. dollars.

(iii) Exhibits/Schedules. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(iv) Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(v) Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any “Section” or “Article” are to the corresponding Section or Article of this Agreement unless otherwise specified.

(vi) Herein. The words such as “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(vii) Including. The word “including” or any variation thereof means “including, without limitation” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(b) No Strict Construction. The Parties participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

## ARTICLE II. PURCHASE AND SALE OF ASSETS

2.1 Purchased Assets. Upon the terms and subject to the conditions of this Agreement, on the Closing Date, Sellers shall sell, transfer, assign, convey and deliver, or cause to be sold, transferred, assigned, conveyed and delivered, to Buyer, free and clear of all Liens, Claims and Encumbrances (other than Permitted Encumbrances and Assumed Liabilities) to the fullest extent permissible under Section 363(f) of the Bankruptcy Code, all right, title and interest of Sellers in all of the properties and assets of Sellers (other than the Excluded Assets) of every kind and description, wherever located, real, personal or mixed, tangible or intangible, owned, leased, licensed, used or held for use in or relating to the Real Property and the Facilities (herein, collectively referred to as the “Purchased Assets”), including all right, title and interest of Sellers in, to and/or under:

(a) all inventories of medical supplies, drugs and pharmaceuticals, food, janitorial and office supplies and other disposables and consumables relating to the Facilities and maintained, held or stored by or for Sellers in connection with the Facilities (the “Inventory”);

(b) all Equipment owned by Sellers;

(c) all real property of Sellers, including without limitation the Real Property listed on Schedule 2.1(c), and any land lying in the bed of any highway, street, road or avenue, open or proposed, adjoining the Real Property;

(d) in addition to the Real Property, all real, personal and intangible property of Sellers, or of any entity in which any Seller has an ownership, membership or governance interest, or of which any Seller is a sole member, including without limitation Fairport/Perinton Senior Living Council, Inc.;

(e) each of Sellers’ Permits that are assignable pursuant to applicable law (with or without approval of a Governmental Authority) and pending applications therefor;

(f) all Business Intellectual Property (including all goodwill associated therewith or symbolized thereby) and any website addresses, social media accounts and email domain addresses;

(g) all Documents;

(h) all telephone and facsimile numbers, remote access portals and other directory listings used in connection with the Facilities;

- (i) all Lease Security Deposits;
- (j) all Purchased Receivables;
- (k) all insurance policies, and rights to proceeds thereof, relating or allocable to any Purchased Asset or Assumed Liability, in each case to the extent assignable to Buyer;
- (l) all Tax refunds and Tax credits relating to the Real Property;
- (m) Any and all membership, ownership or investment interests owned by Sellers in any business enterprise including but not limited to, Pandion Optimization Alliance and/or any affiliates thereof;
- (n) Except as otherwise expressly set forth in Section 2.2 herein, all other or additional privileges, rights and interests associated with the Purchased Assets of every kind and description and wherever located that are used or intended for use in connection with, or that are necessary to the continued operation of, the Facilities;
- (o) all goodwill associated with the Facilities or the Purchased Assets;
- (p) all right, title and interest of Sellers in and to all easements, tenements, hereditaments, privileges and appurtenances in any way belonging to the Real Property;  
**and**
- (q) all fixtures, chattels, equipment and articles of personal property owned by Sellers which are currently located upon or attached to the Real Property and used in connection with the Real Property and the Facilities-; and
- (r) all rights and interests to Sellers' Medicare Provider Agreements and Sellers' Medicaid Provider Agreements, including the provider numbers assigned under such programs.

At any time prior to three (3) Business Days prior to the Closing Date, Buyer may, in its discretion by written notice to Seller, designate any of the Purchased Assets as additional Excluded Assets, which notice shall set forth in reasonable detail the Purchased Assets so designated. Buyer acknowledges and agrees that there shall be no reduction in the Purchase Price if it elects to designate any Purchased Assets as Excluded Assets. For the avoidance of doubt, if something is identified in this Section 2.1 as a Purchased Asset, but it also fits the description of an Excluded Asset under Section 2.2 herein, it shall be considered a Purchased Asset. Notwithstanding any other provision hereof, the Liabilities of Sellers under or related to any Purchased Asset excluded under this paragraph will constitute Excluded Liabilities.

2.2 Excluded Assets. Nothing contained herein shall be deemed to sell, transfer, assign or convey the Excluded Assets to Buyer, and Sellers shall retain all right, title and interest to, in and under the Excluded Assets. For all purposes of and under this Agreement, the term "Excluded Assets" shall mean:

- (a) all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit and other bank deposits;
- (b) all minute books, ledgers, corporate seals and member certificates, if any, of Sellers that are not otherwise included in the Documents;
- (c) all Contracts;
- (d) the Purchase Price and all rights of Sellers under this Agreement;
- (e) all Benefit Plans;
- (f) any and all rights, claims or causes of action of Sellers against third parties arising out of events occurring prior to the Closing Date and any and all rights, claims or causes of action of Sellers against third parties with respect to the Excluded Assets arising out of events occurring after the Closing Date;
- (g) all rights under insurance policies for any refunds for unearned premiums and all rights relating to claims for losses related exclusively to any Excluded Asset;
- (h) any deposits or prepaid charges and expenses paid prior to the Closing Date that are not Lease Security Deposits;
- (i) all personnel records and other records and files that Sellers are required by law to retain in its possession;
- (j) all operating licenses of Sellers;
- (k) all Permits that are not assignable pursuant to applicable law and pending applications therefore;
- (l) all rights with respect to any Proceeding pending as of the Closing Date; and
- (m) all Documents relating exclusively to an Excluded Asset.

2.3 Excluded Liabilities. Notwithstanding any provision in this Agreement to the contrary, Buyer shall not assume and shall not be obligated to assume or be obliged to pay, perform or otherwise discharge any Liability of Sellers, whether presently in existence or arising hereafter, known or unknown, disputed or undisputed, contingent or non-contingent, liquidated or unliquidated, or otherwise, and Sellers shall be solely and exclusively liable with respect to all Liabilities of Sellers, other than the Assumed Liabilities (collectively the “Excluded Liabilities”). For the avoidance of doubt, the concept of Excluded Liabilities is intended to be construed as broadly as possibly under applicable law, including Section 363 of the Bankruptcy Code as interpreted, and shall include, without limitation, the following:

(a) any Liability of Sellers or their directors, officers, members, or agents (acting in such capacities), arising out of, or relating to, this Agreement or the transactions contemplated by this Agreement, whether incurred prior to, at or subsequent to the Closing Date, including, without limitation, all finder's or broker's fees and expenses and any and all fees and expenses of any Representatives of Sellers;

(b) any Liability relating to events or conditions occurring or existing in connection with or arising out of the Facilities as operated by Sellers, or the ownership, possession, use, operation or sale or other disposition prior to the Closing Date of any Purchased Assets (or any other assets, properties, rights or interests associated, at any time prior to the Closing Date, with the Facilities), including trade obligations, accrued payroll and other compensation;

(c) any Liability to any Persons at any time employed by Sellers or its predecessors-in-interest at any time or to any such Person's spouses, children, other dependents or beneficiaries, with respect to incidents, events, exposures or circumstances occurring at any time during the period or periods of any such person's employment by Sellers or its predecessors-in-interest, whenever such claims mature or are asserted, including without limitation, all Liabilities arising (i) under the Benefit Plans, (ii) under any employment, wage and hour restriction, equal opportunity, discrimination, plant closing or immigration and naturalization laws, (iii) under any collective bargaining laws, agreements or arrangements or (iv) in connection with any workers' compensation or any other employee health, accident, disability or safety claims;

(d) all Liabilities of Sellers, or with respect to the Facilities, in connection with claims of professional malpractice or tort;

(e) all Liabilities of Sellers, or with respect to the Facilities, for violations of any Legal Requirement;

(f) any Liability of Sellers relating to the Purchased Assets connected with, arising out of or relating to: (i) Hazardous Substances or Environmental Laws, (ii) claims relating to employee health and safety, including claims for injury, sickness, disease or death of any Person or (iii) compliance with any Legal Requirement relating to any of the foregoing;

(g) any Liability of Sellers under the WARN Act or similar state law, including Liability caused by any action of any Seller prior to Closing or by Buyer's decision not to hire previous employees of Sellers;

(h) any Liability arising under or related to the Benefit Plans;

(i) all Liabilities owed by Sellers to Sellers' employees;

(j) any Liability, known or unknown, fixed, contingent or otherwise, the existence of which is a breach of, or inconsistent with, any representation, warranty,

covenant, obligation or agreement of Sellers set forth in this Agreement or in any of the other Ancillary Documents;

(k) any Liability of Sellers for Taxes, including, without limitation, Taxes attributable to, resulting from, or otherwise arising from the transaction contemplated by this Agreement or any sales tax owed by Sellers or any Affiliate of Sellers;

(l) any Liability to any Person or Sellers on account of any Action or Proceeding;

(m) any Liability of Sellers under any Collective Bargaining Agreements;

(n) any Liability of Sellers in connection with any workers' compensation trust;

(o) any Liability of Sellers on account of any private sector cost reimbursement programs or insurance coverage;

(p) any Liabilities arising out of or pursuant to the Medicare Provider Agreements or Medicaid Provider Agreements for services rendered prior to the Closing Date, excepting Liabilities as required by applicable regulatory requirements or Governmental Authority;

(q) any experience ratings of Sellers maintained by taxing authorities such as unemployment boards;

(r) any Liability of Sellers relating to or arising out of the ownership or operation of an Excluded Asset;

(s) all Liabilities arising out of or pursuant to the Sellers' participation in Government Programs or receipt of payments from those programs, excepting Liabilities as required by applicable regulatory requirements or Governmental Authority; and

(t) any Liabilities of Sellers arising out of Resident Contracts.

2.4 Assumed Liabilities. Upon the terms and subject to the conditions of this Agreement, on the Closing Date, Buyer shall execute and deliver to Sellers the Assignment and Assumption Agreement pursuant to which Buyer shall assume all obligations and Liabilities listed on Schedule 2.4 (the "Assumed Liabilities") and no others.

2.5 Assignments.

(a) Buyer shall have no right to designate any Contracts or Leases for assumption and assignment pursuant to Bankruptcy Code Section 365. All Contracts and Leases shall be rejected effective as of the Closing Date.

(b) In the case of licenses, certificates, approvals, authorizations, and other commitments included in the Purchased Assets (i) that cannot be transferred or assigned

effectively without the consent of third parties, including Governmental Authorities, which consent has not been obtained prior to the Closing (after giving effect to the Sale Order and the Bankruptcy Code), Sellers shall, subject to any approval of the Bankruptcy Court that may be required, reasonably cooperate with Buyer, at the sole cost and expense of Buyer, in endeavoring to obtain such consent and, if any such consent is not obtained, Sellers shall, subject to any approval of the Bankruptcy Court that may be required, cooperate with Buyer in all reasonable respects and at Buyer's sole cost and expense, to provide to Buyer the benefits thereof in some other manner, or (ii) that are otherwise not transferable or assignable (after giving effect to the Sale Order and the Bankruptcy Code), Sellers shall, subject to any approval of the Bankruptcy Court that may be required, reasonably cooperate with Buyer, at the sole cost and expense of Buyer, to provide to Buyer the benefits thereof in some other manner (including the exercise of the rights of Sellers thereunder).

