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*Counsel to the Debtor and Debtor in Possession*

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

In re:

AMSTERDAM HOUSE CONTINUING CARE  
RETIREMENT COMMUNITY, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 23-70989 (AST)

**DEBTOR'S MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE ASSET PURCHASE AGREEMENT BETWEEN THE DEBTOR AND SR HSG ACQUISITIONS, LLC; (II) AUTHORIZING THE PRIVATE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES, EXCEPT FOR CERTAIN PERMITTED LIENS AND ASSUMED LIABILITIES; (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH; AND (IV) GRANTING RELATED RELIEF**

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<sup>1</sup> The last four digits of the Debtor's federal tax identification number are 1764. The Debtor's mailing address is 300 East Overlook, Port Washington, New York 11050.

The above-captioned debtor and debtor in possession (the “Debtor” or “The Harborside”), by and through its counsel, DLA Piper LLP (US), hereby submits this motion (the “Motion”)<sup>2</sup> for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Sale Order”), (i) approving and authorizing the private sale (the “Sale”) of substantially all of the Debtor’s assets (the “Assets”) pursuant to that certain Asset Purchase Agreement between the Debtor and Sr Hsg Acquisitions, LLC (“Buyer”), dated as of January 22, 2025, a copy of which is attached hereto as **Exhibit B** (as amended and together with all exhibits, appendices, and supplements thereto, the “APA”);<sup>3</sup> (ii) authorizing the Sale free and clear of all liens, claims, interests and encumbrances other than the Permitted Liens and Assumed Liabilities (as defined in the APA) that Buyer has agreed to assume or permit under the APA or as otherwise set forth in the APA; (iii) authorizing the assumption and assignment to Buyer of certain of the Debtor’s executory contracts and unexpired leases as designated by Buyer, subject to the procedures set forth herein and the terms and conditions of the APA (the “Assumed Contracts”); and (iv) granting related relief. In support of this Motion, the Debtor relies on the *Declaration of Michael Morton in Support of the Debtor’s Chapter 11 Petition and First Day Motions* [Dkt. No. 13] (the “First Day Declaration”), the *Declaration of David Kliwer in Support of the Debtor’s Motion for Entry of Orders (I) Approving Bidding Procedures, (II) Authorizing the Debtor to Designate a Stalking Horse Bidder, (III) Approving Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (IV) Authorizing (A) the Sale of the Debtor’s Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, and (B) the Assumption and*

<sup>2</sup> Pursuant to the *Stipulation and Agreed Order Approving (I) Debtor’s Entry into Letter of Intent, (II) Setting Hearing to Approve Sale and Related Deadlines, and (III) Granting Related Relief* [Dkt. No. 929], all objections to the relief requested in this Motion must be made on or before **February 5, 2025 at 4:00 p.m. (ET)**. A hearing on the Motion has been scheduled for **February 12, 2025 at 10:00 a.m. (ET)**.

<sup>3</sup> Capitalized terms used but not defined herein shall have the meanings given to them in the APA.

*Assignment of Certain Executory Contracts and Unexpired Leases, (V) Approving the Forms of Notices Related to the Sale, and (VI) Granting Related Relief [Dkt. No. 467] (the “Kliwer Sale Declaration”), the Declaration of Michael Morton in Support of the Debtor’s Motion for Entry of Orders (I) Approving Bidding Procedures, (II) Authorizing the Debtor to Designate a Stalking Horse Bidder, (III) Approving Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (IV) Authorizing (A) the Sale of the Debtor’s Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, and (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (V) Approving the Forms of Notices Related to the Sale, and (VI) Granting Related Relief [Dkt. No. 469] (the “Morton Sale Declaration,” and together with the Kliwer Sale Declaration, the “Initial Sale Declarations”), and the Declaration of David Kliwer in Support of Debtor’s Motion for Entry of an Order (I) Approving the Asset Purchase Agreement Between the Debtor and Sr Hsg Acquisitions, LLC; (II) Authorizing the Private Sale of Substantially All of the Debtor’s Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, Except for Certain Permitted Liens and Assumed Liabilities; (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief, attached hereto as **Exhibit C**. In further support of this Motion, the Debtor respectfully represents as follows:*

### **Preliminary Statement**

1. The Debtor commenced this case nearly two years ago on March 22, 2023. After a fulsome marketing process and a contested sale hearing, the Court entered an order approving the sale of substantially all of the Debtor’s assets to LCS Real Estate LLC (“LCS”) on December 27, 2023. Shortly thereafter, the Debtor achieved a global settlement that was the result of extensive negotiations, good faith efforts and hard-fought compromises among the Debtor, the

Official Committee of Unsecured Creditors (the “Committee”), Amsterdam Continuing Care Health System, Inc. (the “Member”), Amsterdam Nursing Home Corporation (1992) d/b/a Amsterdam Nursing Home, UMB Bank, N.A., in its capacity as bond trustee (the “Bond Trustee”), and members of the restricted group of bondholders holding a majority of the Bonds.<sup>4</sup>

2. Unfortunately, despite the Debtor’s tireless efforts, the sale to LCS was terminated following receipt of a letter from the New York Department of Health indicating that LCS’ change of ownership applications were deemed abandoned and withdrawn.

3. In response to this unexpected and disappointing setback, the Debtor quickly pivoted and, with the assistance of its real estate broker, Continuum Advisors LLC (“Continuum”), contacted numerous potentially interested parties, solicited bids and received term sheets from five interested parties. In consultation with the Bond Trustee, the Committee and the Member (collectively, the “Consultation Parties”), and Continuum, the Debtor evaluated the term sheets and identified Buyer and another bidder as the top bidders (the “Top Bidders”). The Debtor then engaged in arm’s length and good faith negotiations with the Top Bidders regarding the terms of a potential sale and dual track process (the “Dual Track Process”) that would (i) allow the Top Bidders to conduct due diligence simultaneously; (ii) establish certain conditions and deadlines to be met by the Top Bidders in connection with their proposed transactions; and (iii) establish the conditions by which the Debtor would select one of the Top Bidders as the successful bidder with the support of the Consultation Parties.

4. As the Debtor previously advised the Court, one of the Top Bidders did not submit a final term sheet by the deadline of December 12, 2024 at 11:00 a.m. (ET), thereby precluding

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<sup>4</sup> “Bonds” refers to the Nassau County Industrial Development Agency Continuing Care Retirement Community Taxable Revenue Bonds, Series 2021A (Amsterdam at Harborside Project), and Tax-Exempt Refunding Revenue Bonds, Series 2021B (Amsterdam at Harborside Project).

the Dual Track Process. As a result, the remaining Top Bidder, Buyer, emerged as the Debtor's best chance to achieve a sale that maximizes the value of the Debtor's assets and provides the best possible outcome for each of the Debtor's stakeholders under the unique facts and circumstances of this case. Accordingly, on December 12, 2024, the Debtor entered into the final term sheet submitted by Buyer (the "Buyer Term Sheet").

5. The Sale contemplates the conversion of The Harborside into a multiple-resident dwelling specifically designed for use and occupancy by senior citizens, with a stated intent to seek licenses for assisted living and memory care in the future. The key terms of the APA, as further described below, include the following:

- (i) \$80.0 million cash purchase price (the "Purchase Price") subject to certain adjustments, including a \$5.0 million credit to the Purchase Price paid at closing if fewer than forty-six (46) of certain residents execute rental agreements with Buyer (the "Rental Agreements");
- (ii) At closing, Buyer shall pay an aggregate amount of \$4.0 million to fund the Debtor's allowed administrative claims outstanding as of the closing date of the Sale (the "Closing Date"); and
- (iii) Current residents will be offered Rental Agreements that provide for a monthly rent amount equal to the amount of the monthly service fees listed in the residency agreements of such residents as of December 18, 2024, subject to annual increase of no greater than five percent (5%).

6. The Sale is different from the previously approved transaction with LCS due to Buyer's desire to implement a senior rental community business model and close on the transaction without the attendant risks of a protracted and uncertain regulatory approval process. As a condition of the Sale, the Debtor will be required to close The Harborside's health center, which is comprised of a residential health care facility with fifty-six (56) skilled nursing beds, an assisted living residence with twenty-six (26) enriched housing units, and enhanced and special needs assisted living residences with eighteen (18) memory support beds. However, current independent

living residents will be offered the opportunity to enter into Rental Agreements that establish monthly rent equal to their monthly service fees as of December 18, 2024, which is lower than the prevailing market rate for similar independent living communities in the area. Buyer has also committed to a five percent (5%) cap on annual rent increases and significant capital improvements to The Harborside, ensuring improved facilities and quality of life for current and future residents. In sum, the Sale delivers substantial value to the Debtor's creditors and stakeholders, preserves employment for certain of the Debtor's employees and allows independent living residents to remain in their homes.

7. As the Court is aware, the Debtor seeks approval of the Sale as it faces significant operational and financial challenges. Among other challenges, the U.S. Trustee has moved to dismiss the Debtor's chapter 11 case and one critical vendor (with whom the Debtor has since negotiated a settlement approved by the Court) had threatened to cut off services to the Debtor. The Debtor has exhausted the \$9.0 million contribution provided by the Member at the start of this case, the additional \$1.25 million contribution provided by the Member following the termination of the LCS transaction, and depends on additional postpetition financing from the Bond Trustee to continue operations until closing of the Sale. Consummation of the APA through a private sale is the Debtor's last chance to achieve a value maximizing sale and provide existing independent living residents with the opportunity to remain in their homes. Without the Sale, the Debtor will be forced to shut down, needlessly destroying value, eliminating jobs and displacing all of its elderly residents.

8. The Debtor continues to work with the Member, Amsterdam Nursing Home Corporation (1992), the Bond Trustee, the Committee and the ad hoc group of residents (the "Ad

Hoc Group of Residents”) on a global resolution in support of the Sale that will also provide financial support for residents and their families impacted by the Sale.

9. The Debtor firmly believes that consummation of the APA is in the best interests of the Debtor’s estate, creditors and stakeholders, including its residents. Accordingly, the Debtor respectfully requests that the Court approve the Motion and grant the relief requested herein.

### **Jurisdiction and Venue**

10. This Court has jurisdiction over this case, the Debtor, its estate and this Motion, under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b).

11. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

12. The Debtor consents to the entry of a final judgment or order with respect to this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

13. The statutory bases for the relief requested herein are sections 105(a), 363 and 365 of the title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 6004-1 of the Local Bankruptcy Rules for the Eastern District of New York (the “Local Rules”).

### **Background**

#### **A. General Background**

14. On March 22, 2023, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court.

15. The Debtor remains in possession of its assets and manages its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On April 13, 2023,

the United States Trustee for the Eastern District of New York (“U.S. Trustee”) appointed the Committee [Dkt. No. 91]. No trustee or examiner has been appointed in this case.

16. Additional factual background regarding the Debtor, including its business operations, capital and debt structures, and the events leading to the filing of this chapter 11 case, is set forth in the First Day Declaration.

#### **B. The Initial Sale Process**

17. On May 17, 2023, the Court entered the *Order (I) Approving Bidding Procedures, (II) Authorizing the Debtor to Designate a Stalking Horse Bidder, (III) Approving Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (IV) Authorizing (A) the Sale of the Debtor’s Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, and (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (V) Approving the Forms of Notices Related to the Sale, and (VI) Granting Related Relief* [Dkt. No. 179] (the “Bidding Procedures Order”).

18. On August 11, 2023, the Debtor filed the *Notice of Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [Dkt. No. 325] (the “Assumption and Assignment Notice”), and on August 25, 2023, the deadline to object to the assumption and assignment of executory contracts and unexpired leases set forth in the Assumption and Assignment Notice expired.

19. On October 24, 2023, the Debtor concluded the auction contemplated under the Bidding Procedures Order by announcing the selection of LCS as the successful bidder. *See* Dkt. No. 448.

20. On December 27, 2023, the Court entered its *Order (I) Approving the Amended and Restated Asset Purchase Agreement Between the Debtor and Life Care Services Communities LLC*



*d/b/a LCS Real Estate; (II) Authorizing the Sale of Substantially All of the Debtor's Assets Free and Clear of Liens, Claims, Interests and Encumbrances, Except for Certain Assumed Liabilities; (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith; and (IV) Granting Related Relief* [Dkt. No. 607] (the “Initial Sale Order”) approving the sale of substantially all of the Debtor's assets to LCS (the “Initial Sale”) and (ii) *Order Approving Settlement and Compromise Pursuant to Federal Rule of Bankruptcy Procedure 9019* [Dkt. No. 606].

21. On October 3, 2024, the New York Department of Health sent a letter to LCS outlining certain issues that precluded its review of LCS' change of ownership applications in connection with the Initial Sale and informing LCS that such applications were deemed abandoned and withdrawn. *See* Dkt. No. 862.

### **C. Entry into Buyer Term Sheet and the Proposed Sale**

22. On December 12, 2024, the Debtor executed the Buyer Term Sheet and filed the *Update Regarding Debtor's Sale Process* [Dkt. No. 914] that included a proposed order (i) seeking approval of the Debtor's entry into the Buyer Term Sheet, (ii) setting a hearing to approve the Sale and related deadlines and (iii) granting related relief.

23. On December 23, 2024, the Court entered the *Stipulation and Agreed Order Approving (I) Debtor's Entry into Letter of Intent, (II) Setting Hearing to Approve Sale and Related Deadlines, and (III) Granting Related Relief* [Dkt. No. 929], that, among other things, (i) approved the Debtor's entry into the Buyer Term Sheet; (ii) set a deadline of January 27, 2025 for the Debtor to file this Motion; (iii) established February 5, 2025 at 4:00 p.m. (ET) as the deadline to object to the Sale; and (iv) scheduled a hearing with respect to the Sale for February 12, 2025 at 10:00 a.m. (ET).

**The APA**

24. The Debtor respectfully requests the Court's authority to enter into and perform under the APA pursuant to its terms and provisions. Subject to entry of the Proposed Sale Order, the Debtor will sell the Assets to Buyer free and clear of all liens, claims, interests and encumbrances under section 363 of the Bankruptcy Code. Further, the Debtor seeks the Court's authorization to assume and assign the Assumed Contracts to Buyer subject to the procedures set forth herein and the terms and conditions of the APA.

25. The following chart presents a summary of key terms and conditions of the APA:<sup>5</sup>

<b>Provision</b>	<b>Summary Description</b>
<b>Seller</b>	Amsterdam House Continuing Care Retirement Community, Inc. d/b/a The Harborside
<b>Buyer</b>	Sr Hsg Acquisitions, LLC
<b>Sale to Insider</b>	No.
<b>Purchase Price</b> (APA § 3.01)	As full consideration for the sale of the Assets, Buyer shall pay to Seller Cash in amount equal to Eighty Million Dollars (\$80,000,000); minus an amount equal to the Deposit and the PILOT Payment, if applicable.  If fewer than forty-six (46) Residents, not including any of the Residents set forth on Schedule 3.01 of the Disclosure Schedule to the APA, execute Rental Agreements with Buyer, Buyer shall be entitled to receive a credit to the Purchase Price paid at Closing in the amount of Five Million Dollars (\$5,000,000).
<b>Good Faith Deposit</b> (APA § 3.02)	Within two (2) Business Days of execution of the APA, Buyer shall deposit the sum of Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000) with the Title Company pursuant to the Escrow Agreement.

<sup>5</sup>

Capitalized terms used but not defined in this summary have the meanings ascribed to them in the APA, and the descriptions of key provisions set forth in this chart are qualified in their entirety by reference to the APA.

Provision	Summary Description
<b>Administrative Expense Claims Funding Amount</b> (APA § 3.03)	<p>At the Closing, Buyer shall, by wire transfer of immediately available funds, pay an aggregate amount of Four Million Dollars (\$4,000,000) to fund any Allowed Administrative Expense Claims outstanding as of the Closing Date (such amount, the “<u>Administrative Expense Claims Funding Amount</u>”). For the avoidance of doubt, Buyer shall pay the Administrative Expense Claims Funding Amount in addition to the Purchase Price by wiring such amount into an escrow or into such other account as may be designated by the Sale Order.</p>
<b>Acquired Assets</b> (APA § 2.01)	<p>As set forth in the APA and described herein, the Sale includes substantially all of the assets of the Seller (<i>i.e.</i>, the Assets), except for the assets which are excluded from the Sale by the APA (<i>i.e.</i>, the Excluded Assets).</p> <p>Such acquired assets include, among others: (a) insurable fee simple in and to the land described on Schedule 2.01(a) of the Disclosure Schedules (the “<u>Land</u>”), including all easements, rights-of-way, rights of ingress and egress, strips, zones, licenses, transferable hereditaments, privileges, tenements and appurtenances in any way belonging to or appertaining to the Land or the improvements, and any right or interest in any open or proposed highways, streets, roads, avenues, alleys, easements, strips, gores and rights-of-way in, across, in front of, contiguous to, abutting or adjoining the Land, and all buildings, structures, improvements and fixtures placed, located, constructed or installed on the Land (together with the Land, the “<u>Real Property</u>”), (b) all Personal Property, including, without limitation, Furniture and Equipment (whether movable or attached to the Real Property), motor vehicles, Hardware, supplies, Inventory, linens, foodstuffs, consumable and other personal property of any type or description, including all beds, chairs, sofas, wheelchairs, tables, kitchen and laundry equipment associated with and/or present at the Community or Real Property, excluding the Excluded Personal Property, (c) the Contracts of the Seller listed on <u>Schedule 2.01(c)</u> (the “<u>Assigned Contracts</u>”), (d) subject to Applicable Law, Seller’s right, title and interest to copies of all Records, (e) to the extent transferable, Seller’s right, title and interest to any and all Assigned Permits now held in the name of Seller relating to the Real Property, and any renewals, extensions, amendments or modifications thereof, (f) to the extent transferable, all rights in and to any Claims to the extent they are in the nature of enforcing a guaranty, warranty or a contract obligation to complete improvements, make repairs or deliver services to the Seller or the Assets (the “<u>Guaranty Actions</u>”), and (g) to the extent transferable, with the exception of the Excluded Intellectual Property, any and all rights of Seller or its Affiliates with respect to the</p>

Provision	Summary Description
	use of (i) all Intellectual Property, Marks, Software, operating manuals, marketing brochures or other proprietary material used by Seller or its Affiliates in the operation of the Assets, and (ii) all registrations, applications and licenses for any of the foregoing.
<b>Assigned Contracts</b> (APA § 2.07)	<p>Subject to the approval of the Bankruptcy Court by Final Order, and effective on the Closing Date, the contracts listed on Schedule 2.01(c) of the APA will be assumed by the Seller and assigned to the Buyer on the Closing Date, in accordance with section 365 of the Bankruptcy Code.</p> <p>The Assigned Contracts exclude all residency agreements with and Liabilities to Residents, current or former.</p>
<b>Excluded Assets</b> (APA § 2.02)	<p>The APA includes 24 separate categories of excluded assets, including: (a) the Personal Property identified on <u>Schedule 2.02(a)</u> of the Disclosure Schedules, (b) the Intellectual Property identified on <u>Schedule 2.02(b)</u> of the Disclosure Schedules, (c) every Contract of the Seller that is not an Assigned Contract on <u>Schedule 2.02(c)</u> of the Disclosure Schedules, together with any rights or obligations subject thereto, (d) deposit accounts, all pre-Closing Accounts Receivable, all cash, cash equivalents, bank deposits, charitable funds (restricted or unrestricted) or similar cash items of Seller, all marketable securities owned by Seller and all documents related thereto, (e) any other Contract to which Seller is a party or under which it has rights, in each case, that is not used primarily in connection with operation of the Assets or that is not an Assigned Contract, (f) any (i) personnel files not relating to a Transferred Employee; (ii) files or communications subject to the attorney-client or similar privilege; (iii) other books and records that Seller is required by Applicable Law to retain; (iv) documents which Seller is not permitted to transfer pursuant to any contractual confidentiality obligations owed to any third party (other than any patient confidentiality obligation referred to in the foregoing clause (ii)); (v) patient records regarding Residents and former Residents of the assisted living, memory care or skilled nursing centers and units; (vi) healthcare policy and procedure manuals, books and records and other documents related to malpractice prevention programs, credentialing, incident reporting or quality assurance, including those Seller elects or is required to retain; (vii) documents relating to proposals to acquire the Assets by Persons other than Buyer; (viii) documents primarily related to or that are required to realize the benefits of any Excluded Assets; (xi) documents necessary to prepare Tax Returns and cost reports for periods prior to the Closing; (x) Seller's Governing Documents and other organizational record books</p>

Provision	Summary Description
	<p>and minute books; and (xi) documents relating exclusively to an Excluded Asset, (g) any pre-Closing claim, right or interest of Seller in or to any refund, rebate, abatement or other recovery for Taxes, together with any interest due thereon or penalty rebate arising therefrom that relate to the Assets as conducted before the Closing, (h) all insurance policies, (i) rights for refunds for unearned insurance premiums and rights to proceeds with respect to Excluded Assets and other Excluded Liabilities, (j) all of Seller's deposits or prepaid charges, interests, ownership and expenses paid in connection with or relating to any Excluded Assets, (k) all Claims of Seller, including any Claims of Seller against third parties relating to the Excluded Assets, and any and all Claims under chapter 5 and section 724(a) of the Bankruptcy Code, but excluding the Guaranty Actions, (l) any right to receive or expectancy of Seller in any charitable gift, grant, bequest or legacy (including any income or remainder interest in or under any trust or estate), (m) any Claims of Seller against third parties arising out of events occurring prior to the Closing, including and, for the avoidance of doubt, arising out of events occurring prior to the Petition Date, and including any rights under or pursuant to any and all warranties, representations and guarantees made by suppliers, manufacturers and contractors relating to products sold, or services provided, to Seller, but excluding the Guaranty Actions, (n) all deposits remaining at the Closing Date (other than with respect to the Assigned Contracts) and prepaid charges and expenses of Seller, (o) all deposits paid by the Seller pursuant to the utilities order [Dkt. No. 116] entered by the Bankruptcy Court on April 21, 2023, (p) any Contract that relates to the purchase or leasing of equipment that is identified on <u>Schedule 2.02(p)</u> of the Disclosure Schedules, (q) all Benefit Plans, (r) the Purchase Price, the Administrative Expense Claim Funding Amount and all rights of Seller under the APA, (s) all Claims of Seller and its Affiliates with respect to periods prior to the Effective Time, and any payments, awards or other proceeds resulting therefrom, subject to the rights of Buyer established in <u>subsection (m)</u> above, (t) all licenses or Permits that are not transferrable, are not Assigned Permits or that are not related to the Assets, (u) all rights with respect to Proceedings pending at the Effective Time, (v) the proceeds of any settlement agreement entered into in connection with the Bankruptcy Case, (w) any refund due or payable to Seller under the PILOT Agreement in connection with any amount paid by Seller prior to the Closing Date, and (x) all security deposits being held by or on behalf of Seller for Residents.</p>

Provision	Summary Description
<b>Assumed Liabilities</b> (APA § 2.03)	<p>Buyer is assuming the following Liabilities, including all Cure Costs related to the Assigned Contracts (except to the extent constituting and excluding for purposes, the Excluded liabilities): (a) all of the claims, Liabilities and obligations of any kind or nature incurred in the use of the Assets, but only to the extent that the same arise from events occurring exclusively from and after the Closing Date, and (b) all liabilities and obligations of Seller under the Assigned Contracts only to the extent that the same arises exclusively from and after the Closing Date.</p>
<b>Excluded Liabilities</b> (APA § 2.03)	<p>Buyer shall not assume and shall not be obligated to assume or be obliged to pay, perform or otherwise discharge any Liability of Seller or any of Seller's Affiliates, and Seller shall retain and be solely and exclusively liable with respect to all Liabilities of Seller, except for Assumed Liabilities (such Liabilities other than Assumed Liabilities, collectively, the "<u>Excluded Liabilities</u>"), which shall include, without limitation, (a) any Liability associated with an Excluded Assets, (b) all Indebtedness and payables of Seller, reimbursement obligations to guarantor's of Seller's obligations or under letters of credit and all Liabilities of Seller, including to any owner or former owner of capital stock or warrants or holder of Indebtedness of Seller, (c) all entrance fee Liabilities, lifecare obligations, obligations under residency agreements, and obligations or Liabilities to or associated with Residents, current and former, (d) all operating expenses of and Liabilities related to the Assets or the Community to the extent attributable to the ownership, operation or use of any of the Assets or Community prior to the Effective Time, other than any expense or Liability relating to an Assigned Contract that is subject to proration pursuant to Section 3.04(a) of the APA, (e) all Taxes of Seller, including all Transfer Taxes (if any), whether related to the transfer of the Real Property or the Personal Property to Buyer, (f) any Liability arising out of or in connection with any Proceedings (whether instituted prior to or after the Closing) to the extent arising from acts or omissions by Seller that occurred or are alleged to have occurred prior to the Closing Date, (g) all Liabilities consisting of legal, accounting, financial advisory, valuation, investment banking and other third-party advisory or consulting fees and expenses incurred by or on behalf of Seller in connection with or arising from the Bankruptcy Case or the Contemplated Transactions or the Transaction Documents, (h) all Liability related to or arising out of the Bond Financing, the Securities Act of 1933, as amended and the rules and regulations promulgated thereunder, the Internal Revenue Code of 1986, as amended or any Internal Revenue Service audits related thereto, (i) all Liabilities existing prior to the filing of the Bankruptcy</p>

Provision	Summary Description
	Case that are discharged under the Bankruptcy Case, (j) all Liabilities arising out of or related to the actions taken pursuant to the Plan of Closure, (k) Medicare and Medicaid Liabilities and any Liabilities related to the provision of healthcare at the Community prior to the Closing Date, (l) all Excluded Employee Liabilities, and (m) all Liabilities of Seller under the APA and other Transaction Documents.
<b>Sale Free and Clear of Liens and Interests</b> (APA § 6.03)	Subject to Section 2.01(a)(iii) of the APA, at the Closing, Seller shall transfer and convey to Buyer good and indefeasible fee simple title to the Real Property, free and clear of any Liens except Permitted Liens. At the Closing, Seller's right, title and interest to all warranties and guaranties (if any) and to the extent assignable or transferable, relating to the Real Property shall be assigned by Seller to Buyer. Seller shall use commercially reasonable efforts, at the sole expense of Buyer, for the initiation of any new payment in lieu of Taxes program or similar transaction involving the IDA and replacing the PILOT Agreement (any such transfer, assignment, or initiation, the " <u>PILOT Transfer</u> .")
<b>Rental Agreements</b> (APA § 6.09)	Prior to Closing, Buyer shall offer to enter into a Rental Agreement with each Resident occupying an Independent Living Unit. The Rental Agreement will be in form acceptable to Buyer in its sole discretion, provided that each Rental Agreement will provide that, so long as the applicable Resident remains at the Community in the Independent Living Unit that such Resident occupies as of Closing, the rent will be equal to the amount of the monthly service fees listed in the residency agreements of such Residents as of December 18, 2024, subject to annual increases of no greater than five (5%) percent.
<b>Conditions Precedent to Obligation of Buyer to Close</b> (APA Article 8)	<p>The Buyer's obligation to consummate the Contemplated Transactions pursuant to the terms of the APA is subject to the satisfaction, on or prior to the Closing, of the closing conditions set forth under Article VIII of the APA, which includes, without limitation:</p> <ul style="list-style-type: none"> <li>• The Seller's representations and warranties made in the APA or in any Transaction Document shall be true and correct, in all material respects, on the Execution Date and shall be true and correct, in all material respects, as of the Closing Date as though such representation and warranties were made or given on and as of the Closing Date, unless such representation or warranty speaks only as of a specific date, in which case it shall be true and correct as of such specific date. § 8.01.</li> <li>• Seller shall have performed or complied with in all material respects all of its covenants, agreements and obligations required by this Agreement to be performed or complied with by it prior to or upon the Closing. § 8.02.</li> </ul>

Provision	Summary Description
	<ul style="list-style-type: none"> <li>• Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Seller that each of the conditions set forth in Sections 8.01 and 8.02 of the APA have been satisfied. § 8.03.</li> <li>• Seller shall have conveyed to Buyer the Assets, free and clear of all Liens, except Permitted Liens, to the extent permissible under Section 363(f) of the Bankruptcy Code. § 8.04.</li> <li>• The Bankruptcy Court shall have entered the Sale Order, which shall not be stayed. § 8.07.</li> <li>• Seller shall have completed the closure of all but the Independent Living Units of the Community and related non-healthcare facilities in accordance with the Plan of Closure. § 8.08.</li> </ul>
<b>Closing</b> (APA § 10.01)	<p>The Closing shall take place on the date that is twenty (20) days after the satisfaction of all conditions to Closing contained in <u>Article VIII and Article IX</u>, but in no event later than the date that is six (6) months following entry of the Sale Order (the “<u>Outside Closing Date</u>”), subject to extension as set forth below; or at such earlier or later date and time as may be expressly agreed upon in writing by Buyer and Seller.</p> <p>The Outside Closing Date shall be automatically extended for up to three (3) additional consecutive one (1) month periods if the Sale Order has become a Final Order prior to the original Outside Closing Date but the Closing has not occurred solely as a result of Seller’s failure to complete the Consummation of the Plan of Closure.</p>
<b>Termination Events</b> (APA § 12.01)	<p>Under certain circumstances, including, without limitation, the following, the APA may be terminated at any time prior to the Closing by written notice to the applicable party:</p> <ul style="list-style-type: none"> <li>• By either Buyer or Seller if a Governmental Authority issues a final, non-appealable ruling or Order prohibiting the Contemplated Transactions where such ruling or order was not requested, encouraged or supported by any of Seller or Buyer,</li> <li>• By mutual written consent of Seller and Buyer,</li> <li>• By Buyer following entry of an order of the Bankruptcy Court dismissing or converting of the Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code, appointing a chapter 11 trustee or examiner with enlarged powers, or materially amending the Contemplated Transactions,</li> <li>• Material breach by either Buyer or Seller,</li> <li>• By Buyer if (i) the Sale Order is not entered by the Bankruptcy Court on or before February 17, 2025, or (ii) there is an appeal</li> </ul>



Provision	Summary Description
	<p>and Seller under <u>Section 2.06(c)</u> does not defend such appeal due to lack of funding, and</p> <ul style="list-style-type: none"> <li>• By either Buyer or Seller if Closing has not occurred by the Outside Closing Date (as may be extended pursuant to Section 10.01) by no fault of the party terminating; <i>provided, however</i>, that Seller may not terminate if Buyer is providing funding pursuant to Section 2.06(c).</li> </ul>
<b>Releases</b>	Neither Seller nor Buyer is releasing any party in connection with the APA and the Sale.
<b>Relief from Bankruptcy Rules 6004(h) and 6006(d)</b>	As noted in this Motion, the Debtor is requesting relief from the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d).

