

Pleadings Relating to CareCorps Management Company, LLC, et al., Case No. 08-11728

Table of Contents

MOTION TO APPROVE SALE OF ASSETS FREE AND CLEAR OF
LIENS, CLAIMS AND INTERESTS and ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS
(Opelika Facility)

Exhibit A: ASSET PURCHASE AGREEMENT

ORDER AND NOTICE OF SALE HEARING
(Opelika Facility)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

In re:)	
)	
CARECORPS MANAGEMENT)	Case No. 08-11728 DWH
COMPANY, LLC, <i>et al.</i> ¹)	Chapter 11
)	Jointly Administered
Debtors.)	
)	

**MOTION TO APPROVE SALE OF ASSETS FREE AND CLEAR OF
LIENS, CLAIMS AND INTERESTS and ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS (Opelika Facility)**

COME NOW CareCorps Management Company, *et al.*, the debtors and debtors-in-possession (collectively, the “**Debtors**”) in these jointly administered reorganization proceedings, and file their *Motion to Approve Sale of Assets Free and Clear of Liens, Claims and Interests and Assumption and Assignment of Executory Contracts (Opelika Facility)* (the “**Sale Motion**”) pursuant to §§ 105, 363 and 365 of the Bankruptcy Code and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure. In support of this Sale Motion, the Debtors show as follows:

Introduction

1. On May 1, 2008 (the “**Petition Date**”), the Debtors filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

2. An official committee of unsecured creditors (the “**Committee**”) was appointed on May 28, 2008. No request for appointment of a trustee or examiner has been made herein.

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2)(N) and (O).

4. All capitalized terms herein shall have the meaning ascribed thereto in the Asset Purchase Agreement (as hereinafter defined) unless otherwise defined in this Motion. Furthermore, reference is made to the Asset Purchase Agreement as controlling with regard to all terms of the proposed transactions.

Background of Proposed Sale

5. Debtor Care Center of Opelika, Inc. (“**Seller**”) owns and operates a 225 bed skilled nursing facility in Opelika, Lee County, Alabama.

6. The Debtors have determined that, in order to effect a reorganization of their businesses and to maximize the value returned to Seller’s estate, it is in the best interests of the estates to sell substantially all of Seller’s business assets. Together with other planned strategic transactions taken or to be taken in these cases, the Debtors seek in this transaction to also reduce ongoing operating and administrative costs and reduce further the secured debt obligations of the estates.

7. Furthermore, the Debtors believe that sale of Seller’s assets yields the highest and best value and return to all constituencies given the market value of this facility.

¹ The Debtors are the following: Care Center of Aberdeen, Ltd.; Pillars of Aberdeen, LLC; Care Center of Louisville, Ltd.; Pillars of Louisville, LLC; Care Center of Laurel, Ltd; Pillars of Laurel, Ltd.; Clinton Care Center, LLC; Care Center of Opelika, Inc.; Red Bay Care Center, Inc.; Vernon Care Center, Inc.; AirCorps Travel and Transportation, LLC; CareCorps Management Corporation; CareCorps Management Company, LLC.

8. The Debtors have spent a significant amount of time and resources attempting to market and close a sale with several parties they believed to be potential transaction partners. With the agreement of the Committee and Regions Bank, the Debtors recently engaged Marcus & Millichap as brokers to expedite and assist in these efforts. As a result of these joint efforts, the Debtors have concluded that the transaction described below provides the highest and best value for Seller's estate and should be closed.

Terms of Sale

9. Seller has entered into an Asset Purchase Agreement dated February 9, 2009 (the "**Asset Purchase Agreement**") with Porter Properties, Inc. (the "**Buyer**"). A true and correct copy of the Asset Purchase Agreement is attached hereto as **Exhibit "A"** and incorporated herein by reference (Schedules and Exhibits not attached).

10. Pursuant to the Asset Purchase Agreement, Seller intends to sell substantially all of its business assets pursuant to § 363 of the Bankruptcy Code, to assume and assign certain executory contracts pursuant to § 365 of the Bankruptcy Code in connection with this transaction (the "**Executory Contracts**"), along with assignment of other rights and assumption by the Buyer of certain liabilities, all of which are collectively and more particularly identified and defined as the "**Transferred Assets**" in the Asset Purchase Agreement.

11. Seller has agreed to sell to Buyer the Transferred Assets, on the terms and conditions set forth in the Asset Purchase Agreement, for a Purchase Price of \$6,000,000, subject to adjustments for customary pro rations and costs at Closing (the "**Sale**"). Buyer has placed/is transferring its Earnest Money deposit in the amount of \$100,000 to be held by the Earnest Money Escrow Agent.

12. Seller is party to a secured credit facility obtained prior to the Petition Date from Regions Bank (the “**Regions Pre-Petition Loan**”) under numerous loan and security documents more particularly described in Orders previously entered herein and found at Docket Nos. 31, 127, and 253 governing the Debtors’ use of Regions Bank’s cash collateral. Pursuant to the liens granted under Regions Pre-Petition Loan and as provided in the aforementioned Orders, and due to the cross-collateralization of some or all of the collateral securing these loans, Regions Bank’s interests encumber some or all of the Transferred Assets.

13. Upon Closing of the Sale, the liens and security interests of Regions Bank, as well those of any others asserting any rights in or to the Transferred Assets, will transfer and attach to the proceeds received by Seller with the same validity, extent and priority as they existed prior to Closing, thereby adequately protecting all parties’ interests in the Transferred Assets. Regions Bank’s liens and security interests shall be subject to the reserved right of the Committee to challenge as provided in prior Orders of the Court. Nothing in this Sale Motion is intended to affect the validity, priority or extent of any party’s liens or security interests in the Transferred Assets.

14. Marcus & Millichap is entitled, under the terms of its approved retention, to a commission equal to 1% of the gross Sale price, which amount will be paid at Closing from the net proceeds received from Buyer.

15. All proceeds, net of adjustments and payment of the broker’s commission, shall be held by Seller in an interest bearing, debtor-in-possession escrow account at Regions Bank pending further order of the Court unless otherwise agreed by and among the Debtors, the Committee and Regions Bank.

16. The proposed Sale permits the remaining Debtors to continue operating their remaining businesses, preserves the enterprise value of those entities and mitigates any further potential losses to Seller's estate. This Sale also places the Debtors one step closer to being able to exit from bankruptcy.

17. Therefore, the proposed Sale is in the best interests of all interested parties, and the bases for the Sale are consistent with § 363 and the sale of assets outside of a Chapter 11 plan of reorganization.

Sale Meets Requirements of § 363

18. The Bankruptcy Code provides under § 363 for the sale of assets outside the ordinary course of business when the decision to do so is based on sound business judgment and is made in good faith. The Fifth Circuit declared in *In re Continental Airlines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986), that “to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.” *See also In re Condere Corporation*, 228 B.R. 615, 628-30 (Bankr. S.D. Miss. 1998). This analysis is done on a case-by-case basis. *Continental Airlines*, 780 F.2d at 1226.

19. As stated above, the Debtors have exercised sound business judgment in determining to sell Seller's assets. Due to economic and financial conditions that presently exist and have existed for some time, the Debtors believe that the highest and best return to Seller's estate is realized by Sale of the Transferred Assets. The Sale will provide increased operating efficiency and improve cash flows, and the transaction will further the Debtors' ability to turn their attention to the remaining matters necessary to exit.

20. The Sale is to be free and clear of all liens, claims, encumbrances and interests, as provided by § 363(f) and the Asset Purchase Agreement. The proposed Sale will be free and clear of Regions Bank's liens and security interests, and Regions Bank has consented to the Sale. To the extent that other parties assert liens against any of the Transferred Assets, the Debtors submit that the requirements of § 363(f) are met with respect thereto.

21. The Sale does not constitute a *sub rosa* plan of reorganization and is therefore not a transaction prohibited by the Bankruptcy Code. See *In re Braniff Airways, Inc.*, 700 F.2d 935, 939-40 (5th Cir. 1983); *Continental Airlines* at 1227-28. The contemplated transactions neither alter nor restructure the rights of creditors nor do they predetermine their rights under a future plan. *Id.* To the contrary, the transactions contemplated in the Asset Purchase Agreement constitute the mere liquidation of assets.

22. The terms of the Asset Purchase Agreement were negotiated between Seller and Buyer at arm's length, without collusion and in good faith as called for under § 363(m).

23. The Sale process was conducted in good faith, and the Debtors submit that a Sale consummated in accordance therewith will have been conducted in good faith. The Debtors marketed Seller's assets extensively and conducted extensive negotiations with numerous potential purchasers, with the Buyer ultimately proving to have made what the Debtors, the Committee and Regions Bank all believe to be the highest and best offer. Thus, Buyer and Seller are entitled to the protections of § 363(m).

Assumption and Assignment of Executory Contracts

24. To fully effectuate the transactions proposed in the Asset Purchase Agreement, it is necessary for Seller to likewise transfer its rights under the Executory Contracts to Buyer. The Debtors are thus requesting that the Court approve their assumption and assignment to Buyer of

the Assumed Contracts related to the transfer of the Transferred Assets as specified in the Asset Purchase Agreement.

25. Under § 365, a debtor generally has the power, subject to court approval, to assume or reject executory contracts to which it is a party. In judging the propriety of a debtor's decision to reject an executory contract, most courts, including the Fifth Circuit, have applied a "business judgment" standard. *See Sharon Steel Corp. v. National Fuel Gas Distrib. Corp. (In re: Sharon Steel Corp.)*, 872 F.2d 36, 39-40 (3rd Cir. 1989); *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (describing business judgment test as "traditional").

26. Assumption and assignment of the Executory Contracts specified in the Asset Purchase Agreement are a necessary component of the Sale, provide substantial benefit to both parties to the transaction and are justified as an integral part of the Sale of the Transferred Assets. The Executory Contracts are comprised only of the necessary regulatory licenses and agreements essential to the operation of certificated long term care facilities and are specifically identified in the Asset Purchase Agreement.

27. As provided in the Asset Purchase Agreement, the only amounts classified as Cure Amounts are those liabilities owed by Seller under its Medicare/Medicaid provider agreement. These liabilities are included in the Assumed Liabilities and will be cured by a Purchase Price adjustment (reduction) at Closing, with Buyer having agreed to promptly satisfy said liability post-Closing.

28. Seller submits that the foregoing constitutes adequate assurance of future performance but will provide at the Sale Hearing any further proof required to meet their burden in this regard.

Conclusion

29. The Sale is in the best interests of Seller's estate and all creditors, enhances the Debtors' ability to successfully reorganize and preserves value for all constituencies. Furthermore, the Sale to Buyer will have been duly conducted in a fair and reasonable fashion after careful consideration and deliberation. Accordingly, the transactions proposed in the Asset Purchase Agreement comport with all legal requirements of the Bankruptcy Code and Rules and should therefore be approved.

30. If any third parties remain interested in making offers for the purchase of Seller's assets that are higher and better than that of Buyer, any such third party shall provide the terms of its offer to undersigned counsel for the Debtors prior to the final date and time for filing objections to the Sale Motion. If necessary, an auction between or among parties making such offers will be held at the Sale Hearing. If a higher and better offer is accepted by the Debtors, then the Debtor will seek approval at the Sale Hearing of such higher and better offer.

WHEREFORE, the Debtors request that the Court enter an Order approving the Sale to the Buyer and grant such other relief as is just and appropriate.

THIS the 9th day of February, 2009.

Respectfully submitted,

**CARECORPS MANAGEMENT
COMPANY, LLC, et al.**

By: /s/ Douglas C. Noble

James W. O'Mara, MS Bar No. 3929
Douglas C. Noble, MS Bar No. 10526
Christopher R. Maddux, MS Bar No. 100501
PHELPS DUNBAR LLP
111 East Capitol • Suite 600

Jackson, Mississippi 39201
Post Office Box 23066
Jackson, Mississippi 39225-3066
Telephone: (601) 352-2300
Facsimile: (601) 360-9777
www.phelpsdunbar.com

CERTIFICATE OF SERVICE

I do hereby certify that the foregoing pleading was filed electronically through the Court's ECF system and that the same was served electronically on all parties enlisted to receive service electronically and separately served by email on the following:

Sammye S. Tharp
Trial Attorney, Office of the U.S. Trustee
Sammye.S.Tharp@usdoj.gov

Office of the U.S. Trustee
USTPRegion05.AB.ECF@usdoj.gov

Timothy M. Lupinacci
BAKER DONELSON
tlupinacci@bakerdonelson.com

R. Spencer Clift, III
BAKER DONELSON
sclift@bakerdonelson.com

Derek F. Meek
BURR & FORMAN
dmeek@burr.com

Stephen W. Rosenblatt
BUTLER SNOW
steve.rosenblatt@butlersnow.com

Susan Dominick Doughton
SDD@dfy.com

SO CERTIFIED, this the 9th day of February, 2009.

