# UNITED STATES
# SECURITIES AND EXCHANGE COMMISSION
**WASHINGTON, D.C. 20549**

# FORM 8-K

## CURRENT REPORT

**PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**Date of Report (Date of earliest event reported): July 23, 2012 (July 17, 2012)**

# Newcastle Investment Corp.

**(Exact name of registrant as specified in its charter)**

| | | |
|---|---|---|
| **Maryland** (State or other jurisdiction of incorporation) | | |
| **001-31458** (Commission File Number) | | **81-0559116** (IRS Employer Identification No.) |
| **1345 Avenue of the Americas, 46th Floor New York, New York** (Address of principal executive offices) | | **10105** (Zip Code) |

**Registrant's telephone number, including area code (212) 798-6100**

**N/A**
**(Former name or former address, if changed since last report.)**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 1.01 – Entry into a Material Definitive Agreement.**

On July 17, 2012, Newcastle Investment Corp., through its wholly owned subsidiaries ("Newcastle"), entered into agreements pursuant to which Newcastle acquired the right to purchase eight senior housing assets (the "AL Portfolio") from the sellers named in the Amended and Restated Purchase Agreement, amended as of July 16, 2012. The AL Portfolio comprises more than 800 beds in senior living facilities located in California, Oregon, Utah, Arizona and Idaho.

On July 18, 2012, Newcastle completed the acquisition of the AL Portfolio for an aggregate purchase price of approximately $143 million plus related expenses. Newcastle funded the purchase price with an approximately $55 million equity investment and an approximately $88 million non-recourse credit facility with Fannie Mae. The financing currently has a weighted average interest rate of 3.45%, matures in seven years and is secured, among other things, by a first lien security interest in each of the properties comprising the AL Portfolio. Newcastle has retained an affiliate of its manager to manage the properties. Pursuant to a management agreement for each property, Newcastle will pay a fee equal to 6% of the properties' gross income (as defined in each agreement) for the first two years and 7% thereafter (and will reimburse the manager for certain property-level expenses).

The foregoing summary of the agreements does not purport to be a complete description and is qualified in its entirety by the agreements themselves, which are attached hereto as Exhibits 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7, 10.8, 10.9 and 10.10 and are incorporated herein by reference. In accordance with Instruction 2 to Item 601 of Regulation S-K, Newcastle is filing only one management agreement related to the AL Portfolio properties as Exhibit 10.10. The other management agreements are substantially identical in all material respects except as to the parties thereto.

**Item 2.03 – Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

See Item 1.01 above, the provisions of which are incorporated herein by reference.

**Item 9.01 – Financial Statements and Exhibits.**

*(d) Exhibits*

| Exhibit Number | Description |
|---|---|
| 10.1 | Master Designation Agreement, dated as of July 17, 2012, among B Healthcare Properties LLC and the designees listed on the signature pages attached thereto. |
| 10.2 | Amended and Restated Purchase Agreement, dated as of February 27, 2012, by and among the Purchasers named therein, the Sellers named therein, the Former Sellers named therein and Walter C. Bowen. |
| 10.3 | Amendment No. 1 to the Amended and Restated Purchase Agreement, dated as of March 30, 2012, among the Purchasers named therein, the Sellers named therein, BDC/West Covina II, LLC and Walter C. Bowen. |
| 10.4 | Amendment No. 2 to the Amended and Restated Purchase Agreement, dated as of April 11, 2012, among the Purchasers named therein, the Sellers named therein and Walter C. Bowen. |
| 10.5 | Amendment No. 3 to the Amended and Restated Purchase Agreement, dated as of April 27, 2012, among the Purchasers named therein, the Sellers named therein and Walter C. Bowen. |
| 10.6 | Amendment No. 4 to the Amended and Restated Purchase Agreement, dated as of June 14, 2012, among the Purchasers named therein, the Sellers named therein and Walter C. Bowen. |
| 10.7 | Amendment No. 5 to the Amended and Restated Purchase Agreement, dated as of July 16, 2012, among the Purchasers named therein, the Sellers named therein and Walter C. Bowen. |
| 10.8 | Master Credit Facility Agreement, dated as of July 18, 2012, by and among the Borrowers named therein, Propco LLC, TRS LLC and Oak Grove Commercial Mortgage, LLC. |
| 10.9 | Assignment of Master Credit Facility Agreement and Other Loan Documents, dated as of July 18, 2012, from Oak Grove Commercial Mortgage, LLC to Fannie Mae. |
| 10.10 | Management Agreement, dated as of July 5, 2012, between Willow Park Management LLC and Willow Park Leasing LLC. |

The following management agreements are being omitted in reliance on Instruction 2 to Item 601 of Regulation S-K, as discussed in Item 1.01 above:

Management Agreement, dated as of July 5, 2012, between Sun Oak Management LLC and Sun Oak Leasing LLC.

Management Agreement, dated as of July 5, 2012, between Orchard Park Management LLC and Orchard Park Leasing LLC.

Management Agreement, dated as of July 5, 2012, between Desert Flower Management LLC and Desert Flower Leasing LLC.

Management Agreement, dated as of July 5, 2012, between Canyon Creek Property Management LLC and Canyon Creek Leasing LLC.

Management Agreement, dated as of July 5, 2012, between Regent Court Management LLC and Regent Court Leasing LLC.

Management Agreement, dated as of July 5, 2012, between Sunshine Villa Management LLC and Sunshine Villa Leasing LLC.

Management Agreement, dated as of July 5, 2012, between Sheldon Park Management LLC and Sheldon Park Leasing LLC.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

NEWCASTLE INVESTMENT CORP.
(Registrant)

/s/ Brian C. Sigman
Brian C. Sigman
Chief Financial Officer

Date: July 23, 2012

**Exhibit 10.1**

EXECUTION VERSION

MASTER DESIGNATION AGREEMENT

THIS MASTER DESIGNATION AGREEMENT, dated as of July 17, 2012, is made and entered into by and among B Healthcare Properties LLC ("B Healthcare") and the other parties listed on the signature pages attached hereto.

Reference is made to (i) that certain Amended and Restated Purchase Agreement, dated February 27, 2012, by and among B Healthcare, the sellers named therein and Walter C Bowen, as amended by Amendment No. 1 to the Amended and Restated Purchase Agreement, dated March 30, 2012, Amendment No. 2 to the Amended and Restated Purchase Agreement, dated April 11, 2012, Amendment No. 3 to the Amended and Restated Purchase Agreement, dated April 27, 2012, and Amendment No. 4 to the Amended and Restated Purchase Agreement, dated June 14, 2012, and Amendment No. 5, dated July 16, 2012 (as so amended, the "Purchase Agreement") and (ii) that certain Asset Sale Agreement, dated March 30, 2012, by and among B Healthcare, BPM Senior Living Company and Bowen Property Management Company, as amended by Amendment No. 1, dated April 11, 2012, Amendment No. 2, dated April 27, 2012, and Amendment No. 3, dated June 14, 2012, and Amendment No. 4, dated July 16, 2012 (as so amended, the "Asset Agreement")

Terms defined in the Purchase Agreement and the Asset Agreement, as the case may be, are used herein with the same meaning.

B Healthcare and each of the entities identified on Schedule 1 and Schedule 2 attached hereto and listed on the signature pages hereto (each, a "Designee") agree as follows:

Section 1. Pursuant to (i) Section 11.6 of the Purchase Agreement, B Healthcare hereby assigns to each Designee the right to acquire that portion of the Assets identified on Schedule 1 (those assets to be acquired by each such Designee, the "Designee's Portfolio Assets") and all right, title, interest and claims under the Purchase Agreement with respect to the Designee's Portfolio Assets, and each such Designee hereby accepts such assignment and designation and (ii) Section 10.5 of the Asset Agreement, B Healthcare hereby assigns to each Designee the right to acquire that portion of the Assets identified on Schedule 2 (those assets to be acquired by each such Designee, the "Designee's Harrison Assets" and, together with any Designee's Portfolio Assets to be acquired by such Designee, the "Designee's Assets") and all right, title, interest and claims under the Asset Agreement with respect to the Designee's Harrison Assets, and each such Designee hereby accepts such assignment and designation.

Section 2. Each Designee hereby assumes all of the obligations of B Healthcare under the Purchase Agreement or the Asset Agreement, as the case may be, with respect to the Designee's Assets and the related Assumed Liabilities, if applicable (collectively, the "Obligations").

Section 3. With respect to any Facility, for purposes of this Master Designation Agreement, "Real Estate Assets" shall mean the Real Property of such Facility and the Assets to be conveyed pursuant Section 1.1(a)(iii) of the Purchase Agreement related to such Facility.

Section 4. As between B Healthcare and each Designee, B Healthcare hereby is released from the Obligations assumed by each Designee and each Designee shall be solely responsible for its Obligations.

Section 5. This Designation Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

Section 6. This Master Designation Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Designation Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart of this Designation Agreement.

IN WITNESS WHEREOF, B Healthcare and each Designee intending to be legally bound, have caused this Master Designation Agreement to be executed by their officers thereunto duly authorized as of the date first above written.

B Healthcare Properties LLC, a
Delaware limited liability company

By: /s/ Andrew White
Name: Andrew White
Title: CEO, President & Secretary

[B Healthcare Properties LLC-Signature Page to Master Designation Agreement]

**DESIGNEES:**

FHC Property Management LLC, a
Delaware limited liability company

By: /s/ Andrew White
Name: Andrew White
Title: CEO, President & Secretary

B Harrison LLC, a
Delaware limited liability company

By: /s/ Christopher Falkowski
Name: Christopher Falkowski
Title: Vice-President

B Harrison Assets LLC, a
Delaware limited liability company

By: /s/ Christopher Falkowski
Name: Christopher Falkowski
Title: Vice-President

Canyon Creek Leasing LLC, a
Delaware limited liability company

By: /s/ Christopher Falkowski
Name: Christopher Falkowski
Title: Vice-President

Desert Flower Leasing LLC, a
Delaware limited liability company

By: /s/ Christopher Falkowski
Name: Christopher Falkowski
Title: Vice-President

Orchard Park Leasing LLC, a
Delaware limited liability company

By: /s/ Christopher Falkowski
Name: Christopher Falkowski
Title: Vice-President

Regent Court Leasing LLC, a
Delaware limited liability company

By: /s/ Christopher Falkowski
Name: Christopher Falkowski
Title: Vice-President

Sheldon Park Leasing LLC, a
Delaware limited liability company

By: /s/ Christopher Falkowski
Name: Christopher Falkowski
Title: Vice-President

Sun Oak Leasing LLC, a
Delaware limited liability company

By: /s/ Christopher Falkowski
Name: Christopher Falkowski
Title: Vice-President

Sunshine Villa Leasing LLC, a
Delaware limited liability company

By: /s/ Christopher Falkowski
Name: Christopher Falkowski
Title: Vice-President

Willow Park Leasing LLC, a
Delaware limited liability company

By: /s/ Christopher Falkowski
Name: Christopher Falkowski
Title: Vice-President

Canyon Creek Owner LLC, a
Delaware limited liability company

By: /s/ Christopher Falkowski
Name: Christopher Falkowski
Title: Vice-President

Desert Flower Owner LLC, a
Delaware limited liability company

By: /s/ Christopher Falkowski
Name: Christopher Falkowski
Title: Vice-President

Orchard Park Owner LLC, a
Delaware limited liability company

By: /s/ Christopher Falkowski
Name: Christopher Falkowski
Title: Vice-President

Regent Court Owner LLC, a
Delaware limited liability company

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Name: Christopher Falkowski
Title: Vice-President

Sheldon Park Owner LLC, a
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By: /s/ Christopher Falkowski
Name: Christopher Falkowski
Title: Vice-President

Sun Oak Owner LLC, a
Delaware limited liability company

By: /s/ Christopher Falkowski
Name: Christopher Falkowski
Title: Vice-President

Sunshine Villa Owner LLC, a
Delaware limited liability company

By: /s/ Christopher Falkowski
Name: Christopher Falkowski
Title: Vice-President

Willow Park Owner LLC, a
Delaware limited liability company

By: /s/ Christopher Falkowski
Name: Christopher Falkowski
Title: Vice-President

Schedule 1
Purchase Agreement

| FACILITY | SELLER | DESIGNEE (ALL ASSETS/ASSUMED LIABILITIES UNDER PURCHASE AGREEMENT RELATED TO FACILITY) OTHER THAN REAL ESTATE ASSETS | DESIGNEE REAL ESTATE ASSETS |
|---|---|---|---|
| Canyon Creek<br>7235 South Union Park Avenue<br>Cottonwood, Heights, UT 84047 | Regents/Salt Lake, LLC, an Oregon limited liability company | Canyon Creek Leasing LLC | Canyon Creek Owner LLC |
| Desert Flower<br>9185 East Desert Cove<br>Scottsdale, AZ 85260 | Desert Flower LLC, an Oregon limited liability company | Desert Flower Leasing LLC | Desert Flower Owner LLC |
| Orchard Park<br>675 Alluvial Avenue<br>Clovis, CA 93611 | RAL/Clovis, Inc., an Oregon corporation | Orchard Park Leasing LLC | Orchard Park Owner LLC |
| Regent Court<br>400 N. W. Elks Drive<br>Corvallis, OR 97330 | Regent/Corvallis, LLC, an Oregon limited liability company | Regent Court Leasing LLC | Regent Court Owner LLC |
| Sheldon Park<br>2440 Willakenzie Road<br>Eugene, OR 97401 | Regent/Eugene, LLC, an Oregon limited liability company; and Christine Investments, LLC, an Oregon limited liability company | Sheldon Park Leasing LLC | Sheldon Park Owner LLC |
| Sun Oak<br>7241 Canelo Hills Drive<br>Citrus Heights, CA 95610 | BPM/Citrus Heights Limited Partnership, an Oregon limited partnership | Sun Oak Leasing LLC | Sun Oak Owner LLC |
| Sunshine Villa<br>80 Front Street<br>Santa Cruz, CA 95060 | Cornell Springs Partners, an Oregon joint venture; and Regent/Eugene, LLC, an Oregon limited liability company | Sunshine Villa Leasing LLC | Sunshine Villa Owner LLC |
| Willow Park<br>2600 North Milwaukee Street<br>Boise, ID 83704 | Regent/Boise, LLC, an Oregon limited liability company | Willow Park Leasing LLC | Willow Park Owner LLC |

| | SELLER | DESIGNEE |
|---|---|---|
| Assumed Corporate Contracts and Equipment Leases (including those Identified in Section 2.7 of the Sellers Disclosure Letter) | | |
| Corporate Contracts | Various | FHC Property Management LLC |

Schedule 2
Asset Agreement

| Designee | Assets |
|---|---|
| B Harrison Assets LLC | All right, title and interest in and to the FF&E, the Assumed Equipment Leases and the Assumed Contracts and the related Assumed Liabilities under the Asset Agreement |
| B Harrison LLC | All right, title and interest in the Lease and Sublease and the related Assumed Liabilities under the Asset Agreement |

**Exhibit 10.2**

EXECUTION VERSION

**BPM SENIOR LIVING PORTFOLIO SALE**

AMENDED AND RESTATED PURCHASE AGREEMENT

BY AND AMONG

EACH OF THE ENTITIES SET FORTH UNDER THE HEADING "PURCHASERS"
ON THE SIGNATURE PAGES HERETO,

EACH OF THE ENTITIES SET FORTH UNDER THE HEADING "SELLERS"
ON THE SIGNATURE PAGES HERETO,

EACH OF THE ENTITIES SET FORTH UNDER THE HEADING "FORMER SELLERS"
ON THE SIGNATURE PAGES HERETO
(FOR PURPOSES OF ARTICLE XI ONLY)

AND

WALTER C. BOWEN
(FOR PURPOSES OF SECTIONS 4.12, 4.17 AND 6.10 AND ARTICLE XI ONLY)

February 27, 2012

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LIST OF EXHIBITS

**INDEX OF DEFINED TERMS**

**AMENDED AND RESTATED PURCHASE AGREEMENT**

THIS AMENDED AND RESTATED PURCHASE AGREEMENT (this "Agreement"), dated as of this 27th day of February, 2012 (the "Effective Date"), is made and entered into by and among each of the entities set forth under the heading "Purchasers" on the signature pages hereto (individually, a "Purchaser" and, together, the "Purchasers"), each of the entities set forth under the heading "Sellers" on the signature pages hereto (individually a "Seller" and, together, the "Sellers"), each of the entities set forth in Exhibit 1.0 (individually a "Former Seller" and, together, the "Former Sellers") (for purposes of Article XI only) and Walter C. Bowen ("Bowen") (for purposes of Sections 4.12, 4.17 and 6.10 and Article XI only). Each collective group of the Sellers and of the Purchasers is sometimes referred to herein individually as a "Party" and collectively as the "Parties."

**RECITALS**

A. The Purchasers, the Sellers, the Former Sellers and Bowen are parties to that certain Purchase Agreement, dated as of August 25, 2011 (as amended by that certain letter agreement, dated as of September 13, 2011, by Amendment No. 1, dated as of October 8, 2011, by Amendment No. 2, dated as of November 4, 2011, by Amendment No. 3, dated as of December 22, 2011, by Amendment No. 4, dated as of February 14, 2012, and by Amendment No. 5, dated as of February 23, 2012) (as so amended, the "Original Agreement"), pursuant to which, among other things, the Purchasers agreed to purchase from the Sellers, and the Sellers agreed to sell to the Purchasers, the Assets (as defined therein).

B. The Parties desire to amend and restate the Original Agreement in order to, among other things, acknowledge and clarify that the Purchasers shall no longer be purchasing from the Former Sellers, and the Former Sellers shall no longer be selling to the Purchasers, the Assets (as defined in the Original Agreement) of such Former Sellers.

C. The Sellers own assisted living facilities, Alzheimer's care facilities and independent living facilities, listed on Exhibit 1.1(a) (each a "Facility" and, collectively, the "Facilities"). Each Facility is owned by a separate Seller, as identified on Exhibit 1.1(a).

D. The Purchasers desire to purchase all of the Assets and to acquire all of the Sellers' respective right, title and interest in and to the Assets, on the terms and conditions set forth in this Agreement.

E. The Sellers desire to sell to the Purchasers all of the Assets and to convey to the Purchasers all of their respective, right, title and interest in the Assets, on the terms and conditions set forth in this Agreement.

Now, therefore, in consideration of the representations, warranties and covenants herein contained, the Parties agree as follows.

## ARTICLE I

## PURCHASE AND SALE

Section 1.1 Transfer of Assets.

(a) For the consideration hereinafter provided, the Sellers, in accordance with the terms and subject to the conditions in this Agreement, shall convey, transfer and assign to the Purchasers at the Closing, and the Purchasers shall purchase from the Sellers (in each case, free and clear of all Liens other than Permitted Liens), the following, hereinafter collectively referred to as the "Assets":

(i) each Seller's fee simple title in and to the land, as more particularly described in Exhibit 1.1(a) attached hereto (the "Land"), and all buildings, structures, fixtures, facilities, amenities, driveways, walkways, parking lots and other improvements owned by each Seller and located on the Land (collectively, the "Improvements");

(ii) all of each Seller's right, title and interest in and to all easements, rights-of-way, rights of ingress and egress, strips, zones, licenses, transferable hereditaments, privileges, tenements and appurtenances in any way belonging to or appertaining to the Land or the Improvements, and any right or interest in any open or proposed highways, streets, roads, avenues, alleys, easements, strips, gores and rights-of-way in, across, in front of, contiguous to, abutting or adjoining the Land (collectively with the Land and the Improvements, the "Real Property");

(iii) any pending or future action for condemnation, eminent domain or similar proceeding, or for any damage to the Real Property by reason of a change of grade thereof;

(iv) all of each Seller's right, title and interest in and to all materials, supplies, inventory, consumables, perishable and nonperishable food products, and other similar tangible property used in connection with the operation of the Real Property (collectively, the "Inventory");

(v) all of each Seller's right, title and interest in and to the Tenant Leases and the Assumed Equipment Leases;

(vi) all of each Seller's right, title and interest in and to the Assumed Contracts;

(vii) all of each Seller's right, title and interest in and to all Residency Agreements;

(viii) except for the Excluded Assets, all of each Seller's right, title and interest in and to: (A) local and toll-free telephone and facsimile exchange numbers and post office box addresses used in connection with the ownership, maintenance and operation of the Real Property and the businesses operated at the Facilities (the "Business"), (B) to the extent any Seller's interest is assignable pursuant to Applicable Law and to the extent the Purchasers in their sole discretion elect to assume the same, all of each Seller's right, title and interest in and to all licenses, permits, approvals, entitlements, and other governmental authorizations (including certificates of occupancy), provider agreements and certificates of need issued by any Governmental Authority in each Seller's possession or control in connection with the ownership, operation, planning, development, use or maintenance of any Real Property and the Business, (C) all rights and work product under construction, service, consulting, engineering, architectural, design and construction agreements (the "Work Product") (including any warranties contained therein), (D) to the extent that each Seller's interest is assignable, all of each Seller's interest in all construction warranties, manufacturers' warranties and other warranties applicable to the Real Property or the Business, (E) all development rights and goodwill related to any portion of any Real Property, (F) all leads regarding prospective residents, all customer lists, referral source lists, and competitive analyses related to the Facilities, (G) any trade marks, trade names, service marks, trade dress and all variations thereof, (H) all licensed software and proprietary software (the "Proprietary Software") used in the operation of the Facilities, (I) deposits and advance payments made by the Sellers and held by third parties with respect to any of the Assets or the Business, collectively "Transferred Funds", (J) all indemnities related to the Assets, (K) all causes of action, choses of action, rights of recovery, rights of setoff and rights of recoupment of the Sellers relating to the Real Property or the Business, including any such rights of the Sellers under any property, casualty, or other insurance policy ("Causes of Action"), and (L) all other intangible property used by the Sellers exclusively in connection with the ownership and operation of the Real Property or the Business (collectively, the "Intangible Property");

(ix) all of each Seller's right, title and interest in and to (A) keys and combinations to all doors, cabinets, enclosures and other locks on or about the Real Property, (B) furniture, equipment, televisions, telephone systems; mechanical systems, fixtures and equipment, electrical systems, fixtures and equipment; heating fixtures, systems, and equipment; air conditioning fixtures, systems and equipment, plumbing fixtures, systems, and equipment, security systems and equipment, carpets, drapes, artwork and other furnishings, refrigerators, microwaves, ovens, stoves, and all other appliances, vehicles, office equipment, furniture and fixtures not considered improvements, spare parts, supplies and other physical assets, machinery, tools, trade fixtures, utensils, china, glassware, and other personal property owned by the Sellers, which are located on or used exclusively in connection with the maintenance and operation of the Facility and/or the Real Property (collectively, the "FF&E"), (C) the Books and Records and (D) all other personal property owned by the Sellers and which is used by the Sellers in connection with the ownership, maintenance, and operation of the Real Property; but excluding the Excluded Assets (collectively, and together with the Inventory, the "Personal Property");

(x) except for the Excluded Documents, all of each Seller's right, title and interest in and to the following documents that relate to the Real Property, the Personal Property and the Business: (A) all records and reports (except for such records and reports where transfer is prohibited by Applicable Law) relating to all Residents at the Facilities (collectively, the "Resident Records"), (B) Employee Records, but only to the extent such Employee Records are for employees who become Transitioned Employees, (C) third party reports and studies, land surveys, structural reviews, environmental assessments or audits, architectural drawings and engineering, geophysical, soils, seismic, geologic, environmental (including with respect to the impact of materials used in the construction or renovation of the Improvements) and architectural reports, studies and certificates pertaining to the Real Property, (D) land use applications, land use permits and approvals, and other operating permits and (E) policy and procedure manuals (collectively, the "Assigned Records"); and

(xi) copies of the following records (the originals and all other rights associated therewith are to be retained by the Sellers): (A) building designs, (B) accounting records, including billing records and invoices, (C) regulatory surveys and reports, incident tracking reports and (D) all financial statements and other accounting, tax, financial and other books and records relating to the use, maintenance and operation of the Facility, but excluding any Excluded Documents (collectively, the "Copied Records," and, together with the Assigned Records, the "Books and Records").

Notwithstanding the foregoing, each Seller shall separately convey, transfer and assign each Real Property to a single Purchaser (or such Purchaser's assigns pursuant to Section 11.6) in accordance with Exhibit 1.1(a), which exhibit identifies for each Real Property: (A) each Seller that shall convey, transfer and assign such Real Property and (B) the Purchaser to which such Seller shall effect the conveyance, transfer and assignment of such Real Property. With respect to the Assets other than the Real Property, each Seller shall separately convey, transfer and assign each such Asset to one or more Purchasers (or such Purchasers' assigns pursuant to Section 11.6) in accordance with Exhibit 1.1(a), which exhibit identifies for each Facility (X) each Seller that shall separately convey, transfer and assign such Assets and (Y) the Purchaser or Purchasers to which such Seller shall effect the conveyance, transfer and assignment of such Assets. The Purchasers shall have the right to make modifications to the identity of the Purchasers on Exhibit 1.1(a) in accordance with Section 11.6 after the Effective Date up to the Closing Date.

(b) Notwithstanding anything to the contrary contained herein, the Assets shall not include all of the Sellers' right, title and interest in the following items (collectively, the "Excluded Assets"):

(i) All bank accounts, cash, cash equivalents, securities and accounts receivable (but only to the extent relating to periods prior to the Closing) (including third party settlements), prepaid accounts (subject to the provisions of Section 9.6), real estate tax, insurance, maintenance, replacement and other escrows, reserves and impoundments held in connection with any loans and any Causes of Action (but only to the extent such Causes of Action relate to periods prior to the Closing);

(ii) All sums relating to Title XIX of the Social Security Act (however denominated by the applicable state, "Medicaid") rate adjustments relating to periods prior to the Closing;

(iii) Refunds, rebates and dividends paid in respect of workers' compensation, with respect to other insurance premiums paid by the Sellers relating to periods prior to the Closing Date, and refunds and additional recoveries by or payments to the Sellers from any person for services, goods or supplies which were provided by such person to the Sellers prior to the Closing Date;

(iv) The following books and records: (A) the Sellers' organizational documents, minute books and other books and records relating solely to the corporate or similar governance of each Seller as a legal entity, (B) records related to employees that do not become Transitioned Employees, and (C) any correspondence or communications between legal counsel on the one hand and the Sellers or the Seller Representatives on the other hand, whether or not covered by attorney-client privilege, and whether or not related to the transaction contemplated by this Agreement (collectively, the "Excluded Documents");

(v) Originals of the Copied Records;

(vi) The trademarks, trade names, service marks, web addresses and telephone numbers set forth on Exhibit 1.1(b)(vi); and

(vii) All management agreements with BPM Senior Living Company ("BPMSL").

Section 1.2 Closing. Unless this Agreement shall have been terminated pursuant to Article X, the closing hereunder (the "Closing") shall occur at 11:00 a.m. (New York City time) on April 30, 2012 (the "Closing Deadline Date"), unless extended by the Purchasers pursuant to Section 4.8, or earlier upon mutual agreement by the Purchasers and the Sellers. The date on which the Closing occurs is hereinafter referred to as the "Closing Date." The Closing hereunder shall be effective as of 11:59 p.m. (Pacific Time) on the Closing Date. On or before the Closing Date, (i) all Seller Documents, (ii) all executed documents required from each Purchaser under Section 9.2(b) (the "Purchaser Documents") and (iii) all executed documents required from Bowen under Section 9.2(c) in order to effectuate the consummation of the Closing shall be delivered to the Title Company, in its capacity as escrow agent (the "Escrow Agent").

Section 1.3 Purchase Price. The purchase price for the Assets shall be One Hundred Sixty Seven Million Seven Hundred Thousand Dollars ($167,700,000) (the "Purchase Price"), subject to the prorations and further adjustments as provided for in this Agreement. The Purchase Price will be allocated among the Facilities and the Assets related to the respective Facilities and paid to the respective Sellers as provided for in Section 1.7.

Section 1.4 Earnest Money. Prior to the Effective Date, the Purchasers have delivered Two Million Five Hundred Thousand Dollars ($2,500,000) to the Escrow Agent. Pursuant to that certain Amended and Restated Deposit Escrow Agreement, dated as of the Effective Date (as such agreement may be further amended in the future, the "Deposit Escrow Agreement"), by and among the Purchasers, the Sellers and the Escrow Agent, the Purchasers shall be refunded Eight Hundred Ten Thousand Six Hundred Eighty Dollars ($810,680) resulting in an amount of One Million Six Hundred Eighty-Nine Thousand Three Hundred Twenty Dollars ($1,689,320) as earnest money deposit (such

amount, as reduced pursuant to the terms of Section 1.4(d) below, together with all interest accrued thereon, the "Deposit"). The Deposit shall be allocated among the Facilities based on the allocation of the Purchase Price as provided in Section 1.7. The Escrow Agent shall hold the Deposit in one or more interest bearing accounts as directed by the Purchasers.

(a) In the event the Closing occurs, the Deposit shall be applied against the Purchase Price payable at the Closing and the Purchasers shall receive a credit therefor.

(b) In the event this Agreement is terminated in accordance with Section 10.1 (other than pursuant to Section 10.1(c) and subject to the conditions set forth in Section 10.3(b)), then the Escrow Agent shall return the Deposit to the Purchasers, except to the extent a portion of the Deposit is payable to the Sellers pursuant to Section 1.8.

(c) In the event this Agreement is terminated in accordance with and subject to the conditions of Section 10.1(c), then the Escrow Agent shall pay the Deposit to the Sellers, which payment of the Deposit to the Sellers shall constitute the Sellers' full liquidated damages payment as provided in Sections 10.3(b) and 11.16(c).

(d) In the event that this Agreement is terminated with respect to the Regency Grand Facility pursuant to the terms of Section 5.2(i)(i), that portion of the Deposit allocated to the Regency Grand Facility shall be returned to the Purchasers promptly upon written demand by the Purchasers to the Escrow Agent.

(e) Upon the disbursement of the Deposit pursuant to Section 1.4(b) or (c) above, this Agreement shall be null and void and neither Party shall have any further obligation to the other except for those matters which specifically survive such a termination.

Section 1.5 Payment of Purchase Price. At the Closing, the Purchasers shall pay the Purchase Price, (i) adjusted for any prorations, credits and additions for the benefit of the Purchasers or the Sellers as specified in Section 5.2(c) and Article IX, (ii) reduced pursuant to the terms of Section 5.2(i)(i), (iii) reduced by the outstanding principal amount and accrued interest on the Assumed Debt, and (iv) reduced by the amount by which the loan assumption or transfer fee for the Assumed Debt exceeds 1% of the assumed principal amount of the particular Assumed Debt (the "Excess Assumption Fee"). The Purchase Price, as adjusted per the foregoing sentence, minus the Deposit, shall be paid by wire transfer of immediately available federal funds to the Escrow Agent.

Section 1.6 Assumed Liabilities. At the Closing, no Purchaser shall assume any liabilities or obligations of any Seller whatsoever, fixed or contingent, and the Sellers shall retain and discharge in the ordinary course all liabilities and obligations of the Sellers, other than the following obligations which will be assumed by one or more of the Purchasers (as identified
in the respective assignment documents executed at the Closing (the "Assumed Liabilities")):

(i) liabilities and obligations arising out of or related to periods after the Closing, or as otherwise expressly set forth herein, with respect to the Assumed Contracts, the Assumed Equipment Leases, the Tenant Leases and all Residency Agreements; and

(ii) liabilities and obligations arising out of or related to periods after the Closing, or as otherwise expressly set forth herein, with respect to the Assumed Debt Documents (including, but not limited to, the Assumed Debt).

Section 1.7 Allocation of Purchase Price. The Purchase Price and the Deposit shall be allocated among the Facilities and among the Assets related to the respective Facilities at the Closing as provided and as described in Exhibit 1.7. Each Party hereby covenants and agrees (i) to timely file all forms (including IRS Form 8594) and tax returns required to be filed in connection with Exhibit 1.7 and (ii) to take no position on any income tax return or form, before any governmental agency charged with the collection of any income tax, in any judicial proceeding or otherwise with any Governmental Authority that is any way inconsistent with the terms of this Section 1.7 and Exhibit 1.7.

Section 1.8 Due Diligence Period. The Parties hereby acknowledge that, as of the Effective Date, the Purchasers have not yet had an opportunity to complete their Due Diligence Investigation and fully review and evaluate all aspects of this transaction and the condition and suitability of the Assets. Accordingly, for the period (the "Due Diligence Period") beginning on the Effective Date and continuing until 5:00 p.m. (Pacific Time) on April 15, 2012 (as such date may be accelerated pursuant to Section 1.9, the "Hard Date"), and notwithstanding any other provision of this Agreement to the contrary, the Purchasers shall have the right to terminate this Agreement by written notice to the Sellers in the event the Purchasers, in the Purchasers' sole discretion, are not satisfied with the Assets for any reason (or no reason), which reason (or no reason) need not be specified in such notice, provided that such notice is delivered to the Sellers and their counsel at the email addresses set forth in Exhibit 1.8, on or prior to 5:00 p.m. (Pacific Time) on the Hard Date. Each Seller acknowledges and agrees that the Purchasers have no obligation to give the Sellers prior notice, or to negotiate in good faith with the Sellers regarding modifying the terms of this Agreement or the transactions contemplated hereby, before the Purchasers deliver the notice of termination contemplated by the immediately preceding sentence to the email address listed in Section 1.8 of the Disclosure Letter. If such notice of termination is so delivered (i) on or before 5:00 p.m. (Pacific Time) on February 27, 2012 (the "Commitment Date"), then the Purchasers shall be entitled to a refund of the Deposit minus an amount of Three Hundred Thousand Dollars ($300,000), which Three Hundred Thousand Dollars ($300,000) shall be paid to the Sellers, (ii) after 5:00 p.m. (Pacific Time) on the Commitment Date but on or before 5:00 p.m. (Pacific Time) on the Hard Date, then the Purchasers shall be entitled to a refund of the Deposit minus an amount of Six Hundred Thousand Dollars ($600,000), which Six

Hundred Thousand Dollars ($600,000) shall be paid to the Sellers or (iii) after 5:00 p.m. (Pacific Time) on the Hard Date, then the Purchasers shall not be entitled to a refund of the Deposit. If the Purchasers do not terminate this Agreement as set forth in this Section 1.8 or as otherwise provided herein, then this Agreement shall remain in full force and effect.

Section 1.9 Change in Hard Date. The Purchasers may accelerate the end of the Due Diligence Period by delivering written notice to the Sellers to the email address listed in Exhibit 1.8 of a date prior to the Hard Date, which shall thereafter be referred to as the "Hard Date."

## ARTICLE II

## REPRESENTATIONS AND WARRANTIES OF THE SELLERS

In recognition of the as-is basis of this transaction, the Sellers are providing the limited representations and warranties contained in this Article II. Each Seller represents and warrants to the Purchasers, jointly and severally, that, except as set forth in the Second Amended and Restated Disclosure Letter dated February 27, 2012 attached hereto (the "Disclosure Letter") and, with respect to Immaterial Contracts, Terminable Contracts and the Supplemental Financial Information only, as revised by Section 4.20 in the supplemental letter (the "Supplemental Letter") to be delivered by the Sellers to the Purchasers on or before March 2, 2012 (the "Update Date"), and except to the extent such representations and warranties are specifically made as of a particular date (in which case such representations and warranties will be true and correct as of such date) the representations and warranties contained in this Article II (i) are true and correct as of the Effective Date (except with respect to any representations and warranties (x) in Section 2.7 regarding Immaterial Contracts and Terminable Contracts and (y) in Section 2.20 regarding Supplemental Financial Information), (ii) with respect to any representations and warranties (x) in Section 2.7 regarding Immaterial Contracts and Terminable Contracts and (y) in Section 2.20 regarding Supplemental Financial Information, are true and correct as of the Update Date, and (iii) will be true and correct as of the Closing Date as though made as of the Closing Date. The Disclosure Letter is arranged in sections and subsections corresponding to the numbered and lettered sections and subsections contained in this Agreement to which such sections and subsections of the Disclosure Letter relate. An exception to a representation or warranty in this Article II set forth in the Disclosure Letter effectively modifies the corresponding representation or warranty in this Article II, notwithstanding whether such representation and warranty specifically references the Disclosure Letter. Any fact or item disclosed on any section of the Disclosure Letter shall not be deemed by reason only of such inclusion, to be material and shall not be employed as a point of reference in determining any standard of materiality under this Agreement.

Notwithstanding anything else to the contrary herein, any reference in this Agreement to "knowledge" of the Sellers shall be deemed to mean the actual knowledge of the individuals listed on Exhibit 2.0 after due inquiry.

The Purchasers acknowledge that the Sellers and their representatives have not made and are not making any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except as provided in this Article II, and that the Purchasers are not relying and have not relied on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except for the representations and warranties in this Article II.

Section 2.1 Organization and Qualification. (i) Each Seller is duly organized and validly existing and in good standing under the laws of the jurisdiction in which it is formed with all requisite power and authority to carry on its respective business as currently being conducted and to own or lease and operate the Assets it owns or leases as and in the places now owned, leased or operated, respectively; and (ii) each Seller is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of its business or the ownership, construction, management or operation of its Facilities makes such qualification or licensing necessary, other than in such jurisdictions where the failure to be so qualified or licensed, individually or in the aggregate, has not resulted in, and would not reasonably be expected to result in, a Material Adverse Change. The Sellers have provided to the Purchasers complete and correct copies of the articles of incorporation, bylaws, articles of organization, operating agreement, partnership agreement, shareholder or other equity owner agreement or other governing organizational documents (the "Organizational Documents"), as the case may be, for each Seller. No Seller is in default under or in violation of any provision of its respective Organizational Documents. For purposes of this Agreement, the term "Material Adverse Change" shall mean any change, state of facts, development, circumstance, effect, event, condition or occurrence that (a) has had, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the business, assets, properties, liabilities, operations, prospects, condition (financial or otherwise) or results of operations of the Facilities or the Business, or (b) could reasonably be expected to materially impair the ability of one or more of the Sellers to timely perform their obligations hereunder or under any Seller Documents or to timely consummate the transactions contemplated by this Agreement or prevent or materially delay the consummation of the transactions contemplated by this Agreement.

Section 2.2 Authority; Binding Effect; Approvals; No Conflicts.

(a) Subject to receipt of the Governmental Approvals each Seller has, and at the Closing each Seller will have, the requisite corporate, limited liability company or partnership right, power and authority, as applicable, to execute their respective Seller Documents, deliver and perform this Agreement by such Seller in connection with such transactions. The execution, delivery, performance and consummation of this Agreement, the applicable Seller Documents and all of the transactions contemplated herein and therein have been duly authorized and approved by all necessary corporate, partnership or limited liability action of each Seller.

(b) This Agreement and each Seller Document, upon due execution and delivery by each respective Seller, will constitute the legal, valid, and binding obligation of each respective Seller, enforceable in accordance with its respective terms (except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by application of equitable principles).

(c) No equity owner of any Seller, nor any other person, has any dissenter's rights or appraisal rights or any rights of first refusal, rights of first offer or similar rights with respect to the Assets or with respect to the transactions contemplated by this Agreement.

(d) The execution, delivery and performance of this Agreement and any of the Seller Documents by each Seller does not and will not:

(i) Conflict with or result in any breach or violation of the provisions of, or constitute a default under the Organizational Documents of any Seller;

(ii) Violate any restriction to which any Seller is subject or, with or without the giving of notice, the passage of time, or both, violate (or give rise to any right of termination, cancellation or acceleration under) any mortgage, deed of trust, license, permit, lease, indenture, contract, agreement, obligation, commitment, arrangement, understanding, instrument, Lease or other material agreement or instrument, whether oral or written, to which any Seller is a party, or by which it or any of such Seller's Assets are bound or result in the termination of any such instrument or termination of any provisions in such instrument, individually or in the aggregate, that will have a Material Adverse Change and/or result in the creation or imposition of any mortgage, pledge, security interest, encumbrance, charge or other lien (whether arising by contract or by operation of law) (collectively, "Liens") upon the Assets;

(iii) Violate any Applicable Law; or

(iv) Result in the breach or violation of any of the representations and warranties herein set forth by the Sellers.

Section 2.3 Licenses. Section 2.3 of the Disclosure Letter sets forth all material permits, licenses, Medicaid, and other provider agreements and other authorizations issued and required by Governmental Authorities in connection with the ownership, maintenance and operation of any Facility, including all licenses required for each Seller's operation of each Facility as an assisted living facility, Alzheimer's care facility, and/or an independent living facility, (each a "License", collectively, the "Licenses"). Each License is in good standing and the Sellers have not received notice, oral or written, that the Sellers are in violation of any restriction, rule or regulation affecting possession and use thereof. The Sellers and BPMSL are the holders of all the Licenses.

Section 2.4 Compliance with Laws. Each Seller is in compliance with all Applicable Law in all material respects, and no Seller has received any notice from any Governmental Authority or other person, alleging that any Seller is violating any Applicable Law.

Section 2.5 Governmental Approvals. No Seller is required to submit any notice, oral or written, report or other filing with any federal, state, municipal, foreign or other governmental or regulatory authority (a "Governmental Authority" or "Governmental Authorities") in connection with its execution or delivery of this Agreement or any Seller Documents or the consummation of the transactions contemplated hereby and no consent, approval or authorization of any Governmental Authority is required to be obtained by any Seller in connection with the execution, delivery and performance of this Agreement.

Section 2.6 Taxes. All real property taxes and assessments, and all personal property taxes and assessments (including, in each case, all interest and penalties thereon), in connection with the Assets (or the operation thereof) allocable to the period prior to and including the Closing Date, have been paid by the Sellers or, by the time of the Closing, will be paid by the Sellers or prorated between the Parties pursuant to Section 9.4(b). In addition: (i) all income, sales, bed and franchise or similar taxes due and payable by each Seller, if any, and all interest and penalties thereon, if any, have been timely paid in full; (ii) all tax returns required to be filed by each Seller, if any (including all sales, franchise and payroll tax returns and reports), have been properly and timely filed (including extensions pursuant to properly and timely filed extension documents where permitted), are true, correct and complete and correctly reflect the tax position of such Seller, and all taxes respectively due and payable under such tax returns (together with all interest and penalties thereon) have been paid in full; (iii) no Seller is subject to a claim for deficiency or other action in connection with any taxes; (iv) to the Sellers' knowledge, no tax returns of any Seller have been or are being examined by the Internal Revenue Service or any state or local Governmental Authority; and (v) all tax returns filed by each Seller after August 25, 2011 covering periods prior to and including the Closing Date, will be properly and timely filed (giving consideration for allowable extensions), shall be true, correct and complete, and correctly reflect the tax position of such Seller, and all taxes respectively due and payable under such tax returns (together with all interest and penalties thereon) will be timely paid in full. The Sellers (other than Sellers that are disregarded entities for federal income tax purposes) have provided to the Purchasers true, correct and complete copies of all ad valorem and other property tax statements and assessments covering the Assets for the current year and the three (3) preceding years, together with a copy of any notice of increase in valuation received by any Seller since such tax statements were issued. To the Sellers' knowledge, there are no special assessments or charges which have been levied against the Assets that are not reflected on the tax bills. The Sellers (other than the Sellers that are disregarded entities owned by Bowen for federal income tax purposes) have provided to the Purchasers true, correct and complete copies of all tax returns, reports and forms with respect to the operation, use and ownership of the Assets for the current year and the two (2) preceding years. The Sellers that are disregarded entities owned by Bowen for federal income tax purposes have provided to the Purchasers true, correct and complete copies of (A) all Schedules C and/or E from Bowen's tax return and/or (B)

other portions of Bowen's tax returns, reports and forms, in each case containing information with respect to the operation, use and ownership of the Assets for the current year and the two (2) preceding years; provided, however, that the Sellers are only required to provide such Schedules C and/or E and such other portions of Bowen's tax returns, reports and forms that reflect Bowen's ownership of the Assets in entities that are disregarded for federal income tax purposes, are not required to provide the remainder of Bowen's personal income tax returns and are permitted to redact any portion of Bowen's Schedules C and/or E, tax returns, reports, or forms that do not relate to the operation, use and ownership of the Assets.

Section 2.7 Contracts.

(a) Section 2.7(a) of the Disclosure Letter includes a true and correct list as of the Effective Date of all outstanding contracts or agreements, whether written or oral, which relate to the Assets, except (i) those contracts which require annual payments of less than Five Thousand Dollars ($5,000) per contract (the "Immaterial Contracts"), (ii) the Residency Agreements and (iii) the Leases (such contracts and agreements, excluding those set forth in clauses (i), (ii) and (iii), and together with any amendments or modifications thereto, collectively, the "Contracts"). Section 2.7(a) of the Disclosure Letter sets forth each Immaterial Contract and whether such Immaterial Contract contains any express provision against assignment that prohibit or otherwise impede the assumption of such Immaterial Contract by the Purchasers pursuant to Section 5.1. On or prior to the Effective Date, the Sellers have provided to the Purchasers true and complete copies of each Contract (other than those Contracts that are cancelable on thirty (30) days' notice without penalty or premium (the "Terminable Contracts")). The Sellers have provided, or will provide on or before the Update Date, to the Purchasers true and complete copies of each Terminable Contract and each Immaterial Contract. No Seller has (i) received written or oral notice of any default, and there is no default, existing or continuing by any Seller or, to the Sellers' knowledge, any other party, under the terms of any Contracts, or (ii) waived in writing or, to the Sellers' knowledge, otherwise waived or failed to enforce any rights or benefits under any Contract. To the Sellers' knowledge, each Contract is in full force and effect and is valid and enforceable by each applicable Seller in accordance with its terms.

(b) Included in Section 2.7(b) of the Disclosure Letter are specimens of agreements with residents at the Facilities (the "Residents") related to their residency and care (the "Residency Agreements"), and rent rolls dated as of January 31, 2012 for each Facility setting forth all such agreements in effect as of January 31, 2012. All Residents of each Facility have executed Residency Agreements and no such agreement varies in any material respect from the terms of the specimen agreements included in Section 2.7(b) of the Disclosure Letter, was entered into other than on an arms' length basis or provides for payment of a single or fixed sum in exchange for lifetime care or other prepaid services.

(c) Section 2.7(c) of the Disclosure Letter is a list of all indebtedness secured by any Sellers' interest in the Assets (the 'Seller Debt") (as opposed to indebtedness of any lessor with respect to any Assets). Each Seller hereby represents and warrants that such Seller is in compliance, in all material respects, with all representations, warranties, covenants, requirements and conditions under any documents related to the Seller Debt.

(d) Section 2.7(d) of the Disclosure Letter sets forth (i) all of the agreements and instruments (the "Assignable Debt Documents") executed and delivered and currently in effect as of the Effective Date in connection with the Assignable Debt, (ii) the servicer of the Assignable Debt, if applicable, and, to the Sellers' knowledge, the current holders of the Assignable Debt, (iii) the current outstanding principal amount and accrued interest thereon and any other amounts owed with respect to the Assignable Debt, and (iv) the projected principal amount and accrued interest and other amounts due with respect to the Assignable Debt as of March 31, 2012 and as of April 30, 2012. The Sellers have provided to the Purchasers true and correct copies of the Assignable Debt Documents. The Assignable Debt Documents have not been amended or modified except as disclosed in Section 2.7(d) of the Disclosure Letter. The Sellers are in compliance, in all material respects, with all representations, warranties, covenants, requirements and conditions under the Assignable Debt Documents, and no default or event of default has occurred, or is reasonably likely to occur as a result of the transactions contemplated by this Agreement or otherwise, with respect to the Assignable Debt Documents.

(e) Each Contract relates only to the Assets and does not relate to, or provide for any other rights and/or obligations with respect to, any other facility, facilities or assets owned or managed by an affiliate of the Sellers or any other person that is not subject to this Agreement.

Section 2.8 Real Estate.

(a) No Seller has received written, or to the Sellers' knowledge oral, notice of, and no Seller has knowledge of, any violation in any material respect of any zoning codes or ordinances in connection with the ownership, operation or maintenance of any Real Property or the Business conducted thereon. No Seller has knowledge of any agreements, documents, or instruments which are not recorded among the applicable land records for any Real Property but which affect the title to such Real Property. Each Seller has good title to its Assets (excluding the Real Property).

(b) To the Sellers' knowledge, each Real Property abuts on and has direct vehicular access to a public road, or has access to a public road via a permanent irrevocable easement benefiting such Real Property, and no Seller has knowledge of, or has received written, or to the Sellers' knowledge oral, notice alleging, any material breach or default under any instrument creating such easement or attempting to terminate or revoke such easement.

(c) No Seller has received written notice of, or has knowledge of, any threatened or contemplated rezoning or other land use compliance actions. There are no condemnation or eminent domain proceedings pending, or, to the Sellers' knowledge, threatened or contemplated against any Real Property or any part thereof, or access thereto, and no Seller has received written, or to the Sellers' knowledge oral, notice of the intention of any public authority or other entity to take or use any Real Property or any part thereof.

(d) There are no parties (other than the Sellers) in possession of the Assets, or any portion thereof, other than (i) tenants under the Tenant Leases set forth in Section 2.8(d) of the Disclosure Letter who are in possession of only that space permitted by such Lease, and (ii) Residents pursuant to the Residency Agreements, all of whom and all of which (with additions and deletions as experienced by the Sellers in the ordinary course of business as of the Effective Date) are set forth on the rent rolls as part of Section 2.7(b) of the Disclosure Letter.

(e) There are no outstanding options or rights of first offer or refusal to purchase the Assets or any portion thereof or interest therein, other than rights running in favor of the Sellers, all of which are being assigned as part of the Assets.

Section 2.9 Hazardous Substances. For purposes of this Agreement, "Environmental Laws" means the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Sections 9601 et seq., the Clean Water Act, 33 U.S.C. Section 1251 et seq., the Toxic Substances Control Act, the Clean Air Act, 42 U.S.C. Section 7401 et. seq., the Safe Drinking Water Act 42 U.S.C. Section 300(f) et. seq. and all other applicable state, county, municipal, administrative or other environmental, hazardous waste or substance, ordinances, rules, regulations, judgments, orders and requirements of any Governmental Authority relating or pertaining to (A) any aspect of the environment, (B) the preservation or reclamation of natural resources, (C) the management, release and threatened release of Hazardous Substances, (D) response actions and corrective actions regarding Hazardous Substances, (E) the ownership, operation and maintenance of personal and real property that manages or releases Hazardous Substances or at which Hazardous Substances are managed, (F) common law torts, including so-called "toxic torts," and (G) environmental or ecological conditions on, under or about the Assets, and all amendments and regulations promulgated thereunder. For purposes of this Agreement, "Hazardous Substance" shall mean any and all substances, wastes, materials, pollutants, contaminants, compounds, chemicals or elements which are defined or classified as a "hazardous substance," "hazardous material," "toxic substance," "hazardous waste," "pollutant," "contaminant" or words of similar import under any Environmental Law, including all dibenzodioxins and dibenzofurans, polychlorinated biphenyls (PCBs), petroleum hydrocarbon, including crude oil or any derivative thereof, raw materials used or stored in any Facility and building components including asbestos-containing materials in any form, radon gas and mold of a type or in amounts that may present a health hazard.

(a) To the Sellers' knowledge, the Assets do not contain any Hazardous Substances, except for Hazardous Substances typically used in any Facility, including cleaning fluids, insecticides and medicines (the "Common Products"), which Common Products have been used, transported, stored and disposed of by the Sellers in compliance, in all material respects, with all applicable Environmental Laws;

(b) There is no pending or, to the Seller's knowledge, threatened litigation or proceeding before any Governmental Authority in which any person or entity alleges the presence, release or threat of release of any Hazardous Substance or violation of Environmental Laws at any Facility;

(c) No Seller has received any notice, oral or written, of, or has any knowledge that, any Governmental Authority or employee or agent thereof has determined, or threatens to determine, or is investigating, that there is a presence, release or threat of release or placement on, in or from the Assets, or the generation, transportation, storage, treatment, or disposal at the Assets, of any Hazardous Substance. The Sellers shall notify the Purchasers promptly of their receipt of any such notice or knowledge after the Effective Date;

(d) Each Seller has owned and operated its Assets in compliance in all material respects with all applicable Environmental Laws, has obtained all necessary permits under the Environmental Laws for such Seller's operations on its Assets and has not used any of the Assets for the generation, storage, manufacture, use, transportation, disposal or treatment of Hazardous Substances, other than as described in Section 2.9(a) above;

(e) To the Sellers' knowledge, there has been no discharge of any Hazardous Substance in violation of any Environmental Law on or from any of the Assets during the time of the Sellers' ownership or occupancy thereof; and

(f) The Sellers have, prior to the Effective Date, delivered to the Purchasers copies of all reports or tests in the Sellers' possession, if any, with respect to the compliance of the Facilities or the Real Property with the Environmental Laws and/or the presence of Hazardous Substances on the Facilities or the Real Property.

Section 2.10 Leases. Section 2.10 of the Disclosure Letter contains a true and correct list of all leases (inclusive of all amendments) of all machinery, equipment and other tangible property leased to any Sellers which are used at or relate primarily to any Real Property (including all amendments and modifications thereto, the "Equipment Leases"), and all leases of any portion of each Real Property by any Seller to any third party other than a Resident (including all amendments and modifications thereto, the "Tenant Leases" and collectively with the Equipment Leases, the "Leases") and the Sellers have provided to the Purchasers true and current copies of such Leases. Each Lease is in full force and effect; all rents due on or before the Effective Date under each Lease have been timely paid and there has not been and there is no ongoing issue or dispute as to past

rental payments; in each case, a Seller is landlord under each Tenant Leases and none of the Sellers, nor, to the Sellers' knowledge, any other party to such Lease is in material default in any respect thereunder; no Seller has waived in writing, nor, to the Sellers' knowledge, has any Seller otherwise waived or failed to enforce, any rights or benefits under any Lease; and no Seller has knowledge or has received notice, oral or written, that there exists any occurrence, event, condition or act which, upon the giving of notice or the lapse of time or both, would become a default by any Seller (or, to the Sellers' knowledge, any lessee or tenant) under any such Lease.

Section 2.11 Survey Reports, Etc. To the Sellers' knowledge, all survey reports, waivers of deficiencies, plans of correction, and any other investigation reports issued with respect to any Facility (collectively, the "Licensing Surveys") for the last three (3) years and delivered to the Purchasers by the Sellers pursuant toSection 6.3(g) are true and complete copies of such reports, waivers, plans and reports in the Seller's possession. The Sellers shall also promptly deliver to the Purchasers any Licensing Surveys filed, arising, or involving any Facility between the Effective Date and the Closing Date. Each Seller has remedied, discharged and complied with all applicable plans of correction, such that there are no current violations or deficiencies with respect to any of the Licenses.

Section 2.12 Capital Expenditures. Except for routine expenditures in an amount less than One Hundred Thousand Dollars ($100,000) for repairs and replacements in connection with the ongoing maintenance and upkeep of the Real Property, no Seller is a party to any outstanding contracts for capital expenditures relating to any Real Property, nor is it a party to or subject to, any agreement, obligations or commitments for capital expenditures relating to any Real Property, including additions to property, plant, equipment or intangible capital assets.

Section 2.13 Absence of Notices. No Seller has received any written notice of, or to the Sellers' knowledge any oral notice of, or has any knowledge, that any material supplier of any Seller intends to discontinue, substantially alter prices or terms to, or significantly diminish its relationship with any Facility as a result of the transaction contemplated hereby or otherwise.

Section 2.14 Resident Records. No Seller has received any written notice or, to the Sellers' knowledge any oral notice: (a) that Resident Records used or developed in connection with the Business conducted at each Facility have not been maintained in accordance with any applicable federal, state or local laws or regulations governing the preparation, maintenance of confidentiality, transfer and/or destruction of such records or (b) of any material deficiency in the Resident Records or other relevant records of each Facility used or developed in connection with the operation of the Business conducted at each Facility.

Section 2.15 Advance Payments and Residents Funds. The Sellers hold no advance payments or resident trust fund accounts.

Section 2.16 Third Party Payor Program Participation.

(a) Section 2.16(a) of the Disclosure Letter sets forth for each Seller and Facility, by name, number of beds and percentage of revenue for the periods stated for such Seller or Facility, that has participated in, has been excluded from participation in, has elected to

terminate its participation in, currently participates in or is a provider under, Medicaid or Title XVIII ("Medicare") of the Social Security Act or any applicable state Medicaid, CHAMPUS, TRICARE or other federal, state or local governmental reimbursement programs, or successor programs to any of the above (collectively, the "Government Programs"). Except as set forth in Section 2.16(a) of the Disclosure Letter, none of the Sellers, or any Facility, has participated in, has been excluded from participation in, has elected to terminate its participation in, currently participates in or is a provider under any applicable Government Program.

(b) None of the Facilities admits individuals who receive, or who are eligible to receive, Supplemental Security Income ("SSI"), and no Residents receive or are eligible to receive SSI.

Section 2.17 Third Party Payor Reimbursement. All billing practices of each Seller with respect to its Facility to all third party payors, including the Government Programs and private insurance companies, have been in compliance with all Applicable Law, regulations and policies of such third party payors and Government Programs in all material respects. No Seller has received any written notice of, or to the Sellers' knowledge any oral notice of, or has any knowledge, that it has billed or received any payment or reimbursement in excess of amounts permitted by Applicable Law, except to the extent cured or corrected (including all penalties or interest incurred in connection with such payment or reimbursement).

Section 2.18 Licensed Beds and Units. The licensed capacity and/or the number of licensed assisted living beds and units and/or unlicensed independent living beds, as applicable, at each Facility is as set forth in Section 2.18 of the Disclosure Letter. There are no skilled nursing beds located at any Facility.

Section 2.19 Intellectual Property. Other than the rights to use certain trade names and trademarks associated with the Facilities which are listed in Section 2.19 of the Disclosure Letter, and unregistered copyrights in certain printed materials used in the Business, and any software or other computer programs used in the connection with the operation of the Facilities, which the Sellers are transferring, to the extent of the Sellers' interest in such computer programs or software, no Seller has any other Intellectual Property of any kind used in the Business. To the Sellers' knowledge, no Seller has infringed, violated or misappropriated any Intellectual Property rights of any third party. None of the Sellers has received any complaint, claim or notice, or written threat alleging any such material infringement, violation or misappropriation, and, to the Sellers' knowledge, there is no reasonable basis for any such claim. For these purposes, "Intellectual Property" shall mean, collectively, all: (i) United States or foreign patents, patent applications, patent disclosures, and all renewals, reissues, divisions, continuations, extensions or continuations-in-part thereof; (ii) trademarks, service marks, trade dress, trade names, fictitious names, corporate names, and registrations and applications for registration thereof; and (iii) copyrights (registered or unregistered), registrations and applications for registration thereof, including all renewals, derivative works, enhancements, modifications, updates, new releases or other revisions thereof.

Section 2.20 Financial Statements. The Sellers have provided to the Purchasers (or, with respect to the Supplemental Financial Information, will provide on or before the Update Date) copies of the financial statements listed in Section 2.20 of the Disclosure Letter certified by the chief financial officer of each Seller (collectively, the "Financial Statements") as follows: (a) individual Facility monthly profit and loss income statements for the fiscal years ended 2008, 2009, 2010 and 2011 and for the one (1) month period ended January 31, 2012, (b) a schedule of capital improvement expenditures (routine and growth-related) for each Facility for the fiscal years ended 2008, 2009, 2010 and 2011 and for the one (1) month period ended January 31, 2012 and (c) individual Facility payroll statements for each Facility's two (2) most recent payroll cycles. The Financial Statements (including any notes thereto) have been prepared on a consistent basis throughout the periods covered thereby, and with respect to (a) present fairly the profit and loss of each Seller and each Facility as of such dates and include (i) both recurring and non-recurring expenses (with any non-recurring expenses identified and set forth separately in Section 2.20 of the Disclosure Letter), (ii) detailed summaries of any changes in accounting policies, and (iii) the monthly allocation to each Seller of such Seller's health benefits, Property & Professional Liability Insurance and workers compensation insurance expenses and the annual reconciliation amount, if any, in each case, for the periods covered in the Financial Statements (together with a summary explanation for any material reconciliation amounts) ((i), (ii) and (iii), collectively, the "Supplemental Financial Information"). Since January 1, 2008, none of the Sellers has made or received any capital allocations or corporate or other reimbursements to or from any affiliate or any other person. Since January 31, 2012 through the Effective Date, the Sellers have operated the Business without material deviation from the ordinary course of business consistent with past practice and have taken no action, if taken, or failed to take any action, if not taken, in each case, that would require the consent of the Purchasers under Article IV of this Agreement.

Section 2.21 No Litigation. Except as set forth in Section 2.21 of the Disclosure Letter, there are no actions, suits, claims, arbitrations, governmental investigations or other legal or administrative proceedings ("Legal Proceedings"), or any orders decrees or judgments in progress or pending or, to the Sellers' knowledge, threatened against or involving any Seller, any Asset, any Seller's operation of its Real Property or against or relating to the transactions contemplated by this Agreement, in any state court, or in any federal court, or, to the Sellers' knowledge, pending in other jurisdictions or threatened in writing, at law or in equity, by or before any federal, state or municipal court or other governmental agency, department, commission, board, bureau, instrumentality or other Governmental Authority. The matters set forth in Section 2.21 of the Disclosure Letter, if decided adversely, will not materially and adversely affect one or more of the Facilities or the operation of any Real Property or the Business.

Section 2.22 Location of Assets. To each Seller's knowledge, all of the tangible Assets are in the Sellers' possession or control and are located at or on the Real Property, or at the Sellers' company headquarters located at 1800 SW 1st Avenue, Portland, Oregon 97201.

Section 2.23 Employee and Labor Relations. Except as provided in Section 2.23 of the Disclosure Letter:

(a) Compliance. The Sellers and BPMSL are in compliance in all material respects with all Applicable Law respecting employment and employment practices with respect to employees located at the Facilities.

(b) No Claims. No legal claim in respect of application for employment, employment, the terms or conditions of employment, the handling of benefits or termination of employment of any person is currently pending or, to each Seller's knowledge, threatened, against any Seller or BPMSL or any of their subsidiaries, in connection with the hiring, employment, or termination of employees located at the Facilities.

(c) No Labor Actions. No labor strike, picketing action, dispute, slowdown or stoppage, or unfair labor practices are actually pending or, to the Sellers' knowledge, threatened against, or involving, BPMSL, any Seller or any Facility.

(d) No Bargaining Agreements. Neither BPMSL nor any Seller is a party to any collective bargaining agreement, and no collective bargaining agreement is currently being negotiated by the Sellers or BPMSL. To the Sellers' knowledge, no petitions for representation have been filed against any Facility nor have any demands been made for recognition.

(e) PTO. A description of BPMSL's employment policies for payment of accrued sick days, vacation days, and other personal days upon termination of an employee's employment is set forth in Section 2.23(e) of the Disclosure Letter.

(f) At-Will Employees. All employees located at each Facility as of Closing are employees of BPMSL and are employees-at-will.

(g) WARN Compliance. BPMSL has taken, as required by Applicable Law, any and all actions necessary to comply with the Worker Adjustment and Retraining Notification Act (the "WARN Act"), or state statute of similar import, with respect to any event of occurrence affecting any Facility since the effective date of the WARN Act.

(h) Employee Compensation. Schedule 2.23(h) of the Disclosure Letter sets forth for each employee at the Facilities, by Facility:

(i) the annual salary as of the Effective Date;

(ii) the total amount of cash bonus paid in fiscal year 2011; and

(iii) any promised or binding bonus or other additional cash compensation payable for fiscal year 2012.

Section 2.24 Employee Benefit Plans.

(a) Section 2.24(a) of the Disclosure Letter sets forth an accurate and complete list of all Employee Benefit Plans (as defined below) and specifies the sponsor of each said Employee Benefit Plan. "Employee Benefit Plan" mean each "employee pension benefit plan" (as defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")), "employee welfare benefit plan" (as defined in Section 3(1) of ERISA), employment, termination or severance agreement, stock option, stock purchase, incentive compensation, bonus plan, deferred compensation or other material employee benefit plan, fund, program, agreement or arrangement maintained, contributed to or required to be maintained or contributed to by any Seller or BPMSL with respect to any employees located at the Facilities, or by any trade or business, whether or not incorporated, that together with a Seller or BPMSL would be deemed a "single employer" within the meaning of section 4001(b) of ERISA (an "ERISA Affiliate"), or to which a Seller, BPMSL or an ERISA Affiliate is party, whether written or oral, for the benefit of employees at any Facility.

(b) No Seller, BPMSL, nor any ERISA Affiliate has ever maintained any defined benefit plan within the meaning of Section 414(j) of the Internal Revenue Code of 1986, as amended (the "Code").

(c) No Seller, BPMSL, nor any ERISA Affiliate has ever been obligated to contribute to any multi-employer plan within the meaning of Section 3(37) of ERISA.

(d) Each Employee Benefit Plan has, at all times, been maintained and operated in compliance, in all material respects, with its terms and requirements, as well as with all Applicable Law, including ERISA and the Code.

(e) Each Employee Benefit Plan intended to be "qualified" within the meaning of Section 401(a) of the Code is so qualified and the trusts maintained thereunder are exempt from taxation under Section 501(a) of the Code.

(f) The consummation of the transactions contemplated by this Agreement will not, either alone or in combination with another event, (i) entitle any current or former employee or officer of the Sellers or BPMSL located at any Facility to severance pay, unemployment compensation or any other payment, except as expressly provided in this Agreement, or (ii) accelerate the time of payment or vesting, or increase the amount of compensation due any such employees or officers.