(c) Subject to Section 2.3(p), Buyer will accept, and will not take any steps to affirmatively reject, the automatic assignment of Sellers' Medicare Provider Agreements and the transfer of Sellers' Medicaid Provider Agreements. Prior to the Closing, Sellers and Buyer shall act diligently and reasonably, and shall cooperate with each other, to do or cause to be done, all things necessary, proper or advisable consistent with applicable Legal Requirements to effect the assignment of Sellers' Medicare Provider Agreements and the transfer of Sellers' Medicaid Provider Agreements to Buyer as of the Closing Date.

2.6 HRSA Provider Relief Fund. Except to the extent permitted by applicable non-bankruptcy law, this Agreement shall not be construed to authorize the transfer to, or use by, Buyer of any Health Resources and Services Administration Provider Relief Funds ("HRSA Provider Relief Fund") Stimulus Payment, including without limitation any distributions received by the Sellers, either before or after the entry of the Sale Order, from the HRSA Provider Relief Fund, or to permit the use of any HRSA Provider Relief Fund distributions in a manner inconsistent with the associated statutory or regulatory requirements or the terms and conditions associated therewith.

### **ARTICLE III. PURCHASE PRICE**

3.1 Purchase Price. The consideration for the sale, assignment and conveyance of Sellers' right, title and interest in, to and under the Purchased Assets shall be Eight Million Two Hundred Fifty Thousand Dollars (\$8,250,000) (the "Purchase Price").



3.2 Deposit. Within ~~ten~~three (~~10~~3) business days of the Effective Date, Buyer shall deliver to Sellers by electronic transfer an aggregate amount equal to ~~One~~Four Hundred ~~Fifty~~Twelve Thousand Five Hundred Dollars (\$~~150,000~~412,500) (the “Deposit”), to be held by an escrow agent to be mutually agreed upon by the Parties (the “Escrow Agent”) ~~to~~in a non-interest-bearing account of the Escrow Agent until the Closing. If the Closing takes place as provided herein, then the Deposit will be ~~a credit~~credited in favor of Buyer against the Purchase Price paid by Buyer at Closing. If this Agreement is terminated prior to the Closing, then the Deposit shall be returned to Buyer.

3.3 Escrow. At the Closing, Two Hundred Fifty Thousand Dollars (\$250,000) of the Purchase Price will be delivered by Buyer to a non-interest-bearing account of, and held by, the Escrow Agent (the “Receivables Escrow”), for a period of one hundred eighty (180) days (the “Escrow Period”) for the sole purpose of ensuring the collection by Buyer of at least One Million Dollars of the Purchased Receivables (the “Receivables Target Amount”). If at the expiration of the Escrow Period Buyer has collected the Receivables Target Amount, then the Escrow Agent shall be directed by Buyer to disburse the Receivables Escrow to Sellers. If at the expiration of the Escrow Period Buyer has collected less than the Receivables Target Amount, then the Escrow Agent shall be directed to disburse from the Receivables Escrow to Buyer an amount equal to the difference between the Receivables Target Amount and the total amount of Purchased Receivables collected by Buyer during the Escrow Period. Any amount in excess of the Receivables Target Amount that is collected by Buyer during the Escrow Period shall be remitted by Buyer to Sellers within thirty (30) days of the end of the Escrow Period.

3.4 Withholding. Buyer shall be entitled to deduct and withhold from all payments made pursuant to this Agreement such amounts (if any) as Buyer is required to deduct and withhold under the Code or any provision of state, local or foreign law. To the extent that amounts are so withheld and paid over to the appropriate Governmental Authority, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to Seller from which such deduction and withholding was made.

3.5 Allocation of Purchase Price. The Purchase Price shall be allocated among the Purchased Assets in a manner prescribed by Buyer by notice given to Sellers ~~not more than ninety~~at least sixty (~~90~~60) days ~~after~~prior to the due date (including any extensions) of Buyers tax return for the tax year in which the Closing ~~Date~~occurs. Each of Buyer and Sellers (and any Affiliates thereof) agrees that it will (and will cause its Affiliates to) (a) file Tax Returns (including, as applicable, Internal Revenue Service Form 8594) in a manner consistent in all respects with Buyer’s allocation; ~~and~~(b) not take (and will cause its Affiliates not to take) any position that is inconsistent with Buyer’s allocation. Buyer and Sellers acknowledge that such allocation shall be without prejudice to the valuation ascribed to specific assets for federal bankruptcy purposes; provided, however, that any such valuation of specific assets shall be limited in scope, extent and applicability to what is necessary to achieve confirmation of the Sellers’ Chapter 11 plan.

3.6 DIP Financing. As permitted by the Bankruptcy Court and with the approval and consent of any application Governmental Authorities, if the Closing takes place as provided

herein, then any amounts outstanding and payable to Buyer under the DIP Credit Agreement shall be a credit in favor of Buyer against the Purchase Price paid by Buyer at Closing.

#### ARTICLE IV. CLOSING.

4.1 Closing Mechanics. Buyer and Sellers intend to consummate Buyer's purchase of the Purchased Assets and assumption of the Assumed Liabilities pursuant to Sections 363 and 365 of the Bankruptcy Code, which includes at the Closing:

- (a) the payment of the Purchase Price as provided in Section 3.1; and
- (b) the assumption by Buyer of the Assumed Liabilities.

4.2 Closing Date. Except as provided in Article X, upon the terms and subject to the satisfaction of the conditions and contingencies contained in Article IX (or the waiver thereof by the Party entitled to waive the condition), the closing of the sale of the Purchased Assets and the assumption of the Assumed Liabilities contemplated hereby (the "Closing") shall take place at a location and time mutually agreed upon by the Parties, in no event later than the tenth (10th) Business Day following the date on which the conditions set forth in Article IX have been satisfied or waived (other than the conditions which by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), and shall be deemed to have occurred at 12:01 a.m. on such day. Such date and time is hereinafter referred to as the "Closing Date."

4.3 Buyer's Additional Deliveries. At or prior to the Closing, Buyer shall deliver to Sellers:

- (a) the Assignment and Assumption Agreement;
- (b) a certificate of the Secretary of Buyer certifying, as complete and accurate as of the Closing, attached copies of the charter and by-laws of Buyer and certifying and attaching all requisite resolutions approving the execution and delivery of this Agreement, the Ancillary Documents to which Buyer is a party and the consummation of the transaction contemplated hereby;
- (c) the certificates required to be delivered pursuant to Sections 9.2(a) and 9.2(b); and
- (d) such other assignments and other good and sufficient instruments of assumption and transfer, in form reasonably satisfactory to Sellers, as Sellers may reasonably request to transfer and assign the Assumed Liabilities to Buyer.

4.4 Sellers' Deliveries. At or prior to (as specified below) the Closing, Sellers shall deliver to Buyer all the following:

- (a) the Sale Order;
- (b) the Approving Order;

- (c) a duly executed and acknowledged Bargain and Sale Deed (the “Deed”) conveying fee simple title to the Real Property to Buyer;
- (d) the Bill of Sale and Assignment and Assumption Agreement, duly executed by Sellers;
- (e) the certificates required to be delivered pursuant to Sections 9.3(a) and 9.3(b);
- (f) certificates executed by each of the Sellers, in the form prescribed under Treasury Regulation Section 1.1445-2(b), that each Seller is not a foreign person within the meaning of Section 1445(f)(3) of the Code; and
- (g) such other bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Buyer, as are necessary or otherwise customary to vest in Buyer all the right, title and interest of Sellers in, to or under any or all the Purchased Assets and other transfer tax forms, affidavits and certificates customarily delivered in connection therewith.

## ARTICLE V. REPRESENTATIONS AND WARRANTIES OF SELLERS

As an inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Sellers jointly and severally represent and warrant to Buyer that the statements contained in this Article V are correct and complete as of the Effective Date and will be correct and complete as of the Closing, except as set forth in the disclosure schedule accompanying this Agreement (the “Disclosure Schedule”). The Disclosure Schedule will be arranged in sections corresponding to the lettered and numbered sections and subsections contained in this Article V.

5.1 Organization and Standing. Each Seller is duly organized and validity existing and in good standing under the laws of the State of New York and has the requisite authority to own the Purchased Assets owned by it and to carry on its respective business as the same is now being conducted. Sellers have full corporate power and authority to own or lease and to operate and use the Purchased Assets and to carry on the Facilities as now conducted, subject to the Bankruptcy Code and/or the approval or consent of any Governmental Authority.

5.2 Authority.

(a) Sellers have full power and authority to execute, deliver and, subject only to the Sale Order, the Approving Order and the CON Approval, perform this Agreement and each of the Ancillary Documents to which Sellers are a party. The execution, delivery and performance of this Agreement and such Ancillary Documents by Sellers have been duly authorized and approved by Sellers’ boards of directors (or similar governing bodies) and members, is in accordance with the Bankruptcy Code and the Sale Order, and, subject to the entry of the Sale Order and the Approving Order, does not require any authorization or consent of Sellers’ governing board or members or Governmental Authority that has not been obtained. This Agreement has been duly authorized, executed and delivered by

Sellers and, subject to the entry of the Sale Order, the Approving Order and the CON Approval, is the legal, valid and binding obligation of Sellers enforceable in accordance with its terms, and each of the Ancillary Documents to which Sellers is a party has been duly authorized by Sellers and upon execution and delivery by Sellers and subject to the entry of the Sale Order, the Approving Order and the CON Approval, will be a legal, valid and binding obligation of Sellers enforceable in accordance with its terms.

(b) Subject to the entry of the Sale Order and the Approving Order, neither the execution and delivery of this Agreement or any of the Ancillary Documents or the consummation of any of the transactions contemplated hereby or thereby nor compliance with or fulfillment of the terms, conditions and provisions hereof or thereof will conflict with, result in a breach of the terms, conditions or provisions of, or constitute a violation, default or an event of default, or permit the acceleration of any Liability or obligation, under (i) any charter (or similar governing instrument) or by-laws (or similar governing document) of Sellers, (ii) any Permits, (iii) any Order to which Sellers are bound or any Purchased Asset is subject, or (iv) any Legal Requirement affecting Sellers or the Purchased Assets (subject to Buyer's compliance with Section 3.4).

5.3 Subsidiaries and Investments. Except as set forth in Schedule 5.3, Sellers do not, directly or indirectly, own, of record or beneficially or through a nominee agreement, any outstanding voting securities, membership interests or other equity interests in any Person.

5.4 Real Property.

(a) Schedule 2.1(c) lists and sets forth a complete and accurate list of addresses and legal descriptions of all real property owned or leased by Sellers (collectively, the "Real Property"). Except as set forth on Schedule 5.4(a), the properties listed on Schedule 2.1(c), and no others, are required for the operation of the Facilities as they are operated as of the Effective Date.

(i) Except for the Liens, Claims and Encumbrances described in Schedule 5.4(a): (A) Sellers have good and marketable title to such parcels, together with good and marketable title to all rights, privileges, interests, easements and appurtenances now or hereafter belonging or in any way pertaining to the Real Property, subject only to Permitted Encumbrances; (B) all buildings and other improvements situated on the Real Property form a part of the Real Property and are owned by Sellers subject only to Permitted Encumbrances; and (C) no Person, other than Sellers, as the owners, and the residents residing at the Real Property, has any occupancy or use rights with respect to the Real Property and no option, right of first refusal or any other right to purchase exists, or has been granted, with respect to the Real Property.