/s/ Douglas C. Noble

Exhibit A

ASSET PURCHASE AGREEMENT

by and among

CARE CENTER OF OPELIKA, INC.

as Debtor-in-Possession,

as Seller,

and

PORTER PROPERTIES, INC.

as Buyer

February 9, 2009

SECTION 1.	DEFINITIONS.....	1
SECTION 2.	PURCHASE OF TRANSFERRED ASSETS AND ASSUMPTION OF LIABILITIES	10
2.1	Transferred Assets	10
2.2	Liabilities	11
2.3	Excluded Assets	11
SECTION 3.	ESCROW ACCOUNT AND PURCHASE PRICE.....	12
3.1	Escrow Account and Title Agent.....	12
3.2	The Purchase Price and Allocation.....	13
3.3	Prorations as of the Closing Date.....	13
SECTION 4.	CLOSING	14
4.1	Closing Date.....	14
4.2	Closing Deliveries.....	14
SECTION 5.	SELLER’S REPRESENTATIONS AND WARRANTIES	16
5.1	Authorization for Agreement and Consent	16
5.2	Organization of Seller	16
5.3	Consents and Approvals	16
5.4	No Violations	17
5.5	No Default.....	18
5.6	Real Property	18
5.7	Title to Tangible Property	18
5.8	Permits and Environmental Permits.....	18
5.9	Litigation.....	19
5.10	Finder’s Fee	19
5.11	Financial Statements	19
5.12	Legal Compliance	19
5.13	Environmental.....	19
5.14	Taxes	20
5.15	Employee Matters	20
5.16	Intellectual Property.....	21
5.17	Contracts and Cure Amounts	21
5.18	No Changes; Conduct of Business.....	22
5.19	Compliance with Health Care Laws and Regulations	22
5.20	Residents	23
5.21	Full Disclosure	23
5.22	Insurance	23
SECTION 6.	REPRESENTATIONS AND WARRANTIES OF BUYER.....	24
6.1	Authorization for Agreement and Consents	24
6.2	Organization.....	24
6.3	No Violation.....	24

6.4	Finder's Fees	24
6.5	No Litigation	24
6.6	No Financing Contingency	24
6.7	Informed Purchaser	24
SECTION 7. COVENANTS		25
7.1	Seller's Chapter 11 Bankruptcy Cases	25
7.2	Access	25
7.3	HSR Act	26
7.4	Consents	26
7.5	Conduct of the Business Pending Closing	26
7.6	Public Announcements	27
7.7	Financial Statements	27
7.8	Seller's Employees	27
7.9	Additional Agreements	29
7.10	Preservation of Copies of Certain Records	29
7.11	Final Cost Reports	30
7.12	Existing Residents	30
SECTION 8. TAX MATTERS		30
8.1	Sales and Transfer Taxes	30
8.2	Cooperation on Tax Matters	30
SECTION 9. CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS		31
9.1	Representations and Warranties True	31
9.2	Compliance with Agreement	31
9.3	Bankruptcy Court Approval	31
9.4	HSR Act	31
9.5	No Order	31
9.6	Consents and Approvals	31
9.7	No Material Adverse Effect	32
9.8	No Casualty Loss	32
9.9	Notices	32
9.10	Regulatory Status	32
SECTION 10. CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS		32
10.1	Representations and Warranties True	32
10.2	Compliance with Agreement	32
10.3	HSR Act	32
10.4	No Order	32
10.5	Bankruptcy Court Approval	33
SECTION 11. POST CLOSING		33
11.1	Further Assurances	33
11.2	Books and Records; Personnel	33

SECTION 12.	INTENTIONALLY OMITTED	34
SECTION 13.	TERMINATION AND REMEDIES	34
13.1	Termination.....	34
13.2	Expense Reimbursements	35
13.3	Remedies.....	35
13.4	Effect of Termination.....	36
SECTION 14.	MISCELLANEOUS	36
14.1	Expenses	36
14.2	Inform of Litigation	36
14.3	Assignment	36
14.4	Governing Law	37
14.5	Amendment and Modification	37
14.6	Notices	37
14.7	Entire Agreement.....	38
14.8	Successors	38
14.9	Counterparts.....	38
14.10	Severability	38
14.11	Headings	38
14.12	Schedules	38
14.13	Jurisdiction.....	39
14.14	Disclosure of Tax Treatment and Structure	39

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”) is made and entered into this 9th day of February, 2009, by and between **CARE CENTER OF OPELIKA, INC.**, a Debtor-in-Possession and an Alabama corporation (the “Corporation”) (“Seller”), and **PORTER PROPERTIES, INC.**, an Alabama business corporation (“Buyer”).

WITNESSETH:

WHEREAS, Seller is currently in possession of its assets as Debtor-in-Possession pursuant to Title 11, U.S. Code, Sections 101 et seq. (the “Bankruptcy Code”), in the Chapter 11 administratively consolidated cases of Carecorps Management Company, LLC and its filing affiliates, Joint Case No. 08-11728 (the “Bankruptcy Cases”), presently pending in the United States Bankruptcy Court for the Northern District of Mississippi (the “Bankruptcy Court”), which Bankruptcy Cases include Case No. 08-11723 for Seller, and Seller, upon proper approval and authorization from the Bankruptcy Court, may sell and assign assets outside of the ordinary course of business;

WHEREAS, Seller is engaged in the business of operating a skilled nursing facility on, in and with the Transferred Assets (the “Business”);

WHEREAS, Seller desires to sell, assign, transfer and convey to Buyer, directly or indirectly, the Transferred Assets (as defined below), all upon the terms and conditions set forth herein and in accordance with the Final Sale Order and Sections 105, 363 and 365 of the Bankruptcy Code; and

NOW, THEREFORE, in consideration of the foregoing premises and the respective representations, warranties, covenants and agreements contained herein, the parties hereto agree as follows:

SECTION 1. DEFINITIONS.

The following terms used in this Agreement shall have the following meanings:

“**Accounts Receivable**” means all of the accounts receivable or trade receivables arising in connection with the operation of the Business.

“**Action**” has the meaning assigned to that term in Section 9.5 of this Agreement.

“**Agreement**” has the meaning assigned to that term in the introduction to this Agreement.

“**Affiliate**” or “**Affiliates**” with respect to any specified Person means a Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such specified Person. For this definition, “control” (and its derivatives) means the possession, directly or indirectly, of 10% or more of the Equity Interests of a Person, or the power, directly or indirectly, to vote 10% or more of the voting Equity Interests of a Person.

“**Assumed Contracts**” means all rights under the contracts or agreements which are set forth on **Disclosure Schedule, Section 5.17**.

“**Assumed Employment Liabilities**” has the meaning assigned to that term in Section 7.8(c) of this Agreement.

“**Assumed Liabilities**” has the meaning assigned to that term in Section 2.2(a) of this Agreement.

“**Audited Statements**” has the meaning assigned to that term in Section 5.11 of this Agreement.

“**Bankruptcy Cases**” has the meaning assigned to that term in the first recital of this Agreement.

“**Bankruptcy Code**” has the meaning assigned to that term in the first recital of this Agreement.

“**Bankruptcy Court**” has the meaning assigned to that term in the first recital of this Agreement.

“**Bed Tax**” means all taxes, assessments and similar obligations attributable to the patient beds licensed for use in the Business.

“**Business**” has the meaning assigned to that term in the second recital of this Agreement.

“**Business Day**” means any day that is not a Saturday, Sunday or other day on which banking institutions in Birmingham, Alabama are authorized or required by law to be closed.

“**Buyer**” has the meaning assigned to that term in the introduction to this Agreement.

“**Buyer’s 401(k) Plan**” has the meaning assigned to that term in Section 7.8(d) of this Agreement.

“**Buyer’s Proration Amount**” has the meaning assigned to that term in Section 3.3(a) of this Agreement.

“**Casualty Loss**” means any loss, damage, or reduction in value of the Transferred Assets which occurs on or before the Closing Date as a result of acts of God, fire, explosion, earthquake, windstorm, flood, drought, blowout, or other natural or manmade occurrence, excluding changes in market conditions, in an amount of \$1,500,000 or greater, without regard to any insurance proceeds relating to such Casualty Loss.

“**Closing**” means the closing of the transactions contemplated by this Agreement.

“**Closing Date**” has the meaning assigned to that term in Section 4.1 of this Agreement.

“**Closing Time**” has the meaning assigned to that term in Section 4.1 of this Agreement.

“**COBRA Liabilities**” has the meaning assigned to that term in Section 7.8(e) of this Agreement.

“**Code**” means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

“**Confidential Information**” has the meaning assigned to that term in Section 7.2 of this Agreement.

“**Confidentiality Agreement**” means that certain Confidentiality Agreement, executed in 2008, between Seller and Mark Traylor, on or about August 28, 2008.

“**Cure Amounts**” means all payments required to be made in order to effectuate, pursuant to the Bankruptcy Code, the assumption and assignment of the Executory Contracts included in the Transferred Assets assumed by Seller and assigned to Buyer hereunder pursuant to Section 365 of the Bankruptcy Code.

“**Damages**” means losses, costs, claims, strict liability claims, actions, suits, Proceedings, demands, damages, natural resource damages, punitive damages, debts, liabilities, obligations, judgments, fines, penalties, amounts paid in settlement, interest, Taxes and expenses (including reasonable attorneys’ and consultants’ fees, court costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing).

“**Destruction Notice**” has the meaning assigned to that term in Section 11.2 of this Agreement.

“**Disclosure Schedule**” means the exhibit attached hereto as **Schedule 5** and made a part hereof containing the various exceptions to the representations, warranties and covenants of Seller in this Agreement.

“**Earnest Money**” has the meaning assigned to that term in Section 3.1 of this Agreement.

“**Earnest Money Escrow Account**” has the meaning assigned to that term in Section 3.1 of this Agreement.

“**Earnest Money Escrow Agent**” has the meaning assigned to that term in Section 3.1 of this Agreement.

“**Earnest Money Escrow Agreement**” has the meaning assigned to that term in Section 3.1 of this Agreement.

“**Effective Time**” has the meaning assigned to that term in Section 4.1 of this Agreement.

“**Employees**” has the meaning assigned to that term in Section 5.15 of this Agreement.

“**Encumbrances**” means any lien, mortgage, deed of trust, deed to secure debt, pledge, restriction on transfer, proxy and voting or other agreement, claim, charge, security interest,

easement, right of way, encroachment, servitude, right of first offer, right of first refusal, preemptive right or similar restriction.

“Environmental Condition” means any condition existing on or at the Transferred Assets which constitutes (a) a Release on, at, or from such property of any Hazardous Materials, including any migration into or through the soil, groundwater, surface water or environment of any pollution or Hazardous Materials, which would reasonably be expected to result in liability under Environmental Laws, or (b) a violation of any Environmental Laws or any Environmental Permits.

“Environmental Laws” means all federal, state and local laws pertaining to the environment or natural resources including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), the Emergency Planning and Community Right to Know Act and the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act of 1976, the Hazardous and Solid Waste Amendments Act of 1984, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Safe Drinking Water Act, the Oil Pollution Act of 1990, the Hazardous Materials Transportation Act and the Migratory Bird Treaty Act, as each of the foregoing may be amended and in effect on or prior to the Closing Date, together with all regulations issued or promulgated thereunder.

“Environmental Permits” has the meaning assigned to that term in Section 5.13(a) of this Agreement.

“Environmental Reports” means all Phase I or Phase II environmental site assessments prepared by third party agents of Seller since January 1, 2008 with respect to the environmental condition of the Transferred Assets.

“Equity Interests” means (a) with respect to a corporation, as determined under the laws of the jurisdiction of organization of such entity, shares of capital stock; and (b) with respect to a partnership, limited liability company, trust or other entity, as determined under the laws of the jurisdiction of organization of such entity, units, interests, or other partnership or limited liability company interests.

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

“Excluded Assets” has the meaning assigned to that term in Section 2.3 of this Agreement.

“Excluded Liabilities” means all liabilities of Seller other than Assumed Liabilities, including, without limitation, any liability under Title IV of ERISA with respect to any employee benefit plan (as defined in Section 3(3) of ERISA) of the Seller or any member of the Seller’s “controlled group” (as defined under Section 4001(a)(14) of ERISA) covered by Title IV of ERISA, or any benefit payments to any participant covered under such plan(s).

“Excluded Records” is defined within the definition of Records in this Section 1.

“**Executory Contracts**” means those executory contracts and unexpired leases which are included in the Assumed Contracts.

“**Expense Termination Provisions**” has the meaning assigned to that term in Section 13.2(b) of this Agreement.

“**Final Sale Order**” means the Sale Order entered by the Bankruptcy Court (a) that is not reversed, stayed, enjoined, set aside, annulled, or suspended within the deadline, if any, provided by applicable statute or regulation, and (b) as to which the deadlines, if any, for filing any request, motion, petition, application, appeal or notice relating to the Sale Order, and for the entry by any regulatory authority of orders staying, reconsidering, or reviewing on its own motion the Sale Order, have expired without any such request, petition, motion, application, appeal or notice having been filed; *provided, however*, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Code, may be filed with respect to such order shall not prevent such order from being considered a Final Sale Order.

“**Financial Statements**” has the meaning assigned to that term in Section 5.11 of this Agreement.

“**GAAP**” has the meaning assigned to that term in Section 5.11 of this Agreement.

“**Government Reimbursement Program**” has the meaning assigned to that term in Section 5.13(a) of this Agreement.

“**Governmental Authority**” means any (a) federal, state, local, municipal, or other government (including any governmental agency, branch, department, official, or entity and any court or other tribunal); or (b) body entitled to exercise any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature, in each of the foregoing cases having jurisdiction over a Seller, Buyer, the Transferred Assets or the Business.

“**Hazardous Materials**” means any chemicals, materials or substances defined as “hazardous waste”, “hazardous substance”, “hazardous constituent”, “extremely hazardous substance”, “toxic chemical”, “hazardous material”, “hazardous chemical”, “toxic pollutant”, “contaminant”, “chemical”, “chemical substance”, “hazardous air pollutant”, “pollutant”, “pesticide”, “toxic” or “asbestos”, as such terms are defined in any of the Environmental Laws, and related substances, petroleum and fractions thereof, and all other substances which may be declared in any Environmental Law to constitute a material threat to human health or to the environment.

“**HIPAA**” has the meaning assigned to that term in Section 5.19(d) of this Agreement.

“**HSR Act**” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“**Identified Site**” has the meaning assigned to that term in Section 5.13(a) of this Agreement.

“Intellectual Property” shall mean all patents, and any reissues, extensions, divisions, continuations and continuations-in-part; statutory or common law copyrights; statutory or common law trademarks and service marks, trade dress, tradenames, logos and slogans, and the goodwill relating thereto; design rights; trade secrets; confidential information; inventions (whether patentable or not); Software; all data and information; ideas; developments; drawings; specifications; bills of material; processes; formulae; supplier lists; customer lists; marketing information; sales and promotional materials; business plans; and all registrations and applications for any of the foregoing, in each case owned or licensed by a Seller and used in the Business.

“Inventory” means all materials, supplies, parts and work-in-process, in each case that is owned by a Seller and used in connection with the Business.

“Knowledge” means with respect to Buyer, the actual knowledge after due inquiry of Mark Traylor and Howard Porter, and with respect to Seller, the actual knowledge after due inquiry of the following: John Jamison, Eric Melton, Aundrea Fuller.

“Legal Requirement” means any order, constitution, law, ordinance, regulation, statute, code or treaty issued by any Governmental Authority, including an arbitration panel, any principle of common law or judicial or administrative interpretation thereof.

“Licensed Intellectual Property” means the Intellectual Property used by a Seller in connection with or related to the Business with respect to which the rights being exercised by such Seller have been licensed from another Person.

“Material Adverse Effect” means any change or effect that is material and adverse to (a) the Transferred Assets or the Business, (b) the assets, properties, results of operations, or condition (financial or otherwise) of Seller, taken as a whole or (b) the ability of Seller to consummate the transactions contemplated by this Agreement; *provided, however*, that none of the following shall be deemed in themselves, either alone or in combination, to constitute, and none of the following shall be taken into account in determining whether there has been, a Material Adverse Effect: any adverse change or effect attributable to, resulting from or relating to (i) this Agreement or the announcement or pendency of the transactions contemplated by this Agreement; (ii) conditions affecting the industry in which Seller participate, the United States economy as a whole or the markets in which Seller operate; or (iii) compliance with the terms of, or the taking of any action required by, this Agreement. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event does not in and of itself have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then existing events would result in a Material Adverse Effect.