(g) No Employee Benefit Plan provides medical, surgical, hospitalization, death or similar benefits (whether or not insured) for employees or former employees of the Sellers or BPMSL that are or were located at any Facility for periods extending beyond their retirement or other termination of service, other than (i) coverage mandated by Applicable Law, (ii) death benefits under any "pension plan" or (iii) benefits the full cost of which is borne by such current or former employee (or his beneficiary).

(h) There are no pending, threatened or anticipated claims by or on behalf of any Employee Benefit Plans, by any employee or beneficiary at any Facility covered under any such Employee Benefit Plan, or otherwise involving any such Employee Benefit Plan (other than routine claims for benefits).

(i) No amounts payable under the Employee Benefit Plans will fail to be deductible for federal income tax purposes by virtue of Section 280G of the Code.

(j) Each Employee Benefit Plan that is a "nonqualified deferred compensation plan" (as defined for purposes of Section 409A(d)(1) of the Code) has (i) been maintained and operated since January 1, 2005 in good faith compliance in all material respects with Section 409A of the Code and all applicable Internal Revenue Service guidance promulgated thereunder so as to avoid any Tax, penalty or interest under Section 409A of the Code and, as to any such plan in existence prior to January 1, 2005, has not been "materially modified" (within the meaning of Internal Revenue Service Notice 2005-1) at any time after October 3, 2004 or has been amended in a manner that conforms with the requirements of Section 409A of the Code, and (ii) since January 1, 2009, been in documentary and operational compliance in all material respects with Section 409A of the Code and all applicable Internal Revenue Service guidance promulgated thereunder.

(k) The Sellers shall cause the Applicable Sponsor of each Employee Benefit Plan to remain responsible for maintaining all Employee Benefit Plans in compliance with Applicable Law and the Purchasers shall have no obligation with respect to any of the Employee Benefit Plans at any time.

Section 2.25 Inventory and Supplies. As of the Effective Date and at the Closing, the Inventory is and will be in sufficient quantity and condition for the normal operation of the Business at the Facilities and in compliance with all requirements of Governmental Authorities.

Section 2.26 Insurance. Section 2.26 of the Disclosure Letter contains either copies of or a list of the certificates of the all applicable insurance policies carried by the Sellers with respect to the Facilities and the Business, and upon request by the Purchasers, the Sellers shall make copies of any policies and provide the same to the Purchasers. All such policies are in full force and effect, and, to the Sellers' knowledge, have been issued by licensed insurers, all premiums with respect thereto covering all periods up to and including the Closing Date have been paid, and no notice of cancellation or termination has been received with respect to any policies.

Section 2.27 Brokers and Finders. Except as set forth in Section 2.27 of the Disclosure Letter, no Seller has employed or engaged any investment banker, broker or finder in connection with the transactions contemplated by this Agreement who might be entitled to any fee or any commission in connection with or upon consummation of the Closing.

Section 2.28 Truth of Warranties, Representations, and Statements. All of the statements, representations and warranties made by the Sellers in this Agreement and the statements and information set forth in the Disclosure Letter are true and accurate in every material respect.

THE PURCHASERS HEREBY ACKNOWLEDGE AND AGREE THAT EXCEPT WITH RESPECT TO THE FOREGOING REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS ARTICLE II ABOVE, OR AS MAY BE EXPRESSLY SET FORTH ELSEWHERE IN THIS AGREEMENT, THAT THE ASSETS SHALL BE SOLD, AND THAT PURCHASER SHALL ACCEPT POSSESSION OF THE ASSETS ON THE CLOSING DATE "AS IS, WHERE IS, WITH ALL FAULTS," WITH NO RIGHT OF SET-OFF, CONTRIBUTION, COST RECOVERY OR REDUCTION IN THE PURCHASE PRICE, AND THAT, EXCEPT FOR THE SELLERS' EXPRESS REPRESENTATIONS AND WARRANTIES, SUCH SALE SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE WHATSOEVER BY THE SELLERS, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTY OF INCOME POTENTIAL, OPERATING EXPENSES, USES, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SELLER DOES HEREBY DISCLAIM AND RENOUNCE ANY SUCH REPRESENTATION OR WARRANTY. THE PURCHASERS SPECIFICALLY ACKNOWLEDGE THAT, EXCEPT FOR THE SELLERS' REPRESENTATIONS AND WARRANTIES, THE PURCHASERS ARE NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, FROM SELLER AS TO ANY MATTERS CONCERNING THE ASSETS, INCLUDING WITHOUT LIMITATION: (1) THE CONDITION OR SAFETY OF THE LAND OR ANY IMPROVEMENTS THEREOF, INCLUDING, BUT NOT LIMITED TO, PLUMBING, SEWER, HEATING AND ELECTRICAL SYSTEMS, ROOFING, AIR CONDITIONING, IF ANY, FOUNDATIONS, SOILS AND GEOLOGY, INCLUDING HAZARDOUS SUBSTANCES, LOT SIZE, OR SUITABILITY OF THE ASSETS FOR A PARTICULAR PURPOSE; (2) WHETHER THE APPLIANCES, IF ANY, PLUMBING, OR UTILITIES ARE IN WORKING ORDER; (3) THE HABITABILITY OR SUITABILITY FOR OCCUPANCY OF ANY STRUCTURE AND THE QUALITY OF ITS CONSTRUCTION; (4) THE FITNESS OF ANY PERSONAL PROPERTY; (5) WHETHER THE IMPROVEMENTS ARE STRUCTURALLY SOUND, IN GOOD CONDITION, OR IN COMPLIANCE WITH APPLICABLE CITY, COUNTY, STATE, OR FEDERAL STATUTES, CODES, OR ORDINANCES; (6) THE OPERATING PERFORMANCE AND INCOME AND EXPENSES OF THE ASSETS; AND (7) ANY OTHER MATTERS NOT OTHERWISE ENUMERATED HEREINABOVE. THE

PURCHASERS FURTHER ACKNOWLEDGE AND AGREE THAT (A) EXCEPT FOR THE SELLERS' REPRESENTATIONS AND WARRANTIES CONTAINED HEREIN, THE PURCHASERS ARE RELYING SOLELY UPON THEIR OWN INSPECTION OF THE ASSETS AND NOT UPON ANY REPRESENTATIONS MADE TO THEM BY ANY PERSON WHOMSOEVER, (B) EXCEPT AS PROVIDED HEREIN, ANY REPORTS, REPAIRS, OR WORK REQUIRED BY THE PURCHASERS ARE TO BE THE SOLE RESPONSIBILITY OF THE PURCHASERS AND (C) EXCEPT AS PROVIDED HEREIN, THERE IS NO OBLIGATION ON THE PART OF THE SELLERS TO MAKE ANY CHANGES, ALTERATIONS, OR REPAIRS TO THE ASSETS. EXCEPT AS PROVIDED HEREIN, THE PURCHASERS ARE SOLELY RESPONSIBLE FOR OBTAINING ANY RESALE CERTIFICATE, CERTIFICATE OF OCCUPANCY, OR ANY OTHER APPROVAL OR PERMIT NECESSARY FOR TRANSFER OR OCCUPANCY OF THE ASSETS AND FOR ANY REPAIRS OR ALTERATIONS NECESSARY TO OBTAIN SAME, ALL AT THE PURCHASERS' SOLE COST AND EXPENSE. THE PURCHASERS ACKNOWLEDGE AND AGREE THAT THE PURCHASERS' OBLIGATIONS HEREUNDER SHALL REMAIN IN FULL FORCE AND EFFECT WITH THE PURCHASERS HAVING NO RIGHT TO DELAY THE CLOSING OR TERMINATE THIS AGREEMENT REGARDLESS OF ANY FACTS OR INFORMATION LEARNED BY THE PURCHASERS AFTER THE EFFECTIVE DATE, EXCEPT IN EACH CASE AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT. NOTWITHSTANDING ANYTHING HEREUNDER TO THE CONTRARY, THE AGREEMENTS OF THE PURCHASERS SET FORTH IN THIS SECTION SHALL SURVIVE THE CLOSING AND SHALL NOT BE MERGED THEREIN.

## ARTICLE III

## REPRESENTATIONS AND WARRANTIES OF THE PURCHASERS

In recognition of the as-is basis of this transaction, the Purchasers are providing the limited representations and warranties contained in this Article III. Each Purchaser represents and warrants to the Sellers, jointly and severally, that the representations and warranties contained in this Article III are true and correct as of the date of the Effective Date and will be true and correct as of the Closing as though made as of the Closing, except to the extent such representations and warranties are specifically made as of a particular date (in which case such representations and warranties will be true and correct as of such date).

Section 3.1 Organization; Etc. Each Purchaser is duly organized and validly existing and in good standing under the laws of the jurisdiction in which it is formed with all requisite power and authority to own all of its properties and assets and to carry on its business as it is now being conducted.

Section 3.2 Authority, Binding Effect. Each Purchaser has, and at the Closing will have, the requisite corporate, limited liability company or partnership right, power and authority, as applicable, to execute, deliver and perform this Agreement and to consummate the transactions and perform all obligations contemplated hereby and in all agreements, instruments

and documents being or to be executed and delivered by such Purchaser in connection with such transactions. The consummation of the transactions contemplated herein have been duly authorized and approved by all necessary corporate action of each Purchaser. This Agreement and each such other agreement, instrument and document, upon due execution and delivery by each Purchaser, will constitute the legal, valid, and binding obligation of each Purchaser, enforceable in accordance with its terms (except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by application of equitable principles).

Section 3.3 No Violation.

(a) The Purchasers are not subject to or obligated under any articles of incorporation, bylaws, articles of organization, operating agreement, partnership agreement or other governing organizational documents which would be in any material respect breached or violated by the execution, delivery or performance of this Agreement

(b) The Purchasers are not subject to or obligated under Applicable Law, or any agreement or instrument, or any license, franchise or permit, or subject to any order, writ, injunction or decree which would be in any material respect breached or violated by the execution, delivery or performance of this Agreement.

Section 3.4 No Litigation. The Purchasers are not a party to, or defending or subject to, any Legal Proceeding, nor is any such Legal Proceeding threatened, which would, have a material adverse effect on the Purchasers' ability to execute, deliver and perform this Agreement and the documents and transactions contemplated hereby.

Section 3.5 Brokers and Finders. No Purchaser has employed or engaged any investment banker, broker or finder in connection with the transactions contemplated by this Agreement who might be entitled to any fee or any commission in connection with or upon consummation of the Closing.

Section 3.6 Truth of Warranties, Representations, and Statements. All of the statements, representations and warranties made by the Purchasers in this Agreement are true and accurate in every material respect.

## ARTICLE IV

## COVENANTS OF THE SELLERS

From the Effective Date and, subject to earlier termination of this Agreement, until the Closing and to the extent thereafter as contemplated herein, except as otherwise consented to or approved by the Purchasers in writing, the Sellers covenant and agree as follows:

Section 4.1 Interim Operating Covenants. The Business shall be conducted in, and the Sellers shall not take any action that materially deviates from, the ordinary course of business consistent with past practice, and the Sellers shall (a) operate the Facilities or cause the Facilities to be operated in a manner substantially consistent with applicable requirements of all Governmental Authorities and the Facilities' and the Sellers' respective past practices, including maintaining the Licenses in full force and effect; (b) subject to Section 4.19, maintain the Assets or cause the Assets to be maintained in substantially their existing condition, reasonable wear and tear excepted; (c) comply in all material respects with all statutes, laws, ordinances, rules, regulations, requirements, judgments, orders and decrees of any Governmental Authority (collectively, "Applicable Law") with respect to the Assets and the operation thereof, including all required regulatory standards of any Governmental Authorities with regulatory jurisdiction over the Facilities and compliance in all material respects with all Government Programs; (d) timely pay all rents and other payments due on or before the Closing under, and otherwise maintain and comply with, all Contracts, all Tenant Leases, all Equipment Leases, all Residency Agreements and all Employee Benefit Plans; (e) except in the ordinary course of business and consistent with past practice (or as otherwise required by a Governmental Authority), not agree to or make any changes or modifications in any Residency Agreements or incur any further obligations or surrender any rights thereunder; (f) not enter into any agreements or leases which would have had to be disclosed in any section of the Disclosure Letter had such agreements or leases been entered into prior to the Effective Date; (g) not enter into or agree to or make any changes or modifications in any Contracts, Tenant Leases, Equipment Leases or Employee Benefit Plans or incur any further obligations or surrender any rights thereunder; (h) keep in full force and effect insurance policies with the same coverage limits and otherwise on substantially the same terms as existing policies through the Closing Date; (i) maintain in good standing all Licenses necessary to operate the Facilities; and (j) use commercially reasonable, good faith efforts to maintain all goodwill and preserve relationships with all Residents, employees, vendors and Governmental Authorities. For purposes of this Section 4.1 and Section 2.20, a "material deviation" shall include any actions that would be inconsistent with past practice that could reasonably be expected to result, directly or indirectly, in a reduction in net operating income of One Hundred Twenty-Five Thousand Dollars ($125,000.00) or more on an annualized basis, as presented in the Financial Statements.

Section 4.2 Borrowing. The Sellers shall not create or permit to become effective any Liens upon the Assets other than the Permitted Liens and any other Lien arising in the ordinary course and consistent with past practice so long as such Lien is removed, satisfied or otherwise bonded over at or prior to the Closing, such that such Lien is not included as an exception on any Title Policy.

Section 4.3 Full Access and Disclosure.

(a) The Sellers shall, upon reasonable prior notice from one or more of the Purchasers not less than forty-eight (48) hours prior to such requested access, afford to the Purchasers and their counsel, accountants, environmental consultants, engineers, appraisers and other authorized representatives (collectively, the "Purchasers' Representatives") reasonable access to Books and Records and all other information in the Sellers' possession or reasonable control (other than appraisal reports, but including any surveys for the Real Property) in any way relating to the Assets and/or the Facilities, which the Sellers may at the Purchasers' option provide via electronic copy or make available for inspection at the corporate office or at the Facilities, subject to Section 4.3(c), and which information the Sellers, upon such prior notice, shall discuss telephonically with the Purchasers' Representatives; provided, however, that the Sellers shall not be required to provide via electronic copy any Books and Records or other documents located at the Facilities that are not in electronic form or reasonably practicably converted to electronic form.

(b) The Sellers shall supplement or amend any information, written or otherwise, previously delivered or otherwise disclosed to the Purchasers with respect to any matter hereafter arising which, if existing or occurring at the Effective Date, would have been required to be set forth or disclosed; provided, however, that any such supplement or amendment of any information delivered after the Effective Date shall not affect or modify the representations and warranties made by the Sellers, the conditions precedent to the Closing or the Purchasers' rights under this Agreement.

(c) Prior to the Effective Date, the Sellers notified the executive director of each Facility of the pending sale of such Facility to the Purchasers and instructed such executive director to cooperate with the Purchasers and to treat the pending sale with the utmost confidentiality. From the Effective Date through the Closing Date, the Purchasers and the Purchasers' Representatives shall have the opportunity and right upon forty-eight (48) hours prior notice to the Sellers and during normal business hours to enter upon the Real Property and to perform and complete, at the Purchasers' sole expense, their due diligence review, examination and inspection of all matters pertaining to their acquisition of the Assets, including inspection of the Real Property, the Leases, Residency Agreements, the Inventory, the Books and Records and the Personal Property; provided that the Sellers are entitled to have a representative (either the Facility's executive director or a designated person from the corporate office) present during the Purchasers' or the Purchasers' Representatives' visits and in all meetings, calls or other contacts or communications with the Sellers' personnel, and such access shall include the right to meet with the executive directors and the department heads of nursing, maintenance, marketing and food prior to and after March 31, 2012 (the "Notification Date") and all other personnel after the Notification Date, subject to the Purchasers' obligation to comply with the confidentiality provisions set forth in this Agreement. The Purchasers shall at all times conduct such due diligence in compliance (in all material respects) with Applicable Law and the terms of the Residency Agreements and Tenant Leases, and shall use commercially reasonable efforts to not cause damage, loss, cost or expense to the Sellers, the

Facilities or the Residents or unreasonably interfere with or disturb any Resident. To the extent of any damage caused by the Purchasers or the Purchasers' Representatives to any Facility, the Purchasers shall promptly restore such Facility to its condition immediately preceding such inspections and examinations, reasonable wear and tear excepted, and shall keep each Facility free and clear of any mechanic's liens or materialmen's liens arising as a result such inspections and investigations.

(d) The Sellers shall approve any request for a physical inspection or examination of any Facility (and shall be deemed to have approved the same) so long as (i) the Purchasers shall have provided to the Seller of such Facility not less than forty-eight (48) hours prior notice of the same (which notice may be given telephonically on a Business Day); (ii) the Purchasers shall have delivered to the Sellers a certificate of insurance showing that the Purchasers maintain a commercial general liability insurance policy having a combined liability limit of at least One Million Dollars ($1,000,000) and property damage limits of at least One Million Dollars ($1,000,000) and (iii) such proposed inspection or examination shall not unreasonably interfere with such Facility's operations. Any insurance policy required by this subsection shall be written by an insurance company licensed to do business in the state where the Facility is located, name the Sellers as additional insureds, and contain a waiver of any rights of subrogation against the Sellers.

(e) The Purchasers shall indemnify, defend, and hold the Sellers harmless for, from, and against any and all claims and liabilities, including costs and expenses for loss, injury to or death of any of the Purchasers' Representatives (waiving all limitations under workers' compensation), and any loss, damage to or destruction of any property owned by the Sellers or others (including claims or liabilities for loss of use of any property) resulting primarily from the action or inaction of any of the Purchasers' Representatives during any visit to the Real Property prior to the Closing Date, pursuant to this Section 4.3. The Purchasers' indemnity obligation set forth in this Section 4.3(d) shall survive the termination or Closing of this Agreement.

(f) The activities contemplated by this Section 4.3 shall be referred to as the "Due Diligence Investigation."

Section 4.4 Compliance With Laws. The Sellers shall comply in all material respects with all Applicable Law in conjunction with the execution, delivery and performance of this Agreement and the transactions contemplated hereby and the ownership, operation and maintenance of the Facilities prior to and through the Closing.

Section 4.5 Taxes. The Sellers shall properly and timely file (including extensions pursuant to properly and timely filed extension documents where permitted) all federal, state and local tax returns, and, to the extent applicable, estimates and reports, and the Sellers shall timely pay all amounts then due for all taxes for all periods through and including the Closing Date to the extent due and payable at any time prior to and through the Closing Date and otherwise to the extent necessary to transfer the Assets to the Purchasers in accordance with the terms of this Agreement.

Section 4.6 No Disposition of Assets. Other than sales of food and supplies in the ordinary course of business, the Sellers shall not sell, lease or otherwise dispose of or distribute, or permit the creation or imposition of any Liens (except for Permitted Liens) on, any of the Assets or properties related thereto or necessary for operation of the Facilities; provided, however, the Sellers may (i) lease portions of the Facilities to Residents and tenants pursuant to agreements in the forms of Residency Agreements and Leases, respectively, provided to the Purchasers pursuant to the terms of this Agreement and (ii) dispose of the Inventory in the ordinary course of business so long as the Sellers restock and replenish such Inventory consumed or used during the term of this Agreement with Inventory of comparable quality in accordance with the Sellers' prior practices.

Section 4.7 Further Documentation. Pursuant to the express terms of this Agreement, the Sellers agree that for a two (2) year period of time following the Closing, upon reasonable request by the Purchasers, the Sellers will do, execute, acknowledge, and deliver, or cause to be done, executed, acknowledged, and delivered, all such further acts, deeds, assignments, transfers, conveyances and assurances as may be reasonably required, without enlarging or extending any liability of the Sellers beyond what is otherwise contemplated by this Agreement in any manner and without requiring the expenditure of funds by the Sellers, in order to more fully assign, grant, transfer, convey, assure and confirm to the Purchasers, or to their successors and assigns, or for aiding and assisting in collecting and reducing to possession, any or all of the Assets to be sold to the Purchasers pursuant to this Agreement or transitioning the operations of the Facilities to the Purchasers.

Section 4.8 Title Insurance and Surveys.

(a) Prior to the Effective Date, the Sellers have provided to the Purchasers title commitments for each Real Property (collectively, the "Title Commitments"), issued by Lawyers Title Insurance Company (the "Title Company"), which Title Commitments contain commitments of the Title Company to issue to the Purchasers ALTA forms of owner's title insurance policies insuring fee title of the Purchasers in such Real Property, together with legible copies of all recorded exceptions to title referred to therein. Each Title Commitment shall be in the amount allocated to the Real Property as set forth in Section 1.7 of the Disclosure Letter. Attached hereto as Exhibit 4.8(a) is a schedule of (i) the Title Commitments (the "Initial Commitments") and (ii) each survey (the "Initial Surveys") for each Real Property provided by the Sellers or obtained by the Purchasers.

(b) In the event that any update to any Initial Commitment or Initial Survey prior to or on the Closing Date for any Real Property reveals any new matter not previously shown or disclosed on such Initial Commitment or such Initial Survey (each, a "New Title Matter"), the Purchasers shall have the right to approve or disapprove in writing and in their reasonable discretion such New Title Matter within ten (10) Business Days after receipt of the update to the Initial Commitment or Initial Survey, as applicable (which period may extend beyond the scheduled Closing and the Purchasers shall have the right to extend the Closing Date, if necessary, in accordance with the terms of this

Section 4.8), with any such notice of disapproval specifying the New Title Matter to which the Purchasers object (such notice being referred to herein as the "Title Objection Notice"). The failure of the Purchasers to disapprove any New Title Matter within said ten (10) Business Day period shall be deemed a waiver by the Purchasers of any right to object to such New Title Matter and such New Title Matter shall be deemed approved by the Purchasers and shall be considered a Permitted Lien. Notwithstanding the foregoing, the Purchasers shall not have the right to disapprove any of the following, all of which (together with all matters deemed approved by Purchasers pursuant to terms hereof) shall be deemed to be "Permitted Liens" hereunder: (A) matters created or consented to in a separate written consent by the Purchasers, (B) the Assumed Liabilities (including the Assumed Debt and Assumed Debt Documents), (C) all liens of real estate taxes, assessments, water rates, water meter charges, water frontage charges and sewer taxes, rents and charges, if any, provided that such items are not due and payable and are apportioned as provided in this Agreement and/or (D) any matter reflected in any Initial Commitment (excluding any lien securing payment or repayment of a fixed or readily determinable amount other than any lien securing any Assumed Debt, which amount shall be paid by the Seller, and such lien shall be released, at Closing) or any Initial Survey. If the Purchasers deliver a Title Objection Notice to the Sellers within the above-described ten (10) Business Day period, the Sellers shall have ten (10) Business Days after receipt of the Title Objection Notice in which to send the Purchasers a written notice (the "Title Objection Response Notice") informing the Purchasers of the New Title Matters set forth in the Title Objection Notice that the Sellers will agree to cure prior to the Closing Date (as the same may be extended as provided herein). The Closing Date may be extended by the Purchasers or the Sellers to accommodate the notice and cure periods contemplated herein, provided that the Closing Date shall not be extended by the Sellers for a period of more than thirty (30) days for the purposes of curing any New Title Matter, and if the Sellers are unable after using commercially reasonable efforts during such period to cure any New Title Matter to which the Purchasers have objected and the Sellers agreed to cure, the Sellers shall be deemed to have elected not to cure such New Title Matter. If the Sellers refuse to agree to cure any New Title Matter set forth in the Title Objection Notice, the Purchasers shall have ten (10) Business Days after (i) receipt of the Title Objection Response Notice or (ii) the expiration of such thirty (30) day period if the Sellers have not cured any New Title Matter that the Sellers agreed to cure within said thirty (30) day period, as applicable, in which to advise the Sellers in writing of the Purchasers' election (x) to waive the New Title Matters to which the Purchasers objected but the Sellers either refused to cure or could not cure and to proceed to Closing or (y) to terminate this Agreement, in which event the Deposit shall be returned to the Purchasers and the Parties shall have no further obligations or liabilities under this Agreement (other than obligations that shall survive the termination of this Agreement in accordance with the terms hereof). If the Purchasers do not terminate this Agreement pursuant to the preceding sentence, then all New Title Matters appearing in the Title Objection Notice that Sellers either did not agree to cure (as set forth in the Title Objection Response Notice) or could not cure within said thirty (30) day period shall be deemed Permitted Liens. Notwithstanding the foregoing, the Sellers shall be required to (x) use commercially reasonable efforts to cure any matter set forth in any Title Objection Notice and (y) pay and remove (or cause to be paid and removed), at Closing, any lien of a fixed or readily determinable amount from the proceeds of the Purchase Price. The Purchasers agree that the Sellers may cure an objectionable matter by causing the Title Company to remove the same as an exception in the applicable Title Policy or

affirmatively insure over such matter, provided that such affirmative insurance shall be reasonably satisfactory to the Purchasers and any lender of the Purchasers and sufficient, in the Purchasers' reasonable judgment, to adequately address the Purchasers' and any lenders' concerns with respect to such matter.

(c) The title insurance policies issued to the Purchasers as of the Closing shall insure the fee simple interest of the Purchasers in the Real Property, subject to only the standard preprinted exceptions (unless the Purchasers pay for extended coverage and deliver to the Title Company the surveys necessary to remove the survey exceptions, in which case the standard preprinted exceptions shall not appear in the Title Policies) and the Permitted Liens (each a "Title Policy" and collectively the "Title Policies"). The Sellers shall execute affidavits, gap indemnities, no change affidavits for the surveys (to the extent applicable) and other customary agreements as reasonably requested by the Title Company to cause the Title Company to issue the Title Policies and any extended coverage.

(d) The Sellers shall permit the Purchasers and the Purchasers' Representatives to conduct surveys of the Property prior to the Notification Date at the Purchasers' expense and subject to Section 4.3.

(e) The Sellers have provided to the Purchasers prior to the Effective Date copies of any Phase I or Phase II environmental assessments or other environmental assessments in the Sellers' possession or reasonable control and conducted for any of the Assets.

Section 4.9 Delivery of Inventory. At the Closing, the Sellers shall deliver to the Purchasers, by leaving at each of the Facilities, all Inventory.

Section 4.10 Financial Information and Audit Assistance. During the term of this Agreement, the Sellers shall deliver to the Purchasers monthly individual Facility income statements not later than the end of the next succeeding calendar month and updated rent rolls not later than the twentieth (20th) day of the next succeeding calendar month. After Closing, on not less than fourteen (14) Business Days prior written notice from the Purchasers, the Sellers agree to provide the Purchasers' auditors sufficient access to information and personnel at the Sellers' corporate office to obtain all of the information they reasonably require to prepare audited financial statements of the Facilities for fiscal years 2008 through 2011 and comparable unaudited interim financial statements from January 1, 2012 through the Closing Date including access to the Sellers' corporate level books and records. The Sellers also agree to cause an executive officer of the Sellers with knowledge concerning the financial affairs of the Facilities to execute and deliver a representation letter to the Purchasers' auditors with respect to all financial information delivered to the Purchasers and their auditors, in a form and substance substantially similar to what would have been executed and delivered to the auditors had the Sellers been preparing audited financial statements for such time periods with respect to the Facilities, subject to such exceptions as may be required by such executive officer in order to provide such representation letter.

Section 4.11 PTO Pay. The Sellers shall credit to the Purchasers on the Closing Statement, as of the Closing Date for all earned and accrued paid vacation, sick or personal pay or other paid timeoff of all Transitioned Employees being conveyed on the Closing Date (collectively, "PTO"). The Sellers shall deliver to the Purchasers a list of PTO of Transitioned Employees employed at a Facility or employed at a regional corporate level within five (5) days prior to the Closing for such Facility (the "PTO List"), which shall include all PTO for Transitioned Employees of the applicable Facilities (i) as of the most recent pay period preceding the Closing Date and (ii) projected PTO as of the Closing Date, which shall assume no further vacation or sick days for all Transitioned Employees except for known scheduled vacation. The PTO List shall list all PTO of all Transitioned Employees, including the method of calculation of the PTO and the dollar value thereof to the Transitioned Employees to whom the amounts are potentially owed. The Purchasers shall thereafter be responsible for all such PTO to all such Transitioned Employees to the extent of the credit received from the Sellers at the Closing, and the amount of such PTO shall be subject to the post-Closing reconciliation process described in Section 9.6 below.

Section 4.12 No Solicitation.

(a) Each of the Sellers and Bowen shall not, nor shall any of them authorize or permit any of their respective directors, partners, managers, officers, employees or any investment banker, financial advisor, attorney, accountant or other advisor, agent or representative retained by them in connection with the transactions contemplated by this Agreement (collectively, the "Seller Representatives") on the Sellers' or Bowen's behalf to, directly or indirectly through another person or entity, (i) solicit, initiate, cause, knowingly encourage or knowingly facilitate any inquiries or the making of any proposal that constitutes or is reasonably likely to lead to a Proposal or (ii) participate in any discussions or negotiations regarding or enter into any agreement with respect to, any Proposal, or furnish to any person or entity any information in connection with or in furtherance of any Proposal. Without limiting the foregoing, it is agreed that any violation of the restrictions set forth in the preceding sentence by any Seller Representative shall be a breach of this Section 4.12(a) by the Sellers and Bowen. The Sellers and Bowen shall, and shall instruct the Seller Representatives to, immediately cease and after the Hard Date cause to be terminated all existing discussions or negotiations with any person or entity conducted heretofore with respect to any Proposal and after the Hard Date request the prompt return or destruction of all confidential information previously furnished.

(b) In addition to the obligations of the Sellers and Bowen set forth in paragraph (a) of thisSection 4.12, after the Hard Date the Sellers and Bowen shall promptly advise the Purchasers orally and in writing of any request for information or other inquiry that the Sellers or Bowen reasonably believe could lead to any Proposal, the terms and conditions of any such request, Proposal or inquiry (including any changes thereto) and the identity of the person or entity making any such request, Proposal or inquiry. After the Hard Date the Sellers and Bowen shall promptly keep the Purchasers fully informed of the status and details (including any change to the terms thereof) of any such request, Proposal or inquiry.

(c) For purposes of this Section 4.12, "Proposal" means any inquiry, proposal or offer, whether or not conditional and whether or not withdrawn, (a) for a merger, consolidation, recapitalization, acquisition transaction or other business combination involving any or all of the Sellers or (b) to acquire in any manner, directly or indirectly, 10% or more of the aggregate equity interests of the Sellers, or that represent 10% or more of the total assets of the Sellers, other than as contemplated in this Agreement.

Section 4.13 Final Cost Report. The Sellers shall prepare and file any and all final cost reports for each Facility as and to the extent required by any Governmental Authority, Government Program or third party payor for the time period for which each of the Sellers was the operator or licensee of such Facility within the time frame required by Applicable Law for each Facility for which such a report should be prepared, but no later than one hundred and twenty (120) days after the Closing Date for such Facility, it being understood and agreed that it is the intent of the Parties that there shall be no interruption in the payments due to the Purchasers as a result of the failure of the Sellers to timely file such final cost reports.

Section 4.14 Employment Records; Resident Records. Except as may be prohibited by Applicable Law, the Sellers shall make available to the Purchasers the Sellers' books and records relating to all employees of each Seller, including any and all records or written documents relating to performance reviews, performance improvement plans, statements of disciplinary actions taken, and all other information maintained in such employee's personnel files (collectively, "Employee Records"). At the Closing, except as may be prohibited by Applicable Law, the Sellers shall provide copies to the Purchasers of all Employee Records for the Transitioned Employees. Following the Closing, the Sellers shall have the obligation to (i) remove and retain all Employee Records for all employees who are not Transitioned Employees and (ii) remove and retain all records relating to all prior Residents of the Facilities for which the Closing is occurring who were not residing therein on the Closing Date therefor unless the same are required to remain at the Facilities after the Closing in order for the Purchasers to comply with Applicable Law.

Section 4.15 Absence of Certain Changes or Events. The Sellers will not cause or permit any of the following with respect to the employees at the Facilities: any new bonus, percentage compensation, service award or other like benefit or any increase in the compensation payable or to become payable by the Sellers to any of their respective employees (except compensation granted to new employees who are hired in the ordinary course of business and then only upon terms consistent with other employees having comparable duties and experience), any change in the method of calculating any presently existing bonus, percentage compensation, service award or other like benefit, granted, made or accrued to or to the credit of any of the employees or agents of the Sellers or any increase in any employee welfare, insurance, pension, retirement or similar payment or arrangement made or agreed to by any Seller pursuant to existing welfare, pension and retirement Employee Benefit Plans and arrangements, deferred compensation, or other Employee Benefit Plans. In no event shall the limitations contained in this Section 4.15 extend beyond the Closing Deadline Date. Notwithstanding the foregoing provisions of this Section 4.15, the Sellers and BPMSL retain the right to pay as of the Closing longevity bonuses to employees.

Section 4.16 Key Employees. Without the prior written consent of the Purchasers (such consent not to be unreasonable withheld or delayed), the Sellers shall cause BPMSL to not, from the Notification Date through the Closing Date, terminate the employment of any of the employees listed in Exhibit 4.16, which exhibit shall be delivered by the Purchasers on or prior to the Notification Date (the "Key Employees"). The list of Key Employees may not include the Retained Employees. The Sellers shall promptly notify the Purchasers of any resignation of any such Key Employees and after the Notification Date shall not hire any replacement without the consent of the Purchasers (such consent not to be unreasonably withheld or delayed).

Section 4.17 Non-Solicit; No Hire; Non-Competition.

(a) The Sellers, for themselves and on behalf of BPMSL and its affiliates, and Bowen agree that they will not, directly or indirectly, solicit for employment, interfere with, offer to hire, or hire or cause to be hired or aid or assist any other person to solicit or hire, whether on a full-time, part-time, consulting or any other basis any existing employees at any of the Facilities between the Effective Date and the Closing, and, for a period of five (5) years after the Closing Date, any Transitioned Employee; provided, however, that the forgoing provisions of this Section 4.17(a) shall not restrict a Seller after the Closing Date from placing a bona fide public advertisement for employment which is not specifically targeted at such employees or from hiring an individual who is referred to a Seller pursuant to a generalized search conducted by a professional search firm but is not specifically targeted at a Transitioned Employee or the Facilities.

(b) The Sellers, for themselves and on behalf of BPMSL and its affiliates, and Bowen agree for a period of five (5) years after the Closing Date, not to directly or indirectly, in any capacity (including as an employee, owner, partner, agent, shareholder, director, officer, member, creditor, consultant, co-venturer or otherwise) whether alone, together or with any other person or entity, establish, reestablish, open or reopen, engage in, assist, financially or otherwise, any memory care, assisted living facility, independent living facility or continuing care retirement community, located or developed within a ten (10) mile radius of any Facility, except for the Facilities listed on Exhibit 4.17, which shall be permitted notwithstanding their proximity to any Facility or other similar facility now or hereafter owned or operated by any Purchaser or affiliated entity.

(c) The Sellers and Bowen acknowledge that the Purchasers' remedies at law for any breach of this Section 4.17 are inadequate and that irreparable damage would occur in the event that any provision of this Section 4.17 were not performed in accordance with its terms and further agree that the Purchasers shall be entitled to an injunction or injunctions to prevent or restrain breaches or threatened breaches of this Section 4.17. To the extent any court of competent jurisdiction adjudicating the enforceability of this Section 4.17 may deem any restriction set forth herein to be unreasonable, whether as to territory, duration or otherwise, said restriction shall be given effect, and it is the intent of the Parties that said restriction shall be given effect, to the extent such court deems it to be reasonable.

Section 4.18 Employee Benefit Plans. The Sellers shall continue to be liable and responsible for, and the Purchasers shall incur no liability or responsibility with respect to, any "Continuation Coverage" (as that term is defined by COBRA Section 4980B of the Code and Section 601, et seq. of ERISA) for any employee of any Seller terminated at any time prior to the Closing, from and after the Closing. The Purchasers specifically shall not assume, honor or accept any Employee Benefit Plan of the Sellers or their parents or affiliates, and the Sellers shall be solely responsible for satisfying all obligations (whether arising under federal, state or local law or pursuant to contract) which may arise or which may have arisen prior to the Closing Date in connection with the employment by the Sellers of the Sellers' employees or the creation, funding, operation or termination of any of the Employee Benefit Plans that cover any of the Sellers' employees, and the Sellers shall give all WARN Act notices required by Applicable Law. The Sellers shall remain responsible for maintaining or terminating all Employee Benefit Plans in compliance with Applicable Law and the Purchasers shall have no obligation with respect to any of the Sellers' Employee Benefit Plans at any time.

Section 4.19 Capital Expenditures. The Sellers shall complete or cause to be completed prior to the Closing all capital projects as set forth in Section 2.12 of the Disclosure Letter and all repairs and replacements otherwise required to maintain each Facility in its condition as of August 25, 2011 (reasonable wear and tear excepted), using materials and labor, all consistent with the remainder of such Facility. Each Seller will cause such work to be completed in a good and workmanlike manner and in accordance with Applicable Law. All of the work, repairs, replacements and capital projects contemplated by this Section 4.19 shall be at the sole cost and expense of Seller.

Section 4.20 Changes in Representations and Warranties. Without in any way expanding the obligations or liabilities of the Sellers under Article II, the Sellers shall have the obligation throughout the period from the Effective Date through and including the Closing Date to give the Purchasers prompt written notice to the email address set forth on Exhibit 2.0 of any representation and warranty, made by the Sellers in Article II, which becomes materially inaccurate or incorrect, to the extent the Sellers obtain knowledge of such inaccuracy or incorrectness. Notwithstanding the foregoing, such notice shall not affect or modify the representations and warranties made by the Sellers, the conditions precedent to the Closing or the Purchasers' rights under this Agreement; provided, however, that the Supplemental Letter delivered on or before the Update Date (x) with respect to Section 2.7 regarding Immaterial Contracts and Terminable Contracts only and (y) with respect to Section 2.20 regarding the Supplemental Financial Information only, shall effectively amend the Disclosure Letter.

Section 4.21 Delivery of Documents. Prior to the Effective Date, the Sellers delivered to the Purchasers or at the Sellers' election made available to the Purchasers in the data room set up by the Sellers for the Purchasers to conduct their due diligence review of the Assets, true and complete copies of all documents listed on any sections of the Disclosure Letter, including all Licenses, Contracts, Residency Agreements, Assignable Debt Documents, Leases, Employee Benefit Plans, the financial statements and records contemplated by Section 2.20.

Section 4.22 Contracts Related to Other Facilities. With respect to each Contract set forth in Section 2.7(e) of the Disclosure Letter, the Sellers shall use commercially reasonable efforts to cause such Contract to be modified prior to the Closing Date such that the Contract shall relate only to, and provide for rights and/or obligations with respect only to, the Assets and to no other facility, facilities or assets owned or managed by any affiliate of the Sellers or any other person that is not subject to this Agreement.

## ARTICLE V

## COVENANTS OF THE PURCHASERS

The Purchasers covenant and agree with the Sellers that:

Section 5.1 Assumption of Contracts, Equipment Leases and Tenant Leases. The Purchasers shall review the Contracts and the Equipment Leases during the period ending on the Notification Date, shall give notice to the Sellers indicating which of the Contracts and the Equipment Leases that the Purchasers will not assume at Closing (the "Rejected Contracts"); provided that the Contracts listed on Exhibit 5.1(a) shall not be included as Rejected Contracts. Thereafter, the Sellers shall give notice to all parties under the Rejected Contracts that the Purchasers have elected not to assume and the Sellers shall terminate such Rejected Contracts on or prior to the Closing Date and the Sellers shall be responsible for all costs and expenses of such termination, including any costs or expenses that arise after the Closing Date in connection therewith. All Contracts and Immaterial Contracts and Equipment Leases of the Sellers other than (i) Rejected Contracts and (ii) those Contracts, Immaterial Contracts and Equipment Leases that are not assignable, are herein collectively referred to, respectively, as the "Assumed Contracts," and the "Assumed Equipment Leases" and at Closing, the Parties shall execute and enter into the form of assignment and assumption agreement set forth herein in Exhibit 5.1(b) (the "Assignment and Assumption Agreement") whereby the Sellers shall assign and the Purchasers shall assume the Assumed Contracts, the Assumed Equipment Leases and the Tenant Leases. The Sellers shall bear any costs and expenses of obtaining any consents to such assumption of the Assumed Contracts, the Assumed Equipment Leases and the Tenant Leases. All amounts payable under the Assumed Contracts, the Assumed Equipment Leases and the Tenant Leases shall be prorated through the Closing Date pursuant to Sections 9.4 and 9.6.

Section 5.2 Assignable Debt.

(a) The Purchasers have agreed to assume the loan obligations listed on Exhibit 5.2 (the "Assignable Debt") and all liabilities and obligations of the Sellers and Bowen under the Assignable Debt Documents at the Closing to the extent all consents required from the applicable Assignable Debt Lenders have been obtained prior to the Closing Date pursuant to the Acceptable Terms, subject to the terms of this Section 5.2 and this Agreement. The Purchasers shall use good faith, commercially reasonable efforts to obtain the consent of the holders and servicers, as applicable, of the Assignable Debt (and any other person or entity required to consent pursuant to the terms of the Assignable Debt Documents)

(collectively, the "Assignable Debt Lenders") to the assumption of the Assignable Debt by the Purchasers as contemplated by this Agreement by the Closing Date on the same terms and conditions as set forth in the Assignable Debt Documents existing on the Effective Date, subject to Section 5.2(f), and subject to no other terms and/or conditions unless approved in writing by the Purchasers in their sole discretion), provided in each case that (i) the Assignable Debt Lenders shall approve such changes to the Assignable Debt Documents necessary or required by the Purchasers to reflect the change in the borrower ownership and/or operating structure (including, without limitation, with respect to permitted transfers, operating leases and management agreements), (ii) such other changes reasonably required by the Assignable Debt Lenders to reflect the new operating and management structure, so long as such changes do not increase the liability or obligations of the borrower as set out in the Assignable Debt Documents, (iii) that such Assignable Debt is, and after the Closing shall be, secured only by the Assets that serve as collateral for such Assignable Debt on the Effective Date, and (iv) that none of the Purchasers, nor any parent entity or affiliate of any of the foregoing shall have any personal liability (whether pursuant to any guaranty, indemnity or other undertaking) in respect of such Assignable Debt except for customary personal recourse obligations resulting from fraud, misrepresentation, misapplication of cash, waste, environmental claims and liabilities, prohibited transfers, violations of single purposes entity covenants, and other circumstances customarily included in a separate guaranty or indemnification agreement in non-recourse financings of real property (the foregoing, "Non-Recourse Carve-out Obligations"), and as to the Non-Recourse Carve-Out Obligations only as may be offered in accordance with the immediately following sentence (the terms described in this sentence, collectively, the "Acceptable Terms"). The Purchasers shall be deemed to have used commercially reasonable efforts if they offer in connection with any such loan assumption as a guarantor and environmental indemnitor with respect to any Non-Recourse Carve-out Obligations the lowest tier holding company that holds directly or indirectly all of the Real Property (the "Purchaser Parent"), provided, in no event, shall the Purchasers have any obligation to offer any other entity or person to serve as such guarantor or indemnitor (including any direct or indirect equity owner of any Purchaser Parent).

(b) The Sellers and the Purchasers acknowledge and agree that the Purchasers continue to respond to supplemental requests by the Assignable Debt Lenders for additional information. The Purchasers shall use commercially reasonable efforts to deliver to the Assignable Debt Lenders, on or prior to the Notification Date (or reasonably promptly following receipt by the Purchasers of such request from the Assignable Debt Lenders if such request is made less than fifteen (15) Business Days prior to the Notification Date), information that substantially complies with any such request to the extent the requested information is available to the Purchasers, in all cases subject to the terms and conditions and limitations of Section 5.2(a); provided, however, the Parties agree and acknowledge that the Purchasers shall have no obligation to deliver any information required by the Assignable Debt Lenders with respect to any Seller or any affiliate of any Seller or otherwise with respect to the historical operations of any Facility and the Sellers shall be solely obligated to provide such information to the Assignable Debt Lenders. Notwithstanding the foregoing, the Parties agree that the stated requirements of the debt assumption application is subject to modification and interpretation of the representative, underwriter and counsel assigned to the loan file, in their discretion, and the Purchasers shall have no obligation to provide any information beyond that which is communicated and required by such parties to the Purchasers, subject to the terms of Section 5.2(a).

(c) The Purchasers agree to pay any loan assumption or transfer fees and all other fees, costs, expenses and other amounts required to be paid in connection with the assumption of the Assumed Debt (as hereinafter defined) to the extent incurred pursuant to the terms of the Assumed Debt Documents (as hereinafter defined) and its own attorneys fees incurred in connection therewith (and this obligation shall survive the Closing); provided, however, that the Sellers shall pay the Excess Assumption Fee on the Assumed Debt at the Closing.

(d) If any Assignable Debt Lenders refuse to grant a full release, from and after the Closing, of any guarantor of all or any portion of any Non-Recourse Carve-out Obligations relating to any Assignable Debt, the Sellers shall have the option to elect to treat such Assignable Debt Lenders as refusing to provide consent to the assumption by the Purchasers of such Assignable Debt and, in such event, the Purchasers shall be deemed not to be obligated to assume such Assignable Debt and the terms of this subsection (c) shall apply. The terms of this subsection (c) shall apply but only subject to, and in accordance with, the terms and conditions of subsection (i) below.

(e) In the event that the Purchasers are not obligated under the terms of this Section 5.2 to assume the Assignable Debt, the Assignable Debt Documents related to such Assignable Debt shall not be Permitted Liens and the Purchasers shall have no further obligation with respect to such Assignable Debt.

(f) Notwithstanding anything to the contrary contained in this Section 5.2, in the event that (i) the Purchasers are unable to obtain the consent of the applicable Assignable Debt Lenders to assume the Assignable Debt on Acceptable Terms prior to the Closing Date or (ii) any Assignable Debt Lenders give notice that they will permit the Purchasers to assume the Assignable Debt but on terms other than Acceptable Terms, the Sellers or Bowen may, in their sole discretion, negotiate directly with the applicable Assignable Debt Lenders (provided that the Purchasers are permitted to participate in any such negotiations) prior to Closing and offer such Assignable Debt Lenders terms to induce the Assignable Debt Lenders to permit the Purchasers to assume the Assignable Debt on Acceptable Terms ("Cure Terms"). If the Assignable Debt Lenders accept such Cure Terms, the Purchasers shall assume the Assignable Debt subject to the Cure Terms provided (i) all consents required from the applicable Assignable Debt Lenders have been obtained prior to the Closing Date pursuant to the Acceptable Terms (as modified by the Cure Terms) and (ii) in the Purchasers' sole discretion, the Cure Terms do not adversely impact the rights and/or obligations of the Purchasers and/or any guarantor with respect to such Assignable Debt.

(g) The Sellers understand that the Purchasers intend to secure a commitment from a third party lender in connection with the acquisition of the Assets (the "Acquisition Loan"). The Purchasers agree to promptly deliver to the Sellers written notice upon receipt by the Purchasers of any such written commitment.

(h) The Purchasers agree to participate with the Sellers in weekly telephone calls on Mondays at 10:00 am (Pacific), or at another time if mutually agreed upon by the Parties, for not more than fifteen (15) minutes to discuss the status of the Acquisition Loan and the assumption by the Purchasers of the Assignable Debt. Such calls shall not include counsel to the Purchasers or the Sellers, unless the Purchasers agree otherwise in their sole discretion, provided Purchasers have obtained in advance of such calls updates from their legal counsel regarding the status of the Acquisition Loan and the assumption by the Purchasers of the Assignable Debt.

(i) Notwithstanding anything to the contrary contained in this Agreement:

(i) In the event that (A) the Purchasers are unable to consummate the assumption of the Assignable Debt as of the Closing Date or (B) the Assignable Debt Lenders provide notice prior to the Closing Date of their refusal to consent to the assumption of the Assignable Debt by the Purchasers, and notwithstanding receipt of such notice, the Sellers may elect, in their sole discretion, to extend the closing date with respect to the Regency Grand Facility and any Assets used in connection with, or otherwise related to, the Regency Grand Facility (the "Regency Grand Assets") and such closing date shall be extended to the date of the earlier to occur of (A) the assumption by the Purchasers (or their assigns pursuant to Section 11.6) of the Assignable Debt, (B) the prepayment or defeasance by the Sellers of the Assignable Debt, or (C) the date the Sellers elect, in their sole discretion, to terminate this Agreement with respect to the Regency Grand Assets, provided in no event shall such closing date be extended beyond December 31, 2012 (such closing date, the "Regency Grand Closing"). In the event of extension of the Regency Grand Closing, the Purchasers shall continue to use good faith, commercially reasonable efforts to obtain the consent of the Assignable Debt Lenders to assignment of the Assignable Debt to the Purchasers on Acceptable Terms. The Parties agree that if the closing date for the Regency Grand Assets is extended pursuant to the terms of this Section 5.2(i)(i), the portion of the Deposit allocated to the Regency Grand Facility (the "Regency Grand Deposit") shall continue to be held by the Escrow Agent in accordance with the terms of the Deposit Escrow Agreement and shall not be applied toward the Purchase Price on the Closing Date. The Seller of the Regency Grand Facility shall, at the Purchasers' sole option, engage the Purchasers or an affiliate of the Purchasers (the "Purchaser Manager") to manage the Regency Grand Facility from and after the

Closing Date until the Regency Grand Closing (or, if sooner, the earlier termination of this Agreement as contemplated by this Section 5.2(i)(i)) pursuant to a form based on the Form Management Agreement, with any required changes based on California rules or regulations. Such management agreement may be terminated by such Seller for any reason.

(ii) If the Regency Grand Closing does not occur on or prior to December 31, 2012, or upon earlier delivery of written notice by such Seller to the Purchasers of the termination of this Agreement with respect to the Regency Grand Assets in accordance with the terms of this Section 5.2(i)(i), this Agreement shall be deemed terminated with respect to the Regency Grand Assets, the Regency Grand Deposit shall be returned to the Purchasers or, if the terms of Section 10.3(b) shall apply, the Sellers, and the Parties shall have no further obligations under this Agreement with respect to the Regency Grand Assets. In the event that any person or entity other than the Purchaser Manager is the manager of the Regency Grand Facility for any period of time between the Closing and the Regency Grand Closing, the Sellers agree that (W) all representations and warranties made by the Sellers with respect to the Regency Grand Assets pursuant to Article II will be true and correct as of the Regency Grand Closing, (X) the Sellers shall comply with all of its covenants pursuant to Article IV with respect to the Regency Grand Assets, (Y) it shall be a condition to the Regency Grand Closing that the conditions set forth in Section 8.2 shall have been satisfied with respect to the Regency Grand Assets on and as of such date and (Z) for the purposes of the Regency Grand Assets, each reference in this Agreement to "the Closing" shall be deemed to be a reference to "the Regency Grand Closing". If the Purchaser Manager manages the Regency Grand Facility for the entire period between the Closing and the Regency Grand Closing, it shall be a condition to the Regency Grand Closing (each of which conditions may be waived solely by the Purchasers) that the conditions set forth is Section 8.2(c), (e), (g), (h), (i) and (l) with respect to the Regency Grand Assets shall have been satisfied on or prior to such date.

(iii) In the event that the Assignable Debt Lenders provide notice prior to the Closing Date of their refusal to consent to the assumption of the Assignable Debt by the Purchasers and the Sellers do not elect to extend the closing date with respect to the Regency Grand Assets on or before the Closing Date, this Agreement shall automatically terminate with respect to the Regency Grand Assets, and the Parties shall have no further obligations under this Agreement with respect to the Regency Grand Assets, and this Agreement shall continue in full force and effect with respect to all Assets other than the Regency Grand Assets. Upon receipt of such notice from the Assignable Debt Lenders, the Purchase Price shall be reduced by the amount allocated by the Parties to the Regency Grand Assets pursuant to the terms of Section 1.7 hereof and the Purchasers shall have the right to demand from the Escrow Agent return of the Regency Grand Deposit. Each Party hereto agrees to acknowledge in writing the removal of the Regency Grand Assets from this Agreement promptly upon the request of any other Party.

(j) The Assignable Debt that the Purchasers (or their assigns pursuant to Section 11.6) assume pursuant to this Section 5.2 is referred to as the "Assumed Debt" and the related Assignable Debt Documents are referred to as the "Assumed Debt Documents." At Closing, to the extent the same are transferred to and made available to the Purchasers after the Closing (and the same approved by the applicable Assignable Debt Lenders), the Purchasers shall credit the Sellers for the balance of all real estate tax, insurance, maintenance, replacement and other escrows, reserves and impoundments existing on the Closing Date and held by or for the benefit of such Assignable Debt Lender in connection with the Assumed Debt.

Section 5.3 Resident Records and Employment Records. The Purchasers understand that all of the (i) Resident Records and (ii) Employment Records for Transitioned Employees are being transferred hereunder to the Purchasers. The Purchasers agree to maintain all such Resident Records and Employment Records for the requisite period prescribed by Applicable Law but at a minimum five (5) years after a Resident ceases to be a resident of the Facility. In addition, if and to the extent permitted by Applicable Law, the Purchasers agree to allow the Sellers, or the Sellers' agents or representatives during normal business hours and upon reasonable advance notice and at the Sellers' sole cost and expense and subject to Applicable Law governing the rights of the Residents, and the rights of the Transitioned Employees, respectively, to examine from time to time such Resident Records or Employment Records relating to the period of the Sellers' operation of the Facilities, to cooperate with the Sellers, the Sellers' agents or representatives in their examination or review of such Resident Records or Employment Records, and to permit the Sellers to obtain copies thereof, upon request.

Section 5.4 Cooperation. After the Closing Date, the Purchasers shall cooperate with the Sellers and provide reasonable access to the Books and Records in the Purchasers' possession that are required by the Sellers to respond to any third party litigation, government audit, and/or third-party payor audit, upon reasonable advance notice and to the extent permitted by Applicable Law. The Sellers shall be responsible for the cost and expense of copying any records in the Purchasers' possession or any costs of third parties unrelated to the Purchasers (*e.g.*, record management companies) in making the records available to the Sellers.

Section 5.5 Employment.

(a) The Purchasers agree that after the Notification Date but prior to the Closing and subject to the Purchasers' normal employment screening process (i.e., background check, drug-testing, etc.), the Purchasers will tender offers of employment to those employees of the Sellers that the Purchasers determine, in their sole discretion, to retain after the Closing Date. The Purchasers shall have no obligation to tender offers of employment to any of the Sellers' employees. Those persons who accept an offer of employment from the Purchasers are referred to herein as "Transitioned Employees." The Purchasers agree that at least ten (10) days prior to the Closing, the Purchasers will furnish the Sellers a list of such Transitioned Employees. The provisions of this Section 5.5 are subject to Section 5.6 below.

(b) In the event that the Purchasers offer employment and hire both Kris Brock and Barbara Page, until the earlier of December 31, 2012 or the date on which either is no longer employed by the Purchasers, the Purchasers shall allocate eight (8) hours per week for one of such individuals to be available to the Sellers every Monday of each week (such individuals to be made available on a rotating basis, as reasonably practicable to the Purchasers, and subject to each such individual's availability), unless the Purchasers provide the Sellers with twenty-four (24) hours advance notice notifying the Sellers of an alternate day on which such individual is to be made available, for purposes of managing properties of BPMSL not managed by the Purchasers or their affiliates, with no right to roll over any unused time. The Sellers agree to pay the Purchasers within fifteen (15) days of receipt of an invoice from the Purchasers (whether such persons are accessed by BPMSL or not) for (i) twenty percent (20%) of all costs of employment for such individual (including all costs relating to salary, payroll and other taxes or the provision of benefits, based on a 40 hour work week) and (ii) all related travel costs and other reasonable expenses incurred by the Purchasers or the such employees in connection with such access. The Purchasers and their affiliates shall have no liability for any actions or failures to act by such employees, or any claims brought by either such employees, in connection with such access and the Sellers shall indemnify the Purchasers and their affiliates for any and all losses, costs, damages, expenses and other liabilities in connection with such access.

Section 5.6 Non-Solicit; No Hire; Non-Competition.

(a) Notwithstanding Section 5.5 above, the Purchasers agree that they will not, directly or indirectly, solicit for employment, interfere with, offer to hire, or hire or cause to be hired or aid or assist any other person to solicit or hire, whether on a full-time, part-time, consulting or any other basis any of the individuals listed on Exhibit 5.6(a) (each a "Retained Employee") at any of the Facilities or any other similar facility between the Effective Date and the Closing, and, for a period of two (2) years after the Closing Date; provided, however, that the foregoing provisions of this Section 5.6 shall not restrict a Purchaser after the Closing Date from placing a bona fide public advertisement for employment which is not specifically targeted at a Retained Employee or from hiring an individual who is referred to a Purchaser pursuant to a generalized search conducted by a professional search firm but is not specifically targeted at a Retained Employee or the Facilities listed on Exhibit 4.17.

(b) If this Agreement is terminated, the Purchasers agree that they will not, directly or indirectly, solicit for employment, interfere with, offer to hire, or hire or cause to be hired or aid or assist any other person to solicit or hire, whether on a full-time, part-time, consulting or any other basis any of the individuals listed on Exhibit 5.6(b) (each a "Protected Employee"), for a period of two (2) years after the termination of this Agreement;provided, however, that the foregoing provisions of this Section 5.6 shall not restrict a Purchaser after the termination of this Agreement from placing a bona fide public advertisement for employment which is not specifically targeted at a Protected Employee or from hiring an individual who is referred to a Purchaser pursuant to a generalized search conducted by a professional search firm but is not specifically targeted at a Protected Employee.

Section 5.7 Vacation/PTO Credit. The Purchasers agree that upon the Closing, they will credit all Transitioned Employees with all vacation, PTO, or other leave benefits that Transitioned Employees had earned and accrued but not yet used while employed by the Sellers or BPMSL to the extent of the Seller credit as described in Section 4.11. Furthermore, the Purchasers agree that when they pay such credited leave benefits to Transitioned Employees, it will do so at a rate not less than the rate at which the leave was earned, or if paid at a lesser rate, the Purchasers will increase the number of hours credited to compensate the individual for any difference to the extent of the Seller credit as described in Section 4.11.

Section 5.8 WARN Act. The Purchasers agree to hire and maintain the employment, for a period of at least ninety one (91) days following the Closing, of an adequate number of Transitioned Employees at an adequate job and rate of pay (including commission structure) to prevent triggering any notice obligation under the WARN Act, or any similar state statute.

Section 5.9 Employee Benefits. Upon the Closing, the Purchasers will offer Transitioned Employees the opportunity to enroll in the Purchasers' health benefits plans in accordance with and to the extent permitted under the terms of such plans.

Section 5.10 Further Documentation. The Purchasers agree that, for the two (2) year period following the Closing Date, upon request by the Sellers, the Purchasers will do, execute, acknowledge, and deliver, or cause to be done, executed, acknowledged, and delivered, all such further acts, documents and assurances as may be reasonably required, without enlarging or extending any obligations or liability of the Purchasers under this Agreement in any manner and without requiring the expenditure of funds by the Purchasers, as necessary to fully consummate the transactions contemplated by this Agreement.

Section 5.11 Changes in Representations and Warranties. Without in any way expanding the obligations or liabilities of the Purchasers under Article III in this Agreement, the Purchasers shall have the obligation throughout the period from the Effective Date through and including the Closing Date to give the Sellers prompt written notice of any representation and warranty made by the Purchasers in Article III, which becomes materially inaccurate or incorrect, to the extent such inaccuracy or incorrectness is brought to the knowledge and attention of the Purchasers.

Section 5.12 Return of Confidential Information. Promptly following execution of this Agreement, the Purchasers shall either return to the Sellers or destroy all Confidential Information in the Purchasers' possession or control (or in the possession or control of Fortress Investment Group LLC or its affiliates) related to the Former Sellers including without limitation, all memoranda, notes and information derived therefrom and Purchasers shall provide to the Sellers written verification confirming that all such Confidential Information has been properly disposed of. Notwithstanding the foregoing, the Purchasers may retain Confidential Information related to Acacia Springs, Heritage Springs and The Regent, provided that any such Confidential

Information related to such these facilities, as well as any Confidential Information related to the Facilities, shall be returned or destroyed in the event that this Agreement is terminated. Notwithstanding the foregoing, the Purchasers may retain Confidential Information related to the Former Sellers that is not practical to separate from Confidential Information related to the Sellers, as well as such copies of Confidential Information as are required to comply with Applicable Laws and none of the Purchasers nor Purchasers' Representatives shall be required to purge their computer archives; provided that notwithstanding anything in this Section 5.12, all other terms of the Confidentiality Agreement shall remain in force and effect.

## ARTICLE VI

## OTHER COVENANTS

Section 6.1 Confidentiality.

(a) Each Party shall, and shall cause its affiliates and representatives to, hold in strict confidence all documents and information concerning the other furnished to it in connection with the transactions contemplated by this Agreement in accordance with the Confidentiality Agreement, dated as of June 13, 2011, by and between Harvest Facility Holdings LP and BDC Advisors, LLC (the "Confidentiality Agreement"), which shall continue in full force and effect, and all such information shall be deemed to be "Confidential Information" pursuant to such agreement. The term "Transaction" as used in the Confidentiality Agreement shall refer to the Transaction under this Agreement. The Purchasers shall be entitled to the same rights and subject to the same obligations as "Holiday" under the Confidentiality Agreement. The Sellers shall be entitled to the rights and subject to the obligations of "Company" under the Confidentiality Agreement.

(b) The Sellers agree that all information about the Facilities and the Business shall be deemed to be Confidential Information (as defined in the Confidentiality Agreement) and after the Closing shall be held in confidence as if each Seller were a Receiving Party (as defined in the Confidentiality Agreement) with respect to such information, and such information shall not at any time after the Closing be used for the advantage of the Sellers or their affiliates or representatives or disclosed to third parties (including employees at the Facilities) by the Sellers or their affiliates or representatives. Notwithstanding the foregoing, any confidentiality restrictions on the Purchasers relating to the Facilities or the Business shall terminate at the Closing.

(c) The obligations of the Parties under this Section 6.1 shall survive termination of this Agreement.

Section 6.2 Resident Rents; Accounts Receivable.

(a) Prior to the Closing, each Seller shall bill its Residents in the ordinary course of business for amounts due under the Residency Agreements, and the Purchasers shall assume responsibility for the billing and collection of payments on account of services rendered by or on behalf of the Purchasers at each Facility on and after the Closing Date. In furtherance and not in limitation of the foregoing, each Seller shall be responsible for billing amounts under Government Programs under such Seller's provider number for services rendered at any time prior to the Closing Date for the Facility where such services were rendered and the Purchasers shall, at the Purchasers' option, either take an assignment of the Sellers' Government Programs provider numbers or obtain their own Government Programs provider numbers and shall bill Government Programs for services provided at any time after the Closing Date. The Parties acknowledge that generally, private pay Residents are billed monthly by the Sellers in advance on or about the twentieth (20th) through the twenty fifth (25th) of each month, while Government Programs are billed in arrears. Regardless of which Party bills the Residents or Government Programs, the portion of all Resident rents and service fees allocable to the time period prior to the Closing Date shall be allocated to the Sellers and the portion thereof allocable to the time period on or after the Closing Date shall be allocable to the Purchasers and will be accounted for as part of the reconciliation process set forth in Section 9.6.

(b) Rents and service fees for the period prior to the Closing Date will remain the property of the Sellers. The Sellers shall retain all rights in and title to all accounts receivable related to pre-Closing services, except to the extent any portion relates in part to dates after the Closing Date. The Sellers agree that they will not evict any current Residents at any of the Facilities between the Effective Date and the Closing Date without the Purchasers' prior written consent, which consent shall not be unreasonably withheld.

(c) The Sellers' pre-Closing accounts receivable shall include all amounts due the Sellers as of the Closing Date, for all services and ancillary services or products provided to any current or former Residents by or on behalf of the Sellers prior to the Closing Date.

(d) For payments received by the Purchasers or the Sellers on the account of Residents which do not specify the dates of services for which payment is made, such payments shall be processed, to the extent permitted by Applicable Law, first to the Purchasers for (i) the current month and (ii) for any arrearages due to the Purchasers, then to any arrearages owed to the Sellers.

(e) The Purchasers shall remit to the Sellers within twenty (20) Business Days of their receipt thereof any third-party payor payments (Social Security, etc.) received by the Purchasers that apply to a pre-Closing account of the Resident for whom the payment is made in accordance with the dates of service indicated on the remittance, together with a copy of the remittance advice and any repayment or reimbursement received by the Purchasers arising out of cost reports filed for the cost reporting period ending prior to the Closing Date.

(f) The Sellers shall remit to the Purchasers within twenty (20) Business Days of their receipt thereof any third-party payor payments (Social Security, etc.) received by the Sellers that apply to a post-Closing account of the Resident for whom the payment is made in accordance with the dates of service indicated on the remittance, together with a copy of the remittance advice and any repayment or reimbursement received by the Sellers arising out of cost reports filed for any cost reporting period ending from and after the Closing Date.