(ii) Sellers have not received written notice, nor is there pending or, to Sellers' Knowledge, is there threatened any imposition of any special assessments for public betterments affecting the Real Property.

(iii) True, correct, and complete copies of the Leases have been delivered to Buyer. To Sellers' Knowledge, the Leases are in good standing and in full force and effect in accordance with their respective terms and have not been modified, amended, terminated, renewed, or extended, except as set forth in the applicable Lease. To Sellers' Knowledge, none of the parties to any Lease is in default of any of its obligations thereunder and no event has occurred that, with the giving of notice or passage of time, or both, would constitute a default thereunder.

(iv) To Sellers' Knowledge, the improvements and fixtures on the Real Property, including roofs, structures and HVAC equipment, are in good operating condition and in a state of good maintenance and repair, ordinary wear and tear excepted. Sellers have not received written notice of any condemnation, expropriation or similar proceeding pending or, to Sellers' Knowledge, threatened against any of the Real Property or any improvement thereon.

(v) Sellers have not received written notice that the Real Property is in violation of any law, rule, regulation, ordinance or statute, including those relating to zoning, building, land use, environmental, health and safety, fire, air, sanitation and noise control. To Sellers' Knowledge, no Real Property is subject to any governmental decree or order (or, to Sellers' Knowledge, threatened or proposed order) to be sold or taken by public authority. To Sellers' Knowledge, there is no existing or proposed plan to modify or realign any street or highway.

(b) Except as set forth in Schedule 5.4(b), to Sellers' Knowledge,

(i) Sellers have all Environmental Permits necessary for the lawful operation of the Facilities.

(ii) There has been no Release or threatened Release of any Hazardous Substances at, on or under any of the Real Property, and none of such properties has been used by any Person as landfill or storage, treatment or disposal site for any type of Hazardous Substance or non-hazardous solid wastes as defined under any Environmental Laws.

(iii) Any storage tanks that have existed or presently exist on, at or under any of the Real Property were or have been operated and maintained in accordance with all Environmental Laws and none of them has or is Releasing any Hazardous Substance.

(iv) Sellers have provided Buyer with copies of all material documents, records and information in Sellers' possession concerning the condition of the Environment at any of the Real Property that constitutes a Purchased Asset, whether generated by Sellers or others, including environmental audits and environmental site assessments.

## 5.5 Title to Purchased Assets; Due Diligence.

(a) Upon delivery to Buyer on the Closing Date of the instruments of transfer contemplated by Section 4.4, and subject to the terms of the Sale Order, Sellers will thereby transfer to Buyer, good and marketable title to all of the Purchased Assets, free and clear of all Liens, Claims, Interests and Encumbrances (other than Permitted Encumbrances and Assumed Liabilities).

(b) Within five (5) Business Days of the Effective Date, Sellers shall deliver to Buyer copies of the following Documents, to the extent that such documents exist and are in Seller's possession, custody or control:

(i) Any Phase I or other environmental reports relating the Real Property;

(ii) Any existing title insurance commitments or policies relating to the Real Property; and

(iii) Any existing surveys relating the Real Property.

(c) Within five (5) Business Days of the Effective Date, as evidence of title, Sellers shall order an updated title report for the Real Property (the "Title Report") from a title company licensed to do business in the State of New York (the "Title Company") and cause a copy thereof to be simultaneously sent to Buyer and Buyer's attorney. Buyer shall have the right to order an updated survey of the Real Property (the "Survey"), at Buyer's sole cost and expense and shall deliver copies of the Survey to Sellers and the Title Company upon receipt. Within twenty (20) days of Buyer's receipt of the Title Report and Survey, Buyer shall advise Sellers of any objections to the Title Report or Survey other than the Permitted Encumbrances (the "Title Objection Notice"); provided, however, that receipt by Sellers' counsel of a copy of the Title Report shall be deemed notice of Buyer's objections to title. Sellers shall have five (5) Business Days after its receipt of the Title Objection Notice to notify Buyer ("Sellers' Title Notice") that Sellers have decided to either: (i) remedy such title defects; or (ii) notify Buyer that Sellers are unable or unwilling to cure any such title defect, provided that if Sellers fail to provide the Sellers' Title Notice within the time period stated herein, Sellers shall be deemed to have elected not to cure or otherwise resolve Buyer's title objections. Buyer may elect, by written notice to Sellers within three (3) Business Days of Buyer's receipt of Sellers' Title Notice, to waive such defects and proceed with the Closing subject thereto. If Sellers are unable or unwilling to remedy the title objections and Buyer does not elect to waive such defects, then Buyer may terminate this Agreement by providing written notice thereof to Sellers no later than three (3) Business Days after receiving Sellers' Title Notice or after Sellers are deemed to have elected not to cure any objections, whichever is later, in which event the Deposit shall be refunded forthwith in full termination of this Agreement. In the event a continuation of title at Closing reveals additional title defects, Buyer shall be entitled to adjourn the Closing for a reasonable period of time and Sellers and Buyer shall have the same rights with respect to such additional title defects as if they had appeared in the original Title Report and Survey.

(d) Subject to the terms and conditions contained herein, Buyer and its agents shall have a period of thirty (30) days following the Effective Date (the “Inspection Period”) to inspect or cause to be inspected all of the physical and economic conditions of the Real Property, access to which shall be granted to Buyer and/or Buyer’s agents and representatives, at all reasonable times, provided that Buyer shall provide Sellers with at least twenty-four (24) hours’ prior notice of each on-site inspection at the Real Property. Buyer shall have the right hereunder to conduct any environmental or other assessment of the Real Property including sampling of environmental media, and in addition, Buyer at its own cost may cause a Phase I Environmental Assessment of the Real Property to be conducted by an environmental consultant of Buyer’s choice. Buyer shall not undertake any invasive testing procedures with respect to the Improvements or any portion of the Real Property without Sellers’ additional prior written consent. Sellers shall cause their Representatives to reasonably cooperate with Buyer and its representatives in connection with such investigation and examination. If Buyer is not satisfied with the results of such inspections, Buyer may terminate this Agreement for any reason or no reason by providing written notice (in the manner set forth herein) to Sellers on or before 5:00 p.m. (EST) on the last day of the Inspection Period and shall thereupon promptly receive a refund of the Deposit and interest accumulated thereon and be relieved of any and all liability hereunder except as to Buyer’s restoration obligations under this Section and Buyer’s indemnification obligations as set forth in this Agreement. Buyer agrees that in conducting any inspections, investigations or tests of the Real Property, Buyer and its Representatives will (i) not unreasonably interfere with the operation and maintenance of the Real Property; (ii) not damage any part of the Real Property or any personal property owned or held by any third party; (iii) maintain commercial general liability insurance of One Million Dollars (\$1,000,000) combined single limit for bodily injury, death, or property damage, covering any accident arising in connection with the presence of Buyer, its agents or representatives, on the Real Property; (iv) promptly pay when due the costs of all tests, investigations and examinations done with regard to the Real Property; (v) not permit any liens to attach to the Real Property or any part thereof by reason of the exercise of Buyer’s rights hereunder; (vi) fully restore the Real Property to the condition in which the same were found before any such inspections or tests were undertaken; and (vii) notify Sellers of its inspections such that Sellers may be present during any such inspection, investigation or test. Except as a result of Sellers’ negligence or willful misconduct, Buyer shall indemnify, defend, and hold Sellers harmless from all losses, costs, liens, claims, causes of action, liability, damages and expenses, including, without limitation, reasonable attorneys’ fees, incurred by Sellers as a result of any entry by Buyer (or its agents or representatives) onto the Real Property, including, without limitation, any damage to the Real Property or injury to persons resulting from entry upon or inspections, tests or investigations of the Real Property conducted by or on behalf of Buyer; provided that the foregoing indemnification shall not include any losses, costs, liens, claims, causes of action, liability, damages or expenses that result from the mere discovery, by Buyer or its Representatives, of existing conditions on the Real Property during such inspections or tests conducted pursuant to the terms of this Agreement. The provisions of this Section and Buyer’s indemnification obligations contained herein shall survive the Closing or the termination of this Agreement, as applicable.

5.6 Taxes.

(a) Sellers are, and have been, since their incorporation, entities exempt from federal income Tax as an organization described in Section 501(c)(3) of the Code, and have not and do not now, carry on its activities in such a manner that have required (or would require) the filing of any Tax Return and the payment of any Taxes (under Section 511 of the Code or otherwise, including any provision of state, local or foreign income tax law). Except as set forth on Schedule 5.6(a), Sellers and its Affiliates have (a) timely filed all Tax Returns required to be filed with the appropriate Governmental Authority in all jurisdictions in which such Tax Returns are required to be filed (taking into account any extension of time to file granted, or to be obtained on behalf of, Sellers), which were complete and accurate in all material respects, (b) all Taxes due with respect to the periods covered by such Tax Returns have been paid, and (c) there are no liens for Taxes against any of the Purchased Assets (other than liens for current Taxes not yet due and payable).

(b) Sellers have withheld and paid all Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, member or other third party, and all Forms W-2 and 1099 (and state form equivalents thereof) required with respect thereto have been properly completed and timely filed. Sellers are not the beneficiary of any extension of time within which to file any Tax Return. There are no ongoing actions, audits, suits, claims, other legal proceedings or investigations relating to Taxes of Sellers. Sellers have not received from any Governmental Authority (including jurisdictions where Sellers have not filed Tax Returns) any (i) notice indicating an intent to open an audit or other review of Taxes, (ii) request for information related to Tax matters, or (iii) notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted, or assessed by any Governmental Authority against Sellers. Sellers have not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency. Sellers have timely and properly maintained all certificates and documents required to qualify for any exemption from income taxes or the collection of sales taxes. Sellers are not a party to any deferred compensation arrangements within the meaning of Section 409A of the Code. Sellers are not a party to any transaction that may be treated as an excess benefit transaction within the meaning of Section 4958 of the Code.

5.7 Litigation. Except: (i) for the Filing, and any and all Proceedings pending in the Bankruptcy Court arising therefrom or related thereto; (ii) as set forth in Schedule 5.7; and (iii) to the extent that any Action or Proceeding constitutes an Excluded Liability, as of the date hereof there is no pending Action or Proceeding by or against Sellers or relating to the Facilities or any of the Purchased Assets, or, to Sellers' Knowledge, threatened against or affecting Sellers and relating to the Facilities or any of the Purchased Assets. None of the Actions set forth on Schedule 5.7 would have an adverse effect on the Facilities or any of the Purchased Assets after taking into account the operation of the Sale Order.