“Medicare” has the meaning assigned to that term in Section 5.13(a) of this Agreement.

“Organizational Documents” means the articles of incorporation, bylaws, operating agreement, limited liability company agreement, partnership agreement, board resolutions, and other similar documents, instruments or certificates executed, adopted, or filed in connection with the creation, formation, or organization of a Person, including any amendments thereto.

“Owned Real Property” has the meaning assigned to that term in Section 5.6(a) of this Agreement.

“Permits” means any license, permit, consent, approval, franchise, certificate of inspection or authority, variance, authorization or order, or any waiver of the foregoing, issued by a Governmental Authority and used or held for use in relation to the Business, other than the Environmental Permits.

“Person” means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities.

“Proceeding” means any action, arbitration, audit, claim, inspection, notice, review, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, investigative, or informal), at law or in equity, commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

“Property Taxes” means all ad valorem taxes, real property taxes, personal property taxes and similar obligations attributable to the Transferred Assets.

“Purchase Price” has the meaning assigned to that term in Section 3.2(a) of this Agreement.

“Real Property” has the meaning assigned to that term in Section 5.6(a) of this Agreement.

“Records” means Seller’s books and records, in any form or media, relating to the Business (including all digital records), wherever located, and specifically including (i) all prescription records, medical records and patient lists and files relating to the medical care of residents, inclusive of information concerning residents, payors and referral sources, and (ii) all computer records, books of account, audit records, documents (including all personnel records and compliance program documents and materials) and related information relating to, or used by Seller in connection with, the Transferred Assets or the operation of the Business; but specifically excluding (x) any of Seller’s, or their Affiliates’, business plans, strategies and financial records to the extent that such plans, strategies and records address or reflect activities outside of the Business; (y) any of a Seller’s, or their Affiliates’, company minute books or records, Tax Returns or other materials which do not pertain to the Business and (z) any such information that is covered by the attorney-client privilege (such books and records described in clauses (x), (y) and (z), the **“Excluded Records”**).

“Release” or **“Released”** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, migrating or disposing (including, but not limited to, the abandoning or discarding of barrels, containers and other closed receptacles containing any Hazardous Material) into the environment, including but not limited to the movement or continued movement through or in the air, soil, surface water, ground water or property.

“**Required Consents**” has the meaning assigned to that term in Section 7.4 of this Agreement.

“**Sale Motion**” has the meaning assigned to that term in Section 7.1(a) of this Agreement.

“**Sale Order**” means an order or orders of the Bankruptcy Court, approving the transaction contemplated hereby, in form and content reasonably satisfactory to Buyers.

“**Scheduled Contracts**” has the meaning assigned to that term in Section 5.17 of this Agreement.

“**Seller**” has the meaning assigned to that term in the introduction to this Agreement.

“**Seller’s 401(k) Plan**” has the meaning assigned to that term in Section 5.15(b) of this Agreement.

“**Seller’s Proration Amount**” has the meaning assigned to that term in Section 3.3(a) of this Agreement.

“**Software**” means individually each, and collectively all, of the computer programs, including interfaces and any embedded software programs or applications, owned or licensed by a Seller, including as to each program, the processes and routines used in the processing of data, the object code, source code (as to third party source code, when rights to the source code may be obtained), tapes, disks, and all improvements, modifications, enhancements, versions and releases relating thereto.

“**Supplemental Financial Statements**” has the meaning assigned to that term in Section 7.7 of this Agreement.

“**Tax**” and “**Taxes**” means, with respect to any Person, any federal, state or local income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code Sec. 59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value-added, ad valorem, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not, for which such Person may be liable.

“**Tax Returns**” means all returns, declarations, reports, claims for refund and information returns and statements of any Person required to be filed with respect to, or in respect of, any Taxes, including any schedule or attachment thereto and any amendment thereof.

“**Third Party Claim**” has the meaning assigned to that term in Section 12.3 of this Agreement.

“**Threatened**” means as follows: a claim, Proceeding, dispute, action, or other matter will be deemed to have been “Threatened” if any demand or statement has been made (in writing) or any notice has been received (in writing).

“**Transfer Taxes**” has the meaning assigned to that term in Section 8.1 of this Agreement.

“**Transferred Assets**” means the Real Property and any and all assets and rights of Seller which are located on the Real Property or held for use in the Business of Seller including the following assets of Seller (*provided that* the Transferred Assets shall not in any event include Excluded Assets):

- (a) Intellectual Property;
- (b) Real Property;
- (c) all furniture, fixtures, equipment, machinery, rolling stock and spare parts used in the Business;
- (d) all inventory and supplies used in the Business;
- (e) Assumed Contracts;
- (f) all Permits, to the extent transfer is permitted under applicable law;
- (g) all Environmental Permits, to the extent transfer is permitted under applicable law;
- (h) all goodwill relating to the Business;
- (i) all Records;
- (j) to the extent transferable, all approval, licenses, rights, consents, waivers, certificates, authorizations and accreditations related to the Business, including, without limitation, the Seller’s Medicare and Medicaid provider numbers utilized by Seller in connection with the Business, granted by accreditation organizations and any Governmental Authority;
- (k) all (i) express or implied warranties related to the Transferred Assets, to the extent transferable; (ii) resident trust funds, security deposits, prepaid expenses and other similar deposits; and (iii) prepayments and similar items; and
- (l) all Resident Trust Funds.

“**Transferred Employees**” has the meaning assigned to that term in Section 7.8(a) of this Agreement.

“**WARN Act**” means the Worker Adjustment and Retaining Notification Act, as amended.

Unless the context of this Agreement otherwise requires, (a) words of any gender are deemed to include the other gender; (b) words using the singular or plural number also include

the plural or singular number, respectively; (c) the terms “hereof,” “herein,” “hereby,” “hereto,” and derivative or similar words refer to this entire Agreement; (d) the terms “Article” or “Section” refer to the specified Article or Section of this Agreement; (e) the term “including” and other forms of such term, with respect to any matter or thing, means “including but not limited to” such matter or thing; and (f) all references to “dollars” or “\$” refer to currency of the United States.

SECTION 2. PURCHASE OF TRANSFERRED ASSETS AND ASSUMPTION OF LIABILITIES.

2.1 Transferred Assets. Subject to the terms and conditions hereof, and subject to the representations and warranties made herein, on the Closing Date, Seller will sell, assign, transfer and convey to Buyer all of its right, title and interest in and to the Transferred Assets free and clear of all Encumbrances other than Permitted Encumbrances, in accordance with the Final Sale Order and Sections 105, 363 and 365 of the Bankruptcy Code.

“AS IS” TRANSACTION. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN AND/OR IN THE CASE OF THE TITLE OF THE OWNED REAL PROPERTY AS DESCRIBED IN THE STATUTORY WARRANTY DEEDS CONTEMPLATED BY SECTION 4.2(a)(ii), SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE TRANSFERRED ASSETS OR ANY OTHER MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, INCOME TO BE DERIVED OR EXPENSES TO BE INCURRED IN CONNECTION WITH THE TRANSFERRED ASSETS, THE PHYSICAL CONDITION OF ANY PART OF THE TRANSFERRED ASSETS, THE ENVIRONMENTAL CONDITIONS OR OTHER MATTERS RELATING TO THE PHYSICAL CONDITION OF ANY REAL OR PERSONAL PROPERTY OR OTHER ASSETS OWNED OR LEASED BY A SELLER, , THE VALUE OF THE TRANSFERRED ASSETS, THE VALIDITY OR ENFORCEABILITY OF ANY LIABILITIES OF A SELLER, THE MERCHANTABILITY OR FITNESS OF THE PERSONAL PROPERTY OR ANY OTHER ASSETS OWNED OR LEASED BY A SELLER FOR ANY PARTICULAR PURPOSE, OR ANY OTHER MATTER OR THING RELATING TO THE TRANSFERRED ASSETS, OR ANY PORTION THEREOF. WITHOUT IN ANY WAY LIMITING THE FOREGOING, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, SELLER HEREBY DISCLAIM ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE TRANSFERRED ASSETS. BUYER FURTHER ACKNOWLEDGES THAT, AS OF THE CLOSING, BUYER SHALL HAVE CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF THE TRANSFERRED ASSETS AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING SUCH ASSETS AS BUYER DEEMED NECESSARY OR APPROPRIATE AND THAT IN PROCEEDING WITH ITS ACQUISITION OF THE TRANSFERRED ASSETS, EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH HEREIN, BUYER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS. ACCORDINGLY, EXCEPT AS OTHERWISE EXPRESSLY

PROVIDED HEREIN, BUYER WILL ACCEPT THE APPLICABLE TRANSFERRED ASSETS AT THE CLOSING “AS IS,” “WHERE IS,” AND “WITH ALL FAULTS.” NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION SHALL BE CONSTRUED TO DISCLAIM, NEGATE, MODIFY OR AMEND ANY OF SELLER’S WARRANTIES AS CONTAINED IN THIS AGREEMENT OR IN ANY AGREEMENT EXECUTED IN CONNECTION HEREWITH.

2.2 Liabilities.

(a) Subject to the terms and conditions of this Agreement, if the Closing occurs, Buyer shall, on and after the Effective Time, assume, pay, perform or discharge in accordance with their terms solely the following obligations and liabilities, to the extent such obligations and liabilities are those of Seller and relate to the Transferred Assets (the “Assumed Liabilities”): (i) the obligations of a Seller under the Assumed Contracts that arise on or after the Effective Time, relate to periods following the Effective Time and are to be observed, paid, discharged, or performed, as the case may be, at any time on and after the Effective Time; (ii) all liabilities and obligations of Seller occurring, arising out of or related to the ownership and operation of the Business and the Transferred Assets by Buyer on and after the Effective Time; and (iii) all liabilities and obligations of Seller to the extent included in Seller’s Proration Amount.

(b) Notwithstanding anything to the contrary contained herein, Buyer shall not assume, or in any way be liable or responsible for, and the Assumed Liabilities shall not include, any Excluded Liabilities, or any obligations and liabilities of Seller or its Affiliates (whether accrued or contingent or due or not due) which are not specifically assumed herein and included in the definition of Assumed Liabilities set forth in subparagraph (1) above, and any such obligations and liabilities shall be and remain the obligations and liabilities of Seller (or their Affiliates) to pay and/or discharge.

(c) In the event Seller requests that Buyer assume any contract other than the Assumed Contracts, Buyer may, but shall not be obligated to, elect to assume such contract within ten (10) days following the date on which Seller makes such request and provide Buyer with a copy of such contract. In the event Buyer notifies Seller in writing that Buyer elects to assume such contract, such contract shall be added to **Disclosure Schedule, Section 5.17**, and shall be deemed an Assumed Contract for all purposes under this Agreement. In the event Buyer does not deliver a written notice of election to Seller within such ten (10) day period, such contract shall not be an Assumed Contract and shall not be assigned to such Buyer hereunder.

2.3 Excluded Assets. The Transferred Assets shall not include the following assets of a Seller (collectively, the “Excluded Assets”), which Excluded Assets shall be retained by such Seller and shall not transfer to Buyers with the ownership of the Transferred Assets:

(a) any refunds for Taxes paid by a Seller prior to the Closing Date; *provided that* Buyer shall be entitled to its pro rata share of any refunds attributable to any periods ending after the Closing Date with respect to which Buyer has paid Taxes;

(b) the Excluded Records;

(c) Seller's rights under this Agreement and under any contract or agreement to which a Seller is a party that is not an Assumed Contract;

(d) all claims, causes of action, choses in action, rights of recovery and rights of recoupment or set-off of any kind against any Person solely arising out of or relating to the Excluded Assets;

(e) all cash and cash equivalents, including, without limitation, bank accounts or certificates of deposit;

(f) the assets listed on **Disclosure Schedule, Section 2.3**; and

(g) Accounts Receivable.

SECTION 3. ESCROW ACCOUNT AND PURCHASE PRICE.

3.1 Escrow Account and Title Agent.

(a) Upon execution of this Agreement, Buyer shall establish with Land Title Insurance Company (the "Earnest Money Escrow Agent"), an interest-bearing joint order escrow account (the "Earnest Money Escrow Account") and, within one business day after the date of this Agreement, Buyer shall deposit with the Earnest Money Escrow Agent an amount in cash equal to \$100,000 (the "Earnest Money"), which Earnest Money shall be held pursuant to an escrow agreement in the form agreed to by the parties and the Title Agent (the "Earnest Money Escrow Agreement"). Interest accruing on the Earnest Money shall become part of the Earnest Money for all purposes under this Agreement. If Closing does occur, then Buyer and Seller shall cause the Earnest Money Escrow Agent to release the Earnest Money to Seller by wire transfer of immediately available funds to such account(s) as Seller shall designate in writing, which Earnest Money will thereupon be applied toward the cash portion of the Purchase Price. If Closing does not occur, the Earnest Money shall be released as set forth in Section 13.3 of this Agreement.

(b) Buyer shall cause Copeland, Franco, Screws & Gill, P.A. as agent for First American Insurance Company ("Title Agent") to issue and deliver to Buyer within ten (10) days from the execution of this Agreement, an A.L.T.A. title commitment ("**Title Commitment**") for the Owned Real Property in favor of Buyer accompanied by one copy of all documents affecting the Owned Real Property which constitute exceptions to the Title Commitment. In the event that the condition of title is not acceptable to Buyer, Buyer shall state such by written notice to Seller given within two (2) days from receipt thereof ("Title Notice"). Within two (2) days from Seller's receipt of such Title Notice, Seller shall notify Buyer in writing whether it will endeavor to eliminate or modify all unacceptable matters to the reasonable satisfaction of Buyer. If Seller declines to cure Buyer's objection as described in the Title Notice, Buyer may choose to waive any objection to title and accept title to the Owned Real Property subject to any such exceptions previously objected to by Buyer by giving Seller written notice. In the event Buyer does not waive an objection set forth in the Title Notice and if Seller is unwilling or unable, upon exercise of due diligence, to eliminate the matters reasonably and timely objected to by Buyer, then Buyer may, at its option and upon written notice to Seller as its exclusive remedy, (i) accept title subject to the objections raised by Buyer, in which event said objection(s) shall be deemed waived for all

purposes, or (ii) terminate this Agreement. Buyer will negotiate in good faith with Seller regarding the objection to title before exercising its option to terminate this Agreement.