26. In light of (i) the Debtor's comprehensive prepetition and postpetition marketing and sale processes (as further described in the Initial Sale Declarations), (ii) the extensive efforts of the Debtor and its advisors to engage prospective purchasers following the termination of the Initial Sale, and (iii) the Debtor's good faith, arm's length negotiations with Buyer, the Debtor submits that the terms and conditions of the APA, including the total consideration, are fair and reasonable under the circumstances and that the Sale maximizes the value of the Assets.

### **Relief Requested**

27. By this Motion, the Debtor seeks entry of the Proposed Sale Order, substantially in the form attached as **Exhibit A**: (i) approving and authorizing the Sale pursuant to the APA; (ii) authorizing the Sale free and clear of all liens, claims, interests and encumbrances other than the Permitted Liens and Assumed Liabilities that Buyer has agreed to assume or permit under the APA or as otherwise set forth in the APA; (iii) authorizing the assumption and assignment to Buyer of the Assumed Contracts, subject to the procedures set forth herein and the terms and conditions of the APA; and (iv) granting related relief.

## **Basis for Relief**

### **A. The Private Sale is Within the Debtor’s Sound Business Judgment**

28. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Bankruptcy Rule 6004(f)(1) provides that “sales not in the ordinary course of business may be by private sale or by public auction.” Fed. R. Bankr. P. 6004(f).

29. Courts generally apply the “business judgment” standard in determining whether to approve a proposed transaction under section 363 of the Bankruptcy Code. *See Official Comm. of Unsecured Creditors of LTV Aerospace and Def. Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 144–45 (2d Cir. 1992) (finding that sound business judgment supported sale where delay in sale of assets would diminish estate’s value); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070–71 (2d Cir. 1983) (“[T]here must be some articulated business justification, other than appeasement of major creditors, for using, selling, or leasing property out of the ordinary course of business”); *In re MF Global Inc.*, 535 B.R. 596, 605 (Bankr. S.D.N.Y. 2015) (“In approving a transaction conducted pursuant to section 363(b)(1), courts consider whether the [debtor] exercised sound business judgment.”).

30. Whether a sale falls within a debtor’s sound business judgment is a fact-specific inquiry. *See In re Lionel Corp.*, 722 F.2d at 1071–72. Through this inquiry, “a debtor often satisfies the business judgment standard if ‘the directors acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.’” *In re Borders Grp., Inc.*, 453 B.R. 477, 482 (Bankr. S.D.N.Y. 2011) (quoting *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992)). Once the business judgment standard is satisfied, a “presumption of

reasonableness attaches to a Debtor's management decisions.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986).

31. Here, the Debtor has acted within its sound business judgment. The Debtor commenced this case to continue its broad, prepetition marketing process and identify and consummate a sale of its Assets for the benefit of its stakeholders. It has already undertaken an auction as part of its comprehensive Court-approved sale process, and, in order to preserve and maximize the value of the Assets, the Debtor now seeks to enter into and consummate the APA as a private sale. As the Court has recognized, the Debtor's marketing efforts have been extensive, including outreach to over 4,000 parties, including for-profit and not-for-profit entities across the country, as well as operators of continuing care retirement communities (“CCRCs”) and rental communities. *See* Transcript, December 1, 2023 (the “Bench Ruling”), at 43:7-14 (“[The] Court's already referenced the pre-petition and post-petition role and efforts of Grandbridge, later Continuum, and the robust pre-auction marketing process.”). Throughout the Debtor's sale efforts, it has acted on an informed basis, advised by its real estate broker, Continuum, and in consultation with the Consultation Parties. The sale of The Harborside has also generated significant attention in local and national media. Further marketing of The Harborside is unlikely to produce new competitive bidders and is not in the best interests of the Debtor's estate given its liquidity constraints. Having exhausted \$10.25 million in contributions provided by the Member, the Debtor faces a stark but clear choice: it can either consummate the APA and preserve the going concern value and operations of the independent living portion of The Harborside or shut down entirely. It is well within the Debtor's sound business judgment that it elects to pursue the Sale.

**B. The Private Sale Satisfies Bankruptcy Rule 6004(f)**

32. Bankruptcy Rule 6004(f) permits a debtor to sell estate property outside of the ordinary course of business by a private sale or public auction. Private sales outside the ordinary course of business are appropriate where the debtor demonstrates that the sale is permissible under section 363 of the Bankruptcy Code. *See, e.g., In re Schipper*, 933 F.2d 513, 514 (7th Cir. 1991) (approving a private real estate sale by the debtor when the purchase price was the same as an independent appraisal). Courts in the Second Circuit routinely approve private sales upon a finding that the sale is an exercise of the debtor’s sound business judgment. *See, e.g., In re Frontier Commc’ns*, No. 20-22476 (Bankr. S.D.N.Y. Nov. 2, 2020) [Dkt. No. 1286] (approving private sale and finding the sale represented the sound business judgment of the debtor); *In re Waypoint Leasing Holdings Ltd.*, No. 18-13648 (Bankr. S.D.N.Y. July 17, 2019) [Dkt. No. 869] (approving private sale); *In re Westinghouse Elec. Co. LLC*, No. 17-10751 (Bankr. S.D.N.Y. Dec. 12, 2017) [Dkt. No. 541].

33. As noted above, the Debtor has determined that a private sale of the Assets is in the best interest of its estate and its stakeholders. Given the Debtor’s financial position and its extensive marketing efforts, the Debtor and the Consultation Parties unanimously agree that it is not in the best interest of the estate or its stakeholders to undertake a second auction.

**C. Section 363(d) of the Bankruptcy Code is Satisfied**

34. Sections 363(d) of the Bankruptcy Code requires that the transfer of property by a not-for-profit corporation comply with applicable nonbankruptcy law governing such transfer. Specifically, section 363(d) provides that “[t]he trustee may use, sell or lease property under subsection (b) or (c) of this section only – (1) in accordance with applicable accordance with

nonbankruptcy law applicable to the transfer of property by a debtor that is such a corporation or trust.” 11 U.S.C. § 363(d)(1).

35. The inclusion of section 363(d) of the Bankruptcy Code was not intended to provide states with a “veto” of sales of a debtor’s assets under the Bankruptcy Code that otherwise take into account legitimate interests of the state over the transfer or sale of a non-profit’s assets. *See* H. REP. NO. 109-31, pt. 1, title XII (Judiciary. Comm.) (listing section 1221 of the BAPCPA under the heading “Technical Amendments”).

36. Outside of bankruptcy, an insolvent not-for-profit corporation that seeks to sell all or substantially all of its assets is required, pursuant to sections 510 and 511 of the New York Not-for-Profit Corporation Law, to submit a verified petition to the supreme court where the corporation has its principal office for approval of such sale transaction, on notice to the Attorney General. The supreme court will approve the proposed sale transaction if it finds that “the consideration and the terms of the transaction are fair and reasonable to the corporation and that the purposes of the corporation or the interests of the members will be promoted.” N.Y. Not-for-Profit Corp. Law § 511(d).

37. However, separate state court approval is not necessary if the not-for-profit corporation is in bankruptcy. Once in bankruptcy, a proposed sale of a debtor’s assets is subject to various provisions of the Bankruptcy Code, in particular sections 363(d)(1) and 541(f) of the Bankruptcy Code. As stated above, section 363 permits the bankruptcy court to authorize a sale “in the case of a debtor that is a corporation or trust that is not a moneyed business, commercial corporation, or trust, only in accordance with nonbankruptcy law applicable to the transfer of property by a debtor that is such a corporation or trust.” 11 U.S.C. § 363(d)(1). Similarly, section 541(f) of the Bankruptcy Code provides that “property that is held by a debtor that is a corporation

described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.” 11 U.S.C. § 541(f).

38. As this Court previously acknowledged, in *In re HHH Choices Health Plan, LLC*, Judge Wiles determined that the bankruptcy court, rather than the state court, was the appropriate court to determine whether to approve the proposed sale transaction of an insolvent not-for-profit corporation under sections 510 and 511 of the New York Not-for-Profit Corporation Law. 554 B.R. 697, 700 (Bankr. S.D.N.Y. 2016); *see also* Bench Ruling at 34:19-22.

39. The Debtor submits that the terms of the Sale are fair and reasonable and that the Sale serves the purpose of The Harborside by preserving the homes of The Harborside’s independent living residents, thereby satisfying the conditions set forth in sections 510 and 511 of the New York Not-for-Profit Corporation Law. Accordingly, the APA satisfies the requirements of section 363(d) of the Bankruptcy Code.

**D. Buyer is a Good Faith Purchaser and Is Entitled to Full Protection of Section 363(m) of the Bankruptcy Code**

40. As a good faith purchaser, Buyer is entitled to the protections of section 363(m) of the Bankruptcy Code. “The reversal or modification on appeal of an authorization under [ §§ 363(b) or (c) ] of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith[.]” 11 U.S.C. § 363(m). Although “good faith” is not defined in the Bankruptcy Code, the Second Circuit has stated that:

Good faith of a purchaser is shown by the integrity of his conduct during the course of the sale proceedings . . . A purchaser’s good faith is lost by fraud, collusion between the purchaser and other

bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

*In re Gucci*, 126 F.3d 380, 390 (2d Cir. 1997) (internal quotations omitted).

41. The APA and the terms contained therein are the product of good faith, arm's-length negotiations. Buyer is an independent third party with no affiliation with the Debtor. The Purchase Price is considerably higher than other offers the Debtor received at its initial auction and the term sheets received following termination of the Initial Sale. There is nothing to suggest a lack of good faith by Buyer, and Buyer should be afforded the protections provided by section 363(m) of the Bankruptcy Code as a result.

**E. The Private Sale of Assets Should be Approved “Free and Clear” Under Section 363(f) of the Bankruptcy Code**

42. Section 363(f) of the Bankruptcy Code permits a debtor to sell property free and clear of another party's interest in the property if: (a) applicable nonbankruptcy law permits such sale free and clear, (b) the holder of the interest consents, (c) the interest is a lien and the sale price of the property exceeds the value of all liens on the property, (d) the interest is subject to a bona fide dispute, or (e) the holder of an interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest. *See* 11 U.S.C. § 363(f).

43. Section 363(f) of the Bankruptcy Code is written in the disjunctive. Thus, if any of the conditions are met, the debtor has the authority to conduct the sale free and clear of all liens. *See In re Metroplex on the Atl., LLC*, 545 B.R. 786, 792 (Bankr. E.D.N.Y. 2016); *In re USA United Fleet, Inc.*, 496 B.R. 79, 81 (Bankr. E.D.N.Y. 2013); *In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002); *see also In re Dundee Equity Corp.*, No. 89-B-10233, 1992 Bankr. LEXIS 436, at \*12 (Bankr. S.D.N.Y. Mar. 6, 1992) (same); *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same).

44. The Debtor has satisfied these requirements. The Bond Trustee holds liens on and interests in the Assets and has been involved throughout the negotiation process with Buyer in its capacity as a Consultation Party. The Debtor believes that the Bond Trustee consents to the Sale in satisfaction of section 363(f) of the Bankruptcy Code.

**F. The Debtor Should be Authorized to Assume and Assign the Assumed Contracts to Buyer**

**(i) Assumption and Assignment of the Assumed Contracts is Within the Debtor's Business Judgment**

45. The Debtor respectfully requests the Court's authorization to assume and assign the Assumed Contracts pursuant to section 365 of the Bankruptcy Code. Section 365(a) provides authority for a debtor-in-possession to either assume or reject any executory contract or unexpired lease with the court's approval. *See* 11 U.S.C. § 365(a). The decision to assume or reject an executory contract or unexpired lease is a matter within the "business judgment" of the debtor. *In re Old Carco LLC*, 406 B.R. 180, 188 (Bankr. S.D.N.Y. 2009) ("The business judgment standard is employed by courts in determining whether to permit a debtor to assume or reject a contract.") "The bankruptcy court generally defers to a debtor's determination as to whether rejection of an executory contract is advantageous unless the decision to reject is the product of bad faith, whim, or caprice." *In re Sabine Oil & Gas Corp.*, 547 B.R. 66, 71 (Bankr. S.D.N.Y. 2016), *aff'd*, 567 B.R. 869 (S.D.N.Y. 2017), *aff'd*, 734 F. App'x 64 (2d Cir. 2018).

46. With respect to the Sale, assumption and assignment of the Assumed Contracts is a sound exercise of the Debtor's business judgment because they are integral to the ownership or operation of the Assets.

47. Section 365(f) of the Bankruptcy Code requires, in part, that the assignee of any executory contract provide "adequate assurance of future performance . . . whether or not there has



been a default in such contract.” 11 U.S.C. § 365(f)(2). Section 365(b), which codifies the requirements for assuming an executory contract, provides, in pertinent part that the debtor may only assume an executory contract if the debtor:

- (i) cures, or provides adequate assurance that the [debtor] will promptly cure[s] [any defaults existing under the executory contract];
- (ii) compensates, or provides adequate assurance that the [debtor] will promptly compensate, a party other than the debtor to such contract . . . for any actual pecuniary loss to such party resulting from such default; and
- (iii) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b).

48. While undefined by the Bankruptcy Code, adequate assurance is guided by “a practical, pragmatic construction based upon the facts and circumstances of each case.” *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (quoting *In re Bon Ton Restaurant & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1995)). Adequate assurance may be provided by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph*, 56 B.R. at 605-06 (finding that industrial expertise, past success in running a similar business and financial wherewithal satisfied the adequate assurance requirement of section 365 of the Bankruptcy Code).

49. Here, Buyer is an industry-leading owner with more than 25 years of experience in senior housing with demonstrated financial capabilities. Buyer is a real estate and asset management firm that specializes in senior housing assets such as the Assets. Buyer actively invests in, develops, and manages senior living facilities while working with senior health operators and has successfully converted three (3) other CCRCs from entrance fee to rental

business models. Based on Buyer's industry experience and financial capabilities, the Debtor submits that it has satisfied the adequate assurance requirement of section 365 of the Bankruptcy Code with respect to the assumption and assignment of the Assumed Contracts.

**(ii) The Assumption and Assignment Procedures**

50. Through the Assumption and Assignment Notice, the Debtor has previously provided notice of potential assumption and assignment of its executory contracts and unexpired leases (the "Initial Assumed Contracts") in the form and manner approved under the Bidding Procedures Order (the "Assignment Procedures"). No Contract Objections (as defined in the Assignment Procedures) were submitted by the objection deadline established under the Assignment Procedures and the Court authorized the assumption and assignment of the Initial Assumed Contracts under the Initial Sale Order.

51. The Debtor recognizes that between the date of Assumption and Assignment Notice and the date of this Motion, additional amounts may be required to cure certain Assumed Contracts (the "Gap Period Cure Amounts"). Accordingly, the Debtor prepared the schedule attached hereto as **Exhibit D** reflecting the Initial Assumed Contracts with corresponding Gap Period Cure Amounts, if any. The Debtor respectfully requests that the Court establish **February 28, 2025 at 4:00 p.m. (prevailing Eastern Time)** as the deadline for any counterparty to an Assumed Contract to file an objection asserting such Gap Period Cure Amounts. If an objection as set forth above is timely filed and not resolved by the parties, a hearing with respect to the objection will be requested.

**G. Rejection of the Residency Agreements is Authorized under Section 365(a) of the Bankruptcy Code**

52. In accordance with the APA, the Assumed Contracts exclude all residency agreements with liabilities to current and former residents of The Harborside. Therefore, the Debtor intends to reject those residency agreements.

53. Although the Debtor does not presently seek authority to do so, rejection of the residency agreements, including those assumed under the Debtor's previous chapter 11 case, is permissible under section 365(a) of the Bankruptcy Code. Section 365(a) of the Bankruptcy Code permits a debtor, subject to court approval, to "assume or reject *any* executory contract or unexpired lease of the debtor." 11 U.S.C. §365(a) (emphasis added). That certain residency agreements were assumed in connection with the Debtor's 2021 chapter 11 case does not curtail the Debtor's ability to reject executory contracts that form a part of its estate in the instant case. *See Shoppers World Cmty. Ctr., L.P. v. Bradlees Stores (in Re Bradlees Stores, Inc.)*, Nos. Chapter 11, 00-16033 (BRL), 00-16035 (BRL), 00-16036 (BRL), 01-CV-3934 (SAS), 2001 U.S. Dist. LEXIS 14755, at \*17-18 (S.D.N.Y. Sep. 20, 2001) ("[t]he fact that the Agreement was entered into as part of *Bradlees I*, an earlier Chapter 11 case, is irrelevant because the two Chapter 11 cases are separate and distinct"); *In re Jartran, Inc.* (Jartran II), 886 F.2d 859, 870 (7th Cir. 1989) (the "second chapter 11 filing [was] . . . distinct from the first filing . . ."); *In re Toy King Distributors, Inc.*, 256 B.R. 1, 103 (Bankr. M.D. Fla. 2000) ("[A] subsequent new case, filed after the reorganized debtor has confirmed a Chapter 11 plan in an earlier case, creates an entirely new estate."); *In re Jamesway Corp.*, 202 B.R. 697, 701 (Bankr. S.D.N.Y. 1996) ("The estate created in one bankruptcy case is distinct from that created upon the commencement of a subsequent case . . .").

**Request for Immediate Relief and Waiver of Stay**

54. Pursuant to Bankruptcy Rules 6004(h) and 6006(d), the Debtor seeks a waiver of any stay of the effectiveness of the Proposed Sale Order. Bankruptcy Rule 6004(h) provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Bankruptcy Rule 6006(d) provides that “[a]n order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after entry of the order, unless the court order otherwise.”

55. As set forth above, the relief requested herein is necessary and appropriate to maximize the value of the Debtor’s estate for the benefit of their economic stakeholders. Accordingly, the Debtor submits that ample cause exists to justify the waiver of the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d), to the extent that each Rule applies.

**No Prior Request**

56. No prior Motion for the relief requested herein has been made to this or any other court.

**Notice**

57. Notice of this Motion shall be provided to: (i) the U.S. Trustee; (ii) counsel to the Committee, (iii) counsel to the Ad Hoc Group of Residents, (iv) counsel to the Bond Trustee, (v) counsel to the Member, (vi) counsel to Buyer; (vii) counsel to the Nassau County Industrial Development Agency; (viii) the United States Attorney’s Office for the Eastern District of New York; (ix) the Internal Revenue Service, (x) the United States Department of Justice, (xi) the New York State Attorney General; (xii) the New York Department of Health; (xiii) the New York Department of Financial Services; (xiv) each of the counterparties to the contracts listed on

**Exhibit D**, and (x) all other parties required to receive notice under Local Rule 2002-2. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is necessary.

*[Remainder of page intentionally left blank]*

WHEREFORE, the Debtor respectfully requests that this Court enter the Proposed Sale Order and grant such other and further relief as is just and proper.

Dated: January 27, 2025  
New York, New York

Respectfully submitted,

**DLA PIPER LLP (US)**

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*Counsel to the Debtor and Debtor in Possession*

**EXHIBIT A**

Proposed Sale Order

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

In re:

AMSTERDAM HOUSE CONTINUING CARE  
RETIREMENT COMMUNITY, INC.,  
d/b/a THE HARBORSIDE,

Debtor.

Chapter 11

Case No. 23-70989 (AST)

**ORDER (I) APPROVING THE ASSET PURCHASE AGREEMENT BETWEEN THE  
DEBTOR AND SR HSG ACQUISITIONS, LLC; (II) AUTHORIZING THE SALE OF  
SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS,  
CLAIMS, INTERESTS AND ENCUMBRANCES, EXCEPT FOR CERTAIN  
PERMITTED LIENS AND ASSUMED LIABILITIES; (III) AUTHORIZING THE  
ASSUMPTION AND ASSIGNMENT OF  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN  
CONNECTION THEREWITH; AND (IV) GRANTING RELATED RELIEF**

This matter coming before the Court on the motion [Dkt. No. \_\_\_] (the “Motion”)<sup>1</sup> of the above-captioned debtor and debtor-in-possession (the “Debtor”), pursuant to sections 105, 363 and 365 of title 11 of the United States Code (the “Bankruptcy Code”) and rules 2002, 6004, 6006 and 9007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of an order (i) approving and authorizing the private sale (the “Sale”) of substantially all of the Debtor’s assets (including, for the avoidance of doubt, the fee estate in and to the Real Property);<sup>2</sup> (ii) authorizing the Sale free and clear of all liens, claims, interests and encumbrances other than the Permitted Liens and Assumed Liabilities that Buyer has agreed to assume or permit under the APA or as otherwise set forth in the APA (collectively, the “Claims and Encumbrances”); (iii) authorizing the assumption and assignment to Buyer of the Assumed Contracts; and (iv) granting related relief;

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion or APA (as defined herein), as applicable.

<sup>2</sup> “Real Property” refers to that certain real property described in PILOT Agreement (as defined herein).



and, with respect to the Debtor's previously filed motion to sell substantially all of its assets [Dkt. No. 106], the Court having entered the *Order (I) Approving Bidding Procedures, (II) Authorizing the Debtor to Designate a Stalking Horse Bidder, (III) Approving Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (IV) Authorizing (A) the Sale of the Debtor's Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, and (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (V) Approving the Forms of Notices Related to the Sale, and (VI) Granting Related Relief* [Dkt. No. 179] (the "Bidding Procedures Order"); and the Debtor having conducted a robust marketing process in compliance with the Bidding Procedures Order and having entered into that certain Amended and Restated Asset Purchase Agreement, dated December 20, 2023, between the Debtor, as seller, and Life Care Services Communities LLC d/b/a LCS Real Estate, as buyer ("LCS"); and the Debtor having determined that LCS submitted the highest and best bid; and the Court having conducted a sale hearing on November 15, 2023 and having entered an order approving the sale to LCS on December 27, 2023 [Dkt. No. 607]; and LCS having received a letter from the New York Department of Health indicating that LCS' change of ownership applications were deemed abandoned and withdrawn resulting in the termination of the approved sale to LCS; and, thereafter, the Debtor having solicited new offers from interested parties and the Debtor, with input from the Consultation Parties, having identified the Top Bidders; and the Court having conducted a hearing on December 11, 2024 with respect to the go-forward sale process and, on December 12, 2024, the Debtor having filed an update regarding such sale process [Dkt. No. 914], wherein the Debtor proposed that *Stipulation and Agreed Order Approving (I) Debtor's Entry into Letter of Intent, (II) Setting Hearing to Approve Sale and Related Deadlines, and (III) Granting Related Relief* and provided notice of the deadline of December 20, 2024 for objecting to such order; and on

December 23, 2024, the Court having conducted a status conference and, following such status conference, having entered that *Stipulation and Agreed Order Approving (I) Debtor's Entry into Letter of Intent, (II) Setting Hearing to Approve Sale and Related Deadlines, and (III) Granting Related Relief* [Dkt. No. 929] (the "LOI Order"); and the Debtor having entered into that certain Asset Purchase Agreement, dated as of January 22, 2025 (the "APA"), with Sr Hsg Acquisitions, LLC ("Buyer"), pursuant to which Buyer has agreed to, among other things, (i) purchase substantially all of the Debtor's assets, including the Fee Estate (the "Assets"), for a purchase price of Eighty Million Dollars (\$80,000,000), subject to certain adjustments as set forth under Section 3.01 of the APA (the "Purchase Price"), (ii) pay Four Million Dollars (\$4,000,000) to fund any allowed administrative expense claims as of the Closing Date (the "Administrative Expense Claims Funding Contribution"), and (iii) assume certain liabilities (as set forth in the APA); and the Debtor having determined that Buyer submitted the only mutually supported and therefore highest and best bid for the Assets; and the Court having conducted a hearing on February 12, 2025 (the "Sale Hearing") on the proposed sale to Buyer upon the terms and conditions set forth in the APA at which time all interested parties were offered an opportunity to be heard; and the Court having approved the terms of the APA and overruled any objections thereto; and all parties in interest having been heard, or having had the opportunity to be heard, regarding entry of this Order (the "Sale Order") and approval of the Sale and APA; and it appearing that due and appropriate notice of the Motion, LOI Order, the Sale Hearing and the Assignment Procedures having been given; and it appearing that no other notice of the relief granted by this Sale Order need be given; and it further appearing that the legal and factual bases set forth in the Motion and

at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation thereon and good and sufficient cause appearing therefor, it is hereby:<sup>3</sup>

**FOUND AND DETERMINED THAT:**

A. This Court has jurisdiction to hear and determine the Motion, including the transaction contemplated by the APA, and to grant the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this chapter 11 case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. This Sale Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure as made applicable by Bankruptcy Rule 7054, and notwithstanding Bankruptcy Rules 6004(h) and 6006(d), this Court expressly finds that there is no just reason for delay in the implementation of this Sale Order, and expressly directs entry of judgment as set forth herein.

C. This proceeding is a “core proceeding” within the meaning of 28 U.S.C. § 157(b)(2)(A), (N) and (O).

D. The statutory predicates for the Motion are sections 105, 363, 365 and 541 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014.

E. As evidenced by the affidavits of service filed with the Court, (i) proper, timely and adequate notice of the Motion, the Sale Hearing, the Sale, the Assignment Procedures, LOI Order, and all related transactions collectively described in the APA, and all related deadlines has been provided in accordance with Bankruptcy Rules 2002, 6004, and 9007; (ii) such notice was good, sufficient and appropriate under the circumstances; and (iii) no other or further notice of the LOI

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<sup>3</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr. P. 7052, 9014.

Order, the Motion, the Sale Hearing, the Sale, the Assignment Procedures, all related transactions collectively described in the APA, and any related deadlines is necessary or shall be required.

F. A reasonable opportunity to object or be heard with respect to the Motion and the Sale has been afforded to all interested persons and entities. The Debtor also gave due and proper notice of the Sale and assumption and assignment of each of the executory contracts listed on the *Notice of Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [Dkt. No. 325] (the “Assumption and Assignment Notice”) to each non-Debtor party to such Assumed Contracts.

G. Notice, as evidenced by the affidavits of service filed with the Court, has been provided in the form and manner specified in the Motion and required by the Bidding Procedures Order and/or the LOI Order, and the Court finds that the notice is adequate and sufficient in all respects to bind all creditors, bidders and other parties in interest in this chapter 11 case.

H. The transactions collectively described in the APA are authorized pursuant to Bankruptcy Code section 363(b)(1) and Bankruptcy Rule 6005(f) and are appropriate and in compliance with applicable statutory requirements. The process for the sale of the Assets was conducted in accordance with the LOI Order and in a non-collusive, fair and good faith manner.

I. A reasonable opportunity has been given to any interested party to make a higher or better offer for the Assets.

J. Buyer is purchasing the Assets in good faith and is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and is therefore entitled to the protection of that provision.

K. The APA was negotiated, proposed and entered into by the Debtor and Buyer without collusion, in good faith, within the meaning of Bankruptcy Code section 363(m), and from

arm's-length bargaining positions. Neither the Debtor nor Buyer has engaged in any conduct that would cause or permit the Sale or any part of the transactions contemplated by the APA to be avoidable under section 363(n) of the Bankruptcy Code. The APA was not entered into, and neither the Debtor nor Buyer has entered into the APA, or proposes to consummate the transactions collectively described in the APA, for the purpose of hindering, delaying or defrauding creditors of the Debtor under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia. Neither the Debtor nor Buyer has entered into the APA or is consummating the transactions collectively described therein with any fraudulent or improper purpose.

L. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing; and (ii) the representations of counsel made on the record at the Sale Hearing, the Debtor afforded interested potential purchasers a full and fair opportunity to bid and submit offers for the Assets.

M. Buyer is not an "insider" of the Debtor as that term is defined in section 101(31) of the Bankruptcy Code.

N. The consideration provided by Buyer for the Assets pursuant to the APA: (i) is fair and reasonable; (ii) is the highest and best offer for the Assets; (iii) will provide a greater recovery for all of the Debtor's stakeholders than would be provided by any other practical available alternative; and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Voidable Transactions Act and all other applicable laws.

O. The Debtor has demonstrated a sufficient basis and compelling circumstances requiring the Debtor to enter into the APA and sell the Assets under section 363 of the Bankruptcy

Code, and such actions are appropriate exercises of the Debtor's business judgment and are in the best interests of the Debtor, its estate and its creditors.

P. The marketing and bidding processes implemented by the Debtor and its advisors, as set forth in the Motion and described at the Sale Hearing, were fair, proper, and reasonably calculated to result in the best value received for the Assets.

Q. The Debtor has full corporate authority and power to execute and deliver the APA and related agreements and all other documents contemplated by the APA, to perform its obligations therein and to consummate the Sale. No additional consents or approvals, other than those provided in the APA, are necessary or required for the Debtor to enter into the APA, perform its obligations therein and consummate the Sale.

R. Buyer would not have entered into the APA and would not consummate the transactions thereby, thus adversely affecting the Debtor and its residents, estate and creditors, if the Assets were not sold to it free and clear of all Claims and Encumbrances (including obligations under the Bond Financing), except those expressly assumed by Buyer pursuant to the provisions of the APA, or if Buyer would, or in the future could, be liable or its property, including the Assets, could be subject to any such Claims and Encumbrances (including obligations under the Bond Financing), including based upon successor or vicarious liability or otherwise. A sale of the Assets other than one free and clear of all such Claims and Encumbrances (including obligations under the Bond Financing) would adversely impact the Debtor's estate, residents and creditors, and would yield substantially less value to the Debtor's estate.

S. The provisions of section 363(f) of the Bankruptcy Code have been satisfied pursuant to the terms of this Sale Order.

T. Subject to the right of non-Debtor parties to executory contracts to object pursuant to the terms of this Sale Order, the Debtor may assume each contract listed on Schedule 2.01(c) provided in connection with the APA (collectively, the “Assumed Contracts”), which for the avoidance of doubt does not include residency agreements (collectively, the “Residency Agreements”), as such Schedule may be amended pursuant to the APA and this Sale Order, and assign each of them to Buyer pursuant to sections 363 and 365 of the Bankruptcy Code and this Sale Order notwithstanding any anti-assignment clause or other provision in the Assumed Contracts, as provided by section 365(f) of the Bankruptcy Code.