Section 6.3 Governmental and Third-Party Notices and Consents; Licensing

(a) Without limiting the Purchasers' obligations set forth in Sections 6.3(c), (d), (e) and (f), and without limiting the Sellers' obligations set forth in Sections 4.3, 6.3(b), (e) and (g), each of the Parties shall use its commercially reasonable efforts (including after the Closing Date) to obtain, at its expense, all waivers, permits, consents, approvals or other authorizations, including the Licensing Approvals, from Governmental Authorities, Government Program agencies or third parties, and to effect all registrations, filings and notices with or to Governmental Authorities, Government Program agencies or third parties, as may be required for such Party to consummate the transactions contemplated by this Agreement and to otherwise comply with all Applicable Law in connection with the consummation of the transactions contemplated by this Agreement (collectively, the "Governmental Approvals"). In no event shall the Purchasers or any of their affiliates be required to (i) agree or commit to divest, hold separate, offer for sale, abandon, limit its operation of or take similar action with respect to any assets (tangible or intangible) or any business interest of it or any of its affiliates (including any of the Facilities after the Closing Date) in connection with or as a condition to receiving the consent or approval of any Governmental Authority (including under the Hart Scott Rodino Act) or (ii) defend through litigation on the merits any claim asserted in any court by any person or Government Authority (each a "Burdensome Condition"). Notwithstanding the foregoing to the contrary, the Purchasers shall pay all fees related to filings made with the Federal Trade Commission and the Antitrust Division of the United States Department of Justice under the Hart Scott Rodino Act.

(b) Until all Licensing Approvals are obtained, the Sellers shall take all actions reasonably necessary and required to facilitate the efforts of the Purchasers and the Purchasers' Representatives to obtain the Licensing Approvals, including (i) providing the Purchasers with cooperation, documentation and information, which cooperation shall include:

(i) directing the executive directors and outside consultants (including causing the participation of the executive directors of each Facility located in California in all Component II sessions with the California Department of Social Services) (A) to reasonably cooperate with any cooperation, documentation and information requests (to the extent of information and documents in the Sellers' possession), from the Purchasers or the Purchasers' Representatives received in connection with the completion by the Purchasers of

the applications for the Licensing Approvals; (B) responding to screening questions or other inquiries by Governmental Authorities related to their applications for the Licensing Approvals; (C) providing the Purchasers with copies of the Sellers' initial licensure applications and most recent renewal applications with respect to each of the Facilities and the Business; and (D) providing all other information necessary to obtain the Licensing Approvals, including the information that is the subject of Section 4.3 provided such information is in the Sellers' possession;

(ii) executing documents (including notices or letters to the appropriate Governmental Authority) and/or taking such actions as may be necessary in connection with the assignment of any Medicaid or other third party payor provider agreements and contracts in effect with respect to the Facilities or the issuance to the Purchasers or the Purchasers' Representatives of new Medicaid or other third party payor provider agreements or contracts for Facilities;

(iii) correcting (at the Purchasers' reasonable direction) or permitting the Purchasers or the Purchasers' Representatives, without unreasonably interfering with normal business operations, to correct on the Purchasers' behalf and at the Sellers' expense any outstanding deficiencies (whether physical plant or operational deficiencies), if and to the extent such correction is required by any Governmental Authority as a condition to the issuance of the Licensing Approvals;

(iv) permitting and promptly providing access to site visits and inspections by, and reasonably cooperating with, the Purchasers and the Purchasers' Representatives (including any experts or consultants) and permitting inspections (preliminary or otherwise) at the Facilities by, and reasonably cooperating with, Governmental Authorities or experts or any representatives thereof (including any inspections to determine the compliance of any Facility with all fire safety codes and assisted living physical requirements), as necessary;

(v) if requested by the Purchasers, reasonably cooperating with the Purchasers and the Purchasers' Representatives to obtain approval by the applicable Governmental Authorities to enter into Interim Operating Agreements; and

(vi) in addition to the resident notices and relinquishment notices contemplated by Sections 6.4 and 6.5, providing such other notices as may be required by Applicable Law or agreements to be given to Governmental Authorities or other persons by the Sellers, the Sellers' affiliates or equity owners, or any of their respective officers, directors, employees, managers, partners or other agents or representatives, which notices shall be in the form prepared by the Purchasers or, if prepared by the Sellers, shall be subject to the prior written approval of the Purchasers.

(c) Subject to the Sellers' compliance with their obligations under this Section 6.3 and Section 4.3, the Purchasers shall submit to the appropriate Governmental Authority completed applications with schedules and required background information in order to obtain all certificate of need approvals or determinations of non-reviewability, CLIA waivers, licensing approvals (including the Health Care Licensing Approvals) and other Governmental Authority approvals as may be required for the Purchasers (or their affiliates) to own and/or operate each Facility and all approvals required to process a change of ownership or new application for Medicaid or any other third party payor certification, if applicable (collectively, the "Licensing Approvals"). Except with respect to (i) the Facility located in Arizona, the applications for which cannot be submitted until 30 days prior to the license transfer date, (ii) the Facility located in Utah, for which (A) background checks for new hires cannot be submitted until 30 days prior to the license transfer date and (B) a fire inspection report shall be obtained prior to the Closing, (iii) certain supplemental materials relating to Sunshine Villa to be submitted promptly after the Effective Date, (iv) Medicaid and CLIA applications, which are not required to be filed until after the Closing, (v) certain other ancillary license applications to be filed promptly after the Effective Date and (vi) any additional materials requested by a Governmental Authority following the Effective Date amending or supplementing materials previously provided to such Governmental Authority, each of which shall be promptly submitted as of such date, on or prior to the Effective Date the Purchasers have submitted substantially complete applications for the Health Care Licensing Approvals; provided, however, the Purchasers shall not be in breach of this Section 6.3(c) if (i) they omitted any of the following from any applications submitted on or before the Effective Date: (A) information required to be provided by the Sellers which has not been provided by the Sellers to the Purchasers prior to the Effective Date, (B) notices to Residents and/or responsible parties which are required to be, but which as of the Effective Date have not yet been, delivered by the Sellers and/or the Purchasers, as applicable, and/or (C) the results of third party inspections which are outside of the control of the Purchasers and have not been completed as of the Effective Date; and/or (ii), despite the good faith efforts of the Purchasers to submit substantially complete applications for the Health Care Licensing Approvals prior to the Effective Date, any such applications for the Health Care Licensing Approvals had not been submitted by such date. For the avoidance of doubt the Parties acknowledge and agree that the applications for the remaining Licensing Approvals, including, but not limited to, where applicable for Medicaid certification, were not required to be filed prior to the Effective Date in light of the fact that, among other reasons, they cannot, in many instances, be submitted until the Purchasers are able to demonstrate to the applicable Governmental Authority that the Health Care Licensing Approvals have been obtained by the Purchasers.

(d) The Purchasers shall diligently pursue in good faith the Licensing Approvals, including completing information requested in a timely manner, attaching required information and exhibits to the Licensing Approvals applications and promptly responding to requests made in connection with the Licensing Approvals; provided, however, the Purchasers shall not be in breach of their obligations under this Section 6.3(d) in the event that the Purchasers are unable to submit such information as a result of a breach by the Sellers of their cooperation obligation as set forth in this Section 6.3 or Section 4.3.

(e) Except as otherwise provided in this Agreement, the Purchasers shall be responsible for any filing fees or other similar costs associated with the change of ownership process; provided, however, that the Sellers shall be responsible for all costs to be incurred in connection with any corrective action related to the Assets that is required by Governmental Authorities prior to such Governmental Authorities issuing the Licensing Approvals (whether occurring prior to or after the Closing), where such corrective action either (A) arises from a survey of any of the Facilities conducted in the ordinary course of the applicable Seller's business operations prior to the Closing Date or (B) is the direct result of an inspection made in connection with a change of ownership and/or re-licensing survey (a "CHOW Survey"), whether such CHOW Survey is conducted prior to or after the Closing Date, and the deficiency to which such corrective action relates had been cited, but was not corrected by the applicable Seller, prior to the CHOW Survey. For purpose hereof a complaint investigation survey shall be deemed to be a survey conducted in the ordinary course of the applicable Seller's business operations.

(f) The Parties agree that the Purchasers are authorized to send pre-filing notices, file for NPI numbers and apply for all Licensing Approvals, disclose the transactions contemplated by this Agreement to all Governmental Authorities and schedule inspections, and the Purchasers shall be permitted to take all other actions related to the Facilities relating to securing the Licensing Approvals.

(g) The Sellers shall provide to the Purchasers any Licensing Surveys, including reports, waivers of deficiency, plans of correction and any other investigation reports issued with respect to the Facilities between the Effective Date and the Closing Date. To the extent any Licensing Surveys reflect any deficiencies or violations, the Purchasers shall have the right to review and approve the proposed plan of correction, which approval shall not be unreasonably withheld unless the corrective action will extend into the period after the Closing Date, in which case the Purchasers shall have the right to withhold their approval in their sole and absolute discretion, and the Sellers shall at the Sellers' expense thereafter remedy and discharge such deficiencies and violations, including filing and complying with any plans of correction or other remedial action required by any Governmental Authority prior to the Closing for any Facility to which such deficiencies or violations relate.

Section 6.4 Notices to Residents. For those Facilities in jurisdictions that require that advance notice be given by the Sellers and/or the Purchasers to Residents and/or responsible parties in connection with securing the Health Care Licensing Approvals, as soon as practicable after the Hard Date or by such earlier date as the Purchasers may advise the Sellers is required under Applicable Law in connection with the Purchasers efforts to secure the Health Care Licensing Approvals as of the Closing Date and to the extent the Sellers have not done so prior to the Effective Date, the Sellers will dispatch notification letters to each Resident and/or responsible party of such Facilities, in the form drafted by the Purchasers and mutually

acceptable to the Parties, as such form may be modified to comply with, and as may be required by Applicable Law, and containing such other information as the Purchasers may reasonably elect to include therein concerning the Purchasers. Following delivery by the Sellers and/or the Purchasers of such notification letters, the Purchasers may deliver additional introduction or notification letters to each resident and/or responsible party of the same Facility, whether or not required by Applicable Law, in the form drafted by the Purchasers and mutually acceptable to the Parties.

Section 6.5 Relinquishment of Authority. If the Governmental Authority having jurisdiction over the issuance of Licensing Approvals requires the Sellers to have relinquished in writing the Sellers' Licensing Approvals as a condition of the Purchasers or the Purchasers' Representatives obtaining Licensing Approval comparable to the Licensing Approval for such Facility on the Effective Date, the Sellers shall execute and deliver such documents as may be necessary for the Sellers to relinquish the Sellers' Licensing Approvals effective on the Closing Date upon the request of the Purchasers.

Section 6.6 Interim Operating Agreements.

(a) If, as of the Closing Date, any of the Purchasers ("Delayed Approval Purchasers") have not obtained all Health Care Licensing Approvals or acceptable assurances that the Purchasers shall receive all Health Care Licensing Approvals effective as of the Closing Date upon any required confirmation by the states that the transfer of the Facility or Facilities located in such states has occurred, then at the Closing, the Delayed Approval Purchasers, shall enter into and the respective Seller, shall enter into and cause BPMSL to enter into (as needed), either (i) an interim lease and services/management agreement in the form attached hereto as Exhibit 6.6(a)(i) and any revisions required to comply with applicable state law (collectively, the "Interim Management Agreements") or (ii) an interim lease and consulting agreement in the form attached hereto as Exhibit 6.6(a)(ii) and any revisions required to comply with applicable state law (collectively, the "Interim Consulting Agreements" and, together with the Interim Management Agreements, the "Interim Operating Agreements"), as appropriate.

(b) In the event that after the Closing and prior to the issuance of the Health Care Licensing Approvals, the applicable Governmental Authority approves the entering into of an Interim Management Agreement with respect to any Facility subject to an Interim Consulting Agreement, then the applicable Sellers, on the one hand, and the applicable Purchasers, on the other hand, shall enter into an Interim Management Agreement in the forms attached hereto as Exhibit 6.6(a)(i) and upon the commencement thereof, the Interim Consulting Agreement in effect with respect to such Facility shall be terminated.

(c) The provisions of Sections 6.6(a) and (b) shall not apply in states where the Parties acknowledge and agree (or, after the Effective Date, the Purchasers have received notice or other communications from the applicable Governmental Authority) that the Interim Operating Agreements are not permitted under Applicable Law, in which case the Parties shall negotiate in good faith to enter into another arrangement that is permitted under Applicable Law.

(d) For purposes of this Agreement, the term "Health Care Licensing Approvals" shall, as to each of the Facilities, refer to the License issued by the applicable Governmental Authority to operate such Facility as an assisted living facility, Alzheimer's care, or residential care facility for the elderly.

Section 6.7 Excluded Business Names. For a period not to exceed two hundred seventy (270) days after the Closing, the Purchasers shall have the limited, nontransferable, non-exclusive right and license to use the trade names and trademarks listed on Exhibit 1.1(b)(vi) (the "Excluded Business Names") solely in connection with the operation of the Facilities, and only if and to the extent any one or more of the Excluded Business Names are displayed on existing signage, marketing and promotional materials, or internal or external business documents being used in connection with the operation of the Facilities as of the Closing. The Sellers acknowledge and agree that at such time as the Purchasers replace the signage at the Facilities, the current signage will be removed and destroyed unless the Purchasers make other arrangements for the delivery thereof to the Sellers.

Section 6.8 Condemnation Event. If between the Effective Date and the Closing a Condemnation Event shall occur with respect to any one or more Facilities, the Sellers shall be required to provide the Purchasers with prompt written notice of such occurrence and the Purchasers may elect, within ten (10) Business Days of receipt of such notice, to (i) terminate this Agreement, in which event the Deposit shall be returned to the Purchasers and the Parties shall have no further obligations or liabilities under this Agreement (other than obligations that shall survive the termination of this Agreement in accordance with the terms hereof) or (ii) elect to proceed to the Closing and have all insurance proceeds and/or awards attributable to such Condemnation Event assigned to the applicable Purchaser (and the Sellers shall provide a credit against the Purchase Price to the Purchasers in the amount of any applicable insurance deductible in connection therewith). "Condemnation Event" shall mean (i) damage or loss to or destruction by fire or other casualty of any one or more of the Facilities, the costs of repair for which is reasonably estimated to exceed $200,000 per Facility, or $500,000 in the aggregate, (ii) any condemnation by any Governmental Authority with respect to any Facility which renders such Facility less than a functional structure to continue to operate the Business thereon or which could reasonably be expected to materially interfere with the use of the Real Property for the purpose for which it is currently used or (iii) any taking of any of the Real Property under the right of eminent domain (or pending Legal Proceedings for such purposes).

Section 6.9 Like-Kind Exchange. The Parties acknowledge and agree that the purchase and sale of the Assets may be part of a tax-free exchange under Section 1031 of the Code for either the Purchasers or the Sellers. Each Party hereby agrees to take all reasonable steps on or before the Closing Date to facilitate such exchange if reasonably requested by the other Party, provided that (a) no Party making such accommodation shall be required to acquire any substitute property, (b) such exchange shall not affect the representations, warranties, liabilities and obligations of the exchanging Party to the other Parties under this Agreement, (c) no Party making such accommodation shall incur any additional cost, expense or liability in

connection with such exchange, unless indemnified by the exchanging Party, and (d) no dates in this Agreement will be extended as a result thereof. Notwithstanding anything to the contrary contained in the foregoing, if one or more Sellers so elect to close the transfer of the Assets as an exchange, then (i) such Sellers, at their sole option, may delegate their obligations to transfer the Assets under this Agreement, and may assign their rights to receive the Purchase Price from the Purchasers, to a deferred exchange intermediary (an "Intermediary") or to an exchange accommodation titleholder, as the case may be; (ii) such delegation and assignment shall in no way reduce, modify or otherwise affect the obligations of the Sellers or Bowen pursuant to this Agreement; (iii) the Sellers and Bowen shall remain fully liable for their obligations under this Agreement as if such delegation and assignment shall not have taken place; (iv) the closing of the transfer of the Assets to the Purchasers shall be undertaken by direct deed from the Sellers (or, if applicable, from other affiliates of the Sellers whom the Sellers will cause to execute such deeds) to the Purchasers or to exchange accommodation titleholder, as the case may be; and (v) the Sellers shall indemnify, protect, defend and hold harmless the Purchasers from and against any and all liability arising from and out of such exchange by the Sellers. Notwithstanding anything to the contrary contained in the foregoing, if one or more Purchasers so elect to close the acquisition of the Assets as an exchange, then (A) the Purchasers, at their sole option, may delegate their obligations to acquire the Assets under this Agreement, and may assign their rights to receive the Assets from the Sellers, to an Intermediary or to an exchange accommodation titleholder, as the case may be; (B) such delegation and assignment shall in no way reduce, modify or otherwise affect the obligations of the Purchasers pursuant to this Agreement; (C) the Purchasers shall remain fully liable for their obligations under this Agreement as if such delegation and assignment shall not have taken place; (D) the closing of the acquisition of the Assets by the Purchasers or the exchange accommodation titleholder, as the case may be, shall be undertaken by direct deed from the Sellers (or, if applicable, from other affiliates of the Sellers whom the Sellers will cause to execute such deeds) to the Purchasers or to exchange accommodation titleholder, as the case may be; and (E) the Purchasers shall indemnify, protect, defend and hold harmless the Sellers from and against any and all liability arising from and out of such exchange by the Purchasers. No Party participating in a Section 1031 exchange transaction pursuant to this Section 6.9 shall make any representation or warranty to the other Party concerning the tax treatment of such transaction.

Section 6.10 License of Certain Assets.

(a) The Purchasers acknowledge that certain affiliates of the Sellers listed on Exhibit 6.10(a) (the "BPMSL Affiliates") will continue to operate either the senior living facilities listed on Exhibit 4.17 or other multifamily housing properties and that the Work Product, the proprietary accounting algorithms (the "Proprietary Algorithms"), and other operational data and materials used by the BPMSL Affiliates in connection with the operation of those senior living facilities listed on Exhibit 4.17 or other multifamily housing properties (the "Operational Materials") which shall be transferred to the Purchasers as of Closing, are also currently used in connection with the BPMSL Affiliate's businesses and will continue to be necessary for the BPMSL Affiliates' continued business operations after Closing. Accordingly, the Purchasers hereby grant to the BPMSL Affiliates a non-exclusive, non-transferable (other than as set forth in Section 6.10(b)), non-sublicensable, fully paid-up license to use the Work

Product, the Proprietary Algorithms, and the Operational Materials solely in connection with operation of the senior living facilities listed on Exhibit 4.17 or other multifamily housing properties (the "BPMSL License"). The Purchasers may terminate the BPMSL License granted under thisSection 6.10(a) upon written notice to the BPMSL Affiliates, in the event that the BPMSL Affiliates breach any of its obligations or restrictions on use set forth in Section 6.10 and the BPMSL Affiliates fail to cure such breach within thirty (30) days of receiving written notice of the breach. The Purchasers shall not be required to provide the BPMSL Affiliates with any maintenance and/or other support services in connection with the Proprietary Algorithms, Work Product or Operational Materials and shall not be liable to the BPMSL Affiliates for any claim, loss, or damage of any kind arising out of or in connection with the Work Product or Proprietary Software or any deficiency or inadequacy thereof.

(b) The Purchasers agree to permit each BPMSL Affiliate to transfer the BPMSL License to any third party successor entity in connection with the sale of substantially all of each such BPMSL Affiliate's respective assets to such entity, provided that such entity agrees in a writing delivered to the Purchasers to be bound by this Section 6.10 and BPMSL Affiliate's transfer of the BPMSL License does not interfere with the ability of the Purchasers to use the Proprietary Algorithms, the Work Product, or the Operational Materials. Bowen, on behalf of the BPMSL Affiliates, agrees that the BPMSL License shall not otherwise be transferred or used by or sublicensed to any other person (including affiliates of the BPMSL Affiliates) by the BPMSL Affiliates.

(c) To the extent that any BPMSL Affiliates or any of their respective representatives improves, alters or otherwise modifies the Proprietary Software Algorithms, the Operational Materials, or the or Work Product, the Purchasers shall retain all right, title, and interest in and to such improvements, modifications, or alterations of the Proprietary Software or Work Product, and the BPMSL Affiliates hereby assign (and shall cause their representatives to hereby assign) any such intellectual property to the Purchasers.

(d) Bowen, on behalf of the BPMSL Affiliates, acknowledge and agree that following the Closing Date, the Purchasers will own all right, title, and interest in and to the Proprietary Software Algorithms, the Operational Materials, and Work Product and neither Bowen nor the BPMSL Affiliates shall challenge the Purchasers' right, title, or interest therein.

(e) The licensed software used in connection with the Facilities is listed onExhibit 6.10(e) (the "Facility Software"). All such Facility Software that is designated as an Assumed Contract by the Purchasers shall be transferred to the Purchasers pursuant to Section 5.1. To the extent any Facility Software that is designated an Assumed Contract is also used by the BPMSL Affiliates senior living facilities or other multifamily housing properties and has been modified by the licensor for use by the BPMSL Affiliates and the Sellers, the BPMSL Affiliates may request that the licensor permit the BPMSL Affiliates to use such modifications under the Purchasers' licenses provided that the terms of such use do not impose any additional conditions or obligations or otherwise impose any additional restrictions on the Purchasers' license to such Facility Software. The BPMSL

Affiliate's use of such Facility Software so modified by the BPMSL Affiliates and the Sellers pursuant to this Section 6.10(e) shall be subject to the conditions of, and the Purchasers' rights under, Sections 6.10(a), (b), (c) and (d) that are applicable to Algorithms, Operational Material and Work Product. Any costs or expenses pursuant to such request shall be solely paid by the BPMSL Affiliates.

Section 6.11 Management Agreement. The Sellers shall cause the owners of such facilities to enter into a management agreement with an affiliate designee of the Purchasers, as manager (the "Manager"), for the management of the facilities listed on Exhibit 6.11. (the "Nevada Facilities"), subject to approval by the lenders that have made loans secured by the Nevada Facilities and subject to finalizing the Form Management Agreement pursuant to the terms of this Section 6.11. The management of each such facility by the Manager shall commence, and the management agreement for such facility shall be executed and become effective, not less than one (1) day prior to the Closing Date (the "Management Agreement Deadline"). The form of the management agreement shall be on reasonable and customary terms mutually agreed on by the Parties and shall include a management fee equal to six percent (6%) of effective gross income and operating covenants, including, but not limited to, a covenant that monthly net operating income must exceed historical levels, which levels will be assessed and mutually agreed upon (the "Form Management Agreement"). The term of each management agreement shall be five (5) years with the following termination rights in favor of the owner of the applicable Nevada Facility: year 1: termination only in the event of a default by the Manager with respect to operating covenants or material breach by the Manager of the terms of the Management Agreement (in each case, subject to customary notice and cure rights); year 2: termination only as permitted in year 1 and/or in the event of a sale by owner of such Nevada Facility; and year 3 and thereafter, upon reasonable notice by such owner to the Manager. The Parties shall use good faith, commercially reasonable efforts to finalize the Form Management Agreement on or prior to the Notification Date and the Sellers shall (and shall cause their respective affiliates and the owners of the Nevada Facilities to) use good faith, commercially reasonable efforts to obtain all lender consents contemplated herein. The Purchasers shall use good faith, commercially reasonable efforts to cooperate with the Sellers, their affiliates and any owner to obtain any required lender consent. If all lender consents contemplated herein are obtained but the Parties have failed to finalize any management agreement contemplated by this Section 6.11 and execute such agreement with respect to any of the Nevada Facilities prior to the Management Agreement Deadline, the Purchasers shall have the right, in their sole discretion, to terminate this Agreement by written notice to the Sellers and payment of Three Hundred Thousand Dollars ($300,000) of the Deposit to Sellers and the Purchasers shall be entitled to a refund of the balance of the Deposit. If the Sellers, their affiliates and the owners of the Nevada Facilities are unable to obtain any lender consent contemplated herein, after using good faith, commercially reasonable efforts, prior to the Management Agreement Deadline, the Purchasers shall have the right, in their sole discretion, to terminate this Agreement by written notice to the Sellers and the Purchasers shall be entitled to a refund of a portion of the Deposit in the amount of Seven Hundred Thousand Dollars ($700,000) and the balance of the Deposit shall be paid to Sellers.

Section 6.12 Sale of BPMSL Assets. The Parties agree to use good faith efforts to finalize an agreement for the sale of certain assets of BPMSL to the Purchasers on or before March 15, 2012; provided, however, that the failure to finalize such agreement on or prior to March 15, 2012, notwithstanding the Parties' good faith efforts, shall not be deemed a breach of this Agreement. The agreement for the sale of the BPMSL assets shall provide, among other things, that: (i) the closing shall occur not less than one (1) day prior to the Closing Date and (ii) if this Agreement is terminated after the BPMSL closing, the Purchasers shall (or shall cause the Person that acquired the BPMSL assets to) convey such assets back to the Sellers (or the Sellers' designee) upon payment of the same purchase price paid to the Sellers for such assets.

## ARTICLE VII

## INDEMNIFICATION

Section 7.1 Indemnification by the Sellers.

(a) Subject to the limitations set forth in this Article VII, each Seller shall, jointly and severally, indemnify, protect, defend, exculpate and hold the Purchasers, the Purchasers' permitted assignees, their respective affiliates and their respective partners, directors, managers, members, shareholders, officers, employees and agents (collectively, the "Purchaser Indemnified Parties") harmless from and against, and agree promptly to defend the Purchaser Indemnified Parties from and reimburse the Purchaser Indemnified Parties for, any and all losses, damages, costs, expenses, liabilities, obligations and claims of any kind (including costs of investigation, reasonable attorneys' fees and other legal costs and expenses) (the "Purchaser Indemnified Losses") which the Purchaser Indemnified Parties may at any time suffer or incur, or become subject to, as a result of or in connection with:

(i) Any and all obligations of the Sellers (or the Sellers' affiliates and agents) relating to claims, damages or injury, related to or arising out of the ownership or operation of the Real Property, the Personal Property, the Facilities or any other Assets on or prior to the Closing Date, whether such accrues or is asserted before or after the Closing Date, except the Assumed Liabilities and other such obligations as may be expressly assumed by the Purchasers under this Agreement and any and all claims, including any suit, action or other proceeding brought by applicable Governmental Authorities or quasi-governmental authorities against the Purchasers arising from the operation and ownership of any of the Facilities by or on behalf of the Sellers before the Closing;

(ii) Any breach or inaccuracy in any of the representations or warranties made by the Sellers in or pursuant to this Agreement or any Seller Documents;

(iii) Any breach of any covenant, agreement or undertaking made by the Sellers under this Agreement or as set forth in any Seller Documents (excluding any breach of any covenant, agreement or undertaking made by the Sellers under any Interim Operating Agreement which are governed by (v) hereof); and

(iv) Any and all claims relating to PTO accrued prior to Closing made against the Purchasers by a Transitioned Employee for those amounts in excess of the PTO benefit which the Sellers transferred to the Purchasers at the Closing.

(v) Any breach of any covenant, agreement or undertaking made by any Seller (or any Affiliate thereof) under any Interim Operating Agreement to which it is a party or the fraud, gross negligence or willful misconduct by any Seller (or any Affiliate thereof) in the exercise of the rights granted to it, or the performance of the obligations imposed on it, under such Interim Operating Agreement.

(b) Except as provided otherwise herein, (i) in determining (x) whether there has been a breach requiring the Sellers to indemnify as provided in Section 7.1(a) and (y) the amount of a Purchaser Indemnified Loss, any materiality qualifier (including any qualification or reference as to material, materiality or Material Adverse Change) in a representation or warranty shall be ignored, (ii) the aggregate liability of the Sellers for Purchaser Indemnified Losses under this Article VII or for any other obligation or claim arising under this Agreement shall not exceed an amount of Nine Million Seven Hundred Sixty Three Thousand Dollars ($9,763,000.00) (the "Seller Cap") and (iii) (A) the Sellers shall be liable for Purchaser Indemnified Losses pursuant toSection 7.1(a)(ii) only if the aggregate Purchaser Indemnified Losses thereunder exceed an amount of Three Hundred Twenty Five Thousand Dollars ($325,000.00), and then only to the extent of such excess, (B) and only if the aggregate Purchaser Indemnified Losses under Section 7.1(a)(i), (iii) and (iv), collectively, exceed Sixty Five Thousand Dollars ($65,000.00)(such amount to be reduced by the amount of any Purchaser Indemnified Losses incurred pursuant to Section 7.1(b)(iii)(C)), but once such amount is reached, then for the full amount (*i.e.*, from the first dollar of such Purchaser Indemnified Losses), (C) and only if the aggregate Purchaser Indemnified Losses under Section 7.1(a)(v) exceed Thirty-Three Thousand Dollars ($33,000.00), then the full amount (*i.e.,* from the first dollar of such Purchaser Indemnified Losses) (the 'Seller Basket"), shall be due and payable by the Sellers and collectable by the Purchaser Indemnified Parties hereunder, net of and reduced by all insurance proceeds actually recovered under policies maintained or required hereunder to be maintained by the Purchasers (net of deductibles, increased premiums and cost of recovery); provided that the Purchasers shall have no obligation to pursue any claims against such policies. Proration items, as well as the following items, shall not be subject to the Seller Basket or the Seller Cap: (A) indemnification claims made by the Purchaser Indemnified Parties pursuant to Section 7.1(a)(ii) with respect to breaches of the representations and warranties of the Sellers inSections 2.1, 2.2 (other than subsections (d)(ii), (iii) and (iv)), 2.6, 2.27 and 9.2(a)(viii) (or any such representations and warranties given in any related instrument, certificate or affidavit delivered by the Sellers at the Closing), and (B) any Purchaser Indemnified Losses arising out of or resulting from fraud, willful breach or intentional misrepresentation.

Section 7.2 Indemnification by the Purchasers.

(a) The Purchasers shall indemnify, protect, defend, exculpate and hold the Sellers, the Sellers' permitted assignees, their respective affiliates and their respective partners, directors, managers, members, shareholders, officers, employees and agents (collectively, the "Seller Indemnified Parties"), harmless from and against, and agree promptly to defend the Seller Indemnified Parties from and reimburse the Seller Indemnified Parties for, any and all losses, damages, costs, expenses, liabilities, obligations and claims of any kind (including costs of investigation, reasonable attorneys' fees and other legal costs and expenses) (the "Seller Indemnified Losses") which the Seller Indemnified Parties may at any time suffer or incur, or become subject to, as a result of or in connection with:

(i) Any and all obligations of the Purchasers (or the Purchasers' affiliates and agents) relating to claims, damages or injury related to or arising out of the ownership or operation of the Real Property, the Personal Property, the Facilities or any other Assets after the Closing Date, except such obligations (A) as may be expressly assumed or retained by the Sellers under this Agreement, (B) arising from the Sellers' breach of any representation, warranty, covenant, agreement or undertaking made by the Sellers under this Agreement and any and all claims, including any suit, action or other proceeding brought by applicable Governmental Authorities or quasi-governmental authorities against the Sellers arising from the ownership and operation of any of the Facilities by or on behalf of the Purchasers after the Closing or (C) arising under the Interim Operating Agreements, as to which the provisions of Section 7.2(a)(v) shall control.;

(ii) Any breach or inaccuracy of any of the representations or warranties made by the Purchasers in this Agreement or in any instrument, certificate or affidavit delivered by the Purchasers at the Closing, or from any misrepresentation in or omission from this Agreement or Purchaser Documents;

(iii) Any breach of any covenant, agreement or undertaking made by the Purchasers under this Agreement or as set forth in any Purchaser Documents (excluding any breach of any covenant, agreement or undertaking made by the Purchasers under any Interim Operating Agreement which are governed by (v) hereof); and

(iv) Any and all PTO claims made against the Sellers by a Transitioned Employee as to whom the Purchasers received a credit against the Purchase Price for PTO pursuant to Section 9.4 in this Agreement, but only to the extent that the Purchasers failed to provide the corresponding PTO benefit which it received from the Sellers hereunder to such Transitioned Employee.

(v) Any breach of any covenant, agreement or undertaking made by any Purchaser (or any Affiliate thereof) under any Interim Operating Agreement to which it is a party or the fraud, gross negligence or willful misconduct by any Purchaser (or any Affiliate thereof) in the exercise of the rights granted to it, or the performance of the obligations imposed on it, under such Interim Operating Agreement.

(b) Except as otherwise provided herein, (i) in determining (x) whether there has been a breach requiring the Purchasers to indemnify as provided in Section 7.2(a) and (y) the amount of a Seller Indemnified Loss, any materiality qualifier (including any qualification or reference as to material, materiality or Material Adverse Change) in a representation or warranty shall be ignored, (ii) (A) the aggregate liability of the Purchasers for Seller Indemnified Losses under this Article VII (other than under Section 7.2(a)(v)) shall not exceed an amount of Three Million Two Hundred Fifty Five Thousand ($3,255,000.00) (the "Purchaser Cap") and (B) the aggregate liability of the Purchasers for Seller Indemnified Losses under Section 7.2(a)(v) shall not exceed an amount equal to Nine Million Seven Hundred Sixty Three Thousand Dollars ($9,763,000.00) (the "Operating Cap"), provided that the Operating Cap amount shall be reduced by any Seller Indemnified Losses incurred under Section 7.2(b)(ii)(A), and (iii) (A) the Purchasers shall be liable for Seller Indemnified Losses pursuant to Section 7.2(a)(ii) or for any other obligation or claim arising under this Agreement only if the aggregate of such Seller Indemnified Losses thereunder exceed an amount of Three Hundred Twenty Five Thousand Dollars ($325,000.00), (B) and then only to the extent of such excess, and only if the aggregate Seller Indemnified Losses under Section 7.2(a)(i), (iii) or (iv), collectively, exceed Sixty Five Thousand Dollars ($65,000.00) (such amount to be reduced by the amount of any Seller Indemnified Losses incurred pursuant to Section 7.2(b)(iii)(C)), but once such amount is reached, then for the full amount (*i.e.*, from the first dollar of such Seller Indemnified Losses), (C) and only if the aggregate Seller Indemnified Losses under Section 7.2(a)(v) exceed Thirty-Three Thousand Dollars ($33,000.00), then the full amount (*i.e.,* from the first dollar of such Purchaser Indemnified Losses) (the "Purchaser Basket"), shall be due and payable by the Purchasers and collectable by Seller Indemnified Parties hereunder, net of and reduced by all insurance proceeds actually recovered under policies maintained or required hereunder to be maintained by the Sellers (net of deductibles, increased premiums and cost of recovery); provided that the Sellers shall have no obligation to pursue any claims against such policies. Proration items, as well as the following items, shall not be subject to the Purchaser Basket or the Purchaser Cap: (A) indemnification claims made by the Seller Indemnified Parties pursuant to Section 7.2(a)(ii) with respect to breaches of the representations and warranties of the Purchasers in Sections 3.1, 3.2, 3.3(a) and 3.5 (or any such representations and warranties given in any instrument, certificate or affidavit delivered by the Purchasers at the Closing), and (B) any Seller Indemnified Losses arising out of or resulting from fraud, willful breach or intentional misrepresentation.

Section 7.3 Notification of Claims.

(a) Any and all claims must be made in writing within thirty (30) months of Closing. Failure to provide a clear and explicit notice of claim shall forever bar any claim of any sort, including claims under this agreement and all other agreements related to the purchase of the Assets, by statute, at common law or otherwise, and whether known or unknown, contingent, liquidated or unliquidated.

(b) A Party entitled to be indemnified pursuant toSections 7.1 or 7.2 (the "Indemnified Party") shall notify the Party liable for such indemnification (the "Indemnifying Party") in writing of any claim or demand which the Indemnified Party has determined gives rise or will likely give rise to a right of indemnification under this Agreement, as soon as possible after the Indemnified Party becomes aware of such claim or demand and has made such determination; provided, however, that the Indemnified Party's failure to give such notice to the Indemnifying Party in a timely fashion shall not result in the loss of the Indemnified Party's rights with respect thereto except to the extent any Party to this Agreement is prejudiced by the delay, and then only to the extent of such prejudice. Subject to the Indemnifying Party's right to defend in good faith third party claims as hereinafter provided, the Indemnifying Party shall satisfy its obligations under this Article VII within thirty (30) days after the receipt of written notice thereon from the Indemnified Party, it being agreed that the Indemnifying Party need not satisfy such obligations during any period in which the Indemnifying Party is defending in good faith the applicable third party claim in the manner described below.

(c) If the Indemnified Party shall notify the Indemnifying Party of any claim or demand pursuant toSection 7.3(a), and if such claim or demand relates to a claim or demand asserted by a third party against the Indemnified Party which the Indemnifying Party acknowledges is a claim or demand for which it must indemnify or hold harmless the Indemnified Party under Sections 7.1 or 7.2, the Indemnifying Party shall have the right to either (i) pay such claim or demand or (ii) employ counsel reasonably acceptable to the Indemnified Party to defend any such claim or demand asserted against the Indemnified Party. The Indemnified Party, at its own expense, shall have the right to participate in the defense of any such claim or demand. The Indemnifying Party shall notify the Indemnified Party in writing, as promptly as possible (but in any case reasonably in advance of the due date for the answer or response to a claim) after the date of the notice of claim given by the Indemnified Party to the Indemnifying Party under Section 7.3(a) of its election to defend in good faith any such third party claim or demand;provided that by defending such claim or demand, the Indemnifying Party thereby admits and affirms its obligation to fully perform its indemnification obligation in the event such contested claim is resolved adversely to the Indemnified Party. So long as the Indemnifying Party is defending in good faith any such claim or demand asserted by a third party against the Indemnified Party and is able to demonstrate to the Indemnified Party its financial

wherewithal to fully perform its indemnification obligation in the event such contested claim is resolved adversely to the Indemnified Party, the Indemnified Party shall not settle or compromise such claim or demand. In no event shall any such claim or demand be settled in a commercially unreasonable manner. The Indemnified Party shall make available to such counsel all records and other materials in the Indemnified Party's possession reasonably required by it for its use in contesting any third party claim or demand. Whether or not the Indemnifying Party elects to defend any such claim or demand, the Indemnified Party shall have no obligations to do so. Notwithstanding the foregoing, if the actual or potential defendants in, or targets of, such third party claim include both the Indemnifying Party and the Indemnified Party, and the Indemnified Party shall have reasonably concluded that there are or are reasonably likely to be legal defenses available to it that are different from or additional to those available to the Indemnifying Party or that there exists or is reasonably likely to exist a conflict of interest, in either case that would make it inappropriate in the reasonable judgment of the Indemnified Party for the same counsel to represent both the Indemnified Party and the Indemnifying Party, then the Indemnified Party shall be entitled to participate in the defense of such third party claim, in which case the Indemnifying Party shall bear the reasonable fees, costs and expenses of one separate counsel to the Indemnified Party in each jurisdiction (and shall pay such fees, costs and expenses as incurred); provided that the Indemnified Party shall use diligent and good faith efforts in such defense.

(d) An Indemnifying Party may not, without the prior written consent of the Indemnified Party, settle or compromise any claim or consent against an Indemnified Party to the entry of any judgment with respect to which indemnification is being sought hereunder unless such settlement, compromise or consent includes an unconditional release of the Indemnified Party from all liability arising out of such claim and does not contain any equitable order, judgment or term which in any manner affects, restrains or interferes with the business of the Indemnified Party or any of the Indemnified Party's affiliates.

Section 7.4 Survival of Representations.

(a) Except as otherwise provided in this Section 7.4 (including Section 7.4(c)), all the representations and warranties contained in this Agreement (and any claims for any breach thereof) or any certificate delivered pursuant to or connection with this Agreement (and any claims for any breach thereof) shall survive the Closing for eighteen (18) months, except that Sections 2.1, 2.2, 3.1 and 3.2 shall survive for thirty (30) months.

(b) All covenants and agreements contained in this Agreement (and any claims for any breach thereof) that by their terms apply or are to be performed in whole or in part after the Closing shall remain in full force and effect after the Closing in accordance with their terms (or, if no survival period is stated therein, then such covenants and agreements shall survive indefinitely). All covenants and agreements contained in this Agreement that by their terms apply or are to be performed in their entirety on or prior to the Closing shall terminate at the Closing; provided that any claims for any breach thereof shall survive the Closing for eighteen (18) months.

(c) Notwithstanding the foregoing, if prior to the close of business on the last day of the applicable survival period, an Indemnifying Party shall have been properly notified as provided hereunder of a claim for indemnity hereunder and such claim shall not have been finally resolved or disposed of at such date, such claim shall continue to survive and shall remain a basis for indemnity hereunder until such claim is finally resolved or disposed of in accordance with the terms in this Agreement subject in all respects to the applicable statute of limitations. If any act, omission, disclosure or failure to disclose shall form the basis for a claim for breach of more than one representation or warranty, and such claims have different periods of survival hereunder, the termination of the survival period of one claim shall not affect a Party's right to make a claim based on the breach of a representation, warranty or covenant still surviving.

The rights to indemnification set forth in this Article VII shall not be affected by (i) any investigation conducted by or on behalf of an Indemnified Party or any knowledge acquired (or capable of being acquired) by an Indemnified Party, whether before or after the Closing Date, with respect to the inaccuracy or noncompliance with any representation, warranty, covenant or obligation which is the subject of indemnification hereunder or (ii) any waiver by an Indemnified Party of any closing condition relating to the accuracy of representations and warranties or the performance of or compliance with agreements and covenants.

Section 7.5 No Punitive Damages. No Party will be liable to any other Party under any cause of action, whether in contract, tort, or otherwise, for any punitive damages, even if the Party has been advised of the possibility of such damages; provided that the foregoing shall not limit the right of any Indemnified Party to indemnification in accordance with this Agreement with respect to any component of any claim, settlement, award or judgment against such Party by a third party.

Section 7.6 Right to Set-Off. Subject to the conditions and limitations applicable to indemnification claims set forth in this Article VII, the Purchasers shall have the right to set-off any indemnification payment obligation of which has been finally adjudicated (with no further right of appeal) or of which the Sellers and the Purchasers mutually agree the Purchasers are entitled to indemnification under Article VII against any other payment to be made by the Purchasers or any of their affiliates to the Sellers. No exercise by the Purchasers of such right of set-off in compliance with this Section 7.6 shall constitute a default in the payment of any amount against which such set-off is made.

## ARTICLE VIII

## CONDITIONS

Section 8.1 Conditions to Each Party's Obligations. The respective obligations of each Party to effect the Closing are subject to the satisfaction or waiver delivered to the other Party of each of the following conditions precedent:

(a) There shall not be in force any order, decree, judgment or injunction of any Governmental Authority enjoining or prohibiting the consummation of the transactions contemplated by this Agreement or any Seller Document or Purchaser Document.

Section 8.2 Conditions to Obligations of the Purchasers. The obligation of each of the Purchasers to effect the Closing is subject to the satisfaction or waiver delivered to the other Party of each of the following conditions precedent:

(a) The representations and warranties of the Sellers set forth in this Agreement that are qualified as to materiality shall be true and correct and the representations and warranties of the Sellers that are not qualified as to materiality shall be true and correct in all material respects, in each case, as of the Closing as though made as of the Closing; provided that, to the extent that any such representation or warranty speaks as of a specified date, it need only be true and correct as of such date.

(b) Each of the Sellers shall have performed or complied with in all material respects its agreements and covenants (in each case, disregarding any materiality qualifiers contained therein) required to be performed or complied with under this Agreement as of or prior to the Closing.

(c) No Legal Proceeding shall be pending wherein an unfavorable judgment, order, decree, stipulation or injunction would (i) prevent consummation of the transactions contemplated by this Agreement, (ii) cause the transaction contemplated by this Agreement to be rescinded following consummation or (iii) impose a Burdensome Condition on the Purchasers, and no such judgment, order, decree, stipulation or injunction shall be in effect.

(d) The Sellers shall have obtained at their own expense (except as provided in Section 8.2(d) of the Disclosure Letter) each of the consents, authorizations, orders, permits and approvals listed in Section 2.2(a) of the Disclosure Letter (and shall have provided copies thereof to the Purchasers), each of which shall be in full force and effect.

(e) The Title Company shall at the Closing be irrevocably and unconditionally committed to issue each of the Title Policies upon payment of the premium, and such Title Policies shall not contain any exceptions to title other than the standard preprinted exceptions (unless the Purchasers pay for extended coverage and deliver to the Title Company the surveys necessary to remove the survey exceptions, in which case the standard preprinted exceptions shall not appear in the Title Policy) and the Permitted Liens, and the Sellers shall have delivered all affidavits, gap indemnities, no change affidavits for the surveys (to the extent applicable) and other customary agreements as reasonably requested by the Title Company in connection with the issuance of the Title Policies and any extended coverage requested by the Purchasers.

(f) Either (i) the applicable Purchasers shall have received the Health Care Licensing Approvals, or written assurances satisfactory to the applicable Purchasers that the Health Care Licensing Approvals will be granted, effective as of the Closing Date or (ii) (A) in accordance with all of the provisions of Section 6.6, the Sellers shall have executed or caused BPMSL, as applicable, to have executed the Interim Operating Agreements with respect to each of the Facilities to be owned and/or operated by the Delayed Approval Purchasers (the "Interim Operating Facilities") and (B) as of the Closing Date, each of the Interim Operating Facilities shall be duly licensed in the name of the applicable Seller and the applicable Seller shall be certified to participate in Medicaid with respect to each of the Interim Operating Facilities which was so certified immediately prior to the Closing Date.

(g) None of the Sellers shall have (i) applied for or consented to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) become unable, or admitted in writing its inability, to pay its debts generally as they mature, (iii) made a general assignment for the benefit of its or any of its creditors, (iv) been dissolved or liquidated in full or in part, (v) commenced a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consented to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it or (vi) taken any action for the purpose of effecting any of the foregoing, and an order for relief entered or such proceeding shall not be dismissed, discharged or stayed within ninety (90) days of commencement.

(h) The Sellers shall have delivered to the Purchasers certified copies of any required corporate, partnership or limited liability company approvals required for the execution and consummation of this Agreement, the Seller Documents and all transactions contemplated hereby and thereby.

(i) Each of the Sellers shall have executed and delivered to the Escrow Agent their respective Seller Documents and provided the Purchasers the items listed in Section 9.2(a)(xii), (xiii) and (xiv).

(j) Bowen shall have executed and delivered to the Escrow Agent the Pledge Agreement.

(k) On or prior to the date that is one (1) Business Day prior to the Closing Date, the Nevada Owners shall have entered into management agreements for the Nevada Facilities with the Manager.

(l) The Purchasers shall have received such other certificates and instruments as are reasonable and customary for a buyer to request in connection with the Closing.

(m) The Closing Effective Gross Income shall not have decreased by five percent (5%) or more when compared with the Base Effective Gross Income.

(n) The Sellers shall have delivered a certificate from the manager or general partner of each of the Sellers, in a representative and not a personal capacity, to the effect that each of the conditions specified in clauses (a)-(d) in this Section 8.2 (insofar as clause (c) relates to a Legal Proceeding involving any Seller) are satisfied.

(o) As used in this Section 8.2:

(i) "Closing Effective Gross Income" shall mean the average monthly Effective Gross Income of the Facilities year to date through the month ended prior to the Closing Date.

(ii) "Base Effective Gross Income" shall mean the average monthly Effective Gross Income for the Facilities year to date through July 31, 2011.

(iii) "Effective Gross Income" shall mean, for all Facilities, the Effective Gross Income as reflected on the operating statement, prepared and provided monthly by the Sellers.

Section 8.3 Conditions to Obligations of the Sellers. The obligation of each of the Sellers to effect the Closing is subject to the satisfaction or waiver delivered to the other Party of each of the following conditions precedent:

(a) The representations and warranties of the Purchasers set forth in this Agreement that are qualified as to materiality shall be true and correct and the representations and warranties of the Purchasers that are not qualified as to materiality shall be true and correct in all material respects, in each case, as of the Closing as though made as of the Closing; provided that, to the extent that any such representation or warranty speaks as of a specified date, it need only be true and correct as of such date.

(b) Each of the Purchasers shall have performed or complied with in all material respects its agreements and covenants (in each case, disregarding any materiality qualifiers contained therein) required to be performed or complied with under this Agreement as of or prior to the Closing.

(c) The Sellers shall have received such other certificates and instruments as are reasonable and customary for a seller to request in connection with the Closing.

(d) The Purchasers shall have delivered a certificate from the Chief Executive Officer of each of the Purchasers to the effect that each of the conditions specified in clauses (a) through (c) in this Section 8.3 (insofar as clause (c) relates to a Legal Proceeding involving any Purchaser) is satisfied.

(e) Either (i) the applicable Purchasers shall have received the Health Care Licensing Approvals, or written assurances satisfactory to the applicable Purchasers that the Health Care Licensing Approvals will be granted, effective as of the Closing Date or (ii) (A) in accordance with all of the provisions of Section 6.6, the Purchasers shall have executed the Interim Operating Agreements with respect to each of the Interim Operating Facilities and (B) as of the Closing Date, each of the Interim Operating Facilities shall be duly licensed in the name of the applicable Seller, or if the Seller is not the licensee, the applicable licensee, and the applicable Seller shall be certified to participate in Medicaid with respect to each of the Interim Operating Facilities which was so certified immediately prior to the Closing Date.

(f) Each of the Purchasers shall have executed and delivered their respective Purchaser Documents.

(g) The Purchasers shall have wired the balance of the Purchase Price to be paid at the Closing to the Escrow Agent.

## ARTICLE IX

## CLOSING

Section 9.1 Possession. Possession of all Assets sold hereunder shall be delivered to the Purchasers on the Closing Date, and the Sellers shall provide notices, in form provided by the Purchasers and reasonably acceptable to the Sellers, to Residents of such possession change if requested by the Purchasers or if required by Applicable Law.

Section 9.2 Closing Documents.

(a) The Sellers shall deliver to the Purchasers on the Closing Date, the following:

(i) Interim Operating Agreements. Interim Operating Agreements, to the extent applicable, duly executed by the respective Sellers and BPMSL, as applicable;

(ii) Assignment and Assumption Agreement. Assignment and Assumption Agreements, duly executed by the respective Seller thereto in the form of Exhibit 5.1(a);

(iii) Deeds. Duly executed Grant Deeds for each Real Property located in the State of California and Special Warranty Deeds (or the state equivalent) for each Real Property located in the remaining states, in recordable form and otherwise sufficient to convey such Real Property to the Purchasers subject to no Liens except Permitted Liens and pursuant to laws of the state in which such Real Property is located, as reasonably approved by the Purchasers and the Title Company;

(iv) Bills of Sale. Bills of Sale duly executed by the respective Seller, in the form ofExhibit 9.2(a)(iv);

(v) Assignments of Intangible Property. Assignments of all Intangible Property duly executed by the respective Seller in the form ofExhibit 9.2(a)(v);

(vi) Assignments of Residency Agreements. Assignments of all Residency Agreements duly executed by the respective Seller in the form of Exhibit 9.2(a)(vi);

(vii) Other Conveyance Instruments. Such additional bills of sale and other appropriate instruments of assignment and conveyance, in form mutually but reasonably satisfactory to the Parties, dated as of the Closing, conveying all of the Sellers' right, title and interest in and title to the Assets, including the Personal Property, free and clear of all liens, liabilities, security interests or encumbrances except as otherwise permitted herein;

(viii) FIRPTA Certificate. Certificate and affidavit of the Sellers' non-foreign status that complies with Section 1445 of the Code, in form and substance reasonably satisfactory to the Purchasers, the form of which will be provided by the Purchasers within sixty (60) days after the Effective Date as Exhibit 9.2(a)(viii);

(ix) Evidence of Seller Authority. Evidence of the authority of each Seller to execute and deliver the applicable Seller Documents in order to effectuate the Closing;

(x) Bring-Down Certificate. A bring-down certificate reaffirming that the representations and warranties are true and correct as of the Closing Date as modified by Section 8.2;

(xi) Closing Statement. A closing statement setting forth in reasonable detail the financial transactions contemplated by this Agreement, including the Purchase Price, all prorations and the allocation of costs specified herein (the "Closing Statement"), executed by the Sellers and agreed to by the Purchasers;

(xii) Rent Roll. A then current rent roll for each Facility certified by the respective Seller as of the Closing Date as true, complete and accurate in all material respects, which shall include such information for the Residents as provided in Section 2.7(b) of the Disclosure Letter and the information required by Section 8.2(i) and (l);

(xiii) Contracts, Leases, Residency Agreements, Licenses and Books and Records. To the extent not already delivered by the Sellers, originals (or, to the extent not available, true and correct copies) of all of the Assumed Contracts, Assumed Equipment Leases, Tenant Leases, Residency Agreements, Licenses, Books and Records and Copied Records, which documents may be delivered by the Sellers leaving such documents at the Facility; and

(xiv) Employee Records. Subject to Section 4.14, employee records relating to Transitioned Employees shall remain at the respective Facility.

(Items (i) through (xi) hereafter are referred to as the "Seller Documents.")

(b) The Purchasers shall deliver to the Sellers or cause to be delivered to the Sellers on the Closing Date the following:

(i) Interim Operating Agreement. Interim Operating Agreement, to the extent applicable, duly executed by the respective Purchaser;

(ii) Assignment and Assumption Agreement. Assignment and Assumption Agreement, duly executed by the respective Purchaser in the form of Exhibit 5.1;

(iii) Assignments of Intangible Property. Assignments of all Intangible Property duly executed by the respective Seller in the form of Exhibit 9.2(a)(v);

(iv) Assignments of Residency Agreements. Assignments of all Residency Agreements duly executed by the respective Seller in the form of Exhibit 9.2(a)(vi);

(v) Title Documents. Any other documents reasonably required by the Title Company;

(vi) Purchaser Resolutions. Certified copies of resolutions duly adopted by the Board of Managers of each Purchaser approving the transactions contemplated by this Agreement;

(vii) Bring-Down Certificate. A bring-down certificate reaffirming that the representations and warranties are true and correct as of the Closing Date as modified by Section 8.3; and

(viii) Closing Statement. The Closing Statement executed by the Purchasers.

(c) Bowen shall deliver to the Purchasers or cause to be delivered to the Purchasers on the Closing Date the Pledge Agreement, duly executed by Bowen, and by Bowen's spouse, if required by applicable community property law to be effective.

Section 9.3 Resident Funds. The Sellers shall provide the Purchasers with an accounting of all funds belonging to Residents at the Facilities which are held by the Sellers in a custodial capacity and an accounting of all advance payments received by it pertaining to Residents at the Facilities at least fifteen (15) days prior to the Closing.

At the Closing the Sellers shall return all such funds to the respective Residents, and shall provide the Purchasers with documentation signed by each Resident acknowledging receipt of such funds and satisfaction of the Sellers' financial and custodial obligations with respect thereto, or otherwise provide to the Purchasers evidence reasonably satisfactorily to the Purchasers that such funds have been returned to the respective Residents, it being the intent and purpose of this provision that, at the Closing, the Sellers will be relieved of all fiduciary and custodial obligation with respect to such funds and that the Purchasers will assume no such obligations other than to the extent the Residents elect to return such funds to the Purchasers after the Closing and the Purchasers are required, under Applicable Law, to accept custody thereof.

Notwithstanding the foregoing, the Sellers will indemnify and hold the Purchaser Indemnified Parties harmless from all liabilities, claims, and demands, in the event the amount of such funds.

Section 9.4 Closing Adjustments.

(a) PTO. In accordance with Section 4.11 and Section 4.11 of the Disclosure Letter, the Sellers shall credit all PTO owed to Transitioned Employees as of the Closing Date to the Purchasers.

(b) Real Estate and Personal Property Taxes; Prorations. Real and personal property taxes and assessments shall be prorated between the Sellers and the Purchasers as of the Closing Date (with the Closing Date being allocated to the Sellers). Said prorations shall be based on the tax year of the municipality in which the Real Property and the Personal Property are located and shall be based on the most recent available bill. Said prorations shall be made on an accrual basis with reference to the most recent available tax information with a post-Closing reproration being made within thirty (30) days after the Sellers' receipt from the Purchasers of the actual final tax bills for the applicable years. If such amounts are not paid by the Sellers to the Purchasers, or by the Purchasers to the Sellers, as the case may be, within thirty (30) days of the date such amounts are due hereunder, then the amount owed shall accrue interest thereafter at the rate of 1.5% per month; provided, however, that in no event will interest be charged in excess of the amount permitted by Applicable Law.

(c) Other Prorations. Charges for water, fuel, gas, oil, heat, electricity and other utilities, operating charges, prepaid amounts, rents, other charges under Assumed Contracts, Assumed Equipment Leases and Tenant Leases and for other amounts customarily prorated between a buyer and a seller in transactions similar to the transactions contemplated by this Agreement shall be prorated as of the Closing Date but such amounts will not be paid pursuant to the Closing Statement but shall instead be part of the post-Closing reconciliation process described in Section 9.6 below. Notwithstanding anything to the contrary in this Section 9.4, the Sellers and the Purchasers shall undertake to reconcile, in good faith, any amounts included in the prorations made pursuant to the terms hereof for which current bills were not available or amounts subject to proration were not otherwise immediately ascertainable, or which were otherwise estimated for purposes of finalizing such prorations. To the extent such reconciliation results in one Party owing any amount of money to the other Party, such Party which owes money shall make payment to the other Party as promptly as possible, but in no event later than three (3) Business Days after the determination of such liability.

(d) Estimated Costs. All payables, including accounts payable for Inventory, utilities, payroll, services, supplies, materials, etc. which accrue prior to 5:00 p.m. on the Closing Date shall be the Sellers' responsibility through the Closing Date and shall be subject to the reconciliation process described in Section 9.6 below. All payables, including accounts payable for Inventory, supplies, payroll, services, materials, etc. which accrue thereafter shall be paid by the Purchasers.

(e) Transferred Funds. The Sellers shall be credited in the post-closing reconciliation with the value of all Transferred Funds.

(f) Survival. This Section shall survive the Closing for a period of two (2) years.

(g) Closing Statement Accounting. All calculations and prorations under this Section 9.4 shall be made on the accrual basis of accounting.

Section 9.5 Closing Costs; Transfer Taxes.

(a) At or before the Closing, the Sellers shall pay (i) fifty percent (50%) of any escrow or closing charges of the Title Company; (ii) one hundred percent (100%) of any and all sales, documentary, stamp, transfer, sales, use, gross receipts or similar taxes or recording fees related to the transfer of the Assets (provided, however, that the Purchasers shall pay any documentary or similar taxes or recording fees that relate solely to borrowings by the Purchasers to finance the acquisition of the Assets or to the assumption of debt to which the Assets are subject by the Purchasers); (iii) any search fees and costs for the Title Commitments and the premium for each Title Policy issued to the Purchasers (assuming standard coverage); and (iv) the cost of any endorsement required to cure or insure over any title objection identified by the Purchasers in any Title Objection Notice.

(b) At or before the Closing, the Purchasers shall pay (i) fifty percent (50%) of any escrow or closing charges of the Title Company; (ii) any documentary or similar taxes or recording fees that relate solely to borrowings by the Purchasers to finance the acquisition of the Assets or to the assumption of debt to which the Assets are subject by the Purchasers; (iii) the cost of obtaining current surveys with respect to the Real Property (if desired by the Purchasers); and (iv) the cost to obtain extended coverage with respect to any Title Policy and the cost to obtain any endorsement requested by the Purchasers (but not including any endorsement required to cure or insure over any title objection identified by the Purchasers in any Title Objection Notice). In addition, the Purchasers shall pay the cost of any title insurance issued in favor of any lender of the Purchasers and the costs associated with the inspections and investigations conducted by the Purchasers or their agents or representatives.

Section 9.6 Post-Closing Reconciliation. Within sixty (60) days after the Closing Date, the Purchasers shall deliver to the Sellers a revised Closing Statement setting forth detailed calculations of the prorations for those items subject to closing adjustments as set forth in Section 9.4 (the "Purchasers' Closing Statement"). If the Sellers do not object to the calculations of the items subject to adjustment set forth in the Purchasers' Closing Statement within twenty (20) days after receipt thereof, then the calculations set forth in the Purchasers' Closing Statement shall be final and binding on the Parties. If the Sellers object to the Purchasers' Closing Statement within twenty (20) days of the receipt thereof, then the Parties shall appoint, and if they cannot agree, the Purchasers' and the Sellers' accountants shall appoint, an independent accounting firm of certified public accountants (the

"Reviewing Accountants") to review the calculations set forth on the Closing Statement. The Reviewing Accountants shall review the prorations subject to closing adjustments set forth on the original Closing Statement and compare them to the calculations of the prorations set forth on the Purchasers' Closing Statement and shall either accept or reject such changes, item by item. The calculation of the prorations, as adjusted by the changes accepted by the Reviewing Accountants, shall be final and binding on the Parties. On the later to occur of (i) one hundred eighty (180) days after Closing or (ii) the expiration of any review or dispute resolution period, the Parties shall pay any net amounts due to the other by wire transfer of immediately available funds. The cost of the services provided by the Reviewing Accountants shall be shared equally between the Parties.

## ARTICLE X

## TERMINATION AND ABANDONMENT

Section 10.1 Method of Termination. This Agreement may be terminated and the transactions herein contemplated may be abandoned at any time on or before the Closing:

(a) by mutual written consent of the Parties;

(b) by the Purchasers by giving written notice to the Sellers at any time prior to the Closing in the event the Sellers have breached any representation, warranty or covenant contained in this Agreement in any material respect, the Purchasers have notified the Sellers of the breach and the breach has continued without cure for a period of fifteen (15) days after the notice of breach;

(c) by the Sellers by giving written notice to the Purchasers at any time after the Hard Date in the event the Purchasers have breached any representation, warranty, covenant, agreement or undertaking contained in this Agreement (other than those contained in Section 5.2(b)) in any material respect, the Sellers have notified the Purchasers of the breach and the breach has continued without cure for a period of fifteen (15) days after the notice of breach;

(d) by the Purchasers pursuant to Sections 1.8, 4.8(b), 6.8, 6.11, Article VIII or this Article X;

(e) by either Party by giving written notice to the other Party, if a court of competent jurisdiction or other Governmental Authority shall have issued a nonappealable final order, decree or ruling or taken any other action, in each case having the effect of permanently restraining, enjoining or otherwise prohibiting the transactions contemplated hereby, unless the Party relying on such order, decree or ruling or other action has not complied in all material respects with its obligations under this Agreement;

(f) by the Purchasers after the Hard Date for any reason (or no reason), if the Purchasers deliver notice to the Sellers; provided, that, such termination will not be effective until the Purchasers deliver notice to the Escrow Agent to release and pay the Deposit to the Sellers; each Seller acknowledges and agrees that the Purchasers have no obligation to give the Sellers prior notice, or to negotiate in good faith with the Sellers regarding modifying the terms of this Agreement or the transactions contemplated hereby, before the Purchasers deliver the notice of termination pursuant to this Section 10.1(f); and

(g) by either Party if the Closing shall not have been consummated on or prior to the Closing Date Deadline; and provided, further, that the right to terminate this Agreement under this Section 10.1(g) shall not be available to any Party whose action or failure to act has been the primary cause of the Closing failing to occur on or before such date and such action or failure to act constitutes a breach of this Agreement by such Party.

Section 10.2 Procedure Upon Termination. In the event of termination and abandonment pursuant to Section 10.1 in this Agreement, this Agreement shall terminate and shall be abandoned, without further action by any of the Parties. If this Agreement is terminated for any reason, no Party shall have any liability or further obligation except as expressly set forth herein and with respect to obligations that expressly survive termination of this Agreement.

Section 10.3 Effect of Termination; Remedies for Default and Disposition of the Deposit.

(a) Seller Defaults.

(i) If the transactions contemplated by this Agreement do not close by reason of the failure of the satisfaction of the conditions benefiting the Purchasers under Section 8.1 and 8.2 in this Agreement (except by reason as described in (ii) of this Section), then the Deposit shall be returned to the Purchasers, and neither Party shall have any further obligation or liability to the other except with respect to those provisions of this Agreement which expressly survive a termination of this Agreement.

(ii) If the transactions contemplated by this Agreement do not close by reason of a breach by the Sellers then, at the Purchasers' election, (A) the Deposit shall be returned to the Purchasers, and, except as provided in Section 10.3(a)(iii), neither Party shall have any further obligation or liability to the other except with respect to those provisions of this Agreement which expressly survive a termination of this Agreement, or (B) if the Purchasers are ready, willing and able to close (including having immediately available funds to close, and is not otherwise in default), the Purchasers may specifically enforce this Agreement; provided, that any action by the Purchasers for specific performance must be commenced, if at all, within ninety (90) days of the Sellers' default, the failure of which shall constitute a waiver by the Purchasers of such right and remedy. If the

Purchasers shall not have commenced an action for specific performance within the aforementioned time period or so notified the Sellers of the Purchasers' election to terminate this Agreement, then the Purchasers' sole remedy shall be to terminate this Agreement in accordance with clause (A) above. In the event the Purchasers commence an equitable action for specific performance, the Sellers hereby acknowledge that the Purchasers do not have an adequate remedy at law and that injunctive relief and specific performance will not constitute a hardship to the Sellers. In addition, in the event the Purchasers prevail under any action under this Section 10.3(a), the Sellers shall pay to the Purchasers all their cost and expenses, including reasonable attorney's fees incurred in pursuing such action.

(iii) In the event this Agreement is terminated by the Purchasers in accordance withSection 10.1(b) as a result of the Sellers' intentional breach, willful misrepresentation or fraud, in addition to the Purchasers' right to receive the return of the Deposit or to seek specific performance as aforesaid, the Sellers shall be jointly and severally liable to the Purchasers for any damages to the Purchasers as a result of such breach; provided, however, that such damages shall be limited to the Expenses of the Purchasers, not to exceed Two Million Five Hundred Thousand Dollars ($2,500,000) in the aggregate. Such payment of Expenses shall be paid within three (3) Business Days after receipt of documentation supporting such Expenses. For purposes of this Agreement, "Expenses" means all out-of-pocket fees and expenses (including all fees and expenses of accountants, investment bankers, counsel, experts and consultants of the Purchasers and their affiliates) incurred by the Purchasers or on their behalf, prior to the termination of this Agreement, in connection with or related to the preparation, negotiation, execution and performance of this Agreement and the transactions contemplated hereby and the Purchasers' investigation and examination of the Assets, together with any costs or expenses incurred by the Purchasers in enforcing their rights under this Article X.