3.2 The Purchase Price and Allocation.

(a) Subject to the terms and conditions of this Agreement, as consideration for the purchase of the Transferred Assets and Buyer's assumption of the Assumed Liabilities as provided herein and in consideration for the agreements contained herein, Buyer shall pay to Seller an amount equal to (i) six million dollars (\$6,000,000) in cash at the Closing (the "Purchase Price").

(b) The Purchase Price shall be reduced by Seller's Proration Amount and shall be increased by Buyer's Proration Amount.

(c) Within thirty (30) days after the Closing Date, Seller and Buyer shall negotiate in good faith an allocation of the Purchase Price (including the amount of Assumed Liabilities to the extent required by the Code) among the Transferred Assets that complies with Section 1060 of the Code with respect to the allocation of the Purchase Price. If the allocation is not agreed upon on or before the thirtieth day after the Closing Date, then Buyer and Seller agree that the allocation shall be made and consistently reported by Buyer and Seller in compliance with Section 1060 based upon an asset valuation supplied by Self, Maples & Copeland, P.C. The cost of such asset valuation shall be shared equally by Buyer and Seller. Buyer will order such asset valuation from Self, Maples & Copeland, P.C. as soon as practicable after such date as Buyer and Seller fail to agree on such allocation. The asset valuation, if required, shall be provided to Buyer and Seller within forty-five (45) days after the date of such order. Any subsequent adjustments to the Purchase Price shall be reflected in a revised Purchase Price allocation in a manner consistent with Section 1060 and any other applicable provisions of the Code, and Buyers shall deliver any such revisions to the Purchase Price allocation to Seller promptly after such revisions are made.

3.3 Prorations as of the Closing Date.

(a) The parties agree that the following items attributable to the Transferred Assets and the Business shall be further adjustments to the Purchase Price and, where necessary, prorated as of the Closing Time pursuant to the most recent information available to Seller, with Seller to be responsible for, and to receive the benefit of, the same, but only to the extent relating to any period prior to the Effective Time (any such amount that has not been paid by Seller as of the Closing Time is referred to herein as "Seller's Proration Amount"), and the Buyers to be responsible for, and to receive the benefit of, the same after the Effective Time (any such amount that has been prepaid by Seller as of the Closing Time is referred to herein as "Buyer's Proration Amount"):

- (i) Property Taxes and assessments for the current tax year;
- (ii) water, sewer and other utility charges and similar types of charges and installments or special benefit assessments;
- (iii) electric, gas, telephone and other utility charges; and

(iv) Bed taxes for any straddle period.

(b) If the final Property Tax rates or assessed value for the current Tax year is not established as of the date of the calculation of the above proration, then such proration shall be based on the Property Tax rates or assessed value in effect for the preceding Tax year.

SECTION 4. CLOSING.

4.1 Closing Date. The Closing shall take place at 10:00 a.m., local time at the place of the Closing, on Friday, February 27, 2009 provided that all of the conditions to the obligations of the parties hereto to consummate the transactions contemplated hereby, as set forth in Section 9 and Section 10 of this Agreement have either been satisfied or waived, including but not limited to (a) Buyer's receipt of a Title Commitment satisfactory to Buyer as required by Section 3.2 hereof and (b) receipt of all approvals required of Governmental Authorities, or within two (2) Business Days after receipt of such Title Commitment or Government Approvals, as the case may be. The Closing shall take place in Lee County, Alabama at the offices of counsel to Buyer's lender, or at such other time, date and place as shall be fixed by agreement among the parties hereto (the date of the Closing being herein referred to as the "Closing Date", and the time of the Closing being herein referred to as the "Closing Time"). The Closing shall be effective for tax and accounting purposes as of 12:01 a.m., central time, on Sunday, March 1, 2009 (the "Effective Time").

4.2 Closing Deliveries. At the Closing on the Closing Date:

(a) Seller shall sell, assign, transfer and convey or cause to be sold, assigned, transferred and conveyed, the Transferred Assets to Buyer, in each case free and clear of all Encumbrances, other than Permitted Encumbrances. Such sale, assignment, transfer and conveyance shall be effected, evidenced or accompanied by delivery by Seller to Buyer of the following documents:

(i) bills of sale and assignment, duly executed by the applicable Seller to Buyer, covering all of the Transferred Assets of such Seller (other than the Owned Real Property of such Seller), in each case as contemplated by Section 4.2(d);

(ii) assumption agreements duly executed by the applicable Seller, pursuant to which the applicable Seller assigns and Buyer assumes the Assumed Liabilities of such Seller, in each case substantially in a form mutually acceptable to both Seller and Buyer;

(iii) statutory warranty deeds covering the Owned Real Property as contemplated by Section 4.2(d), duly executed by the applicable Seller to Buyer. The Owned Real Property shall be conveyed to Buyer subject only to: 1) ad valorem taxes for the current year; (2) any exceptions or encumbrances not objected or waived by Buyer pursuant to Paragraph 3.1(a) or which Buyer thereafter agrees to accept 3) the Assumed Liabilities, if any relating to the Owned Real Property; and 4) zoning, entitlement, subdivision planning and building codes and other land use laws, regulations or ordinances regulating the use, development, conservation restriction and occupancy of the Real Property (the "**Permitted Encumbrances**"). Seller shall cause all standard exceptions to be deleted at Closing including,

but not limited to, a policy of title insurance providing affirmative coverage against mechanics and materialmens liens;

(iv) a certificate from Seller dated the Closing Date and duly executed by Seller's shareholder to the effect that the conditions set forth in Section 9 have been satisfied and such additional proof as Buyer may reasonably require that such conditions have been satisfied;

(v) a certified copy of the Final Sale Order;

(vi) certificates of title to all transferred rolling stock, if any;

(vii) copies of any Required Consents, each duly executed by the applicable Governmental Authority or other applicable Person, including but not limited to change of ownership and related forms relative to Seller's Medicare and Medicaid provider numbers and the underlying agreements;

(viii) a certificate of non-foreign status of Seller which meets the requirements of Treasury Regulation Section 1.1445-2(b)(2); and

(ix) any ancillary documents reasonably required by Title Agent for Title Agent to issue an ALTA owners and mortgagee title insurance policy as described in the Title Commitment in the amount of the Purchase Price.

(b) Buyer shall accept and assume all of the right, title and interest in and to the Transferred Assets sold, assigned, transferred and conveyed to Buyer by Seller, and Buyer shall accept and assume all of the rights, obligations and duties of the Assumed Liabilities. Buyer shall deliver the following to Seller:

(i) the Purchase Price;

(ii) a certificate from Buyer dated the Closing Date and duly executed by an officer of Buyer to the effect that the conditions set forth in Section 10 have been satisfied;

(iii) bills of sale and assignment, duly executed by Buyer covering all of the Transferred Assets of the applicable Seller (other than the Owned Real Property of such Seller), in each as contemplated by Section 4.2(d);

(iv) assumption agreements duly executed by Buyer, pursuant to which Buyer assumes the Assumed Liabilities, in a form mutually acceptable to both Seller and Buyer;

(v) certificates of title to all transferred rolling stock, if any; and

(vi) any documents required by any Governmental Authority to be executed by Buyer in connection with obtaining any Required Consent, including but not limited to change of ownership and related forms relative to Seller's Medicare and Medicaid provider numbers and the underlying agreements.

(c) Funds sufficient to pay all known and outstanding Civil Monetary Penalties due to CMS with respect to the Seller's Opelika skilled nursing facility shall be escrowed in an interest-bearing account to be established at a bank approved by the Bankruptcy Court. The parties agree to work in good faith with one another to open discussions with CMS concerning the reduction of such Civil Monetary Penalties. Any balance remaining in such escrow after resolution of the matters with CMS shall be released to Seller.

(d) At the request of Buyer or Seller, Buyer and Seller agree to execute and deliver at Closing such additional bills of sale and assignment, assumption agreements and special warranty deeds in each case as shall be reasonably necessary to record title to the Transferred Assets (or any portion thereof) in the applicable filing jurisdiction or otherwise reflect the transfer of the Transferred Assets and the assumption of the Assumed Liabilities, in each case in a form mutually acceptable to both Buyer and Seller, *provided that* such bills of sale and assignment, assumption agreements and statutory warranty deeds shall be consistent with the terms and conditions of this Agreement and shall not purport to assign any rights, title or interest in assets other than the Transferred Assets or assume any liabilities other than the Assumed Liabilities.

SECTION 5. SELLER'S REPRESENTATIONS AND WARRANTIES.

Seller hereby represents and warrants to Buyer as follows (except as set forth on **Schedule 5** hereto, such schedule being referred to herein as the "Disclosure Schedule"):

5.1 Authorization for Agreement and Consent. Subject to Bankruptcy Court approval, Seller has all requisite corporate power and authority to enter into this Agreement and to sell, assign, transfer and convey the Transferred Assets to Buyer under this Agreement. The execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate actions of Seller. Subject to Bankruptcy Court approval, this Agreement constitutes, and, when executed by Seller, any documents or instruments to be executed and delivered by Seller pursuant hereto will constitute, legal, valid and binding obligations of Seller, as applicable, enforceable in accordance with their terms.

5.2 Organization of Seller.

(a) Care Center of Opelika, Inc. is duly organized as a corporation, and is validly existing and in good standing under the laws of the State of Alabama and has the corporate power and authority to own, use, and operate its properties and to carry on the Business as it is now being conducted.

(b) John W. Jamison III owns 100% of the Equity Interests in Seller. Seller does not own any Equity Interests in any other Person.

5.3 Consents and Approvals. Except for (i) the findings of two regulatory surveys currently outstanding and/or pending for the Business, including a complaint survey related to an incident which occurred on or about January 15, 2009 and the annual survey which began on February 5, 2009, which findings or final outcomes are as of the date of this Agreement inconclusive and unknown (collectively the "Pending Surveys"); (ii) approval by the Bankruptcy

Court via entry of the Sale Order, and (iii) consents, approvals, authorizations, declarations, or rulings identified on the **Disclosure Schedule, Section 5.3:**

(a) As of the date of this Agreement, to Seller's Knowledge and except as set forth on **Disclosure Schedule, Section 5.3,** it is in substantial compliance with all Legal Requirements applicable to the Transferred Assets and the Business, assets, and operations of Seller as presently conducted (including, without limitation, Legal Requirements relating to healthcare laws, antitrust, occupational safety and health, environmental protection and conservation, water or air pollution, toxic and hazardous waste and substances control, employment eligibility verification pursuant to the immigration laws, product liability, hiring, wages, hours, equal employment, employee benefit plans and programs, collective bargaining and withholding and social security Taxes, billing, claims submissions, licensing and participation in Medicare and Medicaid programs).

(b) Seller holds all Permits for use, occupancy, or operation of the Transferred Assets and the conduct of the Business as it is presently being conducted, and all such Permits shall be in full force and effect immediately prior to Closing. Except as provided in **Disclosure Schedule, Section 5.3,** no approval from, consent by, or registration, declaration, or filing with any Governmental Authority is required in connection with the execution and delivery of this Agreement by Seller or the consummation by such Seller of the transactions contemplated hereby and for the conduct of the Business in its present manner from and after Closing. Not in limitation of the generality of the foregoing:

(i) Seller is duly licensed by the State of Alabama Department of Health and is authorized to operate the skilled nursing facility in its existing facility on the Real Property. A copy of such license has been delivered to Buyer.

(ii) Seller is duly licensed by the Alabama Department of Public Health and holds a valid Certificate of Need, copies of which have been provided to Buyer.

(iii) Seller is qualified for participation in the Medicare and Medicaid programs.

5.4 No Violations. Neither the execution, delivery, or performance of this Agreement by Seller, nor the consummation by Seller of the transactions contemplated hereby, nor compliance by Seller with any of the provisions hereof will (a) conflict with or result in any breach of any provisions of the Organizational Documents of Seller; (b) result in a violation, or breach of, or constitute (with or without due notice or lapse of time) a default (or give rise to any right of termination, cancellation, vesting, payment, exercise, acceleration, suspension, or revocation) under any of the terms, conditions, or provisions of any note, bond, mortgage, deed of trust, security interest, indenture, license, contract, agreement, plan, or other instrument or obligation to which Seller is a party or by which Seller's properties or assets may be bound or affected; (c) violate any order, writ, injunction, decree, statute, rule, or regulation applicable to Seller or to Seller's properties or assets; (d) result in the creation or imposition of any Encumbrance on the Transferred Assets other than Permitted Encumbrances; or (e) cause the suspension or revocation of any Permit (pursuant to the terms of such Permit) necessary for Seller or, after the Closing, Buyer, to conduct the Business as currently conducted, except in the

case of clauses (b), (c), (d), and (e) for violations, breaches, defaults, terminations, cancellations, vestings, payments, exercises, accelerations, creations, impositions, suspensions, or revocations that (x) are excused by or the enforcement of remedies relating thereto are stayed by the Bankruptcy Court or the applicability of any provision of the Bankruptcy Code, (y) would not have a Material Adverse Effect or (z) are set forth on the **Disclosure Schedule, Section 5.4**.

5.5 No Default. Except as set forth on the **Disclosure Schedule, Section 5.5**, Seller is not in violation, breach of, or default under (and no event has occurred that with notice or the lapse of time would constitute a violation, breach of, or a default under) any term, condition, or provision of (a) their Organizational Documents, (b) any note, bond, mortgage, deed of trust, security interest, indenture, license, agreement, plan, contract, lease, commitment, or other instrument, or obligation to which Seller is a party or by which the Transferred Assets may be bound or affected, (c) any order, writ, injunction, decree, statute, rule, or regulation applicable to the Transferred Assets, or (d) any Permit, license, governmental authorization, consent, or approval necessary for such Seller to conduct the Business as currently conducted, except in the case of clauses (b), (c) and (d), for those violations, breaches or defaults that (i) occurred prior to or upon the commencement of the Bankruptcy Cases and that are excused by or the enforcement of remedies relating thereto are stayed by the Bankruptcy Court or the applicability of any provision of the Bankruptcy Code or (ii) would not have a Material Adverse Effect.

5.6 Real Property.

(a) The **Disclosure Schedule, Section 5.6** contains a complete list of all real property that is owned by Seller (such real property, together with all rights, title, privileges and appurtenances pertaining thereto, shall be collectively referred to as the “Owned Real Property”). The Owned Real Property is sometimes referred to as the “Real Property”.

(b) Except as set forth on the **Disclosure Schedule, Section 5.6**, the Permitted Encumbrances and those Encumbrances that will be released pursuant to the Sale Order, Seller has good title in fee simple to the Owned Real Property and to all plants, buildings and improvements thereon.