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

1. The relief requested in the Motion is granted as set forth herein. The Debtor’s entry into the APA and the Sale is hereby approved in all respects. The terms and conditions of the APA and transactions contemplated in connection with the APA are hereby authorized and approved in all respects pursuant to, *inter alia*, sections 105(a), 363(b) and 365(a) of the Bankruptcy Code.

2. All objections to the relief sought in the Motion that have not been previously resolved or withdrawn are hereby overruled on their merits and with prejudice. All persons and entities given notice of the Motion that failed to timely object thereto are deemed to consent to the relief sought therein, including all non-Debtor parties to the Assumed Contracts.

3. The Debtor is authorized and directed to take any and all actions necessary or appropriate to (i) consummate the Sale in accordance with the Motion, the APA and this Sale Order, and (ii) perform, consummate, implement and close fully the Sale, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA. After the date of entry of this Sale Order, the Debtor and Buyer may enter into any

amendment, supplement, or modification to the APA, including the assignment thereof to the designee of Buyer acquiring the Assets under the APA, that is not material or is not adverse to the Debtor's estate without the need of further notice, hearing or Court order.

4. Those holders of Claims and Encumbrances and other non-Debtor parties who did not object, or who withdrew their objections prior to entry of this Sale Order, the Motion, LOI Order, the Sale Hearing, the Sale, or the APA, are deemed to have consented to this Sale Order, LOI Order, the Sale and the APA pursuant to section 363(f)(2) of the Bankruptcy Code and are enjoined from taking any action against Buyer, its affiliates, or any agent of the foregoing to recover any claim which such person or entity has against the Debtor. Those holders of Claims and Encumbrances and other non-Debtor parties who did object, if any, fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Claims and Encumbrances, if any, attach to the proceeds of the Sale ultimately attributable to the property against or in which they assert a Claim and Encumbrance.

#### **Sale and Transfer of the Assets**

5. The APA, the Transaction Documents, all transactions contemplated thereby, and all of the terms and conditions thereof are hereby approved. Pursuant to Bankruptcy Code section 363(b), the Debtor is authorized to consummate the Sale pursuant to and in accordance with the terms and conditions in the APA and this Sale Order. The Debtor and its officers, employees and agents are authorized and directed to execute and deliver, and authorized to perform under, consummate and implement, the APA together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA, and to take all further actions as may be (a) reasonably requested by Buyer for the purpose of assigning, transferring, granting, conveying and conferring to Buyer, or reducing to possession, the Assets; or (b) necessary or



appropriate to the performance of the obligations contemplated by the APA, all without further order of the Court. Buyer shall have no obligation to proceed with the closing of the Sale (the “Closing”) until all conditions precedent to its obligations to do so have been met, satisfied or waived (in a writing signed by Buyer).

6. In accordance with the APA, Buyer shall pay to the Debtor at Closing the Purchase Price and the Administrative Expense Claims Funding Contribution, which shall be set aside and held by the Debtor, subject to further order of the Court with respect to allowed administrative expense claims. Additionally, the Deposit shall be released to the Debtor.

7. Upon Closing, the Assets transferred, sold and delivered to Buyer pursuant to the APA shall be free and clear of all Claims and Encumbrances of any person or entity, except those Claims and Encumbrances expressly assumed by Buyer, with all such Claims and Encumbrances attaching automatically to the proceeds of the Sale in the same manner, validity and priority that they attached to the Assets prior to the Closing. The transfer of the Assets to Buyer constitutes a legal, valid and effective transfer of the Assets and shall vest Buyer with all right, title and interest in and to the Assets described in the APA.

8. Upon Closing, this Sale Order shall be construed as, and shall constitute for any and all purposes, a full and complete general assignment, conveyance and transfer of the Assets pursuant to the terms of the APA.

9. Notwithstanding anything in this Sale Order or the APA to the contrary, the Assets sold to Buyer pursuant to the APA and this Sale Order shall not include any charitable funds held by or on behalf of the Debtor.

10. Upon Closing, except as permitted by the APA, all persons and entities, including, but not limited to, the Debtor and its creditors, residents, employees, former employees and

affiliates, administrative agencies, tax and regulatory authorities, governmental departments (including the Nassau County Industrial Development Agency (the “IDA”)), secretaries of state, federal, state and local officials, and their respective successors or assigns, including, but not limited to, persons asserting any Claims and Encumbrances (including any liens and/or tenancy rights of residents) against the Assets, shall be permanently and forever barred, restrained and enjoined from commencing or continuing in any manner any action or other proceeding of any kind against the Assets or Buyer (or its members, representatives, or affiliates) as alleged successor or otherwise, with respect to (i) any Claims and Encumbrances on or in respect of the Assets, other than, unless terminated as of the Closing Date, in respect of the PILOT Agreement (as defined in the APA), and (ii) recovering from any claim which such person or entity had solely against the Debtor or any of the Debtor’s subsidiaries, affiliates, directors, officers, agents, representatives, employees, investors, owners, partners, or joint venturers.

11. The terms and provisions of this Sale Order shall be binding in all respects upon all entities, including, but not limited to the Debtor, Buyer, creditors, residents, employees, former employees and affiliates, administrative agencies, governmental departments, secretaries of state, federal, state and local officials and their respective successors or assigns, including, but not limited to, persons asserting any Claim and Encumbrance against or interest in the Debtor’s estate or the Assets, including any subsequent appointment of a trustee or other fiduciary under any section of the Bankruptcy Code.

12. Upon Closing, except to the extent such liability is expressly assumed by Buyer under the APA, all entities holding a Claim and Encumbrance of any kind and nature against the Assets hereby are barred from asserting such Claim and Encumbrance against Buyer and/or the Assets and, effective upon the transfer of the Assets to Buyer upon Closing, the Claims and

Encumbrances shall attach to the proceeds of the Sale with the same force, validity, priority and effect, if any, as against the Assets.

13. This Sale Order (i) is and shall be effective as a determination that, upon Closing, all Claims and Encumbrances existing as to the Assets conveyed to Buyer have been and hereby are adjudged to be unconditionally released, discharged and terminated, with all such Claims and Encumbrances attaching automatically to the proceeds in the same manner, extent, validity and priority as they existed at Closing, and (ii) shall be binding upon and govern the acts of all entities, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies or units, governmental departments or units, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets conveyed to Buyer. All Claims and Encumbrances of record as of the date of this Sale Order shall be removed and stricken as against the Assets in accordance with the foregoing. All entities are authorized and specifically directed to strike all such recorded Claims and Encumbrances against the Assets from their records, official or otherwise. Nothing contained in this Sale Order shall affect that certain *Mortgage and Assignment of Leases and Rents* dated as of December 1, 2007 made by the IDA and the Debtor to County of Nassau recorded December 31, 2007 in the Office of the County Clerk, County of Nassau in Liber 32619 page 569 (the “PILOT Mortgage”) and the PILOT Mortgage shall not be deemed terminated. In furtherance thereof, as of the Closing, the following shall occur in the order specified below:

(i) the IDA shall execute and deliver to Debtor the Agency Deed (as such term is defined in the PILOT Agreement now in effect) transferring the Fee Estate to the Debtor effective immediately preceding the Closing Date, subject, as applicable, to any PILOT Agreement then remaining in effect from and after the Closing Date;

(ii) the IDA shall execute and deliver to Debtor a termination of that certain Installment Sale Agreement dated as of September 1, 2021 between the Debtor and IDA, together with an executed and acknowledged release in form sufficient to release that Memorandum of Installment Sale Agreement dated as of September 1, 2021 recorded in the Office of the Clerk of the County of Nassau County;

(iii) Bond Trustee shall deliver to Debtor for recording in the Office of the Clerk of the County of Nassau County an original fully executed and acknowledged release of mortgage in form sufficient to release that certain Mortgage, Assignment of Leases and Rents and Security Agreement made by the IDA and Debtor to the Bond Trustee to secure the principal amount of \$168,037,200.00 dated September 8, 2021;

(iv) Bond Trustee shall deliver to the Debtor for recording or filing in the Office of the Clerk of the County of Nassau County and with the Secretary of State of the State of New York UCC-3 financing statement amendments (and as of the Closing, authorizes the Debtor to prepare and file any such UCC-3 financing statements) terminating of record any and all UCC-1 financing statements filed against the Debtor, the IDA or the Assets in connection with the Bond Financing; and

(v) If the IDA has approved the PILOT Transfer (as defined below), the IDA and Buyer shall each execute and deliver such documents as have been agreed to by and between the IDA

and Buyer and the County of Nassau to effectuate the agreed upon structure for the PILOT Transfer.

14. For purposes of the PILOT Transfer, and subject to the approval of the IDA, the termination of the existing PILOT Agreement and the effectiveness of the PILOT Transfer shall be deemed to occur simultaneously such that the Real Property is not returned to the tax rolls of the County of Nassau, but rather the effectiveness and benefit of the PILOT Transfer shall be effective pursuant to its terms immediately upon Closing as set forth in the APA. The foregoing paragraphs shall be subject to the IDA's discretionary approval of the PILOT Transfer, as set forth herein.

15. If any person or entity which has filed financing statements, mortgages, lis pendens or other documents or agreements evidencing Claims and Encumbrances on the Assets shall not have delivered to the Debtor prior to Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements and any other documents necessary for the purpose of documenting the release of all Claims and Encumbrances which the person or entity has or may assert with respect to the Assets, the Debtor is hereby authorized and directed upon Closing, and Buyer is hereby authorized upon Closing, to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Assets as attorney in fact pursuant to the terms of this Sale Order a certified copy of which may be submitted to, and shall be accepted by, the applicable recording or filing office and accepted as proof of execution by and on behalf of the applicable holder of the Claims and Encumbrances to be released thereby. Upon Closing of the Sale, each of the Debtor's creditors is authorized and directed to execute such documents and take all such

actions as may be necessary to release their respective Claims and Encumbrances against the Assets.

16. Upon Closing, Buyer shall not be deemed (i) a successor to the Debtor, (ii) a party to a *de facto* merger of Buyer and the Debtor or (iii) a mere continuation of the Debtor. Without limiting the generality of the foregoing, and except as specifically provided in the APA, Buyer shall not be liable for any claims against the Debtor or the IDA or any of its predecessors or affiliates, other than as expressly provided for in such APA. Further, except as expressly provided in the APA, Buyer is not assuming nor shall it in any way be liable or responsible, as successor or otherwise, for any claims, debts, obligations, Claims and Encumbrances of the Debtor or its estate or the IDA of any kind or character in any way whatsoever relating to or arising from the Assets or the Debtor's operation or use of the Assets prior to the Closing, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, under the laws of the United States, any state, territory, or possession of the United States, the District of Columbia or any other country or foreign jurisdiction.

**Assumption and Assignment of Assumed Contracts**

17. As to any Assumed Contract listed in the Assumption and Assignment Notice and Exhibit D to the Motion, wherein the Debtor proposed Gap Period Cure Amounts, that was not objected to by February 28, 2025 at 4:00 (ET) the Debtor shall be authorized to assume and assign to Buyer such Assumed Contract pursuant to section 365 of the Bankruptcy Code without further order of the Court, effective as of the latest of (i) payment of the applicable cure amount, if any; and (ii) the Closing Date; *provided, however*, that the Debtor and the Buyer shall be entitled to remove any Assumed Contract from the list of executory contracts designated to be assumed and assigned pursuant to the APA.

18. The Buyer shall have until the Designation Deadline to provide the Debtor with a revised Schedule 2.01(c), wherein the Buyer designates Assumed Contracts and which may be revised in the Buyer's sole and absolute discretion.

19. If the Debtor and Buyer identify additional executory contracts or unexpired leases that they desire to assume and assign pursuant to the APA, the Debtor shall promptly serve a supplemental notice of contract assumption and assignment ("Supplemental Assumption Notice"), as provided in the Assignment Procedures. If, as to any Assumed Contract listed in a Supplemental Assumption Notice, a counterparty does not assert a Contract Objection (as defined in the Assignment Procedures) by the deadline set forth in the Supplemental Assumption Notice (the "Supplemental Objection Deadline"), the Debtor shall be authorized to assume and assign to Buyer such Assumed Contract pursuant to section 365 of the Bankruptcy Code without further order of the Court, effective as of the latest of (i) the Supplemental Objection Deadline; (ii) payment of the applicable cure amount, if any; and (iii) the Closing Date. If, however, a Contract Objection is asserted by counterparties listed on the Supplemental Assumption Notice by the Supplemental Objection Deadline, and the Debtor and/or Buyer is unable to resolve such objection consensually, the proposed assumption and assignment which is the subject of the Contract Objection shall be subject to further order of the Court, and the Debtor and/or Buyer shall promptly request a hearing to consider the Contract Objection.

20. The Debtor has demonstrated that assuming and assigning the Assumed Contracts in connection with the Sale is an exercise of its sound business judgment, and that such assumption and assignment is in the best interests of the Debtor's estate. Pursuant to the Assignment Procedures, the Debtor will cure, or will provide adequate assurance of cure of, any defaults existing prior to the Closing Date, which is the effective date of the assumption of the Assumed

Contracts, and will provide for compensation or adequate assurance of compensation to any non-Debtor party to such contracts for any of their actual pecuniary losses resulting from any default arising prior to the Closing Date under the Assumed Contracts, within the meaning of section 363(b)(1)(B) of the Bankruptcy Code (collectively, the “Cure Costs”). Except as otherwise provided in the APA, all Cure Costs shall be funded by Buyer to the Debtor.

21. Subject to the Assignment Procedures and the APA, if and as applicable, and payment of the Cure Costs (which amounts may be satisfied or waived in part or whole according to any separate agreements with any non-Debtor party thereto), each Assumed Contract will be in full force and effect and enforceable by Buyer against any non-Debtor party thereto in accordance with its terms upon the Closing of the Sale. The Debtor shall be relieved from any further liability with respect to the Assumed Contracts after such assignment to and assumption by Buyer.

22. Unless otherwise agreed by any party potentially entitled to a Cure Cost, on the Closing Date or such other date as determined by the Court, the Debtor will pay in full, using funds provided by Buyer except as otherwise provided in the APA, all Cure Costs in respect of all undisputed cure claims and all Cure Costs that have been determined by this Court or resolved by agreement. Any agreements regarding Cure Costs shall be binding as if, and have the same effect as if, the Court had made a final determination of such Cure Costs pursuant to this Sale Order and the motion or notice filed by the Debtor regarding assumption and assignment of such Assumed Contracts.

23. Except for the obligation to pay the Cure Costs, each nondebtor party to an Assumed Contract hereby is forever barred, estopped, and permanently enjoined from asserting against the Debtor or Buyer, or the property of any of them, any default existing as of the date of the Sale Hearing, whether declared or known or unknown.



24. Any provisions in any of the Assumed Contracts that prohibit or condition the assignment of any Assumed Contract or allow the non-debtor party to such Assumed Contract to terminate, recapture, impose any penalty, condition a renewal or extension, or modify or limit any term or condition upon the assignment of such Assumed Contract, constitute unenforceable anti-assignment provisions that are void and of no force and effect. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtor and assignment to Buyer of the Assumed Contracts have been satisfied.

25. Buyer has provided adequate assurance of its future performance under the Assumed Contracts within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code.

26. Assumption of the Assumed Contracts shall include any ancillary or related agreements, or rights appurtenant thereto, pursuant to which the Debtor has rights or licenses granted in connection with or under the Assumed Contracts, so long as such ancillary or related agreements do not create additional obligations of the Debtor or Buyer beyond those set out in the Assumed Contracts (unless Buyer subsequently agrees to such obligations).

27. The Debtor and Buyer shall jointly file and serve a Notice of Closing and Schedule of Assumed Contracts (the “Closing Notice”) within two (2) business days following the Closing, and service of such Closing Notice by CM/ECF shall be deemed sufficient in all regards. No assumption and assignment of any Assumed Contracts shall be binding on the Debtor and Buyer until the Closing of the APA pursuant to this Sale Order.

28. Notwithstanding anything to the contrary in this Sale Order, the APA, and/or any other transaction document executed in connection with the closing of the Sale, Sodexo, Inc. and Affiliates’ Proprietary Materials and Trade Secrets, as defined in that certain *Management*

*Agreement* dated February 18, 2018, as amended by and between the Debtor and Sodexo Operations, LLC, shall be Excluded Assets under the APA and shall not be transferred, conveyed or assigned to Buyer at the closing of the Sale.

### **Additional Provisions**

29. The provisions of this Sale Order and the APA and any actions taken pursuant hereto or thereto shall survive entry of any order that may be entered (i) confirming or consummating any plan of reorganization or liquidation of the Debtor; (ii) converting the Debtor's bankruptcy case from chapter 11 to chapter 7; (iii) dismissing the Debtor's bankruptcy case; or (iv) appointing a chapter 11 trustee or examiner, and the terms and provisions of the APA as well as the rights and interests granted pursuant to this Sale Order and the APA shall continue in this chapter 11 case or any superseding case and shall be binding upon the Debtor, Buyer and their respective successors and permitted assigns. The post-closing obligations under the APA shall be unaffected and fully preserved, so that any successor, liquidating trust, chapter 7 trustee, or the like shall be obligated and required to comply with all post-Closing duties, including without limitation further assurances and any obligations under management and sublease agreements regardless of the status of this chapter 11 case, without cost to, or the necessity of a motion or administrative claim from, Buyer.

30. Each and every federal, state and governmental agency or department and any other person or entity is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA.

31. Pursuant to section 1146(a) of the Bankruptcy Code, the sale of the Assets shall not be taxed under any law imposing a stamp tax or similar tax.

32. Nothing contained in any order of any type or kind entered in this chapter 11 case or any related proceeding subsequent to entry of this Sale Order, nor in any chapter 11 plan confirmed in this chapter 11 case, shall conflict with or derogate from the provisions of the APA or the terms of this Sale Order, which shall be expressly preserved under the terms of such plan. To the extent, if any, anything contained in this Sale Order conflicts with a provision in the APA, this Sale Order shall govern and control.

33. Buyer is purchasing the Assets in good faith and is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to the protection of that provision. Pursuant to Bankruptcy Code section 363(m), if any or all of the provisions of this Sale Order are hereafter reversed, modified, or vacated by a subsequent order of this Court or any other court, such reversal, modification, or vacatur shall not affect the validity and enforceability of any sale, transfer or assignment under the APA or obligation or right granted pursuant to the terms of this Sale Order, and notwithstanding any reversal, modification or vacatur shall be governed in all respects by the original provisions of this Sale Order or the APA, as the case may be. The consideration provided by Buyer for the Assets is fair and reasonable, and the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

34. This Court retains jurisdiction, even after any conversion of this chapter 11 case to a case under chapter 7, to: (i) interpret, implement and enforce the terms and provisions of this Sale Order (including any injunctive relief provided in this Sale Order) and the terms of the APA, all amendments thereto and any waivers and consents thereunder and of each of the agreements executed in connection therewith; (ii) protect Buyer and the Assets from and against any of the Claims and Encumbrances, other than those expressly assumed by Buyer; (iii) resolve any disputes arising under or related to the APA or the Sale; (iv) adjudicate all issues concerning pre-Closing

Claims and Encumbrances and any other interest(s) in and to the Assets, if any, including the extent, validity, enforceability, priority and nature of all such Claims and Encumbrances and any other interest(s); (v) adjudicate any disputes related to the Assumed Contracts between the Debtor and Buyer or the Debtor and a counterparty to the Assumed Contracts; and (vi) adjudicate any and all issues and/or disputes relating to the Debtor's right, title or interest in the Assets, the Motion, or the APA (and ancillary Transaction Documents).

35. From and after the date hereof, the Debtor and Buyer shall act in accordance with the terms of the APA.

36. This Sale Order shall be binding in all respects upon all creditors (whether known or unknown) of the Debtor, all successors and assigns of Buyer, the Debtor and its affiliates and subsidiaries, the Assets, and any subsequent trustees appointed in this chapter 11 case or upon (i) a conversion of this chapter 11 case to a case under chapter 7 or (ii) dismissal of this chapter 11 case.

37. The failure specifically to include any particular provisions of the APA in this Sale Order shall not diminish or impair the efficacy of such provisions, it being the intent of the Court that the APA with Buyer and each and every provision, term and condition thereof be, and therefore is, authorized and approved in its entirety.

38. The provisions of this Sale Order are nonseverable and mutually dependent.

39. This Sale Order shall take effect immediately and shall not be stayed pursuant to Bankruptcy Rules 6004(g), 6004(h), 6006(d), 7062, or otherwise.

**EXHIBIT B**

Asset Purchase Agreement dated January 22, 2025

**ASSET PURCHASE AGREEMENT**

**DATED AS OF JANUARY 22, 2025**

**BY AND BETWEEN**

**AMSTERDAM HOUSE CONTINUING CARE RETIREMENT COMMUNITY, INC.  
D/B/A THE HARBORSIDE  
as Seller**

**AND**

**SR HSG ACQUISITIONS, LLC  
as Buyer**

## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (this “Agreement”) is dated as of January 22, 2025 (the “Execution Date”), by and between **AMSTERDAM HOUSE CONTINUING CARE RETIREMENT COMMUNITY, INC. (D/B/A THE HARBORSIDE)** (“Seller”), and **SR HSG ACQUISITIONS, LLC** (“Buyer”).

### RECITALS:

A. Seller is the owner of certain real, personal and intangible property constituting that certain continuing care retirement community known as “The Harborside,” which includes independent living apartments, assisted living units, memory care units, and a licensed and Medicare-certified skilled nursing facility, located at 300 East Overlook, Port Washington, New York 11050 (the “Community”);

B. On March 22, 2023 (the “Petition Date”), Seller filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Eastern District of New York (the “Bankruptcy Court”), thereby commencing the case captioned “In re: AMSTERDAM HOUSE CONTINUING CARE RETIREMENT COMMUNITY, INC. (Case No. 23-70989 (AST))” (the “Bankruptcy Case”);

C. Prior efforts to sell the Community as an entrance fee continuing care retirement community have been unsuccessful, so before consummating this sale to Buyer, Seller is required to close its healthcare operations (including assisted living, memory care and skilled nursing) so that the Assets can continue as a multiple-residents dwelling specifically designed for use and occupancy by senior citizens;

D. Seller desires to sell, transfer, convey and assign to Buyer, and Buyer desires to purchase, acquire, accept and assume from Seller pursuant to this Agreement, the Sale Order and Sections 105, 363, and 365 of the Bankruptcy Code, the Assets and Assumed Liabilities of the Seller as specifically provided herein;

E. The execution and delivery of this Agreement and Seller’s ability to consummate the transactions set forth in this Agreement are subject to, among other things, the entry of the Sale Order;

F. The parties acknowledge, understand and agree that the terms of the Contemplated Transactions are the result of arm’s length negotiations; and

G. Seller determined that Buyer’s offer to purchase the Assets is the highest and best offer received for the Assets and constitutes a fair and adequate purchase price for the Assets.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer, intending to be legally bound, agree as follows:

## ARTICLE I. DEFINITIONS

**Section 1.01 Defined Terms.** For purposes of this Agreement, the following terms shall have the meanings indicated:

“Accounts Receivable” means all accounts, notes, accounts receivable and other rights to receive payment for goods and services provided by Seller in connection with the Assets prior to the Effective Time, including any such accounts receivable that have been charged off as bad debts, whether billed or unbilled, or recorded or unrecorded, or collected after the Effective Time.

“Action” means any claim, complaint (including a qui tam complaint), audit, legal action, suit or arbitration, litigation, civil investigative demand, criminal information, subpoena, search warrant, or any proceeding or investigation by or before any Governmental Authority.

“Adequate Assurance Utility Deposits” has the meaning set forth in Section 2.02(o).

“Administrative Expense Claim” means any Claim against the Seller for (a) costs and expenses of administration pursuant to Sections 503(b), 507(b) or 1114(e)(2) of the Bankruptcy Code, including: (i) the actual and necessary costs and expenses incurred on or after the Petition Date of preserving the Seller’s Estate and operating the business of the Seller; (ii) all fees and charges assessed against the Estate pursuant to 28 U.S.C. § 1930; (iii) Claims for the value of any goods received by the Seller within twenty (20) days before the Petition Date allowed in accordance with Section 503(b)(9) of the Bankruptcy Code; and (iv) all requests for compensation or expense reimbursement for making a substantial contribution in the Bankruptcy Case pursuant to Sections 503(b)(3), (4) and (5) of the Bankruptcy Code; and (b) all accrued, contingent and/or unpaid fees (including any payments owed to Continuum Advisors LLC) for legal, financial advisory, real estate brokerage, and other services and obligations for reimbursement of expenses rendered or incurred during the Bankruptcy Case under Sections 328, 330(a), 331 or 363 of the Bankruptcy Code by any professional retained by Seller in the Bankruptcy Case, or under Section 503 of the Bankruptcy Code, that the Bankruptcy Court has not denied by a Final Order, to the extent that any such fees and expenses have not been previously paid.

“Administrative Expense Claims Funding Amount” has the meaning set forth in Section 3.03.

“Affiliate” means with respect to any specified Person, any other Person who directly or indirectly controls, is controlled by, or is under common control with, the specified Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning set forth in the introductory paragraph.

“Allocated Value” has the meaning set forth in Section 7.02.



“Allowed” means, with reference to any Claim against the Seller, a Claim (i) as to which no objection or request for estimation has been filed on or before any deadline therefor set by the Bankruptcy Court or the expiration of such other applicable period fixed by the Bankruptcy Court or any plan of reorganization or liquidation confirmed in the Bankruptcy Case; (ii) as to which any objection has been settled, waived, withdrawn or denied by a Final Order; or (iii) that is allowed (a) by a Final Order or (b) pursuant to the terms of any plan of reorganization or liquidation confirmed in the Bankruptcy Case.

“Allowed Administrative Expense Claim” means an Administrative Expense Claim that is Allowed.

“Applicable Law” means any federal, state, municipal, county, local, foreign or other statute, law, ordinance, code, constitution, treaty, rule, regulation or published guidance having the effect of law, or any order, writ, injunction, judgment, plan, decree or other requirement or rule of law of any Governmental Authority.

“Approval” means any final approval, authorization, consent, notice, qualification or registration, or any extension, modification, amendment or waiver of any of the foregoing, of or from, or any notice, statement, filing or other communication to be filed with or delivered to any Governmental Authority without conditions.

“Asset Taxes” means all sales, use, real estate, ad valorem, property, excise, production or similar Taxes, but not payroll, withholding, franchise, income or similar Taxes.

“Assets” has the meaning set forth in Section 2.01.

“Assigned Contracts” has the meaning set forth in Section 2.01(c).

“Assigned Permits” means all certificates, licenses and permits which under Applicable Law are required to be held in connection with the ownership, use, occupancy, operation and maintenance of the Assets, *but excluding* (i) assisted living facility, memory care facility, or skilled nursing facility licenses or a continuing care retirement community license; (ii) Seller’s Medicare and Medicaid provider numbers; and (iii) certificates, licenses and permits to provide related healthcare services ((i) through (iii), together with any other permits that are not assumed by or transferred to Buyer hereunder, collectively the “Retained Permits”).

“Assumed Liabilities” has the meaning set forth in Section 2.03.

“Bankruptcy Case” has the meaning set forth in the Recitals.

“Bankruptcy Code” has the meaning set forth in the Recitals.

“Bankruptcy Court” has the meaning set forth in the Recitals.

“Benefit Plans” means (i) all “employee benefit plans,” as defined in Section 3(3) of ERISA (whether or not such plan is subject thereto), and (ii) all bonus or other incentive, deferred or other compensation, profit sharing, pension, change-in-control, employment, consulting, contractor, severance pay, separation, retention, sick leave, vacation pay, day or dependent care,

salary continuation, disability, hospitalization, medical, life insurance, retiree healthcare, retiree life insurance, other retirement, scholarship, legal services, cafeteria, life, health, accident, disability, workers' compensation, paid time off, fringe benefit or other insurance or employee benefit programs, plans, policies or arrangements, whether written or oral, single employer, multiemployer or multiple employer, or whether for the benefit of a single individual or more than one individual, to which Seller or any of its ERISA Affiliates sponsors, maintains, contributes, has an obligation to contribute or has any Liability (including through its ERISA Affiliates, former or current), contingent or otherwise, with respect to, or otherwise provides to, any current or former Employee or Service Provider, their beneficiaries and/or dependents.

"Bond Financing" means the following bonds issued pursuant to the Indenture for the benefit of the Seller and currently outstanding in the approximate aggregate principal amount of \$168,037,200.00 (plus accrued interest): (i) \$40,710,000 Continuing Care Retirement Community Taxable Revenue Bonds (Amsterdam at Harborside Project), Series 2021A, and (ii) \$127,327,200 Continuing Care Retirement Community Tax-Exempt Refunding Revenue Bonds (Amsterdam at Harborside Project), Series 2021B.

"Bond Trustee" means UMB Bank, N.A., in its capacity as trustee under the Indenture.

"Bonus" has the meaning set forth in Section 7.05(d).

"Breaching Party" has the meaning set forth in Section 11.01.

"Business Day" means any day other than (i) a Saturday, Sunday or any United States federal legal holiday, or (ii) any day on which banks in New York are not open for business.

"Buyer" has the meaning set forth in the Preamble.

"Buyer Closing Certificate" has the meaning set forth in Section 9.03.

"Buyer Employer" has the meaning set forth in Section 7.05(a).

"Buyer's Objections" has the meaning set forth in Section 6.10(a).

"Buyer's Permitted Assignees" has the meaning set forth in Section 13.05.

"Buyer Related Party" has the meaning set forth in Section 8.01.

"Casualty Materiality" has the meaning set forth in Section 7.08.

"Claim" has the meaning set forth in Section 101(b) of the Bankruptcy Code, and any and all demands, losses, liabilities, damages, obligations, expenses, fines, penalties, costs, claims, causes of action and judgments for: (a) breaches of Contract; (b) loss or damage to Personal Property, injury to or death of persons (including illness and disease), and other tortious injury; or (c) violation of Applicable Laws, orders, or any other legal right or duty actionable at law or in equity. The term "Claim" also includes reasonable attorneys' fees, court costs and other reasonable costs resulting from the investigation or defense of any claim.

“Closing” means the consummation of the purchase and sale of the Assets and assumption of the Assumed Liabilities in accordance with the terms of this Agreement on the Closing Date, or at such earlier or later date and time as may be agreed upon between Buyer and Seller.