(b) Purchaser Defaults; Elective Termination by the Purchasers. In the event that (i) after the Hard Date, without termination of this Agreement by the Purchasers, the Purchasers shall not complete the Closing under this Agreement in circumstances in which the conditions benefiting the Purchasers under Section 8.1 and 8.2 in this Agreement were satisfied or previously waived and neither Party has terminated this Agreement pursuant to an express right to terminate as herein provided, (ii) this Agreement is terminated pursuant to Section 10.1(c) in circumstances where the Purchasers would not have a right to terminate this Agreement under Section 10.1(b), or (iii) this Agreement is terminated pursuant to Section 10.1(f), then the Sellers' sole remedy shall be to terminate this Agreement and to receive the Deposit as full and complete liquidated damages. The Parties acknowledge and agree that the amount of damages which the Sellers may incur as a result of such termination may be difficult to ascertain, and that the amount specified herein is a fair and reasonable estimate thereof, after which the Parties shall have no further rights hereunder.

Nothing in this Section shall be construed to limit the Sellers' rights or damages under any indemnities given by the Purchasers to the Sellers under this Agreement.

(c) Disposition of the Deposit. In the event the transaction contemplated by this Agreement shall close, the Deposit shall be applied as payment of the Purchase Price being paid at the Closing.

## ARTICLE XI

## MISCELLANEOUS PROVISIONS

Section 11.1 Amendment and Modification. This Agreement may be amended, modified and supplemented only by written agreement of all the Parties.

Section 11.2 Waiver of Compliance; Consent. Any failure of the Sellers on the one hand, or the Purchasers, on the other hand, to comply with any obligation, covenant agreement or condition herein may be waived in writing by the other Party, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any Party, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 11.2.

Section 11.3 Releases.

(a) Consistent with the fact that the Original Agreement is hereby superseded in its entirety, each Seller and Former Seller, on behalf of itself, its permitted assignees, their respective affiliates and it and their respective partners, directors, managers, members, shareholders, officers, employees and agents, successors and assigns, hereby irrevocably and unconditionally releases and forever discharges, the Purchasers, the Purchasers' permitted assignees, their respective affiliates and its and their respective partners, directors, managers, members, shareholders, officers, employees and agents, successors and assigns (each a "Purchaser Released Party") from any and all losses, damages, costs, expenses, liabilities, obligations and claims, including any suit, action or other proceeding, at law or in equity (collectively, "Claims") against any Purchaser Released Party arising out of, or related to, (i) any breach of any covenant, agreement or undertaking made by the Purchasers under the Original Agreement, (ii) any breach or inaccuracy of any representation and warranty made by the Purchasers in or pursuant to the Original Agreement, and (iii) any breach of any confidentiality obligations of the Purchasers under the Original Agreement; provided, however, that nothing in this Section 11.3(a) shall release any Purchaser Released Party from any Claim arising out of, or related to, any breach of any covenant, agreement or undertaking made by any Purchasers under this Agreement or any breach or inaccuracy of any representation and warranty made by the Purchasers in or pursuant to this Agreement, in each case, from the Effective Date and at all times thereafter.

(b) Consistent with the fact that the Original Agreement is hereby superseded in its entirety, each Purchaser, on behalf of itself, its permitted assignees, their respective affiliates and it and their respective partners, directors, managers, members, shareholders, officers, employees and agents, successors and assigns, hereby irrevocably and unconditionally releases and forever discharges, the Sellers and the Original Sellers, the Sellers' and Original Sellers permitted assignees, their respective affiliates and its and their respective partners, directors, managers, members, shareholders, officers, employees and agents, successors and assigns (each a "Seller Released Party") from any and all Claims against any Seller Released Party, arising out of, or related to, (i) any breach of any covenant, agreement or undertaking made by the Sellers or the Original Seller under the Original Agreement, (ii) any breach or inaccuracy of any representation and warranty made by the Sellers or the Original Sellers in or pursuant to the Original Agreement, provided that with respect to the Sellers only, such breach or inaccuracy of any representation and warranty has been cured by the delivery of the Disclosure Letter on the Effective Date, and (iii) any breach of any confidentiality obligations of the Sellers under the Original Agreement; provided, however, that nothing in this Section 11.3(b) shall release any Seller Released Party from any Claim arising out of, or related to, any breach of any covenant, agreement or undertaking made by the Sellers under this Agreement or any breach or inaccuracy of any representation and warranty made by the Sellers in or pursuant to this Agreement, in each case, from the Effective Date and at all times thereafter.

(c) The obligations of the Parties under this Section 11.3 should survive termination of this Agreement.

Section 11.4 Notice. All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be personally delivered, or sent by facsimile transmission (provided a copy is thereafter promptly mailed as hereinafter provided), or sent by overnight commercial delivery service (provided a receipt is available with respect to such delivery), and shall be effective when received, if sent by personal delivery or by facsimile transmission or by overnight delivery service:

(a) If to the Sellers, the Former Sellers or Bowen, to:

c/o BDC Advisors LLC
1331 NW Lovejoy Street, Suite 775
Portland, Oregon 97209
Attn: Walter C. Bowen
Phone: (503) 595-3090
Fax: (503) 274-4685

with copies to (which shall not constitute notice):

Schwabe, Williamson & Wyatt, P.C.
Pacwest Center
1211 SW 5th Ave., Ste. 1900
Portland, Oregon 97204
Attn: Charmin B. Shiely
Tel: (503) 796-2768
Fax: (503) 796-2900

(b) If to the Purchasers, to:

c/o Fortress Investment Group LLC
1345 Avenue of the Americas
New York, New York 10105
Attn: Kevin Krieger
Tel: (212) 479-1564
Fax: (212) 798-6075

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

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036
Attn: Joseph A. Coco
Thomas W. Greenberg
Tel: (212) 735-3000
Fax: (212) 735-2000

or to such other person or address as any Party shall furnish to the other Party in writing pursuant to this Section 11.4. Notwithstanding the foregoing, the Purchasers shall be permitted in connection with the exercise of their rights to terminate this Agreement and the Sellers shall be permitted to satisfy their document delivery requirements to send any such notice or deliveries via electronic mail, which shall constitute effective delivery for purposes of this Agreement.

Section 11.5 Expenses. Except as otherwise provided herein, each Party shall bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby.

Section 11.6 Assignment. This Agreement and all the provisions in this Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and permitted assigns. The Purchasers may assign (in whole or in part) the Agreement and/or its right to acquire any one or more Facilities (or any portion of the Assets) or the right to manage under the Management Agreement to one or more affiliates that either control or manage the Purchasers, are controlled or managed by the Purchasers or under common control with the Purchasers, including joint venture entities in which the Purchasers or their affiliates share control with third parties, without the prior written consent of the Sellers; provided that the foregoing does not violate the terms or conditions of the Governmental Approvals. Other than the foregoing, neither the Purchasers nor the Sellers may assign this

Agreement without first obtaining the other Party's written consent, which may be withheld in the other Party's sole discretion. Upon an assignment (or partial assignment) by the Purchasers of their rights under the Agreement in accordance with this Section 11.6, the Purchasers' assignee(s) shall be deemed to be the Purchasers hereunder (as it relates to the Facilities subject to such assignment) and shall be the beneficiary of all of the Sellers' representations, warranties, covenants, agreements or undertakings in favor of the Purchasers under this Agreement. No assignment of this Agreement shall release the Purchasers from their obligations hereunder. Notwithstanding anything to the contrary, the Purchasers shall be permitted to assign (in whole or in part) certain representations and warranties, certain covenants and any indemnity obligation arising from such assigned representations and warranties or covenants to its affiliate(s); provided, however:

(a) The Sellers shall only be obligated to pay one party in connection with any claim for indemnification with respect to a specific Facility brought for a breach of a representation and warranty and/or covenant;

(b) The Purchasers shall determine which party will receive indemnification with respect to such claim and only one (1) Party shall be permitted to make such claim; and

(c) Any such claim shall be subject to Article VII of this Agreement.

Section 11.7 Governing Law. All matters arising out of or relating to this Agreement and the transactions contemplated hereby (including its interpretation, construction, performance and enforcement) shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of laws of any jurisdictions other than those of the State of Delaware.

Section 11.8 Business Day. If the date for giving of notice or performance of any duty or obligation hereunder falls on a day that is not a Business Day hereunder, such date shall be automatically extended to the next Business Day hereunder. As used herein, a "Business Day" means any day other than a Saturday, Sunday or any other day on which banks are authorized to be closed in the State of New York. Time is of the essence with respect to all terms, provisions, covenants and conditions contained in this Agreement.

Section 11.9 Counterparts . This Agreement may be executed by facsimile signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 11.10 Headings. The Article and Section headings and table of contents contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 11.11 Entire Agreement. This Agreement, which term as used throughout includes the Exhibits and Disclosure Letter hereto, embodies the entire agreement and understanding of the Parties in respect of the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, agreements or undertakings, other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings among the Parties, including the Original Agreement, with respect to such subject matters contained herein and the Original Agreement has no further force or effect.

Section 11.12 Warranty of Authority. Each of the Parties warrants that the persons signing on their behalf have the right and power to enter into this Agreement and to bind them to the terms of this Agreement.

Section 11.13 Publicity. All pre-Closing publicity concerning the transactions contemplated by this Agreement and all notices respecting publicity shall be jointly planned, coordinated and released by and between the Parties; provided, however, that nothing herein shall prohibit either Party from making any press release or disclosure as may be required to comply with Applicable Law, regulation or stock market rule provided, that the releasing or disclosing Party provides notice to the other of the substance of such release or disclosure in advance thereof.

Section 11.14 Waiver of Jury Trial. EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION BROUGHT ON OR WITH RESPECT TO THIS AGREEMENT, INCLUDING TO ENFORCE OR DEFEND ANY RIGHTS HEREUNDER, AND AGREES THAT ANY SUCH ACTION SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

Section 11.15 Third Party Beneficiaries. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any third party other than the Parties hereto and the Indemnified Parties as set forth in Article VII any right, remedy or claim under or by reason of this Agreement.

Section 11.16 Specific Performance; Limitation of Remedy.

(a) The Sellers understand and agree that the covenants and undertakings on each of their parts herein contained are uniquely related to the desire of the Purchasers and their respective affiliates to consummate the Closing, that the transactions contemplated by this Agreement are a unique business opportunity at a unique time for the Purchasers and their respective affiliates, and further agree that irreparable damage would occur in the event that any provision of this Agreement were not performed by the Sellers in accordance with its specific terms and further agree that, although monetary damages may be available for the breach by the Sellers of such covenants and undertakings, monetary damages would be an inadequate remedy therefor and that specific performance would not constitute a hardship for the Sellers. Accordingly, the Sellers agree, on behalf of themselves and their respective affiliates, that, in the event of any breach or threatened breach by the Sellers of any of

their respective covenants or obligations set forth in this Agreement, the Purchasers shall be entitled to an injunction or injunctions to prevent or restrain breaches or threatened breaches of this Agreement by the Sellers, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of the Sellers under this Agreement, including the provisions of Section 10.3(a)(ii). The Sellers hereby agree not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches or threatened breaches of this Agreement by the Purchasers, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of the Sellers under this Agreement. The Purchasers in seeking an injunction or injunctions to prevent breaches of this Agreement by the Sellers and to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction. Except as expressly provided herein, under no circumstance shall the Purchasers file or record, or cause to be filed or recorded, against the Real Property a lis pendens, lien or any other type of encumbrance as the result of any breach or alleged breach of this Agreement by the Sellers, or for any other reason or purpose. Notwithstanding the foregoing to the contrary, the Purchasers may file or record, or cause to be filed or recorded, against the Real Property a lis pendens, lien or other type of encumbrance permitted under applicable law if and when (x) the Purchasers are awarded monetary damages in a lawsuit filed by the Purchasers alleging that the Sellers breached this Agreement or (y) the Purchasers file a lawsuit against the Sellers seeking specific performance of the Sellers' obligation to convey the Real Property to the Purchasers pursuant to the terms of this Agreement. The foregoing shall not affect the pledges of the Approved Collateral under Section 11.17.

(b) The Purchasers understand and agree that the Sellers would suffer irreparable damage in the event that the Purchasers were to breach certain provisions of this Agreement, and that while monetary damages may be available for the breach by the Purchasers of such covenants and undertakings, monetary damages would be an inadequate remedy therefor and that specific performance would not constitute a hardship for the Purchasers. Accordingly, the Purchasers agree, on behalf of themselves and their respective affiliates, that, in the event of any breach or threatened breach by the Purchasers of the following provisions: Sections 4.3 (Access and Disclosure), 4.7 (Further Documentation), 4.10 (Financial Information and Audit Assistance), 4.12 (No Solicitation), 4.17 (Non-Solicit; No Hire; Non-Competition); 6.1 (Confidentiality) and 6.7 (Excluded Business Names); then the Sellers shall be entitled to seek an injunction or injunctions to specifically enforce such enumerated provisions of this Agreement. The Sellers in seeking an injunction or injunctions to prevent breaches of this Agreement by the Purchasers and to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction.

(c) Notwithstanding anything to the contrary in this Agreement, the Sellers understand and agree that, in the event that this Agreement is terminated by the Sellers pursuant to and subject to the conditions of Section 10.3(b), or if this Agreement is terminated pursuant by the Purchasers pursuant to Section 10.1(f), then the Sellers' sole and exclusive remedy against the Purchasers and any of their respective affiliates and their respective partners, directors, managers, members, shareholders, officers, employees and agents (the "Purchaser

Parties") for any breach, loss or damage shall be to receive payment of the Deposit, in each case only to the extent provided in Section 10.3(b); and upon payment of such amount, no Seller or other person or entity shall have any rights or claims against the Purchaser Parties under this Agreement, or any other agreement or agreement delivered in connection with this Agreement, whether at law or equity, in contract, in tort or otherwise, and none of the Purchaser Parties shall have any further liability or obligation relating to or arising out of this Agreement or the transactions contemplated by this Agreement.

Nothing in this Section shall be construed to limit the Sellers' rights or damages under any indemnities (other than Article VII) given by the Purchasers to the Sellers under this Agreement.

Section 11.17 Bowen Guarantee.

(a) Bowen hereby irrevocably and unconditionally guarantees (the "Guarantee") to the Purchasers the punctual and full performance by each Seller of all of its obligations arising from and after the Closing pursuant to this Agreement. The Guarantee is absolute and unconditional irrespective of circumstances which might otherwise constitute a legal or equitable discharge of, or any defense, setoff or counterclaim available to, Bowen. Bowen agrees not to effect or agree to take any action which would adversely affect his ability to carry out any of the terms, covenants or conditions of this Section 11.17. Bowen hereby expressly acknowledges that the Guarantee and all obligations under this Section 11.17 shall be binding on his estate (including, but not limited to, the requirements that Bowen's estate maintain the net worth, and provide the certified quarterly statements, required under subsection (b)).

(b) For so long as any obligations of the Sellers under this Agreement shall remain outstanding, Bowen shall maintain a net worth in excess of Fifty Eight Million Five Hundred Seventy-Nine Thousand Dollars ($58,579,000.00) and will provide the Purchasers with certified quarterly statements reasonably evidencing his net worth. If Bowen's net worth should fall below such amount, Bowen shall immediately cause to be delivered to an account reasonably agreed upon with the Purchasers Nine Million Seven Hundred Sixty-Three Thousand Dollars ($9,763,000.00), and the Purchasers shall be granted a security interest in such account, and such account and all amounts therein shall secure the punctual and full performance by each Seller of all of its obligations arising from and after the Closing pursuant to this Agreement.

(c) To secure Bowen's guarantee obligations hereunder, Bowen shall enter into at the Closing (i) a pledge agreement (the "Pledge Agreement") in favor of the Purchasers (and each of their assigns pursuant to Section 11.6), in form reasonably satisfactory to the Purchasers, pursuant to which Bowen shall pledge and grant in favor of the Purchasers (and each of their assigns pursuant to Section 11.6) a security interest in (x) the St. Clair Membership Interest and (z) the Bend Membership Interest , and (ii) a mortgage (or deed of trust, as applicable) (a "Mortgage" and together with the Pledge Agreement, the "Security Documents") in favor of the Purchasers

(and each of their assigns pursuant to Section 11.6), in form reasonably satisfactory to the Purchasers, pursuant to which Bowen shall mortgage and grant in favor of the Purchasers (and each of their assigns pursuant to Section 11.6) a security interest in the Home (the assets and interests described herein, collectively, the "Approved Collateral"). The Sellers shall use good faith efforts to cause any party holding a lien encumbering all or any portion of the Approved Collateral, or any other Person required to approve or effectuate (as reasonably determined by the Purchasers) the transactions contemplated by the Security Documents, in each case, to have approved in writing prior to the Closing the Security Documents and the transactions contemplated by the Security Documents, except for the consent of M&T Realty Capital Corporation in connection with exercise of remedies with respect to the pledge of the St. Clair Membership Interest, the Parties agreeing that notwithstanding the Sellers' inability to obtain such consent, the Sellers remain obligated to execute and deliver the Pledge Agreement with respect to the Membership Interest at Closing.

(d) For the purposes of this Section 11.17, the "St. Clair Membership Interests" shall mean the Walter C. Bowen Trust's 77% membership interest in 735 St. Clair, LLC, an Oregon limited liability company, the sole owner of the real property commonly known as and located at 735 St. Clair Avenue, Multnomah County, Oregon (the "St. Clair Property"); the "Home" shall mean Walter C. Bowen's personal residence located at 11223 NW Saltzman, Portland, OR 97229 held in the Walter C. Bowen Trust; the "Bend Membership Interest" shall mean Walter C. Bowen's 100% membership interest in BDC/Bend, LLC, an Oregon limited liability company, the sole owner of certain vacant real property located southwest of the intersection of Watt Way and Medical Center Drive in Bend, Oregon 97701 and more particularly described on Exhibit 11.16.

(e) Each of the Security Documents shall grant in favor of the Purchasers (and each of their assigns pursuant to Section 11.6) a valid security interest in and to the Approved Collateral and shall contain such customary terms as are necessary to protect the rights of the Purchasers (and each of their assigns pursuant to Section 11.6) as contemplated by this Section 11.17, including (i) representations and warranties, including with respect to the respective item of Approved Collateral (A) the ownership of the Approved Collateral, (B) that the Approved Collateral shall be and remain free and clear of all Liens other than those Liens existing on the Closing Date, (C) the power and authority to pledge the Approved Collateral and enter into the Security Documents and (D) no consents or approvals (other than those obtained, or the requirement for which is waived by Purchasers, by the Closing Date) required to enter into the Security Documents and grant a security interest in the Approved Collateral; (ii) covenants that the grantor(s) (A) will not assign, pledge, hypothecate or transfer, or create or permit to exist any security interest or other Lien on the Approved Collateral, excluding with respect to those Liens existing on the Closing Date, (B) will defend its title and interest thereto or therein against any Liens (other than those Liens existing on the Closing Date), however arising, (C) will not take any action (or fail to take any action) that would materially and adversely affect the rights of the Purchasers (and/or each of their assigns pursuant to Section 11.6), and (D) shall take all other actions reasonably necessary to protect the rights of the Purchasers (and each of their assigns pursuant to Section 11.6) under the Security Documents, including delivering limited liability company certificates or control agreements and making UCC or other filings or recordings to secure or perfect the security interests granted with respect to all Approved Collateral and (iii) other reasonable and customary terms and conditions.

(f) In the event Bowen is unable to make the representation set forth in Section 11.17(e)(i)(D) with respect to any Approved Collateral at Closing, as their sole remedy, the Purchasers may reject such item of Approved Collateral, in which case Bowen shall pledge in favor of the Purchasers (and each of their assigns pursuant to Section 11.6) in a manner reasonably acceptable to the Purchasers (i) marketable securities reasonably acceptable to the Purchasers with a fair market value of not less than the Assigned Value of the item of Approved Collateral that is rejected by Purchasers and/or (ii) cash in an amount equal to such Assigned Value, and in such event, the items of Approved Collateral that have not been rejected by the Purchasers pursuant to this Section 11.17(f) and such marketable securities and/or such cash, as applicable, collectively shall be deemed to be Approved Collateral. For purposes of this Section 11.17(f), the "Assigned Value" for each item of Approved Collateral, which amounts total Four Million Five Hundred Fifty-Six Thousand Dollars ($4,556,000), is as follows: St. Clair Membership Interest is Two Million Six Hundred Sixty-Four Thousand Dollars ($2,664,000); Bend Membership Interest is One Million One Hundred Ninety-Two Thousand Dollars ($1,192,000); Home is Seven Hundred Thousand Dollars ($700,000).

(g) The Security Documents shall be released on the date that is the later of (i) the one (1) year anniversary of the Closing and (ii) the date that all claims made by the Purchasers (and/or each of their assigns pursuant to Section 11.6) and pending as of the one (1) year anniversary of the Closing are fully resolved, satisfied and paid pursuant to Article VII to any Purchaser Indemnified Party. The Security Documents shall be executed by Bowen (or any applicable trustee of a trust) and, if required by applicable community property law, his spouse.

(h) To the extent required by applicable community property law, Bowen will provide any consents or other documentation from his spouse, if any, in order to authorize (or evidence such authority) the Guarantee and the Security Documents contemplated in this Section 11.17.

(i) On or prior to the Effective Date, Bowen and/or his representatives have provided materials and information to the Purchasers related to or regarding the St. Clair Property, the other assets owned directly or indirectly by Bowen, and the net worth of Bowen. Bowen hereby represents and warrants that each of the materials and information provided on or prior to the Effective Date is true, accurate and complete in all material respects, and does not omit any material information related thereto.

Section 11.18 Interpretation. When a reference is made in this Agreement to an Article, a Section, Exhibit or section of the Disclosure Letter, such reference shall be to an Article of, a Section of, or an Exhibit or section of the Disclosure Letter to, this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The

words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a person are also to its permitted successors and assigns. The Parties have participated jointly in the negotiating and drafting of this Agreement. In the event of an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement. In the event of a conflict between this Agreement and any Exhibit hereto, this Agreement shall govern.

Section 11.19 Submission to Jurisdiction. Each Party (a) submits to the jurisdiction of the federal court sitting in Dallas, Texas in any action or proceeding arising out of or relating to this Agreement, (b) agrees that all claims in respect of such action or proceeding may be heard and determined in any such court, (c) waives any claim of inconvenient forum or other challenge to venue in such court, (d) agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court and (e) waives any right it may have to a trial by jury with respect to any action or proceeding arising out of or relating to this Agreement. Each Party agrees to accept service of any summons, complaint or other initial pleading made in the manner provided for the giving of notices in Section 11.4, provided that nothing in this Section 11.19 shall affect the right of any Party to serve such summons, complaint or other initial pleading in any other manner permitted by Applicable Law.

Section 11.20 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Applicable Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by Applicable Law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 11.21 Oregon Statutory Disclosure. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF

ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

Section 11.22 California Disclosures and Special Provisions.

(a) Natural Hazard Disclosure. The term "Natural Hazard Area" shall mean those areas identified as natural hazard areas or natural hazards in the Natural Hazard Disclosure Act, California Government Code Sections 8589.3, 8589.4 and 51183.5 and California Public Resources Code Sections 2621.9, 2694 and 4136, and any successor statutes or laws (the "CA Act"). To the extent required under applicable law, the Sellers shall cause the Title Company to deliver to the Purchasers as soon after the Effective Date as is practicable a Natural Hazard Disclosure Statement (the "CA Disclosure Statement") for each Real Property located in California in a form required by the CA Act. The Purchasers acknowledge that each CA Disclosure Statement will fully and completely discharge the Sellers from any disclosure obligations under the CA Act and under California Civil Code Sections 1102 through 1102.17. Nothing contained in the CA Disclosure Statements release the Purchasers from their obligation to fully investigate and satisfy themselves with the condition of the Real Property located in California prior to executing this Agreement, including, without limitation, whether any of the Real Property located in California is located in any Natural Hazard Area. The Purchasers further acknowledge and agree that the matters set forth in the CA Disclosure Statements may change on or prior to the Closing and that the Sellers have no obligation to update, modify or supplement the CA Disclosure Statements. The Purchasers are solely responsible for preparing and delivering their own CA Disclosure Statements to subsequent prospective purchasers of the Real Property located in California.

(b) Releases. In connection with any release set forth in this Agreement, the releasing party acknowledges that it is familiar with and expressly waives any protections or rights provided by §1542 of the California Civil Code, which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Section 11.23 Liquidated Damages. SHOULD THE PURCHASERS BREACH THIS AGREEMENT AND THE SELLERS ELECT TO RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES PURSUANT TO SECTIONS 10.1(F), 10.3(B) and 11.16(B) OF THIS AGREEMENT, THE SELLERS' RETENTION OF THE DEPOSIT SHALL CONSTITUTE LIQUIDATED AND AGREED-UPON DAMAGES PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE.

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**SELLERS' SIGNATURE PAGES TO BPM SENIOR LIVING PORTFOLIO SALE AMENDED AND RESTATED PURCHASE AGREEMENT DATED FEBRUARY 27, 2012**

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the date first written above.

**SELLERS:**

[**Regent Court]** **Regent/Corvallis, LLC**, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Desert Flower]** **Desert Flower LLC**, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Managing Member

**[Sun Oak]** **BPM/Citrus Heights Limited Partnership**, an Oregon limited partnership

By: Hambledon Investments, LLC, an Oregon limited liability company, its General Partner

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Regency Grand at West Covina]** **BDC/West Covina II, LLC**, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Sunshine Villa]** **Cornell Springs Partners**, an Oregon joint venture, co-tenant

By: Cornell Springs Apartments Limited Partners, an Oregon limited partnership, a joint venturer

**SELLERS' SIGNATURE PAGES TO BPM SENIOR LIVING PORTFOLIO SALE AMENDED AND RESTATED PURCHASE AGREEMENT DATED FEBRUARY 27, 2012**

By: /s/ Walter C. Bowen
Walter C. Bowen, General Partner

By: BDC/Santa Cruz, LLC, a joint venturer

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**Regent/Eugene, LLC**, an Oregon limited liability company, co-tenant

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Canyon Creek]**

**Regent/Salt Lake, LLC**, an Oregon limited liability company

By: Hambledon Investments, LLC, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Sheldon Park]**

**Regent/Eugene, LLC**, an Oregon limited liability company, co-tenant

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Willow Park]**

**Regent/Boise, LLC**, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Orchard Park]**

**RAL/Clovis, Inc.**, an Oregon corporation

By: /s/ Walter C. Bowen
Walter C. Bowen, CEO

[**END OF SELLERS' SIGNATURE PAGES**]

**FORMER SELLERS' SIGNATURE PAGES TO BPM SENIOR LIVING PORTFOLIO SALE AMENDED AND RESTATED PURCHASE AGREEMENT DATED FEBRUARY 27, 2012**

**FORMER SELLERS**, for purposes of Article XI only**:**

**[Acacia Springs]**

**BDC/Las Vegas, LLC**, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Magnolia Village]**

**BDC/Riverside, LLC**, an Oregon limited liability company

By /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Overlake Terrace]**

**Sterling Park, L.L.C.**, a Washington limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Managing Member

**[Heritage Springs]**

**BDC/Las Vegas Three, LLC**, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Regency Park]**

**Regency Park Apartments Limited Partnership**, an Oregon limited partnership

By: /s/ Walter C. Bowen
Walter C. Bowen, its General Partner

**[The Regent]**

**BDC/Corvallis, LLC**, a Delaware limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

[**END OF FORMER SELLERS' SIGNATURE PAGES**]

**PURCHASERS' SIGNATURE PAGE TO BPM SENIOR LIVING PORTFOLIO SALE AMENDED AND RESTATED PURCHASE AGREEMENT DATED FEBRUARY 27, 2012**

**PURCHASERS:**
**B Healthcare Properties LLC**, a Delaware limited liability company

By: /s/ Andrew White
Andrew White, Authorized Person

**[END OF PURCHASERS' SIGNATURE PAGES]**

**PURCHASERS' SIGNATURE PAGE TO BPM SENIOR LIVING PORTFOLIO SALE AMENDED AND RESTATED PURCHASE AGREEMENT DATED FEBRUARY 27, 2012**

/s/ Walter C. Bowen

Walter C. Bowen, for purposes of
Sections 4.12, 4.17 and 6.10 and Article XI only

**[END OF WALTER C. BOWEN'S SIGNATURE PAGE]**

**Exhibit 10.3**

**EXECUTION VERSION**

**AMENDMENT NO. 1 TO**
**AMENDED AND RESTATED PURCHASE AGREEMENT**

This AMENDMENT NO. 1 TO AMENDED AND RESTATED PURCHASE AGREEMENT (this "Amendment"), dated as of March 30, 2012, is made and entered into by and among each of the entities set forth under the heading "Purchasers" on the signature pages hereto (the "Purchasers"), each of the entities set forth under the heading "Sellers" on the signature pages hereto (the "Sellers"), BDC/West Covina II, LLC (the "Regency Grand Seller") and Walter C. Bowen ("Bowen"). The Purchasers, the Sellers, the Regency Grand Seller and Bowen are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

W I T N E S S E T H

**WHEREAS**, the Parties desire to amend that certain Amended and Restated Purchase Agreement, dated as of February 27, 2012, by and among the Purchasers and the Sellers named therein and Walter C. Bowen ("Bowen") (for purposes of Sections 4.12, 4.17 and 6.10 and Article XI of the Agreement only) ("Agreement") in order to, among other things, acknowledge and clarify that the Purchasers shall no longer be purchasing from the Regency Grand Seller, and the Regency Grand Seller shall no longer be selling to the Purchasers, the Assets (as defined in the Original Agreement) of the Regency Grand Seller.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the undersigned hereby agree as follows:

1. **Interpretation**. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

2. **Closing Deadline Date**. "Closing Deadline Date" as used in the Agreement shall hereby be defined as June 15, 2012.

3. **Hard Date**. "Hard Date" as used in the Agreement shall hereby be defined as May 15, 2012.

4. **Notification Date**. "Notification Date" as used in the Agreement shall hereby be defined as May 15, 2012;provided that each reference to "Notification Date" in (i) Section 4.8(d) of the Agreement shall be deemed to refer to refer to March 31, 2012 and (ii) Sections 5.1 and 6.11 of the Agreement shall be deemed to refer to April 15, 2012.

5. **Purchase Price.** The first sentence of Section 1.3 of the Agreement is hereby amended and restated in entirety as follows:

"The purchase price for the Assets shall be One Hundred Forty-Three Million Three Hundred Thousand Dollars ($143,300,000) (the Purchase Price"), subject to the prorations and further adjustments as provided for in this Agreement."

6. **Payment of Purchase Price**. The first sentence of Section 1.5 of the Agreement is hereby amended and restated in its entirety as follows:

"At the Closing, the Purchasers shall pay the Purchase Price, adjusted for any prorations, credits and additions for the benefit of the Purchasers or the Sellers as specified in Article IX."

7. **Assumed Liabilities**. Section 1.6 of the Agreement is hereby amended and restated in its entirety as follows:

"Assumed Liabilities. At the Closing, no Purchaser shall assume any liabilities or obligations of any Seller whatsoever, fixed or contingent, and the Sellers shall retain and discharge in the ordinary course all liabilities and obligations of the Sellers, other than the following obligations which will be assumed by one or more of the Purchasers (as identified in the respective assignment documents executed at the Closing (the "Assumed Liabilities")): liabilities and obligations arising out of or related to periods after the Closing, or as otherwise expressly set forth herein, with respect to the Assumed Contracts, the Assumed Equipment Leases, the Tenant Leases and all Residency Agreements."

8. **Capital Expenditures**. Section 4.19 of the Agreement is hereby amended and restated in its entirety as follows:

"The Sellers shall complete all repairs and replacements otherwise required to maintain each Facility in its condition as of August 25, 2011 (reasonable wear and tear excepted), including ordinary course maintenance, using materials and labor, all consistent with the remainder of such Facility; provided, however, that the Sellers shall not be obligated to make any capital project expenditures for any repair or replacement the need for which first arises or results from any event that occurs after April 30, 2012 unless such repair or replacement, if not immediately completed, could reasonably be expected to (i) result in the loss of life, limb or other material physical harm to any occupant, employee or other Person lawfully at the Facility, or (ii) result in a catastrophic failure with respect to the overall property level operations (in each case, an "Emergency Repair"); provided, further, for the purposes of this Section 4.19, (x) such obligations shall not include any repair or replacement to the extent in excess of that immediately necessary to remedy the condition giving rise to the grounds for an Emergency Repair, and (y) the Sellers shall be solely obligated to make repair or replacement necessitated, in whole or in part, as the result of the Sellers' breach of this Agreement (including pursuant to this Section 4.19(a)). Each Seller will cause such work to be completed in a good and workmanlike manner and in accordance with Applicable Law. All of the work, repairs, replacements and capital projects contemplated by this Section 4.19 shall be at the sole cost and expense of Seller."

9. **Delivery of Documents**. Section 4.21 of the Agreement is hereby amended and restated in its entirety as follows:

"Delivery of Documents. Prior to the Effective Date, the Sellers delivered to the Purchasers or at the Sellers' election made available to the Purchasers in the data room set up by the Sellers for the Purchasers to conduct their due diligence review of the Assets, true and complete copies of all documents listed on any sections of the Disclosure Letter, including all Licenses, Contracts, Residency Agreements, Leases, Employee Benefit Plans, the financial statements and records contemplated by Section 2.20."

10. **Assumed Contracts and Assumed Equipment Leases**. Section 5.1 of the Agreement is hereby amended to insert the following sentence immediately following the first sentence of such Section:

"On or prior to April 15, 2012, the Purchasers shall provide to the Sellers an assignment request letter for each Contract and Equipment Lease that is not a Rejected Contract, substantially in the form attached hereto as Exhibit 5.1(b), which assignment request letters the Sellers shall promptly deliver to all parties under such Contracts and Equipment Leases (it being understood that the Purchasers and the Sellers hereby waive any confidentiality rights related to such communications). To the extent that the applicable counterparties are unwilling to enter into agreements with respect to any such Contract or Equipment Lease, if Purchasers desire the benefits of such Contract or Equipment Lease, Purchasers and Sellers shall negotiate in good faith a mutually agreeable alternative arrangement, that is feasible under the terms of the respective Contract or Equipment Lease, so that the Purchasers or their designee(s) will have the benefits and obligations of such Contract or Equipment Lease as though it had been assigned, which arrangement shall include that the Purchasers shall indemnify Sellers with respect to Sellers' payment and performance obligations under such Contract or Equipment Lease."

11. **Closing Conditions**. Section 8.2(d) of the Agreement is hereby amended and restated in its entirety as follows:

"Each of the consents, authorizations, and approvals listed on Section 8.2(d) of the Disclosure Letter previously obtained by Seller shall be in full force and effect."

12. **Expenses**. Section 11.5 of the Agreement is hereby amended to insert the following sentence at the end of such Section:

"For the avoidance of doubt, the Purchasers shall bear all costs and expenses relating to services provided by The Nathanson Group PLLC and Hanson Bridgett LLP in connection with the transactions completed by this Agreement."

13. **Regency Grand**. The Parties agree that (i) the Regency Grand Seller shall hereby be deemed a "Former Seller" under the Agreement, (ii) each of Section 1.4(d), Section 2.7(d) and Section 5.2 of the Agreement is hereby amended and restated in its entirety as follows:

"[Intentionally Omitted]"

and (iii) the third sentence of Section 4.8(b) of the Agreement is amended in its entirety as follows:

"Notwithstanding the foregoing, the Purchasers shall not have the right to disapprove any of the following, all of which (together with all matters deemed approved by Purchasers pursuant to terms hereof) shall be deemed to be "Permitted Liens" hereunder: (A) matters created or consented to in a separate written consent by the Purchasers, (B) the Assumed Liabilities, (C) all liens of real estate taxes, assessments, water rates, water meter charges, water frontage charges and sewer taxes, rents and charges, if any, provided that such items are not due and payable and are apportioned as provided in this Agreement and/or (D) any matter reflected in any Initial Commitment (excluding any lien securing payment or repayment of a fixed or readily determinable amount, which amount shall be paid by the Seller, and such lien shall be released, at Closing) or any Initial Survey."

14. **Exhibits**. The Parties agree that Exhibits A, B, C, D, E, F, G, H, I and J hereto hereby replace Exhibits 1.0, 1.1(a), 1.7, 4.8(a), 4.17, 5.1(a), 5.1(b), 5.6(a), 5.6(b) and 6.10(a) to the Agreement, respectively and that Exhibit 5.2 is deleted.

15. **Disclosure Letter**. The Parties agree that the Disclosure Letter is hereby amended as follows: (i) all reference to Regency Grand and disclosures exclusively related to Regency Grand are hereby deleted; (ii) Section 2.7(d) is hereby deleted in its entirety, (iii) the schedule attached hereto as Exhibit K is hereby deemed to be attached to Section 2.23(h) of the Disclosure Letter and (iv) the schedule attached hereto as Exhibit L is hereby deemed to be included in the Disclosure Letter as Section 8.2(d) thereof. The Disclosure Letter, as modified by this paragraph 15, shall be deemed to have been delivered on February 27, 2012.

16. **Entire Agreement; Full Force and Effect**. This Amendment and (subject to the amendment in this Amendment) the Agreement (together with the Disclosure Letter (as amended and restated) and the exhibits and other documents delivered pursuant thereto) and the Confidentiality Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof and thereof and shall supersede all previous negotiations, commitments, agreements and understandings (both oral and written) with respect to such subject matter. Except as amended or modified hereby, each term and provision of the Agreement is hereby ratified and confirmed and will and does remain in full force and effect.

17. **Counterparts**. This Amendment may be executed by facsimile signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

*[Remainder of page intentionally left blank.]*

**IN WITNESS WHEREOF**, the Parties have caused this Amendment to be executed as of the date first written above by their respective officers thereunto duly authorized.

**SELLERS:**

[**Regent Court]** **Regent/Corvallis, LLC**, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Desert Flower]** **Desert Flower LLC**, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Managing Member

**[Sun Oak]** **BPM/Citrus Heights Limited Partnership**, an Oregon limited partnership

By: Hambledon Investments, LLC, an
Oregon limited liability company, its General Partner

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Sunshine Villa]**

**Cornell Springs Partners,** an Oregon joint venture, co-tenant

By: Cornell Springs Apartments Limited Partners, an Oregon limited partnership, a joint venturer

By: /s/ Walter C. Bowen
Walter C. Bowen, General Partner

By: BDC/Santa Cruz, LLC, a joint venturer

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**Regent/Eugene, LLC,** an Oregon limited liability company, co-tenant

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Canyon Creek]**

**Regent/Salt Lake, LLC**, an Oregon limited liability company

By: Hambledon Investments, LLC, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Sheldon Park]**

**Regent/Eugene, LLC**, an Oregon limited liability company, co-tenant

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Willow Park]**

**Regent/Boise, LLC**, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Orchard Park]**

**RAL/Clovis, Inc.**, an Oregon corporation

By: /s/ Walter C. Bowen
Walter C. Bowen, CEO

**REGENCY GRAND SELLER:**

**[Regency Grand at West Covina]**

**BDC/West Covina II, LLC**, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**PURCHASERS:**

**B Healthcare Properties LLC**, a Delaware limited liability company

By: /s/ Andrew White

/s/ Walter C. Bowen
Walter C. Bowen

**EXHIBIT 1.0**

**FORMER SELLERS**

| SELLER | FACILITY |
|---|---|
| BDC/Las Vegas, LLC, an Oregon limited liability company | Acacia Springs<br>8630 W. Nevso Drive<br>Las Vegas, NV 89147 |
| BDC/Las Vegas Three, LLC, an Oregon limited liability company | Heritage Springs<br>8720 West Flamingo Road<br>Las Vegas, NV 89147 |
| BDC/Riverside, LLC, an Oregon limited liability company | Magnolia Village<br>8537 Magnolia Avenue<br>Riverside, CA 92504 |
| Sterling Park, L.L.C., a Washington limited liability company | Overlake Terrace<br>2956 l52nd Avenue NE<br>Redmond, WA 98052 |
| Regency Park Apartments Limited Partnership, an Oregon limited partnership | Regency Park<br>8300 S.W. Barnes Road<br>Portland, OR 97225 |
| BDC/Corvallis, LLC, a Delaware limited liability company | The Regent<br>440 NW Elks Drive<br>Corvallis, 0R 97330 |
| BDC/West Covina II, LLC, an Oregon limited liability company | Regency Grand at West Covina<br>150 South Grand Avenue<br>West Covina, CA 91791 |

**EXHIBIT 1.1(a)**

**FACILITY DETAIL**

| FACILITY | SELLER | PURCHASER |
|---|---|---|
| Canyon Creek<br>7235 South Union Park Avenue<br>Cottonwood, Heights, UT 84047 | Regents/Salt Lake, LLC, an Oregon limited liability company | B Healthcare Properties LLC, a Delaware limited liability company |
| Desert Flower<br>9185 East Desert Cove<br>Scottsdale, AZ 85260 | Desert Flower LLC, an Oregon limited liability company | B Healthcare Properties LLC, a Delaware limited liability company |
| Orchard Park<br>675 Alluvial Avenue<br>Clovis, CA 93611 | RAL/Clovis, Inc., an Oregon corporation | B Healthcare Properties LLC, a Delaware limited liability company |
| Regent Court<br>400 N. W. Elks Drive<br>Corvallis, OR 97330 | Regent/Corvallis, LLC, an Oregon limited liability company | B Healthcare Properties LLC, a Delaware limited liability company |
| Sheldon Park<br>2440 Willakenzie Road<br>Eugene, OR 97401 | Regent/Eugene, LLC, an Oregon limited liability company; and Christine Investments, LLC, an Oregon limited liability company | B Healthcare Properties LLC, a Delaware limited liability company |
| Sun Oak<br>7241 Canelo Hills Drive<br>Citrus Heights, CA 95610 | BPM/Citrus Heights Limited Partnership, an Oregon limited partnership | B Healthcare Properties LLC, a Delaware limited liability company |
| Sunshine Villa<br>80 Front Street<br>Santa Cruz, CA 95060 | Cornell Springs Partners, an Oregon joint venture; and Regent/Eugene, LLC, an Oregon limited liability company | B Healthcare Properties LLC, a Delaware limited liability company |
| Willow Park<br>2600 North Milwaukee Street<br>Boise, ID 83704 | Regent/Boise, LLC, an Oregon limited liability company | B Healthcare Properties LLC, a Delaware limited liability company |

**EXHIBIT 1.7**

**ALLOCATION OF PURCHASE PRICE**

| Total | Real | Pers Prop | |
|---|---|---|---|
| Desert Flower | $ 25,000,000 | $ 24,600,000 | $ 400,000 |
| Sheldon Park | $ 24,400,000 | $ 23,900,000 | $ 500,000 |
| Regent Court | $ 8,800,000 | $ 8,500,000 | $ 300,000 |
| Orchard Park | $ 18,600,000 | $ 18,250,000 | $ 350,000 |
| Canyon Creek | $ 20,000,000 | $ 19,650,000 | $ 350,000 |
| Willow Park | $ 17,600,000 | $ 17,250,000 | $ 350,000 |
| Sun Oak | $ 4,300,000 | $ 4,100,000 | $ 200,000 |
| Sunshine Villa | $ 24,600,000 | $ 24,100,000 | $ 500,000 |
| Total | $ 143,300,000 | $ 140,350,000 | $ 2,950,000 |

EXHIBIT C—1.7 ALLOCATION OF PURCHASE PRICE

**EXHIBIT 4.8(a)**

**TITLE COMMITMENTS & SURVEYS**

**1. Canyon Creek**

Title Insurance Commitment prepared by Commonwealth Land Title Insurance Company, with an effective date of August 15, 2011, bearing Order No. F-82276F
Survey made by VanWagoner and Associates, dated June 28, 2000

**2. Desert Flower**

Title Insurance Commitment prepared by Commonwealth Land Title Insurance Company, with an effective date of September 29, 2011, bearing Order No. 00963086-040-SA3
Survey made by J.G. Ellis Land Surveying Services, dated August 13, 1999

**3. Orchard Park**

Title Insurance Commitment prepared by Chicago Title Company, with an effective date of August 18, 2011, bearing Title No. 11-44111494-TL
Survey made by Edward D. Dunkel and Associates, dated December 15, 2000

**4. Regent Court**

Title Insurance Commitment prepared by Ticor Title Company, with an effective date of August 24, 2011, bearing Order No. 471811013728-TTMIDWIL18, Supplement 1
Survey made by Thurston & Associates, Inc., dated July 26, 1999

**5. Sheldon Park**

Title Insurance Commitment prepared by Western Title & Escrow Company of Lane County, as agent for Fidelity National Title Insurance Company, with an effective date of August 10, 2011, bearing Order No. 49235
Survey made by SS&W Inc.-Engineers, dated August 16, 2005

**6. Sun Oak**

Title Insurance Commitment prepared by Chicago Title Company, with an effective date of August 8, 2011, bearing Title No. 11-31017739-DP
Survey made by J.V. Surveying, LLC, dated October 28, 2011

**7. Sunshine Villa**

Title Insurance Commitment prepared by Chicago Title Insurance Company, with an effective date of July 27, 2011, bearing Title No. 11-52303279-A-MM
Survey made by Dunbar and Craig, dated December, 2000

**8. Willow Park**

Title Insurance Commitment prepared by Fidelity National Title Insurance Company, with an effective date of August 25, 2011, bearing Order No. 1072901
Survey made by Tealey's Land Surveying, dated September 2000

EXHIBIT D—4.8(a) TITLE COMMITMENTS & SURVEYS

**EXHIBIT 4.17**

**EXCEPTIONS TO NON-COMPETE**

**1. Acacia Springs**

8630 W. Nevso Drive
Las Vegas, NV 89147

**2. Heritage Springs**

8720 West Flamingo Road
Las Vegas, NV 89147

**3. Magnolia Village**

8537 Magnolia Avenue
Riverside, CA 92504

**4. Overlake Terrace**

2956 l52nd Avenue NE
Redmond, WA 98052

**5. Regency Grand**

150 South Grand Avenue
West Covina, CA 91791

**6. Regency Palms**

3985 South Pearl Street
Las Vegas, Nevada 89121

**7. Regency Park**

8300 S.W. Barnes Road
Portland, OR 97225

**8. Royalton Place**

5555 S.E. King Road
Milwaukie, Oregon 97222

**9. The Regent**

440 NW Elks Drive
Corvallis, 0R 97330

EXHIBIT E—4.17 EXCEPTIONS TO NON-COMPETE

**10**. **Waterford Grand**

475 Alexander Loop
Eugene, Lane County, Oregon 97401

EXHIBIT E—4.17 EXCEPTIONS TO NON-COMPETE

**EXHIBIT 5.1(a)**

**CABLE CONTRACTS**

Canyon Creek

- **Services Agreement** dated December 18, 2009, between Comcast of Utah II, Inc. and Canyon Creek Assisted Living
- **Grant of Easement** dated December 18, 2009, between Comcast of Utah II, Inc. and Canyon Creek Assisted Living (exhibit to Services Agreement)
- **Bulk Bill Addendum** dated December 18, 2009, between Comcast of Utah II, Inc. and Canyon Creek Assisted Living
- **Compensation Agreement** dated , 2009, between Comcast of Utah II, Inc. and Canyon Creek Assisted Living

Desert Flower

- **Services and Access Agreement** dated , 2011, between CoxCom, d/b/a Cox Communications and Desert Flower, LLC
- **Bulk Services Agreement** dated August 1, 2006, between CoxCom, d/b/a Cox Communications Phoenix and Desert Flower, LLC
- **Grant of Easement and Memorandum of Agreement** dated August 1, 2006, between CoxCom, d/b/a Cox Communications Phoenix and Desert Flower, LLC, recorded as Instrument No. 2006-1117660

Orchard Park

- **Bulk Service Agreement** dated September 21, 2005, between BPM/Orchard Park and Comcast of Fresno, Inc.
- **Grant of Easement** dated September 21, 2005, between BPM/Orchard Park and Comcast of Fresno, Inc. (exhibit to Bulk Services Agreement)

Regent Court

- **Agreement for Grant of Easement** dated March 1, 2000, between Regent Assisted Living, Inc. and TCI Cablevision of Oregon, Inc. and any entity controlling, controlled by or under common control with AT&T Corp., recorded as Document No. M-287811-00
- **Agreement for Grant of Easement** dated March 1, 2000, between Regent Assisted Living, Inc. and TCI Cablevision of Oregon, Inc. and any entity controlling, controlled by or under common control with AT&T Corp., recorded as Document No. M-283673-00

Sheldon Park

- **Broadband Easement and Right of Entry Agreement** dated January 7, 1998, between TCI of Oregon, Inc. and Regent Assisted Living, recorded as Document No. 9815058 and re-recorded as Instrument No. 2000-070807

Sun Oak

- **Bulk Installation and Services Agreement** dated April 4, 2011, between Comcast of Sacramento I, LLC and BPM/Citrus Heights Limited Partnership

EXHIBIT F—5.6(a) RETAINED EMPLOYEES

- **Grant of Easement** dated April 4, 2010, between Comcast of Sacramento I, LLC and BPM/Citrus Heights Limited Partnership, recorded as Instrument No. 2011-06150950

Sunshine Villa

- **Commercial Service Agreement** dated March 20, 1998, between United Cable Television of Santa Cruz, Inc., d/b/a TCI Cablevision of California Inc., and Sunshine Villa
- **Cable Television Bulk Billing Agreement** dated January 28, 1991, between United Cable Television of Santa Cruz, Inc. and Sunshine Villa, and related addendums
- **Cable Television Easement and Maintenance Agreement** dated March 19, 1991, between United Cable Television of Santa Cruz, Inc. and Sunshine Villa Associates, recorded in Volume 4806, at Page 655

Willow Park

- **Broadband Easement and Right of Entry** dated November 15, 1996, between United Cable Television Corporation, d/b/a TCI Cablevision of Treasure Valley and Health Care Property Investors, Inc.
- **Bulk Rate Agreement** dated November 15, 1996, between United Cable Television Corporation, d/b/a TCI Cablevision of Treasure Valley and Regent Assisted Living, Inc.

EXHIBIT F—5.1(a) CABLE CONTRACTS

**EXHIBIT 5.1(b)**

**FORM OF ASSIGNMENT LETTER**

[April] , 2012

**VIA FEDERAL EXPRESS**

[_____]
[_____]
[_____]

Re: [Agreement(s) between applicable Seller and Addressee], dated as of [ ] (the "Agreement(s)").

Ladies and Gentlemen,

[Applicable Seller] ("Transferor") has entered into a purchase agreement (the "Purchase Agreement") with B Healthcare Properties LLC (such entity or its designee, "Transferee"), pursuant to which Transferor and certain of its affiliates intend to convey to Transferee the Assets (as defined in the Purchase Agreement), including the conveyance to Transferee of all of Transferor's right, title, and interest in [Facility name] and under the Agreement(s). B Healthcare Properties LLC is an affiliate of Fortress Investment Group LLC (NYSE: FIG), a leading global investment management firm and one of the most active investors in the senior housing market. The sale and assignment is anticipated to be effective as of 11:59 p.m. on June 15, 2012.

Subject to the receipt of your consent (requested below), after the Closing Date (as defined in the Purchase Agreement), Transferee will be deemed to have automatically assumed all rights and obligations under the Agreement(s) to the extent arising after the Closing Date. On or shortly after the Closing Date Transferee will deliver you notice that the sale has been consummated. After the Closing Date, you are advised to perform all of your duties under the Agreement(s) directly for the benefit of Transferee. After such date, please provide all notices under the Agreement(s) to Transferee at:

B Healthcare Properties LLC
c/o Fortress Investment Group LLC
1345 Avenue of the Americas
New York, New York 10105
Attn: Kevin Krieger
Tel: (212) 479-1564

Additionally, Transferor requests your consent to Transferor's assignment of the Agreement(s) to Transferee in connection with the transfer of the Assets. Please indicate your consent to the aforesaid assignment of the Agreement(s) by signing on the space provided below and returning it via fax or email to:

Fax: (503) 796-2900 (Attn: Brandan Chambers)
Email: bchambers@schwabe.com (Subject: BPM Consent to Assignment.)

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Thank you for your business relationship with [Facility name]. We wish you the best in the future and appreciate your assistance in this matter. Should you have any questions regarding this request, please contact Matt Bisturis at 360-905-1113 or mbisturis@schwabe.com.

Very Truly Yours,
[Applicable Seller]

By: _____
Name:
Title:

**CONSENT**
The undersigned hereby irrevocably consents to the assignment of the Agreement(s) to Transferee in connection with the transfer of the Assets.

By: _____
Name: _____
Title _____
Dated: _____

**EXHIBIT 5.6(a)**

**RETAINED EMPLOYEES**

Walter C. Bowen

Dennis Parfitt

Steve Gish

Barclay Grayson

Michael Baugh

Francesca Barrett

Blair Martini

Pat Youngren

Alma Metternich

All employees located at facilities operated by BPMSL other than the Facilities.

EXHIBIT G—5.6(a) RETAINED EMPLOYEES

**EXHIBIT 5.6(b)**

**NON-SOLICIT EMPLOYEES**

Any employee of BPMSL

Barclay Grayson

EXHIBIT H—5.6(b) NON-SOLICIT EMPLOYEES

**EXHIBIT 6.10(a)**

**BPMSL AFFILIATES**

1. Bowen Property Management Company
2. BPM Senior Living Company
3. BDC Advisors, LLC
4. BDC/Las Vegas II, LLC (Regency Palms)
5. BDC/Milwaukie, LLC (Royalton Place)
6. BDC/Eugene, LLC (Waterford Grand)
7. BDC/Bend, LLC
8. BDC/Las Vegas, LLC (Acacia Springs)
9. BDC/Las Vegas Three, LLC (Heritage Springs)
10. BDC/Riverside, LLC (Magnolia Village)
11. Sterling Park, L.L.C., (Overlake Terrace)
12. Regency Park Apartments Limited Partnership (Regency Park)
13. BDC/Corvallis, LLC (The Regent)
14. All apartments (not assisted living facilities) owned by Walter C. Bowen
15. BDC/Portland Self Storage, LLC
16. NW 16th Storage, LLC.
17. BDC/West Covina II, LLC (Regency Grand at West Covina)

EXHIBIT I—6.10(a) BPMSL AFFILIATES

**Exhibit K**

**Attachment to Section 2.23(h) of Disclosure Letter**

See Attached

EXHIBIT J

**SECTION 8.2**

**Section 8.2(d):**

- **Sheldon Park**: The Purchase Agreement is not binding on Christine Investments, LLC without the written consent of the co-tenant Christine Investments, LLC, an Oregon limited liability company. This consent has been obtained, subject to no decrease in the Purchase Price allocation to Sheldon Park set forth in Exhibit 1.7 to the Purchase Agreement, other than for such prorations and adjustments as otherwise provided for in the Purchase Agreement.

EXHIBIT K

**Exhibit 10.4**

EXECUTION VERSION

**AMENDMENT NO. 2 TO**
**AMENDED AND RESTATED PURCHASE AGREEMENT**

This AMENDMENT NO. 2 TO AMENDED AND RESTATED PURCHASE AGREEMENT (this "Amendment"), dated as of April 11, 2012, amends that certain Amended and Restated Purchase Agreement, dated as of February 27, 2012, by and among the Purchasers and the Sellers named therein and Walter C. Bowen ("Bowen") (for purposes of Sections 4.12, 4.17 and 6.10 and Article XI of the Agreement only) (as previously amended by Amendment No. 1 to Amended and Restated Purchase Agreement, dated as of March 30, 2012, the "Agreement"). The Purchasers, the Sellers and Bowen are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

W I T N E S S E T H

**WHEREAS**, the Parties have reviewed the Agreement, including the exhibits thereto, and desire to acknowledge and clarify its original intent and/or otherwise amend the Agreement by entering into this Amendment on the terms set forth below.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the undersigned hereby agree as follows:

1. **Interpretation**. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

2. **Notification Date**. "Notification Date" as used in Sections 5.1 and 6.11 of the Agreement shall hereby be deemed to refer to April 30, 2012.

3. **Entire Agreement; Full Force and Effect**. This Amendment and (subject to the amendment in this Amendment) the Agreement (together with the Disclosure Letter (as amended and restated) and the exhibits and other documents delivered pursuant thereto) and the Confidentiality Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof and thereof and shall supersede all previous negotiations, commitments, agreements and understandings (both oral and written) with respect to such subject matter. Except as amended or modified hereby, each term and provision of the Agreement is hereby ratified and confirmed and will and does remain in full force and effect.

4. **Counterparts**. This Amendment may be executed by facsimile signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

*[Remainder of page intentionally left blank.]*

**IN WITNESS WHEREOF**, the Parties have caused this Amendment to be executed as of the date first written above by their respective officers thereunto duly authorized.

**SELLERS:**

[**Regent Court]** **Regent/Corvallis, LLC**, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Desert Flower]** **Desert Flower LLC**, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Managing Member

**[Sun Oak]** **BPM/Citrus Heights Limited Partnership**, an Oregon limited partnership

By: Hambledon Investments, LLC, an Oregon limited liability company, its General Partner

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Sunshine Villa]**

**Cornell Springs Partners,** an Oregon joint venture, co-tenant

By: Cornell Springs Apartments Limited Partners, an Oregon limited partnership, a joint venture

By: /s/ Walter C. Bowen
Walter C. Bowen, General Partner

By: BDC/Santa Cruz, LLC, a joint venture

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**Regent/Eugene, LLC,** an Oregon limited liability company, co-tenant

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Canyon Creek]**

**Regent/Salt Lake, LLC**, an Oregon limited liability company

By: Hambledon Investments, LLC, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Sheldon Park]**

**Regent/Eugene, LLC**, an Oregon limited liability company, co-tenant

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Willow Park]**

**Regent/Boise, LLC,** an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Orchard Park]**

**RAL/Clovis, Inc.**, an Oregon corporation

By: /s/ Walter C. Bowen
Walter C. Bowen, CEO

**PURCHASERS:**

**B Healthcare Properties LLC**, a Delaware limited liability company

By: /s/ Andrew White

/s/ Walter C. Bowen
Walter C. Bowen

**Exhibit 10.5**

EXECUTION VERSION

**AMENDMENT NO. 3 TO**
**AMENDED AND RESTATED PURCHASE AGREEMENT**

This AMENDMENT NO. 3 TO AMENDED AND RESTATED PURCHASE AGREEMENT (this "Amendment"), dated as of April 27, 2012, amends that certain Amended and Restated Purchase Agreement, dated as of February 27, 2012, by and among the Purchasers and the Sellers named therein and Walter C. Bowen ("Bowen") (for purposes of Sections 4.12, 4.17 and 6.10 and Article XI of the Agreement only) (as previously amended by Amendment No. 1, dated as of March 30, 2012, and Amendment No. 2, dated as of April 11, 2012, the "Agreement"). The Purchasers, the Sellers and Bowen are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

W I T N E S S E T H

**WHEREAS**, the Parties have reviewed the Agreement, including the exhibits thereto, and desire to acknowledge and clarify its original intent and/or otherwise amend the Agreement by entering into this Amendment on the terms set forth below.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the undersigned hereby agree as follows:

1. **Interpretation**. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

2. **Notification Date**. "Notification Date" as used in Sections 5.1 and 6.11 of the Agreement shall hereby be deemed to refer to May 11, 2012.

3. Rent Roll. Section 9.2(a)(xii) of the Agreement shall be deleted and the following inserted in lieu thereof:

"A then current rent roll for each Facility certified by the respective Seller as of the Closing Date as true, complete and accurate in all material respects, which shall include such information as was provided in the rent rolls provided in Section 2.7(b) of the Disclosure Letter and the information required by Section 8.2(m)."

4. **Entire Agreement; Full Force and Effect**. This Amendment and (subject to the amendment in this Amendment) the Agreement (together with the Disclosure Letter (as amended and restated) and the exhibits and other documents delivered pursuant thereto) and the Confidentiality Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof and thereof and shall supersede all previous negotiations, commitments, agreements and understandings (both oral and written) with respect to such subject matter. Except as amended or modified hereby, each term and provision of the Agreement is hereby ratified and confirmed and will and does remain in full force and effect.

5. **Counterparts**. This Amendment may be executed by facsimile signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

*[Remainder of page intentionally left blank.]*

**IN WITNESS WHEREOF**, the Parties have caused this Amendment to be executed as of the date first written above by their respective officers thereunto duly authorized.

**SELLERS:**

[**Regent Court]**

**Regent/Corvallis, LLC**, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Desert Flower]**

**Desert Flower LLC**, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Managing Member

**[Sun Oak]**

**BPM/Citrus Heights Limited Partnership**, an Oregon limited partnership

By: Hambledon Investments, LLC, an Oregon limited liability company, its General Partner

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Sunshine Villa]**

**Cornell Springs Partners,** an Oregon joint venture, co-tenant

By: Cornell Springs Apartments Limited Partners, an Oregon limited partnership, a joint venturer

By: /s/ Walter C. Bowen
Walter C. Bowen, General Partner

By: BDC/Santa Cruz, LLC, a joint venturer

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**Regent/Eugene, LLC,** an Oregon limited liability company, co-tenant

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Canyon Creek]**

**Regent/Salt Lake, LLC**, an Oregon limited liability company

By: Hambledon Investments, LLC, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Sheldon Park]**

**Regent/Eugene, LLC**, an Oregon limited liability company, co-tenant

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Willow Park]**

**Regent/Boise, LLC,** an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Orchard Park]**

**RAL/Clovis, Inc.**, an Oregon corporation

By: /s/ Walter C. Bowen
Walter C. Bowen, CEO

**PURCHASERS:**

**B Healthcare Properties LLC**, a Delaware limited liability company

By: /s/ Andrew White

/s/ Walter C. Bowen
Walter C. Bowen

**Exhibit 10.6**

EXECUTION VERSION

**AMENDMENT NO. 4 TO**
**AMENDED AND RESTATED PURCHASE AGREEMENT**

This AMENDMENT NO. 4 TO AMENDED AND RESTATED PURCHASE AGREEMENT (this "Amendment"), dated as of June 14, 2012, amends that certain Amended and Restated Purchase Agreement, dated as of February 27, 2012, by and among the Purchasers and the Sellers named therein and Walter C. Bowen ("Bowen") (for purposes of Sections 4.12, 4.17 and 6.10 and Article XI of the Agreement only) (as previously amended by Amendment No. 1, dated as of March 30, 2012, Amendment No. 2, dated as of April 11, 2012, and Amendment No. 3 dated as of April 27, 2012, and as amended hereby, the "Agreement"). The Purchasers, the Sellers and Bowen are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

W I T N E S S E T H

**WHEREAS**, the Parties have reviewed the Agreement, including the exhibits thereto, and desire to acknowledge and clarify its original intent and/or otherwise amend the Agreement by entering into this Amendment on the terms set forth below.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the undersigned hereby agree as follows:

1. **Interpretation**. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

2. **Closing Deadline Date**. "Closing Deadline Date" as used in the Agreement shall hereby be defined as July 18, 2012.

3. **Amount of Deposit**. The first paragraph of Section 1.4 of the Agreement is replaced in its entirety with the following language:

"The Purchasers have delivered One Million Six Hundred Eighty-Nine Thousand Three Hundred Twenty Dollars ($1,689,320) to the Escrow Agent as earnest money deposit (such amount, as shall be increased pursuant to the following sentence, together with all interest accrued thereon, the "Deposit"). Pursuant to that certain Deposit Escrow Agreement, effective as of August 26, 2011 (as amended by Amendment No. 1, dated of October 10, 2012, Amendment No. 2, dated as of February 27, 2012, and Amendment No. 3, dated as of June 14, 2012, and as such agreement may be further amended in the future, the "Deposit Escrow Agreement"), by and among the Purchasers, the Sellers and the Escrow Agent, on June 15, 2012 the Purchasers shall deliver to the Escrow Agent an additional Three Million Three Hundred Ten Thousand Six Hundred Eighty Dollars ($3,310,680) resulting in an amount of Five Million Dollars ($5,000,000) as the Deposit. The Deposit shall be

allocated among the Facilities based on the allocation of the Purchase Price as provided in Section 1.7. The Escrow Agent shall hold the Deposit in one or more interest bearing accounts as directed by the Purchasers."

4. **Disposition of Deposit**. Sections 1.4(b) and 1.4(c) shall hereby by modified to add the following language immediately following the words 'Section 10.1(c)": "or Section 10.1(f)".

5. **Notification Date**. "Notification Date" as used in Sections 4.16 of the Agreement shall hereby be deemed to refer to the date of this Amendment.