5.8 Insurance. Set forth on Schedule 5.8 is an accurate and complete list of each insurance policy and insurance arrangement, including any that covers Sellers' businesses properties, assets (including the Purchased Assets), Liabilities (including Assumed Liabilities) or



employees or others providing services (including medical malpractice insurance, self-insurance, but excluding insurance policies providing benefits under Benefit Plans) of or with respect to the Facilities (the “Insurance Policies”). Except as set forth on Schedule 5.8, the Insurance Policies are in full force and effect, all premiums thereon have been paid, and Sellers are otherwise in compliance in all material respects with the payment and other terms and provisions of such policies. Sellers are not in default under any of the Insurance Policies (or any policy required to be set forth on Schedule 5.8) and there exists no event, occurrence, condition or act (including the purchase of the Purchased Assets hereunder) that, with the giving of notice, the lapse of time of the happening of any other event or condition, would become a default thereunder. Except as set forth on Schedule 5.8, Sellers have not received any notice of cancellation or non-renewal of any such Insurance Policies nor has the termination of any such Insurance Policies been threatened, and there exists no event, occurrence, condition or act (including the purchase of the Purchased Assets hereunder) that, with the giving of notice, the lapse of time or the happening of any other event or condition, would entitle any insurer or administrator of such Insurance Policy to terminate or cancel any such Insurance Policies. Each of the Insurance Policies is of a type and in such amount and covers such risks as are consistent with customary practice and standards of companies engaged in businesses and operations similar to the Facilities. There has not been, nor is there pending or to Sellers’ Knowledge is there threatened, any material adverse change in Sellers’ relationship with its insurers, in the premiums payable, or the coverage provided pursuant to such Insurance Policies. Buyer has been provided an electronic file containing a list of all pending claims and the claims history with respect to the Facilities during the past five (5) years (including with respect to insurance obtained but not currently maintained).

#### 5.9 Accreditation.

(a) Except as otherwise set forth on Schedule 5.9(a), the Facilities have all required accreditations with no material contingencies. Without limiting the generality of the foregoing, the facilities, Equipment, and staffing and operations of the Facilities satisfy the accreditation standards, including in the case of FBH the CMS Conditions of Participation for Long Term Care Facilities (42 CFR Part 483) and the ~~New York State Department of Health~~ NYSDOH’s Minimum Standards for Nursing Homes (10 NYCRR Part 415). Sellers have previously delivered to Buyer true, correct and complete copies of: (i) the Facilities’ most recent accreditation survey report, and deficiency list; (ii) the Facilities’ boiler inspection reports for the past two (2) years and list of deficiencies, if any. Sellers have taken all reasonable steps to correct all such deficiencies and a description of any uncorrected deficiency is set forth in Schedule 5.9(a). The most recent accreditation survey report resulted in continued accreditation of the Facilities and did not require the capital expenditures aggregating in excess of Ten Thousand Dollars (\$10,000) be made in order to ensure continued accreditation.

(b) Except as set forth on Schedule 5.9(b), the Facilities are eligible to receive payment without restriction under Title XVIII of the Social Security Act (“Medicare”) and Title XIX of the Social Security Act (“Medicaid”) and are “providers” with valid and current provider agreements and with one or more provider numbers with applicable Government Programs through intermediaries. Except as set forth on Schedule 5.9(b), each part of the Facilities that historically has received Medicare or Medicaid reimbursement is

eligible to receive payment without restriction under Medicare and Medicaid and is a “provider” with a valid and current provider agreement and with one or more provider numbers with the Government Programs through intermediaries or carriers, as applicable. Except as set forth on Schedule 5.9(b), the Facilities are “providers” with valid and current provider agreements and with one or more provider numbers. The Facilities are in compliance with the conditions of participation for the Government Programs in all material respects. Without limiting the generality of the foregoing, the Facilities, Equipment, staffing and operations of the Facilities satisfy all conditions of Medicare and Medicaid participation. There is not pending, or to Sellers’ Knowledge, threatened any proceeding or investigation under the Government Programs involving Sellers or any of the Purchased Assets.

(c) To Sellers’ Knowledge, no employee or independent contractor of Sellers or any of its Affiliates (whether an individual or entity) has been excluded from participating in any federal health care program and neither the Facilities nor Sellers’ or any of its Affiliates’ officers, directors, agents or managing employees has been excluded from Medicare or any federal health care program or been subject to sanction or been convicted of a crime involving health care Legal Requirements.

5.10 Affiliate Transactions. Except as disclosed on Schedule 5.10, no Affiliate of Sellers (a) is an officer, director, employee, consultant, competitor, creditor, debtor, customer, distributor, supplier or vendor of Sellers, (b) is a party to any Contract with Sellers, (c) has any Proceeding against Sellers, or (d) has a loan outstanding from Sellers.

5.11 No Broker. Except as described on Schedule 5.11, no broker, investment banker, financial advisor or other Person is entitled to any broker’s, finder’s, financial advisor’s or other similar fee or commission in connection with the transactions contemplated by this Agreement, based upon arrangements made by or on behalf of Sellers or any of its respective Affiliates. Sellers are solely responsible for the compensation of such Persons described on Schedule 5.11.

5.12 Employment Matters.

(a) Except as disclosed on Schedule 5.12(a), for the past six (6) years, Sellers have complied in all material respects with all applicable law respecting employment and employment practices, terms and conditions of employment and wages and hour.

(b) To Sellers’ Knowledge, Sellers are not engaged in any unfair labor practice or other unlawful employment practice. Except as disclosed on Schedule 5.12(b), within the past six (6) years, there have been no unfair labor practice charges or other employee-related complaints or claims against Sellers pending or, to Sellers’ Knowledge, threatened before the National Labor Relations Board, the Equal Employment Opportunity Commission, the Occupational Safety and Health Review Commission, the Department of Labor or any other Governmental Authority by or concerning the employees, independent contractors or consultants of Sellers, that if decided adversely would reasonably be expected to have a Material Adverse Effect. Except as disclosed on Schedule 5.12(b), within the past six (6) years, Sellers have not (i) been notified by any Governmental

Authority of any alleged violation by Sellers of applicable law that remains unresolved respecting employment, employment practices or terms and conditions of employment, or (ii) received any notice of the intent of any Government Authority to conduct an investigation of Sellers and, to Sellers' Knowledge, no such investigation is in progress.

(c) Schedule 5.12(c) of the Disclosure Schedules sets forth a true and complete list of all employees (whether full-time, part-time or otherwise) and independent contractors of Sellers as of the date hereof, setting forth the name, position, job location, salary or wage rate, bonuses and other incentive compensation, date of hire, full- or part-time status, active or leave status (including any individual absent due to short-term disability, family or medical leave, military leave or other approved absence), overtime "exempt" or "non-exempt" status and the basis for each employee classified as exempt (e.g., Administrative, Executive, Professional, etc.), which basis is proper under applicable laws. Except as disclosed on Schedule 5.12(c), Sellers do not owe to any current or former independent contractors of Sellers any amounts for any period other than the current payment period.

(d) Except as provided on Schedule 5.12(d), Sellers are not party to any Collective Bargaining Agreement.

(e) There are no strikes, slowdowns or work stoppages pending or, to Sellers' Knowledge, threatened with respect to Sellers' employees, nor has any such strike, slowdown or work stoppage occurred or, to Sellers' Knowledge, been threatened within three (3) years prior to the date hereof. There are no material arbitrations, grievances or other labor disputes pending or, to Sellers' Knowledge, threatened with respect to Sellers' employees.

(f) Sellers have not promised any of its management or other employees that any of such persons will be employed or engaged subsequent to the date hereof or the Closing Date. The execution of this Agreement and the consummation of the transactions contemplated hereby will not result in the breach or other violation of any employment agreement, consulting agreement or other labor-related agreement to which Sellers are a party. With respect to the transactions contemplated by this Agreement, any notice to employees or their representatives required by applicable law to be given by Sellers has been given or prior to Closing will be given by Sellers.

(g) Except as disclosed on Schedule 5.12(g), all material levies, assessments and penalties made against Sellers pursuant to all applicable workers compensation legislation as of the date hereof have been paid by Sellers, and Sellers have not been reassessed under any such legislation.

(h) Schedule 5.12(h) identifies, as of the date of this Agreement, a true and complete list of all Benefit Plans.

(i) No Benefit Plan is a "multiemployer pension plan," as defined in Section 3(37) of ERISA, nor is any Benefit Plan a plan described in Section 4063(a) of ERISA and

(ii) Sellers have not made or suffered a “complete withdrawal” or a “partial withdrawal,” as such terms are respectively defined in Sections 4203 and 4205 of ERISA (or any liability resulting therefrom has been satisfied in full).

(j) No present or former employee, agent, contractor, consultant or volunteer providing items or services to or on behalf of Sellers related to Governmental Programs was, at the time the items or services were provided debarred, suspended, excluded or otherwise ineligible to participate in a Government Program.

5.13 Compliance with Laws; Permits.

(a) Except as provided in Schedule 5.13(a), to Sellers’ Knowledge, Sellers are, and have been, in compliance, in all material respects, with all Legal Requirements applicable to its respective operations or the Facilities, including all appropriate health care facility licensing agencies. Except as set forth on Schedule 5.13(a), since January 1, 2020, Sellers have not received written notice from any Governmental Authority with respect to, or been charged with, the violation of any Legal Requirement.

(b) Schedule 5.13(b) sets forth a current, complete and accurate list of all Permits issued to Sellers, including the expiration dates thereof, if any. Sellers have all Permits required by all Legal Requirements from all applicable Governmental Authorities and any other regulatory agencies necessary or proper in order to own or lease the Purchased Assets and to conduct and operate the Facilities as presently operated. Sellers previously have complied and are currently complying in all respects with its obligations under each of the Permits listed in Schedule 5.13(b) and all such Permits are in full force and effect. No notice from any Governmental Authority or other Person in respect to the threatened, pending or possible revocation, termination, suspension or limitation of any of the Permits has been issued or given, nor are Sellers aware of the proposed or threatened issuance of any such notice. There is no basis known to Sellers for any such action that would have an adverse effect upon the Facilities or the Purchased Assets, or upon Sellers’ right to conduct and operate the Facilities as presently conducted and operated. The Facilities are licensed for 142 skilled nursing beds and a 42-bed adult home which includes 11 ALP beds and an associated limited license LHCSA.

5.14 Inventory. Except as set forth in Schedule 5.14, all Inventory of Sellers are in safe condition and currently usable in the ordinary course of business.

5.15 Intellectual Property. There are no conditions existing which would prevent the Business Intellectual Property (other than intellectual property included in Excluded Assets) from transferring to Sellers pursuant to this Agreement.

5.16 Full Disclosure. To Sellers’ Knowledge, no representations or warranties by Sellers in this Agreement, and no statement contained in any document (including financial statements and the Disclosure Schedules), certificate, or other writing furnished or to be furnished by Sellers to Buyer or any of its Representatives pursuant to the provisions hereof or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of

material fact or omits or shall omit to state any material fact necessary, in light of the circumstances under which it was made, in order to make the statements herein or therein not misleading, and all of the foregoing accurately, completely and correctly present the information required or purported to be set forth herein or therein. There is no material fact or circumstance known to Sellers and related to Sellers or the Facilities which has not been disclosed in writing to Buyer.

## **ARTICLE VI. REPRESENTATIONS AND WARRANTIES OF BUYER**

As an inducement to Sellers to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer hereby represents and warrants to Sellers and agrees as follows:

6.1 Organization and Standing. Buyer is duly organized pursuant to the laws of the State of New York and is validly existing under the laws of the State of New York. Buyer has full power and authority to own or lease and to operate and use its properties and assets and to carry on its business as now conducted, except as requiring approval or consent of any Governmental Authority.