“Closing Date” has the meaning set forth in Section 10.01.

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

“Community” has the meaning set forth in the Recitals.

“Consummation of the Plan of Closure” has the meaning set forth in Section 8.08.

“Contemplated Transactions” has the meaning set forth in Section 2.01.

“Contract” means any written contract, agreement, indenture, note, bond, sublease, lease (including any Personal Property lease or capital lease), conditional sales contract, mortgage, license, sublicense, franchise agreement, obligation, promise, undertaking, commitment or other legally binding agreement, primarily pertaining to or used in connection with the Assets (in each case, whether written or oral), along with any additional Contracts that are entered into after the date hereof but prior to the Closing in compliance with the terms hereof.

“Cure Costs” has the meaning set forth in Section 2.07(c).

“Deed” means the special warranty deed, in form and substance mutually agreeable to the parties, which will be used to convey the Real Property to Buyer at the Closing subject to Section 2.01(a)(iii).

“Deposit” has the meaning set forth in Section 3.02(a).

“Designation Deadline” means 5:00 p.m., prevailing Eastern Time, on the date that is five (5) Business Days prior to the Closing Date or such later date as Buyer and Seller shall mutually agree and as the Bankruptcy Court may authorize; *provided* that the Designation Deadline for any Contract with respect to which a dispute regarding a Cure Cost exists on such date shall be five (5) Business Days after the date of the resolution of such dispute.

“Disclosure Schedules” means the disclosure schedules provided by Seller in connection with this Agreement.

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

“Effective Time” means 12:01 a.m. on the Closing Date, unless otherwise agreed in writing by Seller and Buyer.

“Employee” means any individual employed by Seller.

“Employee Records” has the meaning set forth in Section 7.06(a).

“Employment Laws” means all Applicable Laws related to labor and employment, including, without limitation, those relating to payroll obligations, terms and conditions of

employment, classification of independent contractors and exempt and non-exempt employees, wages, hours, overtime, occupational safety and health, workers compensation, unemployment benefits, leaves of absence, equal employment opportunity, affirmative action, discrimination, harassment, retaliation, collective bargaining, unfair labor practices, whistleblowing, disability rights, pay equity, paid leave, plant closures and layoffs (including the WARN Act), and immigration.

“Environmental Defect” means any condition of, in, on or under any of the Assets that either (i) requires monitoring, reporting, removal, restoration, remediation or resolution under applicable Environmental Laws or (ii) if known by a federal or state regulatory agency of competent jurisdiction, would reasonably be expected to cause such federal or state regulatory agency to assert that the Assets require monitoring, reporting, removal, restoration, remediation or resolution under applicable Environmental Laws.

“Environmental Laws” means any federal, state or local Applicable Law relating to the prevention of pollution, protection of health or the environment or natural resources, restoration of environmental quality, or Releases of or exposure to Hazardous Substances or the handling, generation, treatment, transportation, storage, use, arrangement for disposal or disposal, manufacture, distribution, formulation, packaging or labeling of Hazardous Substances, including the following federal statutes and the regulations promulgated thereunder: the Comprehensive Environmental Response, Compensation and Liability Act of 1980; the Emergency Planning and Community Right-To-Know Act; the Resources Conservation and Recovery Act; the Clean Air Act; the Clean Water Act; the Safe Drinking Water Act; the Oil Pollution Act; the Toxic Substances Control Act; the Hazardous Materials Transportation Act; the Federal Insecticide, Fungicide, and Rodenticide Act; and the regulations promulgated pursuant thereto and analogous State and local Applicable Laws.

“Environmental Liabilities” means any Liabilities arising under Environmental Laws or Environmental Defects.

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

“ERISA Affiliate” means any entity that, together with Seller, may be treated as a single employer under Section 4001 of ERISA or Section 414 of the Code.

“ERISA Affiliate Liability” means any actual or contingent Liability of Seller or its ERISA Affiliates under or in respect of any Benefit Plan pursuant to any statute or regulation that imposes Liability on a “controlled group” or similar basis as a result of being an ERISA Affiliate or successor prior to the Closing Date with respect to any other Person.

“Escrow Agreement” means an Escrow Agreement, by and among Buyer, Seller and the Title Company in form and substance reasonably acceptable to the Buyer and Seller.

“Estate” means the estate created in the Bankruptcy Case containing all property and other interests of the Seller pursuant to Section 541 of the Bankruptcy Code.

“Excluded Assets” has the meaning set forth in Section 2.02.

“Excluded Contracts” has the meaning set forth in Section 2.02(c).

“Excluded Employee Liabilities” means each of the following:

(a) any and all Liabilities arising out of, relating to or resulting from or with respect to any current or former Employee or Service Provider (and their services), based on facts occurring prior to the Closing (even if not known until after the Closing), including relating to his/her employment or services, transition of employment or services, or termination of employment or services, with Seller or any of their respective Affiliates, including as a result of the consummation of the Contemplated Transactions, including Liabilities related to unemployment benefits;

(b) any and all actual or contingent Liabilities under, arising out of, relating to or resulting from any Benefit Plans;

(c) any ERISA Affiliate Liability;

(d) any and all Liabilities for any misclassification of any Person performing services for or on behalf of Seller prior to the Closing as an independent contractor rather than as an employee;

(e) any and all other Liabilities arising out of, relating to or resulting from the employment or prospective employment of or the termination of any relationship with any current, former or prospective Employees (including any Employee who does not accept an offer of employment with Buyer) or Service Providers, based on facts occurring prior to the Closing (even if not known until after the Closing);

(f) any Liabilities related to a union or a Collective Bargaining Agreement; and

(g) any liabilities under the WARN Act, or state statute of similar import, arising or related to or in connection with (i) the period through Closing under this Agreement or (ii) triggered in connection with Closing under this Agreement.

“Excluded Intellectual Property” has the meaning set forth in Section 2.02(b).

“Excluded Liabilities” has the meaning set forth in Section 2.04.

“Excluded Personal Property” has the meaning set forth in Section 2.02(a).

“Execution Date” has the meaning set forth in the Preamble.

“Final Order” means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as to which the time for appeal, Petition for *Certiorari*, or move for re-argument or re-hearing has expired, and as to which no appeal, Petition for *Certiorari*, or other proceeding for re-argument or re-hearing shall then be pending, or as to which any appeal, Petition for *Certiorari*, re-argument or re-hearing shall have been waived in writing, in form and substance reasonably satisfactory to the Seller and the Buyer, or in the event that an appeal, Writ of *Certiorari*, or re-argument or re-hearing thereof has been sought, such order of the Bankruptcy

Court, or other court of competent jurisdiction, shall have been determined by the highest court to which such order was approved, or no stay pending appeal is in effect regarding such appeal, *certiorari*, re-argument or re-hearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, Petition for *Certiorari*, or move for re-argument or re-hearing shall have expired; provided however, that the possibility that a motion under Section 502(i) of the Bankruptcy Code, Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous bankruptcy Applicable Law or applicable state court rules of civil procedure may be, but have not been, filed with respect to such order shall not cause such order not to be a Final Order.

“Flow of Funds Memorandum” means the memorandum that outlines the receipt of the Purchase Price and the distributions of funds.

“Fraud” means actual and intentional common law fraud (as defined in the State of New York) by a party hereto. In no event shall Fraud include any constructive, promissory, imputed, constructed, negligent, reckless or equitable fraud or other claims based on constructive knowledge, negligent misrepresentation, recklessness or other similar theories.

“Furniture and Equipment” means all furniture, fixtures, furnishings, machinery, appliances and other equipment (including medical equipment) and leasehold improvements owned by Seller and used by Seller in connection with the Assets, including all such desks, chairs, tables, Hardware, copiers, telephone lines, telecopy machines and other telecommunication equipment (and, to the extent assignable by Seller, the telephone numbers associated therewith), cubicles and miscellaneous office furnishings.

“GAAP” means generally accepted accounting principles in the United States.

“Governing Document” means the legal document(s) by which any Person (other than an individual) establishes its legal existence, or which govern its internal affairs. For example, the “Governing Documents” of a corporation would be its certificate of incorporation and bylaws, the “Governing Documents” of a limited partnership would be its certificate of formation and its limited partnership agreement, and the “Governing Documents” of a limited liability company would be its certificate of formation and its limited liability company agreement or operating agreement.

“Government Health Program” means any federal health program as defined in 42 U.S.C. § 1320a-7b(f), including but not limited to (i) Title XVIII (Medicare), Title XIX (Medicaid) and Title XXI (Children’s Health Insurance Program) of the Social Security Act; (ii) the healthcare programs offered by the U.S. Department of Veterans Affairs; and (iii) the Civilian Health and Medical Program of Uniformed Services and TRICARE programs; and similar or successor programs that are funded, in whole or in part, by the government of the United States of America.

“Governmental Authority” means any federal, state, provincial, municipal or local government, agency, court, arbitrator, regulatory or administrative agency, department (including the DOH and New York State Department of Financial Services), commission, board, bureau, subdivision, authority, instrumentality or other body, including any Person exercising executive,

legislative, judicial, regulatory or administrative governmental powers or functions, in each case to the extent the same has jurisdiction over the Person, property or service in question.

“Guaranty Actions” has the meaning set forth in Section 2.01(f).

“Hardware” means any and all computer and computer-related hardware, including computers, file servers, facsimile servers, scanners, color printers, laser printers and networks.

“Hazardous Substance” means any and all substances, wastes, materials, pollutants, contaminants, compounds, chemicals or elements which are defined or classified as a “hazardous substance,” “hazardous material,” “toxic substance,” “hazardous waste,” “pollutant,” “contaminant” or words of similar import under any Environmental Law, including, without limitation, all dibenzodioxins and dibenzofurans, polychlorinated biphenyls (PCBs), petroleum hydrocarbon, including crude oil or any derivative thereof, any radioactive material, raw materials used or stored at the Real Property, including asbestos-containing materials in any form, perfluoroalkyl substances, polyfluoroalkyl substances, radon gas and mold of a type or in amounts that may present a health hazard.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009), as each may be amended from time to time, and the regulations promulgated thereunder.

“IDA” means the Nassau County Industrial Development Agency.

“Improvements” has the meaning set forth in Section 2.01(a)(i).

“Indebtedness” means, without duplication, the outstanding principal amount of, accrued and unpaid interest on and other payment obligations (including any prepayment premiums or similar breakage costs payable as a result of the consummation of the Contemplated Transactions) with respect to (a) indebtedness for borrowed money; (b) obligations under any existing interest rate, commodity or other swap, hedge or financial derivative agreement; or (c) indebtedness evidenced by any note, bond, debenture or other debt security. Notwithstanding anything to the contrary in the foregoing, “Indebtedness” shall not include: (i) trade payables and accrued expenses arising in the ordinary operation of the Assets and not overdue or older than 60 days, (ii) deferred revenue, (iii) any undrawn letters of credit, (iv) any payment or performance bonds, and (v) any Liabilities related to Residents.

“Indenture” means that certain Indenture of Trust, dated September 1, 2021, between the IDA and Bond Trustee.

“Independent Living Units” means Living Units (as defined in NY Pub Health Law § 4601 (2015)) at the Community for Residents, but specifically excluding enriched housing units, special needs assisted living residence units and skilled nursing beds.

“Information Privacy and Security Laws” means Applicable Laws regarding the privacy and security of Personal Information, including without limitation, to the extent applicable,

HIPAA, state data privacy and security laws, state unfair or deceptive trade practices laws, state social security number protection laws and state data breach notification laws.

“Intellectual Property” means all intellectual property, including all (i) patents and patent applications; (ii) pending and registered trademarks and material unregistered trademarks, service marks, trade dress, logos and slogans; (iii) registered internet domain names; (iv) registered copyrights; (v) Software (other than Off-the-Shelf Software) in which a Seller has any ownership rights; and (vi) any industrial designs, trade secrets, proprietary know-how and confidential business information owned, used or licensed by Seller.

“Inventory” means all food, janitorial, housekeeping and office supplies and other non-medical consumables located in or used in connection with the operation of the Real Property and Community, excluding the Excluded Personal Property.

“Knowledge” means (i) with respect to Seller, the actual knowledge of Brooke Navarre, the Seller’s President and Chief Executive Officer, after reasonable inquiry, which shall include, but not be limited to, discussions with Michael Morton, the Chief Restructuring Officer; or (ii) with respect to Buyer, the actual knowledge of Paul Froning, Buyer’s manager.

“Land” has the meaning set forth in Section 2.01(a)(i).

“Liability” means any debt, obligation, duty or liability of any nature (including any unknown, undisclosed, unmatured, unaccrued, unasserted, contingent, indirect, conditional, implied, vicarious, derivative, successor, joint, several or secondary liability), and for the avoidance of doubt, includes any entrance fee refund, lifecare-related liabilities and obligations to Residents, current and former.

“Lien” means any mortgages, deeds to secure debt, deeds of trust, hypothecations, securities, charges, Claims, encumbrances, interests, pledges, security interests, rights of set-off, restrictions or limitations on use, successor liabilities, conditions, rights of first refusal, options or liens of any kind, obligations to allow participation, agreements or rights, rights asserted in litigation matters, rights asserted in adversary proceedings in the Bankruptcy Case, competing rights of possession, obligations to lend, matters filed of record that relate to, evidence or secure an obligation of the Seller (and all created expenses and charges) of any type under, among other things, any document, instrument, regulation, or administrative governmental powers or functions, in each case the same has jurisdiction over the Person or property in question, whether voluntarily incurred or arising by operation of law or otherwise, affecting any assets or property, including any agreement to give or grant any of the foregoing, any conditional sale or other title retention agreement, and the filing of or agreement to give any financing statement with respect to any assets or property under the Uniform Commercial Code or Applicable Law.

“Loss” or “Losses” means any and all costs, obligations, liabilities, demands, settlement payments, awards, judgments, fines, penalties, damages and reasonable out-of-pocket expenses, including court costs and reasonable attorneys’ fees, whether or not arising out of a third-party Claim.

“Marks” means all trademarks, service marks, trade names, service names, brand names, all trade dress rights, logos, Internet domain names and corporate names and general intangibles



of a like nature, together with the goodwill associated with any of the foregoing, and all applications, registrations and renewals thereof.

“Material Adverse Effect” means any event, occurrence, fact, condition or change that is, or would reasonably be expected to be, individually or in the aggregate, materially adverse to (i) the condition of the Assets, or (ii) the ability of Seller to consummate the Contemplated Transactions or to perform its obligations under this Agreement, except to the extent resulting from: (a) general business or economic conditions; (b) substantial changes to Medicare, Medicaid or Third-Party Payor reimbursements; (c) national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States; (d) earthquake, tornado, hurricane, flood or other natural disaster except to the extent that such event results in material damage to the Assets; (e) changes in GAAP; (f) any action required by this Agreement or any action taken (or omitted to be taken) with the written consent of or at the written request of Buyer; (g) any effect resulting from compliance with terms of this Agreement or consummation of the Contemplated Transactions; (h) any failure of the Assets to meet any internal or published projections, forecasts or revenue or earnings predictions; (i) any existing event, occurrence or circumstance with respect to which the Buyer has Knowledge as of the date hereof, and only to the extent it exists as of the date hereof and not as it may become worse by some later date; (j) the filing of the Bankruptcy Case and any event or occurrence attributable to the filing of the Bankruptcy Case; and (k) any action reasonably necessary for the Consummation of the Plan of Closure.

“Newly Arising Matters” has the meaning set forth in Section 6.10(c).

“Off-the-Shelf Software” means any commercially available, off-the-shelf software with annual payments (including all associated license, hosting, support and maintenance fees) of less than Ten Thousand Dollars (\$10,000). For the avoidance of doubt, Off-the-Shelf Software expressly excludes any software that is distributed as “free software,” “open source software,” “copyleft” software, “community source code,” or under a similar licensing or distribution model.

“Order” means any award, decision, writ, injunction, judgment, order or decree entered, issued, made or rendered by any Governmental Authority, or by any arbitrator.

“Outside Closing Date” has the meaning set forth in Section 10.01.

“Title Affidavit” means an owner’s affidavit in form and substance reasonably acceptable to the Title Company and the Seller to enable the Title Company to delete the standard title insurance exceptions from Buyer’s owner’s title insurance policy, but excluding the survey exception, which shall be Buyer’s responsibility.

“Past Employee Records” has the meaning set forth in Section 7.06(a).

“Paying Party” has the meaning set forth in Section 8.02.

“Permits” means all certificates, licenses and permits which under Applicable Law are required to be held in connection with the ownership, use, occupancy, operation and maintenance of the Assets, *but excluding* the Retained Permits.

“Permitted Exceptions” means (a) all Title Exceptions, excluding the so-called “standard exceptions” that can be removed by the Title Deliveries; (b) the standard survey exception, subject to Buyer’s right to provide the Title Company the Survey to remove same; (c) all title objections which Buyer has waived or accepted in writing; (d) any lien or encumbrance arising out of the acts or omissions of Buyer; (e) matters disclosed by the Survey (provided this carve out does not include any Newly Arising Matters) or that would be disclosed by an inspection of the Real Property or Community; and (f) all open permits affecting the Real Property as reflected on the Title Commitment.

“Permitted Liens” means (a) Liens for Taxes not yet due and payable or which as of the Closing Date are being contested in good faith by appropriate Proceedings (so long as such Liens are handled via prorations and do not attach to the Assets, or Seller shall have made other arrangements reasonably acceptable to Buyer); (b) any Lien that will be discharged at or prior to the Closing; (c) the Permitted Exceptions; (d) any zoning or other governmentally established restrictions or encumbrances; and (e) mechanic’s, materialman’s, supplier’s, vendor’s or similar Liens arising or incurred in the operation of the Assets, securing amounts which are not yet due and payable (so long as such Liens following Closing do not attach to the Assets, or Seller shall have made other arrangements reasonably acceptable to Buyer).

“Person” means any natural person, firm, corporation, company, general or limited partnership, limited liability company, association, joint venture, business enterprise, trust, estate, Governmental Authority or other legal entity, in each case whether in its own or a representative capacity.

“Personal Information” means any data or information in any form that, alone or in combination with other information reasonably accessible to Seller, may be (i) linked or relates to an identifiable natural individual (including, without limitation, employee identification numbers, social security numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit card information, biometric or health data, answers to security questions and other personal identifiers), and (ii) any other information that constitutes “personal data,” “personal information,” “personally identifiable information,” “nonpublic personal information,” “protected health information,” or under like terms set forth in Information Privacy and Security Laws.

“Personal Property” has the meaning set forth in Section 2.01(b)(i).

“Petition Date” has the meaning set forth in the Recitals.

“PILOT Agreement” means that (i) certain Payment in Lieu of Taxes Agreement, effective as of December 1, 2007, by and between the IDA and Seller, as amended by that certain First Amendment to Payment in Lieu of Taxes Agreement, dated as of June 1, 2014, (ii) that certain Installment Sale Agreement, dated as of September 1, 2021, by and between the Seller and the

IDA, as amended, and (iii) all documents referenced in or entered into in connection with the foregoing.

“PILOT Payment” has the meaning set forth in Section 7.01(b).

“PILOT Transfer” has the meaning set forth in Section 6.03.

“Plan of Closure” means the written plan of closure providing for the closure of Seller’s assisted living, memory care, skilled nursing operations and, for the avoidance of doubt, operation of the community as an entrance fee continuing care retirement community, if necessary, and any related healthcare operations at the Community.

“Proceeding” means any Action, arbitration, audit, hearing, investigation, litigation, subpoena, civil investigative demand or suit (whether civil, criminal, administrative or investigative) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

“Proration Schedule” has the meaning set forth in Section 3.04(a).

“PTO” has the meaning set forth in Section 7.05(d).

“Purchase Price” has the meaning set forth in Section 3.01.

“Real Estate Taxes” has the meaning set forth in Section 7.01(b).

“Real Property” has the meaning set forth in Section 2.01(a)(i).

“Records” means the books, records, accounts, files, logs, information, databases, ledgers, in-place policies and training materials, journals and architectural, mechanical and electrical plans and specifications pertaining to or used in the operation of the Real Property, however such data is stored, including, to the extent assignable under Applicable Law, but excluding patient and medical staff records previously held or used by Seller in the operation of the Assets.

“Reimbursing Party” has the meaning set forth in Section 8.02.

“Release” means any past or present actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping abandonment, disposing or allowing to escape or migrate into or through the environment (including ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“Rental Agreement” has the meaning set forth in Section 6.09.

“Representatives” means employees, officers, directors, consultants, agents, contractors, counsel, accountants, investment advisers, lenders, partners, potential partners, investors and potential investors.

“Resident” means a Person occupying the Real Property or any part thereof pursuant to a residency agreement.

“Retained Permits” has the meaning set forth in this Section 1.01 in the exclusion in the definition of “Assigned Permits”.

“Sale Order” means an Order of the Bankruptcy Court in form and substance consistent with the terms of this Agreement and approved by the Buyer and the Seller in their absolute discretion, pursuant to, *inter alia*, Sections 105, 363 and 365 of the Bankruptcy Code (i) authorizing and approving, *inter alia*, the sale of the Assets to Buyer on the terms and conditions set forth herein, free and clear of all Liens and Liabilities (other than Permitted Liens and Assumed Liabilities) to the extent permissible under Section 363(f) of the Bankruptcy Code, (ii) finding that notice of the hearing concerning approval of this Agreement and of the Contemplated Transactions was given in accordance with the Bankruptcy Code and that such notice is appropriate under the particular circumstances, (iii) authorizing and approving the assumption and assignment of the Assigned Contracts to Buyer, (iv) containing a finding that Buyer has acted in “good faith” within the meaning of, and is entitled to the protections of, Section 363(m) of the Bankruptcy Code, (v) containing a finding that this Agreement was negotiated, proposed and entered into by the parties without collusion, in good faith and from arm’s length bargaining positions, (vi) containing a finding that Seller and Buyer have not engaged in any conduct that would cause or permit this Agreement to be avoidable under Section 363(n) of the Bankruptcy Code, (vii) providing that this Agreement and the Contemplated Transactions may, subject to the terms set forth herein, be specifically enforced against and binding upon, and not subject to rejection or avoidance by Seller or its estate or any Chapter 7 or Chapter 11 Bankruptcy Code trustee of Seller or other Representative of its estate, (viii) providing that the Bankruptcy Court shall retain jurisdiction to resolve any controversy or Claim arising out of or relating to this Agreement or the breach thereof, (ix) providing that neither Buyer nor any of its Affiliates shall be deemed a successor in interest to Seller, (x) providing that, upon Buyer’s payment of the consideration provided hereunder, Seller shall have received fair and reasonably equivalent value for the Assets, and (xi) approving the sale of the Assets to Buyer pursuant to New York Not-for-Profit Corporation Law Sections 510 and 511.

“Seller” has the meaning set forth in the Preamble.

“Seller Closing Certificate” has the meaning set forth in Section 8.03.

“Seller Related Party” has the meaning set forth in Section 8.01.

“Service Provider” means any individual who is engaged by Seller to provide personal services to Seller pursuant to a consulting or other independent contractor relationship, directly related to the Assets.

“Software” means, except to the extent generally available for purchase from a third Person, any and all (i) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code, (ii) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise, (iii) descriptions, flow charts and other work product used to design, plan, organize and

develop any of the foregoing, screens, user interfaces, report formats, firmware, development tools, templates; menus, buttons and icons and (iv) all documentation including user manuals and other training documentation related to any of the foregoing, in each case, that is used in, incorporated in, embodied in, displayed by or relate to, or is used or useful in the operation of the Assets and Community.

“Straddle Periods” has the meaning set forth in Section 7.01(b).

“Survey” has the meaning set forth in Section 6.10(a).

“Tax Allocation” has the meaning set forth in Section 7.02.

“Tax Return” means all returns, declarations, reports, estimates, information returns and statements required to be filed with any Governmental Authority in respect of any Taxes.

“Taxes” means (i) all federal, state, local or foreign taxes, charges or other assessments, including all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property, excise taxes, unrelated business income taxes and estimated taxes, whether disputed or not, and (ii) all interest, penalties, fines, additions to tax or additional amounts imposed by any taxing authority in connection with any item described in subsection (i) of this definition.

“Third-Party Payor” means any healthcare cost reimbursement program, health plan or insurance coverage, including without limitation any Government Health Program or commercial insurance.

“Title Commitment” means that certain title commitment No. TA-10221-NY, with an Effective Date of January 3, 2025, for the Real Property issued by the Title Company and attached hereto as Exhibit A.

“Title Company” means Tower Abstract Services, LLC or such other national title insurance company agreed upon by Seller and Buyer.

“Title Deliveries” has the meaning set forth in Section 6.10(b).

“Title Exceptions” means the exceptions set forth in the Title Commitment.

“Title Policy” has the meaning set forth in Section 6.10(a).

“Transaction Documents” means this Agreement, all exhibits hereto, the Disclosure Schedules and each other agreement, certificate or instrument to be delivered pursuant to this Agreement.

“Transfer Taxes” has the meaning set forth in Section 7.01(a).

“Transferred Employee” has the meaning set forth in Section 7.05(a).

“WARN Act” has the meaning set forth in Section 4.13(c).

**Section 1.02 Other Definitions and Interpretive Matters.** Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(a) 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 (or if any other date specified in this Agreement for giving any notice or taking any action) is a day other than a Business Day, then the period (or date) in question shall end on (or be deemed to be) the next succeeding Business Day.

(b) Dollars. Any reference in this Agreement to \$ means United States dollars.

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

(d) 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 the construction or interpretation of 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.

(e) Herein. 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.

(f) 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.

(g) Or. The word “*or*” shall mean “*and/or*”, unless the context otherwise requires.

(h) No Strict Construction. Buyer, on the one hand, and Seller, on the other hand, 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 Buyer, on the one hand, and Seller, on the other hand, 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. Without limitation as to the foregoing, no rule of strict construction construing ambiguities against the draftsman shall be applied against any Person with respect to this Agreement.

## ARTICLE II. PROPERTY DESCRIPTION AND BANKRUPTCY CASE

**Section 2.01 Assets.** Upon and subject to the terms and conditions of this Agreement on the Closing Date and subject to entry of the Sale Order, Seller will sell, transfer, assign, convey and deliver to Buyer, and Buyer will purchase, acquire, assume and accept from Seller all of Seller's respective right, title and interest in, to and under the Assets, free and clear of all Liens and Liabilities to the extent permissible under Section 363(f) of the Bankruptcy Code, other than Permitted Liens and any Assumed Liabilities (the "Contemplated Transactions"). The term, "Assets" means Seller's assets, right and properties pertaining to or used in connection with the operation of the Real Property as existing on the Closing Date wherever located and whether or not carried or reflected on the books and records of Seller of the following types, other than the Excluded Assets, including all right, title and interest of Seller in, to or under the following:

(a) Real Property.

(i) Insurable fee simple title in and to the land, which is described on Schedule 2.01(a) of the Disclosure Schedules (the "Land"), including all easements, rights-of-way, rights of ingress and egress, strips, zones, licenses, transferable hereditaments, privileges, tenements and appurtenances in any way belonging to or appertaining to the Land or the improvements, and any right or interest in any open or proposed highways, streets, roads, avenues, alleys, easements, strips, gores and rights-of-way in, across, in front of, contiguous to, abutting or adjoining the Land, and all buildings, structures, improvements and fixtures placed, located, constructed or installed on the Land (collectively, the "Improvements," together with the Land, are herein sometimes referred to as the "Real Property"). As used in this Agreement, the term "Real Property" shall be deemed to include all of Seller's right, title and interest to the beneficial easements, rights and appurtenances related to the Real Property.

(ii) To the extent transferable, all existing warranties and guaranties (express or implied) issued to Seller in connection with the Improvements.

(iii) The parties acknowledge and agree that fee title in and to the Real Property currently sits with the IDA pursuant to the PILOT Agreement, and therefore, Seller shall satisfy transfer of the fee title through one of the following methods: (1) if the parties achieve a PILOT Transfer on terms acceptable to Buyer, Seller shall convey Seller's interest in the Real Property pursuant to the PILOT Agreement (as it may be amended, restated, supplemented, modified or replaced in connection with the PILOT Transfer), with such interest to include any and all of Seller's rights to reversion; and (2) if the parties do not achieve a PILOT Transfer on terms acceptable to Buyer, Seller shall cause the IDA to transfer fee simple in the Real Property free and clear of all Liens, other than the Permitted Liens, at Closing.

(b) Personal Property.

(i) All Furniture and Equipment (whether movable or attached to the Real Property), motor vehicles, Hardware, supplies, Inventory, linens, foodstuffs, consumable and other personal property of any type or description, including all beds, chairs, sofas, wheelchairs, tables, kitchen and laundry equipment associated with and/or present at the Community or Real Property (collectively, the “Personal Property”), excluding the Excluded Personal Property.

(ii) To the extent transferable, all existing warranties and guaranties (express or implied) issued to Seller in connection with the Personal Property described in Section 2.01(b)(i) above.

(iii) All signs, marks, supplies, trademarks and materials located on or used in the operation of the Assets bearing the name “The Harborside” and all of Seller’s right, title and interest in and to such name, including the internet domain name www.theharborside.org and the content found thereon and related thereto, and related logos and marketing materials.

(iv) To the extent transferable and in Seller’s possession, all site plans, surveys, geological and environmental and soils studies and reports, market studies and surveys and reports, architectural renderings and models, plans and specifications, engineering plans and studies, floor plans, landscaping plans and other similar plans and diagrams relating thereto; and all construction warranties, manufacturer’s warranties and other warranties and guarantees applicable to the Assets.

(c) Assigned Contracts. The Contracts of the Seller listed on Schedule 2.01(c) (the “Assigned Contracts”), which Schedule shall be provided by Buyer, and may be revised by Buyer from time to time prior to the Designation Deadline in its sole and absolute discretion. Notwithstanding the foregoing, as used in this Agreement, the term “Assigned Contracts” expressly excludes any contracts, leases, agreements, commitments and other arrangements, and any amendments, modifications, supplements, renewals and extensions entered into by Seller after the Execution Date and prior to the Closing in breach of Section 6.02. Buyer shall have no obligations under any Contracts unless such Contract is an Assigned Contract listed on Schedule 2.01(c). Further, notwithstanding anything else herein, Assigned Contracts shall exclude all residency agreements with and Liabilities to Residents, current or former.

(d) Records. Subject to Applicable Law, Seller’s right, title and interest to copies of all Records.