5.7 Title to Tangible Property. Seller has good and valid title to all of the tangible personal property constituting Transferred Assets, free and clear of all Encumbrances other than Permitted Encumbrances. **Disclosure Schedule, Section 5.7** contains (a) a complete list of all leases of furniture, fixtures, equipment, machinery, rolling stock or other tangible personal property located on the Real Property or used in the Business and (b) the latest depreciation schedule that includes the tangible personal property owned by the Seller.

5.8 Permits and Environmental Permits. Seller has all Permits that are necessary for the conduct of the Business as it is being conducted by such Seller as of the date of this Agreement. (a) Excluding all local and customary business permits, all Permits described in the preceding sentence held by Seller are listed on the **Disclosure Schedule, Section 5.8** and are in full force and effect. (b) Except as set forth on the **Disclosure Schedule, Section 5.8**, no violations are occurring or have been committed during the 6-month period prior to the date hereof in respect of any such Permit other than such violations which did not, or, to the

Knowledge of Seller, would not have a Material Adverse Effect, and no Proceeding is pending or, to the Knowledge of Seller, Threatened to revoke or limit any such Permit.

5.9 Litigation. Except for the Bankruptcy Cases and as set forth on the **Disclosure Schedule, Section 5.9**, there is no (i) Proceeding pending or, to Seller's Knowledge, Threatened against any Seller or (ii) material judgment, decree, injunction, or order of any Governmental Authority or arbitrator outstanding against any Seller.

5.10 Finder's Fee. Seller has engaged Marcus & Millichap to render real estate services in connection with this Agreement. Seller will pay the entire fee due to Marcus & Millichap at the Closing from Sale Proceeds. No other person is entitled to a brokerage, financial advisory, finder's, or similar fee or commission payable in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller.

5.11 Financial Statements. The audited, consolidated balance sheets of Seller (including the notes thereto) as of December 31, 2006, December 31, 2007, and the related audited statements of operations and cash flows for the years then ended (the "**Audited Statements**"), the unaudited, consolidated balance sheet of Seller as of November 30, 2008, and the related unaudited statements of operations, and cash flows for the periods then ended (collectively with the Audited Statements, the "**Financial Statements**") have been posted in the Seller Data Room. The Financial Statements have been prepared in accordance with United States generally accepted accounting principles ("**GAAP**") applied on a consistent basis throughout the periods covered thereby (except as noted therein) and fairly present in all material respects the financial position and the related results of operations and cash flows of Seller for the dates and periods covered thereby.

5.12 Legal Compliance. Except as disclosed in the **Disclosure Schedule, Section 5.12** or in connection with the Pending Surveys, as of the date of this Agreement, Seller is not in violation of, nor has Seller been given notice or been charged with any violation of, any Legal Requirements except for such violations, notices, or charges that have not had or will not have, individually or in the aggregate, a Material Adverse Effect.

5.13 Environmental. (i) Except for the proper care and handling of bio-medical waste in the ordinary course of the business operations of Seller and the skilled nursing industry, which needs are addressed by Seller through a contract(s) with third parties, (ii) except as set forth on the **Disclosure Schedule, Section 5.13** and (iii) except as would not have a Material Adverse Effect:

(a) (i) Seller is in compliance with, and has complied in all respects with, and there is not, and have been no, violations of, any Environmental Laws related to the Business or the Transferred Assets; (ii) Seller possesses all environmental permits, certificates, consents or other settlement agreements, licenses, approvals, registrations and authorizations required for the operation of the Business and the Transferred Assets under all Environmental Laws ("**Environmental Permits**"); (iii) to the Knowledge of Seller, there are no Environmental Conditions on or affecting the Transferred Assets; (iv) Seller has filed all material notices required under all Environmental Laws and Environmental Permits; (v) Seller has made

available to Buyer true and complete copies of all Environmental Reports, if any; (vi) the Real Property is not listed under any Environmental Law as a site requiring remediation of Hazardous Material, or the subject of any enforcement action or investigation, or citizen's suit, under any Environmental Law ("Identified Site"); (vii) No Seller has transported or arranged for transportation of (directly or indirectly) to any Identified Site any Hazardous Materials generated or created by the use, ownership or operation of the Transferred Assets or by the operation of the Business; (viii) to Seller's Knowledge, there is not now, nor at any time in the past has there been, at, on or in any of the Transferred Assets, any (A) treatment, recycling, storage or disposal or any Hazardous Materials, or (B) surface impoundment, landfill lagoon or other containment facility for the temporary or permanent storage, treatment, or disposal of Hazardous Materials, in either case except in compliance with Environmental Laws.

(b) To Seller's Knowledge, there are no underground storage tanks currently or formerly located on the Real Property.

5.14 Taxes.

(a) Except as set forth on the **Disclosure Schedule, Section 5.14**, Seller has timely filed with the appropriate taxing authorities all Tax Returns required to be filed by them and have timely paid all Taxes owed by them. All Tax Returns filed by Seller are correct and complete in all material respects. No Seller is currently the beneficiary of any extension of time to file any such Tax Return.

(b) There are no liens for Taxes (other than for current Taxes not yet due and payable) on the Transferred Assets. Except as set forth on the **Disclosure Schedule, Section 5.14**, none of the Transferred Assets is property that is required to be treated for Tax purposes as being owned by any Person other than a Seller.

(c) No Seller has received any written notice from a taxing authority in a jurisdiction where it does not file Tax Returns that it may be subject to taxation by that jurisdiction.

(d) All Taxes that Seller is required by law to withhold or collect for all periods ending on or prior to the date hereof have been withheld or collected, and Seller has timely paid all such Taxes due any Governmental Authority.

5.15 Employee Matters. A complete and accurate list of all employees of Seller (the "Employees"), together with each such employee's date of hire, position, rate of pay, and accrued benefits including, without limitation, severance benefits if any, has been posted in the Seller Data Room as the document entitled "Total Employee Final Report 2-9-09." Except as set forth in the **Disclosure Schedule, Section 5.15:**

(a) With respect to the Employees, there are no pending or, to the Knowledge of Seller, Threatened claims, trade disputes or controversies regarding employment, terms of employment or termination of employment including, but not limited to, any claims for unpaid wages, harassment or workmen's compensation. Neither at the time of hiring nor to the Knowledge of Seller presently, were or are any Employees listed or named on any Nurse/Aide Abuse Registry.

(b) The Carecorps Management 401(k) Plan (the “Seller’s 401(k) Plan”) has been maintained in compliance with its material terms and in compliance with all material Legal Requirements. Seller’s 401(k) Plan has received a favorable determination letter from the Internal Revenue Service regarding its tax-qualified status within the preceding two (2) years, and Seller know of no amendments or events subsequent to such favorable determination letter that would jeopardize the tax-qualified status of Seller’s 401(k) Plan.

(c) No employee benefit plan (as defined in Section 3(3) of ERISA) that is subject to Title IV of ERISA, sponsored by any Seller or any entity in the same controlled group as a Seller or under common control with any Seller as defined in Section 414 of the Code has, on a termination basis, liabilities greater than assets.

(d) All payroll tax liabilities including, without limitation, FICA, FUTA and Social Security withholdings, with respect to all of the Employees have been fully paid, in a timely manner, by Seller.

(e) A listing and brief description of all of Seller’s benefits and benefit plans, agreements or arrangements with respect to the Employees is set forth on **Disclosure Schedule, Section 5.15**. Copies of all of Seller’s benefits and benefit plans, agreements or arrangements with respect to the Employees have been posted in the Seller Data Room.

5.16 Intellectual Property. The Intellectual Property rights used in the operation of the Business as conducted as of the date of this Agreement are not, to the Knowledge of Sellers, registered or otherwise licensed, except various pieces of off the shelf software that may have included a shrink-wrap license. Except as would not have a Material Adverse Effect, to the Knowledge of Sellers the products produced and sold in connection with the Business, and all Intellectual Property used in the conduct of the Business as conducted as of the date of this Agreement, do not infringe upon, violate or constitute the unauthorized use of any rights owned or controlled by any third party, including any Intellectual Property of any third party. Seller has no Knowledge of any Licensed Intellectual Property used in the conduct of the Business as conducted as of the date of this Agreement, that infringes upon, violates or constitutes the unauthorized use of any rights owned or controlled by any third party, including any Intellectual Property of any third party.

5.17 Contracts and Cure Amounts. The **Disclosure Schedule, Section 5.17** contains a complete and accurate list of all of the contracts or agreements to which Seller is a party or by which any of the Transferred Assets are bound and which are to be assumed by Buyer (collectively, the “Scheduled Contracts”). Except as set forth on the **Disclosure Schedule, Section 5.17**, (i) to Seller’s Knowledge, each Person that has any obligation or liability under any Scheduled Contract is in material compliance with each such Scheduled Contract and (ii) except with regard to the Pending Surveys, no event has occurred or circumstance exists that (with or without notice or lapse of time) may result in a violation or breach of, or give any Seller or any other Person the right to declare a default under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, any Scheduled Contract. No Seller has given or received from any other Person, at any time since May 1, 2008 any written notice or other written communication regarding any actual, alleged, possible, or potential material violation or breach of, or default under, any Scheduled Contract and, to the Knowledge of Seller, no such

violation, breach or default under any Scheduled Contract has been Threatened. Except as set forth on the **Disclosure Schedule, Section 5.17**, the consummation of the transactions contemplated by this Agreement does not require the consent of or notice to any Person pursuant to the Scheduled Contracts.

5.18 No Changes; Conduct of Business. Except as set forth in the **Disclosure Schedule, Section 5.18**, since May 1, 2008, (a) the operations and affairs of the Business have been conducted in the ordinary course of business, and (b) there has been no event or change which has had, or will have, a Material Adverse Effect.

5.19 Compliance with Health Care Laws and Regulations. Except with respect to any matter arising from the Pending Surverys:

(a) Seller is eligible to receive payment without restriction under Title XVIII of the Social Security Act ("Medicare") and is a "provider" with valid and current provider agreements with one or more provider numbers with Medicare, Medicaid, the Civilian Health and Medical Program of the Uniformed Services program, and all other similar federal, state or local reimbursement or governmental programs in which Seller participates with respect to the business (each a "Government Reimbursement Program"). Seller is presently in substantial compliance with the Conditions of Participation, as defined in 42 C.F.R. § 482, for the Government Reimbursement Program in all material respects, subject to the outcome of the Pending Surveys.

(b) Except as set forth in **Disclosure Schedule, Section 5.19(b)**, (i) Seller has not received notice of any currently pending, threatened, or possible decertification, audit, offset, contractual settlement, Proceeding, other action or loss of any Permit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, and whether public or private), including, without limitation, participation in any Government Reimbursement Program or any private health care benefit program; (ii) no validity review or program integrity review of any Seller has been conducted by any Governmental Authority in connection with any Government Reimbursement Program or any private health care benefit program, and no such review, audit, or audit assessment is scheduled or pending or, to the Seller's Knowledge, threatened against any Seller, the Business, and the Transferred Assets, or the consummation of the transactions contemplated by this Agreement, and (iii) no Seller has received a subpoena or formal or informal request for records from any Governmental Authority.

(c) Seller has provided Buyer copies of all Medicare and Medicaid Cost Reports relating to the Business filed by such Seller, and such reports are complete and correct in all material respects. Except as set forth in **Disclosure Schedule, Section 5.19(c)**, (i) Seller has not failed to file, and has not filed delinquent or false, cost reports and other documentation and reports required to be filed with any commercial third-party payors or any Government Reimbursement Program in compliance with applicable Contracts or Legal Requirements, which were due on or before the date of this Agreement, and (ii) there are no Claims (including notices of any offsets against future reimbursements) pending or scheduled, or, to Seller's Knowledge, threatened by any person or entity, public or private, including, without limitation, the Centers for Medicare and Medicaid Services, or any other state or federal agency with respect to any Government Reimbursement Program claims filed by any Seller related to the operation of the

Business on or before the date of this Agreement, or program compliance matters. Except for those in the ordinary course of business, to Seller's Knowledge, no validation review or program integrity review related to Seller, the operation of the Business or the consummation of the transactions contemplated by this Agreement, has been conducted by any commission, board, agency, or Governmental Authority in connection with any Government Reimbursement Program, and to Seller's Knowledge, no such reviews are scheduled, pending or threatened against any Seller. Seller has delivered to Buyer accurate and complete copies of any Claims, actions, inquiries, or other correspondence or appeals listed on **Disclosure Schedule, Section 5.19(c)**.

(d) Except as set forth in **Disclosure Schedule, Section 5.19(d)**, there are no outstanding corporate compliance issues with respect to the Seller or the Business, including, without limitation, any complaints regarding violations of the privacy or security regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), or any internal or external investigations related to corporate compliance program complaints or inquiries, or billing and collection issues.

Seller, together with Seller's officers, directors, and employees, has not been excluded, suspended, debarred or otherwise declared ineligible to participate in any Government Reimbursement Program or have been debarred from contracting with any federal or state entity. Seller would not reasonably be expected to have criminal culpability or to be excluded, suspended, debarred or otherwise declared ineligible to participate in any Government Reimbursement Program or be debarred from contracting with any federal or state entity.

5.20 Residents. Seller has not received any written or oral notice that any current resident has ceased, or will cease, to be a resident in the next thirty days. To the Seller's knowledge, no such resident has threatened to take any action described in the preceding sentence as a result of the consummation of the transactions contemplated by this Agreement.

5.21 Full Disclosure. To the best of Seller's Knowledge, the representations and warranties of Seller in this Agreement and in the Disclosure Schedules attached hereto are true, complete and correct, and no such representation or warranty contains any untrue statement of material fact or omits to state any material fact necessary to make the statements made therein not misleading.

5.22 Insurance

(a) **Disclosure Schedule, Section 5.22** to this Agreement contains an accurate and complete list of all policies of liability, workers' compensation, property and casualty insurance providing coverage for the Seller or the Business, copies of which have been posted in the Seller Data Room; and

(b) No notice of cancellation, termination or reduction in coverage has been received with respect to any policy listed in **Disclosure Schedule, Section 5.22**. The Seller has not been refused any insurance with respect to its Business, assets or operations, nor has its coverage been limited by any insurance carrier to which it has applied for any insurance or with which it has

carried insurance during the past three years. The Seller will maintain all such insurance in full force and effect through the Closing Date.

SECTION 6. REPRESENTATIONS AND WARRANTIES OF BUYER.

Buyer hereby represents and warrants to Seller as follows:

6.1 Authorization for Agreement and Consents. Buyer has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions contemplated hereby have been duly authorized by all necessary actions of Buyer. This Agreement constitutes, and, when executed by Buyer, any documents or instruments to be executed and delivered by Buyer pursuant hereto, will constitute, legal, valid and binding obligations of Buyer enforceable in accordance with their terms.