6.2 Capacity; Authority; Consents.

(a) Subject to the entry of the Sale Order, the Approving Order, and the CON Approval, Buyer has full power and authority to execute, deliver and perform this Agreement and all of the Ancillary Documents to which it is a party. The execution, delivery and performance of this Agreement and such Ancillary Documents by Buyer have been duly authorized and approved by Buyer's governing body and do not require any further authorization or consent of Buyer or its members. This Agreement has been duly authorized, executed and delivered by Buyer and is the legal, valid and binding agreement of Buyer enforceable against Buyer in accordance with its terms, and each Ancillary Document to which Buyer is a party has been duly authorized by Buyer and upon execution and delivery by Buyer, subject to the entry of the Sale Order, the Approving Order and the CON Approval, will be a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as (i) enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses.

(b) Subject to the entry of the Sale Order, the Approving Order and the CON Approval, and as otherwise noted in Section 6.1 above, neither the execution and delivery of this Agreement or any of such Ancillary Documents or the consummation of any of the transactions contemplated hereby or thereby nor compliance with or fulfillment of the terms, conditions and provisions hereof or thereof will:

(i) conflict with, result in a breach of the terms, conditions or provisions of, or constitute a default, or an event of default under (1) Buyer's

organizational documents, (2) any Order to which Buyer is a party or by which it is bound or (3) any Legal Requirement affecting Buyer; or

(ii) require the approval, consent, authorization or act of, or the making by Buyer of any declaration, filing or registration with, any Person, other than filings with the Bankruptcy Court or under anti-trust or competition laws.

6.3 No Brokers or Finders. Neither Buyer nor any affiliate of Buyer has engaged any finder or broker in connection with the transactions contemplated hereby.

6.4 Ability to Perform. Buyer has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing have immediately available funds in cash, which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement.

6.5 Full Disclosure. All of Buyer's warranties, representations or covenants in this Agreement: (a) constitute a material part of the consideration hereunder; (b) are true and complete, current and accurate as of the date hereof; (c) shall be true, complete, current and accurate as of the Closing; and (d) shall survive the Closing and delivery of the Purchased Assets to Buyer. None of the statements, representations or warranties of Buyer misstates or omits any fact which would make such statements, representations or warranties incomplete, misleading or incorrect in any material respect. Buyer shall inform Sellers if any statement, representation or warranty becomes incorrect, misleading or incomplete subsequent to the date hereof.

## ARTICLE VII. ACTION PRIOR TO CLOSING DATE

7.1 Third Party Consents; Permits. Sellers shall use best efforts to cooperate with Buyer to secure, before the Closing Date, any third party consents that Buyer reasonably deems necessary to consummate the transactions contemplated hereby, to the extent such consents are not provided for or satisfied by the Sale Order; provided that neither Sellers nor Buyer shall have any obligation to offer or pay any consideration in order to obtain any such consents, approvals or waivers. The Parties will cooperate with each other so that each provides all necessary change of ownership notices, if applicable, pursuant to governing regulations.

7.2 Governmental Approvals.

(a) Commencing as of the date of entry of the Sale Order, Buyer shall file any required applications with Governmental Authorities, as may be necessary (i) for Buyer to obtain all Permits necessary to operate the Facilities conducted by Sellers, including, but not limited to, submitting to the ~~New York State Department of Health~~ [NYSDOH](#) a Certificate of Need application and Part I and Part II Adult Care Facility Common Applications [seeking establishment and licensure of Buyer as the operator of the Facilities](#) and obtaining non-contingent approval of same (collectively, the "CON Approval") ~~seeking establishment and licensure of Buyer as the operator of the Facilities~~, and (ii) to enable Buyer to obtain on or as soon as practicable after the Closing Date, any additional licenses, permits, approvals, consents, certificates, registrations, and authorizations

(whether governmental, regulatory, or otherwise) as may be necessary for the lawful operation of the Facilities from and after the Closing Date.

(b) Commencing as of the date of entry of the Sale Order, Buyer shall submit to NYSDOH one or more services agreements relevant or applicable to NYSDOH-regulated entities of Sellers (i.e., FBH/Nursing Facility and ACF/Adult Home) in substantially the form attached hereto as Exhibit A, with such titles and parties as required or appropriate (“Service Agreements for NYSDOH-Regulated Entities”) providing for the provision of administrative and consulting services by Buyer or any entity in the Friendly Home System, to NYSDOH-regulated Sellers to assist such Sellers in the continued operation of the NYSDOH-regulated Facilities until such time as CON Approval is received.

(c) Commencing as of the date of entry of the Sale Order, Buyer shall enter into services agreements relevant or applicable to non-NYSDOH-regulated entities of Sellers (i.e., Ministries/Community-Based Services and Distinctive Living/independent living community operated by Distinctive Living) in substantially the form attached hereto as Exhibit B, with such titles and parties as required or appropriate (“Service Agreements for Non-NYSDOH-Regulated Entities”) providing for the provision of administrative and consulting services by Buyer or any entity in the Friendly Home System, to non-NYSDOH-regulated Sellers to assist Sellers in the continued operation of the non-NYSDOH-regulated Facilities.

(d) ~~(b)~~ Sellers shall submit any required documentation in order to obtain the Approving Order within fifteen (15) days of entry of the Sale Order. Any filing or other fees and other out-of-pocket expenses associated with Sellers obtaining the Approving Order shall be paid by Sellers. Sellers shall take no action prior to the Closing that might prevent the issuance of the Approving Order.

(e) ~~(e)~~ During the period prior to the Closing Date, Sellers and Buyer shall act diligently and reasonably, and shall cooperate with each other, to do or cause to be done, all things necessary, proper or advisable consistent with applicable Legal Requirements to cause the contingencies and conditions precedent to the Closing to be satisfied and to cause the Closing to occur, including, to secure any consents and approvals of any Governmental Authority required to be obtained by them in order to assign, transfer or obtain any Permits issued by any Governmental Authority, to permit the consummation of the transactions contemplated by this Agreement or to otherwise satisfy the conditions set forth in Article IX, in each case as necessary to the extent such consents are not provided for or satisfied by the Sale Order. Notwithstanding anything to the contrary herein, any delay of the Buyer in obtaining approvals from any Governmental Authority shall not constitute a breach of this Agreement.

(f) ~~(d)~~ To the extent practicable, Sellers and Buyer (i) shall promptly inform each other of any communication from any Governmental Authority concerning this Agreement, the transactions contemplated hereby, and any filing, notification or request for approval and (ii) shall permit the other Party to review in advance any proposed written communication or information submitted to any such Governmental Authority in response

thereto. In addition, neither Party shall agree to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry with respect to this Agreement, or the transactions contemplated hereby, notification or request for approval, unless it consults with the other Party in advance and, to the extent permitted by any such Governmental Authority, gives the other party the opportunity to attend and participate thereat, in each case to the maximum extent practicable. Subject to any restrictions under applicable laws, rules or regulations, each Party shall furnish the other with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective representatives on the one hand, and the Governmental Authority or members of its staff on the other hand, with respect to this Agreement, the transactions contemplated hereby (excluding documents and communications which are subject to preexisting confidentiality agreements or to the attorney-client privilege or work product doctrine) or any such filing, notification or request for approval. Each Party shall also furnish the other party with such necessary information and assistance as such other party and its Affiliates may reasonably request in connection with their preparation of necessary filings, registration or submissions of information to the Governmental Authority in connection with this Agreement, the transactions contemplated hereby and any such filing, notification or request for approval. Sellers and Buyer shall prosecute all required requests for approval with all necessary diligence and otherwise use their respective reasonable best efforts to obtain the grant thereof by an Order as soon as possible. Notwithstanding anything to the contrary herein, any failure to comply with this [Section 7.2\(e\)](#) shall not constitute a breach of this Agreement.

7.3 Operations Prior to the Closing Date. Prior to the Closing, Sellers shall maintain the Purchased Assets and operate the Facilities only in the ordinary course consistent with past practice in conformance with all Legal Requirements and any approved budget, including maintain proper business records, maintaining sufficient Inventory levels for operation of the Facilities in accordance with applicable laws and regulations, and maintaining the Purchased Assets in good operating condition, except as otherwise expressly provided in this Agreement. Consistent with the foregoing, Sellers shall use best efforts to continue operating the Facilities as going concerns, and to maintain the business organization of the Facilities intact. [Commencing as of the date of entry of the Sale Order, and subject to any necessary Bankruptcy Court approval or consent related thereto, Buyer shall enter into one or more interim consulting agreements in substantially the form attached hereto as Exhibit C, with such titles and parties as required or appropriate \(the "Interim Consulting Agreements"\) with NYSDOH-regulated Sellers whereby Buyer or any entity in the Friendly Home System would provide consulting services to assist NYSDOH-regulated Sellers in the continued operation of the NYSDOH-regulated Facilities until such time as \(i\) Buyer receives approval from the NYSDOH or PHHPC, as applicable, of one or more Service Agreements for NYSDOH-Regulated Entities, or \(ii\) CON Approval is received, whichever occurs earlier.](#)

7.4 Insurance; Damage; Destruction. Until the Closing, Sellers shall maintain (including necessary renewals thereof) insurance policies against risk and liabilities to the extent and in the manner and at the levels heretofore maintained by Sellers with respect to the Facilities and the Purchased Assets. Until the Closing, the Purchased Assets shall remain at the risk of



Sellers. In the event of any material damage to or destruction of any Purchased Asset (other than normal wear and tear) after the date hereof and prior to the Closing (in any such case, a “Loss”), Sellers shall give notice thereof to Buyer. If any such Loss is covered by policies of insurance, all right and claim of Sellers to any proceeds of insurance for such Loss shall be assigned and (if previously received by Sellers and not used prior to the Closing Date to repair any damage or destruction) paid to Buyer at Closing, and Buyer shall complete the transactions contemplated by this Agreement without any reduction in the Purchase Price with respect to such Loss, though Buyer shall receive a credit against the Purchase Price of any uninsured or underinsured amounts and any deductible. If any such Loss is not recovered by policies of insurance, Buyer shall have the right to reduce the Purchase Price by an amount equal to (y) the estimated cost to repair or restore the Purchased Assets affected by such Loss (the “Affected Assets”) to substantially repair or restore their condition immediately prior to the occurrence of such Loss, or (z) if such Affected Assets are destroyed or damaged beyond repair, the replacement cost of the Affected Assets and, in either case Buyer shall complete the transactions contemplated by this Agreement and all compensation payable on account of such Loss shall be retained by Sellers. If Buyer elects to reduce the Purchase Price pursuant to this Section 7.4, Sellers and Buyer shall negotiate in good faith in an effort to agree upon the amount of such reduction. If the Parties are unable to reach agreement within five (5) Business Days after notice of the Loss is given by Sellers, then the amount of the reduction shall be determined by an independent, qualified insurance adjuster selected by the Parties (or, if they are unable to agree on such selection, one appointed by the Bankruptcy Court upon application of either Party).