6. **Assumed Contracts and Assumed Equipment Leases**. Section 5.1 of the Agreement shall be replaced in its entirety with the following:

"Assumption of Contracts, Equipment Leases and Tenant Leases. The Purchasers shall review the Contracts and the Equipment Leases during the period ending on June 14, 2012 and by such date shall give notice to the Sellers indicating which of the Contracts and the Equipment Leases that the Purchasers will not assume at Closing (the "Rejected Contracts"), provided that the Contracts listed on Exhibit 5.1(a) shall not be included as Rejected Contracts. The Sellers shall be responsible for all costs and expenses of terminating Rejected Contracts, including any costs or expenses that arise after the Closing Date in connection therewith. Promptly following receipt of the notice of Rejected Contracts from Purchaser, the Sellers shall deliver to all parties under each Contract and Equipment Lease that is not a Rejected Contract and requires consent for assignment, an assignment request letter in substantially the form provided by the Purchasers (it being understood that the Purchasers and the Sellers hereby waive any confidentiality rights related to such communications). All Contracts and Immaterial Contracts and Equipment Leases of the Sellers other than (i) Rejected Contracts and (ii) those Contracts, Immaterial Contracts and Equipment Leases that are not assignable, are herein collectively referred to, respectively, as the "Assumed Contracts" and the "Assumed Equipment Leases" and at Closing, the Parties shall execute and enter into the form of assignment and assumption agreement set forth herein in Exhibit 5.1(b) (the "Assignment and Assumption Agreement") whereby the Sellers shall assign and the Purchasers shall assume the Assumed Contracts, the Assumed Equipment Leases and the Tenant Leases. The Sellers shall bear any costs and expenses of obtaining any consents to such assumption of the Assumed Contracts, the Assumed Equipment Leases and the Tenant Leases. To the extent that the applicable counterparties are unwilling to enter into agreements with respect to any such Contract or Equipment Lease, if Purchasers desire the benefits of such Contract or Equipment Lease, Purchasers and Sellers shall negotiate in good faith a mutually agreeable alternative arrangement, that is feasible under the terms of the respective Contract or Equipment Lease, so that the

Purchasers or their designee(s) will have the benefits and obligations of such Contract or Equipment Lease as though it had been assigned, which arrangement shall include that the Purchasers shall indemnify Sellers with respect to Sellers' payment and performance obligations under such Contract or Equipment Lease. All amounts payable under the Assumed Contracts, the Assumed Equipment Leases and the Tenant Leases shall be prorated through the Closing Date pursuant to Sections 9.4 and 9.6."

7. **Termination**. Section 10.1(d) of the Agreement shall be replaced in its entirety with the following:

"by the Purchasers pursuant to Sections 1.8, 4.8(b), 6.8, 6.11 or Article VIII."

8. **Closing Condition**. The Agreement is hereby amended to add the following provision as Section 8.2(p):

"The Sellers shall have deposited, or shall have caused to be deposited, into the Operating Account (as defined in each of the management agreements for the Nevada Facilities) the following amounts: $354,000 for Acacia Springs; $378,000 for Heritage Springs; $340,000 for Regency Palms (provided that such condition shall be deemed satisfied if such amounts are funded immediately following the Closing with the proceeds of the Purchase Price pursuant to an irrevocable written direction prior to Closing by the Sellers to Escrow Agent)."

9. **Exhibits**. The Parties agree that Exhibit 5.1(b) to the Agreement is hereby replaced with the exhibit attached as Exhibit 5.1(b) to the Amended and Restated Purchase Agreement prior to the replacement of such exhibit pursuant to Amendment No. 1 to the Agreement.

10. **Insurance**. The Purchasers shall pay to the Sellers, at Closing, an amount equal to $102,366 to compensate the Sellers for costs incurred by the Sellers to maintain medical and dental insurance for its employees during the month of July, 2012. The Seller shall terminate, or cause to be terminated, all such medical and dental coverage effective as of the Closing.

11. **Approved Collateral**. Notwithstanding anything to the contrary contained in the Purchase Agreement, for the purposes of satisfying the requirements of Section 11.17(c)(ii) of the Purchase Agreement, Bowen shall have the option, exercisable by delivery of written notice to the Purchasers not less than five (5) days prior to the Closing Date, to as of the Closing Date deliver either the Mortgage pursuant to the terms of Section 11.17 or deposit $700,000 in an account with First Republic Bank subject to a Deposit Account Control Agreement in favor of Purchasers (and each of their assigns pursuant to Section 11.6). The Deposit Account Control Agreement shall be deemed a "Security Document" subject to release in accordance with Section 11.17(g). In the event of settlement or final adjudication of a claim against Bowen under the Guarantee, funds in the account shall be released to Purchasers to be applied against the amount owed by

Bowen to Purchasers. Failure of Bowen to timely deliver written notice of his election to the Purchasers pursuant to this Section 10 shall be deemed an election to deliver the Mortgage at Closing.

12. **Entire Agreement; Full Force and Effect.** This Amendment and (subject to the amendment in this Amendment) the Agreement (together with the Disclosure Letter (as amended and restated) and the exhibits and other documents delivered pursuant thereto) and the Confidentiality Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof and thereof and shall supersede all previous negotiations, commitments, agreements and understandings (both oral and written) with respect to such subject matter. Except as amended or modified hereby, each term and provision of the Agreement is hereby ratified and confirmed and will and does remain in full force and effect.

13. **Counterparts**. This Amendment may be executed by facsimile signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

*[Remainder of page intentionally left blank.]*

**IN WITNESS WHEREOF**, the Parties have caused this Amendment to be executed as of the date first written above by their respective officers thereunto duly authorized.

**SELLERS:**

[**Regent Court]**

**Regent/Corvallis, LLC**, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Desert Flower]**

**Desert Flower LLC**, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Managing Member

**[Sun Oak]**

**BPM/Citrus Heights Limited Partnership**, an Oregon limited partnership

By: Hambledon Investments, LLC, an Oregon limited liability company, its General Partner

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

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By: Cornell Springs Apartments Limited Partners, an Oregon limited partnership, a joint venturer

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By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

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By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

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By: Hambledon Investments, LLC, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Sheldon Park]**

**Regent/Eugene, LLC**, an Oregon limited liability company, co-tenant

By /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Willow Park]**

**Regent/Boise, LLC,** an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Orchard Park]**

**RAL/Clovis, Inc.**, an Oregon corporation

By: /s/ Walter C. Bowen
Walter C. Bowen, CEO

**PURCHASERS:**

**B Healthcare Properties LLC**, a Delaware limited liability company

By: /s/ Andrew White

Signature Page to Amendment No. 4

/s/ Walter C. Bowen
Walter C. Bowen

Signature Page to Amendment No. 4

**Exhibit 10.7**

EXECUTION VERSION

**AMENDMENT NO. 5 TO**
**AMENDED AND RESTATED PURCHASE AGREEMENT**

This AMENDMENT NO. 5 TO AMENDED AND RESTATED PURCHASE AGREEMENT (this "Amendment"), dated as of July 16, 2012, amends that certain Amended and Restated Purchase Agreement, dated as of February 27, 2012, by and among the Purchasers and the Sellers named therein and Walter C. Bowen ("Bowen") (for purposes of Sections 4.12, 4.17 and 6.10 and Article XI of the Agreement only) (as previously amended by Amendment No. 1, dated as of March 30, 2012, Amendment No. 2, dated as of April 11, 2012, Amendment No. 3 dated as of April 27, 2012, Amendment No. 4 dated as of June 14, 2012, and as amended hereby, the "Agreement"). The Purchasers, the Sellers and Bowen are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

W I T N E S S E T H

**WHEREAS**, the Parties have reviewed the Agreement, including the exhibits thereto, and desire to acknowledge and clarify its original intent and/or otherwise amend the Agreement by entering into this Amendment on the terms set forth below.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the undersigned hereby agree as follows:

1. **Interpretation**. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

2. **Closing**. The first sentence in Section 1.2 of the Agreement is hereby amended and restated as follows:

Unless this Agreement shall have been terminated pursuant to Article X, the closing hereunder (the "Closing") shall occur on July 18, 2012 or July 19, 2012 at the sole election of the Purchasers (the "Closing Deadline Date"), so long as Purchasers deliver notice of such election to the Sellers and their counsel at the email addresses set forth in Exhibit 1.8 at or prior to 9:00 a.m. (PDT) on July 17, 2012, provided, if no notice is delivered by such time the Closing Deadline Date shall be extended to July 20, 2012.

3. **Indemnification**. The Sellers shall indemnify the Purchasers from any Purchaser Indemnified Losses in connection with the compliance by the Purchasers of obligations imposed upon Purchasers by the Arizona Department of Health Services in connection with the Enforcement Meeting Agreement Form to be executed by the Sellers. Such indemnification obligation of the Sellers shall not be subject to the Seller Basket.

4. **Entire Agreement; Full Force and Effect** This Amendment and (subject to the amendment in this Amendment) the Agreement (together with the

Disclosure Letter (as amended and restated) and the exhibits and other documents delivered pursuant thereto) and the Confidentiality Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof and thereof and shall supersede all previous negotiations, commitments, agreements and understandings (both oral and written) with respect to such subject matter. Except as amended or modified hereby, each term and provision of the Agreement is hereby ratified and confirmed and will and does remain in full force and effect. No provision of this Amendment shall be construed as a waiver of any right of any Party except as expressly set forth in this Amendment.

5. **Counterparts**. This Amendment may be executed by facsimile signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

*[Remainder of page intentionally left blank.]*

**IN WITNESS WHEREOF**, the Parties have caused this Amendment to be executed as of the date first written above by their respective officers thereunto duly authorized.

**SELLERS:**

[**Regent Court]** **Regent/Corvallis, LLC**, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Desert Flower]** **Desert Flower LLC,** an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Managing Member

**[Sun Oak]** **BPM/Citrus Heights Limited Partnership**, an Oregon limited partnership

By: Hambledon Investments, LLC, an Oregon limited liability company, its General Partner

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Sunshine Villa]**

**Cornell Springs Partners,** an Oregon joint venture, co-tenant

By: Cornell Springs Apartments Limited Partners, an Oregon limited partnership, a joint venturer

By: /s/ Walter C. Bowen
Walter C. Bowen, General Partner

By: BDC/Santa Cruz, LLC, a joint venturer

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**Regent/Eugene, LLC,** an Oregon limited liability company, co-tenant

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Canyon Creek]**

**Regent/Salt Lake, LLC**, an Oregon limited liability company

By: Hambledon Investments, LLC, an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Sheldon Park]**

**Regent/Eugene, LLC**, an Oregon limited liability company, co-tenant

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Willow Park]**

**Regent/Boise, LLC,** an Oregon limited liability company

By: /s/ Walter C. Bowen
Walter C. Bowen, Manager

**[Orchard Park]**

**RAL/Clovis, Inc.**, an Oregon corporation

By: /s/ Walter C. Bowen
Walter C. Bowen, CEO

**PURCHASERS:**

**B Healthcare Properties LLC**, a Delaware limited liability company

By: /s/ Andrew White

/s/ Walter C. Bowen
Walter C. Bowen

**Exhibit 10.8**

Bastion/Oak Grove
EXECUTION VERSION

MASTER CREDIT FACILITY AGREEMENT

BY AND AMONG

**BORROWERS SIGNATORY HERETO,**

**PROPCO LLC and TRS LLC (Guarantor)**

AND

**OAK GROVE COMMERCIAL MORTGAGE, LLC**

dated as of

July 18, 2012

TABLE OF CONTENTS

**EXHIBITS**

**MASTER CREDIT FACILITY AGREEMENT**

THIS MASTER CREDIT FACILITY AGREEMENT (this "**Agreement**") is made as of July 3, 2012, by and among (i) (a) **CANYON CREEK OWNER LLC**, (b) **DESERT FLOWER OWNER LLC**, (c) **ORCHARD PARK OWNER LLC**, (d) **REGENT COURT OWNER LLC**, (e) **SHELDON PARK OWNER LLC**, (f) **SUN OAK OWNER LLC**, (g) **SUNSHINE VILLA OWNER LLC**, (h) **WILLOW PARK OWNER LLC**, each a Delaware limited liability company, and (i) such Additional Borrowers as may from time to time become borrowers under this Agreement (individually and collectively, "**Borrower**"); (ii) (a) **PROPCO LLC**, a Delaware limited liability company and (b) **TRS LLC**, a Delaware limited liability company (individually and together, "**Guarantor**"); and (iii) **OAK GROVE COMMERCIAL MORTGAGE, LLC**, a Delaware limited liability company ("**Lender**").

**RECITALS:**

A. Borrower owns one (1) or more Seniors Housing Facilities (unless otherwise defined or the context clearly indicates otherwise, capitalized terms shall have the meanings ascribed to such terms in Appendix I of this Agreement) as more particularly described in Exhibit A to this Agreement.

B. Borrower has requested that Lender establish a Credit Facility in the original principal amount of $88,400,000 in favor of Borrower, comprised initially of a $23,400,000 Variable Facility, all or part of which can be converted to a Fixed Facility in accordance with, and subject to, the terms and conditions of this Agreement and a $65,000,000 Fixed Facility.

C. To secure the obligations of Borrower under this Agreement and the other Loan Documents issued in connection with the Credit Facility, Borrower shall create a Collateral Pool in favor of Lender. The Collateral Pool shall be comprised of (i) certain Seniors Housing Facilities owned by Borrower and (ii) any other collateral pledged to Lender from time to time by any Borrower pursuant to this Agreement or any other Loan Documents. As of the Initial Closing Date, the Collateral Pool shall consist of the Mortgaged Properties listed on Exhibit A.

D. Each Note and Security Document shall be cross-defaulted (i.e., a default under any Note, Security Document, or under this Agreement, shall constitute a default under each other Note, Security Document, and this Agreement) and cross-collateralized (i.e., each Security Instrument shall secure all of Borrower's obligations under this Agreement and the other Loan Documents) and it is the intent of the parties to this Agreement that Lender may accelerate any Note without the obligation, but with the right to accelerate any other Note and that in the exercise of its rights and remedies under the Loan Documents, Lender may, except as provided in this Agreement, exercise and perfect any and all of its rights and remedies in and under the Loan Documents with regard to any Mortgaged Property without the obligation, but with the right to exercise and perfect its rights and remedies with respect to any other Mortgaged Property and that any such exercise shall be without regard to the Allocable Facility Amount assigned to such Mortgaged Property and that Lender may recover an amount equal to the full amount Outstanding in respect of any of the Notes in connection with such exercise and any such amount shall be applied to the Obligations as determined by Lender.

E. Guarantor has an economic interest in Borrower or will otherwise obtain a material financial benefit from the Credit Facility.

F. Subject to the terms, conditions and limitations of this Agreement, Lender has agreed to establish the Credit Facility.

NOW, THEREFORE, Borrower, Lender and Guarantor, in consideration of the mutual promises and agreements contained in this Agreement, hereby agree as follows:

## ARTICLE 1
## THE COMMITMENT

**Section 1.01. The Commitment.**

Subject to the terms, conditions and limitations of this Agreement:

(a) Variable Facility Commitment. Subject to the terms and conditions of this Agreement, Lender agrees to make one or more Variable Advances to Borrower on the Initial Closing Date in the aggregate amount of the Variable Facility Commitment in effect on the Initial Closing Date. Subject to the availability of Future Advances pursuant to Section 2.05 and Article 3 and all other terms and conditions of this Agreement, Lender may agree to make one or more additional Variable Advances to Borrower. At such time that any additional Variable Advance may be made, the Variable Facility Commitment shall be increased by such Variable Advance amount. The aggregate principal balance of the Variable Advances Outstanding at any time shall not exceed the Variable Facility Commitment. The repayment in full of a Variable Advance shall permanently reduce the Variable Facility Commitment by the original principal amount of such Variable Advance. The repayment in part of a Variable Advance shall permanently reduce the Variable Facility Commitment by such repaid amount. Borrower may not re-borrow any part of any Variable Advance that it has previously borrowed and repaid. Subject to the terms, conditions and limitations of this Agreement, Borrower may convert all or part of any Variable Advance to a Fixed Advance.

(b) Fixed Facility Commitment. Subject to the terms and conditions of this Agreement, Lender agrees to make one or more Fixed Advances to Borrower on the Initial Closing Date in the aggregate amount of the Fixed Facility Commitment in effect on the Initial Closing Date. Subject to the availability of Future Advances pursuant to Section 2.05 and Article 3 and all other terms and conditions of this Agreement, Lender may agree to make one or more additional Fixed Advances to Borrower from time. At such time that any additional Fixed Advance may be made, the Fixed Facility Commitment shall be increased by such Fixed Advance amount. The aggregate principal amount of the Fixed Advances Outstanding shall not exceed the Fixed Facility Commitment. The repayment in full of a Fixed Advance shall permanently reduce the Fixed Facility Commitment by the original principal amount of such Fixed Advance. The repayment in part of a Fixed Advance shall permanently reduce the Fixed Facility Commitment by such repaid amount. Borrower may not re-borrow any part of any Fixed Advance which it has previously borrowed and repaid.

**Section 1.02. Requests for Advances.**

Borrower shall request an Advance by giving Lender an Advance Request. The Advance Request shall indicate whether the Request is for a Fixed Advance, a Variable Advance, or both.

**Section 1.03. Maturity Date of Advances; Prepayment.**

(a) Maturity Date of Variable Advances. Subject to the terms and conditions of Section 1.10, the maturity date of each Variable Advance shall be specified in the Advance Request by Borrower for such Variable Advance, provided that such maturity date shall be no earlier than the date that is the first day of the month following the date five (5) years after the Closing Date of such Variable Advance, and no later than the date that is the first day of the month following the date ten (10) years after the Closing Date of such Advance, provided no maturity date shall be later than the date that is the first day of the month following the date fifteen (15) years after the Initial Closing Date. The term of the Variable Advance made on the Initial Closing Date shall be seven (7) years.

(b) Maturity Date of Fixed Advances. Subject to the terms and conditions of Section 1.10, the maturity date of each Fixed Advance shall be specified by Borrower in the Advance Request for such Fixed Advance, provided that such maturity date shall be no earlier than the date that is the first day of the month following the date five (5) years after the Closing Date of such Fixed Advance and no later than the first day of the month following the date ten (10) years after the Closing Date of such Fixed Advance, provided no maturity date shall be later than the date that is the first day of the month following the date fifteen (15) years after the Initial Closing Date. The term of the Fixed Advance made on the Initial Closing Date shall be seven (7) years.

(c) Prepayment of Advances. Borrower may prepay all or a portion of any Advance pursuant to the prepayment provisions of the applicable Note and otherwise in accordance with this Agreement. Any repaid Advances shall automatically result in a permanent reduction of the Commitment.

**Section 1.04. Interest on Advances.**

(a) Partial Month Interest. If a Fixed Advance or Variable Advance is not made on the first day of a calendar month, Borrower shall pay interest on the original stated principal amount of such Advance for the partial month period commencing on the Closing Date for such Advance and ending on the last day of the calendar month in which the Closing Date occurs. Borrower shall pay interest for such partial month on any such Advance at a rate per annum equal to interest rate described in the applicable Note.

(b) Interest on Advances. Each Advance shall bear interest at a rate, per annum, as set forth in the applicable Note.

**Section 1.05. Notes.**

The obligation of Borrower to repay each Advance shall be evidenced by a separate Fixed Facility Note or Variable Facility Note. Each Note shall be payable to the order of Lender and shall be made in the original principal amount of such Advance.

**Section 1.06. Conversion of Variable Advances to Fixed Advances.**

(a) Right to Convert. Subject to the terms and conditions of this Agreement, including without limitation Section 1.10 below, Borrower shall have the right, from time to time during the Conversion Availability Period, to convert all or any portion of a Variable Advance to one (1) or more Fixed Advances (a "**Conversion**"). The Variable Facility Commitment shall be reduced by, and the Fixed Facility Commitment shall be increased by, such converted amount. No prepayment premiums shall be due in connection with such Conversion except in connection with a prepayment as provided in Section 1.07(c).

(b) Request. To convert all or a portion of a Variable Advance to one (1) or more Fixed Advances, Borrower shall deliver a Conversion Request to Lender.

**Section 1.07. Conditions and Limitations on Right to Convert Advances.**

Borrower's right to convert all or a portion of a Variable Advance to one (1) or more Fixed Advances is subject to the terms and conditions of this Agreement, including without limitation Section 1.10 and the following limitations:

(a) Minimum Request. Each Conversion Request shall be in the minimum amount of $5,000,000, or any lesser amount of the Variable Advances then Outstanding.

(b) Compliance with Coverage and LTV Tests. Immediately after the proposed Conversion, the Coverage and LTV Tests shall be satisfied.

(c) Failure to Underwrite. In the event that the Coverage and LTV Tests would not be satisfied after the proposed Conversion, if Borrower continues to elect the Conversion, Borrower shall prepay a portion of the Advances Outstanding pursuant to Section 3.04(e) to meet the Coverage and LTV Tests and shall pay all prepayment premiums and other fees associated with such prepayment.

(d) Maturity Date of Converted Advances. Upon Conversion, such Advance shall have a maturity date elected by Borrower that shall be no earlier than the date that is the first day of the month following the date five (5) years after the Closing Date of such Conversion, and subject to Section 1.03(b), not later than the first day of the month following the date fifteen (15) years after the Initial Closing Date.

(e) General Conditions. Satisfaction of all applicable General Conditions contained in Section 5.01 and Section 5.07 on or before the Closing Date.

(f) Closing. The Closing Date shall occur during the Conversion Availability Period on a Rate Change Date. The Closing Date of a Conversion shall not be earlier than thirty (30) Business Days after Lender's receipt of the Conversion Request (or on such other date as Borrower and Lender may agree). Lender and Borrower shall execute and deliver, at the sole cost and expense of Borrower, in form and substance satisfactory to Lender, the Conversion Documents to be effective as of the Closing Date.

**Section 1.08. Interest Rate for Converted Advance.**

The interest rate for any converted Advance shall be determined pursuant to the terms of Section 2.01 of this Agreement. The Margin applicable to the converted Advance shall be determined by Lender prior to such Conversion; provided that (a) with respect to an Advance converted within five (5) years of the original closing of such Variable Advance, the portion of the Margin comprising the Fixed Facility Fee for such converted Advance shall equal the Variable Facility Fee in effect at the original closing of such Variable Advance, and (b) with respect to an Advance converted after five (5) years of the original closing of such Variable Advance, the portion of the Margin comprising the Fixed Facility Fee for such converted Advance shall be mutually agreed to by Lender and Borrower.

**Section 1.09. Interest Rate Protection.**

(a) If required by Lender at the time of any Advance, to protect against fluctuations in interest rates during the term of this Agreement, pursuant to the terms of the Cap Security Agreement, Borrower shall make arrangements for a LIBOR-based interest rate cap in form and substance satisfactory to Lender with a counterparty satisfactory to Lender ("**Interest Rate Cap**") to be in place and maintained at all times with respect to any Variable Advance that has been funded and remains Outstanding. The seller of the Interest Rate Cap (seller and its transferees and assigns, the "**Counterparty**") shall be a financial institution meeting the minimum requirements for hedge counterparties acceptable to Lender. The Interest Rate Cap shall have a minimum initial term of four (4) years. Borrower shall be required to make Monthly Deposits (as defined in the Cap Security Agreement) to be held in an Interest Rate Cap Reserve Account (as defined in the Cap Security Agreement). As set forth in the Cap Security Agreement, Borrower agrees to pledge its right, title and interest in the Interest Rate Cap to Lender as additional collateral for the Obligations.

**Section 1.10. Limitations on Executions.**

Notwithstanding anything in this Agreement or any other Loan Document to the contrary, any Future Advance, whether a Variable Advance or a Fixed Advance, and any Conversion of an Advance shall be subject to the precondition that Lender must confirm with Fannie Mae that Fannie Mae is generally offering to purchase in the marketplace advances of the execution type requested by Borrower at the time of the request and at the time of the Rate Setting Date for the requested Advance. In the event Fannie Mae is not purchasing advances of the type requested by

Borrower, Lender agrees to offer, to the extent available from Fannie Mae, alternative advance executions based on the types of executions Fannie Mae is generally offering to purchase in the marketplace at that time. Any alternative execution offered would be subject to mutually agreeable documentation necessary to implement the terms and conditions of such alternative execution.

## ARTICLE 2
## THE ADVANCES

**Section 2.01. Rate Setting for an Advance.**

Rates for an Advance (whether drawn or converted) shall be set in accordance with the following procedures:

(a) Preliminary, Nonbinding Quote. At Borrower's request Lender shall quote an estimate of the interest rate for such proposed Advance. Lender's quote shall be based on (i) a solicitation of bids from institutional investors selected by Lender, and (ii) the proposed terms and amount of the Advance selected by Borrower. The quote shall not be binding upon Lender.

(b) Rate Setting. If Borrower substantially satisfies all of the conditions to Lender's obligation to make an Advance (or convert a Note, as applicable), then Borrower may request that Lender submit to Borrower a completed draft Rate Form. The draft Rate Form shall specify the proposed maximum interest rate for such Advance ("**Maximum Annual Interest Rate**") and other terms set forth therein including, without limitation, the Fixed Facility Fee or the Variable Facility Fee, as applicable. If the draft Rate Form is approved by Borrower, Borrower shall execute and return the approved Rate Form to Lender before 4:00 p.m. Eastern Standard Time or Eastern Daylight Savings Time, as applicable, on any Business Day ("**Rate Setting Date**").

(c) Rate Confirmation. Within one (1) Business Day after receipt of the Rate Form and upon satisfaction of substantially all of the conditions to Lender's obligation to make such Advance (or for Conversion, as applicable), Lender shall solicit bids from institutional investors selected by Lender based on the information in the Rate Form. If Lender obtains a commitment ("**Funding Commitment**") on terms equivalent to (or better than) the terms in the draft Rate Form, Lender shall then complete and countersign the Rate Form thereby confirming the terms set forth therein, and shall immediately deliver the confirmed Rate Form to Borrower. The interest rate for such Advance, as set forth in the confirmed Rate Form, shall be the most favorable bid, not to exceed the Maximum Annual Interest Rate.

**Section 2.02. Breakage and Other Costs.**

If Lender obtains, and then fails to fulfill the Funding Commitment because the Advance is not made (or the Conversion does not occur, as applicable) (for a reason other than Lender's default unless Lender's default results from or is on account of a default by Borrower), Borrower shall pay all reasonable third party, out-of-pocket costs payable to the potential investor and other reasonable costs, fees and actual damages incurred by Lender in connection with such failure to fulfill the Funding Commitment. Lender reserves the right to require Borrower to post a deposit at the time the Funding Commitment is obtained. Such deposit shall be refunded to Borrower upon the settlement of the related MBS or purchase of the Note by Fannie Mae, as applicable. For any Funding Commitment entered into after the Initial Closing Date, Borrower's obligations under the Funding Commitment shall be secured by each Mortgaged Property.

**Section 2.03. Advances.**

(a) Initial Advance. In connection with the Initial Advance, if all conditions precedent contained in Section 5.02 and the General Conditions contained in Section 5.01 are satisfied on or before the Initial Closing Date, Lender shall make the Initial Advance on the Initial Closing Date.

(b) Future Advance. Subject to Lender's consent to the making of a Future Advance pursuant to the terms of Section 1.10 and Section 2.05, Borrower may submit an Advance Request for a Future Advance in the minimum amount of $5,000,000. If all conditions precedent contained in Section 5.03 and Section 3.02 (if such Future Advance is being made in connection with an addition of Mortgaged Property) and the General Conditions contained in Section 5.01 are satisfied, and Lender has approved an increase in the Commitment pursuant to Section 1.10 and Section 2.05, Lender shall make the Future Advance, at a closing to be held at offices reasonably designated by Lender on a Closing Date reasonably agreed to by Lender and Borrower, which date shall not be more than three (3) Business Days after Borrower's receipt from Lender of the confirmed Rate Form (or on such other date as Borrower and Lender may agree).

**Section 2.04. Determination of Allocable Facility Amount and Valuations.**

(a) Initial Determinations. On the Initial Closing Date, Lender shall determine (i) the Allocable Facility Amount and Valuation for each Initial Mortgaged Property, (ii) the Aggregate Debt Service Coverage Ratio and the Aggregate Loan to Value Ratio, and (iii) the Initial Advance Amount and the initial Commitment amount. Changes in Allocable Facility Amount, Valuations, the Aggregate Debt Service Coverage Ratio and the Aggregate Loan to Value Ratio shall be made pursuant to Section 2.04(b).

(b) Subsequent Monitoring Determinations.

(i) Once each Calendar Quarter, within twenty (20) Business Days after Borrower has delivered to Lender the reports required in Section 8.03, Lender shall determine the Aggregate Debt Service Coverage Ratio and the Aggregate Loan to Value Ratio. On the First Anniversary and on an annual basis thereafter, and if Lender decides that changed market or property conditions warrant, Lender shall redetermine Allocable Facility Amounts and Valuations. After the First Anniversary, Lender shall also redetermine Allocable Facility Amounts and Valuations before and after a Collateral Event and to take account of any Collateral Event or other event that invalidates the outstanding determinations. Upon receipt by Borrower of any such new determinations by Lender, Borrower shall promptly acknowledge such receipt.

(ii) Lender shall promptly disclose its determinations to Borrower. Until redetermined, the outstanding Allocable Facility Amounts and Valuations shall remain in effect.

Notwithstanding anything in this Agreement to the contrary, no change in Allocable Facility Amounts, Valuations, the Aggregate Loan to Value Ratio or the Aggregate Debt Service Coverage Ratio shall result in a Potential Event of Default or Event of Default.

**Section 2.05. Additional Financing; Future Advances Made on Decreases in Loan to Value Ratios and Increases in Debt Service Coverage Ratios**

(a) Subject to Section 1.10 and satisfaction of the conditions precedent in Section 5.01 and Section 5.03, Borrower may request an increase in the Commitment in order to draw additional financing with a fixed or variable interest rate (each such loan, a "**Future Advance**"). Any such Future Advance shall be subject to the Underwriting and Servicing Requirements. The Variable Facility Commitment and/or the Fixed Facility Commitment, as applicable, shall be increased by the amount of any Future Advance made by Lender. The maximum amount of any Future Advance shall be equal to or less than (x) the amount determined by the definition of "Advance Amount" and (y) the amount, when combined with Advances Outstanding, equal to or less than the maximum amount of Advances that could be Outstanding based on the Coverage and LTV Tests. Once made, any Future Advance hereunder shall be subject to this Agreement in all respects and shall be secured by the Security Instruments encumbering the Mortgaged Properties. Subject to the terms of Section 2.05(b) below, a Future Advance may be permitted with or without the addition of an Additional Mortgaged Property. Borrower agrees to pay the Additional Origination Fee, the Additional Collateral Due Diligence Fee (if an additional Mortgaged Property is added to the Collateral Pool in connection with such Future Advances), and any reasonable third party, out-of-pocket costs and expenses that may be charged by Lender in connection with a Future Advance. Notwithstanding the foregoing, under no circumstances shall Lender approve a request that results in the Aggregate Loan to Value Ratio exceeding ninety percent (90%).

(b) Pursuant to the provisions of Section 2.05(a), during the period beginning on the First Anniversary and ending on the Fifth Anniversary, but not more than twice during the term of the Credit Facility, Borrower may request and Lender may (subject to Section 1.10) consent to a Future Advance without the addition of Additional Mortgaged Property based on decreases in the Aggregate Loan to Value Ratio and increases in the Aggregate Debt Service Coverage Ratio as determined by Lender in accordance with this Agreement and the Underwriting and Servicing Requirements. Borrower shall pay an Additional Origination Fee in connection with each Advance made pursuant to this Section 2.05(b). Notwithstanding the foregoing, under no circumstances shall Lender approve a request that results in the Aggregate Loan to Value Ratio exceeding ninety percent (90%).

## ARTICLE 3
## COLLATERAL CHANGES

**Section 3.01. Right to Add Collateral.**

Subject to the availability of Future Advances pursuant to Section 2.05 and the terms and conditions of this Article 3, Borrower shall have the right to request additional proceeds and add Seniors Housing Facilities to the Collateral Pool.

**Section 3.02. Procedure for Adding Collateral.**

The procedure for adding Seniors Housing Facilities to the Collateral Pool contained in this Section 3.02 shall apply to all additions of Mortgaged Property, other than in connection with a Substitution.

(a) Request. From time to time, Borrower may deliver to Lender an Addition Request to add one (1) or more Seniors Housing Facilities to the Collateral Pool (the "**Addition**"). Each Addition Request shall be accompanied by: (i) the property-related information required by Lender, and (ii) the payment of all Additional Collateral Due Diligence Fees.

(b) Underwriting.

(i) Borrower may add one or more Additional Mortgaged Properties to the Collateral Pool provided that all of the following conditions precedent shall have been satisfied: (A)(1) the Additional Mortgaged Property meets the Individual Property Coverage and LTV Tests and (2) after such Addition, the Collateral Pool meets the Coverage and LTV Tests, (B) as of the Closing Date, the Additional Mortgaged Property shall be leased to an Operator pursuant to the Operating Lease and subject to a Management Agreement with a Manager, and (C) all other conditions for the Addition of such Additional Mortgaged Property and funding of any Future Advance set forth in Section 1.10, Section 2.05, Section 5.01, Section 5.03 and Section 5.04 shall have been satisfied.

(ii) Lender shall evaluate the proposed Additional Mortgaged Property for compliance with the requirements and conditions precedent set forth in this Agreement. Lender shall determine the Debt Service Coverage Ratio and the Loan to Value Ratio of the proposed Additional Mortgaged Property and the Aggregate Debt Service Coverage Ratio and the Aggregate Loan to Value Ratio applicable to the Collateral Pool. The Loan to Value Ratio and Aggregate Loan to Value Ratio shall be determined on the basis of the lesser of (A) the acquisition price of the proposed Additional Mortgaged Property if purchased by Borrower in an arms-length transaction within twelve (12) months of the related Addition Request, and (B) a Valuation made with respect to the proposed Additional Mortgaged Property.

(iii) After receipt of all reports, certificates and documents required to determine compliance with this Agreement, Lender shall notify Borrower whether the proposed Additional Mortgaged Property meets the requirements of this Section 3.02(b) for an Addition. If the proposed Additional Mortgaged Property meets the conditions set forth in this Agreement, Lender shall set forth the Aggregate Debt Service Coverage Ratio and the Aggregate Loan to Value Ratio that Lender estimates shall result from the Addition of the proposed Additional Mortgaged Property to the Collateral Pool and the Advance Amount. After receipt of Lender's written confirmation that the conditions for the proposed Addition are satisfied, Borrower shall notify Lender in writing whether it elects to add the proposed Additional Mortgaged Property to the Collateral Pool.

(c) Closing. If the proposed Additional Mortgaged Property meets the conditions set forth in this Section 3.02(b), Borrower timely elects to add the proposed Additional Mortgaged Property to the Collateral Pool, and all conditions precedent contained in Section 5.03, Section 5.04, and all General Conditions contained in Section 5.01 are satisfied, the proceeds of the applicable Future Advance shall be funded and the proposed Additional Mortgaged Property shall be added to the Collateral Pool, at a closing to be held at offices designated by Lender on a Closing Date agreed to by Lender, occurring within thirty (30) Business Days after Lender's receipt of Borrower's election (or on such other date as Borrower and Lender may agree).

**Section 3.03. Right to Obtain Releases of Collateral.**

Subject to the terms and conditions of this Article 3, Borrower shall have the right from time to time to obtain a release of a Mortgaged Property from the Collateral Pool.

**Section 3.04. Procedure for Obtaining Releases of Collateral.**

(a) Request. To obtain a release of a Mortgaged Property from the Collateral Pool (a "**Release**"), Borrower shall deliver a Release Request to Lender. Borrower shall not be permitted to re-borrow any amounts that will be prepaid in connection with the Release and any prepayments associated with such Release shall automatically result in a permanent reduction of the Fixed Facility Commitment or Variable Facility Commitment, as applicable.

(b) Conditions for Release. Lender shall release a Release Mortgaged Property pursuant to a Release Request upon satisfaction of all of the following conditions precedent:

(i) after giving effect to the Release, the Aggregate Loan to Value Ratio for the proposed Collateral Pool shall be less than or equal to the lesser of (A) the Aggregate Loan to Value Ratio of the Collateral Pool immediately prior to the release of the Release Mortgaged Property, and (B) sixty percent (60%);

(ii) after giving effect to the Release, the Aggregate Debt Service Coverage Ratio of the proposed Collateral Pool shall be equal to or greater than the greater of (A) the Aggregate Debt Service Coverage Ratio of the Collateral Pool immediately prior to the release of the Release Mortgaged Property, and (B) 1.55:1.0 for the portion of the Advances drawn from the Fixed Facility Commitment and 1.35:1.0 for the portion of the Advances drawn from the Variable Facility Commitment;

(iii) the Note selected by Borrower for repayment pursuant to Section 3.04(e) must permit prepayment at the time of the release (i.e., there is no lockout at the time of the release);

(iv) payment of the Release Price; and

(v) the requirements of Section 5.01 and Section 5.05 shall be satisfied.

(c) Release Price. The "**Release Price**" for each Release Mortgaged Property means the greater of:

(i) one hundred percent (100%) of the Allocable Facility Amount for the Release Mortgaged Property, or

(ii) one hundred percent (100%) of the amount of Advances Outstanding that are required to be repaid by Borrower to Lender in connection with the proposed release of the Release Mortgaged Property from the Collateral Pool so that, immediately after the release the conditions precedent set forth in clauses (i)-(ii) of Section 3.04(b) are satisfied.

In addition to the Release Price, Borrower shall pay to Lender all associated prepayment premiums, accrued interest and other amounts due under the Notes evidencing the Advances being repaid to and including the date such Advance may be repaid.

(d) Notwithstanding the foregoing, if any of the tests identified in clauses (b)(i) and (b)(ii) above would not be satisfied after the Release of the Mortgaged Property (but assuming clauses (b)(iii), (b)(iv) and (b)(v) above are satisfied), such Release shall be permitted provided that the Alternate Coverage and LTV Tests are met after giving effect to the Release and all other conditions in this Section 3.04 are met.

(e) Application of Release Price.

The Release Price for the Release Mortgaged Property shall be applied in reduction of the principal amounts of the Advances Outstanding in the order selected by Borrower, provided that (i) any amount of the Note that Borrower elects to prepay must be prepaid in full or, if the Release Price is not sufficient to do so, the Note shall be only partially prepaid; (ii) prepayment is permitted under such Note; (iii) any yield maintenance, fee maintenance, or other prepayment premium due and owing is paid; and (iv) interest is paid through the end of the month. If Borrower does not give Lender direction with respect to the application of the Release Price or if the selected Note does not comply with the provisions of (i) and (ii) above, then the Release Price shall be applied:

(A) first against any Variable Advance Outstanding so long as the prepayment is permitted under the Variable Facility Note (and any prepayment premium due and owing is paid), until any Variable Loan is no longer Outstanding (provided that, in the event there are multiple Variable Advances Outstanding, Lender shall determine the order of application of the Release Price taking into account factors including the unpaid principal balances of the Variable Facility Notes, and which Variable Facility Note Outstanding has the lowest prepayment costs or highest interest rate;

(B) then against any Fixed Advance Outstanding so long as the prepayment is permitted under the applicable Fixed Facility Note (and any prepayment premium due and owing is paid) (provided that, in the event there are multiple Fixed Advances Outstanding, Lender shall determine the order of application of the Release Price taking into account factors including the unpaid principal balances of the Fixed Facility Notes, and which Fixed Facility Note Outstanding has the lowest prepayment costs or the highest interest rate.

The Note to be prepaid or partially prepaid as determined pursuant to this Section 3.04(e), shall be referred to as the "**Selected Note**".

(f) Closing. If all requirements of this Section 3.04 are satisfied, Lender shall cause the Release Mortgaged Property to be released at a closing to be held at offices designated by Lender on a Closing Date agreed to by Lender and Borrower and occurring within thirty (30) days after Lender's receipt of the Release Request (or on such other date as Borrower and Lender may agree), by executing and delivering, and causing all applicable parties to execute and deliver, all at the sole cost and expense of Borrower, the Release Documents. At Lender's option, Borrower shall prepare the Release Documents and submit them to Lender for its review.

(g) Release of Borrower and Guarantor. Upon the Release of a Mortgaged Property, Borrower owning the Release Mortgaged Property shall be released as a party to this Agreement and automatically without further action, Borrower and Guarantor shall be released from their obligations with respect to the Release Mortgaged Property under this Agreement and the other Loan Documents, except for (i) any liabilities or obligations of such Borrower or Guarantor which arose prior to the Closing Date of such Release, (ii) any provisions of this Agreement and the other Loan Documents that are expressly stated to survive any release or termination, and (iii) any Obligations that survive release as specifically set forth in Section 18 (Environmental Hazards) of the Security Instrument. In connection with the Release of any Release Mortgaged Property, Lender shall take such actions and execute any such documents as may be reasonably requested by Borrower and Guarantor, and at Borrower's expense, to evidence the Release and to release any liens created by any Loan Document with respect to the Release Mortgaged Property and/or any other assets owned by Borrower owing such Release Mortgaged Property.

**Section 3.05. Substitutions.**

(a) Right to Substitute Collateral. Subject to the terms, conditions and limitations of Article 3 and Article 5, Borrower shall have the right during the period beginning on the First Anniversary and ending on the date twelve (12) months prior to the Termination Date to obtain the Release of one or more Release Mortgaged Properties from the Collateral Pool by replacing such Release Mortgaged Property with one (1) or more additional Mortgaged Properties that meet the requirements of this Agreement (the "**Substitute Mortgaged Property**") thereby effecting a "**Substitution**" of Collateral.

(b) Request. Borrower shall simultaneously deliver to Lender both a completed and executed Addition Request (unless a Substitute Mortgaged Property has not been identified by Borrower, in which case Borrower shall submit a Request that indicates a Substitute Mortgaged Property is undetermined, and not less than sixty (60) Calendar Days prior to the date on which Borrower desires to add such Substitute Mortgaged Property, but not later than sixty (60) Calendar Days prior to the Property Delivery Deadline (defined hereinafter) shall submit a supplemental Addition Request that identifies the proposed Substitute Mortgaged Property) and Release Request (together, the "**Substitution Request**"). Each Substitution Request shall be accompanied by the following: (i) the information required by the Underwriting and Servicing Requirements with respect to the proposed Substitute Mortgaged Property and any additional information Lender reasonably requests; and (ii) the payment of all Additional Collateral Due Diligence Fees.

(c) Underwriting.

(i) Lender shall evaluate the proposed Substitute Mortgaged Property for compliance with the requirements and conditions precedent set forth in this Agreement. Lender shall determine the Debt Service Coverage Ratio and the Loan to Value Ratio of the proposed Substitute Mortgaged Property and the Aggregate Debt Service Coverage Ratio and the Aggregate Loan to Value Ratio applicable to the Collateral Pool. The Loan to Value Ratio and Aggregate Loan to Value Ratio, shall be determined on the basis of the lesser of (A) the acquisition price of the proposed Substitute Mortgaged Property if purchased by Borrower in an arms-length transaction within twelve (12) months of the related Substitution Request, and (B) a Valuation made with respect to the proposed Substitute Mortgaged Property.

(ii) A Substitution shall be permitted provided that all of the following conditions precedent are satisfied:

(A)(1) the Aggregate Loan to Value Ratio of the proposed Collateral Pool immediately following the Substitution will be less than or equal to the lesser of (a) sixty percent (60%) and (b) the Aggregate Loan to Value Ratio of the Collateral Pool immediately prior to the Substitution; and

(2) the Aggregate Debt Service Coverage Ratio of the proposed Collateral Pool immediately following the Substitution will be greater than or equal to the greater of (a) 1.55:1.0 for the portion of the Advances drawn from the Fixed Facility Commitment and 1.35:1.0 for the portion of the Advances drawn from the Variable Facility Commitment and (b) the Aggregate Debt Service Coverage Ratio of the Collateral Pool immediately prior to the Substitution.

Notwithstanding the foregoing, if any of the tests identified in clauses (c)(ii)(A)(1) and (2) above are not satisfied, such Substitution shall be permitted provided that the Alternate Coverage and LTV Tests are met after giving effect to the Substitution and all other conditions in this Section 3.05 are met.

(B) as of the Closing Date, the Substitute Mortgaged Property shall be leased to an Operator pursuant to the Operating Lease and subject to a Management Agreement with a Manager; and

(C) all conditions precedent contained in this Section 3.05 and Section 5.01, Section 5.05 and Section 5.06 are satisfied.

(iii) After receipt of (1) the Substitution Request and (2) all reports, certificates and documents required to determine compliance with this Agreement, Lender shall notify Borrower whether the proposed Substitute Mortgaged Property meets the requirements of Section 3.05(c)(ii) for a Substitution. If the proposed Substitution meets the conditions set forth

in this Agreement, Lender shall calculate the Aggregate Debt Service Coverage Ratio and the Aggregate Loan to Value Ratio that Lender estimates shall result from the proposed Substitution. After receipt of Lender's written confirmation that the proposed Substitution will satisfy the conditions precedent of Section 3.05(c)(ii), Borrower shall notify Lender in writing whether it elects to add the proposed Substitute Mortgaged Property to the Collateral Pool.

(iv) Borrower may substitute one or more Mortgaged Properties that have Allocable Facility Amounts greater than the Allocable Facility Amount of the Release Mortgaged Property. Borrower may substitute one or more Substitute Mortgaged Properties that have an aggregate Allocable Facility Amount that is less than the Allocable Facility Amount of the Release Mortgaged Property, provided that if Borrower advises Lender that no further property will be substituted or the Property Delivery Deadline has elapsed, then Borrower shall promptly pay the Release Price applicable to such Release Mortgaged Property after taking into account the Substitute Mortgaged Property(ies) to be added to the Collateral Pool, together with all yield maintenance, fee maintenance or prepayment premiums that are payable in connection such prepayment amount.

(d) Closing. If the Substitution and the proposed Substitute Mortgaged Property satisfies all the conditions set forth in thisSection 3.05, and Borrower timely elects to cause such Substitution to occur, then the proposed Substitute Mortgaged Property(ies) shall be substituted into the Collateral Pool in replacement of the proposed Release Mortgaged Property, at a closing to be held at offices designated by Lender on a Closing Date agreed to by Lender and Borrower, and occurring —

(i) if the Substitution of the proposed Substitute Mortgaged Property(ies) is to occur simultaneously with the release of the proposed Release Mortgaged Property, within sixty (60) days after Lender's receipt of Borrower's Substitution Request (or on such other date to which Borrower and Lender may agree); or

(ii) if the Substitution of the proposed Substitute Mortgaged Property(ies) is to occur subsequent to the Release of the Release Mortgaged Property (a "**Staggered Substitution**"), within ninety (90) days after the effective date of the release of such Release Mortgaged Property (provided such date shall be extended an additional ninety (90) days if Borrower provides reasonable evidence of Borrower's diligent efforts in finding a suitable proposed Substitute Mortgaged Property) (the "**Property Delivery Deadline**").

(e) Substitution Deposit.

(i) The Deposit. If a Substitution is a Staggered Substitution, on or before the Closing Date of the Release of the Release Mortgaged Property, Borrower shall deposit with Lender the "**Substitution Deposit**" described below in the form of cash in a non-interest bearing account held by Lender as additional Collateral. In lieu of (or in partial satisfaction of) depositing cash for the Substitution Deposit, Borrower may post a Letter of Credit as additional Collateral issued by a financial institution acceptable to Lender in accordance with the terms of Section 5.11 of this Agreement, with a face amount available to be drawn equal to the Substitution Deposit (less any amount that has been deposited in cash).

(ii) Substitution Deposit Amount.

(A) The "**Substitution Deposit**" for each proposed Staggered Substitution shall be an amount equal to the sum of:

(1) the Release Price relating to the Release Mortgaged Property, plus

(2) any and all of the yield maintenance, fee maintenance or the prepayment premium, as applicable, for the Selected Note that shall be prepaid if the Substitution fails to take place, calculated as of the end of the month in which the Property Delivery Deadline occurs, as if the Selected Note were to be prepaid in such month; plus

(3) a deposit of $6,000 per Substitute Mortgaged Property to be applied towards the estimated third party, out-of-pocket costs and expenses and fees of Lender pertaining to the Substitution (the "**Substitution Cost Deposit**"); plus

(4) without duplication to any other amounts included in this definition of Substitution Deposit, in the event that (a) at the time of the Release no Note is prepayable (i.e. all Notes are subject to a lockout period) or (b) the Release Price is in excess of all Notes that are open to prepayment, all scheduled principal and interest due and owing through the end of the lockout period with respect to such Selected Note.

(B) The Substitution Cost Deposit shall be used by Lender to cover all reasonable third party, out-of-pocket costs and expenses incurred by Lender and Fannie Mae, including legal fees and expenses incurred by Fannie Mae and Lender in connection with such Substitution whether such Substitution actually closes (the "**Substitution Costs**"). On or prior to the Closing Date of the Substitution, Lender shall notify Borrower of the actual amount of the Substitution Costs incurred by Lender and Fannie Mae in connection with the Substitution and Borrower shall, on or before the Substitution Closing Date, pay to Lender the remainder of such Substitution Costs (if the actual amount of the Substitution Costs exceed the Substitution Cost Deposit and the other amounts previously deposited with Lender by Borrower) or Lender shall promptly refund to Borrower any Substitution Cost Deposit deposited with Lender by Borrower in excess of the Substitution Costs (if the actual amount of the Substitution Costs is less than the Substitution Cost Deposit deposited with Lender by Borrower).

(C) With respect to the Substitution Deposit, in determining which Notes shall be prepaid, the order of application shall be governed bySection 3.04(e).

(iii) Failure to Close Substitution. If the addition of the proposed Substitute Mortgaged Property does not occur by the Property Delivery Deadline in accordance with Section 3.05(d)(ii), then Borrower shall have irrevocably waived its right to substitute such Release Mortgaged Property with the proposed Substitute Mortgaged Property, and the release of

the Release Mortgaged Property shall be deemed to be a Release pursuant to Section 3.04 and shall trigger a prepayment of the Release Price, together with all yield maintenance, fee maintenance or prepayment premium then due in connection with such payment. In such event, Borrower shall pay Lender all amounts that would be payable under Section 3.04 upon such a Release and prepayment, and such payment shall be applied in the manner prescribed for Release Prices pursuant to Section 3.04(e). The Substitution Deposit shall be applied by Lender in payment of the Release Price, together with all yield maintenance, fee maintenance or prepayment premium then due in connection with such payment. Any portion of the Substitution Deposit not needed to make such payment shall be promptly refunded to Borrower after the Property Delivery Deadline.

(iv) Substitution Deposit Disbursement. At closing of the Substitution, Lender shall disburse or return the Substitution Deposit, as applicable (less any portion of the Substitution Costs), directly to Borrower at such time as the conditions precedent in Section 3.05, Section 5.01, Section 5.05 and Section 5.06 for the Substitution have been satisfied, which must occur no later than the Property Delivery Deadline. Notwithstanding the foregoing, in the event that Borrower adds a Substitute Property to the Collateral Pool prior to the Property Delivery Deadline but the addition of such Substitute Mortgaged Property has not in and of itself satisfied the requirements of Section 3.05(c)(ii)(A), the Substitution Deposit shall be reduced by the Allocable Facility Amount for such Substitute Mortgaged Property, and such reduction in the Substitution Deposit shall be returned to Borrower, or in the case of a Letter of Credit, such Letter of Credit shall be reduced by such reduction in the Substitution Deposit. If Borrower has not satisfied the requirements to close the Substitution by the Property Delivery Deadline, the terms of Section 3.05(e)(iii) shall apply with respect to the remaining Substitution Deposit.

(f) Conditions Precedent to Substitutions. The obligation of Lender to make a requested Substitution is also subject to satisfaction of each of the conditions precedent for additions of Substitute Mortgaged Properties and Releases of Release Mortgaged Properties set forth in Section 5.01 and Section 5.06 of this Agreement.

(g) Restriction on Borrowings. If the addition of the Substitute Mortgaged Property to the Collateral Pool and the release of the Release Mortgaged Property from the Collateral Pool do not occur simultaneously then, until the addition of the Substitute Mortgaged Property to the Collateral Pool, no Future Advances or other Requests (other than a Credit Facility Termination Request, which shall be permitted subject to satisfaction of the conditions in Article 4, and other than a Conversion pursuant to a Conversion Request, which shall be permitted subject to satisfaction of the conditions in Section 1.07; provided, however, with respect to any Conversion, the Substitution Deposit shall be recalculated based on the provisions in this Section 3.05 and Borrower shall deposit with Lender as additional Collateral all increases, if any, in such Substitution Deposit within five (5) days after receipt of notice of the same) will be permitted unless and until the provisions of Section 3.05(e)(iii) are satisfied.

(h) Additional Requirement for Staggered Substitutions. Notwithstanding anything to the contrary in this Agreement, no Staggered Substitution shall be permitted unless the Aggregate Loan to Value Ratio of the Collateral Pool immediately after the Release of the Release Mortgaged Property is less than or equal to one hundred twenty-five percent (125%). For the purposes of the foregoing requirement, neither the value of the Substitution Deposit nor the value of any undelivered Substitute Mortgaged Property shall be taken into account.

## ARTICLE 4
## TERMINATION OF FACILITIES

**Section 4.01. Right to Terminate Credit Facility.**

Subject to the terms and conditions of this Article 4, Borrower shall have the right to terminate this Agreement and the Credit Facility and receive a Release of all of the Collateral.

**Section 4.02. Procedure for Terminating Credit Facility.**

(a) Request. To terminate this Agreement and the Credit Facility, Borrower shall deliver a Credit Facility Termination Request to Lender.

(b) Closing. If all conditions precedent contained in Section 5.08 are satisfied, this Agreement shall terminate, and Lender shall cause all of the Collateral to be released, at a closing to be held at offices designated by Lender on a Closing Date agreed to by Borrower and Lender, not more than fifteen (15) days after Lender's receipt of the Credit Facility Termination Request (or on such other date as Borrower and Lender may agree), by executing and delivering, and causing all applicable parties to execute and deliver, all at the sole cost and expense of Borrower, the Credit Facility Termination Documents.

## ARTICLE 5
## CONDITIONS PRECEDENT TO ALL REQUESTS

**Section 5.01. Conditions Applicable to All Requests.**

Borrower's right to close the transaction requested in a Request (other than a Credit Facility Termination Request made pursuant toSection 4.02) shall be subject to satisfaction of the following conditions precedent ("**General Conditions**") in addition to any other applicable conditions precedent contained in this Agreement:

(a) Payment of Expenses. The payment by Borrower of Lender's and Fannie Mae's reasonable third party out-of-pocket fees and expenses payable in accordance with this Agreement, including, but not limited to, reasonable legal fees and expenses.

(b) No Material Adverse Effect. There has been no Material Adverse Effect since the date of the most recent Compliance Certificate (or, with respect to the conditions precedent to the Initial Advance, from the condition, business or prospects reflected in the financial statements, reports and other information obtained by Lender during its review of Borrower and Guarantor and the Initial Mortgaged Properties).

(c) No Default. There shall exist no Event of Default or Potential Event of Default immediately prior to the Closing Date for the Request (that is not otherwise cured by the closing of such Request) and, after closing such Request, no Event of Default or Potential Event of Default shall occur as a result of the closing of such Request.

(d) No Insolvency. Receipt by Lender on the Closing Date for the Request of a certificate from each of Borrower and Guarantor certifying that, to its knowledge, no Targeted Entity or FIG is insolvent (within the meaning of any applicable federal or state laws relating to bankruptcy or fraudulent transfers) or will be rendered insolvent, as applicable, by the transactions contemplated by the Loan Documents or the Request or, after giving effect to such transactions, will be left with an unreasonably small capital with which to engage in its business or undertakings, or will have intended to incur, or believe that it has incurred, debts beyond its ability to pay such debts as they mature or will have intended to hinder, delay or defraud any existing or future creditor.

(e) No Untrue Statements. The Loan Documents shall not contain any untrue or misleading statement of a material fact and shall not fail to state a material fact necessary to make the information contained therein not misleading.

(f) Representations and Warranties. All representations and warranties made by Borrower and Guarantor in the Loan Documents shall be true and correct in all material respects on the Closing Date for the Request with the same force and effect as if such representations and warranties had been made on and as of the Closing Date for the Request. On the Closing Date of any Request, the representations and warranties referred to in this Section 5.01 shall be deemed remade by Borrower and Guarantor.

(g) No Condemnation or Casualty. There shall not be pending or threatened any condemnation or other taking, whether direct or indirect, against any Mortgaged Property (other than a Release Mortgaged Property subject to a Release Request or Substitution Request) and there shall not have occurred any casualty to any improvements located on any Mortgaged Property (other than a Release Mortgaged Property subject to a Release Request or Substitution Request), which condemnation or casualty would have a Material Adverse Effect.

(h) Delivery of Closing Documents. The receipt by Lender of the following, each dated as of the Closing Date for the Request, in form and substance satisfactory to Lender in all respects:

(i) the required Loan Documents, as applicable;

(ii) a Compliance Certificate;

(iii) an Organizational Certificate; and

(iv) such other documents, instruments, approvals (and, if requested by Lender, certified duplicates of executed copies thereof) and opinions as Lender may reasonably request.

(i) Covenants. Borrower is in full compliance with each of the covenants contained in the Loan Documents, without giving effect to any notice and cure rights of Borrower.

**Section 5.02. Conditions Precedent to Initial Advance.**

The obligation of Lender to make the Initial Advance is subject to satisfaction of the following conditions precedent:

(a) receipt by Lender of the fully executed Advance Request;

(b) the Coverage and LTV Tests are satisfied and the maximum Advance Amount is not exceeded;

(c) the Individual Property Coverage and LTV Tests are satisfied;

(d) if the Initial Advance includes a Variable Advance, receipt by Lender at least three (3) days prior to the Initial Closing Date, of the confirmation of an Interest Rate Cap commitment, in accordance with the Cap Security Agreement, effective as of the Initial Closing Date;

(e) if the Initial Advance includes a Variable Advance, receipt by Lender of the Interest Rate Cap Documents (as defined in the Cap Security Agreement), effective as of the Initial Closing Date;

(f) delivery to the Title Company, for filing and/or recording in all applicable jurisdictions, of all applicable Loan Documents required by Lender to be filed or recorded, and funds adequate to pay all taxes, fees and other charges payable in connection with such execution, delivery, recording and filing;

(g) receipt by Lender of the Initial Origination Fee pursuant to Section 10.01(a) and the Initial Due Diligence Fee pursuant to Section 10.02(a);

(h) receipt by Lender of a Funding Commitment;

(i) delivery by Lender to Borrower of the confirmed Rate Form for the Initial Advance pursuant to Section 2.01(c);

(j) if the Advance is a Fixed Advance, delivery of one (1) or more Fixed Facility Notes duly executed by Borrower in the amount reflecting all of the terms of the Fixed Advance;

(k) if the Advance is a Variable Advance, delivery of one or more Variable Facility Notes duly executed by Borrower in the amount reflecting all of the terms of the Variable Advance; and

(l) receipt by Lender of documents and instruments required by Section 5.09 and Section 5.10.

**Section 5.03. Conditions Precedent to Future Advances.**

Subject to the availability of Future Advances pursuant to Section 2.05, the obligation of Lender to make a requested Future Advance is subject to satisfaction of the following conditions precedent:

(a) receipt by Lender of the fully executed Advance Request;

(b) delivery by Lender to Borrower of the Rate Form for the Future Advance pursuant to Section 2.01(c)(b);

(c) after giving effect to the Future Advance, the Coverage and LTV Tests and, in connection with the Addition of a Mortgaged Property (if applicable), the Individual Property Coverage and LTV Tests are satisfied and the maximum Advance Amount is not exceeded;

(d) if the Future Advance is a Fixed Advance, delivery of one or more Fixed Facility Notes, duly executed by Borrower, in the amount and reflecting all of the terms of the Fixed Advance;

(e) if the Future Advance is a Variable Advance, delivery of one or more Variable Facility Notes, duly executed by Borrower, in the amount and reflecting all of the terms of the Variable Advance;

(f) receipt by Lender of the documents and instruments required by Section 5.09 and Section 5.10;

(g) receipt by Lender of the Additional Origination Fee pursuant to Section 10.01(b) and the Additional Collateral Due Diligence Fees pursuant to Section 10.02(b);

(h) receipt by Lender of a Funding Commitment;

(i) for any Title Insurance Policy not containing a future advance endorsement, the receipt by Lender of an endorsement to the Title Insurance Policy, amending the effective date of the Title Insurance Policy to the Closing Date and showing no additional exceptions to coverage other than Permitted Liens;

(j) if the Future Advance is a Variable Advance, receipt by Lender at least three (3) days prior to the Closing Date, of the confirmation of an Interest Rate Cap commitment, in accordance with the Cap Security Agreement, effective as of the Closing Date;

(k) if the Future Advance is a Variable Advance, receipt by Lender of Interest Rate Cap Documents in accordance with this Agreement and the Cap Security Agreement, effective as of the Closing Date;

(l) a certificate from Borrower certifying that no Governmental Approval not already obtained or made is required for the execution and delivery of the documents to be delivered in connection with the Future Advance;

(m) a certificate from Borrower certifying that neither Borrower nor Guarantor is under any cease or desist order or other orders of a similar nature, temporary or permanent of any Governmental Authority which would have the effect of preventing or hindering performance of the terms and provisions of the Agreement or any other Loan Documents, nor are there any proceedings presently in progress or, to its knowledge, contemplated which, if successful, would lead to the issuance of any such order; and

(n) receipt by Lender of a Confirmation of Guaranty for each Guaranty then in effect.

**Section 5.04. Conditions Precedent to Addition of an Additional Mortgaged Property to the Collateral Pool.**

The Addition of an Additional Mortgaged Property to the Collateral Pool (other than a Substitution of a Substitute Mortgaged Property into the Collateral Pool, which is governed by Section 5.06 on the applicable Closing Date is subject to satisfaction of the following conditions precedent:

(a) receipt by Lender of the fully executed Addition Request;

(b) the requirements of Section 3.02(b) shall be satisfied immediately after giving effect to the proposed Addition;

(c) receipt by Lender of the Additional Collateral Due Diligence Fee pursuant to Section 10.02(b);

(d) receipt by Lender of all reasonable legal fees and expenses payable by Borrower in connection with the Addition Request;

(e) receipt by Lender of documents and instruments required by Section 5.09 and Section 5.10;

(f) receipt by Lender prior to the Closing Date of the amendment to the Operating Lease evidencing the Addition of the Additional Mortgaged Property to the terms of the Operating Lease and, if applicable, adjusting the rent payment under the Operating Lease pursuant to the terms of the Operating Lease;

(g) receipt by Lender of any subordination, non-disturbance and attornment agreements and/or estoppel certificates required by Lender with respect to any commercial leases, master leases and/or ground lease(s) (if any) affecting the Additional Mortgaged Property;

(h) delivery to the Title Company, for filing and/or recording in all applicable jurisdictions, all applicable additional Loan Documents required by Lender to be filed or recorded, and funds adequate to pay all taxes, fees and other charges payable in connection with such execution, delivery, recording and filing;

(i) if reasonably required by Lender, amendments to this Agreement, the Notes and the Security Instruments, reflecting the addition of the Additional Mortgaged Property to the Collateral Pool and, as to any Security Instrument so amended, the receipt by Lender of an endorsement to the Title Insurance Policy insuring the Security Instrument, amending the effective date of the Title Insurance Policy to the Closing Date and showing no additional exceptions to coverage other than Permitted Liens;

(j) if the Title Insurance Policy for the Additional Mortgaged Property contains a tie-in endorsement, an endorsement to each other Title Insurance Policy containing a tie-in endorsement, adding a reference to the Additional Mortgaged Property; and

(k) receipt by Lender of evidence that any code violations affecting the Additional Mortgaged Property have been resolved to Lender's satisfaction.

**Section 5.05. Conditions Precedent to Release of Property from the Collateral Pool.**

The obligation of Lender to Release a Mortgaged Property from the Collateral Pool by executing and delivering the Release Documents on the Closing Date is subject to satisfaction of the following conditions precedent:

(a) receipt by Lender of the fully executed Release Request;

(b) the requirements of Section 3.04(b) shall be satisfied immediately after giving effect to the proposed Release;

(c) receipt by Lender of the Release Price;

(d) receipt by Lender of the Release Fee;

(e) receipt by Lender of all reasonable legal fees and expenses in connection with the Release Request;

(f) receipt by Lender on the Closing Date of one or more executed, original counterparts of each Release Document, dated as of the Closing Date, signed by each of the parties (other than Lender) who is a party to such Release Document;

(g) if required by Lender, amendments to the Notes and the Security Instruments, reflecting the release of the Release Mortgaged Property from the Collateral Pool and, as to any Security Instrument so amended, the receipt by Lender of an endorsement to the Title Insurance Policy insuring the Security Instrument, amending the effective date of the Title Insurance Policy to the Closing Date and showing no additional exceptions to coverage other than Permitted Liens;

(h) if the Release Mortgaged Property is one phase of a project, and one or more other phases of the project are Mortgaged Properties which will remain in the Collateral Pool ("**Remaining Mortgaged Properties**"), the Remaining Mortgaged Properties must be able to be operated separately from the Release Mortgaged Property and any other phases of the project which are not Mortgaged Properties, taking into account any cross use agreements or easements, access, utilities, marketability, community services, ownership and operation of the Remaining Mortgaged Properties and any other relevant factors pursuant to the Underwriting and Servicing Requirements. Borrower shall deliver to Lender evidence satisfactory to Lender that this condition precedent is satisfied prior to the closing of the transaction that is the subject of the Request. Borrower acknowledges that none of the Initial Mortgaged Properties are part of a phase of a project;

(i) receipt by Lender on the Closing Date of a Confirmation of Obligations, dated as of the Closing Date, signed by Borrower and Guarantor, pursuant to which Borrower and Guarantor confirm their remaining obligations under the Loan Documents; and

(j) receipt by Lender prior to the Closing Date of the amendment to the Operating Lease evidencing the release of the Release Mortgaged Property from the terms of the Operating Lease and adjusting the rent payment under the Operating Lease pursuant to the terms of the Operating Lease;

(k) receipt by Lender of endorsements to the tie-in endorsements (if available) of the Title Insurance Policies, if deemed necessary by Lender, to reflect the release. Notwithstanding anything to the contrary herein, no release of any Mortgaged Property from the Collateral Pool shall be made unless Borrower has provided title insurance to Lender in respect of each of the remaining Mortgaged Properties in the Collateral Pool in an amount equal to (i) the Allocable Facility Amount for such Mortgaged Property if "tie-in" endorsements are available such that the total title coverage (taking into account the title coverage provided by the "tie-in" endorsements) for a Mortgaged Property is equal to or greater than one hundred fifteen percent (115%) of the Initial Valuation of such Mortgaged Property, or (ii) if the preceding clause (i) cannot be satisfied, one hundred fifteen percent (115%) of the Initial Valuation of such Mortgaged Property.