(e) Assigned Permits. To the extent transferable, Seller’s right, title and interest to any and all Assigned Permits now held in the name of Seller relating to the Real Property, and any renewals, extensions, amendments or modifications thereof.

(f) Claims and Causes of Action. To the extent transferable, all rights in and to any Claims to the extent they are in the nature of enforcing a guaranty, warranty or a



contract obligation to complete improvements, make repairs or deliver services to the Seller or the Assets (the “Guaranty Actions”).

(g) Intellectual Property. To the extent transferable, with the exception of the Excluded Intellectual Property, any and all rights of Seller or its Affiliates with respect to the use of (i) all Intellectual Property, Marks, Software, operating manuals, marketing brochures or other proprietary material used by Seller or its Affiliates in the operation of the Assets, and (ii) all registrations, applications and licenses for any of the foregoing.

**Section 2.02 Excluded Assets**. Nothing herein contained shall be deemed to sell, transfer, assign or convey the following assets to Buyer, and Seller shall retain all right, title and interest to, in and under the following assets (the “Excluded Assets”):

(a) The Personal Property identified on Schedule 2.02(a) of the Disclosure Schedules (the “Excluded Personal Property”);

(b) The Intellectual Property identified on Schedule 2.02(b) of the Disclosure Schedules (the “Excluded Intellectual Property”);

(c) Every Contract of the Seller that is not an Assigned Contract (the “Excluded Contracts”), together with any rights or obligations subject thereto. For the avoidance of doubt, Excluded Contracts include all residency agreements with Residents, current and former (and all entrance fee obligations or lifecare obligations related thereto) and Medicare and Medicaid provider agreements;

(d) All deposit accounts, all pre-Closing Accounts Receivable, all cash, cash equivalents, bank deposits, charitable funds (restricted or unrestricted) or similar cash items of Seller, all marketable securities owned by Seller and all documents related thereto;

(e) Any other Contract to which Seller is a party or under which it has rights, in each case, that is not used primarily in connection with operation of the Assets or that is not an Assigned Contract;

(f) Any (i) personnel files not relating to a Transferred Employee; (ii) files or communications subject to the attorney-client or similar privilege; (iii) other books and records that Seller is required by Applicable Law to retain; (iv) documents which Seller is not permitted to transfer pursuant to any contractual confidentiality obligations owed to any third party (other than any patient confidentiality obligation referred to in the foregoing clause (ii)); (v) patient records regarding Residents and former Residents of the assisted living, memory care or skilled nursing centers and units; (vi) healthcare policy and procedure manuals, books and records and other documents related to malpractice prevention programs, credentialing, incident reporting or quality assurance, including those Seller elects or is required to retain; (vii) documents relating to proposals to acquire the Assets by Persons other than Buyer (except to the extent required to be provided to Buyer under Section 6.15 regarding alternative transactions); (viii) documents primarily related to or that are required to realize the benefits of any Excluded Assets; (ix) documents necessary to prepare Tax Returns and cost reports for periods prior to the Closing; (x) Seller’s Governing Documents and other organizational record books and minute books;

and (xi) documents relating exclusively to an Excluded Asset; *provided, however*, that Buyer shall have the rights of access to such retained books and records set forth in Sections 6.10 and 7.06 (except for privileged materials or as prohibited by Applicable Law); *and provided further* that Seller will provide Buyer reasonable access to records under this Section 2.02(f)(iv) and (v) to the extent allowed by law and requested by Buyer in connection with any Actions or any future efforts of Buyer post-closing to obtain licenses for healthcare services at the Real Property (such efforts to be in Buyer's sole discretion).

(g) any pre-Closing claim, right or interest of Seller in or to any refund, rebate, abatement or other recovery for Taxes, together with any interest due thereon or penalty rebate arising therefrom that relate to the Assets as conducted before the Closing;

(h) subject to Section 6.13, all insurance policies;

(i) rights for refunds for unearned insurance premiums and rights to proceeds with respect to Excluded Assets and other Excluded Liabilities;

(j) all of Seller's deposits or prepaid charges, interests, ownership and expenses paid in connection with or relating to any Excluded Assets;

(k) all Claims of Seller, including any Claims of Seller against third parties relating to the Excluded Assets, and any and all Claims under Sections 544, 545, 547, 548, 549, 550, 551 and 724(a) of the Bankruptcy Code, but excluding the Guaranty Actions;

(l) any right to receive or expectancy of Seller in any charitable gift, grant, bequest or legacy (including any income or remainder interest in or under any trust or estate);

(m) any Claims of Seller against third parties arising out of events occurring prior to the Closing, including and, for the avoidance of doubt, arising out of events occurring prior to the Petition Date, and including any rights under or pursuant to any and all warranties, representations and guarantees made by suppliers, manufacturers and contractors relating to products sold, or services provided, to Seller, but excluding the Guaranty Actions; *provided, however*, that to the extent Buyer is subject to any third party Liability resulting from the Contemplated Transactions arising out of events that occurred prior to Closing, Buyer may assert any Claim of Seller against third parties that relate to such Liability;

(n) all deposits remaining at the Closing Date (other than with respect to the Assigned Contracts) and prepaid charges and expenses of Seller;

(o) all deposits (the "Adequate Assurance Utility Deposits") paid by the Seller pursuant to that certain *Final Order (I) Prohibiting Utility Providers From Altering, Refusing or Discontinuing Service, (II) Deeming the Utility Providers Adequately Assured of Future Performance, and (III) Establishing Procedures for Determining Requests for Additional Adequate Assurance* [Docket No. 116] entered by the Bankruptcy Court on April 21, 2023;

- (p) any Contract that relates to the purchase or leasing of equipment that is identified on Schedule 2.02(p) of the Disclosure Schedules;
- (q) all Benefit Plans;
- (r) the Purchase Price, the Administrative Expense Claim Funding Amount and all rights of Seller under this Agreement;
- (s) all Claims of Seller and its Affiliates with respect to periods prior to the Effective Time, and any payments, awards or other proceeds resulting therefrom, subject to the rights of Buyer established in subsection (m) above;
- (t) all licenses or Permits that are not transferrable, are not Assigned Permits or that are not related to the Assets;
- (u) all rights with respect to Proceedings pending at the Effective Time;
- (v) the proceeds of any settlement agreement entered into in connection with the Bankruptcy Case;
- (w) any refund due or payable to Seller under the PILOT Agreement in connection with any amount paid by Seller prior to the Closing Date; and
- (x) all security deposits being held by or on behalf of Seller for Residents.

**Section 2.03 Assumption of Liabilities.** Upon the terms and subject to the conditions of this Agreement, on the Closing Date, Buyer shall execute and deliver to Seller the Bill of Sale, Assignment and Assumption Agreement, in form and substance mutually agreeable to the parties, pursuant to which Buyer shall assume and agree to discharge when due (in accordance with their respective terms and subject to the respective conditions thereof), only the following Liabilities of Seller, including all Cure Costs related to the Assigned Contracts (except to the extent constituting and excluding for all purposes, the Excluded Liabilities) and no other Liabilities (collectively, the “Assumed Liabilities”):

- (a) all of the claims, Liabilities and obligations of any kind or nature incurred in the use of the Assets, but only to the extent that the same arise from events occurring exclusively from and after the Closing Date; and
- (b) all liabilities and obligations of Seller under the Assigned Contracts only to the extent that the same arises exclusively from and after the Closing Date.

The assumption by Buyer of the Assumed Liabilities shall not, in any way, enlarge the rights of any third parties relating thereto.

**Section 2.04 Excluded Liabilities.** Notwithstanding any provision in this Agreement or any related document 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 Seller or any of Seller’s Affiliates, and Seller shall retain and be solely and exclusively liable with respect to all Liabilities

of Seller, except for only the Assumed Liabilities (such Liabilities other than Assumed Liabilities, collectively, the “Excluded Liabilities”), which Excluded Liabilities shall include the following:

- (a) any Liability associated with any Excluded Assets;
- (b) all Indebtedness and payables of Seller, reimbursement obligations to guarantors of Seller’s obligations or under letters of credit and all Liabilities of Seller, including to any owner or former owner of capital stock or warrants or holder of Indebtedness of Seller;
- (c) all entrance fee Liabilities, lifecare obligations, obligations under residency agreements, and obligations or Liabilities to or associated with Residents, current and former;
- (d) all operating expenses of and Liabilities related to the Assets or the Community, to the extent attributable to the ownership, operation or use of any of the Assets or Community prior to the Effective Time, other than any expense or Liability relating to an Assigned Contract that is subject to proration pursuant to Section 3.04(a);
- (e) all Taxes of Seller, including all Transfer Taxes (if any), whether related to the transfer of the Real Property or the Personal Property to Buyer;
- (f) any Liability arising out of or in connection with any Proceedings (whether instituted prior to or after Closing) to the extent arising from acts or omissions by Seller which occurred or are alleged to have occurred prior to the Closing Date;
- (g) all Liabilities consisting of legal, accounting, financial advisory, valuation, investment banking and other third-party advisory or consulting fees and expenses incurred by or on behalf of Seller in connection with or arising from the Bankruptcy Case or the Contemplated Transactions or the other Transaction Documents;
- (h) all Liability related to or arising out of the Bond Financing, the Securities Act of 1933, as amended and the rules and regulations promulgated thereunder, the Internal Revenue Code of 1986, as amended or any Internal Revenue Service audits related thereto;
- (i) all Liabilities existing prior to the filing of the Bankruptcy Case that are discharged under the Bankruptcy Case;
- (j) all Liabilities arising out of or related to the actions taken pursuant to the Plan of Closure;
- (k) Medicare and Medicaid Liabilities and any Liabilities related to the provision of healthcare at the Community prior to the Closing Date;
- (l) all Excluded Employee Liabilities; and
- (m) all Liabilities of Seller under this Agreement and the other Transaction Documents.

For the avoidance of doubt, any obligation of Buyer under any Rental Agreement shall not be considered an Excluded Liability.

**Section 2.05 Further Assurances.** From time to time following the Closing, Seller and Buyer shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, assignments, releases and other instruments and shall take such further actions as may be reasonably necessary or appropriate to otherwise make effective the Contemplated Transactions; *provided, however*, that nothing in this Section 2.05 shall require Buyer or any of their respective Affiliates to assume any Liabilities other than the Assumed Liabilities. Notwithstanding the foregoing, nothing in this Section 2.05 shall prohibit Seller from ceasing operations or winding up its affairs following the Closing, so long as adequate provision is made for Seller to perform its obligations hereunder. Each of the Buyer and Seller acknowledges that subsequent to the Closing, each party may need access to information or documents in the control or possession of the other parties with respect to the Assets and the Assumed Liabilities, including for the purposes of post-closing operations of the Assets by the Buyer, any pending or threatened audits, inquiries or investigations (including any of the same undertaken by any Governmental Authority), compliance with Applicable Laws and the prosecution or defense of third party claims as may be related to the Assets, and each party shall provide such reasonable access.

**Section 2.06 Bankruptcy Court Approval.**

(a) Seller and Buyer acknowledge that this Agreement and the sale of the Assets and the assumption and assignment of the Assigned Contracts are subject to Bankruptcy Court approval. Seller and Buyer acknowledge that they are aware of the relevant legal requirements and will proceed in good faith to satisfy such requirements. Seller agrees that it shall give good and proper notice to any and all parties in interest required to have prior notice under the Bankruptcy Code of the proposed and actual Bankruptcy Court approval of this Agreement.

(b) From and after the Execution Date and prior to the Closing or the termination of this Agreement in accordance with Article XII, neither party (nor their Affiliates) shall take any action which is intended to (or is reasonably likely to), or fail to take any action the intent (or the reasonably likely result) of which failure to act is to, prevent entry of the Sale Order or approval of this Agreement according to its terms.

(c) In the event that the entry of a Sale Order is appealed or a stay pending appeal is sought and the parties do not mutually elect to waive the necessity of a Final Order in their absolute discretion, Seller shall, to the extent Seller has sufficient funding to do so, or Buyer determines in its sole and absolute discretion to provide funding to do so for some period of time or amount reasonably satisfactory to both Buyer and Seller, oppose the appeal or the stay pending appeal and seek the dismissal of any appeal (including a petition for certiorari, motion for rehearing, re-argument, reconsideration or revocation) (and for the avoidance of doubt, in the event that Buyer is providing funding under this Section 2.06(c) for some period of time or amount, Seller's obligation shall not extend past such period of time or amount).

(d) Notwithstanding the foregoing, any resulting changes to this Agreement or any other Transaction Document or resulting material changes to the proposed Sale Order shall be subject to the approval of each of Buyer and Seller in their absolute discretion. Seller shall (i) provide Buyer with drafts of any and all other pleadings and proposed orders to be filed or submitted in connection with this Agreement and the Contemplated Transactions at least three (3) Business Days prior to filing or submitting such pleadings and proposed orders, and such pleadings and proposed orders shall be in form and substance reasonably acceptable to Buyer and (ii) make best efforts to consult and cooperate with Buyer regarding any discovery taken in connection with seeking entry of the Sale Order (including any depositions).

(e) Seller shall use commercially reasonable efforts to obtain entry of the Sale Order on or before February 17, 2025.

**Section 2.07 Assigned Contracts and Cure Costs.**

(a) Subject to the approval of the Bankruptcy Court by Final Order, and effective on the Closing Date, the Assigned Contracts will be assumed by the Seller and assigned to the Buyer on the Closing Date, in accordance with Section 365 of the Bankruptcy Code. The final determination of which Contracts shall be Assigned Contracts shall be within the Buyer's sole discretion. The Cure Costs of the Assigned Contracts shall be paid by the Buyer in accordance with the provisions herein.

(b) Schedule 2.07(b) of the Disclosure Schedules sets forth each Contract, including Seller's good faith estimate of the amount of the Cure Costs payable as of Closing in respect of each such Contract (and if no Cure Cost is estimated to be payable in respect of any particular Contract, the amount of such Cure Cost designated for such Contract shall be "\$0.00").

(c) At the Closing (or, if the applicable Assigned Contract is not assigned to Buyer at Closing pursuant to the terms of this Agreement, then at the time of the assignment of such Assigned Contract to Buyer, if ever), Buyer shall pay, pursuant to Section 365 of the Bankruptcy Code and the Sale Order, any and all cure and reinstatement costs or expenses that are required to be paid under Sections 365(b)(1)(A) and (B) of the Bankruptcy Code in connection with the assumption and assignment of the Assigned Contracts (the "Cure Costs"). For the avoidance of doubt, (i) Buyer shall pay all Cure Costs for Assigned Contracts in the amounts set forth on Schedule 2.07(b) in cash at Closing, (ii) the Cure Costs are separate and apart from, and in addition to, the Purchase Price and, (iii) except with respect to the Assumed Liabilities, Buyer shall not be required to make any payment of Cure Costs for any Contract and shall not assume any Liabilities with respect to any Contract that is not an Assigned Contract; *provided that* any amounts owed for Taxes (or payment in lieu thereof), whether under the PILOT Agreement or otherwise, as of Closing shall be handled as Taxes pursuant to Section 7.01, and not as Cure Costs.

(d) Notwithstanding anything in this Agreement to the contrary, a Contract that is validly rejected or otherwise not assumed and assigned to the Buyer pursuant to this Section 2.07 shall constitute an Excluded Asset.

(e) At any time prior to the Designation Deadline, Buyer shall have the right, which may be exercised in Buyer's sole discretion, to provide written notice to Seller of Buyer's election to designate any Contract (including any Contract that is an Assigned Contract immediately before such designation) (1) as an Excluded Contract, and upon such designation, such Contract shall constitute an Excluded Contract and, if applicable, shall cease to constitute an Assigned Contract or (2) to the extent not already rejected, as an Assigned Contract, and upon such designation, such Contract shall constitute an Assigned Contract and shall cease to constitute an Excluded Contract.

(f) If Buyer exercises its rights in Section 2.07(e) above to designate a Contract, including a Contract that was an Assigned Contract immediately before such designation, as an Excluded Contract, there shall be no reduction in the Purchase Price as a result of such designation or change in designation, and likewise, if Buyer exercises its right to designate a Contract as an Assigned Contract, there shall be no increase in the Purchase Price.

(g) Notwithstanding anything to the contrary contained herein, Buyer shall be solely responsible for paying all accrued amounts outstanding under (including, without limitation, the Cure Costs associated with) that certain Reciprocal Construction Operation and Easement Agreement, dated October 5, 1998, as of the Effective Time, which amount Buyer shall pay in cash at Closing (the "HOA Agreement").

### ARTICLE III. PURCHASE PRICE

**Section 3.01 Purchase Price.** As full consideration for the sale of the Assets by Seller to Buyer, at the Closing, Buyer shall assume the Assumed Liabilities as provided in Section 2.03 and shall pay to the Seller cash in an amount equal to the following amounts, subject to adjustment as provided in Section 3.04 below (the "Purchase Price"):

- (a) Cash in amount equal to Eighty Million Dollars (\$80,000,000); *minus*
- (b) An amount equal to the Deposit; *minus*
- (c) A credit equal to the PILOT Payment.

Notwithstanding the foregoing, if fewer than forty-six (46) Residents, which Residents shall not include any of the Residents set forth on Schedule 3.01 of the Disclosure Schedule, execute Rental Agreements with Buyer, Buyer shall be entitled to receive a credit to the Purchase Price paid at Closing in the amount of Five Million Dollars (\$5,000,000).

**Section 3.02 Good Faith Deposit.**

(a) Within two (2) Business Days of the date hereof, Buyer shall deposit the sum of Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000) (the “Deposit”) with the Title Company pursuant to the Escrow Agreement. The Deposit and any interest accrued thereon shall be non-refundable and held by the Title Company until released to the Seller or Buyer in accordance with Section 3.02(b).

(b) Upon the Closing or the termination of this Agreement pursuant to Article X, the Deposit shall be paid by the Title Company to either Seller or returned to Buyer as provided further herein, and, if paid to Seller at the Closing, shall reduce the portion of the Purchase Price to be paid by Buyer to Seller at Closing as set forth in Section 3.01.

**Section 3.03 Administrative Expense Claims.** At the Closing, Buyer shall, by wire transfer of immediately available funds, pay an aggregate amount of Four Million Dollars (\$4,000,000) to fund any Allowed Administrative Expense Claims outstanding as of the Closing Date (such amount, the “Administrative Expense Claims Funding Amount”). For the avoidance of doubt, the Buyer shall pay the Administrative Expense Claims Funding Amount in addition to the Purchase Price, by wiring such amount into an escrow, or into such other account as may be designated pursuant to the Sale Order.

**Section 3.04 Prorations.**

(a) All income and expenses of the Assets shall be prorated on a daily basis between Seller and Buyer as of the Closing Date. Such items to be prorated may include:

(i) Utility charges, if any, based on utility charges for the month of Closing or, if not available, based on utility charges for the month immediately preceding the Closing;

(ii) Water charges and sewer rentals, if any, based on the charges for the month of Closing or, if not available, based on the charges for the month immediately preceding Closing; and

(iii) Equipment lease, rental and service contract payments, pursuant to the Assigned Contracts.

Buyer and Seller shall prepare Schedule 3.04(a) to the Disclosure Schedules (the “Proration Schedule”) prior to Closing, which shall include the items listed above and any other applicable income and expenses with regard to the Assets. Seller and Buyer will use all reasonable efforts to finalize and agree upon the Proration Schedule at least five (5) Business Days prior to Closing.

(b) Except with respect to Adequate Assurance Utility Deposits, any escrow accounts held by any utility companies and any cash deposits made by Seller on behalf of Seller to any utility company prior to Closing to secure obligations under Assumed Liabilities shall be assigned to Buyer and Seller shall receive a credit at Closing for any such deposits. Seller and Buyer shall finalize and agree upon the cash deposits and credits



due Seller at least two (2) Business Days prior to Closing. Buyer will not issue a credit or make any cash payment after the Closing for Seller utility deposits.

(c) The parties agree that any amounts that may become due under this Section 3.04 shall be paid at Closing as can best be determined. A post-Closing reconciliation of pro-rated items shall be made by Buyer and Seller within sixty (60) days after Closing, and any amounts due at that time shall be promptly forwarded to the respective party in a lump sum payment. Notwithstanding anything herein, neither party shall have any obligation to the other under this Section 3.04 one hundred twenty (120) days after Closing.

(d) Notwithstanding anything to the contrary contained herein, to the extent the PILOT Payment is prepaid by Seller prior to Closing, Seller shall receive a credit at Closing for any such prepaid amount covering periods from and after the Effective Time (so long as Buyer gets the benefit of such amounts).

(e) This Section 3.04 shall survive the Closing.

#### **ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF SELLER**

As of the Execution Date and as of the Closing Date, and as a material inducement to Buyer entering into this Agreement and to consummate the Contemplated Transactions, Seller represents and warrants to Buyer, as follows:

**Section 4.01 Organization; Good Standing of Seller.** Seller is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State of New York. Seller has the requisite corporate power and authority to own and to operate and use its properties and to own the Assets. Seller is duly qualified or licensed to do business in New York.

**Section 4.02 Authority; Validity; Consents.** Seller has the requisite corporate power and authority necessary to enter into this Agreement and the other Transaction Documents to which Seller is a party. Seller's obligations to perform under this Agreement and the other Transaction Documents are subject to requisite Bankruptcy Court approval. Upon entry of the Sale Order, the execution, delivery and performance of this Agreement and such other Transaction Documents by Seller and the consummation by Seller of the Contemplated Transactions have been duly and validly authorized by all requisite corporate action, none of which actions have been modified or rescinded and all of which actions remain in full force and effect. This Agreement has been duly and validly executed and delivered by Seller and each other Transaction Document required to be executed and delivered by Seller at the Closing will be duly and validly executed and delivered by Seller at the Closing. Subject to requisite Bankruptcy Court approval and assuming due authorization, execution and delivery by Buyer, this Agreement and the other Transaction Documents constitute the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.

**Section 4.03 Contracts.** Schedule 2.07(b) of the Disclosure Schedules includes a true, complete and correct list as of the Execution Date of all material Contracts currently in force, and Seller has provided to Buyer true and complete copies of all such Contracts.

**Section 4.04 Title; No Outstanding Rights.** At Closing, Seller will deliver good and marketable title to, or a valid leasehold interest in, all Personal Property (except for the Excluded Personal Property) included in the Assets free and clear of all Liens, other than Permitted Liens, to the extent permissible under Section 363(f) of the Bankruptcy Code. Seller is the sole record and beneficial owner of the Assets, subject to the Permitted Liens.

**Section 4.05 Permits and Approvals.**

(a) Schedule 4.05(a) of the Disclosure Schedules sets forth a complete list of material Permits and Approvals currently issued or granted by a Governmental Authority and owned or held by or issued to Seller in connection with the Assets (other than the Retained Permits).

(b) Except as set forth in Schedule 4.05(b), there are no pending or, to the Knowledge of Seller, threatened Proceedings or Actions by or before any Governmental Authority to revoke, cancel, rescind, suspend, restrict, modify or refuse to renew any of the Permits or Approvals.

**Section 4.06 Compliance with Applicable Laws.**

(a) Except as set forth on Schedule 4.06 of the Disclosure Schedules, the Assets are, and since January 1, 2018, have been, in material compliance (including timely filing all required materials in connection therewith) with all Applicable Laws.

(b) Except as set forth on Schedule 4.06 of the Disclosure Schedules, neither Seller nor the Community has received any written communication since January 1, 2018, from a Governmental Authority or any qui tam relator or otherwise that alleges, that the Assets are not in compliance with any Applicable Law, other than statements of deficiencies from a Governmental Authority that are not material to the Assets in nature or amount.

**Section 4.07 Proceedings; Judgments.** Except for the Bankruptcy Case and as set forth on Schedule 4.07 of the Disclosure Schedules, (a) there are no Proceedings pending or, to Seller's Knowledge, threatened against or relating to Seller or any Assets; (b) there is no Proceeding pending or, to Seller's Knowledge, threatened, before or by any Governmental Authority with respect to any Assets; and (c) there has been no settlement or other similar agreement or Order with respect to the ownership or operation of the Assets that is material. Seller has not received any written notice or written claim for tort or violation of any applicable Order or an investigation thereof with respect to its ownership or operation of the Assets.

**Section 4.08 Real Property.**

(a) Schedule 4.08(a) of the Disclosure Schedules contains an accurate and complete legal description, street address and tax parcel identification number for the Real Property. The IDA holds good and indefeasible fee simple title to all of the Real Property, and Seller has the interest in the Real Property as set forth in the PILOT Agreement, including a reversionary right thereunder. Seller shall convey the Real Property free and clear of all Liens (other than the Permitted Liens) unless the PILOT Transfer is effected,

in which case Seller shall transfer its interest in the Real Property under the PILOT Agreement (as may be amended, restated, supplemented, modified or replaced in connection with the PILOT Transfer, including Seller's reversionary rights. Seller has provided a true, correct and complete copy of the PILOT Agreement (together with all amendments and supplements thereto) to Buyer. Seller does not lease any portion of the Real Property as a tenant or subtenant.

(b) Seller has not received written notice from any Governmental Authority of (and otherwise has no Knowledge of) (i) any pending or threatened condemnation Proceedings affecting the Real Property, or any part thereof; (ii) asserting or alleging any material violations or potential violations of any Applicable Laws (including zoning and land use ordinances, building codes and similar requirements) with respect to the Real Property, or any part thereof, which have not heretofore been cured; or (iii) any pending or threatened Proceedings, nor any Claims or Actions against Seller or any Affiliate of Seller or the Real Property, relating to the ownership, lease, use or occupancy of such Real Property or any portion thereof which is reasonably likely to result in a material change in the condition of the Real Property or the ownership or operation of the Real Property. Seller has not received any written notice of (and otherwise has no Knowledge of) any pending zoning or other land use change affecting the Real Property. Neither the whole nor any material portion of the Real Property has been damaged by fire or other casualty that would rise to the level of Casualty Materiality. Between the Execution Date and the Closing, Seller will give Buyer prompt written notice of any actual or any threatened casualty or condemnation of any part of the Real Property or notice asserting or alleging violations of any Applicable Laws.

**Section 4.09 Tax Matters.** Except as set forth on Schedule 4.09 of the Disclosure Schedules:

(a) All Taxes due and owing by Seller (whether or not shown on any Tax Return) have been timely paid when due (taking into account any applicable extensions), including all Taxes with respect to the Assets.

(b) There are no Tax liens on any of the Assets other than liens for Taxes not yet due and payable.

(c) To Seller's Knowledge, proper and accurate amounts have been withheld by Seller in compliance with the payroll Tax and other withholding provisions of all Applicable Laws, and all such amounts have been timely remitted to the proper taxing authority.

(d) Seller has timely filed all Tax Returns required to be filed by it, including all Tax Returns relating to the Assets (all of which are true, complete and correct in all material respects). Seller has 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, which currently remains in effect. Seller is not currently the beneficiary of any extension of time within which to file any Tax Return.

(e) To Seller's Knowledge, no deficiencies for Taxes have been claimed, proposed or assessed by any Governmental Authority for which Seller may have any Liability or which may attach to the Assets. There are no pending or, to Seller's Knowledge, threatened proceedings for or relating to any Liability in respect of Taxes for which Seller may have any Liability or which may attach to the Assets. There are no matters under discussion by Seller with any Governmental Authority with respect to Taxes that may result in an additional amount of Taxes for which Seller may have any Liability or which may attach to the Assets. No Governmental Authority has notified Seller that it has conducted an audit of any Taxes that may be due and owing by Seller or as the result of the operation of the Assets audited by Seller, which currently remains outstanding or unresolved.

**Section 4.10 Environmental Matters.** Except as disclosed in any of Buyer's environmental inspections, including any environmental assessments of the Real Property, or as set forth on Schedule 4.10 of the Disclosure Schedules, to the Knowledge of Seller (a) there are no material Environmental Liabilities on or affecting the Real Property; (b) except for any noncompliance that has been remediated in accordance with applicable Environmental Law, Seller has at all times operated the Real Property during its ownership of the Real Property in material compliance with all applicable Environmental Laws and all Permits required thereunder or issued pursuant thereto; (c) there are no Proceedings pending or threatened before any Governmental Authority with respect to Seller's ownership or operation of the Real Property alleging violations of Environmental Laws, or claiming material remediation obligations under applicable Environmental Laws, and Seller has not received any written notice of any alleged or actual violation or non-compliance with any Environmental Law or of non-compliance with the terms or conditions of any environmental Permits, arising from, based upon, associated with or related to the Real Property or the ownership or operation thereof; (d) there has been no Release of any Hazardous Substance in violation of Environmental Laws on or from the Real Property during the time of Seller's ownership or occupancy thereof, and (e) Seller has not used any of the Real Property for the generation, storage, manufacture, use, transportation, disposal or treatment of Hazardous Substances in violation of Environmental Laws.

**Section 4.11 Rent Rolls.** Seller's reports provided under Section 6.11 (Rent Rolls) are, to the Knowledge of Seller, true, correct and complete and are consistent in methodology with historical reports prepared by Seller.

**Section 4.12 Absence of Certain Changes or Events.** Since January 1, 2024, through the Execution Date, neither the Community nor Seller have:

(a) Other than in the ordinary course of business, consistent with past practices, offered options to or granted any increase in the compensation or benefits provided or to be provided to or payable or to become payable by Seller to any of its Employees (except compensation granted to new Employees who were hired in the ordinary course of business on an arm's length basis on substantially similar terms to existing Employees with comparable duties and experience); and

(b) Made any change in any method of accounting or accounting practice relating to the Community.

**Section 4.13 Employee and Labor Relations.**

(a) Compliance and No Claims. Except as set forth on Schedule 4.13(a), (i) Seller is, and since January 1, 2023, has been, in compliance with all Employment Laws with respect to the operation of the Community, and (ii) no legal claim with respect to application for employment, the terms or conditions of employment, the handling of benefits or termination of employment or any other alleged breach of any Employment Laws has been asserted or to Seller's Knowledge threatened against Seller in connection with the operation of the Community.

(b) No Bargaining Agreements. Seller is not a party to any collective bargaining agreement, and no collective bargaining agreement is currently being negotiated by Seller. No petitions for representation have been filed against the Community nor have any demands been made for recognition.

(c) WARN Act Compliance. Seller has taken any and all actions required by law necessary to comply with the Worker Adjustment and Retraining Notification Act of 1988, as amended ("WARN Act"), or state statute of similar import, with respect to any event or occurrence affecting the Community since January 1, 2023.