7.5 Confidentiality. The Parties agree and acknowledge that the Purchased Assets include confidential information of the Facilities which will be transferred to Buyer at the Closing. Subject to the requirements of the Bankruptcy Code or as may be imposed by the Bankruptcy Court, from and after the Closing: (a) Sellers shall, and shall cause its Affiliates to, hold in confidence all confidential information (including patient information, marketing plans and pricing information) included in the Purchased Assets and transferred to Buyer; (b) in the event that Sellers or its Affiliates shall be legally compelled to disclose any such information, Sellers shall provide Buyer with prompt written notice of such requirement so that Buyer may seek a protective order or other remedy; and (c) in the event that such protective order or other remedy is not obtained, Sellers or its Affiliates shall furnish only such information as is legally required to be provided.

7.6 Bankruptcy Court Matters.

(a) Sellers and Buyer acknowledge that this Agreement and the sale of the Purchased Assets are subject to Bankruptcy Court approval.

(b) From and after the date hereof, Sellers shall not take any action that is intended to result in, or fail to take any action the intent of which failure to act would result in, the reversal, voiding, modification or staying of the Sale Order.

(c) Sellers shall promptly make any filings, take all actions and use reasonable best efforts to obtain any and all relief from the Bankruptcy Court that is necessary or appropriate to consummate the transactions contemplated by this Agreement. Sellers shall

provide Buyer with drafts of any and all pleadings and proposed orders to be filed or submitted in connection with this Agreement for Buyer's prior review and comment and shall cooperate with Buyer to make reasonable changes. In the event the entry of the Sale Order is appealed, Sellers shall immediately consult with their legal counsel and if deemed appropriate, diligently defend such appeal and any stay pending appeal that may be filed in connection therewith. Notwithstanding the foregoing, any resulting changes to this Agreement or any other Ancillary Agreement or any resulting changes to the Sale Order shall be subject to Buyer's approval in its sole and absolute discretion.

7.7 Notification of Breach; Disclosure. Sellers shall promptly notify Buyer of (a) any event, condition or circumstance of which Sellers become aware after the date hereof and prior to the Closing Date that would constitute a violation or breach of this Agreement (or a breach of any representation or warranty contained in this Agreement) or, if the same were to continue to exist as of the Closing Date, would constitute the nonsatisfaction of any of the conditions set forth in Article IX, as the case may be or (b) any event, occurrence, transaction or other item of which Sellers become aware which would have been required to have been disclosed on any scheduled attached hereto had such event, occurrence, transaction or item existed as of the date hereof. During the period prior to Closing Date, Sellers will promptly advise Buyer in writing of any written notice from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement.

7.8 Financing. Buyer shall use its reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to obtain mortgage financing on commercially reasonable terms with the intent to refinance the Mortgage Debt at the Closing (the "Mortgage Financing"). Sellers shall use its and their reasonable best efforts to provide such cooperation as may be reasonably requested by Buyer in connection with the Mortgage Financing.

7.9 Condemnation. If, between the date hereof and the Closing, any condemnation or eminent domain proceedings are initiated which would result in the taking of all or any material portion of the Real Property, then Buyer may elect to terminate this Agreement by giving written notice of its election to Sellers within fifteen (15) days after receiving notice of such prospective taking. For purposes of this Agreement a condemnation or eminent domain proceeding has been "initiated" if Sellers has received a written notice from the applicable authority that all or any portion of the Premises is to be taken from any of the Sellers. If Buyer shall so elect to terminate this Agreement then (i) Buyer shall be entitled to the return of the Deposit and (ii) neither party hereto shall have any further obligations or liabilities to the other under this Agreement, except for those which expressly survive the termination of this Agreement. In such event, all of Sellers' right, title and interest in and to any condemnation proceeds paid or payable in connection therewith shall be assigned to Buyer, and Sellers shall cooperate with Buyer in taking all steps necessary or appropriate to effect such assignment. For the purposes of this Paragraph, "material portion" shall mean any taking that takes more than five (5%) of the net rentable area of the Real Property or 5% of the parking area of the Real Property. If, between the date hereof and the Closing, any condemnation or eminent domain proceedings are initiated which would result in the taking of less than, a material portion of the Premises or enough to entitle any tenant to terminate its lease, then neither Sellers nor Buyer may terminate this Agreement and the parties shall proceed

to the Closing without reduction of or offset against the Purchase Price and Buyer shall have no other claim against Sellers. In such event, all of Sellers' right, title and interest in and to any condemnation proceeds paid or payable in connection therewith shall be assigned to Buyer, and Sellers shall cooperate with Buyer in taking all steps necessary or appropriate to effect such assignment.

## ARTICLE VIII. ADDITIONAL AGREEMENTS

### 8.1 Taxes.

(a) To the extent applicable, all Real Property Taxes and similar ad valorem obligations levied with respect to the Real Property portion of the Purchased Assets, whether imposed or assessed before or after the Closing Date ("Periodic Taxes") for a taxable period that includes (but does not end on) the Closing Date (the "Straddle Period"), shall be apportioned between Sellers and Buyer as of the Closing Date based on the number of days of such taxable period included in the period ending with and including the Closing Date divided by the number of days in the taxable period (the "Pre-Closing Straddle Period"), and the number of days of such taxable period beginning after the Closing Date divided by the number of days in the taxable period (the "Post-Closing Straddle Period"). Sellers shall be responsible for all Periodic Taxes for the Pre-Closing Straddle Period (and any taxable periods ending prior to the Closing Date) and shall, as soon as practicable, provide Buyer with such documentation, as Buyer may reasonably request, evidencing the payment of such Periodic Taxes, and Buyer shall be responsible for all Periodic Taxes for the Post-Closing Straddle Period (and any taxable periods ending after the Post-Closing Straddle Period). At the Closing, Buyer shall be credited with an amount equal to any unpaid Periodic Taxes attributable to Pre-Closing Straddle Period and Sellers shall be credited with an amount equal to any Periodic Taxes paid by Sellers but apportioned hereunder to the Post-Closing Straddle Period (each determined in accordance with the foregoing principles). Buyer shall be responsible for the payment of unpaid Periodic Taxes to the applicable Governmental Authority, but nothing herein shall relieve Sellers from liability for the payment of Periodic Taxes as provided in this Section 8.1. Sellers shall be responsible for Tax Returns required to be filed for taxable periods ending prior to the Closing Date and Buyer shall be responsible for preparing and filing all Tax Returns required to be filed for all taxable periods ending after the Closing Date (including the Straddle Period).

(b) Any sales Tax, use Tax, real property transfer or gains Tax, documentary stamp Tax or similar Tax attributable to the sale or transfer of the Purchased Assets and not exempted under the Sale Order or exemptions under laws applicable to the parties ("Transfer Taxes") shall be borne by Sellers. Sellers and Buyer shall use reasonable efforts and cooperate in good faith to exempt the sale and transfer of the Purchased Assets from any such Transfer Taxes. Sellers shall prepare and file all necessary Tax Returns or other documents with respect to all such Transfer Taxes; provided, however, that in the event any such Tax Return requires execution by Buyer, Sellers shall prepare and deliver to Buyer a copy of such Tax Return prior to closing. Buyer shall promptly execute such Tax

Return and deliver it to Sellers at Closing for deliver to Title Company, which shall cause it to be filed.

(c) Except for Periodic Taxes credited at Closing in accordance with Section 8.1(a), Sellers or Buyer, as the case may be, shall provide reimbursement for any Tax paid by one Party all or a portion of which is the responsibility of the other Party in accordance with the terms of this Section 8.1. Within a reasonable time prior to the payment of any said Tax, the Party paying such Tax shall give notice to the other of the Tax payable and each Party's respective liability therefor, although failure to do so will not relieve the other Party from its liability hereunder.

(d) Buyer and Sellers agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Facilities and the Purchased Assets (including access to books and records) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any taxing authority and the prosecution or defense of any claims, suit or proceeding relating to any Tax; provided, however, that neither Buyer nor Sellers shall be required to disclose the contents of its income tax returns to any Person. Any expenses incurred in furnishing such information or assistance pursuant to this Section 8.1(d) shall be borne by the Party requesting it.

(e) Notwithstanding anything set forth in this Section 8.1, Buyer shall be entitled to all Tax refunds and Tax credits related to the Real Property that are first refunded or credited on or after the Closing Date, irrespective of whether such Tax refunds or Tax credits relate to the pre-Closing period.

## 8.2 Employees.

(a) Sellers shall terminate the employment of all employees at the Facilities effective as of the Closing Date. Buyer shall offer employment from and after the Closing Date to Sellers' employees. Following the Closing Date, Buyer shall retain all such employees for at least sixty (60) days (the "Post-Closing Employment Transition Period") except with regard to (i) termination of employment for cause or (ii) the nursing home administrator, the director of nursing or any other supervisors. Buyer shall not reduce wages or benefits, or modify any other terms and conditions of employment, economic or otherwise during the Post-Closing Employment Transition Period. Notwithstanding the foregoing, following the expiration of the Post-Closing Employment Transition Period, nothing contained in this Agreement shall be construed to prevent the termination of employment of any individual, require minimum benefit or compensation levels or prevent any change in the employee benefits provided to any employee hired by Buyer. Any offer of employment will be subject to Sellers' employee's successful completion of clearances required by law or by Buyers internal policies. To assist Buyer in the evaluation of Sellers' employees, and consistent with applicable Law, Sellers shall provide Buyer access to the personnel records and personnel files of such employees, and shall provide such other information regarding their employees as Buyer may reasonably request. No provision of this Agreement shall create any third party beneficiary rights in any employee or former

employee of Sellers or any other Person or entities (including any beneficiary or dependent thereof) of any nature or kind whatsoever, including without limitation, in respect of continued employment (or resumed employment) for any specified period.

(b) Sellers shall provide to Buyer all information as reasonably requested by Buyer to provide notices and COBRA continuation coverage to the extent applicable.

8.3 Collections on Purchased Assets. If, after the Closing Date, Sellers shall receive payment with respect to any Purchased Assets, Sellers shall immediately deliver such funds or assets to Buyer and take all steps necessary to vest title to such funds or assets in Buyer. Sellers hereby designate Buyer and its respective officers as Sellers' true and lawful attorney-in-fact, with full power of substitution, to execute and endorse for the benefit of Buyer all checks, notes or other documents received by Sellers in payment of or in substitution or exchange for any of the Purchased Assets. Sellers hereby acknowledge and agree that the power of attorney set forth in the preceding sentence in favor of Buyer is coupled with an interest, and further agrees to execute and deliver to Buyer from time to time any documents or other instruments reasonably requested by Buyer to evidence such power of attorney. If after the Closing Date, Buyer shall receive payment with respect to any Excluded Assets ~~and/or with respect to any funds received from any Governmental Authority (such as, for example, Medicare or Medicaid funds)~~, Buyer shall immediately deliver such funds or assets to Sellers on mutually agreeable terms.

8.4 Real Property Proration. At the Closing, all items of income and expense with respect to the Real Property listed on Schedule 2.1(dc) shall be prorated by the parties as of 12:01 a.m. on the Closing Date. With respect to any amounts that have not yet been billed or otherwise determined, Sellers and Buyer shall prorate such amounts based on the most recent ascertainable bill.