**Section 5.06. Conditions Precedent to Substitution of a Substitute Mortgaged Property into the Collateral Pool.**

The obligation of Lender to close a Substitution is subject to satisfaction of the following conditions precedent:

(a) receipt by Lender of the fully executed Substitution Request;

(b) the provisions of Section 3.05(c) shall be satisfied immediately after giving effect to the proposed Substitution;

(c) if applicable, pursuant to Section 3.05(c), receipt by Lender of the Substitution Deposit (inclusive of the Substitution Cost Deposit) upon the Release of the Release Mortgaged Property;

(d) receipt by Lender of the Substitution Fee upon the Release of the Release Mortgaged Property;

(e) receipt by Lender of all reasonable legal fees and expenses payable by Borrower in connection with the Substitution pursuant to Section 10.03(b);

(f) receipt by Lender of the Additional Collateral Due Diligence Fee pursuant to Section 10.02(b);

(g) receipt by Lender of documents and instruments required by Section 5.09 and Section 5.10;

(h) delivery to the Title Company, with fully executed instructions directing the Title Company to file and/or record in all applicable jurisdictions, all applicable additional Loan Documents required by Lender to be filed or recorded in connection with the Substitution, and funds adequate to pay all taxes, fees and other charges payable in connection with such execution, delivery, recording and filing;

(i) any proposed Additional Borrower meets and satisfies all of the requirements and conditions of Section 14.02;

(j) receipt by Lender on the Closing Date of a Confirmation of Guaranty;

(k) if required by Lender, amendments to this Agreement, the Notes and the Security Instruments, reflecting the addition of the Substitute Mortgaged Property to the Collateral Pool and, as to any Security Instrument so amended, the receipt by Lender of an endorsement to the Title Insurance Policy insuring the Security Instrument, amending the effective date of the Title Insurance Policy to the Closing Date and showing no additional exceptions to coverage other than Permitted Liens;

(l) if the Title Insurance Policy for the Substitute Mortgaged Property contains a tie-in endorsement, an endorsement to each other Title Insurance Policy containing a tie-in endorsement, adding a reference to the Substitute Mortgaged Property; and

(m) receipt by Lender prior to the Closing Date of the amendment to the Operating Lease evidencing the following: (i) the release of the Release Mortgaged Property from the terms of the Operating Lease, (ii) the addition of the Substitute Mortgaged Property to the terms of the Operating Lease, and (iii) adjusting the rent payments under the Operating Lease pursuant to the terms of the Operating Lease.

**Section 5.07. Conditions Precedent to Conversion.**

The Conversion of all or a portion of a Variable Advance to a Fixed Advance is subject to Satisfaction of the following conditions precedent:

(a) receipt by Lender of the fully executed Conversion Request;

(b) the provisions of Section 1.07 and Section 1.10 shall be satisfied;

(c) if applicable pursuant to the provisions of Section 1.07(c), prepayment by Borrower of any Advances Outstanding that Borrower has designated for payment, together with any other amounts due with respect to the prepayment of such Advances;

(d) if required by Lender, an endorsement to each Title Insurance Policy, amending the effective date of the Title Insurance Policy to the Closing Date and showing no additional exceptions to coverage other than the exceptions shown on the Closing Date of such Mortgaged Property, Permitted Liens and other exceptions approved by Lender; and

(e) receipt by Lender of one (1) or more executed, original counterparts of each Conversion Document, dated as of the Closing Date, each of which shall be in full force and effect and in form and substance reasonably satisfactory to Lender in all respects, signed by each of the parties (other than Lender) to such Conversion Document.

**Section 5.08. Conditions Precedent to Termination of Credit Facility.**

The right of Borrower to terminate this Agreement and the Credit Facility and to receive a release of all of the Collateral from the Collateral Pool and Lender's obligation to execute and deliver the Credit Facility Termination Documents on the Closing Date are subject to Borrower's payment in full of all of the Notes Outstanding on the Closing Date, including any associated prepayment premiums or other amounts due under the Notes and all other amounts owing by Borrower to Lender under this Agreement.

**Section 5.09. Opinions.**

With respect to the closing of the Initial Advance, any Collateral Event (other than a Release), a request for a Transfer or any other instances in which a prudent Lender would require an opinion, it shall be a condition precedent that Lender receives favorable opinions of counsel (including local counsel, as applicable) to Borrower, Guarantor and Operator (as applicable) as to the due organization and qualification of Borrower, Guarantor and Operator (as applicable), the due authorization, execution, delivery and enforceability of each Loan Document executed in connection with the Request and such other matters as Lender may reasonably require, each dated as of the Closing Date for the Request, in form and substance satisfactory to Lender in all respects.

**Section 5.10. Delivery of Property-Related Documents.**

With respect to each of the Initial Mortgaged Properties on the Initial Closing Date and each Additional Mortgaged Property on the Closing Date applicable thereto (including a Substitute Mortgaged Property), it shall be a condition precedent that Lender receives from Borrower each of the documents and reports required by Lender pursuant to the Underwriting and Servicing Requirements in connection with the Addition of such Mortgaged Property and each of the following, each in form and substance satisfactory to Lender in all respects:

(a) a commitment for the Title Insurance Policy applicable to such Mortgaged Property and a pro forma Title Insurance Policy based on the title commitment equal to one hundred fifteen percent (115%) of the Initial Valuation of such Mortgaged Property (which amount shall take into account the title insurance coverage provided by "tie-in" endorsements), each as approved by Lender;

(b) the Insurance Policy (or a certified copy of the Insurance Policy) applicable to the Mortgaged Property;

(c) unless waived by Lender, the Survey applicable to the Mortgaged Property and approved by Lender (which shall be last revised no less than forty-five (45) days prior to the Closing Date);

(d) a certificate from Borrower certifying to the compliance of the Mortgaged Property with Applicable Laws;

(e) an Appraisal of the Mortgaged Property;

(f) a Replacement Reserve Agreement or an amendment thereto, providing for the establishment of a replacement reserve account, to be pledged to Lender, in which the owner shall (unless waived by Lender) periodically deposit amounts for replacements for improvements at the Mortgaged Property and as additional security for Borrower's obligations under the Loan Documents;

(g) a Completion/Repair and Security Agreement or an amendment thereto, if required by Lender, together with required escrows, on the standard form required by Lender;

(h) a SASA or an amendment thereto, on the standard form required by Lender, if applicable;

(i) an Assignment of Leases and Rents, if Lender determines one to be necessary or desirable, provided that the provisions of any such assignment shall be substantively identical to those in the Security Instrument covering the Collateral, with such modifications as may be necessitated by applicable state or local law;

(j) a Security Instrument to effectuate the addition of each Mortgaged Property to the Collateral Pool. The amount secured by each Security Instrument shall be equal to the Commitment;

(k) a Certificate of Borrower Parties;

(l) any subordination, non-disturbance and attornment agreements and/or estoppel certificates required by Lender with respect to any commercial leases and/or ground leases (if any) affecting the Mortgaged Property;

(m) any Facility Operating Agreement; and

(n) any other document that Lender may reasonably determine is required in connection with a Mortgaged Property.

**Section 5.11. Conditions Precedent to Letters of Credit.**

The right or requirement of Borrower to provide a Letter of Credit in connection with this Agreement is subject to satisfaction of the following conditions precedent:

(a) Letter of Credit Requirements. Any Letter of Credit shall be issued by a financial institution satisfactory to Fannie Mae (the "**Issuer**"). If Borrower provides Lender with a Letter of Credit pursuant to this Agreement, the Letter of Credit shall be in form and substance satisfactory to Lender and Lender shall be entitled, upon occurrence of circumstances in (b), to draw under such Letter of Credit solely upon presentation of a sight draft to the Issuer. Any Letter of Credit shall be for a term of at least three hundred sixty-four (364) days (provided that in connection with a Substitution, the term of any Letter of Credit shall be until the date five (5) days after the Property Delivery Deadline).

(b) Draws Under Letter of Credit. Lender shall have the right to draw monies under the Letter of Credit:

(i) upon the occurrence of an Event of Default;

(ii) if thirty (30) days prior to the expiration of the Letter of Credit, either the Letter of Credit has not been extended for a term of at least three hundred sixty four (364) days (provided that in connection with a Substitution, the term of any Letter of Credit shall be at least until the date twelve (12) Business Days after the Property Delivery Deadline) or Borrower has not replaced the Letter of Credit with substitute cash collateral in the amount required by Lender; or

(iii) upon the downgrading of the ratings of the long-term or short-term debt obligations of the Issuer below a level satisfactory to Fannie Mae; provided that Borrower shall have twelve (12) Business Days after notice of such downgrading to deliver to Lender either (A) an acceptable replacement Letter of Credit or (B) substitute cash collateral in the amount required by Lender.

(c) Deposit to Cash Collateral Account. If Lender draws under the Letter of Credit pursuant to Section 5.11(b)(ii) or Section 5.11(b)(iii) above, Lender shall deposit such draw monies into a Cash Collateral Account established pursuant to a Cash Collateral Agreement entered into the first time Lender draws any such monies. Lender shall hold the Letter of Credit drawn monies in the Cash Collateral Account until the earliest of the following events occurs:

(i) Borrower presents an acceptable replacement Letter of Credit and Lender agrees, in its sole discretion, to accept such Letter of Credit (provided that any agreement by Lender to accept a replacement Letter of Credit will be conditioned upon Borrower's payment of all administrative and reasonable third party, out-of-pocket legal costs incurred by Lender and Fannie Mae in connection with the replacement of the Letter of Credit.)

(ii) the applicable provisions of this Agreement pursuant to which the Letter of Credit was provided are satisfied;

(iii) Borrower pays all amounts due and payable under the Loan Documents;

(iv) Lender consents to Borrower's written request to apply the funds to the principal balance of a Note specified by Borrower and any prepayment premium due in connection with such application; or

(v) an Event of Default occurs and Lender elects to apply the proceeds as described below in Section 5.11(d);

During any period that Lender holds the cash proceeds resulting from a draw on any Letter of Credit, Lender will not pay interest to, or on behalf of, Borrower in connection with such funds.

(d) Default Draws. If Lender draws under the Letter of Credit pursuant to Section 5.11(b)(i) above, Lender shall have the right to use monies drawn under the Letter of Credit for any of the following purposes:

(i) to pay any amounts required to be paid by Borrower under the Loan Documents (including, without limitation, any amounts required to be paid to Lender under this Agreement and any amounts required to fund Obligations required to be performed by Borrower hereunder);

(ii) to (on Borrower's behalf, or on its own behalf if Lender becomes the owner of the Mortgaged Property) pre-pay any Note in whole or in part, including any prepayment premium or yield maintenance;

(iii) deposit monies into the Cash Collateral Account; or

(iv) to exercise any other remedies available to Lender pursuant to Article 12.

(e) Legal Opinion. Prior to or simultaneous with the delivery of any new Letter of Credit (but not the extension of any existing Letter of Credit), Borrower shall cause the Issuer's counsel to deliver a legal opinion satisfactory in form and substance as approved by Lender.

## ARTICLE 6
## REPRESENTATIONS AND WARRANTIES

**Section 6.01. Representations and Warranties of Borrower Parties.**

The representations and warranties of Borrower and Guarantor are contained in the Certificate of Borrower Parties executed and delivered by Borrower and Guarantor.

**Section 6.02. Representations and Warranties of Lender.**

Lender hereby represents and warrants to Borrower and Guarantor as follows:

(a) Due Organization. Lender is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware.

(b) Power and Authority. Lender has the requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.

(c) Due Authorization. The execution and delivery by Lender of this Agreement, and the consummation by it of the transactions contemplated hereby, and the performance by it of its obligations hereunder, have been duly and validly authorized by all necessary action and proceedings by it or on its behalf.

## ARTICLE 7
## [INTENTIONALLY OMITTED]

## ARTICLE 8
## AFFIRMATIVE COVENANTS OF BORROWER AND GUARANTOR

Borrower and Guarantor agree and covenant with Lender that, at all times during the Term of this Agreement:

**Section 8.01. Compliance with Agreements.**

Each of Borrower and Guarantor shall comply with all the terms and conditions of each Loan Document to which it is a party or by which it is bound; provided, however, that Borrower's or Guarantor's failure to comply with such terms and conditions shall not be an Event of Default until the expiration of the applicable notice and cure periods, if any, specified in the applicable Loan Document.

**Section 8.02. Maintenance of Existence.**

Each Borrower Party shall maintain its existence and continue to be duly organized under the laws of the state of its organization. Each Borrower Party shall continue to be duly qualified to do business in each jurisdiction in which such qualification is necessary to the conduct of its business and where the failure to be so qualified would adversely affect the validity of, the enforceability of, or the ability to perform, its obligations under this Agreement or any other Loan Document.

**Section 8.03. Financial Statements; Accountants' Reports; Other Information.**

Borrower and Guarantor shall keep and maintain, and Borrower shall cause each Operator to keep and maintain, at all times books of accounts and records that are complete and accurate in all material respects and in sufficient detail to reflect, in all material respects, (a) all of Borrower's and Guarantor's financial transactions and assets and (b) the results of the operation of each Mortgaged Property and copies of all written contracts, Leases and other instruments which affect each Mortgaged Property (including all bills, invoices and contracts for electrical service, gas service, water and sewer service, waste management service, telephone service and management services). In addition, Borrower or Guarantor, as applicable, shall furnish, or cause to be furnished, to Lender:

(a) Annual Financial Statements. As soon as available, and in any event within one hundred twenty (120) days after the end of each calendar year during the Term of this Agreement, a statement of income and expenses and a statement of cash flows (that includes a statement of all contingent liabilities) of Borrower, Guarantor and Operator, and balance sheets showing all assets and liabilities of Borrower, Guarantor and Operator as of the end of such calendar year all in reasonable detail, prepared in accordance with GAAP, consistently applied, and, if prepared in the ordinary course of business, accompanied by a certificate of Borrower's, Guarantor's and Property Operator's independent certified public accountants to the effect that such financial statements have been prepared in accordance with GAAP, consistently applied, and that such financial statements fairly present the results of its operations and financial condition for the periods and dates indicated, with such certification to be free of exceptions and qualifications as to the scope of the audit or as to the going concern nature of the business. As soon as available, and in any event within ninety (90) days after the close of its fiscal year during the Term of this Agreement, Guarantor will provide to Lender a letter as of January 1 of each year to the effect that such officer has reviewed the records and systems of Borrower and Guarantor and that Borrower, Operator and the manager of each Borrower are in compliance with the Single Purpose requirements (as set forth in the definition of Single Purpose herein) (the "**Compliance Letter**"). All financial statements required by this Section 8.03(a) with respect to Borrower, Guarantor and/or Operator may be unaudited unless Borrower, Guarantor or Operator obtain audited statements in the ordinary course of business.

(b) Quarterly Financial Statements. As soon as available, and in any event within forty-five (45) days after the end of each calendar quarter during the Term of this Agreement, a statement of income and expenses for Borrower, Guarantor and Operator (in connection with the operation of the Mortgaged Property) on a calendar quarter basis as of the end of each calendar quarter, all in reasonable detail, prepared in accordance with GAAP, consistently applied.

(c) Quarterly Property Statements. As soon as available, and in any event within forty-five (45) days after each Calendar Quarter, a statement of income and expenses of each Mortgaged Property prepared in accordance with GAAP accompanied by a certificate of an authorized representative of Borrower or Guarantor reasonably acceptable to Lender to the effect that each such statement of income and expenses fairly, accurately and completely presents the operations of each such Mortgaged Property for the period indicated.

(d) Annual Property Statements. On an annual basis within sixty (60) days after the close of its fiscal year, an annual statement of income and expenses of each Mortgaged Property accompanied by a certificate of an authorized representative of Borrower or Guarantor reasonably acceptable to Lender to the effect that each such statement of income and expenses fairly, accurately and completely presents, in all material respects, the operations of each such Mortgaged Property for the period indicated.

(e) Updated Rent Rolls. Upon Lender's request (but not more frequently than quarterly), a current Rent Roll for each Mortgaged Property, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent amount, the rent paid and any other information reasonably requested by Lender and accompanied by a certificate of an authorized representative of Borrower or Guarantor reasonably acceptable to Lender to the effect that each such Rent Roll fairly, accurately and completely presents, in all material respects, the information required therein.

(f) Accountants' Reports; Other Reports. Promptly upon receipt thereof: copies of the final annual audited reports submitted to Borrower or Guarantor by its independent certified public accountants (if applicable) in connection with the examination of its financial statements made by such accountants; provided, however, that Borrower or Guarantor shall only be required to deliver such audited reports to the extent that they relate to Borrower or Guarantor or any Mortgaged Property.

(g) Security Deposit Information. Within thirty (30) days after Lender's request, an accounting of all security deposits held in connection with any Lease of any part of any Mortgaged Property, including the name and identification number of the accounts in which such security deposits are held, the name and address of the financial institutions in which such security deposits are held and the name and telephone number of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts.

(h) Security Law Reporting Information. If Borrower or Guarantor is a reporting company under the Securities Exchange Act of 1934, promptly upon becoming available, (i) copies of all financial statements, reports and proxy statements sent or made available generally to its respective security holders (to the extent not publicly available), (ii) all regular and periodic reports and all registration statements (other than the exhibits thereto and any registration statements on Form S-8 or a similar form) and prospectuses, if any, filed with the Securities and Exchange Commission or other Governmental Authorities, and (iii) all press releases and other statements made available generally to the public concerning material developments in the business of Borrower or Guarantor or other party.

(i) Plans and Projections. Upon Lender's request, but no earlier than thirty (30) days following commencement of each fiscal year, and to the extent prepared in the ordinary course of business, copies of Borrower's annual budget (including capital expenditure budgets) and projections for each Mortgaged Property.

(j) Strategic Plan. Within ten (10 days upon Lender's request after the occurrence and during the continuance of an Event of Default, to the extent prepared in the ordinary course of business of Borrower or Guarantor, as applicable, a written narrative discussing Guarantor's short and long range plans, including its plans for operations, mergers, acquisitions and management, and accompanied by supporting financial projections and schedules, certified by a Proper Officer as true, correct and complete in all material respects ("**Strategic Plan**").

(k) Statement of Ownership. At any time upon Lender's request, a statement that identifies: (i) all owners of any Targeted Entity and the interest held by each and (ii) if Borrower or any owner of Borrower is a corporation, all officers and directors of Borrower, and if Borrower or any owner of Borrower is a limited liability company, all managers who are not members, provided in no event is Borrower required to identify the owners of Newcastle or HoldCo.

(l) Other Information. Within forty-five (45) days after Lender's request, but not more frequently than once per Calendar Year, such other information reasonably requested by Lender.

(m) Complaints. Within thirty (30) days of the date Borrower obtains knowledge thereof or reasonably should have obtained knowledge thereof, notice of any complaint, together with copies of any complaint filed against Borrower, Property Operator or any Mortgaged Property alleging any violation of fair housing law, handicap access or the Americans with Disabilities Act and any final administrative or judicial dispositions of such complaints.

(n) Resident Care Agreements. Within fifteen (15) days after Lender's request, copies of resident care agreements and resident occupancy agreements.

(o) Regulatory or Licensing. Within ten (10) Business Days after receipt thereof, copies of all inspection reports, surveys, reviews, and certifications prepared by, for, or on behalf of any licensing or regulatory authority relating to any Mortgaged Property and any legal actions, orders, notices, or reports relating to any Mortgaged Property issued by the applicable regulatory or licensing authorities, in each case, if the same would or could reasonably be expected to have a Material Adverse Effect.

(p) Services and Operations. Within fifteen (15) days after Lender's request, copies of all reports relating to the services and operations of each Mortgaged Property, including, if applicable, Medicaid cost reports and records relating to account balances due to or from Medicaid or any private insurer.

(q) Incident Reports. By the fifteenth (15th) day of each month, copies of all incident reports submitted by or on behalf of Borrower or Property Operator during the prior month to any liability insurance carrier or any elderly affairs, regulatory or licensing authority.

(r) Other Communications of Property Operator. Within thirty (30) days of submission to Borrower by Property Operator, the financial statements, reports, documents, communications and information delivered to Borrower by Property Operator pursuant to the Facility Operating Agreement as in effect on the date of this Agreement, to the extent not otherwise provided under this Agreement.

(s) Deliveries Generally. Notwithstanding anything to the contrary contained herein, (i) no Borrower Party shall be obligated to deliver or disclose to Lender or Fannie Mae any report, document, communication or other information that would cause such party to fail to be in compliance with HIPAA or any other Applicable Law, and (ii) with respect to any pro forma financial statements or projections provided by any Borrower Party to Lender or Fannie Mae hereunder, each of Lender and Fannie Mae acknowledge and agree that no Borrower Party is certifying to the truth, accuracy or completeness of any such financial statements or projections and the information provided and/or disclosed therein was prepared in good faith upon assumptions that were reasonable as of the date set forth therein.

(t) Delivery of Books and Records. If an Event of Default has occurred and is continuing, Borrower shall deliver to Lender upon written demand all books and records relating to the Mortgaged Property or its operation.

(u) Credit Report. Borrower authorizes Lender to obtain a credit report on Borrower at any time.

**Section 8.04. Confidentiality of Certain Information.**

No Borrower Party shall disclose any terms, conditions, underwriting requirements or underwriting procedures of the Credit Facility or any of the Loan Documents; provided, however, that such confidential information may be disclosed (a) as required by law or pursuant to generally accepted accounting procedures, (b) to officers, directors, employees, agents, partners, investors, investment advisors, attorneys, accountants, engineers and other consultants of Borrower who need to know such information, provided such Persons are instructed to treat such information confidentially, (c) to any regulatory authority having jurisdiction over Borrower, (d) in connection with any filings with the Securities and Exchange Commission or other Governmental Authorities, (e) to the extent included in periodic management reports prepared by Guarantor and delivered to lenders and certain other parties; provided, however, no fees provided for under this Agreement shall be disclosed in such reports, or (f) to any other Person to which such delivery or disclosure may be necessary or appropriate (i) in compliance with any law, rule, regulation or order applicable to Borrower, (ii) in response to any subpoena or other legal process or information investigative demand or (iii) in connection with any litigation to which Borrower is a party.

**Section 8.05. Access to Records; Discussions With Officers and Accountants.**

To the extent permitted by law and in addition to the applicable requirements of the Security Instruments, Borrower shall permit Lender to and shall cause Property Operator to permit Lender to:

(a) inspect, make copies and abstracts of, and have reviewed or audited, such of Borrower's, Guarantor's or Property Operator's books and records as may relate to the Obligations or any Mortgaged Property;

(b) discuss Borrower's affairs, finances and accounts with Borrower's Senior Management and, so long as Borrower shall be given reasonable notice and the opportunity to participate in such discussions, Property Operator, property managers and/or independent public accountants, provided, during the continuance of an Event of Default, Lender shall be permitted to discuss Borrower's affairs, finances and account with Guarantor's Senior Management;

(c) discuss the Mortgaged Properties' conditions, operations or maintenance with Property Operator of such Mortgaged Properties and the officers and employees of Borrower and Guarantor, provided that Borrower shall be given reasonable notice and the opportunity to participate in such discussions; and

(d) receive any other information that Lender reasonably deems necessary or relevant in connection with any Advance, any Loan Document or the Obligations from Borrower's Senior Management or Property Operator.

Notwithstanding the foregoing, unless an Event of Default has occurred and is continuing, and in the absence of an emergency, all inspections and discussions shall be conducted at reasonable times during normal business hours upon reasonable notice to Borrower.

**Section 8.06. Certificate of Compliance.**

Borrower shall deliver to Lender concurrently with the delivery of the financial statements and/or reports required bySection 8.03 a certificate signed by an authorized representative of Borrower or Guarantor acceptable to Lender stating that, to the best knowledge of such individual following reasonable inquiry, no Event of Default or Potential Event of Default has occurred, or if an Event of Default or Potential Event of Default has occurred, specifying the nature thereof in reasonable detail and the action Borrower or Guarantor is taking or proposes to take. Any certificate required by this Section 8.06 shall run directly to and be for the benefit of Lender and Fannie Mae.

**Section 8.07. Maintain Licenses.**

(a) Borrower shall procure and maintain or cause Property Operator, as applicable, to procure and maintain in full force and effect all Permits, charters and registrations which are material to the conduct of its business (except to the extent a failure to procure or maintain would not have a Material Adverse Effect) and shall abide by and satisfy all terms and conditions of all such Permits, charters and registrations (except to the extent a failure to abide by and satisfy would not have a Material Adverse Effect). Borrower shall procure and maintain or cause Property Operator, as applicable, to procure and maintain all Licenses or registrations required to operate the Mortgaged Property as a Seniors Housing Facility, as required by the appropriate Governmental Authority, except to the extent a failure to procure or maintain would not have a Material Adverse Effect. Notwithstanding the foregoing, applications to the applicable licensing authority set forth on Exhibit C of the SASA have been duly made and, pending the approval of such applications, each Mortgaged Property may be lawfully operated as a "Facility Type" as set forth on Schedule I of the SASA.

(b) Borrower shall submit a copy of all Licenses to Lender within thirty (30) days after the date such Mortgaged Property is added to the Collateral Pool. Failure by Borrower to provide such evidence of the License to Lender within such thirty (30) day period shall be an Event of Default under this Agreement provided that such period shall be extended so long as Borrower is diligently pursuing.

**Section 8.08. Inform Lender of Material Events.**

Borrower shall promptly inform Lender in writing of any of the following (and shall deliver to Lender copies of any related written communications, complaints, orders, judgments and other documents relating to the following) of which Borrower has actual knowledge:

(a) Defaults. The occurrence of (x) any Event of Default under any Loan Document or (y) any "Event of Default" (or a default which continues beyond any applicable notice and cure period) under any Facility Operating Agreement;

(b) Regulatory Proceedings. The commencement of any rulemaking or disciplinary proceeding or the promulgation of any proposed or final rule which would have, or could reasonably be expected to have, a Material Adverse Effect; the receipt of written notice from any Governmental Authority having jurisdiction over Borrower that (i) Borrower or Property Operator is being placed under regulatory supervision, (ii) any License, Permit, charter, membership or registration material to the conduct of Borrower's or Property Operator's business or material to the operation of the Mortgaged Properties is to be suspended or revoked or (iii) Borrower or Property Operator is to cease and desist any practice, procedure or policy employed by Borrower, Property Operator or Guarantor in the conduct of its business, and with respect to (i), (ii) or (iii), the same would have, or could reasonably be expected to have, a Material Adverse Effect;

(c) Bankruptcy Proceedings. The commencement of any proceedings by or against any Borrower Party under any applicable bankruptcy, reorganization, liquidation, insolvency or other similar law now or hereafter in effect or of any proceeding in which a receiver, liquidator, trustee or other similar official is sought to be appointed for it;

(d) Environmental Claim. The receipt from any Governmental Authority or other Person of any written notice of any violation, claim, demand, abatement, order or other order or direction (conditional or otherwise) for any damage, including personal injury (including sickness, disease or death), tangible or intangible property damage, contribution, indemnity, indirect or consequential damages, damage to the environment, pollution, contamination or other adverse effects on the environment, removal, cleanup or remedial action or for fines, penalties or restrictions, resulting from or based upon (i) the existence or occurrence, or the alleged existence or occurrence, of a Hazardous Substance Activity on any Mortgaged Property or (ii) the violation, or alleged violation, of any Hazardous Materials Laws in connection with any Mortgaged Property or any of the other assets of Borrower;

(e) Material Adverse Effects. The occurrence of any act, omission, change or event (including the commencement or written threat of any proceedings by or against Borrower, Property Operator or Guarantor in any Federal, state or local court, or before any Governmental Authority, or before any arbitrator), which has, or would have, a Material Adverse Effect, subsequent to the date of the most recent financial statements of Borrower or Guarantor delivered to Lender pursuant to Section 8.03;

(f) Accounting Changes. Any material change in Borrower's, Property Operator's or Guarantor's accounting policies or financial reporting practices;

(g) Legal and Regulatory Status. The occurrence of any act, omission, change or event, including any failure to obtain any Governmental Approval, the result of which is to (i) effect the ability of Borrower or any Property Operator to be qualified to conduct its business in any jurisdiction where the failure to be so qualified would have a Material Adverse Effect or (ii) effect the zoning or other regulatory status of the Mortgaged Property that would result in a Material Adverse Effect; and

(h) Legal Proceedings. The commencement or written threat of, or amendment to, any proceedings by or against Borrower or Property Operator in any Federal, state or local court or before any Governmental Authority, or before any arbitrator, which, if adversely determined, would have, or at the time of determination could reasonably be expected to have, a Material Adverse Effect.

**Section 8.09. Compliance with Applicable Laws.**

(a) Borrower shall comply and shall cause Operator to comply with all Applicable Laws now or hereafter affecting any Mortgaged Property or any part of any Mortgaged Property or requiring any alterations, repairs or improvements to any Mortgaged Property, except in each case to the extent any failure to comply could not reasonably be expected to have a Material Adverse Effect. Borrower shall procure and continuously maintain or shall cause Property Operator to procure and maintain in full force and effect, and shall abide by and satisfy or shall cause Property Operator to abide by and satisfy all terms and conditions of all Permits and shall comply with all written notices from Governmental Authorities, except in each case to the extent any failure of any of the foregoing could not reasonably be expected to have a Material Adverse Effect.

(b) If required by Applicable Law, Borrower shall at all times maintain or cause Property Operator to at all times maintain a current provider agreement under any and all applicable federal, state and local laws for reimbursement: (i) to a Seniors Housing Facility on the Mortgaged Property; or (ii) for other type of care provided at the Mortgaged Property.

(c) If Borrower is a HIPAA Covered Entity, Borrower shall at all times remain in substantial compliance with HIPAA requirements, including those concerning privacy, breach notification, security and billing standards.

**Section 8.10. Alterations to the Mortgaged Properties.**

Except as otherwise provided in the Loan Documents, Borrower shall have the right to undertake any alteration, improvement, demolition, removal or construction (collectively, **"Alterations"**) to the Mortgaged Property which it owns without the prior consent of Lender;provided, however, that in any case, no such Alteration shall be made to any Mortgaged Property without the prior written consent of Lender if (a) such Alteration could reasonably be expected to materially and adversely affect the value of such Mortgaged Property or its operation as a Seniors Housing Facility in substantially the same manner in which it is being operated on the date such property became Collateral, (b) the construction of such Alteration could reasonably be expected to result in interference to the occupancy of tenants of such Mortgaged Property such that tenants in occupancy with respect to ten percent (10%) or more of the Leases would be permitted to terminate their Leases or to abate the payment of all or any portion of their rent solely as a result of such Alterations, or (c) such Alteration will be completed in more than twelve (12) months from the date of commencement or in the last year of the Term of this

Agreement. Notwithstanding the foregoing, Borrower must obtain Lender's prior written consent to construct any single project constituting Alterations (other than scheduled repairs and maintenance to existing improvements) with respect to any single Mortgaged Property costing in excess of $150,000, and Borrower must give prior written notice to Lender of any single project constituting Alterations (other than scheduled repairs and maintenance to existing improvements) with respect to any single Mortgaged Property costing in excess of $75,000; provided, however, that the preceding requirements shall not be applicable to Alterations made, conducted or undertaken by Borrower as part of Borrower's routine maintenance and repair of the Mortgaged Properties as required by the Loan Documents.

**Section 8.11. Loan Document Taxes.**

If any tax, assessment or Imposition (other than a franchise tax or excise tax imposed on or measured by, the net income or capital (including branch profits tax and any Excluded Tax) of Lender (or any transferee or assignee thereof, including a participation holder)) ("**Loan Document Taxes**") is levied, assessed or charged by the United States, or any State in the United States, or any political subdivision or taxing authority thereof or therein upon any of the Loan Documents or the obligations secured thereby, the interest of Lender in the Mortgaged Properties, or Lender by reason of or as holder of the Loan Documents, Borrower shall pay all such Loan Document Taxes to, for, or on account of Lender (or provide funds to Lender for such payment, as the case may be) as they become due and payable and shall promptly furnish proof of such payment to Lender, as applicable. In the event of passage of any law or regulation permitting, authorizing or requiring such Loan Document Taxes to be levied, assessed or charged, which law or regulation in the opinion of counsel to Lender may prohibit Borrower from paying the Loan Document Taxes to or for Lender, Borrower shall enter into such further instruments as may be permitted by law to obligate Borrower to pay such Loan Document Taxes.

**Section 8.12. Further Assurances.**

Borrower, Guarantor and Operator, at the reasonable request of Lender, shall execute and deliver and, if necessary, file or record such statements, documents, agreements, UCC financing and continuation statements and such other instruments and take such further action as Lender from time to time may reasonably request as necessary, desirable or proper to carry out more effectively the purposes of this Agreement or any of the other Loan Documents or to subject the Collateral to the lien and security interests of the Loan Documents or to evidence, perfect or otherwise implement, to assure the lien and security interests intended by the terms of the Loan Documents or in order to exercise or enforce its rights under the Loan Documents.

**Section 8.13. Transfer of Ownership Interests.**

(a) Prohibition on Transfers. Subject to paragraph (b) of this Section 8.13, no Targeted Entity shall cause or permit:

(i) a Transfer as described in Paragraph (a) of the definition of "Transfer";

(ii) a Change of Control;

(iii) a Transfer or change in the holder of the Licenses authorizing the Mortgaged Property to operate as a Seniors Housing Facility to any Person other than Borrower and/or any Property Operator; or

(iv) a Transfer of the Borrower's or any Property Operator's respective interest(s) in any Facility Operating Agreement.

(b) Permitted Transfers. Notwithstanding the provisions of paragraph (a) of this Section 8.13, the following Transfers are permitted upon thirty (30) days prior written notice to Lender without the consent of Lender (provided that no notice is required for Transfers pursuant to clauses (i), (ii) and (iii) below) (the "**Section 8.13 Permitted Transfers**"):

(i) a Transfer in the public securities markets of any Ownership Interest in Newcastle (or HoldCo, on and after the HoldCo Event); provided, however, that no Change of Control occurs as the result of such Transfer;

(ii) the issuance by Newcastle (or HoldCo, on and after the HoldCo Event) of additional stock (including by creation of a new class or series of stock), and the subsequent Transfer of such stock; provided, however, that no Change of Control occurs as the result of such Transfer;

(iii) any amendment, modification or any other change in the governing instrument or instruments of Newcastle (or HoldCo, on and after the HoldCo Event) in connection with the creation of a new class or series of stock pursuant to (ii) above; provided, however, that no Change of Control occurs as a result of such Transfer;

(iv) a merger with, or acquisition of or by, another entity by Newcastle (or HoldCo, on and after the HoldCo Event) provided that (A) Newcastle (or HoldCo, on and after the HoldCo Event) is the surviving entity after such merger or acquisition, (B) no Change of Control occurs, (C) Newcastle (or HoldCo, on and after the HoldCo Event), shall be managed by FIG pursuant to a management and advisory agreement in substantially the same form as the management and advisory agreement between Newcastle and FIG on the date hereof or in form otherwise reasonably acceptable to Lender, and (D) such merger or acquisition does not result in an Event of Default;

(v) a Transfer of the Ownership Interests in HoldCo in connection with a public offering of securities in HoldCo (and together with the transactions contemplated by subsection (b)(ii) above, the "**HoldCo Event**"), provided that upon and at all times following such Transfer HoldCo shall be managed by FIG pursuant to a management and advisory agreement in substantially the same form as the management and advisory agreement between Newcastle and FIG on the date hereof or in form otherwise reasonably acceptable to Lender;

(vi) any change in the management of Newcastle (and/or HoldCo, on and after the HoldCo Event) provided that, prior to the Holdco Event, Newcastle, and on and after the Holdco Event, HoldCo, shall be managed by FIG pursuant to a management and advisory agreement in substantially the same form as the management and advisory agreement between Newcastle and FIG on the date hereof or in form otherwise reasonably acceptable to Lender;

(vii) a Transfer with respect to any Ownership Interest in any Borrower or Guarantor; provided, however, that no Change of Control occurs as the result of such Transfer;

(viii) The Transfer of Ownership Interests in a conversion or reconstitution of Borrower from one type of legal entity into another type of legal entity for tax or other structuring purposes, provided:

(A) no Change of Control occurs,

(B) Borrower provides Lender with prior written notice of such conversion or reconstitution,

(C) Borrower provides Lender any certificates evidencing such conversion or reconstitution filed with the appropriate Secretary of State or Governmental Authority,

(D) Borrower provides Lender new certificates of good standing for such entity,

(E) Lender reserves the right to file UCC-3 amendments where necessary reflecting the conversion or reconstitution,

(F) Borrower executes an amendment to this Agreement documenting the conversion or reconstitution, and

(G) the Title Company shall confirm (via electronic mail or letter) that nothing is needed in the land records (of each of the appropriate jurisdictions) at such time to evidence such conversion, and no endorsements to the title policies are necessary to maintain Lender's then current coverage; or if any endorsements are necessary, Borrower shall provide such endorsements.

Lender agrees that following the HoldCo Event, any reference to Newcastle in this Section 8.13 (and the related definitions) shall be deemed deleted and no longer applicable.

**Section 8.16. Transfer of Ownership of Mortgaged Property.**

(a) Prohibition on Transfers. Subject to paragraph (b) of this Section 8.14, neither Borrower nor Guarantor shall cause or permit, and Borrower shall cause Newcastle (or HoldCo, on and after the HoldCo Event) not to cause or permit, a Transfer as described in Paragraph (b) of the definition of "Transfer".

(b) Permitted Transfers. Notwithstanding provision (a) of this Section 8.14, the following Transfers of a Mortgaged Property by Borrower or Guarantor, upon fifteen (15) days' prior written notice to Lender (however, notice will not be required with respect to the Transfers permitted pursuant to subsections (i), (ii) and (v) below and prior notice shall not be required with respect to the Transfers pursuant to subsection (iii) below), are permitted without the consent of Lender (together with the Section 8.13 Permitted Transfers, "**Permitted Transfers**"):

(i) the grant of a leasehold interest (or other use rights) in individual dwelling units or commercial spaces in accordance with the Security Instrument;

(ii) a sale or other disposition of non-material personal property not necessary for the operation of the Mortgaged Property or obsolete or worn out personal property which is contemporaneously replaced by comparable personal property of equal or greater value which is free and clear of liens, encumbrances and security interests other than those created by the Loan Documents or Permitted Liens;

(iii) any Permitted Lien, provided that notice is to be provided to Lender promptly after Borrower receives actual or constructive notice of such Permitted Lien;

(iv) the grant of an easement, servitude or restrictive covenant if, prior to the granting of the easement, servitude or restrictive covenant, Borrower causes to be submitted to Lender all information required by Lender to evaluate the easement, servitude or restrictive covenant, Lender shall consent to such easement, servitude or restrictive covenant if (A) Lender's determines that it will not materially adversely affect the operation of the Mortgaged Property or Lender's interest in the Mortgaged Property and (B) Borrower pays to Lender, within ten (10) Business Days after demand therefore, all reasonable third party out-of-pocket costs and expenses incurred by Lender in connection with reviewing Borrower's request. Lender shall not unreasonably withhold its consent to or withhold its agreement to subordinate the lien of a Security Instrument to (1) the grant of a utility easement serving a Mortgaged Property to a publicly operated utility, or (2) the grant of an easement related to expansion or widening of roadways, driveways and parking areas, provided that any such easement is in form and substance reasonably acceptable to Lender and does not materially and adversely affect the access, use or marketability of a Mortgaged Property;

(v) conveyance of any Mortgaged Property at a judicial or non-judicial foreclosure sale under the applicable Security Instrument;

(vi) any Transfer of a Mortgaged Property to another Single-Purpose entity wholly owned, directly or indirectly, by Guarantor. Such Single-Purpose entity shall be subject to Lender's prior review and approval to determine if the proposed Borrower satisfies the definition of an Additional Borrower. Borrower and Guarantor shall execute such documentation as Lender reasonably requires to document the transfer, add the Additional Borrower and confirm the Obligations;

(vii) the execution of the Facility Operating Agreement, and of any replacement Facility Operating Agreement entered into in accordance with the terms of this Agreement; and

(viii) any commercial sublease of a Mortgaged Property that may be permitted by Lender in accordance with the terms of the Loan Documents.

(c) Assumption of Collateral Pool. Notwithstanding Section 8.14(a), a Transfer of the entire Collateral Pool may be permitted with the prior written consent of Lender if each of the following requirements is satisfied:

(i) the transferee ("**New Collateral Pool Borrower**") is a Single Purpose entity, is not directly or indirectly owned by and is not a Prohibited Person, and executes an assumption agreement that is acceptable to Lender pursuant to which such New Collateral Pool Borrower assumes all obligations of a Borrower under all the applicable Loan Documents;

(ii) the applicable Loan Documents shall be amended and restated as deemed necessary or appropriate by Lender to meet the then-applicable requirements of Fannie Mae; provided, however, any waivers granted in connection with any Advances will not be reinstated unless specifically approved by Lender and Fannie Mae;

(iii) after giving effect to the assumption, the General Conditions contained in Section 5.01 shall be satisfied;

(iv) New Collateral Pool Borrower shall make such deposits to the reserves or escrow funds established under the Loan Documents, including replacement reserves, completion/repair reserves, and all other required escrow and reserve funds at such times and in such amounts as determined by Lender at the time of the assumption;

(v) New Collateral Pool Borrower shall propose a guarantor acceptable to Lender, which guarantor is not directly or indirectly owned by and is not a Prohibited Person, and executes and delivers a guaranty acceptable to Lender;

(vi) delivery to the Title Company for filing and/or recording in all applicable jurisdictions, all applicable Loan Documents including assumption documents and any other appropriate documents in form and substance reasonably satisfactory to Lender in form proper for recordation as may be necessary in the opinion of Lender to correctly evidence the assumptions and the confirmation of Liens created hereunder;

(vii) Lender shall be the servicer of the loan; and

(viii) the requirements of Section 8.14(d) are satisfied.

Upon the satisfaction of all of the foregoing conditions and the completion of the Transfer of the Collateral Pool, the assumption of the Obligations by the New Collateral Pool Borrower, and the assumption by a new guarantor of Guarantor's obligations, Borrower and Guarantor shall be released from any further obligations under the Loan Documents, except for any liabilities or obligations of Borrower or Guarantor which relate to the period prior to the closing of such assumption, any provisions of this Agreement and the other Loan Documents that are expressly stated to survive any release and termination, and any Obligations that survive release as specifically set forth in Section 18 (Environmental Hazards) of the Security Instrument.

(d) Consent to Prohibited Transfers. Lender may, in its sole and absolute discretion, consent to a Transfer that would otherwise violate Section 8.13 or this Section 8.14 if, prior to the Transfer, Borrower or Guarantor, as the case may be, has satisfied each of the following requirements:

(i) the submission to Lender of all information required by Lender to make the determination;

(ii) the absence of any Event of Default or Potential Event of Default;

(iii) neither transferee nor guarantor is directly or indirectly owned by nor is a Prohibited Person and each meets all of the eligibility (including the requirement that the proposed transferee is not a Prohibited Person), credit, management and other standards (including any standards with respect to previous relationships between Lender and the transferee and the organization of the transferee) customarily applied by Lender at the time of the proposed Transfer to the approval of borrower or guarantor, as the case may be, in connection with the origination or purchase of similar mortgage finance structures on similar Senior Housing Facilities unless partially waived by Lender in exchange for such additional conditions as Lender may require;

(iv) if transferor has obligations under any Loan Documents, the execution by the transferee or one (1) or more individuals or entities acceptable to Lender of an assumption agreement, guaranty or any other required loan documents, as applicable, that is acceptable to Lender and that, among other things, requires the transferee or such person to perform all obligations of transferor or such person set forth in such Loan Document, and may require that the transferee or such person comply with any provisions of this Agreement or any other Loan Document which previously may have been waived by Lender and/or Fannie Mae;

(v) the Mortgaged Properties, at the time of the proposed Transfer, meet all standards as to its physical condition that are customarily applied by Lender at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgage finance structures on similar Seniors Housing Facilities unless partially waived by Lender in exchange for such additional conditions as Lender may require;

(vi) if any MBS is Outstanding, the Transfer shall not result in a "significant modification," as defined under applicable Treasury Regulations, of any Advance that has been securitized in an MBS;

(vii) Borrower and transferee have agreed to Lender's conditions to approve such Transfer, which may include, but are not limited to (A) providing additional collateral, guaranties, or other credit support to mitigate any risks concerning the proposed transferee or the performance or condition of the Mortgaged Property, and (B) amending the Loan Documents to (1) delete any specially negotiated terms or provisions previously granted for the exclusive benefit of transferor and (2) restore to original provisions of the standard Fannie Mae form multifamily loan documents, to the extent such provisions were previously modified; and

(viii) Lender's receipt of all of the following:

(A) a transfer fee equal to one percent (1%) of the Advances Outstanding immediately prior to the Transfer;

(B) a $3,000 review fee for each Mortgaged Property then in the Collateral Pool; and

(C) reimbursement of all of Lender's reasonable, third party, out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request.

**Section 8.15. Change in Senior Management.**

Borrower shall give Lender notice of any change in the identity of Senior Management of Borrower, Guarantor or FHC Property Management LLC.

**Section 8.16. Date-Down Endorsements.**

At any time and from time to time, a Lender may obtain an endorsement to each Title Insurance Policy, the effect of which is to bring forward the effective date of such Title Insurance Policy. Borrower shall pay for the cost and expenses incurred by Lender (either directly to the Title Company or to Lender, within five (5) days after demand by Lender) in obtaining such endorsement, provided that, for each Title Insurance Policy, it shall not be liable to pay for more than one (1) such endorsement in any consecutive twelve (12) month period.

**Section 8.17. Ownership of Mortgaged Properties.**

Borrower shall be the sole owner of each of the Mortgaged Properties free and clear of any Liens other than Permitted Liens.

**Section 8.18 Single Purpose Entity.**

Borrower and each sole member manager of Borrower shall maintain itself as a Single Purpose entity. Borrower shall cause the Operator to maintain itself as a Single Purpose entity.

**Section 8.19. ERISA.**

Borrower acknowledges that:

(1) it shall not maintain or sponsor an Employee Benefit Plan or fail to comply with the requirements of a "qualified plan" under Section 401(a) of the Internal Revenue Code;

(2) it shall not maintain, sponsor or contribute to any Employee Benefit Plan that is subject to Title IV of ERISA or Section 412 of the Internal Revenue Code;

(3) it shall not engage in a non-exempt "prohibited transaction" described in Section 406 of ERISA or Section 4975 of the Internal Revenue Code that could result in an assessment of a civil penalty under Section 502(i) of ERISA or excise tax under Section 4975 of the Internal Revenue Code, and none of the assets of Borrower shall constitute "plan assets" (within the meaning of Department of Labor Regulation Section 2510.3-101) of any Employee Benefit Plan subject to Title I of ERISA;

(4) it shall not incur any "withdrawal liability" or trigger a "reportable event" (as such terms are described in Title IV of ERISA) with respect to any such Employee Benefit Plan, unless approved by the appropriate Governmental Authority;

(5) no ERISA Affiliate shall withdraw from any Employee Benefit Plan that is a "Multiemployer Plan;" and

(6) it shall not incur any liabilities under ERISA that if unpaid or unperformed might result in the imposition of a Lien against any of its properties or assets, including satisfaction of any plan funding requirements.

**Section 8.20. Special Provisions Regarding Property Operator.**

Borrower shall not terminate any Facility Operating Agreement or remove or permit or suffer the removal of Property Operator without the prior written consent of Lender and unless and until Lender has approved in writing a replacement Property Operator as the case may be. If any Facility Operating Agreement is terminated or any Property Operator is removed by Lender pursuant to the terms and conditions of the Loan Documents, Borrower agrees to use commercially reasonable efforts to enter into a new Facility Operating Agreement with a new Property Operator on or prior to the effective date of termination unless otherwise directed by Lender. Any new Property Operator must be approved in writing by Lender. Any Facility Operating Agreement between Borrower and a new Property Operator must be approved in writing by Lender, and each new Property Operator must execute and deliver to Lender a SASA. Borrower shall cause any Property Operator to deliver prior written notice to Lender of any name change or any change in its place of incorporation/organization; provided if such name changes or change in the place of incorporation/organization does not adversely affect such Property Operator's ability to maintain any material License, such notice shall be delivered promptly following such change but in any event not more than ten (10) days following Lender's request. Borrower agrees that Lender shall have the right to remove Property Operator at any time: (a) upon the occurrence and during the continuance of an Event of Default under (and as defined in) the Facility Operating Agreement and (b) upon the occurrence of an "Event of Default" under (and as defined in) any SASA.

**Section 8.21. Enforcement of Leases.**

Borrower will comply, in all material respects, with and shall enforce, in all material respects, the obligations of Operator under the Operating Lease.

**Section 8.22. Facility Operating Agreement.**

Borrower shall not assign its rights under a Facility Operating Agreement and shall cause each Property Operator to not assign either of its rights under a Facility Operating Agreement, without the prior written consent of Lender. Within five days of Borrower's receipt of notice thereof, Borrower shall give Lender written notice that any Property Operator has threatened in writing to terminate a Facility Operating Agreement or that a Property Operator has otherwise discontinued its operation and management of the Mortgaged Property.

**Section 8.23. Special Covenant Regarding Sunshine Villa.**

The Mortgaged Property known as Sunshine Villa ("**Sunshine Villa**"), located in Santa Cruz, California, is subject to that certain Participation Agreement with the City of Santa Cruz Affordable Housing Program dated as of September 29, 1989, as amended by that certain First Amendment to Participation Agreement dated as of February 22, 2007 (together, the "**Participation Agreement**"). Pursuant to the Participation Agreement, Sunshine Villa is subject to certain affordable housing requirements. Borrower hereby covenants to comply in all material respects with the terms of the Participation Agreement for so long as Sunshine Villa remains in the Collateral Pool.

**Section 8.24. Special Covenant Regarding Sun Oak.**

The Mortgaged Property known as Sun Oak ("**Sun Oak**"), located in Citrus Heights, California, is, as of the Effective Date, a non-conforming use due to the lack of a "Minor Use Permit" to be issued by the City of Citrus Heights. Borrower shall use best efforts to obtain the Minor Use Permit within ninety (90) days of the Initial Closing Date. In the event that the Minor Use Permit is not obtained and there is damage of more than fifty percent (50%) of the assessed value of Sun Oak, Borrower shall immediately release Sun Oak from the Collateral Pool in accordance with the provisions of Section 3.03.

**Section 8.25. Special Covenant Regarding Willow Park.**

As of the Initial Closing Date, each of the cottages located on the Mortgaged Property known as Willow Park ("**Willow Park**"), located in Boise, Idaho does not contain a sprinkler system. For so long as any cottage does not contain a sprinkler system, Borrower shall maintain an appropriately sized, inspected and approved fire extinguisher in such cottage.

## ARTICLE 9
## NEGATIVE COVENANTS OF BORROWER

Borrower and Guarantor, as applicable, agree and covenant with Lender that, at all times during the Term of this Agreement:

**Section 9.01. Other Activities.**

(a) No Targeted Entity (other than NewCastle or HoldCo) shall amend its Organizational Documents in any material respect without the prior written consent of Lender;

(b) no Targeted Entity shall change its name without notifying Lender in writing prior to such change, provided if such name change does not adversely affect such Targeted Entity's ability to maintain any material License, such notice shall be delivered promptly following such change but in any event not more than ten (10) days following Lender's request;

(c) no Borrower Party shall dissolve or liquidate (whether voluntary or involuntary) in whole or in part;

(d) no Targeted Entity shall, without the prior written consent of Lender, merge or consolidate with any Person, except in connection with a Permitted Transfer; or

(e) Borrower and Operator shall not use, or permit to be used, any Mortgaged Property for any uses or purposes other than as a Seniors Housing Facility and ancillary uses consistent with Seniors Housing Facilities.

**Section 9.02. Liens.**

Borrower shall not create, incur, assume or suffer to exist any Lien on any Mortgaged Property or any part of any Mortgaged Property, except the Permitted Liens and Permitted Transfers.

**Section 9.03. Indebtedness and Mezzanine Financing.**

Borrower shall not incur or be obligated at any time with respect to any Indebtedness (other than Advances) secured by any of the Mortgaged Properties. No Targeted Entity shall incur any "mezzanine debt," or issue any preferred equity that is secured by a pledge of the Ownership Interests in any Targeted Entity or by a pledge of cash flows of Borrower.

**Section 9.04. Principal Place of Business.**

Borrower shall not change its principal place of business, state of formation, or the location of its books and records, each as set forth in the Certificate of Borrower Parties, without first giving thirty (30) days' prior written notice to Lender.

**Section 9.05. Condominiums.**

Borrower shall not submit any Mortgaged Property to a condominium regime during the Term of this Agreement without Lender's prior written consent.

**Section 9.06. Restrictions on Distributions.**

Borrower shall not make any distributions of any nature or kind whatsoever to the owners of its Ownership Interests if, at the time of such distribution, an Event of Default has occurred and is continuing.

**Section 9.07. Conduct of Business.**

The conduct of Borrower's businesses shall not violate Borrower's Organizational Documents.

**Section 9.08. Changes to Facility Operating Agreement.**

Borrower shall not and shall cause Property Operator not to make any material amendments or modifications to a Facility Operating Agreement, terminate a Facility Operating Agreement (except as provided in Section 8.21), or waive any material default thereunder, without the prior written consent of Lender. "Material amendments or modifications to any Facility Operating Agreement" means any amendments or modifications that (i) reduce or change the rent or other payments required to be made by Property Operator, (ii) reduce or change the term, (iii) release any security for the obligations of Property Operator, (iv) change any provisions of a Facility Operating Agreement relating to facility mortgages and the rights of mortgagees, (v) grant options to purchase or (vi) materially modify or reduce the rights or interests of Lender or Fannie Mae. Borrower shall not permit and shall cause Property Operator not to permit any property other than the Mortgaged Property to be subject to a Facility Operating Agreement. In the event that a Facility Operating Agreement matures earlier than the Termination Date, no later than ninety (90) days prior to expiration of such Facility Operating Agreement Borrower shall extend the term of such Facility Operating Agreement, and provide written evidence to Lender of the same, on the terms substantially similar to the Facility Operating Agreement.

**Section 9.09. Changes to Licenses, Permits.**

Borrower shall not and shall cause Property Operator not to, without the prior written consent of Lender, seek or cause the amendment, modification or other change to any License or Permit in any respect that would prohibit or adversely affect the ability to operate any Mortgaged Property as a Seniors Housing Facility or would add Skilled Nursing Units at any Mortgaged Property.

**Section 9.10. Medicaid and Skilled Nursing.**

(a) If any Borrower or any Property Operator is a Medicaid Participant as of the Effective Date with respect to any Mortgaged Property, such Borrower or Property Operator shall maintain its contract as a participating provider in the Medicaid Program at all times. Such Borrower shall not permit or allow more than thirty-five percent (35%) of any Mortgaged Property's effective gross income to be derived from units relying on Medicaid payments. If by reason of applicable law or regulation more than thirty-five percent (35%) of effective gross income is derived from units relying on Medicaid payments, such Borrower shall take, or shall cause to be taken, in a diligent and expeditious manner all reasonable steps necessary to bring such Mortgaged Property into compliance with the preceding sentence to the extent permissible by applicable law or regulation.

(b) With respect to any Borrower or Property Operator which is not a Medicaid Participant as of the Effective Date, Borrower shall notify Lender in writing thirty (30) days prior to any Borrower's or Property Operator's submission of its request to participate in the Medicaid Program, and will provide Lender with copies of all material correspondence and documentation received from the Property Jurisdiction or any authorizing entity concerning its submission. In the event any Borrower or Property Operator becomes a Medicaid Participant with respect to a Mortgaged Property, such Borrower or Property Operator shall execute the form of Medicaid reserve agreement and depositary agreement as Lender may require.

(c) Borrower further covenants and agrees that it (i) shall not permit any of its units to be operated as Skilled Nursing Units, and (ii) shall limit the use and occupancy of the Mortgaged Property to tenants that meet the standards for a Seniors Housing Facility.

## ARTICLE 10
## FEES

**Section 10.01. Origination Fees.**

(a) Initial Origination Fee. Borrower shall pay to Lender an origination fee ("**Initial Origination Fee**") equal to 100 basis points (1.00%) multiplied by the amount of the Initial Advance.

(b) Additional Origination Fee. Upon the closing of a Future Advance drawn from an increase in the Commitment approved by Lender pursuant to Section 2.05, Borrower shall pay to Lender an origination fee equal to 50 basis points (0.50%) multiplied by the amount of the Future Advance.

**Section 10.02. Due Diligence Fees.**

(a) Initial Due Diligence Fees. Borrower shall pay to Lender due diligence fees ("**Initial Due Diligence Fees**") with respect to each Initial Mortgaged Property in an amount equal to the reasonable third party, out-of-pocket costs and expenses of Lender's due diligence for such Initial Mortgaged Properties, including but not limited to third party reports required by Lender plus (i) a $2,500 fee per Initial Mortgaged Property payable to Fannie Mae by Borrower plus (ii) a $3,500 processing fee per Initial Mortgaged Property payable to Lender by Borrower. All Initial Due Diligence Fees shall be paid by Borrower on the Initial Closing Date (or, if the proposed Initial Mortgaged Properties do not become part of the Collateral Pool, within five (5) days of demand therefor). On or before the Initial Closing Date, Borrower shall pay a non-refundable deposit toward the Initial Due Diligence Fees equal to the product obtained by multiplying $6,000 by the number of Initial Mortgaged Properties, minus the portion of the estimated amount of Initial Due Diligence Fees previously paid to Lender by Borrower. On or prior to the Initial Closing Date, Lender shall notify Borrower of the actual amount of the Initial Due Diligence Fees and Borrower shall, on the Initial Closing Date, pay to Lender the remainder of such Initial Due Diligence Fees (if the actual amount of the Initial Due Diligence Fees exceeds the deposit and the other amounts previously paid to Lender by Borrower) or Lender shall promptly refund to Borrower any amounts paid to Lender by Borrower in excess of the Initial Due Diligence Fees (if the actual amount of the Initial Due Diligence Fees is less than the deposit and the other amounts previously paid to Lender by Borrower).

(b) Additional Collateral Due Diligence Fees for Additional Collateral. Borrower shall pay to Lender on or before the Closing Date additional due diligence fees (the "**Additional Collateral Due Diligence Fees**") with respect to each proposed Additional Mortgaged Property or Substitute Mortgaged Property, as applicable, in an amount equal to the reasonable third party,

out-of-pocket costs and expenses of Lender's due diligence for such Additional Collateral, including but not limited to third party reports reasonably required by Lender plus (i) a $2,500 fee per Additional Mortgaged Property or Substitute Mortgaged Property, as applicable, payable to Fannie Mae by Borrower plus (ii) a $3,500 processing fee per Additional Mortgaged Property or Substitute Mortgaged Property, as applicable, payable to Lender by Borrower. Borrower shall pay a non-refundable deposit toward the Additional Collateral Due Diligence Fees equal to the product obtained by multiplying $6,000 per Additional Mortgaged Property or Substitute Mortgaged Property, as applicable,.

**Section 10.03. Legal Fees and Expenses.**

(a) Initial Legal Fees. On the Closing Date, Borrower shall pay, or reimburse Lender for, all reasonable out-of-pocket legal fees and expenses incurred by Lender and by Fannie Mae in connection with the preparation, review and negotiation of this Agreement and any other Loan Documents executed on the date of this Agreement.

(b) Fees and Expenses Associated with Requests. Borrower shall pay, or reimburse Lender and Fannie Mae for, all reasonable out-of-pocket costs and expenses incurred by Lender and Fannie Mae, including legal fees and expenses incurred by Lender and Fannie Mae in connection with the preparation, review and negotiation of all documents, instruments and certificates to be executed and delivered in connection with any request under this Agreement, the performance by Lender of any of its obligations with respect to any request, the satisfaction of all conditions precedent to Borrower's rights or Lender's obligations with respect to any such request, and all transactions related to any of the foregoing, including the cost of title insurance premiums and applicable recordation and transfer taxes and charges and all other reasonable third party, out-of-pocket costs and expenses in connection with any request. The obligations of Borrower under this subsection shall be absolute and unconditional, regardless of whether the transaction requested in such request actually occurs. Borrower shall pay such costs and expenses to Lender on the Closing Date for the request, or, as the case may be, within five (5) days after demand therefor by Lender if Lender determines that such request will not be approved or otherwise close.

**Section 10.04. Failure to Close any Request.**

If Borrower makes a request under this Agreement and fails to close on the request for any reason other than the default by Lender, then Borrower shall pay to Lender and Fannie Mae within five (5) days of demand therefor, all damages incurred by Lender and Fannie Mae in connection with the failure to close.

## ARTICLE 11
## EVENTS OF DEFAULT

**Section 11.01. Events of Default.**

Each of the following events shall constitute an "**Event of Default**" under this Agreement, whatever the reason for such event and whether it shall be voluntary or involuntary, or within or without the control of Borrower or Guarantor or be effected by operation of law or pursuant to any judgment or order of any court or any order, rule or regulation of any Governmental Authority:

(a) the occurrence of an Event of Default under and as defined in any Loan Document; or

(b) the failure by Borrower to pay or deposit when due any amount payable by Borrower under any Note, any Security Instrument, this Agreement or any other Loan Document, including any fees, costs or expenses;

(c) the failure by Borrower to perform or observe any covenant set forth in Section 8.02 (Maintenance of Existence), Section 8.07 (Maintain Licenses), Section 8.08 (Inform Lender of Material Events), Section 8.13 (Transfer of Ownership Interests), Section 8.14 (Transfer of Ownership of Mortgaged Property), Section 8.17 (Ownership of Mortgaged Properties), Section 8.18 (Single Purpose Entity), Section 8.20 (Special Provisions Regarding Property Operator), Section 8.21 (Enforcement of Leases), Section 8.22 (Facility Operating Agreement), Section 9.01 (Other Activities), Section 9.02 (Liens), Section 9.03 (Indebtedness and Mezzanine Financing), Section 9.06 (Restrictions on Distributions), or Section 9.08 (Changes to Facility Operating Agreement), Section 9.09 (Changes to Licenses, Permits), Section 9.10 (Medicaid); or

(d) the failure by Borrower to perform or observe any covenant contained in Article 7, Article 8 or Article 9 (other than those sections specifically referenced in Section 11.01(c) above) for thirty (30) days after receipt of notice of such failure by Borrower from Lender, provided that such period shall be extended for up to thirty (30) additional days if Borrower, in the discretion of Lender, is diligently pursuing a cure of such default within thirty (30) days after receipt of notice from Lender; or

(e) [Intentionally Deleted];

(f) [Intentionally Deleted];

(g) the failure by Borrower to maintain the insurance coverage required by Section 19 (Property and Liability Insurance) of the Security Instrument;

(h) any loss by Borrower or any Property Operator of any License or other legal authority necessary to operate the Mortgaged Property as a Seniors Housing Facility, or any failure by Borrower or any Property Operator to comply strictly with any consent order or decree or to correct, within the time deadlines set by any federal, state or local licensing agency, any deficiency, in each case, where such failure results, or under applicable laws and regulations, is reasonably likely to result, in an action by such agency with respect to the Mortgaged Property that would have a Material Adverse Effect;

(i) if Borrower or any Property Operator:

(i) ceases to operate the Mortgaged Property as a Seniors Housing Facility or takes any action or permits to exist any condition that causes the Mortgaged Property to no longer be classified as housing for older persons pursuant to the Fair Housing Amendments Act of 1988 and the Housing for Older Persons Act of 1995;

(ii) ceases to provide such kitchens, separate bathrooms, and areas for eating, sitting and sleeping in each independent living or assisted living unit or at a minimum, central bathing and dining facilities for Alzheimer's/dementia care, as are provided as of the Closing Date;

(iii) ceases to provide other facilities and services normally associated with independent living or assisted living units including (A) central dining services providing up to three (3) meals per day, (B) periodic housekeeping, (iii) laundry services, (iv) customary transportation services, and (v) social activities;

(iv) provides or contracts for Skilled Nursing Units;

(v) leases or holds available for lease to commercial tenants non-residential space (i.e., space other than the units, dining areas, activity rooms, lobby, parlors, kitchen, mailroom, marketing/management offices) exceeding ten percent (10%) of the net rental area;

(j) an "Event of Default" (or a default which continues beyond any applicable notice and cure period) under any Facility Operating Agreement; provided, with respect to any default under any Management Agreement by Manager, if the Manager is not Affiliated with Borrower, (i) Operator and Manager shall be afforded the same cure rights (if applicable to such default) provided under this Agreement, which shall run concurrently with the cure rights provided to Borrower, and (ii) notwithstanding any provision to the contrary in the SASA or herein, upon such Manager default, Operator shall be permitted to exercise its rights and remedies under the SASA or under the Management Agreement, which shall include, without limitation, the right to terminate the Management Agreement in accordance with the terms of the Management Agreement and replace Manager with a replacement property manager acceptable to Lender within sixty (60) days of the expiration of any such default notice and cure period under the Management Agreement, provided that Lender shall have the right to approve such new property manager and the new Management Agreement.