6.2 Organization. Buyer is an Alabama business corporation duly organized, validly existing and in good standing under the laws of the State of Alabama and has the power and authority to own, use, and operate its properties and to carry on its business as it is now being conducted.

6.3 No Violation. The execution and delivery of this Agreement and all other agreements, instruments and documents contemplated hereby by Buyer and the consummation of the transactions contemplated hereby and thereby will not conflict with or violate or constitute a breach or default under the Organizational Documents of Buyer or any provision of any mortgage, trust indenture, lien, lease, agreement, instrument, or court order, judgment or decree to which Buyer is bound.

6.4 Finder's Fees. No Person is entitled to any brokerage, financial advisory, finder's, or similar fee or commission payable by Seller or any of its Affiliates in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer or their Affiliates.

6.5 No Litigation. No Proceeding is pending or, to Buyer's Knowledge, has been Threatened by or against Buyer or any of its Affiliates which would materially and adversely affect the ability of Buyer to consummate the transaction provided for in this Agreement.

6.6 No Financing Contingency. Buyer has cash reserves or availability under its credit facilities to pay the Purchase Price in cash to the Seller on the Closing Date. Buyer's obligations hereunder are not contingent upon procuring financing for the transaction

6.7 Informed Purchaser. Buyer is informed and a sophisticated purchaser. Buyer has engaged expert advisors, experienced in the evaluation and purchase of property and assets such as those that are the subject of this Agreement and are involved in a bankruptcy case, and Buyer has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement. Buyer acknowledges that it has had complete and open access to the key employees, documents and facilities of the Business to conduct its due diligence. Buyer further acknowledges that Seller

make no representation or warranty with respect to (a) any projections, estimates or budgets delivered to or made available to Buyer or any of its Affiliates, counsel, advisors, accountants or other representatives of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of the Business or any other aspects of the Business or the Transferred Assets or (b) any other information or documents made available to Buyer or its counsel, advisors, accountants or other representatives with respect to the Business, except as expressly set forth in this Agreement. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION SHALL BE CONSTRUED TO DISCLAIM, NEGATE, MODIFY OR AMEND ANY OF SELLER'S WARRANTIES AS CONTAINED IN THIS AGREEMENT OR IN ANY AGREEMENT EXECUTED IN CONNECTION HERewith

SECTION 7. COVENANTS.

7.1 Seller's Chapter 11 Bankruptcy Cases.

(a) This Agreement and the transactions contemplated hereby are contingent upon the approval and authorization of the Bankruptcy Court. Seller shall file a motion (the "Sale Motion") within two (2) Business Days after the date hereof to seek approval by the Bankruptcy Court of the sale contemplated hereby, and Seller shall take all commercially reasonable steps necessary or appropriate to obtain Bankruptcy Court approval without the necessity of an Auction. Seller shall likewise use its commercially reasonable efforts to obtain the entry of the Sale Order in a form mutually acceptable to both Seller and Buyer, on or before 90 days after the date of this Agreement.

(b) Seller shall provide notice of the Sale Motion to every Person with an interest in the Transferred Assets, counter-parties to the Assumed Contracts, the State of Alabama, and every Person reasonably requested by Buyer, in accordance with the notice provisions of the Bankruptcy Code and orders in the Bankruptcy Cases, including, without limitation, any applicable state taxing authority. The Notice of the Sale Motion shall provide, among other matters, that any objections to the Sale Motion shall be served upon counsel for Buyer.

(c) Upon entry of the Sale Order, Seller shall promptly provide Buyer with notice of each such entry, keep a copy of such Sale Order, as applicable.

7.2 Access. From and after the date of this Agreement until the Closing Date, Seller shall give Buyer and its employees, agents and authorized representatives reasonable access, during regular business hours and upon reasonable advance notice, to the Transferred Assets and to such employees and records relating to the Transferred Assets or the Business, in each case, as are necessary to allow Buyer and its employees, agents and authorized representatives to make such inspections, to interview or confer with officers, employees, agents and representatives of the Seller as Buyer believes necessary and appropriate with respect to the Transferred Assets or the Business. Seller shall have the right to have a representative present at all times of any such inspections, interviews and examinations. Additionally, all records provided to Buyer pursuant to this Section will be deemed to be "Confidential Information" for purposes of the Confidentiality Agreement. Seller shall provide to Buyer such information and records

regarding the Employees as Buyer may reasonably request, including, without limitation, the Employees' addresses, dates of birth, dates of hire, and dependent information, personnel files, performance evaluations, and other employment related documents. Buyer, however, shall not be entitled to access to any materials containing privileged communications (except with the written consent of the Seller) or information about employees, disclosure of which might violate an employee's reasonable expectation of privacy. Notwithstanding the foregoing, at the request of Buyer, Seller shall make available to Buyer any written performance evaluations of the Employees.

7.3 HSR Act. If filings pursuant to and under the HSR Act are required in connection with the consummation of the transactions contemplated by this Agreement, Seller and Buyer will promptly (and in no event later than ten Business Days after the date of this Agreement) compile and file (or will cause their "ultimate parent entity" (as determined for purposes of the HSR Act) to file) under the HSR Act such information respecting such party as the HSR Act requires.

7.4 Consents. Both Buyer and Seller shall use their commercially reasonable efforts to obtain all consents of any Governmental Authority which are required to permit Buyer to operate the Business (collectively, the "Required Consents"), a true and complete list of which is attached as Disclosure Schedule, Section 7.4 hereto. The parties agree that the Closing shall be extended for a period of up to thirty (30) days, or longer if mutually agreed among the parties, to allow the parties additional time to secure the Required Consents.

7.5 Conduct of the Business Pending Closing. Subject to any obligations as a debtor or debtor-in-possession under the Bankruptcy Code, from the date hereof until the Closing Date, Seller shall use commercially reasonable efforts to conduct the Business in the ordinary course of business. Except as otherwise contemplated under this Agreement or as required by applicable Legal Requirements, or in the ordinary course of business, from the date hereof until the Closing Date, without the prior written consent of Buyers:

- (a) Seller shall not acquire the assets of any other Person;
- (b) Seller shall not enter into any contract or agreement which may become an Assumed Contract which is not cancelable at will at the option of the Seller;
- (c) Seller shall not sell, lease, license, or otherwise surrender, relinquish, encumber, or dispose of the Transferred Assets other than dispositions of current assets (as defined under GAAP) or used or obsolete equipment in the ordinary course of business; *provided* such used or obsolete equipment is replaced with reasonable items of replacement equipment prior to the closing to the extent that such used or obsolete equipment is necessary for the conduct of the Business by Seller as currently conducted;
- (d) Seller shall not change any method of accounting or accounting practice used by them, except for any change required by GAAP;
- (e) Seller shall use their best efforts to preserve their relationships with third parties (including employees) and keep available the services currently provided to Seller

(excluding the impact of Seller's rejection or potential rejection of any contracts or Seller's good faith business judgment to terminate any contract with any vendor);

(f) Seller shall not obtain any rulings or make any elections with respect to Taxes, or enter into any agreements with any Taxing Authority, to the extent any such elections or agreements have or could reasonably be expected to have any affect on the Transferred Assets after the Closing;

(g) Seller shall not establish or increase the benefits under, or promise to establish, modify or increase the benefits under, any employee benefit plan (as defined in Section 3(3) of ERISA) in which Employees participate or otherwise increase the compensation payable to any Employees, except in accordance with existing plans and agreements consistent with past practice, or establish, adopt or enter into any collective bargaining agreement, service agreement, employment contract or related agreement (written or oral) with any Employee, or modify or amend any agreements contained in the **Disclosure Schedule, Section 5.15**;

(h) Seller shall not declare or pay any dividends on its Equity Interests, pay bonuses to or increase the compensation of any contractor, hire or engage any additional employees or contractors, or pay bonuses or increase compensation of any Employee except with regard to such increases in compensation tied to the anniversary of such Employee's original hire date, all in accordance with business practices and policies of the Seller, copies of which have been posted in the Seller Data Room; and

(i) Seller shall not agree or commit to do any of the foregoing.

7.6 Public Announcements. Prior to the Closing, Buyer, on the one hand, and Seller, on the other hand, agree that they will not issue any press release or respond to any press inquiry with respect to this Agreement or the transactions contemplated hereby without the prior approval of the other party (which approval will not be unreasonably withheld, conditioned or delayed), except as may be required by Legal Requirements or the Bankruptcy Court.

7.7 Financial Statements. From the date of this Agreement through the Closing Date, within twenty (20) days after the end of each applicable calendar month, Seller shall provide Buyer with copies of Seller's consolidated financial statements prepared in accordance with past practice for each calendar month ending subsequent to the date of this Agreement (the "Supplemental Financial Statements"), which shall be prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby (except that such Supplemental Financial Statements may not include footnotes and shall be subject to nonmaterial recurring year-end adjustments).

7.8 Seller's Employees.

(a) **Employment.** At least three days prior to the Closing Date, Buyer shall offer employment to certain of Seller's Employees (subject to Buyer's reasonable screening processes for potential employees) at rates of base compensation similar to the rates of base compensation of such Employees as of the date of this Agreement and with the benefits for Transferred Employees contemplated by Section 7.8(d). Employees who accept Buyer's offer of employment (the "Transferred Employees") shall become employees of Buyer effective on the

Effective Date or such later date as the offer of employment is made and accepted. Seller shall terminate the employment of all the Employees as of the Effective Time. Buyer shall have sole responsibility for the payment of all wages, overtime, sick pay, taxes, withholdings, and employee benefits with respect to Buyer's employment of the Transferred Employees on and after the Effective Time. Buyer specifically assumes any and all liability, if any, arising under the WARN Act arising out of the transaction contemplated by this Agreement.

(b) **Hiring Process.** Seller shall assist Buyer in Buyer's efforts to evaluate and employ the Employees. Notwithstanding the foregoing, Buyer shall be solely responsible for any and all communications it makes to the Employees regardless of Seller's involvement in such process or receipt of documents and materials to be distributed to the Employees. Buyer shall comply, at its own expense, with all laws in connection with its communications to the Employees, the process of offering employment to them, and the hiring and transition of such Employees.

(c) **Certain Employee Liabilities.**

(i) From and after the Effective Time, Seller shall remain responsible for payment of all of the liabilities, claims, obligations, costs or expenses associated with workers' compensation claims by Employees arising before the Closing (the "Retained Employment Liabilities").

(ii) From and after the Closing, Buyer shall assume responsibility for all accrued but unpaid vacation benefits and vacation pay (in each case, whether arising before, on or after Closing) due to Employees. Notwithstanding the foregoing, Buyer shall not assume or be liable for any liabilities, claims, obligations, costs or expenses (which liabilities, claims, obligations, costs and expenses shall constitute Excluded Liabilities) with respect to (A) accrued but unpaid wages, salary or other compensation (including incentive compensation) arising prior to or upon the Closing (other than the accrued but unpaid vacation benefits described above), or (B) short-term or long-term disability benefits with respect to any former Employees receiving such benefits as of or prior to the Closing.

(d) **Employee Benefit Plans.** All Transferred Employees shall be immediately eligible to participate in a health plan sponsored by Buyer, which plan shall have substantially similar terms, conditions, and benefits as those provided under Seller's health plan, a copy of which as been posted in the Seller Data Room. In addition, Buyer shall, to the extent permitted by applicable law, permit direct cash rollovers and direct rollovers of notes representing outstanding participant loans from the "Seller's 401(k) Plan" to the Buyer's 401(k) Plan, if such a plan is established by Buyer, and if those Transferred Employees are otherwise eligible to become participants in Buyer's 401(k) Plan. Other than the foregoing obligations, Buyer shall decide, in its sole and absolute discretion, which, if any, employee benefit plans, programs, policies, or arrangements it shall offer to Transferred Employees, and shall further decide, in its sole and absolute discretion, which Transferred Employees may participate in such employee benefit plans, programs, policies, or arrangements. Except as set forth in this Section 7.8, Buyer need not offer the same employee benefit plans, programs, policies or arrangements to any Transferred Employee.

(e) **Health Care Continuation Coverage.** Seller shall pay and be solely liable for all liability, cost, expense, taxes and sanctions under Section 4980B of the Code, and interest and penalties imposed upon, incurred by, or that arise by reason of or relate to any failure to comply with the health care continuation coverage requirements of Section 4980B of the Code and Sections 601 through 608 of ERISA, as amended (“COBRA Liabilities”) (i) for any Employees who do not become Transferred Employees, (ii) for any qualified beneficiary (as defined in Section 4980B(g)(1) of the Code and Section 607(3) of ERISA) of individuals described in (i) above, (iii) for any Transferred Employee or qualified beneficiary of a Transferred Employee who does not elect to become covered under Buyer’s group health plan in connection with the Transferred Employee’s offer of employment with Buyer, *provided that* Seller’s obligation to provide group health plan coverage to any such individual shall terminate upon the date the individual becomes covered under Buyer’s group health plan, and (iv) for any other qualified beneficiary (as defined above) who became such prior to the Closing Date. Buyer shall be responsible for all COBRA Liabilities with respect to any Transferred Employee who becomes covered under Buyer’s group health plan (as defined previously) upon employment with Buyer, and any qualified beneficiary (as defined previously) of that Transferred Employee who becomes a qualified beneficiary after the Transferred Employee becomes covered under Buyer’s group health plan.

(f) **No Employment or Third-Party Beneficiary Rights.** The provisions of this Section 7.8 shall neither create any rights in any Transferred Employee to continued employment with Buyer for any specified period of time, nor create any third-party beneficiary rights in any Employee or, if hired by Buyer, any Transferred Employee, or any other Person (including any heir, beneficiary, executor, administrator, or representative of any Employee, Transferred Employee or any other Person claiming through any such employee or other Person), with respect to such employee’s or other Person’s employment or any term or condition thereof.

7.9 Additional Agreements. Subject to the terms and conditions of this Agreement, each of the parties hereto shall use its commercially reasonable efforts to do, or cause to be taken all action and to do, or cause to be done, all things necessary, proper, or advisable under applicable Legal Requirements to consummate and make effective the transactions contemplated by this Agreement, including the fulfillment of the conditions set forth in Section 9 and Section 10 to the extent that the fulfillment of such is within the control of such party.