(d) List of Employees. Schedule 4.13(d) attached hereto is a complete list of all Employees, which lists their respective dates of hire, salaries or hourly pay rates, accrued PTO, accrued Bonus, position salaries or hourly pay rates, and position as of the date set forth thereon. No Employees are parties to any written or oral employment agreements.

**Section 4.14 Employee Benefit Plans.**

(a) Neither the Seller nor any ERISA Affiliate sponsors, maintains, participates in or contributes to or has ever sponsored, maintained, participated in or contributed to or has (or reasonably could have) any Liability (including any contingent Liability) under or with respect to (i) any "employee pension benefit plan," as defined in Section 3(2) of ERISA, that is subject to Section 302 of ERISA, Title IV of ERISA or Section 412 of the Code; (ii) any "multiemployer plan," as defined in Section 3(37) or 4001(a)(3) of ERISA or 414(f) of the Code; or (iii) any multiple employer plan within the meaning of Section 210(a), 4063 or 4064 of ERISA or Section 413(c) of the Code.

(b) Seller has never been obligated to contribute to any multi-employer plan within the meaning of ERISA Section 3(37).

(c) Schedule 4.14(c) sets forth an accurate and complete list of all Benefit Plans and specifies whether Seller, any of Seller's ERISA Affiliates or any affiliated entity sponsors each of said Benefit Plans.

(d) Each Benefit Plan is and has at all times been sponsored, funded, maintained and operated in compliance with its terms and requirements of all applicable Benefit Plans and all Applicable Laws, including, without limitation, ERISA and the Code.

(e) None of Seller, any ERISA Affiliate or any Benefit Plans provides or has any obligation to provide (or contribute toward the cost of) severance, life insurance, medical or other welfare benefits (within the meaning of Section 3(1) of ERISA) to any current or former Employee of Seller or any ERISA Affiliate after his or her retirement or other termination of employment or service, and neither Seller nor any ERISA Affiliate has ever represented, promised or contracted (to any such Employee or former Employee (or to any other Person) that such benefits would be provided, except to the extent required by Section 4980B of the Code and Part 6 of Subtitle B of Title I of ERISA or similar state law. Seller is not a party to any agreement, contract, arrangement or plan relating to the Assets that has resulted or would result, separately, or in the aggregate, in the payment of any “excess parachute payment” within the meaning of Code Section 280G or in a payment.

(f) Prior to the Closing, Seller shall remain responsible for maintaining all Benefit Plans in compliance with Applicable Laws and Buyer shall have no obligation with respect to any of Seller’s Benefit Plans at any time.

**Section 4.15 Insurance.** Schedule 4.15 of the Disclosure Schedules sets forth an accurate and complete list of all insurance policies or self-insurance funds maintained by Seller with respect to the Community and Seller as of the Execution Date covering the ownership and operation of the Community, indicating the types of insurance, policy numbers, terms, identity of insurers and amounts and coverages (including applicable deductibles), copies of which Seller has provided to Buyer.

**Section 4.16 Broker’s or Finder’s Fees.** Except as disclosed on Schedule 4.15 of the Disclosure Schedules, no agent, broker, investment banker or other person or firm acting on behalf of Seller or any of its Affiliates or under its authority is or will be entitled to any broker’s or finder’s fee or any other commission or similar fee, directly or indirectly, from Seller or Buyer or any of the parties’ respective Affiliates in connection with the Contemplated Transactions.

**Section 4.17 No Other Representation and/or Warranty.** Except for the representations and warranties contained in this Article IV (including the related portions of the Disclosure Schedules), Seller has not made and does not make any other express or implied representation or warranty, either written or oral, on behalf of or with respect to Seller, the Assets or the Community, including any representation or warranty arising from statute or otherwise in law. For the avoidance of doubt, no action taken or omitted to be taken in connection with the Plan of Closure shall be deemed to be a violation of any representation or warranty made by Seller in this Article IV.

**ARTICLE V.  
REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as of the Execution Date and as of the Closing as follows:

**Section 5.01 Organization and Good Standing.** Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer has all requisite corporate power to own, operate and lease the Assets and the Real Property.

**Section 5.02 Authorization and Binding Effect of Transaction Documents.** Buyer has the requisite corporate power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which Buyer is a party and to consummate the Contemplated Transactions. The execution and delivery of this Agreement and the other Transaction Documents and the performance of Buyer's obligations hereunder and thereunder (including consummation of the Contemplated Transactions) has been duly authorized by all requisite corporate action of Buyer, and this Agreement constitutes the valid and binding obligation and agreement of Buyer, enforceable in accordance with its terms (subject to the effect of bankruptcy, insolvency fraudulent conveyance, reorganization, moratorium and similar laws affecting creditor's rights and remedies generally, and to limitations imposed by general principles of equity, whether applied by a court of law or of equity).

**Section 5.03 Absence of Conflicts.** Neither the execution and delivery or performance of this Agreement, nor compliance with the terms and provisions hereof, will (i) conflict with or result in any breach of any of the terms, conditions or provisions of, (ii) constitute a default under, (iii) result in a violation of or (iv) give any third party the right to modify, terminate or accelerate any obligation under, the provisions of the Governing Documents of Buyer and/or its Affiliates, any indenture, mortgage, lease, loan agreement or other agreement or instrument to which Buyer and/or its Affiliates is bound or affected or any Applicable Law to which Buyer and/or its Affiliates is subject or any Applicable Law.

**Section 5.04 Consents.** Other than the Permits and approval of the Bankruptcy Court, the execution, delivery and performance by Buyer and/or its Affiliates of this Agreement and the other Transaction Documents, and consummation by Buyer and/or its Affiliates of the Contemplated Transactions and thereby, do not and will not require the authorization, consent, approval, exemption, clearance or other action by or notice or declaration to, or filing with, any court or administrative or other Governmental Authority, or the consent, waiver or approval of any other person or entity.

**Section 5.05 Broker's or Finder's Fees.** No agent, broker, investment banker or other person or firm acting on behalf of Buyer or any of its Affiliates or under its authority is or will be entitled to any broker's or finder's fee or any other commission or similar fee, directly or indirectly, from Buyer or any of its Affiliates in connection with the Contemplated Transactions.

**Section 5.06 Diligence.** Buyer acknowledges and agrees that (a) Buyer has conducted its own independent investigation, review and analysis of the business, results of operations, prospects, condition (financial or otherwise) and assets of Seller; and (b) Buyer has been provided

adequate access to the personnel, properties, assets, premises, books and records and other documents and data of Seller for such purpose.

**Section 5.07 No Other Representation and/or Warranty.** Except for the representations and warranties contained in this Article V, Buyer has not made and does not make any other express or implied representation or warranty, either written or oral, on behalf of or with respect to Buyer, including any representation or warranty arising from statute or otherwise in law.

**Section 5.08 Acknowledgment of Limitation of Warranties.**

(a) Buyer hereby acknowledges that, except as expressly set forth in Article IV of this Agreement, Buyer is relying solely on its own investigations, examinations and inspections of the Assets and the Assumed Liabilities and is not relying in any way on the information furnished by Seller, any of Seller's Affiliates, or their agents or Representatives, including, without limitation, their contractors, engineers, attorneys, accountants, consultants, brokers or advisors.

(b) Buyer agrees that except as expressly set forth in Article IV of this Agreement and in any Disclosure Schedules delivered in conjunction with this Agreement, the Assets and Assumed Liabilities are transferred "AS IS," "WHERE IS" AND, SUBJECT ONLY TO THE REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE IV, AND IN ANY DISCLOSURE SCHEDULES DELIVERED IN CONNECTION WITH THIS AGREEMENT WITH ALL FAULTS AND WITHOUT ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE WHATSOEVER, EXPRESS OR IMPLIED, ORAL OR WRITTEN, AND IN PARTICULAR, WITHOUT ANY IMPLIED WARRANTY OR REPRESENTATION AS TO:

(i) CONDITION, VALUE, MERCHANTABILITY OR FITNESS OR SUITABILITY FOR ANY SPECIFIC PURPOSE AS TO ANY OF THE ASSETS;

(ii) THE OPERATION OF THE ASSETS BY BUYER AFTER THE CLOSING IN ANY MANNER OTHER THAN AS USED AND OPERATED BY THE SELLER; OR

(iii) THE PROBABLE SUCCESS OR PROFITABILITY OF THE OWNERSHIP, USE OR OPERATION OF THE ASSETS BY BUYER AFTER THE CLOSING.

(c) Buyer acknowledges and agrees that except for the representations and warranties contained in Article IV of this Agreement, neither Seller nor any of its Affiliates, officers, directors, employees, agents, Representatives nor any other Person makes or shall be deemed to make any representation or warranty to Buyer, express or implied, at Applicable Law or in equity, on behalf of Seller with respect to the Assets or otherwise, including with respect to any other information provided to Buyer, whether on behalf of Seller or such other Persons.



## ARTICLE VI. COVENANTS

**Section 6.01 Continuing Inspection Rights.** Seller shall continue to provide reasonable access to Buyer of all of Seller's assets, books, accounting records, correspondence and files of Seller (to the extent related to the operation of the Assets) for examination by Buyer, its Representatives, with the right to make copies of such books, records and files or extracts therefrom. Such access will be available to Buyer during normal business hours, upon reasonable notice, in such manner as will not unreasonably interfere with the conduct of the operation of the Assets. Seller will make available to Buyer and its Representatives such additional data and other available information regarding the Assets as Buyer deems reasonably necessary or desirable to comply with Buyer's internal requirements or the requirements of Buyer's lenders, investors or members, including further inspection of title, survey, environmental and structural aspects, assessments of the compliance of the Assets with all Applicable Laws and customary pre-closing walk-throughs. Any information provided to Buyer or its Representatives in accordance with this Section 6.01 shall be subject to the terms of the confidentiality and non-disclosure agreement dated October 15, 2024, between Focus SH Acquisitions LLC and Seller. Seller and Buyer shall hold joint meetings at the Community with the Residents and Seller's employees from time to time prior to the Closing as the parties may reasonably agree. At any time after those meetings, Buyer will be entitled to meet with and conduct job interviews with any and all Employees. Seller shall furnish such additional financial and operating data and other information as Buyer and Buyer's Representatives shall from time to time request, including without limitation the Plan of Closure and any status on the implementation of the Plan of Closure.

**Section 6.02 Conduct of Business Prior to the Closing.** Seller covenants and agrees, from the Execution Date through the Closing, unless Buyer provides its prior written consent thereto, which shall not be unreasonably withheld, conditioned or delayed, or as otherwise expressly contemplated by this Agreement (including, without limitation, implementing the Plan of Closure) to, at Seller's sole cost and expense:

- (a) operate the Assets in compliance with Applicable Law in all material respects, consistent with past practices immediately prior to the Closing Date;
- (b) use commercially reasonable efforts to maintain all existing insurance policies with the same coverages and amounts as of the Execution Date;
- (c) operate, maintain and repair the Real Property and otherwise conduct business in material compliance with the terms or conditions of the Permits and Approvals listed on Schedule 4.05(a) of the Disclosure Schedules, all Applicable Laws having jurisdiction over any aspect of the operation of the Real Property and all applicable insurance requirements;
- (d) maintain the books and records for the Assets;
- (e) not sell, lease, grant any rights or options in or to or otherwise transfer or dispose of or agree to sell, lease or otherwise transfer or dispose of the Real Property in whole or in part, except leasing to Residents of the Community;

(f) use commercially reasonable efforts to maintain the Personal Property currently in use in reasonably good operating condition and repair, except for ordinary wear and tear and damage by casualty, in a manner consistent with past practice immediately prior to the Closing Date, subject, and, in respect of the period after the Execution Date, to those actions necessary in connection with the Bankruptcy Case;

(g) not sell, lease or otherwise dispose of or distribute any material Assets, including but not limited to Inventory, material Assets used in the Community's kitchens, and any vehicles used in the operation of the Community, except in the ordinary course of business;

(h) not make any alterations or improvements to the Real Property or make any capital expenditure with respect to the Assets in excess of Twenty-Five Thousand Dollars (\$25,000.00) individually, other than those that are required by Applicable Law for health, welfare or safety, that are necessary to preserve the coverage under or comply with the terms of any insurance policy with respect to the Assets, or with Buyer's consent which shall not be unreasonably withheld; and

(i) confer with Buyer prior to implementing material operational decisions; provided, however, that Seller shall not be required to confer with Buyer in connection with any decisions concerning the Plan of Closure, which decisions Seller shall be free to make in its sole and absolute discretion.

Notwithstanding the foregoing, in no event shall Buyer be, or be deemed to be, in control of the Assets or the Community prior to the Effective Time.

**Section 6.03 Title; Additional Documents.** Subject to Section 2.01(a)(iii), at the Closing, Seller shall transfer and convey to Buyer good and indefeasible fee simple title to the Real Property, free and clear of any Liens except Permitted Liens. At the Closing, Seller's right, title and interest to all warranties and guaranties, if any, and to the extent assignable or transferable, relating to the Real Property shall be assigned by Seller to Buyer. Seller shall use commercially reasonable efforts, at the sole expense of Buyer, for the initiation of any new payment in lieu of Taxes program or similar transaction involving the IDA and replacing the PILOT Agreement (any such transfer, assignment or initiation, the "PILOT Transfer").

**Section 6.04 Confidentiality.** Any and all nonpublic information, materials, documents, and instruments delivered to Buyer by Seller or its agents or Affiliates and any and all nonpublic information, documents and instruments delivered to Seller by Buyer or its agents or Affiliates are of a confidential and proprietary nature. Buyer and Seller agree that prior to Closing, each will maintain the confidentiality of all such confidential information, documents or instruments delivered to each by the other party or its agents in connection with the negotiation of, or in compliance with, this Agreement, and only disclose such information, documents and instruments to their duly authorized officers, directors, representatives and agents, or as otherwise required by Applicable Law, including the Bankruptcy Code. Buyer and Seller further agree that if the Contemplated Transactions are not consummated and this Agreement is terminated, each will return all such documents, materials and instruments and all copies thereof in their possession to the other party or provide confirmation of destruction related to such documents, materials and

instruments. For the avoidance of doubt, Buyer shall not be responsible for any damages resulting from any disclosures by Seller to any Employees or Residents regarding the Contemplated Transaction. This Section 6.04 shall survive as to both Seller and Buyer in the event this Agreement is terminated prior to Closing and shall survive as to Seller's obligations (and not Buyer's) following Closing.

**Section 6.05 Commercially Reasonable Efforts.** Except as otherwise provided herein, Seller and Buyer shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the Contemplated Transactions, including using commercially reasonable efforts to accomplish the following: (A) the taking of all reasonable acts necessary to cause the conditions precedent set forth in Article VIII and Article IX to be satisfied, (B) the making of all necessary registrations, declarations and filings (including registrations, declarations and filings with Governmental Authorities, if any) and the taking of all reasonable steps as may be necessary to avoid any Proceeding by any Governmental Authority, and (C) the execution or delivery of any additional instruments necessary to consummate the Contemplated Transactions and to fully carry out the purposes of this Agreement. In furtherance of the foregoing, promptly following the entry of the Sale Order, Seller shall use best efforts to obtain the approval of the Plan of Closure from the New York Department of Health and/or the Bankruptcy Court. Buyer shall cooperate in all reasonable respects with Seller in its efforts to obtain such approval; *provided that* nothing in this paragraph shall modify the conditions to Closing of the parties or obligate Buyer to close until Seller has achieved Consummation of the Plan of Closure.

**Section 6.06 Supplemental Disclosure.** Prior to the Closing, Seller shall supplement any Disclosure Schedules with respect to any matter that arises or becomes known to Seller after the date hereof and that would have been required or permitted to be set forth or described in the Disclosure Schedules had such matter existed or been known to Seller as of the date of this Agreement. To the extent such supplemental disclosure would cause Seller to be unable to satisfy the condition to the Closing set forth in Section 8.01, then Buyer shall have ten (10) Business Days from the receipt of such supplemental disclosure to terminate this Agreement by written notice to Seller without any liability to Buyer, and the Deposit shall be refunded to Buyer. If Buyer does not terminate this Agreement during such ten (10) Business Day period, or the supplemental disclosure would not cause Seller to be unable to satisfy the condition to the Closing set forth in Section 8.01, then such supplemental disclosure shall not entitle Buyer to terminate this Agreement, and such supplemental disclosure will be deemed to have cured the breach of any representation or warranty made in this Agreement with respect to such disclosed matter only (it being understood that the consummation of the Closing after the supplemental disclosure will be deemed to constitute a waiver of any such breach).

**Section 6.07 Prior Knowledge.** If Buyer or its Affiliates had Knowledge prior to the execution of this Agreement that any representation or warranty of Seller contained in this Agreement was not true and correct as of the date hereof, Buyer may not assert such breach of a representation and warranty as a basis not to consummate the transactions contemplated by this Agreement. In the event the Closing occurs, Buyer hereby expressly waives, relinquishes and releases any right or remedy available to it in Applicable Law, in equity or under this Agreement to make a Claim against Seller for damages that Buyer may incur or to rescind this Agreement and

the transactions contemplated hereby as the result of any of Seller's representations or warranties being not true or correct, if Buyer had Knowledge that such representation or warranty was not true or correct at the time of the Closing.

**Section 6.08 Post-Closing Records Obligations of Seller.** Following Closing, Seller shall use, and shall cause Seller's Affiliates to use, reasonable diligent efforts to cooperate with Buyer and its Affiliates to provide any records in Seller's custody or control which may be requested of Buyer by any Governmental Authority or needed in connection with any Action. This Section 6.08 shall survive the Closing.

**Section 6.09 Rental Agreements.** Prior to Closing, Buyer shall offer to enter into a rental agreement (each, a "Rental Agreement") with each Resident occupying an Independent Living Unit. The Rental Agreement will be in form acceptable to Buyer in its sole discretion, provided that each Rental Agreement will provide that, so long as the applicable Resident remains at the Community in the Independent Living Unit that such Resident occupies as of Closing, (i) the rent will be equal to the amount of the monthly service fees listed in the residency agreements of such Residents as of December 18, 2024, subject to annual increases of no greater than five (5%) percent. Seller agrees that it shall not adjust, modify, increase, or decrease the monthly service amounts in any residency agreement for an Independent Living Unit prior to Closing. Notwithstanding anything to the contrary herein or in any other document, Buyer shall not be obligated to honor any commitments of Seller in any existing or former Resident's residency contracts which are not set forth in the Rental Agreement, and for the avoidance of doubt, the Rental Agreement shall exclude any lifecare benefits, healthcare benefits, entrance fee refunds, or (should the Community subsequently provide for higher levels of care) rate reductions on moving to any higher levels of care.

**Section 6.10 Title Insurance and Survey.**

(a) Buyer has obtained the following: (i) a draft survey prepared by Pinnacle Land Surveyors, dated January 7, 2025 (the "Survey"), and (ii) the Title Commitment, issued by the Title Company. Buyer and Seller have agreed prior to the Execution Date to the list of Title Exceptions to which Buyer objected, and which Seller has elected to cure as set forth on Schedule 6.10(a) of the Disclosure Schedules (collectively, "Buyer's Objections"). On or prior to the Closing Date, Seller will cause Buyer's Objections to be removed and execute and deliver the Title Deliveries to enable Title Company to issue an owner's title insurance policy with all endorsements reasonably available (the "Title Policy") to Buyer consistent with the terms of this Agreement.

(b) Seller agrees to deliver such information as may be reasonably required by the Title Company, appropriate to the distressed circumstances surrounding the sale and pursuant to the Sale Order, including the Title Affidavit, supporting resolutions, a limited gap indemnity, and such other documents and/or such other information as is reasonable under the circumstances (the "Title Deliveries").

(c) In the event that at any time on or prior to Closing, an update of the Title Commitment or the Survey reveals any items not previously disclosed by the Title Commitment or the Survey ("Newly Arising Matters") which render the title uninsurable

or unmarketable or otherwise adversely affect the use of any of the Real Property and which are not Permitted Liens, then Buyer shall, within five (5) Business Days of receipt of such update (but in any event within two (2) Business Days of the Closing Date), give written notice thereof to Seller, and Seller shall have five (5) Business Days from the date of the notice within which to cure or cause the release of the same. Any Newly Arising Matters and any Buyer's Objections that Seller has agreed to cure will be cured by Seller on or before Closing, which cure may be effected by payment and discharge of the objectionable item or by causing the Title Company to remove the same as an exception or affirmatively insure over such item provided such affirmative insurance shall be reasonably satisfactory to Buyer and any lender of Buyer and sufficient, in Buyer's reasonable judgment, to adequately address Buyer's and any lender's concerns with respect to such matter. In the event Seller shall fail or refuse to cure any Newly Arising Matters or any Buyer's Objection that Seller has agreed to cure, Buyer shall have the right to advise Seller in writing of Buyer's election (x) to accept and close over such issues, (y) to make such payments (at Buyer's sole expense) as are necessary to effect releases of such claims Seller is not prepared to cure and to proceed to Closing or (z) to terminate this Agreement by notice to Seller, in which case the Deposit shall be refunded to Buyer, and neither party shall have any further rights, duties or obligations hereunder except for those which expressly survive the termination hereof.

(d) Seller shall not take any affirmative action inconsistent with this Agreement which would affect title to the Real Property as shown on the Title Commitment or which would have any impact on the Real Property or the Community as is reflected on the Survey.

**Section 6.11 Rent Rolls.** From and after the Execution Date, Seller shall deliver to Buyer its updated rent rolls not later than the thirty (30) days after the relevant month.

**Section 6.12 Surveys; Relicensing Surveys and Cooperation.** Seller shall provide to Buyer true and complete copies of all regulatory surveys and other Governmental Authority reports, waivers of deficiencies, plans of correction and any other investigation notices, warnings, correspondence or reports filed or issued with respect to the Community which occur between the Execution Date and the Closing Date.

**Section 6.13 Tail Insurance.** At or prior to Closing, Seller shall, at Buyer's sole cost and expense, at Buyer's option in Buyer's sole discretion, obtain tail insurance coverage in the amount of its existing liability insurance coverages, with coverage extending to claims made during the period no shorter than two (2) years (or three years, at Buyer's option) after the Closing Date, with respect to Seller's operations at the Community, which coverage shall not be cancelable by Seller during such period without Buyer's consent and which insurance, if requested by Buyer, shall name Buyer, Buyer's operator and any lender of Buyer as additional insureds thereunder and which insurance shall have no deductible payable by the insured or any additional insureds.

**Section 6.14 Financing Commitment.** Upon Seller's request prior to the Closing Date, Buyer shall provide reasonable evidence of Buyer's ability to obtain funds by means of credit facilities or otherwise sufficient to pay the Purchase Price and any other amounts payable pursuant to this Agreement and to demonstrate adequate assurance of future performance as required under

Section 365 of the Bankruptcy Code.

**Section 6.15 Exclusivity.** From the Execution Date through the Closing Date or the earlier termination of this Agreement, Seller will, and shall cause its respective Affiliates, officers, directors, employees, investment bankers, consultants, attorneys and other agents and Representatives acting on its and their behalf not to, directly or indirectly, (a) solicit, initiate, facilitate, encourage, furnish information with respect to, seek any proposal or offer from or participate in any negotiation with any Person (other than Buyer or any Person on its behalf) regarding any acquisition of the Assets or Real Estate (including by merger or consolidation) or any acquisition of all or a material portion of the Assets or the Real Estate, or (b) enter into any agreement, arrangement or understanding with respect to any of the foregoing or requiring Seller to abandon, terminate or refrain from consummating the transaction. Seller will promptly notify Buyer of the receipt and all the details of any unsolicited offer with respect to an alternate transaction.

**Section 6.16 Notification of Certain Matters.** From the Execution Date to the Closing Date, Seller shall give prompt written notice and/or provide documents to Buyer of the occurrence, or failure to occur, of any event that causes any representation or warranty of Seller contained in this Agreement to be untrue in any material respect. Such notice shall provide a reasonably detailed description of the relevant circumstances and shall include the amount that Seller believes, based on facts known to Seller, would impact the Contemplated Transactions. For the avoidance of doubt, such notice shall not affect Buyer's rights and shall not trigger the ten (10) day decision period created by an update to the Disclosure Schedules, which instead shall be handled pursuant to Section 6.06.

## ARTICLE VII. OTHER AGREEMENTS

### **Section 7.01 Taxes**

(a) Any transfer, documentary, sales, use, stamp, registration and other similar non-income Taxes and all conveyance fees, recording charges and other similar fees and charges (including any penalties and interest) incurred in connection with the consummation of the Contemplated Transactions (collectively, the "Transfer Taxes"), shall be borne entirely by Seller. Seller and Buyer shall use commercially reasonable efforts and cooperate in good faith to exempt the sale and transfer of the Assets from any Transfer Taxes, including under Section 1405(b)(8) of the New York Tax Law and Section 1146(a) of the Bankruptcy Code. Seller will, at its own expense, file all necessary Tax Returns and other documentation with respect to all Transfer Taxes, and, if required by Applicable Law, the parties will, and will cause their Affiliates to, join in the execution of any such Tax Returns and other documentation.

(b) Seller shall retain responsibility for, and shall bear and pay, all Taxes (including any payments in lieu thereof) based upon operation or ownership of the Assets for any period ending before the Closing Date; *provided that*, Buyer will pay accrued amounts owed under the PILOT Agreement (the "PILOT Payment") at or promptly following Closing (or when due, if later) and receive a dollar for dollar credit toward the

Purchase Price at Closing, solely to the extent the PILOT Payment has not already been paid by Seller. Buyer shall bear and pay all Asset Taxes, payroll Taxes and withholding Taxes assessed with respect to the Assets for any taxable period beginning on or after (and relating solely to the period on and after) the Closing Date. Seller shall retain responsibility for, and shall bear and pay, all real estate taxes (or payments in lieu thereof) and special assessments levied on the Real Property (the “Real Estate Taxes”) for the portion of any Straddle Period ending prior to the Closing Date. Buyer shall bear and pay all Real Estate Taxes for the portion of any Straddle Period beginning on or after the Closing Date. For purposes of allocation between the parties of Real Estate Taxes assessed with respect to the Assets that are payable with respect to any Tax periods beginning before and ending after the Closing Date (“Straddle Periods”), the portion of any such Real Estate Taxes that are attributable to the portion of the Straddle Period that ends on the Closing Date shall be allocated pro rata per day between the period prior to the Closing Date (which shall be Seller’s responsibility) and the period on and after the Closing Date (which shall be Buyer’s responsibility). At the Closing, Real Estate Taxes with respect to each Asset for the applicable Straddle Period shall be prorated in accordance with the foregoing provisions based on (i) the Real Estate Tax assessment for such Asset for such Straddle Period, if available, (ii) if clause (i) is not available, then based on the Real Estate Taxes paid with respect to such Asset during the preceding Tax period. A post-closing re-proration shall be made within thirty (30) days after either party’s receipt of the actual final Real Estate Tax bills applicable to the Straddle Period. With respect to any not yet delinquent Taxes relating to a Tax year ending after the Closing Date, Buyer will assume responsibility for the actual payment of all such Taxes to the applicable Governmental Authority (with Buyer having already received a credit for Seller’s portion of such Taxes at Closing).

(c) Seller, on the one hand, or Buyer, on the other hand, as the case may be (the “Reimbursing Party”), shall provide reimbursement for any Tax paid by the other (the “Paying Party”) all or a portion of which is the responsibility of the Reimbursing Party in accordance with the terms of Section 7.01(b) or which represents an overpayment for Taxes by the Paying Party. Within a reasonable time prior to the payment of any such Tax, the Paying Party shall give notice to the Reimbursing Party of the Tax payable and the Paying Party’s and Reimbursing Party’s respective Liability therefor, although failure to do so will not relieve the Reimbursing Party from its Liability hereunder except to the extent the Reimbursing Party is materially prejudiced thereby.

(d) Buyer and Seller agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Assets (including access to books and records and Tax Returns and related working papers dated before Closing) as is reasonably necessary for the preparation and filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any Taxing authority, the prosecution or defense of any Claims, Actions or Proceedings relating to any Tax and the claiming by Buyer of any federal, state or local business Tax credits or incentives that Buyer may qualify for in any of the jurisdictions in which any of the Assets are located; *provided, however*, that neither Buyer nor Seller shall be required to disclose the contents of its income Tax Returns to any Person other than each other. Any expenses incurred in furnishing such information or assistance pursuant to this Section 7.01(d) shall be borne by the party requesting it.

**Section 7.02 Allocation of Purchase Price.** Within ten (10) days prior to the Closing, Buyer shall prepare and deliver to Seller an allocation of the Purchase Price among the Assets (the “Purchase Price Allocation”). The Purchase Price Allocation shall be commercially reasonable for senior housing transactions and prepared in accordance with Applicable Law, including in accordance with Code Section 1060 and the Treasury Regulations promulgated thereunder (and any similar Law). None of Buyer, Seller, or any of their respective Affiliates shall take any position (whether in audits, on any Tax Return or otherwise) that is inconsistent with the Purchase Price Allocation unless required by a final determination within the meaning of Code Section 1313(a) that is binding upon the relevant party.

**Section 7.03 Bulk Sales.** To the extent applicable, Buyer and Seller hereby waive compliance with all “bulk sales,” “bulk transfer” and similar Applicable Law that may otherwise be applicable with respect to the sale and transfer of any or all of the Assets to Buyer, it being understood that any Liabilities arising out of the failure of Seller to comply with the requirements and provisions of any such “bulk sales,” “bulk transfer” and similar Applicable Law of any jurisdiction shall be treated as Excluded Liabilities, and further, it being understood that this waiver shall not preclude Buyer from making and requiring compliance with the bulk sales filing under New York Tax Law § 1141(c) et seq. with the Division of Taxation.

**Section 7.04 Adequate Assurance and Performance; Security Arrangements.** Buyer shall provide adequate assurance as required under the Bankruptcy Code of the future performance by Buyer of the Assigned Contracts. Buyer and Seller agree that they will promptly take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under the Assigned Contracts, such as furnishing timely requested and factually accurate affidavits, non-confidential financial information and other documents or information for filing with the Bankruptcy Court and making Buyer’s and Seller’s employees and Representatives available to testify before the Bankruptcy Court.