(k) fraud or material misrepresentation or material omission which would cause a Material Adverse Effect by or on behalf of any Targeted Entity contained in this Agreement or any Loan Document or in connection with (i) the application for or creation of the Credit Facility, (ii) any financial statement, rent roll, or other report or information provided to Lender during the term of the Credit Facility, or (iii) any request for Lender's consent to any proposed action, including a request for disbursement of funds under this Agreement or any Loan Document;

(l) (i) Any Targeted Entity shall (A) commence a voluntary case (for itself or against any other Targeted Entity) under the Federal bankruptcy laws (as now or hereafter in effect), (B) file a petition as debtor seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, debt adjustment, winding up or composition or adjustment of debts, (C) consent to or fail to contest in a timely and appropriate manner any

petition filed against it in an involuntary case under such bankruptcy laws or other laws, (D) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of a substantial part of its property, domestic or foreign, (E) admit in writing its inability to pay (to any Person other than to Lender in connection with a workout) its debts as they become due, (F) make a general assignment for the benefit of creditors, (G) assert that any Targeted Entity has no liability or obligations under this Agreement or any other Loan Document to which it is a party; or (H) take any action for the purpose of effecting any of the foregoing; or

(ii) a case or other proceeding shall be commenced against any Targeted Entity (other than by Lender or Fannie Mae) in any court of competent jurisdiction seeking (A) relief under the Federal bankruptcy laws (as now or hereafter in effect) or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding upon or composition or adjustment of debts, or (B) the appointment of a trustee, receiver, custodian, liquidator or the like of any Targeted Entity, whether by such Person or an Affiliate thereof, or of all or a substantial part of the property, domestic or foreign, of any Targeted Entity, whether by such Person or an Affiliate thereof, and any such case or proceeding shall continue undismissed or unstayed for a period of sixty (60) consecutive calendar days, or any non-appealable order granting the relief requested in any such case or proceeding against any Targeted Entity, whether by such Person or an Affiliate thereof (including an order for relief under such Federal bankruptcy laws) shall be entered; or

(iii) any Targeted Entity files an involuntary petition against Borrower under any Chapter of the Bankruptcy Code or under any other bankruptcy, insolvency, reorganization, arrangement or readjustment of debt, dissolution, liquidation or similar proceeding relating to Borrower under the laws of any jurisdiction;

(m) both (i) an involuntary petition under any Chapter of the Bankruptcy Code is filed against Borrower or Borrower directly or indirectly becomes the subject of any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction, or in equity, and (ii) any Targeted Entity has acted in concert or conspired with such creditors of Borrower (other than Lender) to cause the filing thereof;

(n) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impairs the lien created by the Security Instrument or Lender's interest in the Mortgaged Property;

(o) if (i) any material provision of this Agreement or any other Loan Document or the lien and security interest purported to be created hereunder or under any Loan Document shall at any time for any reason cease to be valid and binding on Borrower or Guarantor in accordance with its terms, or shall be declared to be null and void (provided if such invalidity or voidness is subject to remedy by Borrower or Guarantor complying with the further assurances provisions of the Loan Documents, then Borrower and Guarantor shall be given the opportunity to so comply and no Event of Default shall be deemed to have occurred during such period), or (ii) the validity

or enforceability hereof or thereof or the validity or priority of the lien and security interest created hereunder or under any other Loan Document shall be contested by any Borrower Party seeking to establish the invalidity or unenforceability hereof or thereof, or Borrower or Guarantor (only with respect to the Guaranty) shall deny that it has any further liability or obligation hereunder or thereunder; or

(p) (i) except as permitted under the Loan Documents, the execution by Borrower of a chattel mortgage or other security agreement on any materials, fixtures or articles used in the construction or operation of the improvements located on any Mortgaged Property or on articles of personal property located therein, or (ii) if any such materials, fixtures or articles are purchased pursuant to any conditional sales contract or other security agreement or otherwise so that the Ownership thereof will not vest unconditionally in Borrower free from encumbrances, or (iii) if Borrower does not furnish to Lender upon request the contracts, bills of sale, statements, receipted vouchers and agreements, or any of them, under which Borrower claim title to any materials, fixtures, or articles referred to in clauses (i) or (ii) of this paragraph (p);

(q) [Intentionally Deleted]

(r) [Intentionally Deleted];

(s) any judgment against Borrower or Guarantor, or any attachment or other levy against any portion of Borrower's or Guarantor's assets with respect to a claim or claims in an amount in excess of $100,000 with respect to Borrower and $250,000 with respect to Guarantor in the aggregate remains unpaid, unstayed on appeal, undischarged, unbonded, not fully insured (taking into consideration any deductible under any policy maintained by Borrower pursuant to the terms of Section 19 of each Security Instrument) or undismissed for a period of ninety (90) days;

(t) any failure by Borrower or Guarantor to perform or observe any condition, agreement or obligation under any Loan Document that is subject to a specified notice and cure period, which failure continues beyond such specified notice and cure period as set forth herein or in the applicable Loan Document; or

(u) the failure by any Borrower Party party thereto to perform or observe any term, covenant, condition or agreement hereunder, other than as contained in subsections (a) through (t) above, or in any other Loan Document, within thirty (30) days after receipt of notice from Lender identifying such failure, provided such period shall be extended for up to thirty (30) additional days if Borrower or Guarantor, in the discretion of Lender, is diligently pursuing a cure of such default within thirty (30) days after receipt of notice from Lender, but no such notice or grace period shall apply in the case of any such failure which could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Agreement, result impairment of the Note, this Agreement, or the Security Instrument, or any other security given under any other Loan Document.

## ARTICLE 12
## REMEDIES

**Section 12.01. Remedies; Waivers.**

Upon the occurrence and during the continuance of an Event of Default, Lender may do any one or more of the following at its option (without presentment, protest or notice of protest, all of which are expressly waived by Borrower and Guarantor):

(a) cease making Advances, permitting Additions, Substitutions, Releases, or Conversions under this Agreement, or closing any requests and/or not permitting any new requests under this Agreement;

(b) by written notice to Borrower, to be effective upon dispatch, terminate the Commitment and declare the principal of, and interest on, the Advances and all other sums owing by Borrower to Lender under any of the Loan Documents forthwith due and payable, whereupon the Commitment will terminate and the principal of, and interest on, the Advances and all other sums owing by Borrower to Lender under any of the Loan Documents will become forthwith due and payable;

(c) accelerate any Note without the obligation, but the right to accelerate any other Note and that in the exercise of its rights and remedies under the Loan Documents, Lender may, except as provided in this Agreement, exercise and perfect any and all of its rights in and under the Loan Documents with regard to any Mortgaged Property without the obligation (but with the right) to exercise and perfect its rights and remedies with respect to any other Mortgaged Property and that any such exercise shall be without regard to the Allocable Facility Amount assigned to such Mortgaged Property and that Lender may recover an amount equal to the full amount Outstanding in respect of any of the Notes in connection with such exercise and any such amount shall be applied to the Obligations as determined by Lender;

(d) Lender shall have the right to pursue any other remedies available to it under any of the Loan Documents;

(e) Lender shall have the right to pursue all remedies available to it at law or in equity, including obtaining specific performance and injunctive relief.

**Section 12.02. Waivers; Rescission of Declaration.**

Lender shall have the right, to be exercised in its complete discretion, to waive any breach hereunder (including the occurrence of an Event of Default), by a writing setting forth the terms, conditions, and extent of such waiver signed by Lender and delivered to Borrower. Unless such writing expressly provides to the contrary, any waiver so granted shall extend only to the specific event or occurrence which gave rise to the waiver and not to any other similar event or occurrence which occurs subsequent to the date of such waiver. This provision shall not be construed to permit the waiver of any condition to a Request otherwise provided for herein.

**Section 12.03. Lender's Right to Protect Collateral and Perform Covenants and Other Obligations**

If Borrower or Guarantor fails to perform the covenants and agreements contained in this Agreement or any of the other Loan Documents, then Lender at Lender's option may make such appearances, disburse such sums and take such action as Lender deems necessary, in its sole discretion, to protect Lender's interest, including (a) disbursement of reasonable attorneys' fees, (b) entry upon the Mortgaged Property to make repairs and replacements, (c) procurement of satisfactory insurance as provided in Section 5 of the Security Instrument encumbering the Mortgaged Property, and (d) if the Security Instrument is on a leasehold, exercise of any option to renew or extend the ground lease on behalf of Borrower and the curing of any default of Borrower in the terms and conditions of the ground lease. Any amounts disbursed by Lender pursuant to this Section 12.03, with interest thereon, shall become additional Indebtedness of Borrower secured by the Loan Documents. Unless Borrower and Lender agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the weighted average, as determined by Lender, of the interest rates in effect from time to time for each Advance unless collection from Borrower of interest at such rate would be contrary to Applicable Law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under Applicable Law. Nothing contained in this Section 12.03 shall require Lender to incur any expense or take any action hereunder.

**Section 12.04. No Remedy Exclusive.**

Unless otherwise expressly provided, no remedy herein conferred upon or reserved is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under the Loan Documents or existing at law or in equity.

**Section 12.05. No Waiver.**

No delay or omission to exercise any right or power accruing under any Loan Document upon the happening of any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

**Section 12.06. No Notice.**

To entitle Lender to exercise any remedy reserved to Lender in this Article 12, it shall not be necessary to give any notice, other than such notice as may be required under the applicable provisions of this Agreement or any of the other Loan Documents.

## ARTICLE 13
## INSURANCE, REAL ESTATE TAXES AND REPLACEMENT RESERVES

**Section 13.01. Insurance and Real Estate Taxes.**

Borrower shall (unless waived by Lender in the Security Instrument) establish funds for Taxes, insurance premiums and certain other charges for each Mortgaged Property in accordance with Section 7(a) of the Security Instrument for each Mortgaged Property.

**Section 13.02. Replacement Reserves.**

Borrower shall execute a Replacement Reserve Agreement for the Mortgaged Properties and shall (unless waived by Lender pursuant to the Replacement Reserve Agreement) make all deposits for replacement reserves in accordance with the terms of the Replacement Reserve Agreement.

## ARTICLE 14
## LIMITS ON PERSONAL LIABILITY

**Section 14.01. Personal Liability to Borrower.**

(a) Limits on Personal Liability. Except as otherwise provided in this Section 14.01, Borrower and Guarantor shall have no personal liability under the Loan Documents for the repayment of any Obligations or for the performance of any other Obligations under the Loan Documents (other than Guarantor pursuant to the terms of the Guaranty), and Lender's only recourse for the satisfaction of the Obligations and the performance of such Obligations shall be Lender's exercise of its rights and remedies with respect to the Mortgaged Properties and any other Collateral held by Lender as security for the Obligations.

(b) Exceptions to Limits on Personal Liability. Borrower and Guarantor shall be personally liable to Lender for the repayment of a portion of the Advances and other amounts due under the Loan Documents in an amount equal to any loss, expense, cost, liability or damage suffered by Lender as a result of or in any manner relating to (i) failure of Borrower to pay to Lender upon demand after an Event of Default all Rents (as defined in the Security Instrument) to which Lender is entitled under Section 3(a) of the Security Instrument encumbering the Mortgaged Property and the amount of all security deposits collected and then held by Borrower from tenants then in residence provided all such security deposits collected and no longer held were applied pursuant to the applicable Leases; (ii) failure of Borrower to apply all insurance proceeds, condemnation proceeds or security deposits from tenants as required by the Security Instrument encumbering the Mortgaged Property; (iii) failure of such Borrower or Guarantor to comply with its obligations under the Loan Documents with respect to the delivery of books and records and financial statements; (iv) fraud or written material misrepresentation by Borrower or Guarantor, or any officer, director, partner, member or employee of Borrower or Guarantor in connection with the application for or creation of the Obligations or any request for any action or consent by Lender; (v) failure to apply Rents (including pre-paid rents), first, to the payment of reasonable operating expenses and then to amounts ("**Debt Service Amounts**") payable under the Loan Documents (except that Borrower will not be personally liable (A) to the extent that

Borrower or Guarantor lacks the legal right to direct the disbursement of such sums because of a bankruptcy, receivership or similar judicial proceeding, or (B) with respect to Rents of a Mortgaged Property that are distributed in any Calendar Quarter if Borrower has paid all operating expenses and Debt Service Amounts for that Calendar Quarter); (vi) failure of Borrower to comply with the provisions of Section 17(a) of any Security Instrument; or (vii) Borrower's failure comply with the Licensing provisions of Section 8.07(b) of this Agreement which recourse shall terminate upon satisfaction of the provisions of Section 8.07(b).

(c) Full Recourse. Borrower and Guarantor shall be personally liable to Lender for the payment and performance of all Obligations upon the occurrence of any of the following: (i) Borrower acquisition of any property or operation of any business not permitted by the Single Purpose requirements in the Loan Documents; or (ii) a Transfer that is an Event of Default under any Loan Documents; or (iii) any of the items identified in Section 11.01(l)(i)(A) through (H), inclusive; or (iv) any of the items identified in Section 11.01(l)(ii)(A) or (B) if they occur with the consent, encouragement or active participation of Borrower Parties or any Affiliate of Borrower Parties; or (v) Borrower's or Guarantor's failure to satisfy any and all indemnification obligations contained in Section 18 (environmental) of any Security Instrument.

(d) Miscellaneous. To the extent that Borrower or Guarantor has personal liability under this Section 14.01, or Guarantor has liability under the Guaranty, such liability shall be joint and several and Lender may exercise its rights against Borrower or Guarantor personally without regard to whether Lender has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any guarantor, or pursued any other rights available to Lender under the Loan Documents or Applicable Law. For purposes of this Article 14, the term "**Mortgaged Property**" shall not include any funds that (i) have been applied by Borrower as required or permitted by the Loan Documents prior to the occurrence of an Event of Default, or (ii) are owned by Borrower or Guarantor and which Borrower was unable to apply as required or permitted by the Loan Documents because of a bankruptcy, receivership, or similar judicial proceeding.

(e) Permitted Transfer Not Release. No Transfer by any Person of its Ownership Interests in Borrower shall release Borrower or Guarantor from liability under this Article 14, this Agreement or any other Loan Document, unless Lender shall have approved the Transfer and shall have expressly released Borrower or Guarantor in connection with the Transfer.

**Section 14.02. Additional Borrowers.**

If the owner of an Additional Mortgaged Property is not a current Borrower, the owner of such proposed Additional Mortgaged Property must demonstrate to the satisfaction of Lender that such new Borrower complies with the definition of "Additional Borrower."

In addition, on the Closing Date of the addition of any Additional Mortgaged Property, the owner of such Additional Mortgaged Property, if such owner is an Additional Borrower, shall become a party to a contribution agreement in a manner reasonably satisfactory to Lender, shall deliver a Certificate of Borrower Parties with respect to such Additional Borrower and such Additional Mortgaged Property in form and substance satisfactory to Lender, and execute and

deliver, along with the other Borrowers, such documents as Lender may require to make such Additional Borrower a party to the Variable Facility Notes and/or Fixed Facility Notes. Any Additional Borrower of an Additional Mortgaged Property which becomes added to the Collateral Pool shall be a Borrower for purposes of this Agreement and shall execute and deliver to Lender an amendment adding such Additional Borrower as a party to this Agreement and revising the Exhibits hereto, as applicable, to reflect the Additional Mortgaged Property and Additional Borrower, in each case satisfactory to Lender.

**Section 14.03. Borrower Agency Provisions.**

(a) Each Borrower and Additional Borrower hereby irrevocably designates PROPCO LLC, a Delaware limited liability company, as the borrower agent (the "**Borrower Agent**") to be its agent and in such capacity to receive on behalf of Borrower all proceeds, receive all notices on behalf of Borrower under this Agreement, make all requests under this Agreement, and execute, deliver and receive all instruments, certificates, requests, documents, amendments, writings and further assurances now or hereafter required hereunder, on behalf of such Borrower, and hereby authorizes Lender to pay over all loan proceeds hereunder in accordance with the direction of Borrower Agent. Each Borrower hereby acknowledges that all notices required to be delivered by Lender to any Borrower shall be delivered to Borrower Agent and thereby shall be deemed to have been received by such Borrower.

(b) The handling of this Credit Facility as a co-borrowing facility with a Borrower Agent in the manner set forth in this Agreement is solely as an accommodation to Borrower and is at their request. Lender shall not incur liability to Borrower as a result thereof. To induce Lender to do so and in consideration thereof, each Borrower hereby indemnifies Lender and holds Lender harmless from and against any and all liabilities, expenses, losses, damages and claims of damage or injury asserted against Lender by any Person arising from or incurred by reason of Borrower Agent handling of the financing arrangements of Borrower as provided herein, reliance by Lender on any request or instruction from Borrower Agent or any other action taken by Lender with respect to this Section 14.03 except due to willful misconduct or gross negligence of the indemnified party.

**Section 14.04. Waivers With Respect to Other Borrower Secured Obligation (for Mortgaged Properties located in California)**

To the extent that a Security Instrument or any other Loan Document executed by one Borrower secures an Obligation of another Borrower (the "**Other Borrower Secured Obligation**"), and/or to the extent that a Borrower has guaranteed the debt of another Borrower pursuant toArticle 14, Borrower who executed such Loan Document and/or guaranteed such debt (the "**Waiving Borrower**") hereby agrees, to the extent permitted by law, to the provisions of thisSection 14.04. To the extent that any Mortgaged Properties are located in California, and to the extent permitted by law, the references to the California Code below shall apply to this Agreement and any California Security Instrument securing a California Mortgaged Property.

(a) The Waiving Borrower hereby waives any right it may now or hereafter have to require the beneficiary, assignee or other secured party under such Loan Document, as a condition to the exercise of any remedy or other right against it thereunder or under any other Loan Document executed by the Waiving Borrower in connection with the Other Borrower Secured Obligation: (i) to proceed against the other Borrower or any other person, or against any other collateral assigned to Lender by either Borrower or any other person; (ii) to pursue any other right or remedy in Lender's power; (iii) to give notice of the time, place or terms of any public or private sale of real or personal property collateral assigned to Lender by the other Borrower or any other person (other than the Waiving Borrower), or otherwise to comply with Section 9615 of the California Commercial Code (as modified or recodified from time to time) with respect to any such personal property collateral located in the State of California; or (iv) to make or give (except as otherwise expressly provided in the Security Documents) any presentment, demand, protest, notice of dishonor, notice of protest or other demand or notice of any kind in connection with the Other Borrower Secured Obligation or any collateral (other than the Collateral described in such Security Document) for the Other Borrower Secured Obligation.

(b) The Waiving Borrower hereby waives any defense it may now or hereafter have that relates to: (i) any disability or other defense of the other Borrower or any other person; (ii) the cessation, from any cause other than full performance, of the Other Borrower Secured Obligation; (iii) the application of the proceeds of the Other Borrower Secured Obligation, by the other Borrower or any other person, for purposes other than the purposes represented to the Waiving Borrower by the other Borrower or otherwise intended or understood by the Waiving Borrower or the other Borrower; (iv) any act or omission by Lender which directly or indirectly results in or contributes to the release of the other Borrower or any other person or any collateral for any Other Borrower Secured Obligation; (v) the unenforceability or invalidity of any Security Document or Loan Document (other than the Security Instrument executed by the Waiving Borrower that secures the Other Borrower Secured Obligation) or guaranty with respect to any Other Borrower Secured Obligation, or the lack of perfection or continuing perfection or lack of priority of any Lien (other than the Lien of such Security Instrument) which secures any Other Borrower Secured Obligation; (vi) any failure of Lender to marshal assets in favor of the Waiving Borrower or any other person; (vii) any modification of any Other Borrower Secured Obligation, including any renewal, extension, acceleration or increase in interest rate; (viii) any and all rights and defenses arising out of an election of remedies by Lender, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the Waiving Borrower's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the California Code of Civil Procedure or otherwise; (ix) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (x) any failure of Lender to file or enforce a claim in any bankruptcy or other proceeding with respect to any person; (xi) the election by Lender, in any bankruptcy proceeding of any person, of the application or non-application of Section 1111(b)(2) of the Bankruptcy Code; (xii) any extension of credit or the grant of any lien under Section 364 of the Bankruptcy Code; (xiii) any use of cash collateral under Section 363 of the Bankruptcy Code; or (xiv) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any person. The Waiving Borrower further waives any and all rights and defenses that it may have because the Other Borrower Secured Obligation is secured by real property; this means, among other things, that: (A) Lender may collect from the Waiving Borrower without first

foreclosing on any real or personal property collateral pledged by the other Borrower; (B) if Lender forecloses on any real property collateral pledged by the other Borrower, then (C) the amount of the Other Borrower Secured Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (D) Lender may foreclose on the real property encumbered by the Security Instrument executed by the Waiving Borrower and securing the Other Borrower Secured Obligation even if Lender, by foreclosing on the real property collateral of the Other Borrower, has destroyed any right the Waiving Borrower may have to collect from the Other Borrower. Subject to the last sentence of Section 14.03, the foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses the Waiving Borrower may have because the Other Borrower Secured Obligation is secured by real property. These rights and defenses being waived by the Waiving Borrower include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure. Without limiting the generality of the foregoing or any other provision hereof, the Waiving Borrower further expressly waives, except as provided in Section 14.04(g) below, to the extent permitted by law any and all rights and defenses, which might otherwise be available to it under California Civil Code Sections 2787 to 2855, inclusive, 2899 and 3433, or under California Code of Civil Procedure Sections 580a, 580b, 580d and 726, or any of such sections.

(c) The Waiving Borrower hereby waives any and all benefits and defenses under California Civil Code Section 2810 and agrees that by doing so the Security Instrument executed by the Waiving Borrower and securing the Other Borrower Secured Obligation shall be and remain in full force and effect even if the other Borrower had no liability at the time of incurring the Other Borrower Secured Obligation, or thereafter ceases to be liable. The Waiving Borrower hereby waives any and all benefits and defenses under California Civil Code Section 2809 and agrees that by doing so the Waiving Borrower's liability may be larger in amount and more burdensome than that of the other Borrower. The Waiving Borrower hereby waives the benefit of all principles or provisions of law, which are or might be in conflict with the terms of any of its waivers, and agrees that the Waiving Borrower's waivers shall not be affected by any circumstances, which might otherwise constitute a legal or equitable discharge of a surety or a guarantor. The Waiving Borrower hereby waives the benefits of any right of discharge and all other rights under any and all statutes or other laws relating to guarantors or sureties, to the fullest extent permitted by law, diligence in collecting the Other Borrower Secured Obligation, presentment, demand for payment, protest, all notices with respect to the Other Borrower Secured Obligation, which may be required by statute, rule of law or otherwise to preserve Lender's rights against the Waiving Borrower hereunder, including notice of acceptance, notice of any amendment of the Loan Documents evidencing the Other Borrower Secured Obligation, notice of the occurrence of any default or Event of Default, notice of intent to accelerate, notice of acceleration, notice of dishonor, notice of foreclosure, notice of protest, notice of the incurring by the other Borrower of any obligation or indebtedness and all rights to require Lender to (i) proceed against the other Borrower, (ii) proceed against any general partner or managing member of the other Borrower, (iii) proceed against or exhaust any collateral held by Lender to secure the Other Borrower Secured Obligation, or (iv) if the other Borrower is a partnership, pursue any other remedy it may have against the other Borrower, or any general partner of the other Borrower, including any and all benefits under California Civil Code Sections 2845, 2849 and 2850.

(d) The Waiving Borrower understands that the exercise by Lender of certain rights and remedies contained in a Security Instrument executed by the other Borrower (such as a nonjudicial foreclosure sale) may affect or eliminate the Waiving Borrower's right of subrogation against the other Borrower and that the Waiving Borrower may therefore incur a partially or totally nonreimburseable liability. Nevertheless, the Waiving Borrower hereby authorizes and empowers Lender to exercise, in its sole and absolute discretion, any right or remedy, or any combination thereof, which may then be available, since it is the intent and purpose of the Waiving Borrower that its waivers shall be absolute, independent and unconditional under any and all circumstances.

(e) In accordance with Section 2856 of the California Civil Code, the Waiving Borrower also waives any right or defense based upon an election of remedies by Lender, even though such election (e.g., nonjudicial foreclosure with respect to any collateral held by Lender to secure repayment of the Other Borrower Secured Obligation) destroys or otherwise impairs the subrogation rights of the Waiving Borrower to any right to proceed against the other Borrower for reimbursement, or both, by operation of Section 580d of the California Code of Civil Procedure or otherwise.

(f) In accordance with Section 2856 of the California Civil Code, the Waiving Borrower waives any and all other rights and defenses available to the Waiving Borrower by reason of Sections 2787 through 2855, inclusive, of the California Civil Code, including any and all rights or defenses the Waiving Borrower may have by reason of protection afforded to the other Borrower with respect to the Other Borrower Secured Obligation pursuant to the antideficiency or other laws of the State of California limiting or discharging the Other Borrower Secured Obligation, including Sections 580a, 580b, 580d, and 726 of the California Code of Civil Procedure.

(g) In accordance with Section 2856 of the California Civil Code and pursuant to any other Applicable Law, the Waiving Borrower agrees to withhold the exercise of any and all subrogation, contribution and reimbursement rights against the other Borrower, against any other person, and against any collateral or security for the Other Borrower Secured Obligation, including any such rights pursuant to Sections 2847 and 2848 of the California Civil Code, until the Other Borrower Secured Obligation has been indefeasibly paid and satisfied in full, all obligations owed to Lender under the Loan Documents have been fully performed, and Lender has released, transferred or disposed of all of their right, title and interest in such collateral or security.

(h) Each Borrower hereby irrevocably and unconditionally agrees that in the event that, notwithstandingSection 14.04(g) hereof, to the extent its agreement and waiver set forth in Section 14.04(g) is found by a court of competent jurisdiction to be void or voidable for any reason and such Borrower has any subrogation or other rights against any other Borrower, any such claims, direct or indirect, that such Borrower may have by subrogation rights or other form of reimbursement, contribution or indemnity, against any other Borrower or to any security or any such Borrower, shall be and such rights, claims and indebtedness are hereby deferred, postponed and fully subordinated in time and right of payment to the prior payment, performance and satisfaction in full of the Obligations. Until payment and performance in full with interest

(including post-petition interest in any case under any chapter of the Bankruptcy Code) of the Obligations, each Borrower agrees not to accept any payment or satisfaction of any kind of Indebtedness of any other Borrower in respect of any such subrogation rights arising by virtue of payments made pursuant to this Article 14, and hereby assigns such rights or indebtedness to Lender, including the right to file proofs of claim and to vote thereon in connection with any case under any chapter of the Bankruptcy Code, including the right to vote on any plan of reorganization. In the event that any payment on account of any such subrogation rights shall be received by any Borrower in violation of the foregoing, such payment shall be held in trust for the benefit of Lender, and any amount so collected should be turned over to Lender for application to the Obligations.

(i) At any time without notice to the Waiving Borrower, and without affecting or prejudicing the right of Lender to proceed against the Collateral described in any Loan Document executed by the Waiving Borrower and securing the Other Borrower Secured Obligation, (i) the time for payment of the principal of or interest on, or the performance of, the Other Borrower Secured Obligation may be extended or the Other Borrower Secured Obligation may be renewed in whole or in part; (ii) the time for the other Borrower's performance of or compliance with any covenant or agreement contained in the Loan Documents evidencing the Other Borrower Secured Obligation, whether presently existing or hereinafter entered into, may be extended or such performance or compliance may be waived; (iii) the maturity of the Other Borrower Secured Obligation may be accelerated as provided in the related Note or any other related Loan Document; (iv) the related Note or any other related Loan Document may be modified or amended by Lender and the other Borrower in any respect, including an increase in the principal amount; and (v) any security for the Other Borrower Secured Obligation may be modified, exchanged, surrendered or otherwise dealt with or additional security may be pledged or mortgaged for the Other Borrower Secured Obligation.

(j) It is agreed among each Borrower and Lender that all of the foregoing waivers are of the essence of the transaction contemplated by this Agreement and the Loan Documents and that but for the provisions of this Section 14.04 and such waivers Lender would decline to enter into this Agreement.

**Section 14.05. Joint and Several Obligation; Cross-Guaranty.**

Notwithstanding anything contained in this Agreement or the other Loan Documents to the contrary (but subject to the last sentence of thisSection 14.05 and the provisions of Section 14.01 and Section 14.12), each Borrower shall have joint and several liability for all Obligations. Notwithstanding the intent of all of the parties to this Agreement that all Obligations of each Borrower under this Agreement and the other Loan Documents shall be joint and several Obligations of each Borrower, each Borrower, on a joint and several basis, hereby irrevocably guarantees to Lender and its successors and assigns, the full and prompt payment (whether at stated maturity, by acceleration or otherwise) and performance of, all Obligations owed or hereafter owing to Lender by each other Borrower. Subject to Section 14.01, each Borrower agrees that its guaranty obligation hereunder is an unconditional guaranty of payment and performance and not merely a guaranty of collection. The Obligations of each Borrower under this Agreement shall not be subject to any counterclaim, set-off, recoupment, deduction, cross- claim or defense based upon any claim any Borrower may have against Lender or any other Borrower.

**Section 14.06. No Impairment.**

Each Borrower agrees that the provisions of this Article 14 are for the benefit of Lender and their successors, transferees, endorsees and assigns, and nothing herein contained shall impair, as between any other Borrower and Lender, the obligations of such other Borrower under the Loan Documents.

**Section 14.07. Election of Remedies.**

(a) Lender, in its discretion, may (i) bring suit against any one or more Borrower, jointly and severally, without any requirement that Lender first proceed against any other Borrower or any other Person; (ii) compromise or settle with any one or more Borrower, or any other Person, for such consideration as Lender may deem proper; (iii) release one or more Borrower, or any other Person, from liability; and (iv) otherwise deal with any Borrower and any other Person, or any one or more of them, in any manner, or resort to any of the Collateral at any time held by it for performance of the Obligations or any other source or means of obtaining payment of the Obligations, and no such action shall impair the rights of Lender to collect from any Borrower any amount guaranteed by any Borrower under this Article 14.

(b) If, in the exercise of any of its rights and remedies, Lender shall forfeit any of its rights or remedies, including its rights to enter a deficiency judgment against any Borrower or any other Person, whether because of any Applicable Laws pertaining to "election of remedies" or the like, each Borrower hereby consents to such action by Lender and waives any claim based upon such action, even if such action by Lender shall result in a full or partial loss or any rights of subrogation which each Borrower might otherwise have had but for such action by Lender. Any election of remedies which results in the denial or impairment of the right of Lender to seek a deficiency judgment against any Borrower shall not impair any other Borrower's obligation to pay the full amount of the Obligations. In the event Lender shall bid at any foreclosure or trustee's sale or at any private sale permitted by law or any of the Loan Documents, Lender may bid all or less than the amount of the Obligations and the amount of such bid need not be paid by Lender but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Lender or any other party is the successful bidder, shall be conclusively deemed to be fair market value of the Collateral and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be amount of the Obligations guaranteed under this Article 14, notwithstanding that any present or future law or court decision or ruling may have the effect of reducing the amount of any deficiency claim to which Lender might otherwise be entitled but for such bidding at any such sale.

**Section 14.08. Subordination of Other Obligations.**

(a) Each Borrower hereby irrevocably and unconditionally agrees that all amounts payable from time to time to such Borrower by any other Borrower pursuant to any agreement, whether secured or unsecured, whether of principal, interest or otherwise, other than the amounts

referred to in this Article 14 (collectively, the "**Subordinated Obligations**"), shall be and such rights, claims and indebtedness are, hereby deferred, postponed and fully subordinated in time and right of payment to the prior payment, performance and satisfaction in full of the Obligations; provided, however, that payments may be received by any Borrower in accordance with, and only in accordance with, the provisions of Section 14.08(b) hereof.

(b) Until the Obligations under all the Loan Documents have been finally paid in full or fully performed and all the Loan Documents have been terminated, each Borrower irrevocably and unconditionally agrees it will not ask, demand, sue for, take or receive, directly or indirectly, by set-off, redemption, purchase or in any other manner whatsoever, any payment with respect to, or any security or guaranty for, the whole or any part of the Subordinated Obligations, and in issuing documents, instruments or agreements of any kind evidencing the Subordinated Obligations, each Borrower hereby agrees that it will not receive any payment of any kind on account of the Subordinated Obligations, so long as any of the Obligations under all the Loan Documents are Outstanding or any of the terms and conditions of any of the Loan Documents are in effect; provided, however, that, notwithstanding anything to the contrary contained herein, if no Potential Event of Default or Event of Default or both has occurred and is continuing under any of the Loan Documents, then (i) payments may be received by such Borrower in respect of the Subordinated Obligations in accordance with the stated terms thereof, and (ii) each Borrower and Guarantor shall be permitted to make distributions in accordance with the terms of the applicable Organizational Documents. Except as aforesaid, each Borrower agrees not to accept any payment or satisfaction of any kind of indebtedness of any other Borrower in respect of the Subordinated Obligations and hereby assigns such rights or indebtedness to Fannie Mae, including the right to file proofs of claim and to vote thereon in connection with any case under any chapter of the Bankruptcy Code, including the right to vote on any plan of reorganization. In the event that any payment on account of Subordinated Obligations shall be received by any Borrower in violation of the foregoing, such payment shall be held in trust for the benefit of Lender, and any amount so collected shall be turned over to Lender upon demand.

**Section 14.09. Insolvency and Liability of Other Borrower.**

So long as any of the Obligations are Outstanding, if a petition under any chapter of the Bankruptcy Code is filed by or against any Borrower (the "**Subject Borrower**" for the purposes of Section 14.09, Section 14.10, Section 14.11 and Section 14.12 of this Agreement), each other Borrower (each, an "**Other Borrower**" for the purposes of Section 14.09, Section 14.10, Section 14.11 and Section 14.12 of this Agreement) agrees to file all claims against the Subject Borrower in any bankruptcy or other proceeding in which the filing of claims is required by law in connection with indebtedness owed by the Subject Borrower and to assign to Lender all rights thereunder up to the amount of such indebtedness. In all such cases, the Person or Persons authorized to pay such claims shall pay to Lender the full amount thereof and Lender agrees to pay such Other Borrower any amounts received in excess of the amount necessary to pay the Obligations. Each Other Borrower hereby assigns to Lender all of such Borrower's rights to all such payments to which such Other Borrower would otherwise be entitled but not to exceed the full amount of the Obligations. In the event that, notwithstanding the foregoing, any such payment shall be received by any Other Borrower before the Obligations shall have been finally paid in full, such payment shall be held in trust for the benefit of and shall be paid over to Lender upon demand. Furthermore, notwithstanding the foregoing, the liability of each Borrower hereunder shall in no way be affected by:

(a) the release or discharge of any Other Borrower in any creditors', receivership, bankruptcy or other proceedings; or

(b) the impairment, limitation or modification of the liability of any Other Borrower or the estate of any Other Borrower in bankruptcy resulting from the operation of any present or future provisions of any chapter of the Bankruptcy Code or other statute or from the decision in any court.

**Section 14.10. Preferences, Fraudulent Conveyances, Etc.**

If Lender is required to refund, or voluntarily refunds, any payment received from any Borrower because such payment is or may be avoided, invalidated, declared fraudulent, set aside or determined to be void or voidable as a preference, fraudulent conveyance, impermissible setoff or a diversion of trust funds under the bankruptcy laws or for any similar reason, including without limitation any judgment, order or decree of any court or administrative body having jurisdiction over any Borrower or any of its property, or upon or as a result of the appointment of a receiver, intervenor, custodian or conservator of, or trustee or similar officer for, any Borrower or any substantial part of its property, or otherwise, or any statement or compromise of any claim effected by Lender with any Borrower or any other claimant (a "**Rescinded Payment**"), then each Other Borrower's liability to Lender shall continue in full force and effect, or each Other Borrower's liability to Lender shall be reinstated and renewed, as the case may be, with the same effect and to the same extent as if the Rescinded Payment had not been received by Lender, notwithstanding the cancellation or termination of any of the Loan Documents, and regardless of whether Lender contested the order requiring the return of such payment. In addition, each Other Borrower shall pay, or reimburse Lender for, all expenses (including all reasonable attorneys' fees, court costs and related disbursements) incurred by Lender in the defense of any claim that a payment received by Lender in respect of all or any part of the Obligations must be refunded. The provisions of this Section 14.10 shall survive the termination of the Loan Documents and any satisfaction and discharge of any Borrower by virtue of any payment, court order or any federal or state law.

**Section 14.11. Maximum Liability of Each Borrower.**

Notwithstanding anything contained in this Agreement or any of the Loan Documents to the contrary, if the obligations of any Borrower under this Agreement or any of the other Loan Documents or any Security Instruments granted by any Borrower are determined to exceed the reasonably equivalent value received by such Borrower in exchange for such obligations or grant of such Security Instruments under any Fraudulent Transfer Law (as hereinafter defined), then such liability of such Borrower shall be limited to a maximum aggregate amount equal to the largest amount that would not render its obligations under this Agreement or all other Loan Documents subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any applicable provisions of comparable state law (collectively, the "**Fraudulent Transfer Laws**"), in each case after giving effect to all other

liabilities of such Borrower, contingent or otherwise, that are relevant under the Fraudulent Transfer Laws (specifically excluding, however, any liabilities of such Borrower in respect of Indebtedness to any Other Borrower or any other Person that is an Affiliate of the Other Borrower to the extent that such Indebtedness would be discharged in an amount equal to the amount paid by such Borrower in respect of the Obligations) and after giving effect (as assets) to the value (as determined under the applicable provisions of the Fraudulent Transfer Laws) of any rights to subrogation, reimbursement, indemnification or contribution of such Borrower pursuant to Applicable Law or pursuant to the terms of any agreement including any contribution agreement.

**Section 14.12. Liability Cumulative.**

The liability of each Borrower under this Article 14 is in addition to and shall be cumulative with all liabilities of such Borrower to Lender under this Agreement and all the other Loan Documents to which such Borrower is a party or in respect of any Obligations of any Other Borrower.

## ARTICLE 15
## MISCELLANEOUS PROVISIONS

**Section 15.01. Counterparts.**

To facilitate execution, this Agreement may be executed in any number of counterparts. It shall not be necessary that the signatures of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart, but it shall be sufficient that the signature of, or on behalf of, each party, appear on one or more counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than the number of counterparts containing the respective signatures of, or on behalf of, all of the parties hereto.

**Section 15.02. Amendments, Changes and Modifications.**

This Agreement may be amended, changed, modified, altered or terminated only by written instrument or written instruments signed by all of the parties hereto.

**Section 15.03. Payment of Costs, Fees and Expenses.**

In addition to the payments required by Article 10 of this Agreement, Borrower shall pay, within five (5) days after demand therefor, all reasonable third party out-of-pocket fees, costs, charges or expenses (including the reasonable fees and expenses of attorneys, accountants and other experts) incurred by Lender in connection with:

(a) any amendment, consent or waiver to this Agreement or any of the Loan Documents (whether or not any such amendments, consents or waivers are entered into);

(b) defending or participating in any litigation arising from actions by third parties and brought against or involving Lender with respect to (i) any Mortgaged Property, (ii) any event, act, condition or circumstance in connection with any Mortgaged Property or (iii) the relationship between Lender and Borrower and Guarantor in connection with this Agreement or any of the transactions contemplated by this Agreement, except to the extent caused by or resulting from the gross negligence or willful misconduct of Lender as determined by a court of competent jurisdiction pursuant to a final non-appealable court order;

(c) the administration or enforcement of, or preservation of rights or remedies under, this Agreement or any other Loan Documents or in connection with the foreclosure upon, sale of or other disposition of any Collateral granted pursuant to the Loan Documents; or

(d) any disclosure documents, including fees payable to any rating agencies, including the reasonable fees and expenses of Lender's attorneys and accountants.

Borrower shall also pay, on demand, any transfer taxes, documentary taxes, assessments or charges made by any Governmental Authority solely by reason of the execution, delivery, filing, recordation, performance or enforcement of any of the Loan Documents or the Advances. However, Borrower will not be obligated to pay any franchise, excise, estate, inheritance, income, withholding, excess profits or similar tax (such taxes, "**Excluded Taxes**") of Lender. Any reasonable third party, out-of-pocket attorneys' fees and expenses payable by Borrower pursuant to this Section 15.03 shall be recoverable separately from and in addition to any other amount included in such judgment, and such obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment. Any amounts payable by Borrower pursuant to this Section 15.03, with interest thereon if not paid when due, shall become additional Obligations of Borrower secured by the Loan Documents. Such amounts shall bear interest from the date such amounts are due until paid in full at the weighted average, as determined by Lender, of the interest rates in effect from time to time for each Advance unless collection from Borrower of interest at such rate would be contrary to Applicable Law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under Applicable Law. The provisions of this Section 15.03 are cumulative with, and do not exclude the application and benefit to Lender of, any provision of any other Loan Document relating to any of the matters covered by this Section 15.03.

**Section 15.04. Payment Procedure.**

All payments to be made to Lender pursuant to this Agreement or any of the Loan Documents shall be made in lawful currency of the United States of America and in immediately available funds by wire transfer to an account designated by Lender before 2:00 p.m. (Eastern Standard Time or Eastern Daylight Savings Time, as applicable) on the date when due.

**Section 15.05. Performance/Payments on Business Days.**

In any case in which the date by which performance is required or payment to Lender is required (or the expiration of any time period hereunder shall occur) is not a Business Day, then such performance or payment (or expiration of such time period), as applicable, need not occur on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the day required herein, except that with respect to any payment, as applicable, interest shall continue to accrue for the period after such date to the next Business Day.

**Section 15.06. Choice of Law; Consent to Jurisdiction; Waiver of Jury Trial**

NOTWITHSTANDING ANYTHING IN THE NOTES, THE SECURITY DOCUMENTS OR ANY OF THE OTHER LOAN DOCUMENTS TO THE CONTRARY, EACH OF THE TERMS AND PROVISIONS, AND RIGHTS AND OBLIGATIONS OF BORROWER UNDER THIS AGREEMENT AND THE NOTES, GUARANTOR UNDER THE GUARANTY, AND BORROWER, GUARANTOR AND LENDER UNDER THE OTHER LOAN DOCUMENTS, SHALL BE GOVERNED BY, INTERPRETED, CONSTRUED AND ENFORCED PURSUANT TO AND IN ACCORDANCE WITH THE LAWS OF THE DISTRICT OF COLUMBIA (EXCLUDING THE LAW APPLICABLE TO CONFLICTS OR CHOICE OF LAW) EXCEPT TO THE EXTENT OF PROCEDURAL AND SUBSTANTIVE MATTERS RELATING ONLY TO (a) THE CREATION, PERFECTION AND FORECLOSURE OF LIENS AND SECURITY INTERESTS, AND ENFORCEMENT OF THE RIGHTS AND REMEDIES, AGAINST THE MORTGAGED PROPERTIES, WHICH MATTERS SHALL BE GOVERNED BY THE LAWS OF THE JURISDICTION IN WHICH THE MORTGAGED PROPERTY IS LOCATED, (b) THE PERFECTION, THE EFFECT OF PERFECTION AND NON-PERFECTION AND FORECLOSURE OF SECURITY INTERESTS ON PERSONAL PROPERTY (OTHER THAN DEPOSIT ACCOUNTS), WHICH MATTERS SHALL BE GOVERNED BY THE LAWS OF THE JURISDICTION DETERMINED BY THE CHOICE OF LAW PROVISIONS OF THE UNIFORM COMMERCIAL CODE IN EFFECT FOR THE JURISDICTION IN WHICH THE MORTGAGED PROPERTY IS LOCATED AND (c) THE PERFECTION, THE EFFECT OF PERFECTION AND NON-PERFECTION AND FORECLOSURE OF DEPOSIT ACCOUNTS, WHICH MATTERS SHALL BE GOVERNED BY THE LAWS OF THE JURISDICTION IN WHICH THE DEPOSIT ACCOUNT IS LOCATED. BORROWER, GUARANTOR AND LENDER AGREE THAT ANY CONTROVERSY ARISING UNDER OR IN RELATION TO THE NOTES, THE SECURITY DOCUMENTS (OTHER THAN THE SECURITY INSTRUMENTS) OR ANY OTHER LOAN DOCUMENT SHALL BE, EXCEPT AS OTHERWISE PROVIDED HEREIN, LITIGATED IN THE DISTRICT OF COLUMBIA. THE LOCAL AND FEDERAL COURTS AND AUTHORITIES WITH JURISDICTION IN THE DISTRICT OF COLUMBIA SHALL, EXCEPT AS OTHERWISE PROVIDED HEREIN, HAVE JURISDICTION OVER ALL CONTROVERSIES WHICH MAY ARISE UNDER OR IN RELATION TO THE LOAN DOCUMENTS, INCLUDING THOSE CONTROVERSIES RELATING TO THE EXECUTION, JURISDICTION, BREACH, ENFORCEMENT OR COMPLIANCE WITH THE NOTES, THE SECURITY DOCUMENTS (OTHER THAN THE SECURITY INSTRUMENTS) OR ANY OTHER ISSUE ARISING UNDER, RELATING TO, OR IN CONNECTION WITH ANY OF THE LOAN DOCUMENTS. BORROWER, GUARANTOR AND LENDER IRREVOCABLY CONSENT TO SERVICE, JURISDICTION, AND VENUE OF SUCH COURTS FOR ANY LITIGATION ARISING FROM THE NOTES, THE SECURITY DOCUMENTS OR ANY OF THE OTHER LOAN DOCUMENTS, AND WAIVES ANY OTHER VENUE TO WHICH IT MIGHT BE ENTITLED BY VIRTUE OF DOMICILE, HABITUAL RESIDENCE OR OTHERWISE. NOTHING CONTAINED HEREIN, HOWEVER, SHALL PREVENT LENDER FROM BRINGING ANY SUIT,

ACTION OR PROCEEDING OR EXERCISING ANY RIGHTS AGAINST BORROWER AND GUARANTOR AND AGAINST THE COLLATERAL IN ANY OTHER JURISDICTION. INITIATING SUCH SUIT, ACTION OR PROCEEDING OR TAKING SUCH ACTION IN ANY OTHER JURISDICTION SHALL IN NO EVENT CONSTITUTE A WAIVER OF THE AGREEMENT CONTAINED HEREIN THAT THE LAWS OF THE DISTRICT OF COLUMBIA SHALL GOVERN THE RIGHTS AND OBLIGATIONS OF BORROWER AND GUARANTOR AND LENDER AS PROVIDED HEREIN OR THE SUBMISSION HEREIN BY BORROWER AND GUARANTOR TO PERSONAL JURISDICTION WITHIN THE DISTRICT OF COLUMBIA. BORROWER AND GUARANTOR (i) COVENANT AND AGREE NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING UNDER ANY OF THE LOAN DOCUMENTS TRIABLE BY A JURY AND (ii) WAIVE ANY RIGHT TO TRIAL BY JURY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST. THIS WAIVER IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE ACCRUE. FURTHER, BORROWER AND GUARANTOR HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF LENDER (INCLUDING, BUT NOT LIMITED TO, LENDER'S COUNSEL) HAS REPRESENTED, EXPRESSLY OR OTHERWISE, TO BORROWER AND GUARANTOR THAT LENDER WILL NOT SEEK TO ENFORCE THE PROVISIONS OF THIS SECTION 15.06. THE FOREGOING PROVISIONS WERE KNOWINGLY, WILLINGLY AND VOLUNTARILY AGREED TO BY BORROWER AND GUARANTOR UPON CONSULTATION WITH INDEPENDENT LEGAL COUNSEL SELECTED BY BORROWER'S AND GUARANTOR'S FREE WILL.

**Section 15.07. Severability.**

In the event any provision of this Agreement or in any other Loan Document shall be held invalid, illegal or unenforceable in any jurisdiction, such provision will be severable from the remainder hereof as to such jurisdiction and the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired in any jurisdiction.

**Section 15.08. Notices.**

(a) Manner of Giving Notice. Each notice, direction, certificate or other communication hereunder (in this Section 15.08 referred to collectively as "notices" and singularly as a "notice") which any party is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if:

(i) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered);

(ii) sent by Federal Express (or other similar reputable overnight courier) designating morning delivery (any notice so delivered shall be deemed to have been received on the Business Day it is delivered by the courier);

(iii) sent by telecopier or facsimile machine which automatically generates a transmission report that states the date and time of the transmission, the length of the document transmitted, and the telephone number of the recipient's telecopier or facsimile machine (to be confirmed with a copy thereof sent in accordance with paragraphs (i) or (ii) above within two (2) Business Days) (any notice so delivered shall be deemed to have been received (A) on the date of transmission, if so transmitted before 5:00 p.m. (local time of the recipient) on a Business Day, or (B) on the next Business Day, if so transmitted on or after 5:00 p.m. (local time of the recipient) on a Business Day or if transmitted on a day other than a Business Day), addressed to the parties as follows:

| | |
|---|---|
| As to Borrower and Guarantor: | c/o Fortress Investment Group LLC<br>1345 Avenue of the Americas, 46th Floor<br>New York, NY 10105<br>Attention: Brian Sigman<br>Telephone:(212) 479-5343<br>Telecopy No: (212) 798-6070 |
| with a copy to: | Skadden, Arps, Slate, Meagher & Flom LLP<br>155 N. Wacker Drive<br>Chicago, Illinois 60606<br>Attn: Nancy Olson<br>Fax: (312) 407-8584 |
| As to Lender: | Oak Grove Commercial Mortgage, LLC<br>2177 Youngman Avenue, #300<br>St. Paul, MN 55116<br>Attention: Servicing Department<br>Telecopy No.:(763) 656-4440 |
| As to Fannie Mae: | Fannie Mae<br>3900 Wisconsin Avenue, N.W.<br>Washington, D.C. 20016-2899<br>Attention: Vice President for Multifamily Asset Management<br>Telecopy No.:(202) 752-0435 |
| with a copy to: | Venable LLP<br>575 7th Street, N.W.<br>Washington, D.C. 20004<br>Attention: Stephanie L. DeLong, Esq.<br>Telecopy No.:(202) 344-8300 |

(b) Change of Notice Address. Any party may, by notice given pursuant to this Section 15.08, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its notices, but notice of a change of address shall only be effective upon receipt. Each party agrees that it shall not refuse or reject delivery of any notice given hereunder, that it shall acknowledge, in writing, receipt of the same upon request by the other party and that any notice rejected or refused by it shall be deemed for all purposes of this Agreement to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service, the courier service or facsimile.

**Section 15.09. Further Assurances and Corrective Instruments.**

(a) Further Assurances. To the extent permitted by law, the parties hereto agree that they shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as Lender or Borrower may reasonably request to preserve Lender's perfected lien status, or effectuate the intention of or facilitate the performance of this Agreement or any Loan Document.

(b) Further Documentation. Without limiting the generality of subsection (a), in the event any further documentation or information is required by Lender to correct patent mistakes in the Loan Documents, materials relating to the Title Insurance Policies or the funding of the Advances, Borrower shall provide, or cause to be provided to Lender, at its cost and expense, such documentation or information to the extent reasonably required. Borrower shall execute and deliver to Lender such documentation, including any amendments, corrections, deletions or additions to the Notes, the Security Instruments or the other Loan Documents as is reasonably required by Lender.

(c) Compliance with Investor Requirements. Without limiting the generality of subsection (a), Borrower shall take all reasonable actions necessary to comply with the requirements of Lender to enable Lender to sell any MBS backed by an Advance or preserve the federal income tax treatment of any MBS trust that directly or indirectly holds an Advance and issues MBS as a fixed investment trust or real estate mortgage investment conduit, as the case may be, within the meaning of the Treasury Regulations.

**Section 15.10. Term of this Agreement.**

This Agreement shall continue in effect until the Termination Date.

**Section 15.11. Assignments; Third-Party Rights.**

Borrower shall not assign this Agreement, or delegate any of its obligations hereunder, without the prior written consent of Lender. Subject to Section 15.21, Lender may assign its rights and obligations under this Agreement separately or together, without Borrower's consent, only to Fannie Mae or other entity if such assignment is made with the intent that such entity will further assign rights and obligations to Fannie Mae, but may not delegate its obligations under this Agreement unless it first receives Fannie Mae's written approval. Upon assignment to Fannie Mae, subject to Section 15.21, Fannie Mae shall be permitted to further assign its rights and obligations under this Agreement. Fannie Mae shall be permitted to hold, sell or securitize Advances made hereunder without Borrower's consent.

**Section 15.12. Headings.**

Article and Section headings used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

**Section 15.13. General Interpretive Principles.**

For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, (a) the terms defined in Appendix I and elsewhere in this Agreement have the meanings assigned to them in this Agreement and include the plural as well as the singular, and the use of any gender herein shall be deemed to include the other genders; (b) accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; (c) references herein to "Articles," "Sections," "subsections," "paragraphs" and other subdivisions without reference to a document are to designated Articles, Sections, subsections, paragraphs and other subdivisions of this Agreement; (d) a reference to a subsection without further reference to a Section is a reference to such subsection as contained in the same Section in which the reference appears, and this rule shall also apply to paragraphs and other subdivisions; (e) a reference to an Exhibit or a Schedule without a further reference to the document to which the Exhibit or Schedule is attached is a reference to an Exhibit or Schedule to this Agreement; (f) the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular provision; (g) the word "including" means "including, but not limited to;" (h) any reference to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time; (i) all references to a separate instrument or agreement shall include such instrument or agreement as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof; (j) whenever Borrower's knowledge is implicated in this Agreement or the phrase "to Borrower's knowledge" or a similar phrase is used in this Agreement, Borrower's knowledge or such phrase(s) shall be interpreted to mean to the best of Borrower's knowledge after reasonable and diligent inquiry and investigation; and (k) any act or action required to be performed by Borrower with respect to the management or operation of the Mortgaged Property, including any licensing or insurance requirements, under this Agreement shall be interpreted as requiring Borrower either to perform such act or action directly or to cause a Property Operator or other appropriate agent to perform such act or action; any act or action that Borrower is prohibited from performing with respect to the management or operation of the Mortgaged Property, including any licensing or insurance requirements, under this Agreement shall be interpreted as prohibiting Borrower from performing such act or action and prohibiting Property Operator or other appropriate agent from performing such act or action.

**Section 15.14. Interpretation.**

The parties hereto acknowledge that each party and their respective counsel have participated in the drafting and revision of this Agreement and the Loan Documents. Accordingly, the parties agree that any rule of construction which disfavors the drafting party shall not apply in the interpretation of this Agreement and the Loan Documents or any amendment or supplement or exhibit hereto or thereto. In the event of any conflict between the provisions of this Agreement and any of the Loan Documents, the provisions of this Agreement shall control.

**Section 15.15. Standards for Decisions, Etc.**

Unless otherwise provided herein, if Lender's approval is required for any matter hereunder, such approval may be granted or withheld in Lender's sole and absolute discretion. Unless otherwise provided herein, if Lender's designation, determination, selection, estimate, action or decision is required, permitted or contemplated hereunder, such designation, determination, selection, estimate, action or decision shall be made in Lender's sole and absolute discretion.

**Section 15.16. Decisions in Writing.**

Any approval, designation, determination, selection, action or decision of Lender or Borrower must be in writing to be effective.

**Section 15.17. Approval of Waivers.**

Unless otherwise agreed by Lender, any modifications set forth in this Agreement and the other Loan Documents which are modifications to or waivers from the terms and conditions applicable to similar loans made by Lender and sold to Fannie Mae shall remain in effect with respect to a Mortgaged Property or an Advance only for so long as such Mortgaged Property and Advance are subject to this Agreement and such Borrower is controlled by Guarantor and is a party to this Agreement.

**Section 15.18. USA Patriot Act.**

Lender hereby notifies each Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), it is required to obtain, verify and record information that identifies each Borrower, which information includes the name and address of each Borrower and other information that will allow such Lender to identify each Borrower in accordance with such Act.

**Section 15.19. All Asset Filings.**

If Lender believes that an "all-asset" collateral description, as contemplated by Section 9-504(2) of the UCC, is appropriate as to any Collateral under any Loan Document, Lender is irrevocably authorized to use such a collateral description, whether in one or more separate filings or as part of the collateral description in a filing that particularly describes the Collateral.

**Section 15.20. Recitals.**

The Recitals set forth in this Agreement are incorporated herein as if fully set forth in the body of the Agreement.

**Section 15.21. Registry.**

Transfer Record Custodian, acting solely for this purpose as an agent of Borrower, shall maintain at its offices a register for the recordation of the names and addresses of, and principal amounts and stated interest owing to, each owner of a Note pursuant to the terms hereof from time to time (the "**Register**"); provided, that the failure to make any such recordation, or any error in such recordation, shall not affect the Borrower's Obligations in respect of the Credit Facility. The entries in the Register shall be conclusive, and Borrower and Lender shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as an owner of a Note hereunder for all purposes, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrower and Lender, at any reasonable time and from time to time upon reasonable prior notice.

**[Remainder of page intentionally left blank.]**

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

**BORROWER:**

**CANYON CREEK OWNER LLC**, a Delaware limited liability company

By: /s/ Brian Sigman
Name: Brian Sigman
Title: Chief Financial Officer

**DESERT FLOWER OWNER LLC**, a Delaware limited liability company

By: /s/ Brian Sigman
Name: Brian Sigman
Title: Chief Financial Officer

**ORCHARD PARK OWNER LLC**, a Delaware limited liability company

By: /s/ Brian Sigman
Name: Brian Sigman
Title: Chief Financial Officer

**REGENT COURT OWNER LLC**, a Delaware limited liability company

By: /s/ Brian Sigman
Name: Brian Sigman
Title: Chief Financial Officer

**SHELDON PARK OWNER LLC,** a Delaware limited liability company

By: /s/ Brian Sigman
Name: Brian Sigman
Title: Chief Financial Officer

**SUN OAK OWNER LLC**, a Delaware limited liability company

By: /s/ Brian Sigman
Name: Brian Sigman
Title: Chief Financial Officer

**SUNSHINE VILLA OWNER LLC**, a Delaware limited liability company

By: /s/ Brian Sigman
Name: Brian Sigman
Title: Chief Financial Officer

**WILLOW PARK OWNER LLC**, a Delaware limited liability company

By: /s/ Brian Sigman
Name: Brian Sigman
Title: Chief Financial Officer

**GUARANTOR:**

**TRS LLC**, a Delaware limited liability company

By: /s/ Andrew White
Name: Andrew White
Title: CEO, President & Secretary

**PROPCO LLC**, a Delaware limited liability company

By: /s/ Andrew White
Name: Andrew White
Title: CEO, President & Secretary

**LENDER:**

**OAK GROVE COMMERCIAL MORTGAGE, LLC**, a Delaware limited liability company

By: /s/ Beverly D. Berquam
Name: Beverly D. Berquam
Title: Vice President

APPENDIX I
DEFINITIONS

For all purposes of the Agreement, the following terms shall have the respective meanings set forth below:

"**Addition**" has the meaning set forth in Section 3.02(a).

"**Addition Request**" means a written request, substantially in the form of Exhibit L to this Agreement, to add Additional Mortgaged Properties to the Collateral Pool as set forth in Section 3.02(a).

"**Additional Borrower**" means a Single Purpose Entity that is directly or indirectly wholly owned by Guarantor and controlled or managed by Fortress, is the owner of an Additional Mortgaged Property, and is not a Prohibited Person, or owned, directly or indirectly, by a Prohibited Person, which entity has been approved by Lender and becomes a Borrower under the Agreement and the applicable Loan Documents.

"**Additional Collateral**" means an Additional Mortgaged Property or a Substitute Mortgaged Property.

"**Additional Collateral Due Diligence Fees**" means the due diligence fees paid by Borrower to Lender with respect to each Additional Mortgaged Property or Substitute Mortgaged Property, as set forth in Section 10.02(b).

"**Additional Mortgaged Property**" means each Seniors Housing Facility owned by any Borrower or Additional Borrower (either in fee simple or as tenant under a ground lease) and added to the Collateral Pool after the Initial Closing Date pursuant to Article 3.

"**Additional Origination Fee**" has the meaning set forth in Section 10.01(b).

"**Adjustable Rate**" means the adjustable rate of interest based on the Applicable Index as set forth in each Variable Facility Note evidencing a Variable Advance.

"**Advance**" means a Variable Advance or a Fixed Advance.

"**Advance Amount**" means the lesser of (a) the amount that would result in an Aggregate Loan to Value Ratio of not more than sixty percent (60%), or (b) the amount that would result in (i) an Aggregate Debt Service Coverage Ratio of not less than 1.55:1.0 for the portion of the Advance drawn from the Fixed Facility Commitment and (ii) an Aggregate Debt Service Coverage Ratio of not less than 1.35:1.0 for the portion of the Advance drawn from the Variable Facility Commitment, provided that such amount shall not exceed one hundred percent (100%) of the amount that would result from using the calculation set forth in (i) above.

**"Advance Request"** means a written request substantially in the form of Exhibit K to the Agreement.

"**Affiliate**" or "**Affiliated**" means, when used with reference to a specified Person, (a) any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, the specified Person.

"**Aggregate Debt Service Coverage Ratio**" means, for any specified date, the ratio (expressed as a percentage) of —

(a) the aggregate of the Net Operating Income for the Mortgaged Properties

to

(b) the Facility Debt Service on the specified date.

"**Aggregate Loan to Value Ratio**" means, for any specified date, the ratio (expressed as a percentage) of —

(a) the Advances Outstanding on the specified date,

to

(b) the aggregate of the Valuations most recently obtained prior to the specified date for all of the Mortgaged Properties.

"**Agreement**" means this Agreement, as it may be amended, restated, supplemented or otherwise modified from time to time, including all Recitals, Appendices and Exhibits to the Agreement, each of which is hereby incorporated into the Agreement by this reference.

"**Allocable Facility Amount**" means the portion of the then Outstanding Advances allocated to a particular Mortgaged Property by Lender in accordance with the Agreement.

"**Alterations**" has the meaning set forth in Section 8.10.

**"Alternate Coverage and LTV Tests"** means, for any specified date, each of the following financial tests:

(a) the Aggregate Loan to Value Ratio does not exceed fifty-five percent (55%), and

(b) the Aggregate Debt Service Coverage Ratio is not less than (i) 1.75:1.0 with respect to the portion of the Advances drawn from the Fixed Facility Commitment, and (ii) 1.55:1.0 with respect to the portion of the Advances drawn from the Variable Facility Commitment.

"**Amortization Period**" means the period of thirty (30) years.

"**Applicable Index**" means (a) with respect to any Variable Advance that is made pursuant to the Fannie Mae Structured Adjustable Rate Mortgage Product, either One-Month LIBOR or Three-Month LIBOR, and (b) with respect to any other Variable Advance, the index pursuant to which the Adjustable Rate is determined, as set forth in the applicable Variable Facility Note.

"**Applicable Law**" means (a) all applicable provisions of all constitutions, statutes, rules, regulations and orders of all governmental bodies, all Governmental Approvals and all orders, judgments and decrees of all courts and arbitrators, (b) all applicable zoning, building, environmental and other laws, ordinances, rules, regulations and restrictions of any Governmental Authority affecting the ownership, management, use, operation, maintenance or repair of any Mortgaged Property, including the Americans with Disabilities Act (if applicable), the Fair Housing Amendment Act of 1988 and Hazardous Materials Laws (as defined in the Security Instrument), (c) any building permits or any conditions, easements, rights-of-way, covenants, restrictions of record or any recorded or unrecorded agreement affecting any Mortgaged Property including planned development permits, condominium declarations, and reciprocal easement and regulatory agreements with any Governmental Authority, (d) all applicable laws, ordinances, rules and regulations, whether in the form of rent control, rent stabilization or otherwise, that limit or impose conditions on the amount of rent that may be collected from the units of any Mortgaged Property, and (e) requirements of insurance companies or similar organizations which have provided insurance with respect to Borrower or any Mortgaged Property.

"**Appraisal**" means an appraisal of Seniors Housing Facility conforming to the requirements of Lender for similar loans anticipated to be sold to Fannie Mae and accepted by Lender.

"**Appraised Value**" means the value set forth in an Appraisal.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy" as now and hereafter in effect, or any successor statute.

"**Borrower**" means, individually and collectively, (a) **CANYON CREEK OWNER LLC**, (b) **DESERT FLOWER OWNER LLC**, (c) **ORCHARD PARK OWNER LLC**, (d) **REGENT COURT OWNER LLC**, (e) **SHELDON PARK OWNER LLC**, (f) **SUN OAK OWNER LLC**, (g) **SUNSHINE VILLA OWNER LLC**, (h) **WILLOW PARK OWNER LLC**, each a Delaware limited liability company, and (i) any Additional Borrower becoming a party to this Agreement and the other Loan Documents.

"**Borrower Agent**" has the meaning set forth in Section 14.03(a).

"**Borrower Party**" means, individually and collectively, any Targeted Entity and FIG (or HoldCo, after the HoldCo Event).

"**Business Day**" means any day other than a Saturday, Sunday or any other day on which Lender or Fannie Mae is not open for business.

"**Calendar Day**" means any day in the Calendar Year.

"**Calendar Quarter**" means, with respect to any year, any of the following three month periods: (a) January-February-March; (b) April-May-June; (c) July-August-September; and (d) October-November-December.

"**Calendar Year**" means the twelve (12) month period from the first day of January to and including the last day of December, and each twelve (12) month period thereafter.

"**Capitalization Rate**" means, for each Mortgaged Property, a capitalization rate reasonably selected by Lender for use in determining the Valuations, as disclosed to Borrower upon written request therefor from time to time.