7.10 Preservation of Copies of Certain Records. Buyer shall use good faith efforts to preserve all Records transferred to Buyer as part of the Transferred Assets for at least three (3) years after the Closing Date (provided, medical records shall be preserved for at least six (6) years after the Closing Date) in a form and condition comparable to that in which such records were received by Buyer or in a form that comports with accepted business practices. From time to time, upon request of Seller, and at Seller’s expense, Buyer shall supply to Seller copies of such records which Seller may reasonably need (subject, however, in the case of medical records, to applicable Legal Requirements pertaining to the confidentiality thereof). Seller shall preserve all Records not transferred to Buyer as part of the Transferred Assets until such time as Seller’s Bankruptcy case is closed in a form that comports with accepted business practices. If Seller wishes to destroy the Records it retains it shall give Buyer at least ten (10) business days notice of such intent and allow Buyer to review and copy such Records prior to their destruction.

From time to time, upon request of Buyer, and at Buyer's expense, Seller shall supply to Buyer copies of such records which Buyer may reasonably need.

7.11 Final Cost Reports. Seller shall prepare and, following Buyer's review and reasonable approval thereof, file (at Seller's sole cost and expense) final cost reports for the Business with all appropriate third-party payors, including, without limitation, the Medicare and Medicaid programs, relating to all periods prior to the Closing as soon as practicable after Closing. Subject to the terms of this Section, upon request by Seller, Buyer agrees to promptly sign any cost reports required to be filed by Seller hereunder so that they may be filed timely, it being acknowledged that such signature by Buyer will in no manner lessen Seller's obligations arising under this Section. Without limitation to any other provision of this Agreement, Seller shall be liable for any Medicare or Medicaid overpayments or any other financial obligations to any Government Reimbursement Program arising from any violation of Legal Requirements during the period of time prior to the Closing. Buyer shall timely file all Medicare and Medicaid Cost Reports for all cost reporting periods from and after the Closing in accordance with all applicable Legal Requirements. Buyer shall be liable for any Medicare or Medicaid overpayments or any other financial obligations to any Government Reimbursement Program arising from any violation of Legal Requirements during the period of time from and after the Closing (except to the extent such overpayments or other financial obligations are attributable to Seller's failure to comply with the requirements of Medicare, Medicaid, or any other Government Reimbursement Program, or Seller's violation of Legal Requirements, in each case prior to or on the Closing Date).

7.12 Existing Residents. Buyer acknowledges that as of the Closing Date there will be residents located in the skilled nursing facilities operated by Seller and Buyer will accept such residents as residents of Buyer, and Buyer will assume and accept (and hereby agrees to assume and accept) responsibility and liability for the care of such residents as of the Effective Time.

SECTION 8. TAX MATTERS.

8.1 Sales and Transfer Taxes. In the event Transfer Taxes are assessed at Closing or at any time thereafter on the transfer of any Transferred Assets, such Taxes incurred as a result of the transactions contemplated hereby shall be paid by Buyer, and Buyer shall indemnify and hold harmless Seller for any such Transfer Taxes. Buyer shall prepare and timely file all Tax Returns required to be filed in respect of Transfer Taxes, if any. Buyer's preparation of any such Tax Returns shall be subject to Seller's advance approval, which approval shall not be unreasonably withheld, conditioned or delayed. Seller shall reasonably cooperate with Buyer in procuring any available exemptions from any Transfer Taxes and shall reasonably cooperate in procuring any documentation that may be necessary to establish any such exemption.

8.2 Cooperation on Tax Matters. After the Closing, Seller will cooperate with Buyer, and Buyer will cooperate with Seller, to the extent necessary in the preparation of all Tax Returns and will provide (or cause to be provided) any records and other information the other so reasonably requests and will provide the cooperation of its employees and auditors. Seller will reasonably cooperate with Buyer and Buyer will reasonably cooperate with Seller in connection with any Tax investigation, audit or other Tax Proceeding.

SECTION 9. CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS.

The obligations of Buyer hereunder are subject to the satisfaction on or prior to the Closing Date of the conditions set forth below (compliance with which or the occurrence of which may be waived in whole or in part in a writing executed by Buyer, unless such a waiver is prohibited by law).

9.1 Representations and Warranties True. The representations and warranties made by Seller in this Agreement that are not qualified by materiality or Material Adverse Effect shall be true and correct in all respects, and such representations and warranties that are so qualified shall be true and correct in all material respects, in each case as of the Closing Date (other than those representations and warranties that address matters as of a particular date), with the same effect as though such representations and warranties had been made or given on and as of such date, and Buyer shall have received a certificate from Seller dated as of the Closing Date signed by an officer of such Seller as to the satisfaction of this condition.

9.2 Compliance with Agreement. Seller shall have performed and complied in all material respects with all of its obligations under this Agreement which are to be performed or complied with by them prior to or on the Closing Date (including the deliveries contemplated by Section 4.2(a)), and Buyers shall have received a certificate from Seller signed by an officer of such Seller dated as of the Closing Date as to the satisfaction of this condition.

9.3 Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Sale Order, in substantially the form attached hereto as Disclosure Schedule, Section 7.1(a)(3), and which Sale Order shall have been entered in a form reasonably satisfactory to Buyer, and the Sale Order shall not have been stayed, modified, or amended in any manner materially adverse to Buyer.

9.4 HSR Act. Any waiting period applicable to the consummation of the transactions contemplated by this Agreement under the HSR Act, if applicable, shall have expired or been terminated, and no action shall have been instituted by any Governmental Authority challenging or seeking to enjoin the consummation of the transactions contemplated by this Agreement, which action shall not have been withdrawn or terminated.

9.5 No Order. No statute, rule, regulation, executive order, decree, ruling, or preliminary or permanent injunction shall have been enacted, entered, promulgated, or enforced by any Governmental Authority or arbitrator that prohibits, restrains, enjoins, or restricts the consummation of the transactions contemplated by this Agreement that has not been withdrawn or terminated; and no claim, action, suit, arbitration, inquiry, Proceeding or investigation (each, an "Action") shall be pending by or before any Governmental Authority or arbitrator against Buyer or Seller, seeking to restrain or materially and adversely alter the transactions contemplated by this Agreement; *provided, however*, that the provisions of this Section 9.5 shall not apply if Buyer has directly solicited or encouraged any such Action.

9.6 Consents and Approvals. Seller shall have obtained and delivered to Buyer all Required Consents.

9.7 No Material Adverse Effect. Since the date of this Agreement, no event or occurrence shall have taken place which has had a Material Adverse Effect; *provided, however*, that Seller shall have the opportunity to cure such Material Adverse Effect for a period of thirty (30) days from the date of such event or occurrence.

9.8 No Casualty Loss. No Casualty Loss shall have occurred.

9.9 Notices. All necessary notices to all Governmental Authorities shall have been made and all necessary regulatory approvals from all necessary Governmental Authorities shall have been obtained.

9.10 Regulatory Status. As of the Closing, Seller's skilled nursing facility shall not be subject to an outstanding, uncured survey deficiency of a Level II (Immediate Jeopardy).

SECTION 10. CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS.

The obligations of Seller hereunder are subject to the satisfaction on or prior to the Closing Date of the conditions set forth below (compliance with which or the occurrence of which may be waived in whole or in part in a writing executed by Seller, unless such a waiver is prohibited by law).

10.1 Representations and Warranties True. The representations and warranties made by Buyer in this Agreement that are not qualified by materiality shall be true and correct in all respects, and such representations and warranties that are so qualified shall be true and correct in all material respects, in each case as of the Closing Date (other than those representations and warranties that address matters as of a particular date), with the same effect as though such representations and warranties had been made or given on and as of such date, and Seller shall have received a certificate dated as of the Closing Date signed by a manager of Buyer as to the satisfaction of this condition.

10.2 Compliance with Agreement. Buyer shall have performed and complied in all material respects with all of its obligations under this Agreement which are to be performed or complied with by them prior to or on the Closing Date (including the deliveries contemplated by Section 4.2(b)), and Seller shall have received a certificate dated as of the Closing Date signed by a manager of Buyer as to the satisfaction of this condition.

10.3 HSR Act. Any waiting period applicable to the consummation of the transactions contemplated by this Agreement under the HSR Act, if applicable, shall have expired or been terminated, and no action shall have been instituted by any Governmental Authority challenging or seeking to enjoin the consummation of the transactions contemplated by this Agreement, which action shall not have been withdrawn or terminated.

10.4 No Order. No statute, rule, regulation, executive order, decree, ruling, or preliminary or permanent injunction shall have been enacted, entered, promulgated, or enforced by any Governmental Authority or arbitrator that prohibits, restrains, enjoins, or restricts the consummation of the transactions contemplated by this Agreement that has not been withdrawn or terminated; and no Action shall be pending by or before any Governmental Authority or arbitrator against Buyer or Seller, seeking to restrain or materially and adversely alter the

transactions contemplated by this Agreement; *provided, however*, that the provisions of this Section 10.4 shall not apply if any Seller has directly solicited or encouraged any such Action.

10.5 Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Sale Order in substantially the form attached hereto as Disclosure Schedule, Section 7.1(a)(3), and such Sale Order shall not have been stayed, modified or amended in any manner materially adverse to Seller.

SECTION 11. POST CLOSING.

11.1 Further Assurances. Each party shall, from time to time at the reasonable request of another party hereto, and without further consideration, execute and deliver such other instruments of sale, transfer, conveyance, assignment, clarification, and termination, and take such other action as the party making the request may reasonably require to effectuate the intentions of the parties and the transactions contemplated hereunder and related hereto, including those required to sell, transfer, convey and assign to, and vest in Buyer, and to place Buyer in possession of the applicable Transferred Assets, and to transfer, assign, or convey any Excluded Assets not owned by Seller to a Seller. Seller intend to convey the Transferred Assets to Buyer at Closing, and Buyer intends to assume the applicable Assumed Liabilities at Closing; *provided, however*, if it is determined after Closing that: (a) any of the Transferred Assets were not in fact conveyed to Buyer, and that any Transferred Assets are incorrectly held in the name of a Seller, (b) any Excluded Asset not owned by a Seller was not conveyed to such Seller and that the title to such Excluded Asset is incorrectly in the name of Buyer or (c) any Assumed Liability was not properly assumed by Buyer, then the parties shall take all such action necessary to promptly and correctly convey any such Transferred Assets to Buyer, or any such part of the Excluded Assets to the applicable Seller, or to cause Buyer to promptly and correctly assume any such Assumed Liabilities. To the extent all Required Consents from any Governmental Authority have not been obtained by Seller at or prior to the Closing and Buyer, if applicable, elects to waive the condition to Closing set forth in Section 9.6 above, Seller shall reasonably cooperate with Buyer to obtain all such Required Consents after the Closing Date.

11.2 Books and Records; Personnel. Except in the ordinary course of business of such party regarding its own general records or in compliance with such party's general record retention policies, until the seventh anniversary of the Closing Date, Buyer and Seller will maintain all books and records, including electronic and computerized records, that relate to the pre-Closing business, operations, assets and properties related to the Business, and shall give each other party full and complete access during regular business hours and on reasonable prior notice, to all such books, records, and personnel to the extent reasonably required to enable such other party to satisfy its respective obligations hereunder or under applicable law. In addition to the foregoing, neither Seller nor Buyer shall, without ninety (90) days prior written notification (a "Destruction Notice") to the other parties, destroy any pre-Closing books and records, including electronic and computerized records, related to the Business, unless such destruction is to occur in the ordinary course of business of the party destroying such books and records, or in compliance with such party's general record retention policies. Following receipt of a Destruction Notice, if a Seller or Buyer, as applicable, advises the other party or parties in writing within such ninety (90) day period, the applicable party will promptly deliver the applicable books and records to the other.

SECTION 12. INTENTIONALLY OMITTED.

SECTION 13. TERMINATION AND REMEDIES.

13.1 Termination. This Agreement may be terminated on or prior to the Closing Date as follows:

(a) by Buyer if a material breach of any provision of this Agreement has been committed by Seller and such material breach (if and to the extent such breach is capable of being cured by Seller) is not cured within twenty (20) Business Days after Buyer has notified Seller in writing of Buyer's intention to terminate this Agreement pursuant to this clause (a) or such breach has not been waived by Buyer;

(b) by Seller if a material breach of any provision of this Agreement has been committed by Buyer and such material breach (if and to the extent such breach is capable of being cured by Buyers) is not cured within twenty (20) Business Days after Seller have notified Buyer in writing of Seller's intention to terminate this Agreement pursuant to this clause (b) or such breach has not been waived by Seller;

(c) by Buyer if any condition in Section 9 has not been satisfied by March 31, 2009 or if the satisfaction of such a condition by such date is or becomes impossible (other than through the failure of Buyer to comply with its obligations under this Agreement), and Buyer has not waived such condition on or before such date;

(d) by Seller if any condition in Section 10 has not been satisfied by March 31, 2009 or if the satisfaction of such a condition by such date is or becomes impossible (other than through the failure of Seller to comply with their obligations under this Agreement), and Seller have not waived such condition on or before such date;

(e) by Buyer if the Sale Order has not been entered by the Bankruptcy Court by 90 days after the date of this Agreement; *provided, however*, that Buyer shall not be entitled to exercise their rights under this clause, (A) later than five (5) Business Days after such date or (B) if the Sale Order has been entered by the Bankruptcy Court prior to Buyers exercising such rights;

(f) intentionally deleted.

(g) automatically in the event Seller's Bankruptcy Cases shall be converted from cases under Chapter 11 to cases under Chapter 7 or dismissed, or any Person shall be granted relief from the automatic stay with respect to any material portion of the Transferred Assets at any time prior to Closing;

(h) by mutual written consent of the parties hereto; or

(i) by Buyer, if (i) Seller fails to deliver the Audited Statements to Buyer within ten days after the date of this Agreement or (ii) such Audited Statements differ from the unaudited, consolidated balance sheet of Seller as of December 31, 2008, and the related unaudited statement of operations and cash flows for the year then ended in a manner materially

adverse to the transactions contemplated by this Agreement; *provided that* Buyer shall have waived the termination right set forth in this Section 13.1(j) if (A) in the case of clause (i), Buyer shall not have terminated this Agreement within three (3) Business Days after the ten-day period set forth in clause (i), and (B) in the case of clause (ii), Buyer shall not have terminated this Agreement within three (3) Business Days after Seller deliver the Audited Statements; or

In the event of termination by any party as provided above, written notice shall promptly be given to the other party and, except as otherwise provided herein and each party shall pay its own expenses incident to this Agreement and the transactions contemplated hereby.

13.2 Expense Reimbursements. In the event that this Agreement is terminated by Seller because Seller accepts or is about to accept a bid from a Person or Persons other than Buyer in connection with an objection raised at the Sale Hearing, (an “Expense Termination Event”), then Seller shall be obligated to pay Buyer an aggregate amount in cash equal to the total amount of reasonable, out-of-pocket fees and expenses incurred by Buyer in connection with the preparation, execution and performance of this Agreement and the transactions contemplated hereby up to (but not in excess of) an aggregate amount equal to seventy-five thousand dollars (\$75,000) (the “Expense Reimbursement”). Seller shall pay the Expense Reimbursement to Buyer within five (5) Business Days after both (i) the termination of this Agreement by Buyer pursuant to an Expense Termination Event and (ii) Seller’ receipt of written notice from Buyer describing the fees and expenses which constitute the Expense Reimbursement in reasonable detail together with invoices or other documentation of such fees and expenses.