8.5 Access to Excluded Assets and Excluded Liabilities. From time to time during the period following the Closing, upon no less than two (2) Business Days prior request specifying the scope of the access, Buyer shall provide Sellers with reasonable access to the Purchased Assets and Buyer's personnel during normal business hours to assist Sellers in the administration, settlement, collection, payment and disposition of the Excluded Assets and the Excluded Liabilities, as applicable. Such access shall not interfere with the operation of the Facilities and shall be at Sellers' sole cost and expense for any out-of-pocket costs or charges. Sellers acknowledge that Buyer shall have no obligation to maintain or continue any Contracts, Leases, Intellectual Property or other Purchased Assets after the Closing for any such purposes of Sellers.

## **ARTICLE IX. CONDITIONS AND CONTINGENCIES TO CLOSING**

9.1 Conditions and Contingencies to Obligations of Each Party. The respective obligations of each Party under this Agreement, including the obligation to effect the sale and purchase of the Purchased Assets, shall be subject to the fulfillment on or prior to the Closing Date, of the following conditions and contingencies:

(a) the Bankruptcy Court shall have entered the Sale Order in the Bankruptcy Case, and the Bankruptcy Court shall have waived the stay imposed by Rule 6004(h) of the

Federal Rules of Bankruptcy Procedure as to the Sale Order, authorizing the Transactions and approving this Agreement under Sections 105(a), 363 and 365 of the Bankruptcy Code, in form and substance reasonably acceptable to Sellers and Buyer, and the Sale Order shall contain findings that Buyer acquired the Purchased Assets in good faith, for fair value, in an arm's length transaction, and as of the Closing Date the Sale Order shall be in full force and effect, shall not then be stayed, and shall not have been vacated, amended or reversed;

(b) the Sale Order and the Approving Order shall have been obtained, or waiting periods following such governmental filings, if applicable, shall have expired; and

(c) no Governmental Authority shall have enacted, issued, promulgated or entered any Order that is in effect and has the effect of enjoining, making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement that has not been withdrawn or terminated.

9.2 Conditions and Contingencies to Obligations of Buyer. The obligations of Buyer under this Agreement, including the obligation to effect the purchase of the Purchased Assets contemplated by this Agreement shall be subject to the fulfillment on or prior to the Closing Date of the following additional conditions and contingencies:

(a) the representations and warranties of Sellers contained in this Agreement must be true and correct in all material respects on and as of the date hereof and the Closing date, except that any such representations or warranties which expressly relate only to an earlier date need only have been accurate in all material respects as of such date, and Buyer shall have received a certificate of Sellers to such effect signed by a duly authorized officer thereof;

(b) each covenant and obligation that Sellers is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been duly performed and complied with in all material respects, and Buyer shall have received a certificate of Sellers to such effect signed by a duly authorized officer thereof;

(c) Buyer shall have obtained from all relevant Governmental Authorities, including the ~~New York State Department of Health~~[NYSDOH](#) and the ~~New York State Public Health and Health Planning Council~~[PHHPC](#), (i) approval for the Buyer to enter into the transactions contemplated by this Agreement, (ii) and all necessary non-contingent licenses, CON Approvals and Permits for Buyer to operate the Purchased Assets and the Facilities as they are currently operated; provided that approval of the Service Agreements for NYSDOH-Regulated Entities shall not be a condition to Closing;

(d) Buyer and Sellers shall have ~~obtained from each~~ filed such required forms and met applicable ~~Governmental~~ regulatory and Government Authority ~~assurances reasonably satisfactory to Buyer (which may, in Buyer's Discretion, include oral assurances from appropriate Governmental Authorities), that Buyer will be issued Medicare and Medicaid participation approval documents sufficient~~ requirements in order

to effect the assignment of Sellers' Medicare Provider Agreements and the transfer of Sellers' Medicaid Provider Agreements to ~~enable~~ Buyer to bill and receive payment for services rendered to Medicare and Medicaid beneficiaries using the Purchased Assets ~~from and after the, effective as of~~ Closing Date, including receipt of tie-in letters and such other appropriate documentation ~~as Buyer reasonably deems to be necessary~~;

(e) since the date hereof, there shall not have occurred any changes, effects or circumstances constituting, or which would reasonably be likely to result in, individually or in the aggregate, a Material Adverse Effect;

(f) Buyer shall have received assurances from a lender, on commercially reasonable terms and in Buyer's Discretion, of the Mortgage Financing;

(g) Buyer shall have received (i) policies of title insurance on forms of, and issued by, a title company acceptable to Buyer, in Buyer's Discretion, in amounts and otherwise in form acceptable to Buyer, in Buyer's Discretion, insuring the title of Buyer to the Real Property described in Schedule 5.4(a), which policies shall be subject only to such Permitted Encumbrances and such other exceptions as are reasonably satisfactory to Buyer, in Buyer's Discretion, and shall include such endorsements as Buyer, in Buyer's Discretion, shall request, and (ii) surveys that are satisfactory to Buyer, in Buyer's Discretion, sufficient to allow the removal of any survey exceptions from any title insurance policies that Buyer obtains on the Real Property described in Schedule 5.4(a);

(h) As of the Closing, the Sale Order shall not have been reversed, stayed, vacated, modified or amended without the prior written consent of the Buyer;

(i) Sellers shall not have sold, transferred, or made any other disposition, directly or indirectly, of any material portion of the Facilities in connection with the closure, liquidation or winding up of the Facilities, nor shall Sellers have sought any relief from the Bankruptcy Court permitting it to do any of the foregoing;

(j) a trustee under Chapter 11 of the Bankruptcy Code shall not have been appointed for Sellers and rejected the transactions contemplated by this Agreement;

(k) each of the deliveries required to be made to Buyer pursuant to Section 4.4 shall have been so delivered;

(l) Buyer shall have obtained the concurrences of the necessary Governmental Authorities to the effect that Buyer will not be required to comply with any additional Legal Requirements ~~(other than those applicable to the Facilities on the Closing Date)~~ concerning construction, physical plant, structural requirements and physical integrity as a result of Sellers' transfer of the Purchased Assets to Buyer, and Buyer shall have obtained, or have a reasonable belief that it will obtain, from all of the necessary Governmental Authorities, including the zoning board, all governmental approvals, Permits, clearances and contracts necessary or appropriate for the Buyer's operation of the Facilities as previously operated following the Closing;

(m) Buyer shall have been provided with the opportunity to conduct a pre-Closing inspection of the Purchased Assets;

(n) Buyer shall have received a Phase I Environmental Assessment for the Real Property, which Buyer may waive; and

(o) Sellers shall have prepared the Schedules to this Agreement which are satisfactory to Buyer, in Buyer's Discretion, containing information which Buyer, in Buyer's Discretion finds acceptable, and the Parties have completed the Exhibits to this Agreement, acceptable to the Buyer, in Buyer's Discretion.

Any condition or contingency specified in this Section 9.2 may be waived by Buyer, in whole or in part; provided that no such waiver shall be effective against Buyer unless it is set forth in a writing.

9.3 Conditions and Contingencies to Obligations of Sellers. The obligation of Sellers to effect the sale of the Purchased Assets contemplated by this Agreement shall be subject to the fulfillment on or prior to the Closing Date of the following additional conditions and contingencies:

(a) the representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on and as of the date hereof and the Closing date (without giving effect to any materiality qualifiers therein), except that any such representations or warranties which expressly relate to an earlier date need only have been accurate as of such date, and Sellers shall have received a certificate of Buyer to such effect signed by a duly authorized officer thereof;

(b) each covenant and obligation that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been duly performed and complied with in all material respects (without giving effect to any materiality qualifiers therein), and Seller shall have received a certificate of Buyer to such effect signed by a duly authorized officer thereof;

(c) the Sale Order shall not have been reversed, stayed, vacated, modified or amended without the prior written consent of the Buyer;

(d) each of the deliveries required to be made to Sellers pursuant to Section 4.3 shall have been so delivered; and

(e) the Purchase Price shall have been delivered as set forth in Article III.

Any condition or contingency specified in this Section 9.3 may be waived by Sellers; provided that no such waiver shall be effective against Sellers unless it is set forth in writing executed by Sellers.

9.4 Acceleration of Closing. In the event that all conditions and contingencies to Closing have been met or waived other than (a) the CON Approval with respect to the Adult Home



and/or the Approving Order with respect to the transfer of assets by ACF or (b) Section 9.2(d) with respect to the Adult Home, the Parties will proceed to Closing, including payment of the Purchase Price in full, within such timeframe as required by applicable law or Governmental Authority requirements for the change of ownership of the Nursing Facility. In such event, following the Closing, the Parties agree that (i) the transfer of ownership and operations of the Adult Home and the Purchased Assets used in connection with or related to the operation of the Adult Home to Buyer, and Buyer's assumption of any Assumed Liabilities related to the operation of the Adult Home, will occur at such time as the requisite CON Approval for the Adult Home is received and Section 9.2(d) has been satisfied with respect to the operations of the Adult Home, (ii) any failure to obtain CON Approval with respect to the Adult Home or any failure to satisfy Section 9.2(d) with respect to the Adult Home after the Closing shall not give rise to any breach by Sellers under this Agreement or any right for either Party to terminate under Article X, unless such failures are due, in whole or in part, to the actions or inactions of Sellers, (iii) in the immediately foregoing event, the Parties will work forwards a mutually agreeable transition plan, and (iv) in such case, in the event such transition plan results in the transfer of the Adult Home to another entity for value, the proceeds of such transfer shall be payable to Buyer.

## **ARTICLE X. TERMINATION**

10.1 Termination. Anything contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated at any time prior to the Closing Date:

(a) by the mutual consent of Buyer and Sellers;

(b) by either Party if a Governmental Authority issues a ruling or Order prohibiting the transactions contemplated hereby or if Buyer's application for establishment approval or any other approval, including but not limited to the CON Approval, has been proposed for disapproval by the ~~Public Health and Health Planning Council~~PHHPC or disapproved by the ~~New York State Department of Health~~NYSDOH; provided that the disapproval or failure to approve any Service Agreement for NYSDOH-Regulated Entities shall not be grounds for termination hereunder;

(c) by Buyer in the event of any material breach by Sellers of any of Sellers' agreements, covenants, representations or warranties contained herein or in the Sale Order, and the failure of Sellers to cure such breach within seven (7) days after receipt of notice thereof; provided, however, that Buyer (i) notifies Sellers in writing of its intention to exercise its termination rights under this Agreement as a result of the breach and (ii) specifies in such termination notice the representation, warranty or covenant contained herein or in the Sale Order of which Sellers is allegedly in material breach;

(d) by Sellers in the event of any material breach by Buyer of any of Buyer's agreements, representations or warranties contained herein or in the Sale Order, and the failure of Buyer to cure such breach within seven (7) days after receipt of notice thereof; provided, however, that Sellers (i) is not itself in material breach of any of its representations, warranties or covenants contained herein or in the Sale Order, (ii) notifies Buyer in writing of its intention to exercise its termination rights under this Agreement as a

result of the breach, and (iii) specifies in such termination notice the representation, warranty or covenant contained herein or in the Sale Order of which Buyer is allegedly in material breach;

(e) by Sellers, if (i) Sellers execute a definitive agreement with a third party (other than Buyer) for an Alternative Proposal, and (ii) the Bankruptcy Court enters an order in the Bankruptcy Case approving such definitive agreement;

(f) by Buyer if (i) in Buyer's Discretion, any Person seeks authority to withdraw, amend, modify or vacate the Sale Order or (ii) Sellers cease to operate the Facilities as a going concern;

(g) by Buyer, if Buyer is not the successful bidder at the auction; whether or not Buyer's bid is determined to be the backup bid;

(h) by Buyer, if Sellers seeks authority from the Bankruptcy Court to sell, transfer or otherwise dispose, directly or indirectly, of any portion of the Purchased Assets, other than as provided herein;

(i) by Buyer, if a trustee is appointed for Sellers under Chapter 11 of the Bankruptcy Code and such trustee rejects the transactions contemplated by this Agreement;

(j) by Buyer if the DIP Credit Agreement is terminated before the Closing Date;

(k) by Buyer, if any condition or contingency to the obligations of Buyer under this Agreement set forth in Sections 9.1 or 9.2 shall not have been fulfilled, as determined by Buyer, in Buyer's Discretion, other than as a result of a breach by Buyer of any covenant or agreement contained in this Agreement and other than as described in Section 9.4;

(l) by Buyer, if an event in excess of Two Hundred Fifty Thousand Dollars (\$250,000) threshold occurs pursuant to Section 7.4; and

(m) by either Party, if the Closing has not occurred on or before ~~December 31, 2022~~ June 30, 2023, provided that such date may be extended by mutual agreement of the Parties, both acting in good faith to work towards the Closing.