**Section 7.05 Employee Matters.**

(a) Seller shall cause Buyer to receive, after the entry of the Sale Order, access to the Employees at times and in a manner requested by Buyer and reasonably acceptable to Seller, and with information reasonably requested by Buyer with respect to compensation, benefits and other employment terms and conditions with respect to the Employees. No fewer than ten (10) Business Days prior to the Closing Date and subject to Buyer’s employment screening process, Buyer shall offer (or shall cause one of its Affiliates or vendors to offer) employment effective as of the Closing to any Employees determined by Buyer on such terms and conditions as Buyer or Buyer’s operator shall determine. For the avoidance of doubt, Buyer or Buyer’s operator will have no obligation to tender offers of employment to any Employees or honor the terms of any employment arrangements between Seller and any Employees or professional employer organization. All Employees, if any, who (i) are offered employment from Buyer or one of its Affiliates (the “Buyer Employers”), (ii) accept such offer of employment from a Buyer Employer and (iii) commence employment with a Buyer Employer as of the Closing shall be referred to herein as the “Transferred Employees.”



(b) To the extent commercially practicable, the employment of each Transferred Employee with a Buyer Employer shall commence immediately upon the Effective Time. Each Transferred Employee shall be hired on an “*at will*” basis unless otherwise agreed by Buyer. For the avoidance of doubt, the foregoing provision shall not be construed to restrict a Transferred Employee’s rights under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

(c) Seller shall terminate the employment of all Transferred Employees effective as of the Closing. Subject to, and effective as of, the Closing, Seller hereby waives and releases each of the Transferred Employees from any and all contractual, common law or other restrictions related to non-competition or non-solicitation enforceable by Seller with respect to Buyer and its Affiliates with respect to the employment of such individuals by Buyer after their termination of employment with Seller. For purposes of clarity, Seller does not waive or release any Transferred Employees’ obligations related to confidential or proprietary information or trade secrets.

(d) At or prior to Closing, Seller shall pay out to all Employees their portion of the employee appreciation fund previously contributed by the Residents for the benefit of the Employees. At Closing, Seller shall pay out to all Employees in their final paychecks an amount equal to such Employees’ unused but accrued vacation, personal pay, sick pay or other paid time off (collectively, “PTO”) and all accrued bonuses (other than the employee appreciation fund) (individually, a “Bonus”, and collectively, “Bonuses”); *provided that*, to the extent consistent with Applicable Law for Transferred Employees, Seller and Buyer may roll the PTO and Bonus for each Transferred Employee forward onto Buyer benefit plans and Seller shall give Buyer an equivalent credit in the form of a dollar for dollar reduction of the Purchase Price. For the purposes of determining the amount of each Employee’s PTO and Bonus to be paid or credited at Closing, (i) each Employee will be treated as if such PTO had been fully earned of the Closing Date, even if, under benefits plans, such PTO would not be earned or vested until a date in the future or under other future conditions which will not be satisfied as a result of the sale contemplated hereunder and the termination of the Employees as a result thereof, and (ii) all Employees shall receive or be credited prorated Bonuses for the calendar year in which the Closing Date occurs in an amount not to exceed such Employee’s actual bonuses paid by Seller which accrued during the same period in the prior calendar year, to the extent Seller’s bonus and incentive plans contain any discretionary provisions relating to the giving of bonuses or other incentives. Seller shall deliver to Buyer Schedule 7.05(a) of the Disclosure Schedules, which shall set forth the PTO and Bonuses of each Employee for the period through the Closing Date, within five (5) days prior to the Closing.

(e) Pursuant to the “Standard Procedure” provided in Section 4 of Revenue Procedure 2004-53, 2004-2 C.B. 320, (i) Buyer and the Seller shall report on a predecessor/successor basis as set forth therein, (ii) Seller will not be relieved from filing a Form W-2 with respect to any Transferred Employees for any tax period ending on the Closing Date and the tax year following the Closing Date with respect to the portion of such year that such Transferred Employee was employed by Seller, as the case may be, and (iii) Buyer will undertake to file (or cause to be filed) a Form W-2 for each such Transferred Employee with respect to the portion of the year during which such Transferred Employees

are employed by Buyer that follows the Closing Date, excluding the portion of such year that such Transferred Employee was employed by Seller and its Affiliates.

(f) Seller shall continue to be liable and responsible for, and Buyer shall incur no liability or responsibility with respect to, any Continuation Coverage (as that term is defined by COBRA Section 4980B of the Code and Section 601, et seq. of ERISA) for any Employee terminated at any time prior to Closing including without limitation all Employees who are not Transferred Employees. Buyer shall not assume, honor or accept any Benefit Plan, and Seller shall be solely responsible for satisfying all obligations (whether arising under federal, state or local law or pursuant to contract) which may arise or which may have arisen prior to the Closing Date in connection with the employment by Seller of the Employees or the creation, funding, operation or termination of any of the Benefit Plans that cover any of the Employees.

(g) With respect to each employee benefit plan, policy or practice, including severance, vacation and paid time off plans, policies or practices, sponsored or maintained by any Buyer Employer, the Buyer shall (or shall cause the applicable Buyer Employer to) grant, or cause to be granted to, all Transferred Employees after the Closing Date credit for all service with the Seller prior to and including the Closing Date for purposes of eligibility to participate, vesting credit, eligibility to commence benefits, benefit accrual and severance, but excluding benefit accrual under any defined benefit pension plan and any such credit that would result in a duplication of benefits.

#### **Section 7.06 Employment Records; Resident Records.**

(a) Except as may be prohibited by Applicable Law, Seller shall make available to Buyer its books and records relating to all Employees, including any and all records or written documents relating to performance reviews, performance improvement plans, statements of disciplinary actions taken, medical records and all other information maintained in such Employees' personnel files (collectively, "Employee Records"). At Closing, except as may be prohibited by Applicable Law, Seller shall transfer to Buyer all Employee Records for the Transferred Employees provided Buyer shall retain all such Transferred Employees' Records for one (1) year after the Closing Date and shall provide Seller access thereto at Seller's cost and expense if any claims are made against Seller by any such Transferred Employees. Following the Closing, Seller shall have the obligation to (i) remove and retain, as permitted by Applicable Law, all Employee Records for all Employees who are not Transferred Employees ("Past Employee Records") and (ii) remove from the Community, to the extent permitted by Applicable Law, all records relating to all prior residents of the Community who were not residing therein on the Closing Date (provided that Buyer shall be entitled to make a copy of such records prior to removal). In the event that Seller does not remove all Past Employee Records, Buyer may destroy such Past Employee Records.

(b) At least two (2) weeks prior to the Closing Date, Seller shall deliver to Buyer customer data consisting of the names of all Residents, the names and addresses of the Residents' responsible parties, Employee's names, social security numbers, job titles, wage rates, start dates and such further information regarding Residents, Employees or

other matters as Buyer may reasonably require in order to be able to assume operation of the Community and accounting functions as of the Effective Time.

(c) From and after the Closing, for a minimum of three years, each party shall afford the other party reasonable access, during normal business hours, to the books, records and other data relating to the operation of the Community prior to the Closing in its possession to the extent that such access may be reasonably required by the requesting party in connection with (a) the preparation of Tax Returns, (b) the determination or enforcement of rights and obligations under this Agreement, (c) compliance with the requirements of any Governmental Authority, (d) operation of the business post-Closing, (e) in connection with any threatened or actual legal proceeding or Action, (f) potential new licensing and reopening of any healthcare portion of the Community, (g) in connection with any audit of the Community for any pre-Closing period, or (h) in connection with administering the Bankruptcy Case, or any subsequent Chapter 7 case. During such period neither party shall dispose of or destroy any books, records or other data relating to the operation of the Community prior to the Closing unless such party gives the other party thirty (30) days' prior written notice thereof and the option to retain such books, records or other data.

**Section 7.07 Payment of Broker and Finder's Fees.** Each party shall pay all of the fees and costs and expenses due to its brokers, finders and investment bankers, at the Closing. The parties' obligations under this Section 7.07 shall survive the expiration or any termination of this Agreement.

**Section 7.08 Condemnation or Casualty.** The risk of any Loss to the Real Property by casualty event or condemnation before the Closing shall continue to be borne by Seller. In the event any casualty occurs, or condemnation Proceeding is commenced or threatened prior to the Closing, Seller shall promptly give Buyer written notice thereof (in any event within five (5) Business Days after Seller first has actual Knowledge of the occurrence of same). If, prior to Closing, there is a material Loss by casualty or material taking by eminent domain (or a reasonably anticipated material taking from commenced or threatened condemnation) at the Real Property, Buyer shall have the right to treat this Agreement as null and void by providing Seller with written notice within ten (10) Business Days of receiving written notice of such Loss or taking of Buyer's election to treat the Agreement as null and void, and the Deposit shall be refunded to Buyer within two (2) Business Days. If the Closing would otherwise be scheduled to take place within the period during which Buyer has the right to provide notice to Seller of termination of this Agreement as provided above, then the Closing Date may be extended by Buyer to accommodate the relevant period. If Buyer elects to proceed and to consummate the Contemplated Transactions despite said material Loss or material taking, or if there is less than a material Loss or material taking prior to Closing, there shall be no reduction in or abatement of the Purchase Price and Buyer shall be required to purchase the Real Property in accordance with the terms of this Agreement, and Seller shall assign to Buyer, without representation of warranty by or recourse against Seller, all of Seller's right, title and interest in and to any insurance proceeds or award made or to be made in the condemnation Proceeding (in which event Buyer shall have the right to participate in the adjustment and settlement of any insurance-related Claim relating to said Loss). For the purpose of this Section 7.08, the term "material" shall mean any casualty or taking which would, in Buyer's reasonable determination, (a) materially and adversely affect the access to Assets, (b) reduce

available parking levels at the Assets below that required by Applicable Law, (c) cause a violation of any Applicable Law or any Assigned Contract affecting all or a portion of the Real Property, (d) result in the loss of any portion of the Real Property which is necessary to use, operate and/or maintain the balance of such Real Property as an independent living rental community or (e) result in a casualty loss or condemnation award reasonably estimated to exceed Three Million Dollars (\$3,000,000.00) (collectively for subsections (a)-(e), the “Casualty Materiality”). The parties’ obligations, if any, under this Section 7.08 shall survive the expiration or any termination of this Agreement.

## ARTICLE VIII. CONDITIONS PRECEDENT TO THE OBLIGATION OF BUYER TO CLOSE

Buyer’s obligation to consummate the Contemplated Transactions pursuant to the terms of this Agreement is subject to the satisfaction, on or prior to the Closing, of each of the following conditions, unless waived by Buyer in writing:

**Section 8.01 Accuracy of Representations and Warranties; Closing Certificate.** The representations and warranties made by Seller in this Agreement or in any Transaction Document shall be true and correct, in all material respects (other than any representation or warranty which is qualified by materiality, which shall be true and correct in all respects), on the Execution Date and shall be true and correct, in all material respects (other than any representation or warranty which is qualified by materiality, which shall be true and correct in all respects), as of the Closing Date as though such representations and warranties were made or given on and as of the Closing Date, unless such representation and warranty speaks only as of a specific date in which case it shall be true and correct as of such date.

**Section 8.02 Performance of Agreement.** Seller shall have performed or complied with in all material respects all of its covenants, agreements and obligations required by this Agreement to be performed or complied with by it prior to or upon the Closing.

**Section 8.03 Seller Closing Certificate.** Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Seller that each of the conditions set forth in Section 8.01 and Section 8.02 have been satisfied (the “Seller Closing Certificate”).

**Section 8.04 Conveyance of Property.** Seller shall have conveyed to Buyer the Assets, free and clear of all Liens, except Permitted Liens, to the extent permissible under Section 363(f) of the Bankruptcy Code.

**Section 8.05 Bond Financing and Subordinated Financing and Release of All Liens.** Seller shall have caused the Sale Order to provide that the sale of the Assets shall be free and clear of all Liens on the Assets, to the extent permissible under Section 363(f) of the Bankruptcy Code, including the Liens related to the Bond Financing.

**Section 8.06 Delivery of Closing Documents.** Seller shall have delivered or caused to be delivered to Buyer on the Closing each of the Transaction Documents required to be delivered pursuant to Section 10.02.

**Section 8.07 Entry of Sale Order.** The Bankruptcy Court shall have entered the Sale Order, which shall not be stayed.

**Section 8.08 Regulatory Approval.** Seller shall have completed closure of all but the Independent Living Units of the Community and related non-healthcare facilities in accordance with the Plan of Closure, including but not limited to the transfer or discharge of all Residents of Seller's assisted living, memory care, and skilled nursing facilities ("Consummation of the Plan of Closure").

**Section 8.09 Unfavorable Action or Proceeding.** On the Closing Date, no Orders, decrees, judgments or injunctions of any court or Governmental Authority shall be in effect and, other than with respect to the Sale Order, no Claims, Proceedings or Actions shall be pending, which challenge or seek to challenge, or which could prevent or cause the rescission of the consummation of the Contemplated Transactions.

**Section 8.10 Title Insurance.** The Title Company shall be prepared to issue the Title Policy consistent with Section 6.10 above.

**Section 8.11 Material Adverse Effect.** No Material Adverse Effect shall have occurred since the Execution Date.

## ARTICLE IX. CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLER TO CLOSE

The obligation of Seller to consummate the Contemplated Transactions pursuant to the terms of this Agreement is subject to the satisfaction, on or prior to the Closing, of each of the following conditions, unless waived by Seller in writing:

**Section 9.01 Accuracy of Representations and Warranties.** The representations and warranties of Buyer contained in this Agreement shall be true and correct, in all material respects (other than any representation or warranty which is qualified by materiality, which shall be true and correct in all respects), on the Execution Date and shall be true and correct, in all material respects (other than any representation or warranty which is qualified by materiality, which shall be true and correct in all respects), as of the Closing Date as though such representations and warranties were made or given on and as of the Closing Date, unless such representation and warranty speaks only as of a specific date in which case it shall be true and correct as of such date.

**Section 9.02 Performance of Agreements.** Buyer shall have performed or complied with in all material respects all of its covenants, agreements and obligations required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or upon the Closing.

**Section 9.03 Buyer Closing Certificate.** Seller shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer that each of the conditions set forth in Section 9.01 and Section 9.02 have been satisfied (the "Buyer Closing Certificate").

**Section 9.04 Delivery of Closing Documents.** Buyer shall have delivered or caused to be delivered to Seller on the Closing each of the Transaction Documents required to be delivered pursuant to Section 10.03.

**Section 9.05 Entry of Sale Order.** The Bankruptcy Court shall have entered the Sale Order, which shall not be stayed.

**Section 9.06 Unfavorable Action or Proceeding.** On the Closing Date, except with respect to the Sale Order, no Orders, decrees, judgments or injunctions of any court or Governmental Authority shall be in effect which could prevent or cause the rescission of the consummation of the Contemplated Transactions.

**Section 9.07 Cure Costs.** Buyer shall be prepared to pay the Cure Costs of the Assigned Contracts within ten (10) days following Closing.

## **ARTICLE X. CLOSING**

**Section 10.01 Closing Date and Place.** The Closing shall take place on the date that is twenty (20) days after the satisfaction of all conditions to Closing contained in Article VIII and Article IX, but in no event later than the date that is six (6) months following entry of the Sale Order (the “Outside Closing Date”), subject to extension as set forth below; or at such earlier or later date and time as may be expressly agreed upon in writing by Buyer and Seller (the “Closing Date”). Notwithstanding the foregoing, and subject to satisfaction of all conditions to Closing, the Closing shall in no event take place later than the Outside Closing Date; *provided, however*, that the Outside Closing Date shall be automatically extended for up to three (3) additional consecutive one (1) month periods if the Sale Order has become a Final Order prior to the original Outside Closing Date but the Closing has not occurred solely as a result of Seller’s failure to complete the Consummation of the Plan of Closure. Time is of the essence in the performance of this Agreement.

**Section 10.02 Deliveries of Seller.** At the Closing, Seller shall deliver or cause to be delivered to Buyer and/or other Persons the following, in each case in form and substance reasonably satisfactory to Buyer, and to the extent required, executed by a duly authorized officer of Seller:

(a) a governmental certificate, dated as of a date as near as practicable to the Closing, showing that Seller (i) is duly organized and in good standing in the state of organization of Seller and (ii) is qualified to do business in New York;

(b) a certificate of the secretary (or the equivalent thereto if none) of Seller attesting as to the incumbency of each manager, officer and authorized Representative of Seller who executes this Agreement and any of the other Transaction Documents to which it is a party and certifying that resolutions and consents necessary for Seller to act in accordance with the terms of this Agreement have been adopted or obtained (with copies thereof attached);

(c) a certified copy of the Sale Order;

(d) a Deed conveying the Real Property, free and clear of all Liens other than the Permitted Liens, to the fullest extent allowed by law under Section 363(f) of the Bankruptcy Code and subject to Section 2.01(a)(iii);

(e) a Bill of Sale, Assignment and Assumption Agreement transferring the Assets (other than the Real Property) and Assumed Liabilities to Buyer, free and clear of all Liens other than the Permitted Liens;

(f) a certificate of non-foreign status under Section 1445 of the Code, complying with the requirements of the Income Tax Regulations promulgated pursuant to such Section;

(g) evidence of Consummation of the Plan of Closure;

(h) the Seller Closing Certificate;

(i) the Flow of Funds Memorandum;

(j) evidence of purchase of the Tail Insurance, to the extent Buyer has opted to purchase, and has provided funding for, the Tail Insurance;

(k) a properly executed and completed IRS Form W-9 from Seller;

(l) the Title Deliveries; and

(m) such additional information, materials, affidavits and certificates as Buyer shall reasonably request to evidence the satisfaction of the conditions to Buyer's obligations hereunder or to effectuate the transfer of the Assets and give effect hereto, including any documents expressly required by this Agreement or the other Transaction Documents to be delivered by Seller or its Affiliates at Closing.

**Section 10.03 Deliveries of Buyer.** At the Closing, Buyer shall deliver or cause to be delivered to Seller and/or other Persons, the following, in each case in form and substance reasonably satisfactory to Seller, and to the extent required, executed by a duly authorized officer of Buyer:

(a) the Purchase Price by wire transfer in accordance with Section 3.01 and the Administrative Expense Claims Funding Amount by wire transfer in accordance with Section 3.03;

(b) within ten (10) days after Closing, the Cure Costs in accordance with Section 2.07;

(c) the Bill of Sale, Assignment and Assumption Agreement transferring the Assets (other than the Real Property) and the Assumed Liabilities to Buyer, free and clear of all Liens other than the Permitted Liens;

(d) the Buyer Closing Certificate;

(e) a governmental certificate, dated as of a date as near as practicable to the Closing, showing that Buyer is (i) duly organized and in existence in the state of its formation, and (ii) is qualified to do business in the state where the Real Property is located;

(f) a certificate of the secretary (or the equivalent thereto if none) of Buyer attesting as to the incumbency of each manager, officer and authorized Representative of Buyer who executes this Agreement and any of the other Transaction Documents to which it is a party and certifying that resolutions and consents necessary for Buyer to act in accordance with the terms of this Agreement have been adopted or obtained (with copies thereof attached);

(g) the Flow of Funds Memorandum; and

(h) such additional information, materials, affidavits and certificates as Seller shall reasonably request to evidence the satisfaction of the conditions to Seller's obligations hereunder, including any documents expressly required by this Agreement or the other Transaction Documents to be delivered by Buyer or its Affiliates at Closing.

## **ARTICLE XI. SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS**

**Section 11.01 Survival.** All covenants and agreements contained in this Agreement or any other Transaction Document which by their terms are to be performed in whole or in part, or which prohibit actions, at or subsequent to the Closing shall survive the Closing hereunder until all applicable statute of limitations or for such shorter period explicitly specified therein. The party that breaches such covenants and agreements (the "Breaching Party") shall be liable to, and shall hold harmless, the other party after the Closing for any Losses suffered or incurred by such other party as the result of the breach of such covenants and agreements by such Breaching Party. Subject to the foregoing, and excluding in the case of Fraud, all other covenants and agreements contained in this Agreement to be performed prior to the Closing, and all representations and warranties contained in this Agreement or in any certificates delivered at Closing, shall not survive the Closing and shall thereupon terminate.

## **ARTICLE XII. DEFAULT AND TERMINATION**

**Section 12.01 Termination Events.** This Agreement may be terminated at any time prior to the Closing by written notice to the applicable party:

(a) by either Seller or Buyer, if a Governmental Authority issues a final, non-appealable ruling or Order prohibiting the Contemplated Transactions where such ruling or Order was not requested, encouraged or supported by any of Seller or Buyer;

(b) by mutual written consent of Seller and Buyer;

(c) by Buyer, if the Bankruptcy Court enters an Order (i) dismissing the Bankruptcy Case; (ii) converting the Bankruptcy Case to a case under Chapter 7 of the



Bankruptcy Code; (iii) directing the appointment of a Chapter 11 trustee or examiner with expanded powers; or (iv) materially amending the terms of the Contemplated Transactions (subject in all respects to, and not in derogation of, Buyer's rights to approve the Sale Order and any modifications thereto);

(d) by Buyer in the event of any material breach by Seller of any of Seller's agreements, covenants, representations or warranties contained herein and where such breach has not been cured within thirty (30) Business Days after the giving of written notice thereof by Buyer to Seller (which notice shall specify the nature of such breach and be given as promptly as practicable); *provided, however*, that Buyer shall not be permitted to terminate this Agreement pursuant to this Section 12.01(d) if Buyer is itself in material breach of any of its representations, warranties, covenants or agreements contained herein (or in breach at all with respect to those representations, warranties, covenants and agreements that are qualified as to materiality or Material Adverse Effect or similar expressions);

(e) by Seller in the event of any material breach by Buyer of any of Buyer's agreements, covenants, representations or warranties contained herein and where such breach has not been cured within thirty (30) Business Days after the giving of written notice thereof by Seller to Buyer (which notice shall specify the nature of such breach and be given as promptly as practicable); *provided, however*, that Seller shall not be permitted to terminate this Agreement pursuant to this Section 12.01(e) if Seller is itself in material breach of any of Seller's representations, warranties, covenants or agreements contained herein (or in breach at all with respect to those representations, warranties, covenants and agreements that are qualified as to materiality or Material Adverse Effect or similar expressions);

(f) by Buyer if (i) the Sale Order is not entered by the Bankruptcy Court on or before February 17, 2025, or (ii) there is an appeal and Seller under Section 2.06(c) does not defend such appeal due to lack of funding;

(g) by either Buyer or Seller if the Closing has not occurred by the Outside Closing Date (as may be extended pursuant to Section 10.01) by no fault of the party terminating; *provided however*, Seller may not terminate if Buyer is providing funding pursuant to Section 2.06(c);

(h) by Buyer if the Closing has not occurred by the Outside Closing Date (as may be extended pursuant to Section 10.01) solely due to Seller's failure to satisfy the condition set forth in Section 8.08; or

(i) by Buyer pursuant to Section 6.06, Section 6.10(b), or Section 7.08.

**Section 12.02 Effect of Termination.** In the event of termination of this Agreement by Buyer or Seller pursuant to Section 12.01, all rights and obligations of the parties under this Agreement (except for any obligations pursuant to their terms which are to continue following the Closing or after the termination of this Agreement, such as, for example, Section 6.04 (Confidentiality)) shall terminate without any Liability of any party to any other party. In the event

termination is pursuant to any provision except Section 12.01(e), the Deposit shall be returned to Buyer. In the event of a termination pursuant to Section 12.01(e), Seller shall be entitled to keep the Deposit as liquidated damages. The parties agree that it would be impractical and extremely difficult to determine the actual damages to Seller in the event of a breach by Buyer and agree that a reasonable estimate of such damages is an amount equal to the Deposit. The provisions of this Section 12.02 (and, to the extent applicable to the interpretation or enforcement of such provisions, Article I, Article VIII, and Article IX) shall expressly survive the termination of this Agreement.

**Section 12.03 Specific Performance.** In the event the Sale Order has been entered and the Closing has not occurred on or prior to the Outside Closing Date due to a failure of Seller to perform, and provided Buyer has not defaulted on this Agreement, Buyer shall be entitled to the remedy of specific performance against Seller, the subject of this Agreement being unique as Real Property; *provided, however*, that if specific performance of this Agreement is not available as a remedy for any reason, then Buyer shall be entitled to pursue any and all rights and remedies under this Agreement, at law or in equity. Seller agrees not to raise any objections to the availability of the equitable remedy of specific performance to specifically enforce the terms and provisions of this Agreement on the basis that (a) Buyer has an adequate remedy at law, or (b) an award of specific performance or other equitable remedy is not an appropriate remedy for any reason at law, equity or otherwise. Buyer seeking to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with any such injunction or order.

**Section 12.04 Obligations Upon Termination.** If this Agreement is terminated, each of the parties shall bear its own costs incurred in connection with the Contemplated Transactions.

**Section 12.05 Sole and Exclusive Remedy.** Except for the obligations of Seller and Buyer set forth in Article XI, and except in the event of Fraud, Seller and Buyer each acknowledge and agree that prior to the Closing, such party's sole and exclusive remedy with respect to any and all Claims made prior to the Closing for any breach of this Agreement or otherwise relating to the subject matter of this Agreement and the Contemplated Transactions shall be solely in accordance with, and limited to, Section 12.01, Section 12.02 and Section 12.03.

### ARTICLE XIII. MISCELLANEOUS

**Section 13.01 Further Actions.** From time to time before, at and after the Closing, each party will execute and deliver such other documents as reasonably requested by Buyer, Seller or Title Company to consummate the Contemplated Transactions.

**Section 13.02 Notices.** All notices, demands or other communications given hereunder shall be in writing and shall be sufficiently given if delivered by facsimile (with written confirmation of receipt), by courier (including hand-delivery or overnight delivery service), by email or sent by registered or certified mail, first class, postage prepaid, addressed as follows:

If to Seller, to:

Amsterdam House Continuing Care Retirement Community, Inc.  
300 East Overlook  
Port Washington, New York 11050  
Attn: Brooke Navarre; Pamela Landman  
Telephone No.: 516.472.6620  
Email: [bnavarre@theharborside.org](mailto:bnavarre@theharborside.org)  
[plandman@amsterdamcares.org](mailto:plandman@amsterdamcares.org)

*with copies to:*

DLA Piper LLP (US)  
200 South Biscayne Boulevard, Suite 2500  
Miami, Florida 33131  
Attn: Rachel Nanes  
Telephone No.: 305.423.8500  
Email: [rachel.nanes@us.dlapiper.com](mailto:rachel.nanes@us.dlapiper.com)

DLA Piper LLP (US)  
1900 North Pearl Street, Suite 2200  
Dallas, Texas 75201  
Attn: James Muenker  
Telephone No.: 214.743.4559  
E-mail: [james.muenker@us.dlapiper.com](mailto:james.muenker@us.dlapiper.com)

DLA Piper LLP (US)  
1201 West Peachtree Street, Suite 2900  
Atlanta, GA 30309  
Attn: Jason P. Juall  
Telephone No.: 404.736.7829  
E-mail: [jason.juall@us.dlapiper.com](mailto:jason.juall@us.dlapiper.com)

If to Buyer, to:

Sr Hsg Acquisitions, LLC  
200 West Madison, Suite 2650  
Chicago, IL 60606  
Attn: Curt Schaller  
Email: [cschaller@focushp.com](mailto:cschaller@focushp.com)

*with copies to:*

Polsinelli PC  
501 Commerce Street, Suite 1300  
Nashville, TN 37203  
Attn: Bobby Guy, Stewart Day  
Email: [bguy@Polsinelli.com](mailto:bguy@Polsinelli.com); [sdlay@polsinelli.com](mailto:sdlay@polsinelli.com)

or such other address as a party may from time to time notify the other parties in writing (as provided above). Any such notice, demand or communication shall be deemed to have been given (a) if so sent by facsimile, upon receipt as evidenced by the sender's written confirmation of receipt, (b) if so mailed, as of the date delivered, (c) if emailed, when sent, or (d) if so delivered by courier, on the date received.

**Section 13.03 Entire Agreement.** This Agreement and the other Transaction Documents constitute the entire agreement and understanding between the parties with respect to the subject matter hereof and supersede any prior negotiations, agreements, understandings or arrangements between the parties hereto with respect to the subject matter hereof.

**Section 13.04 Binding Effect; Benefits.** Except as otherwise provided herein, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors or permitted assigns. Except to the extent specified herein, nothing in this Agreement, express or implied, shall confer on any person other than the parties hereto and their respective successors or permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

**Section 13.05 Assignment.** This Agreement may not be assigned by any party prior to Closing without the written consent of the other party, which consent may be given or withheld in each such party's sole and absolute discretion, except that Buyer may assign this Agreement and its rights and obligations hereunder without the consent of, and upon written notice to, Seller (a) to an Affiliate of Buyer, (b) to a partnership in which Buyer or any Affiliate of Buyer is a general partner or (c) a limited liability company in which Buyer or any Affiliate of Buyer is a manager or managing member (collectively, "Buyer's Permitted Assignees"). Upon an assignment by Buyer of its rights under the Agreement in accordance with this Section 13.05, Buyer's Permitted Assignee(s) shall be deemed to be the Buyer hereunder and shall be the beneficiary of all of Seller's warranties, representations and covenants in favor of Buyer under this Agreement. Seller expressly acknowledges Buyer's Permitted Assignees may constitute more than one (1) entity.

**Section 13.06 Amendments and Waivers; Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver.**

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of New York applicable hereto.

(b) Without limitation of 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, Actions or Proceedings which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the Contemplated Transactions and (ii) any and all Claims, Actions or Proceedings relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Claim, Action or Proceeding; *provided, however*, that, if the Bankruptcy Case is closed, all Claims, Actions or Proceedings arising out of or relating to this Agreement shall be heard and determined in a New York state court or a federal court sitting in New York, New York, and the parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Claim, Action or Proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Action or Proceeding.

(c) **EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR ANY OTHER AGREEMENT CONTEMPLATED HERETO AND THERETO OR THE CONTEMPLATED TRANSACTIONS OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

**Section 13.07 Amendments; Waivers.** No term or provision of this Agreement may be amended, waived, discharged or terminated orally, except by an instrument in writing signed by Buyer and Seller with respect to any provision contained herein. Any waiver shall be effective only in accordance with its express terms and conditions.

**Section 13.08 Severability.** Any provision of this Agreement which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof, and any such unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Applicable Law, the parties hereto hereby waive any provision of Applicable Law now or hereafter in effect which renders any provision hereof unenforceable in any respect.