13.3 Remedies.

(a) Except as set forth in subsection (b) of this Section 13.3, if Closing does not occur, then within ten (10) days after termination of this Agreement, Buyer and Seller shall cause the Earnest Money Escrow Agent to release the Earnest Money to Buyer by wire transfer of immediately available funds to such account as Buyer shall designate in writing.

(b) Notwithstanding anything else to the contrary contained herein, if Seller terminates this Agreement pursuant to Section 13.1(b), Seller shall be entitled to the Earnest Money as liquidated damages and not as a penalty and Buyer and Seller shall cause the Earnest Money Escrow Agent to release the Earnest Money to Seller by wire transfer of immediately available funds to such account or accounts as Seller shall designate in writing. In the event the Closing is not held, except in the case of fraud, Seller’s right to the Earnest Money shall be their sole and exclusive remedy for any Damages arising out of or related to this Agreement or the transactions contemplated hereby. Upon receipt of the Earnest Money and except as set forth above, Seller hereby waive and release each Buyer Indemnified Party from any and all Damages arising out of or related to this Agreement or the transactions contemplated hereby.

(c) In the event the Closing does not occur, except in the case of fraud, return of the Earnest Money and receipt of the Expense Reimbursement, if applicable, shall be Buyer’s sole and exclusive remedy for any Damages arising out of or related to this Agreement or the transactions contemplated hereby, and, upon receipt of the Earnest Money and the Expense

Reimbursement, if applicable, Buyer hereby waives and releases Seller from any and all Damages arising out of or related to this Agreement or the transactions contemplated hereby.

13.4 Effect of Termination. A party desiring to terminate this Agreement pursuant to Section 13 shall give written notice thereof to each other party specifying the provision hereof pursuant to which the Agreement is terminated and this Agreement shall be terminated at the time such notice is given. Upon termination, this Agreement shall forthwith become null and void and of no further force and effect, without liability on the part of Buyer or Seller or any of its respective Affiliates or representatives under this Agreement, except for the provisions of Section 1 (Definitions), Section 5.10 (Finder's Fee), Section 6.4 (Finder's Fee), Section 7.2, only with respect to treatment of Confidential Information (Access), Section 7.6 (Public Announcements), Section Section 1313 (Termination, Break-Up Fee and Remedies) and Section 14 (Miscellaneous), each of which shall remain in full force and effect. For the avoidance of doubt, the obligations of the parties under the Earnest Money Escrow Agreement and the Confidentiality Agreement shall survive any termination of this Agreement.

SECTION 14. MISCELLANEOUS.

14.1 Expenses. Each of the parties hereto agrees to be responsible for its own costs incurred by it incidental to the performance of its obligations hereunder, without right of reimbursement from the other, whether or not the transactions contemplated by this Agreement shall be consummated, including, without limitation, those costs incidental to the preparation of this Agreement, and the fees and disbursements of legal counsel, accountants and consultants employed by the respective parties in connection with the transactions contemplated by this Agreement.

14.2 Inform of Litigation. During the period from the date of this Agreement to the Closing Date, each party will promptly inform the other party in writing of any litigation commenced or, to the Knowledge of such party, Threatened against such party in respect of the transactions contemplated by this Agreement or the Business.

14.3 Assignment. This Agreement may not be assigned by operation of law or otherwise by Seller without the prior written consent of Buyer, except that Seller shall have the right to assign any rights they have under this Agreement after the Closing to the extent required by any confirmed plan of reorganization in the Bankruptcy Cases. This Agreement may not be assigned by operation of law or otherwise by Buyer without the prior written consent of Seller, except that Buyer may, without the prior written consent of Seller, transfer or assign by operation of law or otherwise this Agreement to any Affiliate or subsidiary of Buyer, *provided that* in the event Buyer assigns all or a portion of its rights and obligations under this Agreement, Buyer hereby unconditionally and irrevocably guarantees to Seller the prompt and full discharge by such subsidiary or Affiliate of all of Buyer's obligations under this Agreement in accordance with the terms hereof and Seller shall not be required to pursue any remedies against such subsidiary or Affiliate hereunder prior to pursuing against Buyer. Upon such transfer of rights by Buyer, such entities will have the right to enforce Buyer's rights under this Agreement, including without limitation the right to pursue any remedies allowed under the terms of this Agreement against Seller hereunder.

14.4 Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Mississippi applicable to agreements made and to be performed entirely within such state, including all matters of construction, validity and performance.

14.5 Amendment and Modification. No amendment, modification, waiver, replacement, termination, or cancellation of any provision of this Agreement will be valid, unless the same will be in writing and signed by Buyer and Seller.

14.6 Notices. All notices, requests, demands and other communications hereunder shall be made in writing. Notices, requests, demands and other communications shall be deemed to be duly given upon the date of delivery, if delivered by hand; upon the second business day after mailing, if mailed by certified or registered mail with postage prepaid; upon the date of fax transmission, if delivered by fax (with confirmation confirmed); or upon the first day after dispatch, if sent by nationally-recognized overnight courier as follows:

If to Seller:

Carecorps Management Company, LLC
P.O. Box 360067
Birmingham, Alabama 35236
Attention: Eric Melton
Fax: (205) 979-8329

With copies to:

Phelps Dunbar L.L.P.
111 East Capitol Street, Suite 600
Jackson, Mississippi 39201-2122
Attention: Douglas C. Noble
Fax: (601) 360-9777

If to Buyer:

Porter Properties, Inc.
472 North Dean Road
Suite 100
Auburn, Alabama 36830
Attention: Mr. Howard J. Porter
Fax: (334) 826-1763

With a copy to:

Dominick, Fletcher, Yeilding, Wood & Lloyd, P.A.
2121 Highland Avenue South
Birmingham, Alabama 35205
Attention: Susan D. Doughton
Fax: (205) 939-2914

or to such other addresses as any party may provide to the other parties in writing.

14.7 Entire Agreement. Except for the Confidentiality Agreement (which shall survive the execution and delivery of this Agreement), this Agreement, together with the exhibits, the Disclosure Schedule, and the certificates, agreements, documents, instruments and writings that are delivered pursuant hereto, constitutes the entire agreement and understanding of Buyer and Seller in respect of the subject matter hereof and supersedes all prior understandings, agreements, or representations by or among Buyers and Seller, written or oral, to the extent they relate in any way to the subject matter hereof or the transactions contemplated hereby.

14.8 Successors. This Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto and to their respective successors and permitted assigns. In the event that a Chapter 11 trustee should be appointed for Seller, or in the event that Seller's Chapter 11 case should be converted to a case under Chapter 7, the obligations of Seller hereunder shall be binding upon such trustee or successor Chapter 7 estate.

14.9 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original but all of which together shall constitute but one and the same instrument.

14.10 Severability. The provisions of this Agreement will be deemed severable and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof; *provided that* if any provision of this Agreement, as applied to any party or to any circumstance, is adjudged by a Governmental Authority or arbitrator not to be enforceable in accordance with its terms, the parties agree that the Governmental Authority or arbitrator making such determination will have the power to modify the provision in a manner consistent with its objectives such that it is enforceable, and/or to delete specific words or phrases, and in its reduced form, such provision will then be enforceable and will be enforced.

14.11 Headings. The headings used in this Agreement are for convenience only and shall not constitute a part of this Agreement.

14.12 Schedules. All of the exhibits and schedules attached hereto are incorporated herein and made a part of this Agreement by reference. Matters reflected in the Schedules and Exhibits to this Agreement are not necessarily limited to matters required by this Agreement to be reflected in such Schedules or Exhibits. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. A disclosure made by the Seller in any Section of this Agreement, Section of the Disclosure Schedule or Exhibit that is sufficient on its face to reasonably inform Buyers of information

required to be disclosed in another Section of this Agreement, Section of the Disclosure Schedule or Exhibit in order to avoid a misrepresentation hereunder or thereunder shall be deemed, for all purposes of this Agreement, to have been made with respect to such other Section of this Agreement, Section of the Disclosure Schedule or Exhibit.

14.13 Jurisdiction. So long as the Bankruptcy Cases are pending, any Proceeding between the parties hereto relating to this Agreement or to any agreement, document or instrument delivered pursuant hereto or in connection with the transactions contemplated hereby, or in any other manner arising out of or relating to the transactions contemplated by or referenced in this Agreement shall be commenced and maintained exclusively in the Bankruptcy Court, and the parties hereto submit themselves unconditionally and irrevocably to the personal jurisdiction of such court.

14.14 Disclosure of Tax Treatment and Structure. Notwithstanding anything in this Agreement or the documents or agreements contemplated hereby to the contrary, the parties (and each employee, representative or other agent of the parties) may disclose to any and all persons, without limitation of any kind, the U.S. federal income tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to the parties relating to such tax treatment and tax structure, such disclosure to be permissible as of the earliest of (a) the date of the public announcement of discussions relating to the transactions contemplated by this Agreement, (b) the date of public announcement of the transactions contemplated by this Agreement, and (c) the date of the execution of this Agreement. Furthermore, nothing contained in this agreement shall restrict the ability of a party to consult a tax advisor of its own choosing with respect to the transactions contemplated by this Agreement.

[Signature page follows]

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

SELLER:

CARE CENTER OF OPELIKA, INC.

Debtor-in-Possession

By: _____

Name: Aundrea D. Fuller

Title: Chief Operating Officer

By: _____

Name: Eric Melton

Title: Chief Financial Officer

BUYER:

PORTER PROPERTIES, INC.

By: _____

Name: _____

Title: _____

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

In re:)	
)	
)	
CARECORPS MANAGEMENT)	Case No. 08-11728 DWH
COMPANY, LLC, <i>et al.</i> ¹)	Chapter 11
)	Jointly Administered
Debtors.)	
)	

**ORDER AND NOTICE OF SALE HEARING
(Opelika Facility)**

THIS CAUSE came before the Court on the *Emergency Motion for Order Shortening Time and Limiting Notice of Sale Motion* [Docket No. 514] filed herein by the debtors and debtors-in-possession CareCorps Management Company, LLC, *et al.* (the “**Debtors**”) with respect to their *Motion for Order Authorizing Sale of Assets Free and Clear of Liens, Claims and Interests and Assumption and Assignment of Executory Contracts (Opelika Facility)* [Docket No. 513] (the “**Sale Motion**”). The Court has considered the motion, finds that the same should be granted, and declares that it is hereby ORDERED, ADJUDGED AND DECREED as follows:

ORDERED that the Debtors shall serve copies of this Order and Notice of Sale Hearing and the Sale Motion (along with the Asset Purchase Agreement attached thereto) on the following entities: (i) all persons that were contacted by the Debtors or that expressed interest as potential purchasers in connection with the marketing and sale process; (ii) all other prospective offerors and parties-in-interest upon written request to the Debtors; (iii) all counterparties to the Executory Contracts; (iv) all persons or entities with an interest in the Transferred Assets pursuant to Rule 6004(c); (v) all persons listed on the most recent Shortened Service List; and (vi) the Buyer and such other persons or entities reasonably requested by Buyer. It is further

ORDERED that the Debtors shall serve all other persons listed on the Court Matrix of Debtor Care Center of Opelika, Inc. with a copy of this Order and Notice of Sale Hearing only, *via* U.S. Mail, First Class. Copies of the Sale Motion, as well as the Asset Purchase Agreement appended thereto and all other pleadings pertaining to the Sale, may be obtained (i) electronically *via* the internet by special posting at <http://www.phelpsdunbar.com/CareCorps>, the firm website of undersigned counsel for the Debtors, or (ii) by written request made to undersigned counsel for the Debtors. It is further

ORDERED that service pursuant to this Order and Notice of Sale Hearing shall constitute good and proper notice of the Sale Motion and hearing thereon under the Bankruptcy Rules.

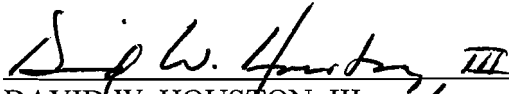
¹ The Debtors are the following: Care Center of Aberdeen, Ltd.; Pillars of Aberdeen, LLC; Care Center of Louisville, Ltd.; Pillars of Louisville, LLC; Care Center of Laurel, Ltd; Pillars of Laurel, Ltd.; Care Center of Clinton, LLC; Care Center of Opelika, Inc.; Red Bay Care Center, Inc.; Vernon Care Center, Inc.; AirCorps Travel and Transportation, LLC; CareCorps Management Corporation; CareCorps Management Company, LLC.

ALL PARTIES SHALL FURTHER TAKE NOTICE that any objection to the Sale shall be made in writing and filed with the Clerk of Court (703 Highway 145 North, Aberdeen, MS 39730) so as to be received by 5:00 p.m. Central Time on **Monday, February 23, 2009** (the "**Objection Deadline**"), and served on the following persons by such Objection Deadline:

- (a) Counsel for Debtors: Douglas C. Noble
Post Office Box 23066
Jackson, Mississippi 39225-3066
doug.noble@phelps.com
- (b) Counsel for Regions: Timothy M. Lupinacci
Wachovia Tower
420 20th Street North, Suite 1600
Birmingham, Alabama 35203
tlupinacci@bakerdonelson.com
- (c) Counsel for Committee: Stephen W. Rosenblatt
Post Office Box 22567
Jackson, Mississippi 39225-2567
steve.rosenblatt@butlersnow.com
- (d) Office of US Trustee: Sammye S. Tharp, Trial Attorney
100 W. Capitol Street, Suite 706
Jackson, Mississippi 39269
sammye.s.tharp@usdoj.gov
- (e) Counsel for Buyer: Susan Dominick Doughton
2121 Highland Avenue
Birmingham, Alabama 35205
SDD@dfy.com

If any timely objection to the Sale Motion is filed and not withdrawn, a **final hearing** on the Sale Motion and approval of the Sale to Buyer shall take place on **Wednesday, February 25, 2009, at 10:00 a.m.**, in **Courtroom 1, Cochran Federal Bankruptcy Courthouse, Highway 145 N, Aberdeen, Mississippi**. If no objections are timely filed thereto, the Court may consider and enter an order granting the Sale Motion *ex parte* and without a hearing.

SO ORDERED ON THIS the 9th day of February, 2009.



DAVID W. HOUSTON, III
United States Bankruptcy Judge