## 10.2 Effect of Termination.

(a) In the event of termination of this Agreement by either Party, except as otherwise provided in this Section 10.2, all rights and obligations of the Parties under this Agreement shall terminate without any liability of any party to any other party, except that nothing in this Agreement will relieve any party from liability for any willful breach of any representation, warranty, covenant or agreement set forth in this Agreement prior to such

termination. The provisions of Sections 10.2 and 11.11 shall expressly survive the expiration or termination of this Agreement.

(b) In the event of a termination of this Agreement pursuant to Sections 10.1(a), (b), (c), (e), (f), (g), (h), (i), (j), (k), (l), (m), or Section 7.47.9, the Deposit shall be released to Buyer by the Escrow Agent.

(c) In the event of a termination of this Agreement by Sellers pursuant to Section 10.1(d), the Deposit shall be released to Sellers by the Escrow Agent in full satisfaction of all damages incurred by Sellers. Except for being allowed to keep the Deposit, Sellers shall be entitled to no further direct or indirect or consequential damages, or otherwise.

(d) In the event of a termination of this Agreement pursuant to Sections 10.1 ~~Section 10~~(e), and subject to the consummation of the Alternative Proposal, ~~the~~ Buyer shall be entitled to the payment of the Break-Up Fee ~~and Expense Reimbursement~~ via wire transfer of immediately available funds at the closing of the Alternative Proposal.

10.3 Specific Performance. In the event that the Sale Order is entered by the Bankruptcy Court, Buyer shall be entitled to seek specific performance for a breach by Sellers of its obligations hereunder.

## ARTICLE XI. GENERAL PROVISIONS

11.1 Survival of Obligations. The representations and warranties respectively made by the Parties in this Agreement and in any certificate delivered hereunder will expire as of the Closing. Subsequent to Closing, no Claim with respect to any breach of any representation or warranty contained in this Agreement and no Claim with respect to any known breach of a covenant to be performed at or prior to Closing contained in this Agreement may be pursued or maintained (either hereunder or otherwise) against any Party. The Parties hereto agree that the covenants contained in this Agreement to be performed after the Closing shall survive the Closing hereunder, and each Party hereto shall be liable to the other after the Closing for any breach thereof.

11.2 No Public Announcement. Neither Sellers nor Buyer shall, without the approval of the other, make any press release or other public announcement concerning the transactions contemplated by this Agreement, except as and to the extent that any such Party shall be so obligated by law, in which case the other Party shall be advised and the Parties shall use their best efforts to cause a mutually agreeable release or announcement to be issued.

11.3 Notices. Except as otherwise expressly provided for in this Agreement, all notices or other communications required or permitted hereunder shall be in writing and shall be given or delivered by personal delivery, or by facsimile or by a nationally recognized private overnight courier service addressed as follows:

If to Buyer, to:

Eastside Senior Care, Inc.  
3156 East Avenue  
Rochester, NY 14618  
Attn: Glen Cooper  
Tel: (585) 789-3351  
Email: [gcooper@friendlyseniorliving.org](mailto:gcooper@friendlyseniorliving.org)

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

Harter Secrest & Emery LLP  
1600 Bausch & Lomb Place  
Rochester, NY 14604  
Attn: Joseph Casion, Esq.  
Tel: (585) 231-1407  
Email: [jcasion@hselaw.com](mailto:jcasion@hselaw.com)

If to Sellers, to:

Fairport Baptist Homes  
4646 Nine Mile Point Road  
Fairport, NY 14450  
Attn: Tom Poelma  
Tel: (585) 388-2300  
Email: [tpoelma@fbhcm.org](mailto:tpoelma@fbhcm.org)

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

Lippes Mathias LLP  
50 Fountain Plaza, Suite 1700  
Buffalo, NY 14202  
Attn: John A. Mueller, Esq.  
Tel: (716) 362-7614  
Email: [jmueller@lippes.com](mailto:jmueller@lippes.com)

or to such other address as such party may indicate by a notice delivered to the other party hereto.

Any notice, consent, authorization, direction or other communication delivered as aforesaid shall be deemed to have been effectively delivered and received, if sent by a nationally recognized private overnight courier service, on the Business Day following the Business Day upon which it is delivered for overnight delivery to such courier service, if sent by facsimile, on the date of confirmation of transmission, or, if delivered personally, on the date of such delivery.

#### 11.4 Successors and Assigns.

(a) The rights of each Party under this Agreement shall not be assignable by such Party prior to the Closing without the written consent of the other Party, except that all

or any portion of the rights of Buyer hereunder may be assigned prior to the Closing, without the consent of Sellers, to any Affiliate of Buyer.

(b) This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns. The successors and permitted assigns hereunder shall include any permitted assignee as well as the successors in interest to such permitted assignee (whether by merger, consolidation, liquidation (including successive mergers, consolidations or liquidations) or otherwise). Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any Person other than the parties and successors and assigns permitted by this Section 11.4 any right, remedy or claim under or by reason of this Agreement.

11.5 Entire Agreement; Amendments. This Agreement and the Exhibits and Schedules referred to herein and the documents delivered pursuant hereto contain the entire understanding of the Parties with regard to the subject matter contained herein or therein, and supersede all prior agreements, understandings or letters of intent between or among any of the Parties. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of the Parties.

11.6 Waivers. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, in whole or in part, by the Party entitled to the benefit thereof. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any Party, it is authorized in writing by an authorized representative of such Party. There shall be no implied waiver of any term or condition of this Agreement resulting from the action or inaction of any Party. The failure of any Party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any Party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

11.7 Expenses. Except as otherwise provided herein, each Party will pay all costs and expenses incident to its negotiation and preparation of this Agreement and to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel and accountants.

11.8 Partial Invalidity. Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

11.9 Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been

signed by and delivered to each of the Parties. Delivery of an executed counterpart of a signature page to this Agreement by facsimile, email, portable document format (PDF) or electronic signature software shall be effective as delivery of a manually executed counterpart of this Agreement.

11.10 Further Assurances. At the Closing, and at all times thereafter as may be necessary, and subject to any approval of the Bankruptcy Court that may be required, Seller and Buyer shall execute and deliver, or cause to be executed and delivered, such other documents, including instruments of conveyance and transfer, as shall be reasonably necessary or appropriate to vest in Buyer title to the Purchased Assets free and clear of all Liens, Claims, Interests and Encumbrances (other than Permitted Encumbrances and Assumed Liabilities), and to comply with the purposes and intent of this Agreement and the Ancillary Documents. Sellers and Buyer shall cooperate with one another to execute and deliver such other documents and instruments as may be reasonably required to carry out the transactions contemplated by this Agreement and the Ancillary Documents.

11.11 Governing Law.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed in and to be performed in the State of New York, without regard to conflicts-of-laws principles (whether of the State of New York or any other jurisdiction) that would require the application of the laws of any jurisdiction other than the State of New York.

(b) Without limiting any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereunder, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 11.3 hereof. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each of the Parties hereto hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 11.3.

(c) THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF SELLER, BUYER OR

THEIR RESPECTIVE REPRESENTATIVES IN THE NEGOTIATION OR PERFORMANCE HEREOF.

11.12 No Third -Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

[SIGNATURE PAGE TO FOLLOW]

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

**SELLERS:**

**Fairport Baptist Homes**

By: \_\_\_\_\_  
Name:  
Title:

**Fairport Baptist Homes Adult Care Facility, Inc.**

By: \_\_\_\_\_  
Name:  
Title:

**FBH Community Ministries**

By: \_\_\_\_\_  
Name:  
Title:

**FBH Distinctive Living Communities, Inc.**

By: \_\_\_\_\_  
Name:  
Title:



**BUYER:**

**Eastside Senior Care, Inc.**

By: \_\_\_\_\_  
Name: Glen Cooper  
Title: President

**Schedule 2.1(c)**  
**Real Property**

See attached.

**Schedule 2.4  
Assumed Liabilities**

None.

**Schedule 5.3**  
**Subsidiaries and Investments**

Tool Thrift Shop LLC  
Crafts, Bits & Pieces LLC

Interest in Pandion Sourcing National LLC (d/b/a Pandion Optimization Alliance)

**Schedule 5.4(a)**  
**Additional Properties Required to Operate the Facilities**

None.

**Schedule 5.4(b)**  
**Environmental Permits and Hazardous Substances**

None.

**Schedule 5.6(a)**  
**Taxes**

2021 Tax Return Filings Currently on Extension.

**Schedule 5.7  
Litigation**

See attached.



**Schedule 5.8  
Insurance**

See attached.

**Schedule 5.9(a)**  
**Accreditation; Uncorrected Deficiencies**

None.

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**Schedule 5.9(b)**  
**Medicare and Medicaid Eligibility Restrictions**

None.

**Schedule 5.10**  
**Affiliate Transactions**

None.

**Schedule 5.11**  
**Brokers**

None.

**Schedule 5.12(a)**  
**Employment Matters**

None.

**Schedule 5.12(b)**  
**Employee Complaints or Claims**

None.



**Schedule 5.12(c)**  
**Employees and Independent Contractors**

List of employees to be provided to Buyer prior to Closing.

**Schedule 5.12(d)**  
**Collective Bargaining Agreement**

None.

**Schedule 5.12(g)**  
**Workers Compensation Levies**

See Schedule 5.7.

**Schedule 5.12(h)**  
**Benefit Plans**

Fairport Baptist Homes Retirement Plan.

**Schedule 5.13(a)**  
**Compliance with Laws**

None.

**Schedule 5.13(b)**  
**Permits**

1. The current Operating Certificate for FBH's Residential Health Care Facility SNF (#2725300N) was issued by the New York State Department of Health ("DOH") on April 30, 2015, with no set expiration date.
2. The current Operating Certificate for FBH Adult Care's Adult Home ALP (#370-E-202) was issued by the DOH on December 1, 2021, with an expiration date of November 30, 2025.
3. The current Operating Certificate for FBH Adult Care's LHCSA (#1628L001) was issued by the DOH on December 2, 2009, with no set expiration date.

**Schedule 5.14  
Inventory**

None.