**Section 13.09 Counterparts.** This Agreement may be executed and accepted in one or more counterparts for the convenience of the parties, each of which will be deemed an original and

all of which, taken together, shall constitute one and the same instrument. Delivery of a counterpart hereof via facsimile transmission or by electronic mail transmission shall be as effective as delivery of a manually executed counterpart hereof.

**Section 13.10 References.** All references in this Agreement to Articles and Sections are to Articles and Sections contained in this Agreement unless a different document is expressly specified.

**Section 13.11 Disclosure Schedules; Schedules; Exhibits.** All Disclosure Schedules and Exhibits referred to herein form an integral part of this Agreement and shall be deemed to be part of this Agreement to the same extent as if set forth in the text of this Agreement. Nothing in any Schedule shall be deemed adequate to disclose an exception to a representation or warranty made herein unless the applicable Schedule identifies the representation to which it relates with reasonable particularity and describes the relevant facts in reasonable detail. All statements contained in certificates and other instruments attached hereto or delivered or furnished on behalf of any party hereto shall be deemed representations and warranties of that party pursuant to this Agreement.

**Section 13.12 Each Party to Bear Own Costs and Fees.** Buyer and Seller shall each pay their respective attorneys' fees and expenses and any broker commissions due to any broker engaged by such party respectively, incurred in connection with the negotiation and consummation of this Agreement and the other Transaction Documents. For the avoidance of doubt, Buyer shall be solely responsible for all costs relating to the Survey, the Title Commitment and any title insurance policy and endorsements thereto obtained by Buyer.

**Section 13.13 Limited Liability.** No past, present, or future member, partner, shareholder, director, officer or employee of any party to this Agreement shall have any Liability of any nature whatsoever in connection with or under this Agreement or any Transaction Document contemplated hereby or in connection with the Contemplated Transactions.

**Section 13.14 Survival of Defined Terms.** Where this Agreement provides that a term or provision shall survive the Closing or the expiration or earlier termination of this Agreement, any defined terms contained in Article I that are used in such surviving term or provision shall also survive the Closing or the expiration or earlier termination of this Agreement.

**Section 13.15 No Third-Party Beneficiary.** The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Buyer and Seller and their permitted assignees only and are not for the benefit of any third party; and, accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

**Section 13.16 No Recourse.** Notwithstanding anything to the contrary that may be expressed or implied in this Agreement or any Transaction Document, each of Buyer and Seller acknowledges and agrees that no recourse under this Agreement or any Transaction Document shall be had against any of Buyer and any of its Affiliates, and each of their respective former, current and future direct or indirect Representatives, financing sources, management companies, partners, members, equity holders, controlling or controlled persons, successors and assigns (each,


a “Buyer Related Party”) or Seller or any of its Affiliates, or any of its former, current and future direct or indirect Representatives, financing sources, management companies, partners, members, equity holders, controlling or controlled persons, successors or assigns of any of the foregoing (each, a “Seller Related Party”), whether by the enforcement of any assessment or by any legal or equitable proceeding, or by or through theories of agency, control, instrumentality, alter ego, domination, single business enterprise, piercing the veil, undercapitalization, or any other attempt to avoid or disregard the entity form of any Person not a contracting party hereto or thereto, or by virtue of any Applicable Law, it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any Buyer Related Party or Seller Related Party, as such, for any obligations of such Person under this Agreement or any Transaction Document for any claim based on, in respect of or by reason of such obligation or their creation.

**(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.)**

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed as of the Execution Date.

**SELLER:**

**AMSTERDAM HOUSE CONTINUING CARE  
RETIREMENT COMMUNITY, INC.**

Signed by:   
By: \_\_\_\_\_  
Name: Brooke Navarre  
Title: President and Chief Executive Officer

**BUYER:**

**SR HSG ACQUISITIONS, LLC**

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



IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed as of the Execution Date.

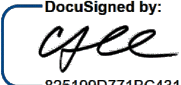
**SELLER:**

**AMSTERDAM HOUSE CONTINUING CARE  
RETIREMENT COMMUNITY, INC.**

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

**BUYER:**

**SR HSG ACQUISITIONS, LLC**

By:  \_\_\_\_\_  
Name: Curt Schaller  
Title: Authorized Signatory

**EXHIBIT C**

Declaration of David Kliewer

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

In re:

AMSTERDAM HOUSE CONTINUING CARE  
RETIREMENT COMMUNITY, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 23-70989 (AST)

**DECLARATION OF DAVID KLIEWER IN SUPPORT OF THE DEBTOR’S MOTION  
FOR ENTRY OF AN ORDER (I) APPROVING THE ASSET PURCHASE  
AGREEMENT BETWEEN THE DEBTOR AND SR HSG ACQUISITIONS, LLC;  
(II) AUTHORIZING THE PRIVATE SALE OF SUBSTANTIALLY ALL OF THE  
DEBTOR’S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND  
ENCUMBRANCES, EXCEPT FOR CERTAIN PERMITTED LIENS AND ASSUMED  
LIABILITIES; (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN  
CONNECTION THEREWITH; AND (IV) GRANTING RELATED RELIEF**

Pursuant to 28 U.S.C. § 1746, I, David Kliewer, do hereby declare, under penalty of perjury, the following to the best of my information, knowledge, and belief:

1. I am the Co-Head of Continuum Advisors LLC (“Continuum”), the Debtor’s real estate broker. I submit this declaration in support of the *Debtor’s Motion for Entry of an Order (I) Approving the Asset Purchase Agreement Between the Debtor and Sr Hsg Acquisitions, LLC; (II) Authorizing the Private Sale of Substantially All of the Debtor’s Assets Free and Clear of Liens, Claims, Interests and Encumbrances, Except for Certain Permitted Liens and Assumed Liabilities; (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith; and (IV) Granting Related Relief* (the “Private Sale Motion”), filed herewith.<sup>2</sup>

<sup>1</sup> The last four digits of the Debtor’s federal tax identification number are 1764. The Debtor’s mailing address is 300 East Overlook, Port Washington, New York 11050.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Private Sale Motion.

2. This declaration supplements the *Declaration of David Kliewer in Support of the Debtor's Bid Procedures Motion and DIP Financing Motion* [Dkt. No. 108] (the "Bid Procedures Declaration"), the *Declaration of David Kliewer in Support of the Debtor's Motion for Entry of Orders (I) Approving Bidding Procedures, (II) Authorizing the Debtor to Designate a Stalking Horse Bidder, (III) Approving Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (IV) Authorizing (A) the Sale of the Debtor's Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, and (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (V) Approving the Forms of Notices Related to the Sale, and (VI) Granting Related Relief* [Dkt. No. 467] (the "Sale Declaration") and the *Rebuttal Declaration of David Kliewer in Support of the Debtor's Motion for Entry of Orders (I) Approving Bidding Procedures, (II) Authorizing the Debtor to Designate a Stalking Horse Bidder, (III) Approving Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (IV) Authorizing (A) the Sale of the Debtor's Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, and (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (V) Approving the Forms of Notices Related to the Sale, and (VI) Granting Related Relief* [Dkt. No. 479] (the "Rebuttal Declaration," and together with the Bid Procedures Declaration and the Sale Declaration, the "Declarations"), previously submitted in this case and incorporated herein by reference.

3. Except as otherwise indicated, all statements set forth in this declaration are based upon my personal knowledge, my discussions with members of the Debtor's management team and advisors, my review of relevant documents and information, or my opinions based upon my experience and knowledge. If called as a witness, I could and would testify competently to the

statements set forth in this declaration. I am authorized to submit this declaration on behalf of the Debtor.

**Professional Background and Experience**

4. Since 2001, I have focused exclusively on the sale of senior housing communities across the country. Prior to forming Continuum, I served as Vice President and co-lead of the Senior Housing and Investment Sales Group at Grandbridge Real Estate Capital LLC (“Grandbridge”) for three years. Prior to that, I served as Senior Director and Senior Analyst in the Senior Housing Capital Markets segment for nearly 19 years at Cushman and Wakefield or its predecessors. I graduated in 2001 with a degree in finance from the University of Florida.

5. My practice focuses on the sale of senior housing communities across the United States. In particular, I specialize in the marketing and sale of independent living, assisted living and memory care communities, as well as continuing care retirement communities (“CCRCs”). Our team has sold over 200 senior housing communities nationwide. With respect to the sale of CCRCs, our team is recognized within the senior housing industry as a national leader, having sold 16 CCRCs within the past five years alone and over 30 in total. In my role as Co-Head of Continuum, my responsibilities include marketing to investors, financial underwriting and sale negotiations. I have broad experience in highly complex transactional work.

6. Our team has over 20 years of experience in the sale of distressed senior housing transactions involving defaulted bond debt, with sales effectuated through bankruptcy, trust instruction proceedings, and receiverships. Recent examples of our team’s defaulted bond sales include: (i) The Arlington of Naples, a 298-unit CCRC located in Naples, Florida, (ii) Merrill Gardens at ChampionGate, a 223-unit rental senior housing community located near Orlando, Florida, (iii) Vista Grande Villa, a 318-unit CCRC located in Jackson, Michigan, (iv) Hillside

Village, a 222-unit CCRC located in Keene, New Hampshire, (v) The Barrington, a 267-unit CCRC located in Carmel, Indiana, and (vi) Friendship Village, a CCRC comprising 646 units and 169 nursing beds located in Schaumburg, Illinois.

7. In September 2022, the Debtor retained Grandbridge to conduct a robust marketing process for the sale of the Debtor's CCRC known as The Harborside. I have led this engagement and was personally involved in all aspects of the Debtor's prepetition and postpetition marketing process, auction, proposed sale to LCS Real Estate LLC ("LCS") and the proposed private sale (the "Sale") to Sr Hsg Acquisitions, LLC (the "Buyer") described below.

**A. The Debtor's Marketing and Sale Efforts**

8. As discussed extensively in my previously filed Declarations, The Harborside has been extensively marketed before and throughout this chapter 11 case. While at Grandbridge, I oversaw the prepetition and postpetition distribution of marketing materials to over 4,400 interested parties, including non-profit and for-profit prospective buyers located in New York and across the country. Those efforts led nearly 100 potential purchasers to execute non-disclosure agreements and gain access to the Debtor's diligence materials. In the initial months of the Debtor's chapter 11 case, Grandbridge and the Debtor's other advisors facilitated the diligence process by arranging (i) property tours of The Harborside; (ii) telephone conferences with the Bond Trustee's counsel; (iii) telephone conferences with the New York Department of Health and Department of Financial Services; and (iv) meetings with the Resident Advisory Committee of The Harborside and the Committee.

9. I designed the postpetition marketing process to solicit interest from a variety of potential bidders. I was very proactive with potential purchasers to ensure they were aware that any form of offer was encouraged, including bids for an entrance fee model, rental model, a hybrid

model, a condominium model, or any creative approach. I regularly engaged in discussions with prospective purchasers regarding potential bid structures and diligence questions. I believe that this emphasis on various types of offers was essential to the proposed transaction presented today through the Private Sale Motion.

10. As described in detail in my Sale Declaration and Rebuttal Declaration, I assisted the Debtor in its evaluation and selection of LCS as the stalking horse bidder and worked extensively with other qualified bidders in preparation for and throughout the competitive auction that was held in September and October 2023. At the conclusion of the auction process, I considered the proposed sale to LCS to be a proper exercise of the Debtor's business judgment.

11. Following the New York Department of Health's October 2024 letter indicating that LCS' change of ownership applications were deemed abandoned and withdrawn and the related termination of the LCS sale transaction, Continuum worked closely with the Debtor and its advisors to identify potential purchasers of The Harborside. As a result of the previous marketing efforts, Continuum was able to conduct a targeted canvassing of potentially interested bidders and solicited bids from those parties. The sale of The Harborside was also the subject of various trade, local and national publications.

12. Within weeks of Continuum's renewed efforts, five (5) parties submitted non-binding term sheets to acquire substantially all of the Debtor's assets (the "Term Sheets"). The Term Sheets were shared with the Consultation Parties.

13. In light of (i) Continuum's extensive, nationwide marketing efforts, (ii) discussions between the Debtor and its advisors with numerous prospective purchasers, (iii) a robust diligence process, (iv) the Debtor's competitive prior auction, and (v) the time and expense that would be

required to conduct a second auction, I believe that the Debtor's determination to pursue a private sale of The Harborside is reasonable and a sound exercise of its business judgment.

**B. The Private Sale Process**

14. In consultation with the Consultation Parties and with the advice of Continuum, the Debtor evaluated the Term Sheets and identified the Buyer and another bidder as the top bidders (the "Top Bidders"). Thereafter, Continuum, together with the Debtor's senior management and counsel, commenced discussions with representatives of the Top Bidders, including telephone calls, in-person meetings and on-site surveys of The Harborside.

15. In addition, Continuum worked with the Debtor, with input from the Consultation Parties, to establish a dual track process (the "Dual Track Process") that would (i) allow the Top Bidders to conduct due diligence simultaneously, (ii) establish certain conditions and deadlines to be met by the Top Bidders in connection with their proposed transactions, and (iii) establish the conditions by which the Debtor would select one of the Top Bidders as the successful bidder with the support of the Consultation Parties. Throughout this time, the Debtor and its advisors, including Continuum, engaged in arm's length and good faith negotiations to materially improve the terms of the Top Bidders' proposed bids.

16. At the status conference held on December 11, 2024 at 11:00 a.m., a deadline of December 12, 2024 at 11:00 a.m. was established for the Top Bidders to submit final term sheets. The other Top Bidder did not submit a final term sheet by the deadline, thereby precluding the Dual Track Process. As a result, the transaction with the Buyer became the clear highest and best transaction under consideration.

17. On December 12, 2024, the Debtor entered into a non-binding term sheet with the Buyer for the sale of substantially all of the Debtor's assets. On December 23, 2024, the Court



entered the *Stipulation and Agreed Order Approving (I) Debtor's Entry into Letter of Intent, (II) Setting Hearing to Approve Sale and Related Deadlines, and (III) Granting Related Relief* [Dkt. No. 929] that, among other things, set certain deadlines related to the Debtor's sale process.

18. On January 22, 2025, the Debtor and the Buyer entered into that certain Asset Purchase Agreement, a copy of which is attached as Exhibit B to the Private Sale Motion (together with any schedules, exhibits and any other documents or instruments related thereto, and as modified, amended or supplemented from time to time, the "APA").

19. I understand that the Debtor has exhausted the postpetition funding provided by the Member at the beginning of this case and the additional contribution provided by the Member following the termination of the LCS transaction and that the Debtor will rely on additional postpetition financing from UMB Bank, N.A. to fund operations through the closing of the Sale. Accordingly, I believe that there is only a limited window of opportunity for the Debtor to achieve approval and consummation of the Sale. Further, given (i) the Debtor does not have sufficient liquidity to fund a second auction process, (ii) the Debtor has not received any comparable offer to the Buyer transaction, and (iii) the Consultation Parties have indicated their support for a private sale process, I believe it is unlikely that an auction or any alternative sale would result in greater economic value for the Debtor's estate or net recovery to the Debtor's creditors.

20. I am familiar with the Buyer and its affiliates based on my experience in the marketing and sales of senior living communities. I understand that the Buyer has more than 25 years of experience in senior living and the financial capability to close on the Sale. Additionally, the Buyer has experience converting distressed CCRCs into a multiple-resident dwelling specifically designed for use and occupancy by senior citizens. Further, based on my dealings with the Buyer throughout negotiations and the sale process, I believe that the Buyer has acted in

good faith, and the Sale will produce the greatest economic value for the Debtor's estate under these unique circumstances.

**C. The Asset Purchase Agreement**

21. Based on my review of the APA, I believe that the proposed transaction includes terms most favorable to the Debtor under the circumstances and is the highest and best offer that the Debtor will receive.

22. The transaction with the Buyer is different from the previously approved transaction with LCS due to the Buyer's desire to implement a senior rental community business model and close on the transaction without the attendant risks, delay and challenges of a change of ownership regulatory approval process. As a result, it is a condition of the APA that The Harborside close its health center, which is comprised of a residential health care facility with fifty-six (56) skilled nursing beds, an assisted living residence with twenty-six (26) enriched housing units, and enhanced and special needs assisted living residences with eighteen (18) memory support beds (collectively, the "Health Center"). Although this will require some of The Harborside's residents to relocate, based on the extensive marketing and sale process that has been conducted in this case, combined with the Debtor's current liquidity constraints and time necessary to complete a regulatory approval process, I do not believe that there is any viable, mutually-supported alternative transaction available to the Debtor that would preserve the Health Center. However, current independent living residents will be offered rental agreements that provide for a monthly rent amount equal to the amount of the monthly service fees listed in the residency agreements of such residents as of December 18, 2024, which is lower than the prevailing market rate for similar independent living communities in the area. The rental agreements will also be

subject to an annual increase of no greater than five percent (5%). I believe this is beneficial to independent living residents who choose to remain at the facility.

23. It is my view that the Sale represents the highest and best offer available to the Debtor under the circumstances and that entry into the APA and consummation of the Sale is a proper exercise of the Debtor's business judgment.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: January 27, 2025

/s/ David Kliwer  
David Kliwer

**EXHIBIT D**

Gap Period Cure Amounts

Ref.	Contract Description <sup>1</sup>	Contract Counterparty	Gap Period Cure Amount
1.	Services Agreement, effective March 25, 2020, by and between A Devebeduttis Corp and Amsterdam House CCRC.	A Devebeduttis Corp	\$-
2.	Services Agreement, effective October 31, 2012, by and between AccessRN of NY LLC and Amsterdam House CCRC.	AccessRN of NY LLC	-
3.	Services Agreement, effective April 9, 2020, by and between Accushield LLC and Amsterdam House CCRC.	Accushield LLC	-
4.	Administrative Services Agreement, effective December 17, 2015, by and between ADP LLC and Amsterdam House CCRC.	ADP LLC	-
5.	Services Agreement, effective January 11, 2011, by and between Airgas Inc and Amsterdam House CCRC.	Airgas Inc	-
6.	Services Agreement, effective December 17, 2010, by and between Allscripts Healthcare Solutions and Amsterdam House CCRC.	Allscripts Healthcare Solutions	-
7.	Services Agreement, effective September 1, 2017, by and between Altice USA and Amsterdam House CCRC.	Altice USA	-
8.	Independent Contractor Agreement, effective October 2, 2021, by and between Anzalone, Michael and Amsterdam House CCRC.	Anzalone, Michael	-
9.	Commercial Natural Gas Sales Agreement, effective January 24, 2023, by and between Approved Energy II LLC and Amsterdam House CCRC.	Approved Energy II LLC	-
10.	Services Agreement, effective February 17, 2015, by and between Arrow Linen Supply Company Inc and Amsterdam House CCRC.	Arrow Linen Supply Company Inc	-
11.	Services Agreement, effective October 5, 2021, by and between Assa Abloy Entrance Systems Us Inc and Amsterdam House CCRC.	Assa Abloy Entrance Systems Us Inc	-
12.	Independent Contractor Agreement, effective November 12, 2015, by and between Bernasconi, Lisa and Amsterdam House CCRC.	Bernasconi, Lisa	-
13.	Services Agreement, effective September 28, 2017, by and between Cablevision Lightpath Nj LLC and Amsterdam House CCRC.	Cablevision Lightpath Nj LLC	-
14.	Software Services Agreement, effective June 23, 2017, by and between Caretech Group and Amsterdam House CCRC.	Caretech Group	-
15.	Services Agreement, effective July 19, 2010, by and between Carr Business Systems and Amsterdam House CCRC.	Carr Business Systems	-
16.	Services Agreement, effective July 1, 2010, by and between Casey Fire Systems Inc and Amsterdam House CCRC.	Casey Fire Systems Inc	-
17.	Software Services Agreement, effective November 6, 2015, by and between Cbord Group Inc and Amsterdam House CCRC.	Cbord Group Inc	-
18.	Rental Services Agreement, effective July 13, 2010, by and between Cintas Corporation and Amsterdam House CCRC.	Cintas Corporation	-
19.	Software Services Agreement, effective January 17, 2022, by and between CodeTwo Sp Zoo Sp K and Amsterdam House CCRC.	CodeTwo Sp Zoo Sp K	-
20.	Services Agreement, effective January 1, 2020, by and between EB Employee Solutions LLC and Amsterdam House CCRC.	EB Employee Solutions LLC	-
21.	Rental Services Agreement, effective September 20, 2019, by and between Ecolab Inc and Amsterdam House CCRC.	Ecolab Inc	-
22.	Services Agreement, effective August 29, 2016, by and between Elite Parking & Hospitality Corp and Amsterdam House CCRC.	Elite Parking & Hospitality Corp	-
23.	Participating Skilled Nursing Facility Agreement, effective January 1, 2020, by and between Empire Healthchoice Assurance Inc and Amsterdam House CCRC.	Empire Healthchoice Assurance Inc	-
24.	Services Agreement, effective November 10, 2022, by and between Envirobusiness Inc and Amsterdam House CCRC.	Envirobusiness Inc	-
25.	Financial Services Agreement, effective October 22, 2022, by and between GMSC New York LLC and Amsterdam House CCRC.	GMSC New York LLC	-
26.	Services Agreement, effective January 4, 2023, by and between Grease Pro and Amsterdam House CCRC.	Grease Pro	-
27.	Maintenance Agreement, effective July 1, 2017, by and between Greenan Business Products Inc and Amsterdam House CCRC.	Greenan Business Products Inc	-
28.	Lease Agreement, effective July 9, 1905, by and between Greenan Business Products Inc and Amsterdam	Greenan Business Products Inc	-
29.	Services Agreement, effective August 1, 2017, by and between Grossman, Martin, MD and Amsterdam House CCRC.	Grossman, Martin, MD	-
30.	Services Agreement, effective August 3, 2017, by and between Hall-Alston, Jane M and Amsterdam House CCRC.	House Hall-Alston, Jane M	-
31.	Reciprocal Construction Operations & Easement Agreement, effective October 5, 1998, by and between and WJ Harbor Ridge, LLC.	Harbor Ridge Associates, LP	-
32.	Services Agreement, effective January 1, 2015, by and between Harbor View At Port Washington Home Owner'S Assoc Inc and Amsterdam House CCRC.	Harbor View At Port Washington Home Owner'S Assoc Inc	-
33.	Services Agreement, effective January 21, 2020, by and between Iron Mountain Info Management LLC and Amsterdam House CCRC.	Iron Mountain Info Management LLC	-
34.	Services Agreement, effective March 1, 2021, by and between Jan-Pro Of Greater NY and Amsterdam House CCRC.	Jan-Pro Of Greater NY	-
35.	Pharmacy Products and Services Agreement, effective January 1, 2017, by and between L I Script LLC and Amsterdam House CCRC.	L I Script LLC	-
36.	Employee Benefits Agreement, effective November 19, 2012, by and between Lincoln Financial Group and Amsterdam House CCRC.	Lincoln Financial Group	-
37.	Services Agreement, effective May 5, 2022, by and between Manhattan Allied Network Corp and Amsterdam House CCRC.	Manhattan Allied Network Corp	-
38.	Software Services Agreement, effective November 22, 2021, by and between Matrixcare Inc and Amsterdam House CCRC.	Matrixcare Inc	-
39.	Services Agreement, effective July 1, 2019, by and between Medford Compounding & Specialty Pharmacy LLC and Amsterdam House CCRC.	Medford Compounding & Specialty Pharmacy LLC	-
40.	Professional Services Agreement, effective January 6, 2022, by and between Med-Net Compliance LLC and Amsterdam House CCRC.	Med-Net Compliance LLC	-
41.	Consulting Agreement, effective June 10, 2022, by and between Mkad Consulting LLC and Amsterdam House CCRC.	Mkad Consulting LLC	-
42.	Services Agreement, effective July 25, 2022, by and between Mmsoft Design Ltd and Amsterdam House CCRC.	Mmsoft Design Ltd	-
43.	License Agreement, effective November 10, 2022, by and between Motion Picture Licensing Corporation and Amsterdam House CCRC.	Motion Picture Licensing Corporation	-
44.	Storage and Services Agreement, effective March 11, 2020, by and between National Archives Inc and Amsterdam House CCRC.	National Archives Inc	-
45.	Services Agreement, effective September 21, 2022, by and between National Auditing Services & Consulting LLC and Amsterdam House CCRC.	National Auditing Services & Consulting LLC	-
46.	Services Agreement, effective September 10, 2013, by and between National Waste Services LLC and Amsterdam House CCRC.	National Waste Services LLC	-
47.	Services Agreement, effective October 15, 2012, by and between Nationalgrid and Amsterdam House CCRC.	Nationalgrid	-
48.	Subscription Agreement, effective April 15, 2022, by and between Network For Good Inc and Amsterdam House CCRC.	Network For Good Inc	-
49.	Automated Teller Machine License Agreement, effective February 15, 2011, by and between New York Community Bank and Amsterdam House CCRC.	New York Community Bank	-
50.	Services Agreement, effective January 12, 2017, by and between OCS Chemical Engineering Co and Amsterdam House CCRC.	OCS Chemical Engineering Co	-
51.	Services Agreement between Optimum and Amsterdam House CCRC.	Optimum	-

<sup>1</sup> The inclusion of a contract or lease in this notice is not a guarantee that such contract or lease will ultimately be assumed and assigned. The Debtor reserves the right to modify or supplement this list.

52.	Maintenance Agreement, effective July 14, 2011, by and between Otis Elevator Company and Amsterdam House CCRC.	Otis Elevator Company	-
53.	Services Agreement, effective August 3, 2015, by and between Patient Care Associates Inc and Amsterdam House CCRC.	Patient Care Associates Inc	-
54.	Services Agreement, effective March 10, 2020, by and between Pest Maxx Environmental Service and Amsterdam House CCRC.	Pest Maxx Environmental Service	-
55.	Services Agreement, effective November 30, 2020, by and between Primepay LLC and Amsterdam House CCRC.	Primepay LLC	-
56.	Healthcare Staffing Agreement, effective January 3, 2017, by and between Promed Staffing Resources and Amsterdam House CCRC.	Promed Staffing Resources	-
57.	Services Agreement, effective May 17, 2022, by and between Solutions Advisors and Amsterdam House CCRC.	Solutions Advisors	-
58.	Healthcare Staffing Agreement, effective December 23, 2021, by and between RN Express Staffing Registry LLC and Amsterdam House CCRC.	RN Express Staffing Registry LLC	-
59.	Consultant Pharmacist Agreement, effective December 10, 2010, by and between Pharmquest and Amsterdam House CCRC.	Pharmquest	-
60.	Services Agreement, effective September 1, 2017, by and between Showtime Networks Inc and Amsterdam House CCRC.	Showtime Networks Inc	-
61.	Services Agreement, effective February 17, 2023, by and between Sodexo Operations LLC and Amsterdam House CCRC.	Sodexo Operations LLC	-
62.	Services Agreement, effective August 3, 2015, by and between Sonographic Imaging Inc and Amsterdam House CCRC.	Sonographic Imaging Inc	-
63.	Managed Account Services Agreement, effective November 19, 2013, by and between Stadion Money Management Inc and Amsterdam House CCRC.	Stadion Money Management Inc	-
64.	Services Agreement, effective September 22, 2022, by and between Stat Inspection Corp and Amsterdam House CCRC.	Stat Inspection Corp	-
65.	Services Agreement, effective September 20, 2021, by and between Summit Heating & Air Conditioning Inc and Amsterdam House CCRC.	Summit Heating & Air Conditioning Inc	-
66.	Maintenance Agreement, effective August 7, 2022, by and between Superior Communications Inc and Amsterdam House CCRC.	Superior Communications Inc	-
67.	Services Agreement between Techclean Industries Ltd and Amsterdam House CCRC.	Techclean Industries Ltd	-
68.	Services Agreement, effective January 12, 2021, by and between Trane Us Inc and Amsterdam House CCRC.	Trane Us Inc	-
69.	Services Agreement, effective July 30, 2021, by and between Unifirst Corporation and Amsterdam House CCRC.	Unifirst Corporation	-
70.	Staffing Contract Agreement, effective September 20, 2018, by and between Inc and United Staffing Registry Inc Amsterdam House CCRC.	United Staffing Registry Inc	-
71.	Textile Rental Agreement, effective November 4, 2015, by and between Unitex Textile Rental Services LLC and Amsterdam House CCRC.	Unitex Textile Rental Services LLC	-
72.	Professional Services Agreement, effective February 1, 2022, by and between Universal Protection Service LP and Amsterdam House CCRC.	Universal Protection Service LP	-
73.	Insurance Agreement, effective January 31, 2014, by and between Unum Life Insurance Co and Amsterdam House CCRC.	Unum Life Insurance Co	-
74.	Services Agreement, effective November 1, 2012, by and between Utility Expense Reduction Energy Services LLC and Amsterdam House CCRC.	Utility Expense Reduction Energy Services LLC	-
75.	Services Agreement between Verizon Enterprises Solutions and Amsterdam House CCRC.	Verizon Enterprises Solutions	-
76.	Services Agreement, effective March 3, 2016, by and between Voicefriend LLC and Amsterdam House CCRC.	Voicefriend LLC	-
77.	Services Agreement, effective May 17, 2018, by and between Xerox Financial Services LLC and Amsterdam House CCRC.	Xerox Financial Services LLC	-
78.	Agreement for Hospice Care to Skilled Nursing Facility Residents between Metropolitan Jewish Home Care, Inc., d/b/a MJHS Hospice and Palliative Care of Greater New York and Amsterdam House Continuing Care Retirement Community, Inc., d/b/a The Amsterdam at Harborside.	MJHS Hospice	-
79.	Ancillary Provider Agreement, effective August 1, 2014, between UnitedHealthcare of New York, Inc., Oxford Health Plans (NY), Inc. and UnitedHealthcare Insurance Company and Amsterdam House Continuing	UnitedHealthcare of New York	-
80.	Services Agreement, effective September 2, 2015, by and between Hospice of New York, LLC and The Amsterdam at Harborside.	Hospice of New York	-
81.	Services Agreement, effective July 6, 2015, by and between New York State Catholic Health Plan, Inc., doing business as Fidelis Care New York and Amsterdam House Continuing Care Retirement Community, Inc.	Fidelis Care New York	-
82.	Payment in Lieu of Taxes Agreement, effective as of December 1, 2007, by and between Nassau County Industrial Development Agency and Amsterdam House Continuing Care Retirement Community Inc.	Nassau County Industrial Development Agency	-
Total – Gap Period Cure Amounts			\$0.00