"**Cap Security Agreement**" means, with respect to an Interest Rate Cap, the Interest Rate Cap Security, Pledge and Assignment Agreement between Borrower and Lender, for the benefit of Lender, in the form attached as Exhibit D to this Agreement as such form or agreement may be amended, modified, supplemented or restated from time to time.

"**Cash Collateral Account**" means the cash collateral account established pursuant to the Cash Collateral Agreement.

"**Cash Collateral Agreement**" means a cash collateral, security and custody agreement by and among Fannie Mae, Borrower and a collateral agent for Fannie Mae.

"**Cash Equivalents**" means Permitted Investments having maturities of not more than twelve (12) months from the date of acquisition of such Permitted Investments.

"**Certificate of Borrower Parties**" means the written instrument substantially in the form of Exhibit J to the Agreement.

"**Change of Control**" means the earliest to occur of the following, as applicable:

(a) the date on which a Person becomes (by acquisition, consolidation, merger or otherwise), directly or indirectly, the beneficial owner of more than twenty-five percent (25%) of the total Ownership Interest of any Targeted Entity then outstanding if at such time Fortress, Newcastle, HoldCo and/or any Fortress Managed Fund, collectively, owns less than seventy-five percent (75%) of the total Ownership Interest of such Targeted Entity;

(b) if any Targeted Entity is a limited partnership a Transfer of any general partnership interest in such Targeted Entity;

(c) if any Targeted Entity is a limited liability company, a Transfer resulting in a change of manager;

(d) the replacement (other than solely by reason of retirement at age sixty or older, death or disability) of more than fifty percent (50%) (or such lesser percentage as is required for decision-making by the board of directors or an equivalent governing body) of the members of the board of directors (or an equivalent governing body) of any Targeted Entity (excluding Newcastle (and HoldCo on and after the HoldCo Event)) over a one-year period from the

directors who constituted such board of directors at the beginning of such period and such replacement shall not have been approved by a vote of at least a majority of the board of directors of such Targeted Entity then still in office who either were members of such board of directors at the beginning of such one-year period or whose election as members of the board of directors was previously so approved (it being understood and agreed that in the case of any entity governed by a trustee, board of managers, or other similar governing body, the foregoing clause (b) shall apply thereto by substituting such governing body and the members thereof for the board of directors and members thereof, respectively); and

(e) the date on which a Fortress Managed Fund ceases to control the management of Newcastle provided, on and after the HoldCo Event, the foregoing shall not apply and a Change of Control shall be deemed to have occurred if a Fortress Managed Fund ceases to control the management of HoldCo.

"**Closing Date**" means the Initial Closing Date and each date after the Initial Closing Date on which the funding or other transaction requested in a Request is required to take place.

"**Collateral**" means the Mortgaged Properties and other collateral from time to time or at any time encumbered by the Security Instruments, or any other property securing Borrower's obligations under the Loan Documents.

"**Collateral Event**" means, individually and collectively, a Release, Substitution, Addition, Future Advance, Conversion and/or any extension of a Maturity Date.

"**Collateral Pool**" means all of the Collateral.

"**Commitment**" means, at any time, the sum of the Fixed Facility Commitment and the Variable Facility Commitment.

"**Compliance Certificate**" means a certificate of Borrower substantially in the form of Exhibit F to the Agreement.

"**Compliance Letter**" has the meaning set forth in Section 8.03(a).

"**Confirmation of Guaranty**" means a confirmation of any Guaranty executed by Guarantor in connection with any Request (excluding any Credit Facility Termination Request) after the Initial Closing, substantially in the form of Exhibit E-2 to the Agreement.

"**Confirmation of Obligations**" means a document substantially in the form of Exhibit M to the Agreement.

"**Control**" (or any variation of such term) of one entity (the "**controlled entity**") by another (the "**controlling entity**") means that the controlling entity has the power and authority, directly or indirectly, to direct or cause the direction of the management and policies of the controlled entity, by contract or otherwise.

"**Conversion**" has the meaning set forth in Section 1.06.

"**Conversion Amendment**" means an amendment to this Agreement reflecting the Conversion of all or any portion of any Variable Advance to a Fixed Advance.

"**Conversion Availability Period**" means with respect to a Conversion of all or a portion of a Variable Advance, the date beginning on the first day of the month following twelve (12) complete months after the Closing Date of such Variable Advance and ending on the earlier of (a) the last day of the fourth month prior to the maturity date of such Variable Advance or (b) the last day of the month following the date ten (10) years after the Initial Closing Date.

"**Conversion Documents**" means the Conversion Amendment, together with an amendment to each Security Document if required by Lender and other applicable Loan Documents, in form and substance satisfactory to Lender, reflecting the Conversion of all or a portion of a Variable Advance to a Fixed Advance.

"**Conversion Request**" means a written request, substantially in the form of Exhibit H to the Agreement, to convert all or a portion of a Variable Advance to a Fixed Advance.

"**Coverage and LTV Tests**" means, for any specified date, each of the following financial tests:

(a) the Aggregate Loan to Value Ratio does not exceed sixty percent (60%), and

(b) the Aggregate Debt Service Coverage Ratio is not less than (i) 1.55:1.0 with respect to the portion of the Advances drawn from the Fixed Facility Commitment, and (ii) 1.35:1.0 with respect to the portion of the Advances drawn from the Variable Facility Commitment.

"**Credit Facility**" means the Fixed Facility and the Variable Facility.

"**Credit Facility Termination Documents**" means the instruments releasing the Security Instruments as liens on the Mortgaged Properties, UCC-3 Termination Statements terminating the UCC-1 Financing Statements in favor of Lender, and such other documents and instruments necessary to evidence the release of the Collateral from any lien securing the Obligations, and the Notes, all in connection with the termination of the Agreement and the Credit Facility pursuant to Article 4.

"**Credit Facility Termination Request**" means a written request, substantially in the form of Exhibit N to the Agreement, to terminate the Agreement and the Credit Facility pursuant to Section 4.02(a).

"**Debt Service Amounts**" has the meaning set forth in Section 14.01(b).

"**Debt Service Coverage Ratio**" means for any Mortgaged Property, for any specified date, the ratio (expressed as a percentage) of –

(a) the aggregate of the Net Operating Income for the preceding twelve (12) month period for the subject Mortgaged Property

to

(b) the Facility Debt Service on the specified date, assuming, for the purpose of calculating the Facility Debt Service for this definition, that Advances Outstanding shall be the Allocable Facility Amount, in each case, for the subject Mortgaged Property.

"**Employee Benefit Plan**" has the meaning as defined in Section 3(3) of ERISA.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended from time to time and the regulations promulgated thereunder.

"**ERISA Affiliate**" means, with respect to any Person, any entity that, together with such Person, would be treated as a single employer under Section 414(b) or (c) of the Internal Revenue Code, or Section 4001(a)(14) of ERISA, or the regulations thereunder. For purposes of this definition, it shall be assumed that each entity is a "trade or business" unless Borrower provides a written opinion of counsel satisfactory to Lender establishing that an entity is not a "trade or business."

"**Event of Default**" means any event defined to be an "**Event of Default**" under Article 11.

**"Facility Debt Service"** means –

(a) For all purposes other than determining the Strike Rate, the sum of the amount of interest and principal amortization that would be payable during the applicable period determined by Lender immediately succeeding the date of determination, except that:

(1) each Variable Advance to be obtained shall be deemed to require level monthly payments of principal and interest (at an interest rate equal to (A) the Applicable Index plus (B) the Margin (or until rate locked, the indicative pricing, as determined pursuant to the Underwriting and Servicing Requirements) plus (C) a stressed underwriting margin of 300 basis points (3.00%) or such lower stressed underwriting margin determined pursuant to the Underwriting and Servicing Requirements, plus (D) any Monthly Cap Escrow Payment, in an amount necessary to fully amortize the original principal amount of the Variable Advance over the Amortization Period;

(2) each Variable Advance Outstanding shall be deemed to require level monthly payments of principal and interest (at an interest rate equal to (A) the Strike Rate applicable to such Advance based on the weighted average of the Strike Rate for all Outstanding Interest Rate Caps, plus (B) the Margin, plus (C) any Monthly Cap Escrow Payment in an amount necessary to fully amortize the original principal amount of the Variable Advance over the Amortization Period;

(3) each Fixed Advance to be obtained or Variable Advance to be converted shall be deemed to require level monthly payments of principal and interest (at an interest rate equal to (A) the greater of (i) the applicable underwriting interest rate floor as calculated in accordance with Lender's Underwriting and Servicing Requirements or (ii)

the base United States Treasury Index Rate for securities having a maturity substantially similar to the maturity of the Fixed Advance, plus (B) the Fixed Facility Fee (or until rate locked, the estimated Fixed Facility Fee as determined pursuant to the Underwriting and Servicing Requirements) in an amount necessary to fully amortize the original principal amount of the Fixed Advance over the Amortization Period;

(4) each Fixed Advance Outstanding shall be deemed to require level monthly payments of principal and interest (at the Interest Rate for such Fixed Advance as set forth in the applicable Note) in an amount necessary to fully amortize the original principal amount of such Fixed Advance over the Amortization Period.

"**Facility Operating Agreement**" means, individually and collectively, any of an Operating Lease, Sublease, Management Agreement or any other agreement setting forth the responsibilities for the operation, management, maintenance or administration of the Mortgaged Property as a Seniors Housing Facility.

"**Fannie Mae**" means the corporation duly organized under the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. §1716et seq. and duly organized and existing under the laws of the United States.

"**Fees**" means Additional Collateral Due Diligence Fee, Additional Origination Fee, Fixed Facility Fee, Initial Due Diligence Fee, Initial Origination Fee, Release Fee, Substitution Fee, Variable Facility Fee, and any and all other fees payable by Borrower as specified in the Agreement.

"**Fifth Anniversary**" means the date that is the first day of the month following the date five (5) years after the Initial Closing Date.

"**FIG**" means FIG LLC, the manager of Newcastle pursuant to that certain Amended and Restated Management and Advisory Agreement dated as of June 23, 2003 or any other subsidiary of Fortress that is majority owned directly or indirectly and Controlled directly or indirectly by Fortress (together with its principals) that has entered into a management and advisory arrangement in substantially the same form as the management and advisory agreement between Newcastle and FIG on the date hereof or in any other form reasonably acceptable to Lender.

"**First Anniversary**" means the date that is the first day of the month following the date one (1) year after the Initial Closing Date.

"**Fixed Advance**" means a fixed rate loan made by Lender to Borrower under the Fixed Facility Commitment evidenced by a Fixed Facility Note.

"**Fixed Facility**" means the agreement of Lender to make Fixed Advances to Borrower pursuant toSection 1.01.

"**Fixed Facility Commitment**" means $65,000,000.00, plus such amount as Borrower may elect to add to or convert to the Fixed Facility Commitment in accordance with Section 1.06, plus any additional Commitment for a Fixed Advance pursuant to Section 2.05 and/or Article 3.

"**Fixed Facility Fee**" means for any Fixed Advance, the number of basis points mutually agreed to by Borrower and Lender at the time as the Fixed Facility Fee for such Fixed Advance (which shall be no more than the amount then being charged by Lender to other borrowers on credit facilities having similar characteristics regarding leverage, recourse and other material terms as determined by Lender), provided that for any Fixed Advance converted from a Variable Advance within five (5) years of the Closing Date of such original Variable Advance, the Fixed Facility Fee shall be the same as the original Variable Facility Fee for such Advance.

"**Fixed Facility Note**" means a promissory note, in the form attached as Exhibit B to the Agreement (as such form may be modified from time to time), which will be issued by Borrower to Lender, concurrently with the funding of each Fixed Advance.

"**Fortress**" means Fortress Investment Group LLC.

"**Fortress Managed Fund**" means a subsidiary of Fortress that is majority owned directly or indirectly and Controlled directly or indirectly by Fortress (together with its principals) that has entered into a management and advisory arrangement in substantially the same form as the management and advisory agreement between Newcastle and FIG on the date hereof or in any other form reasonably acceptable to Lender.

"**Fraudulent Transfer Laws**" has the meaning set forth in Section 14.11 of the Agreement.

"**Funding Commitment**" has the meaning set forth in Section 2.01(c).

"**Future Advance**" has the meaning set forth in Section 2.05.

"**GAAP**" means generally accepted accounting principles in the United States in effect from time to time, consistently applied.

"**General Conditions**" has the meaning set forth in Article 5.

"**Governmental Approval**" means an authorization, permit, consent, approval, license, registration or exemption from registration or filing with, or report to, any Governmental Authority.

"**Governmental Authority**" means any court, board, agency, commission, office or authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence having jurisdiction over any Borrower, Guarantor, Property Operator and/or Mortgaged Properties.

"**Gross Revenues**" means, for any specified period and for any specified purpose, with respect to any Seniors Housing Facility, all income in respect of such Seniors Housing Facility determined in accordance with the Underwriting and Servicing Requirements based on the certified operating statement for such specified period.

"**Guarantor**" means PROPCO LLC and TRS LLC, each a Delaware limited liability company, jointly and severally.

"**Guaranty**" means that certain Guaranty to be executed by Guarantor in the form of Exhibit E-1 to this Agreement.

"**Hazardous Materials**," with respect to any Mortgaged Property, has the meaning given that term in the Security Instrument encumbering the Mortgaged Property.

"**Hazardous Materials Law**", with respect to any Mortgaged Property, has the meaning given that term in the Security Instrument encumbering the Mortgaged Property.

"**Hazardous Substance Activity**" has the meaning given to the term "Prohibited Activities or Conditions" in the Security Instrument encumbering the Mortgaged Property.

"**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996, as amended, and all regulations and other guidance promulgated thereunder by the U.S. Department of Health and Human Services.

"**HIPAA Covered Entity**" means any entity that is deemed to be a "covered entity" under HIPAA.

"**HoldCo**" means any entity now existing or hereinafter formed by Newcastle, whose Ownership Interests will be Transferred to Persons owning stock of Newcastle for the purpose of effecting the HoldCo Event.

"**HoldCo Event**" has the meaning set forth in Section 8.13.

"**Impositions**" has the meaning set forth in the Security Instrument.

"**Indebtedness**" means, with respect to any Person, as of any specified date, without duplication, all:

(a) indebtedness of such Person for borrowed money or for the deferred purchase price of property or services (other than (i) current trade liabilities (including, but not limited to, service contracts, property management agreements, and employment contracts) incurred in the ordinary course of business and payable in accordance with customary practices, (ii) for construction of improvements to property, if such person has a non-contingent contract to purchase such property, or (iii) amounts to be paid by such Person, in performance stages or upon completion, pursuant to a written contract for the making of capital improvements to a Mortgaged Property permitted by this Agreement or the other Loan Documents);

(b) other indebtedness of such Person which is evidenced by a note, bond, debenture or similar instrument;

(c) obligations of such Person under any lease of property, real or personal, the obligations of the lessee in respect of which are required by GAAP to be capitalized on a balance sheet of the lessee or to be otherwise disclosed as such in a note to such balance sheet;

(d) obligations of such Person in respect of acceptances (as defined in Article 3 of the Uniform Commercial Code of the District of Columbia) issued or created for the account of such Person;

(e) liabilities secured by any Lien on any property owned by such Person even though such Person has not assumed or otherwise become liable for the payment of such liabilities; and

(f) as to any Person ("guaranteeing person"), any obligation of (i) the guaranteeing person or (ii) another Person (including any bank under any letter of credit) to induce the creation of a primary obligation (as defined below) with respect to which the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing, or in effect guaranteeing, any indebtedness, lease, dividend or other obligation ("primary obligations") of any third person ("primary obligor") in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, to (A) purchase any such primary obligation or any property constituting direct or indirect security therefor, (B) advance or supply funds for the purchase or payment of any such primary obligation or to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (C) purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (D) otherwise assure or hold harmless the owner of any such primary obligation against loss in respect of the primary obligation ("**Contingent Obligation**") (provided, however, that the term "Contingent Obligation" shall not include endorsements of instruments for deposit or collection in the ordinary course of business). The amount of any Contingent Obligation of any guaranteeing person shall be deemed to be the lesser of (1) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made and (2) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Contingent Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Contingent Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by Lender in good faith.

"**Individual Property Coverage and LTV Tests**" means, with respect to any Mortgaged Property, each of the following tests: (a) the Debt Service Coverage Ratio is not less than (i) 1.50:1.0 with respect to any Fixed Advances, and (ii) 1.35:1.0, with respect to any Variable Advances; and (b) the Loan to Value Ratio does not exceed sixty percent (60%).

"**Initial Advance**" means the Advance made on the Initial Closing Date in the aggregate amount of $88,400,000.00.

"**Initial Closing Date**" means the date of the Agreement.

"**Initial Due Diligence Fees**" has the meaning set forth in Section 10.02(a).

"**Initial Mortgaged Properties**" means, individually and collectively, the Seniors Housing Facilities identified on Exhibit A to the Agreement (and more particularly described in each applicable Security Instrument) and which represent the Seniors Housing Facilities that are made part of the Collateral Pool on the Initial Closing Date.

"**Initial Origination Fee**" has the meaning set forth in Section 10.01(a) of the Agreement.

"**Initial Valuation**" means, when used with reference to specified Collateral, the Valuation initially performed for the Collateral as of the date on which the Collateral was added to the Collateral Pool. The Initial Valuation for each of the Initial Mortgaged Properties is as set forth in Exhibit A to the Agreement.

"**Insurance Policy**" means, with respect to a Mortgaged Property, the insurance coverage and insurance certificates evidencing such insurance required to be maintained pursuant to the Security Instrument encumbering the Mortgaged Property.

"**Interest Rate Cap**" has the meaning set forth in Section 1.09.

"**Internal Revenue Code**" means the Internal Revenue Code of 1986, as amended. Each reference to the Internal Revenue Code shall be deemed to include (a) any successor internal revenue law and (b) the applicable regulations whether final, temporary or proposed.

"**Issuer**" has the meaning set forth in Section 5.11(a).

"**Lease**" means any lease, any sublease or subsublease, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in any Mortgaged Property, and every modification, amendment or other agreement relating to such lease, sublease, subsublease or other agreement entered into in connection with such lease, sublease, subsublease or other agreement, and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

"**Lender**" has the meaning set forth in the first paragraph of the Agreement, and shall also refer to any replacement Lender.

"**Letter of Credit**" means a letter of credit issued by a financial institution satisfactory to Fannie Mae, naming Fannie Mae as beneficiary in a form as reasonably and customarily acceptable to Fannie Mae.

"**Licenses**" has the meaning set forth in the SASA.

"**Lien**" means any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (including both consensual and non-consensual liens and encumbrances).

"**Loan Document Taxes**" has the meaning set forth in Section 8.10(a).

"**Loan Documents**" means the Agreement, the Notes, the Guaranty, the Security Documents, all documents executed by Borrower or Guarantor pursuant to the General Conditions set forth in Article 5 of the Agreement and any other documents executed by Borrower or Guarantor from time to time in connection with the Agreement or the transactions contemplated by the Agreement.

"**Loan to Value Ratio**" means, for a Mortgaged Property, for any specified date, the ratio (expressed as a percentage) of —

(a) the Allocable Facility Amount of the subject Mortgaged Property on the specified date,

to

(b) the Valuation most recently obtained prior to the specified date for the subject Mortgaged Property.

"**Management Agreement**" means, collectively, each management agreement, dated as of the Initial Closing Date, between each Operator, as "Tenant," and each of Orchard Park Management LLC, Sun Oak Management LLC, Sunshine Villa Management LLC, Regent Court Management LLC, Sheldon Park Management LLC, Desert Flower Management LLC, Canyon Creek Property Management LLC and Willow Park Management LLC, as "Manager," as the same may be amended, modified or supplemented from time to time in accordance with the terms of the Loan Documents, and any other management agreement substantially in the form of the Management Agreement or in form otherwise reasonably approved by Lender.

"**Manager**" means the Person approved in writing by Lender responsible for the operation or management of the Mortgaged Property pursuant to a Management Agreement.

"**Margin**" means the spread as determined by Lender over (i) the Applicable Index, with respect to Variable Advances, or (ii) the United States Treasury Index Rate, with respect to Fixed Advances. The Margin shall include the Variable Facility Fee or Fixed Facility Fee, as applicable. The Margin varies and may be different for each Advance.

"**Material Adverse Effect**" means, with respect to any circumstance, act, condition or event of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singularly or in conjunction with any other event or events, act or acts, condition or conditions, or circumstance or circumstances, whether or not related, a change or effect which does or would materially impair (a) the business, operations, property or financial condition of Borrower or Guarantor, (b) the operation, performance or value of any Mortgaged Property, (c) the ability of Borrower or Guarantor to perform the Obligations for which it is liable, (d) the validity, priority, perfection or enforceability of the Agreement or any other Loan Document or the rights or remedies of Lender under any Loan Document, or (e) Lender's ability to have recourse against any Borrower subject to Section 14.01.

"**Maximum Annual Interest Rate**" has the meaning set forth in Section 2.01(b).

"**MBS**" means a mortgage-backed security issued by Fannie Mae which is "backed" by an Advance and has an interest in the Note and the Collateral Pool securing the Note, which interest permits the holder of the MBS to participate in the Note and the Collateral Pool to the extent of such Advance.

"**MBS Delivery Date**" means the date on which an MBS is delivered by Fannie Mae.

"**MBS Issue Date**" means the date on which an MBS is issued by Fannie Mae.

"**MBS Interest Rate**" means the interest rate for an Advance as calculated by Lender (rounded to three places) payable in respect of the Fannie Mae MBS issued pursuant to the Funding Commitment backed by such Advance as determined in accordance with Section 2.01.

"**Monthly Cap Escrow Payment**" has the same meaning as the term "Monthly Deposit" in the Cap Security Agreement.

"**Moody's**" means Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, and its successors and assigns, if such successors and assigns shall continue to perform the functions of a securities rating agency.

"**Mortgaged Properties**" means, collectively, the Initial Mortgaged Properties, Additional Mortgaged Properties and the Substitute Mortgaged Properties (but excluding each Release Mortgaged Property from and after the date of its release from the Collateral Pool), each as described in the applicable Security Instrument.

"Multiemployer Plan" means a multiemployer plan within the meaning of Section 4001(a)(3) or Section 3(37) of ERISA (a) to which Borrower or any ERISA Affiliate is making or accruing an obligation to make contributions; (b) to which Borrower or any ERISA Affiliate has in the past made contributions; or (c) with respect to which Borrower or any ERISA Affiliate could incur liability.

"**National Contracts**" has the meaning set forth in the SASA.

"**Net Operating Income**" means, for any specified period, with respect to any Mortgaged Property, the net income during such period equal to Gross Revenues during such period less the Operating Expenses during such period. If a Mortgaged Property is not owned by a Borrower or an Affiliate of a Borrower for the entire specified period, the Net Operating Income for the Mortgaged Property for the time within the specified period during which the Mortgaged Property was owned by a Borrower or an Affiliate of a Borrower shall be the Mortgaged Property's pro forma net operating income determined by Lender in accordance with the underwriting procedures set forth by Lender for similar loans anticipated to be sold to Fannie Mae.

"**Newcastle**" means Newcastle Investment Corporation, a Delaware corporation.

**"New Collateral Pool Borrower"** has the definition set forth in Section 8.14(c)(i).

"**Note**" means any Fixed Facility Note or Variable Facility Note.

"**Obligations**" means the aggregate of the obligations of Borrower and Guarantor under the Agreement and the other Loan Documents.

"**One-Month LIBOR**" means the British Bankers Association fixing of the London Inter-Bank Offered Rate for 1-month U.S. Dollar-denominated deposits as reported by Reuters through electronic transmission. If the Index is no longer available, or is no longer posted through electronic transmission, Lender will choose a new index that is based upon comparable information and provide notice thereof to Borrower.

"**Operating Expenses**" means, for any period, with respect to any Mortgaged Property, all expenses in respect of the Mortgaged Property, as determined by Lender based on the certified operating statement for such specified period as adjusted to provide for the following: (a) all appropriate types of expenses, including a management fee and deposits required pursuant to the Replacement Reserve Agreement (whether funded or not), are included in the total operating expense figure; (b) upward adjustments to individual line item expenses to reflect market norms or actual costs and correct any unusually low expense items, which could not be replicated by a different owner or manager (e.g., a market rate management fee will be included regardless of whether or not a management fee is charged, market rate payroll will be included regardless of whether shared payroll provides for economies, etc.); and (c) downward adjustments to individual line item expenses to reflect unique or aberrant costs (e.g., non-recurring capital costs, non-operating borrower expenses, etc.).

"**Operating Lease**" means, if applicable, any operating lease, master lease, or similar document as amended, restated, replaced, supplemented, or otherwise modified from time to time, preapproved in writing by Lender, under which control of the occupancy, use, operation, management, maintenance or administration of the Mortgaged Property as a Seniors Housing Facility has been granted by Borrower as lessor to any Person (other than Borrower) as lessee.

"**Operator**" means the Person, approved in writing by Lender, that is the tenant responsible for the occupancy, use, operation, management, maintenance and administration of the Mortgaged Property pursuant to an Operating Lease, if any.

"**Organizational Certificate**" means, collectively, certificates from Borrower and Guarantor to Lender, in the form of Exhibit G-1 and Exhibit G-2 to the Agreement, certifying as to certain organizational matters with respect to Borrower and Guarantor.

"**Organizational Documents**" means all certificates, instruments and other documents in effect on the date of the Agreement (or, with respect to an Additional Borrower, the date on which the Additional Borrower becomes a party to this Agreement), pursuant to which an entity is organized or operates, including but not limited to, (a) with respect to a corporation, its articles of incorporation and bylaws, (b) with respect to a limited partnership, its limited partnership certificate and partnership agreement, (c) with respect to a general partnership or joint venture, its partnership or joint venture agreement and (d) with respect to a limited liability company, its articles of organization and operating agreement as amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

**"Other Borrower"** has the meaning set forth in Section 14.09 of the Agreement.

"**Other Borrower Secured Obligation**" has the meaning set forth in Section 14.04 of the Agreement.

"**Outstanding**" means, when used in connection with promissory notes, other debt instruments or Advances, for a specified date, amounts under any promissory notes or other debt instruments which have been issued, or amounts of Advances which have been made, but which have not been repaid as of such specified date.

"**Ownership Interests**" means, with respect to any entity, any direct or indirect ownership interests in the entity and any economic rights (such as a right to distributions, net cash flow or net income) to which the owner of such ownership interests is entitled.

"**Permits**" means all permits, or similar licenses or approvals issued and/or required by an applicable Governmental Authority or any Applicable Law in connection with the ownership, use, occupancy, leasing, management, operation, repair, maintenance or rehabilitation of any Mortgaged Property or any Borrower's business.

"**Permitted Investments**" means one or more of the following which Lender may invest cash into:

(a) Fannie Mae approved government money market funds; and

(b) any other investment approved in writing by Lender

as such list of investments may be modified by Lender from time to time.

"**Permitted Liens**" means, with respect to a Mortgaged Property, (a) the exceptions to title to the Mortgaged Property set forth in the Title Insurance Policy for the Mortgaged Property which are approved by Lender, (b) the Security Instrument, SASA and any other Loan Document encumbering the Mortgaged Property, (c) Liens, if any, for Taxes or water and sewer charges imposed by any Governmental Authority not yet due and payable, subject to Borrower's right to contest pursuant to Section 15 of the Security Instrument; (d) in the case of Liens arising after the date hereof, statutory Liens of carriers, warehousemen, mechanics, materialmen and other similar Liens arising by operation of law, which are incurred in the ordinary course of Borrower's business for sums which are not yet due or which are released of record or otherwise remedied to Lender's satisfaction within thirty (30) days after Borrower has actual or constructive notice of the existence of such Lien (provided that Borrower provided Lender

prompt notice after actual or constructive notice); (e) any judgment Lien provided that the judgment it secures shall have been discharged or record or the execution thereof stayed pending appeal within thirty (30) days after the entry thereof or within thirty (30) days after the expiration of any stay, as applicable; and (f) such other title and survey exceptions as Lender has approved or may approve in writing in Lender's sole discretion.

"**Permitted Transfers**" has the meaning set forth in Section 8.13 and Section 8.14 of the Agreement.

"**Person**" means an individual, an estate, a trust, a corporation, a partnership, a limited liability company or any other organization or entity (whether governmental or private).

"**Plan**" means a "multiemployer plan" as defined in Section 4001(3) of ERISA and a "single employee plan" as defined in Section 4001(5) of ERISA.

"**Potential Event of Default**" means any event that, with the giving of notice or the passage of time, or both, would constitute an Event of Default.

"**Prohibited Person**" means:

(a) any Person with whom Lender or Fannie Mae is prohibited from doing business pursuant to any law, rule, regulation, judicial proceeding or administrative directive; or

(b) any Person identified on the United States Department of Housing and Urban Development's "Limited Denial of Participation, HUD Funding Disqualifications and Voluntary Abstentions List," or on the General Services Administration's "Excluded Parties List System," each of which may be amended from time to time, and any successor or replacement thereof; or

(c) any Person that is determined by Fannie Mae to pose an unacceptable credit risk due to the aggregate amount of debt of such Person owned or held by Fannie Mae; or

(d) any Person that has caused any unsatisfactory experience of a material nature with Fannie Mae or Lender, such as a default, fraud, intentional misrepresentation, litigation, arbitration or other similar act.

"**Property**" means any estate or interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible.

"**Property Delivery Deadline**" has the meaning set forth in Section 3.05(d)(ii) of the Agreement.

**"Property Operator"** means individually and collectively, (a) any Operator (b) any Sublessee, and (c) any Manager.

"**Rate Change Date**" has the meaning set forth in each Variable Facility Note evidencing a Variable Advance.

"**Rate Form**" means the completed and executed document from Borrower to Lender pursuant to Section 2.01(b), substantially in the form of Exhibit I to the Agreement.

"**Rate Setting Date**" has the meaning set forth in Section 2.01(b).

"**Release**" has the meaning set forth in Section 3.04(a).

"**Release Documents**" mean instruments releasing the applicable Security Instrument and the applicable SASA as a Lien on the Release Mortgaged Property, and UCC-3 Termination Statements terminating the UCC-1 Financing Statements, and such other documents and instruments to evidence the release of the Release Mortgaged Property from the Collateral Pool.

"**Release Fee**" means $20,000 for each Release Mortgaged Property; provided, however, that no Release Fee shall be due for the release of any Mortgaged Property in connection with the complete termination of the Credit Facility.

"**Release Mortgaged Property**" means the Mortgaged Property to be released pursuant to Section 3.04.

"**Release Price**" has the meaning set forth in Section 3.04(c).

"**Release Request**" means a written request, substantially in the form of Exhibit K to the Agreement, to obtain a release of Collateral from the Collateral Pool pursuant to Section 3.04(a).

"**Remaining Mortgaged Properties**" has the meaning set forth in Section 5.05(h).

"**Rent Roll**" means, with respect to any Seniors Housing Facility, a rent roll prepared and certified by the Property Operator of the Seniors Housing Facility on a form approved by Lender.

"**Replacement Reserve Agreement**" means a Replacement Reserve and Security Agreement, reasonably required by Lender, and completed in accordance with the requirements of Lender for similar loans anticipated to be sold to Fannie Mae, as the same may be amended, restated, modified and supplemented from time to time.

"**Request**" means an Addition Request, a Substitution Request, a Release Request, a Conversion Request, a Credit Facility Termination Request, or any request for a Transfer pursuant to Section 8.13 or Section 8.14 or any request for a Future Advance pursuant to Section 2.05.

"**Rescinded Payment**" has the meaning given that term in Section 14.10 of this Agreement.

"**S&P**" means Standard & Poor's Credit Markets Services, a division of The McGraw-Hill Companies, Inc., a New York corporation, and its successors and assigns, if such successors and assigns shall continue to perform the functions of a securities rating agency.

"**SASA**" means, individually and collectively, those certain Subordination, Assignment and Security Agreements encumbering the Mortgaged Property, dated as of the Initial Closing Date and any subsequent Closing Date, as the same may be amended, restated, modified and supplemented from time to time.

"**Securities Act**" means the Securities Act of 1933, as amended from time to time, together with all rules and regulations issued thereunder.

"**Security**" means a security as set forth in Section 2(1) of the Securities Act.

"**Security Documents**" means the Security Instruments, the Completion/Repair and Security Agreements, the Replacement Reserve Agreements, the SASAs and any other documents executed by Borrower and Guarantor from time to time to secure any of Borrower's and Guarantor's obligations under the Loan Documents as the same may be amended, restated, modified or supplemented from time to time.

"**Security Instrument**" means, for each Mortgaged Property, a separate Multifamily Mortgage, Deed of Trust or Deed to Secure Debt, Assignment of Rents, Security Agreement and Fixture Filing given by a Borrower to or for the benefit of Lender to secure the obligations of Borrower under the Loan Documents. With respect to each Mortgaged Property owned by a Borrower, the Security Instrument shall be substantially in the form published by Fannie Mae for use in the state in which the Mortgaged Property is located.

"**Senior Management**" means any individuals with responsibility for any of the functions typically performed by the following officers: Chief Executive Officer, Chief Operating Officer/Director of Operations and Chief Financial Officer/Controller**.**

"**Seniors Housing Facility**" means a residential housing facility which qualifies as "housing for older persons" under the Fair Housing Amendments Act of 1988 and the Housing for Older Persons Act of 1995, and as of the date such facility is a Mortgaged Property under this Agreement, is comprised of and licensed for use as independent living units, assisted living units and/or Alzheimer's/dementia care units, as approved by Lender.

"**Single-Purpose**" means, with respect to a Person that is any form of partnership, real estate investment trust, or corporation or limited liability company, that such Person at all times since its formation:

(a) has not acquired, held, developed or improved any real property, personal property or assets other than the Mortgaged Property and/or the UCC Collateral (as defined in each Security Instrument) or equity interests in a Person that owns the Mortgaged Property;

(b) has not acquired, owned, operated or participated in any business other than the leasing, ownership, management, operation and maintenance of the Mortgaged Property and/or the UCC Collateral or the ownership in equity interests in one or more Borrowers;

(c) has not incurred any material financial obligation under any indenture, mortgage, deed of trust, deed to secure debt, loan agreement or other similar agreement or instrument, other than (1) unsecured trade payables incurred in the ordinary course of the operation of the its business and obligations under the Loan Documents and obligations secured by the Mortgaged Property and/or UCC Collateral to the extent permitted by the Loan Documents, provided that any such trade payables (i) are not evidenced by a promissory note, (ii) are paid within sixty (60) days of the due date of such trade payable, (iii) are payable to trade creditors and in amounts as are normal and reasonable under the circumstances, and (iv) do not exceed at any one time outstanding, in the aggregate, two percent (2%) of the Advances Outstanding, and (B) any obligation incurred in connection with the leasing or acquisition of any fixed or capital asset, provided the aggregate principal amount of such obligations shall not exceed at any one time outstanding $50,000;

(d) has accurately maintained in all material respects its financial statements, accounting records and other partnership, real estate investment trust, limited liability company or corporate documents, as the case may be, separate from those of any other Person and does not list its assets on the financial statement of any other Person; provided, however, that any such Person's assets may be included in a consolidated financial statement of such Person's general partners, managing members, managers (if non-member managed), or any Person owning fifty percent (50%) or more of the Ownership Interests in any of them or Controlling any of them provided that (1) appropriate notation will be made on such consolidated financial statements to indicate the separateness of such Person from such other Person and to indicate that such Person's assets and credit (excluding distributions made in accordance with the Loan Documents) are not available to satisfy the debts and other obligations of such Person and (2) such assets will also be listed on such Person's own separate balance sheet, if a separate balance sheet is prepared;

(e) has not commingled its assets or funds with those of any other Person, and holds all its assets or funds under its own name, unless such assets or funds can be segregated and identified and in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(f) has been adequately capitalized in light of its contemplated business operations provided, however, that this provision shall not require any other Person to make any capital contributions to such Person after the date hereof;

(g) has not assumed, guarantied or become obligated for the liabilities of any other Person (except in connection with the Credit Facility), held out its credit as being available to satisfy the obligations of any other Person, or pledged its assets to secure the obligations of any other Person or otherwise pledged its assets for the benefit of any other Person, in each case except in connection with the Credit Facility as required or approved by Lender;

(h) has not entered into or become a party to, any transaction with any Affiliate of Borrower, except in the ordinary course of business and on terms which are no more favorable to such Affiliate of Borrower than would be obtained in a comparable arm's-length transaction with an unrelated third party;

(i) has not pledged its assets for the benefit of any other entity (except in connection with the Credit Facility as required by or approved by Lender) or made loans or advances to any other Person;

(j) has paid (or has caused Property Operator on behalf of Borrower from Borrower's own funds to pay) its own liabilities, including the salaries of its own employees, if any, from its own funds and maintain a sufficient number of employees in light of its contemplated business operations;

(k) has not failed to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name or failed to correct any known misunderstanding regarding its separate identity;

(l) has allocated fairly and reasonably any overhead for shared expenses;

(m) has maintained its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its formation or organization and has done all things necessary to observe organizational formalities;

(n) has not, other than sole member's ownership interest in one or more Borrowers, owned any subsidiary or made any investment in, any Person without the prior written consent of Lender; and

(o) has not merged or consolidated with any other Person.

**"Skilled Nursing Units"** shall mean all such facilities or units that provide 24-hour resident supervision and registered nursing care services and do not have kitchens.

"**Strike Rate**" means:

(a) In determining the Strike Rate for new Interest Rate Caps (other than replacement Interest Rate Caps) purchased in connection with this Agreement pursuant to the Cap Security Agreement, the Strike Rate shall be the lower of (x) the percentage approved by Lender and (y) the percentage derived by taking:

(1) the Net Operating Income for all Mortgaged Properties, minus

(A) the product of (i) 1.55 and (ii) the payment due on each Fixed Advance provided that:

(1) each Fixed Advance to be obtained shall be deemed to require level monthly payments of principal and interest (at an interest rate equal to (A) the base United States Treasury Index Rate for securities having a maturity substantially similar to the maturity of the Fixed Advance, plus (B) the Fixed Facility Fee (or until rate locked, the estimated Fixed Facility Fee as determined pursuant to the Underwriting and Servicing Requirements) in an amount necessary to fully amortize the original principal amount of the Fixed Advance over the Amortization Period;

(2) each Fixed Advance Outstanding shall be deemed to require level monthly payments of principal and interest (at the Interest Rate for such Fixed Advance as set forth in the applicable Note) in an amount necessary to fully amortize the original principal amount of such Fixed Advance over the Amortization Period;

minus

(B) the product of (i) 1.35 and (ii) the payment due on each Variable Advance Outstanding, provided that each Variable Advance Outstanding shall be deemed to require monthly payments of principal and interest (at an interest rate equal to the weighted average Strike Rate for all outstanding Interest Rate Caps plus the Margin applicable to such non-replacement Interest Rate Caps) in an amount necessary to fully amortize the original principal amount of the Variable Advance over the Amortization Period;

divided by

(2) 1.35

divided by

(3) the total of all Variable Advances to be obtained or Variable Advances Outstanding, that were not included in (1), at the time of the calculation

minus

(4) the Margin (or for Variable Advances to be obtained, until rate locked, the indicative pricing as determined pursuant to the Underwriting and Servicing Requirements).

(b) In determining the Strike Rate for replacement Interest Rate Caps purchased in connection with this Agreement pursuant to the Cap Security Agreement, the Strike Rate shall be the lower of (x) the percentage approved by Lender and (y) the percentage derived by taking:

(1) the Net Operating Income for all Mortgaged Properties, minus

(A) the product of (i) 1.55 and (ii) the payment due on each Fixed Advance provided that each Fixed Advance Outstanding shall be deemed to require level monthly payments of principal and interest (at the Interest Rate for such Fixed Advance as set forth in the applicable Note) in an amount necessary to fully amortize the original principal amount of such Fixed Advance over the Amortization Period;

minus

(B) the product of (i) 1.35 and (ii) the payment due on each Variable Advance Outstanding, provided that each Variable Advance Outstanding shall be deemed to require monthly payments of principal and interest (at an interest rate equal to the weighted average Strike Rate (for all outstanding Interest Rate Caps that are not being replaced in connection with the calculation of this definition) plus the Margin applicable to such non-replacement Interest Rate Caps) in an amount necessary to fully amortize the original principal amount of the Variable Advance over the Amortization Period;

divided by

(2) 1.35

divided by

(3) the total of all Variable Advances Outstanding, that were not included in (b)(1)(B), at the time of the calculation

minus

(4) the Margin.

Notwithstanding the foregoing, if any of the Variable Advances Outstanding that were not included in (b)(1) above are amortizing advances, the calculations in (b)(2) and (b)(3) above must take amortization into account.

"**Subject Borrower**" has the meaning set forth in Section 14.09 of the Agreement.

"**Sublease**" means, if applicable, any sublease or similar document as amended, restated, replaced, supplemented or otherwise modified from time to time, preapproved in writing by Lender, pursuant to which control of the occupancy, use, operation, maintenance and administration of the Mortgaged Property as a Seniors Housing Facility has been granted by an Operator as sub-lessor to any Person (other than Borrower or Operator) as Sublessee.

"**Sublessee**" means the Person responsible for the operation and management of the Mortgaged Property pursuant to any Sublease.

"**Subordinated Obligations**" has the meaning set forth in Section 14.08(a) of the Agreement.

"**Subsequent Lender**" has the meaning set forth in Section 15.11 of the Agreement.

"**Subsidiary**" means, when used with reference to a specified Person, (a) any Person that, directly or indirectly, through one or more intermediaries, is controlled by the specified Person, (b) any Person of which the specified Person is, directly or indirectly, the owner of more than fifty percent (50%) of any voting class of Ownership Interests or (c) any Person (i) which is a partnership and (ii) of which the specified Person is a general partner and owns more than fifty percent (50%) of the partnership interests.

"**Substitute Mortgaged Property**" means each Seniors Housing Facility owned by Borrower (either in fee simple or as tenant under a ground lease, provided such ground lease meets all of the Underwriting and Servicing Requirements of Lender) and added to the Collateral Pool after the Initial Closing Date in connection with a Substitution of Collateral as permitted by Section 3.05.

"**Substitution**" has the meaning set forth in Section 3.05(a).

"**Substitution Cost Deposit**" has the meaning set forth in Section 3.05(e)(ii)(A)(3).

"**Substitution Costs**" has the meaning set forth in Section 3.05(e)(ii)(A)(3).

"**Substitution Deposit**" has the meaning set forth in Section 3.05(e)(i).

"**Substitution Fee**" means, with respect to any Substitution effected in accordance with Section 3.05, a fee in the amount equal to the greater of (a) $25,000 or (b) 35 basis points (0.35%) multiplied times the Allocable Facility Amount of the Substitute Mortgaged Property.

**"Substitution Request**" has the meaning set forth in Section 3.05 of the Agreement.

"**Surveys**" means the as-built surveys of the Mortgaged Properties prepared in accordance with Lender's requirements for similar loans that are anticipated to be sold to Fannie Mae.

"**Targeted Entity**" means individually and collectively, Borrower and/or any direct or indirect owner of Borrower and Guarantor but excluding any Persons directly or indirectly owning any stock of Newcastle (or HoldCo, on and after the HoldCo Event) (provided such exclusion shall only apply to the Ownership Interests in Newcastle and HoldCo).

"**Taxes**" means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Mortgaged Properties.

"**Term of this Agreement**" shall be determined as provided in Section 15.10.

"**Termination Date**" means, at any time during which Variable Advances and Fixed Advances are Outstanding, the latest maturity date for any Advance Outstanding.

"**Three-Month LIBOR**" means the British Bankers Association fixing of the London Inter-Bank Offered Rate for 3-month U.S. Dollar-denominated deposits as reported by Reuters through electronic transmission. If the Index is no longer available, or is no longer posted through electronic transmission, Lender will choose a new index that is based upon comparable information and provide notice thereof to Borrower.

"**Title Company**" means Commonwealth Land Title Insurance Company.

"**Title Insurance Policies**" means the mortgagee's policies of title insurance issued by the Title Company from time to time relating to each of the Security Instruments, conforming to Lender's requirements for similar loans anticipated to be sold to Fannie Mae, together with such endorsements, coinsurance, reinsurance and direct access agreements with respect to such policies as Lender may, from time to time, consider necessary or appropriate, including variable credit endorsements, if available, and with a limit of liability under the policy (subject to the limitations contained in the Conditions of the policy relating to a Determination and Extent of Liability) equal to the Commitment (taking into account tie-in endorsements).

"**Transfer**" means –

(a) as used with respect to Ownership Interests in a Targeted Entity, (i) a sale, assignment, pledge, transfer or other disposition (whether voluntary, involuntary or by operation of law) of any Ownership Interest in a Targeted Entity, or (ii) the issuance or other creation of new Ownership Interests in a Targeted Entity, or (iii) a merger or consolidation of Targeted Entity into another entity or of another entity into Targeted Entity as the case may be, or (iv) the reconstitution of Targeted Entity from one type of entity to another type of entity, or (v) the amendment, modification or any other change in the governing instrument or instruments of Targeted Entity which has the effect of changing the relative powers, rights, privileges, voting rights or economic interests of the Ownership Interests in such Targeted Entity; and

(b) as used with respect to a Mortgaged Property means a sale (except with respect to a Mortgaged Property for which a Release has been requested), assignment, lease (except as permitted by the terms of the Loan Documents), pledge, transfer or other disposition (whether voluntary or by operation of law) of, or the granting or creating of a lien, encumbrance or security interest in, any estate, rights, title or interest in a Mortgaged Property, or any portion thereof. Transfer does not include a conveyance of a Mortgaged Property at a judicial or non-judicial foreclosure sale under any security instrument or the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the Bankruptcy Code.

"**Transfer Record Custodian**" means, with respect to any Note issued hereunder, (a) Oak Grove Commercial Mortgage LLC from the inception of this Agreement for so long as it owns an Advance evidenced by a Note, (b) Fannie Mae for so long as Fannie Mae owns an Advance evidenced by a Note, and (c) Borrower once Fannie Mae ceases to own such Advance unless a majority-in-interest of the holders of a Note vote to designate a different Transfer Record Custodian.

"**Treasury Regulations**" means regulations, revenue rulings and other public interpretations of the Internal Revenue Code by the Internal Revenue Service, as such regulations, rulings and interpretations may be amended or otherwise revised from time to time.

"**Underwriting and Servicing Requirements**" means Lender's overall requirements for Seniors Housing Facilities in connection with similar loans sold or anticipated to be sold to Fannie Mae, pursuant to Fannie Mae's then current guidelines, including, without limitation, requirements relating to Appraisals, physical needs assessments, environmental site assessments, and servicing and asset management, as such requirements may be amended, modified, updated, superseded, supplemented or replaced from time to time.

"**Valuation**" means, for any specified date, with respect to a Seniors Housing Facility, (a) if an Appraisal of the Seniors Housing Facility has been obtained within ninety (90) days prior to the date of determination, the Appraised Value of such Seniors Housing Facility, otherwise (b) the value derived by dividing —

(i) the Net Operating Income of such Seniors Housing Facility, by

(ii) the most recent Capitalization Rate determined by Lender.

Notwithstanding the foregoing, any Valuation for a Seniors Housing Facility calculated for a date occurring before the first anniversary of the date on which the Seniors Housing Facility becomes a part of the Collateral Pool shall equal the Appraised Value of such Seniors Housing Facility, unless Lender determines that changed market or property conditions warrant that the value be determined as set forth in the preceding sentence. Lender may require an update of an existing Appraisal, preparation of a new Appraisal or a determination of value for a Seniors Housing Facility using some other commercially reasonable valuation method whenever Lender determines that a more recent valuation is required to determine whether any Request will meet applicable requirements under the Internal Revenue Code or Treasury Regulations.

"**Variable Advance**" means a loan made by Lender to Borrower under the Variable Facility Commitment that is anticipated to be sold to Fannie Mae under a Fannie Mae adjustable rate loan product.

"**Variable Facility**" means the agreement of Lender to make Variable Advances to Borrower pursuant toSection 1.01.

"**Variable Facility Commitment**" means an aggregate amount of $23,400,000.00, which, when advanced, shall be evidenced by one (1) or more Variable Facility Notes, less such amount as Borrower may elect to convert from the Variable Facility Commitment to the Fixed Facility Commitment in accordance with Section 1.06, plus any additional Commitment for a Variable Advance pursuant to Section 2.05 and/or Article 3.

"**Variable Facility Fee**" means for any Variable Advance drawn, the number of basis points mutually agreed to by Borrower and Lender at the time as the Variable Facility Fee for such Variable Advance (which shall be no more than the amount then being charged by Lender to other borrowers on credit facilities having similar characteristics regarding leverage, recourse and other material terms as determined by Lender).

"**Variable Facility Note**" means a promissory note, in the form attached asExhibit C-1 or Exhibit C-2 to the Agreement (as such form may be modified from time to time), which will be issued by Borrower to Lender, concurrently with the funding of each Variable Advance.

"**Waiving Borrower**" has the meaning set forth inSection 14.04.

**Exhibit 10.9**

**ASSIGNMENT OF**
**MASTER CREDIT FACILITY AGREEMENT**
**AND OTHER LOAN DOCUMENTS**

The undersigned ("**Assignor**") hereby assigns to FANNIE MAE, the corporation duly organized under the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. §1716 et seq. and duly organized and existing under the laws of the United States, all right, title and interest of Assignor in and to all of the loan documents (the "**Loan Documents**"), including but not limited to the Loan Documents listed on Exhibit A hereto, executed in connection with the credit facility (the "**Facility**") in the original maximum principal amount of Eighty-Eight Million Four Hundred Thousand and No/100 Dollars ($88,400,000.00), pursuant to that certain Master Credit Facility Agreement dated as of July 18, 2012 (as the same may be amended, restated or otherwise modified or supplemented from time to time, the "**Master Agreement**") by and among (i) Assignor, (ii) (a) **CANYON CREEK OWNER LLC**, (b) **DESERT FLOWER OWNER LLC**, (c) **ORCHARD PARK OWNER LLC**, (d) **REGENT COURT OWNER LLC**, (e) **SHELDON PARK OWNER LLC**, (f) **SUN OAK OWNER LLC**, (g) **SUNSHINE VILLA OWNER LLC**, (h) **WILLOW PARK OWNER LLC**, each a Delaware limited liability company, and (i) any additional borrowers that join into or become a party to the Master Agreement (individually and collectively, "**Borrower**"), and (iii) **PROPCO LLC**, a Delaware limited liability company and **TRS LLC**, a Delaware limited liability company (individually and together, "**Guarantor**"), as evidenced by one or more promissory notes entitled Variable Facility Note or Fixed Facility Note (and any addenda thereto) and secured by various Multifamily Mortgages or Deeds of Trust or Deeds to Secure Debt (and any riders, addenda or exhibits thereto).

This Assignment is given in connection with, and in consideration of, Fannie Mae's purchase of one or more advances made pursuant to the Master Agreement by Assignor to Borrower, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged.

Capitalized terms and phrases not defined herein shall have the same meaning ascribed to them in the Master Agreement.

This Assignment is effective as of July 18, 2012.

**[Remainder of page intentionally left blank.]**

IN WITNESS WHEREOF, Assignor has caused this Assignment to be duly executed, sealed and delivered.

**ASSIGNOR:**

**OAK GROVE COMMERCIAL MORTGAGE, LLC**, a Delaware limited liability company

By: /s/ Beverly D. Berquam
Name: Beverly D. Berquam
Title: Vice President

**EXHIBIT A**

*All documents are dated as of July 18, 2012.

1. Master Agreement.
2. Guaranty by Guarantor.
3. Replacement Reserve and Security Agreement by and between Borrower and Assignor.
4. Completion/Repair and Security Agreement by and among Borrower and Assignor.
5. Interest Rate Cap Security, Pledge and Assignment Agreement by and between Borrower and Assignor.
6. Organizational Certificate by Borrower.
7. Organizational Certificate by Guarantor.
8. Compliance Certificate by Borrower.
9. Certificate of Borrower Parties by Borrower and Guarantor.
10. Subordination, Assignment and Security Agreement executed by Sun Oak Owner LLC, Sun Oak Leasing LLC, Sun Oak Management LLC, and Assignor.
11. Subordination, Assignment and Security Agreement executed by Orchard Park Owner LLC, Orchard Park Leasing LLC, Orchard Park Management LLC, and Assignor.
12. Subordination, Assignment and Security Agreement executed by Sunshine Villa Owner LLC, Sunshine Villa Leasing LLC, Sunshine Villa Management LLC, and Assignor.
13. Subordination, Assignment and Security Agreement executed by Regent Court Owner LLC, Regent Court Leasing LLC, Regent Court Management LLC, and Assignor.
14. Subordination, Assignment and Security Agreement executed by Sheldon Park Owner LLC, Sheldon Park Leasing LLC, Sheldon Park Management LLC, and Assignor.
15. Subordination, Assignment and Security Agreement executed by Desert Flower Owner LLC, Desert Flower Leasing LLC, Desert Flower Management LLC, and Assignor.
16. Subordination, Assignment and Security Agreement executed by Willow Park Owner LLC, Willow Park Leasing LLC, Willow Park Management LLC, and Assignor.
17. Subordination, Assignment and Security Agreement executed by Canyon Creek Owner LLC, Canyon Creek Leasing LLC, Canyon Creek Property Management LLC, and Assignor.
18. Any and all other documents executed now or in the future in connection with the Loan and the Master Credit Facility Agreement.

**Exhibit 10.10**

**MANAGEMENT AGREEMENT**

THIS MANAGEMENT AGREEMENT (this "Agreement") is effective as of July 5, 2012 (the "Effective Date"), and is entered into by and between Willow Park Management LLC, a Delaware limited liability company ("Manager") and Willow Park Leasing LLC, a Delaware limited liability company ("Tenant"). Tenant intends to lease the senior living facility known as Willow Park (the "Facility"), which is located at 2600 North Milwaukee Street, Boise, Idaho 83704, from Willow Park Owner LLC, a Delaware limited liability company ("Owner") pursuant to the terms of that certain Master Lease and Security Agreement (the "Master Lease") by and among Tenant and certain other parties, collectively as Tenant, and Owner and certain other parties, collectively as Landlord, and desires to retain Manager to manage and operate the Facility pursuant to the terms and conditions of this Agreement. As parties hereto, Manager and Tenant agree:

1. Appointment/Subordination to Master Lease and Facility Loan Documents: Subject to the terms and conditions of this Agreement, Tenant hereby appoints Manager as its exclusive operating, managing and leasing agent, which includes the power and authority to act in the name of and on behalf of Tenant to transact business and make and execute contracts, leases, and other writings, assurances, and instruments which may be needed to operate and manage the Facility. Manager hereby accepts such appointment, together with all the rights, powers, and authority provided by Tenant, and Manager hereby agrees that as the operator of the Facility, it shall have responsibility for the care provided at the Facility and for the compliance of the Facility with Applicable Law. Although ultimate responsibility for the day to day operations at the Facility will be and remain with Manager, Tenant shall retain its leasehold interest in, and nothing herein shall be construed to give Manager any leasehold or other interest in (other than such rights to possession or use as may be required to allow Manager to perform its obligations under this Agreement): (a) the Facility; or (b) any assets (including, without limitation, any furnishings, fixtures, trade fixtures, equipment, supplies, consumables, inventories, tangible and intangible personal property, accounts and accounts receivable, agreements with residents and other contracts or agreements relating to the Facility (excluding any National Contract (as defined in Section 2(f)), and insurance proceeds as set forth in Section 7(e)) necessary or convenient to the ownership, leasing, use, and operation of the Facility and acquired with Owner's or Tenant's funds or revenues of the Facility.

Notwithstanding anything to the contrary in this Agreement, (i) Manager acknowledges receipt of a copy of the Master Lease and (ii) Manager acknowledges and agrees (for itself and any successor to Manager, subject to the transfer restrictions set forth herein, in the Master Lease and the Facility Loan Documents) that this Agreement and the rights of Manager hereunder shall be subject and subordinate to the Master Lease and the rights of Owner thereunder and to any Facility Loan Documents and the rights of the Facility Lender thereunder.

2. Management and Consulting Responsibilities of Manager:

(a) Administrator/Executive Director: Manager shall recruit, evaluate, select and discharge the Facility's administrator/executive director, who shall be responsible for the functional operation of the Facility and execution on a day-to-day basis of policies established by Manager in accordance with this Agreement.

(b) Personnel:

(i) Manager (or an Affiliate of Manager) shall be the employer of all personnel employed at the Facility from time to time and certain off-site personnel. Subject in

each case to the terms and conditions of Section 2(iv) hereof, (a) all matters pertaining to the employment, supervision, compensation, promotion and discharge of employees at the Facility are the responsibility of Manager, with respect to which Manager shall exercise reasonable care, (b) Manager shall maintain staffing levels at the Facility at all times at levels which are sufficient to meet the needs of the residents and to cause the Facility to be operated in compliance with Applicable Law, (c) Manager shall have the sole power to hire, discipline and/or dismiss all personnel employed at the Facility and all staffing decisions shall be made solely by Manager, and (d) Manager shall establish all necessary and desirable personnel policies, wage structures and staff schedules for employment of personnel at the Facility.

(ii) Subject to prior notice to Tenant, Manager shall negotiate with any union lawfully entitled to represent employees and may execute in its own name, and not as agent for Tenant, collective bargaining agreements or labor contracts resulting therefrom.

(iii) Manager shall comply with all Applicable Laws having to do with worker's compensation, social security, unemployment insurance, hours of labor, wages, working conditions and other employer/employee related subjects.

(iv) Notwithstanding the foregoing, if Tenant becomes dissatisfied with the performance of the administrator/executive director or health services director, Tenant shall have the right, and Manager shall provide Tenant the opportunity promptly following Tenant's request, to discuss with representatives of Manager in charge of operating the Facility such dissatisfaction and/or to consult regarding replacement of such person or otherwise putting in place a performance action plan for such person, provided the final staffing decision shall be made by Manager.

(c) Operational Policies: Manager shall maintain and develop all operational policies, procedures and manuals as may be necessary to ensure the ongoing licensure of Manager and/or the Facility and to ensure establishment and maintenance of the standards of resident care/services appropriate for the nature of the Facility; provided, however, that Manager shall not make any material change to the type of services offered at the Facility without obtaining the prior written consent of Tenant. Manager may not add or expand any government or third party payor programs without prior written consent of Tenant.

(d) Forms: Manager shall maintain and develop all invoices and other such forms necessary and desirable for effective, efficient and professional operation of the Facility.

(e) Charges: Manager shall establish the schedules of recommended charges for services, including any and all special charges to the residents of the Facility. Manager shall periodically review and adjust any and all such charges as necessary.

(f) Utility and Service Contracts: Subject to Section 2(r), Manager will have the right, on behalf of the Facility (and in the name of, and as agent for, Tenant or Manager), to enter into or cause the execution of service contracts as required in the ordinary course of business for the operation of the Facility including, but not limited to, contracts for water, electricity, natural gas, telephone, sewer, cleaning, trash removal, pest control, cable, elevator, and boiler maintenance, and other services related to the maintenance of the Facility or to the health and safety of its occupants and such other contracts as may be necessary to carry out the obligations imposed on Manager under this Agreement including, but not limited to, its obligations under Sections 2(g) and (h). All Facility contracts (excluding (i) National

Contracts (defined below) and (ii) contracts with Affiliates of Manager), which are in effect at the expiration or termination of this Agreement and which were entered into in accordance with the terms of this Agreement and are assignable, to the extent not in the name of Tenant, shall be assigned by Manager to Tenant or its designee effective as of the date of such expiration or termination of this Agreement; provided if any contract cannot be assigned or the counterparty to any contract will not consent to an assignment where such consent is required by the terms thereof, any early termination fees shall be the responsibility of Tenant or its designee and Manager shall have no liability with respect thereto, so long as Tenant approved the termination fee prior to Manager entering into the contract. Tenant shall be deemed to have approved any contract with a termination fee of less than $2,500. Except for termination of contracts as of the expiration or termination of this Agreement as provided in this Section, Manager may not terminate any contracts that will result in termination fees to Tenant without Tenant's prior written consent. Manager shall use good faith efforts to negotiate terms in each contract (other than National Contracts and any contract with a term of sixty (60) days or less) (x) permitting assignment to Tenant or its designee upon expiration or termination of this Agreement at no cost to Tenant or its designee and (y) to not include any termination fees. "National Contracts" shall mean any national or other contracts in the name of Manager pursuant to which the Facility, as well as any facility other than those owned or leased by Tenant or an Affiliate of Tenant, is receiving goods, services and/or other benefits.

(g) Purchasing: Manager shall purchase or arrange for the purchase of inventories, provisions, supplies, and operating equipment necessary for proper maintenance and operation of the Facility.

(h) Maintenance and Repair: Manager shall coordinate the repair and maintenance of the Facility in accordance with Applicable Law, and in a condition that is the same or better than the condition that existed as of the Effective Date (or, if later, the date of completion of any capital improvement to the Facility in accordance with the terms hereof), ordinary wear and tear and casualty excepted, including but not limited to cleaning, painting, decorating, plumbing, electrical, HVAC, appliances, carpentry and ground care.

(i) Information and Other Requirements:

(i) Quality Control: Manager shall deliver to Tenant reports and data, in form reasonably acceptable to Tenant, analyzing the quality of services provided at the Facility on at least a quarterly basis.

(ii) Marketing and Overall Business Plan: Manager shall develop and implement the overall business and marketing plans for the Facility, the parties agreeing that the marketing plan shall be subject to the approval of Tenant as part of each Proposed Annual Budget (as hereinafter defined).

(iii) Tenant and Manager Representative Communications: Each party shall select a representative from time to time, and as notified to the other party in writing, for purposes of communications between Tenant and Manager with respect to the operation of the Facility, the Proposed Annual Budget and the Annual Budget and other matters necessitating communication pursuant to the terms of this Agreement. Each of Tenant and Manager agrees to cause its designated representative to use good faith efforts to respond in a timely manner to requests by the other party's designated representative for information or approvals contemplated by this Agreement.

(iv) In-Person Meeting with Tenant: Upon not less than ten (10) business days' prior written request by Tenant, Manager shall cause certain managers or other key employees of the Facility, as may be reasonably requested by Tenant, to meet at the Facility or participate in phone conversations with representatives of Tenant to discuss matters concerning the Facility (including, without limitation, the reports provided pursuant to Section 2(l)).

(j) Equipment and Improvements:

(i) Manager shall advise Tenant as to equipment at and improvements to the Facility which are needed to maintain licenses, comply with Applicable Laws and/or which are necessary to replace obsolete or run-down equipment. Tenant shall review and act upon Manager's recommendations as soon as practicable. Manager shall not be liable for any cost or liability which Manager or Tenant may incur in the event Tenant disregards Manager's recommendations (including, without limitation, any cost or liability arising from any failure to comply with this Agreement, and Manager shall not be deemed to be in default hereunder as a result thereof) to the extent any such cost or liability incurred arises or results, directly or indirectly, from the failure of Tenant to follow or to act upon such recommendations. Manager shall maintain the equipment and improvements in the same or better condition as existed as of the Effective Date (or, if applicable, as of such later date of completion of a capital improvement or equipment purchase with respect to such improvement or equipment), ordinary wear and tear and casualty excepted, and Manager shall cause all repairs, replacements and maintenance to be performed for such purpose; provided, however, that the same shall at all times be undertaken in a workmanlike and lien free manner. Subject to the terms of Section 2(j)(ii) below, in performing the foregoing repairs, replacements and improvements, Manager shall use the Facility's on-site maintenance personnel, as and where possible, and shall contract with qualified third parties to provide the necessary services, and shall undertake the same or cause the same to be undertaken in a workman-like and lien-free manner.

(ii) Tenant, in its sole discretion, may elect to make any repairs or capital improvements at the Facility that are unbudgeted, provided the cost for such additional repairs or capital improvements are paid by the Tenant outside of the Annual Budget (or pursuant to a modification of the Annual Budget) (each, a "Tenant Project"). With respect to any Tenant Project, except with respect to an emergency (in which case prior notice shall be provided to Manager to the extent practicable), Tenant shall provide not less than thirty (30) days written notice of the proposed repair or capital improvement project and coordinate with Manager to minimize disruption to operations at the Facility. If any repair or capital improvement project undertaken pursuant to the terms of this Section 2(j)(ii) results in one (1) or more Disrupted Units, (x) with respect to any month in which all or a portion of a Disruption Period occurs, the Fee paid to Manager shall not be less than the average Fee paid for the most recent three (3) month period during which there existed no Disrupted Unit, and (y) with respect to any calendar quarter, the terms of Section 9(a)(vi) hereof shall not apply and Tenant shall have no termination right thereunder, if any portion of a Disruption Period occurs during such calendar quarter. Manager shall cause any repair or capital improvement contemplated by this Section 2(j)(ii) to be completed pursuant to Section 2(h); provided, however, if any such repair or capital improvement project is estimated to cost $50,000 or more, at Tenant's sole election, Tenant shall have the right to manage and control the project including, but not limited to, selecting and managing the contractors. If Tenant makes such election to manage and control any project (such project, a

"Tenant Controlled Project"), Manager shall have no liability or obligation hereunder or otherwise with respect to any Tenant Controlled Project, the personnel and/or contractors selected by Tenant or their performance (or failure to perform), the quality of their work and/or any claims, demands, causes of action, losses, damages, fines, penalties, liabilities, costs and expenses that arise from any Tenant Controlled Project, and Tenant shall be solely responsible for any Tenant Controlled Project and indemnify and hold harmless Manager for any liability arising out of any such Tenant Controlled Project. For the purposes of this Section 2(j)(ii), "Disrupted Unit" shall mean any residential unit or commercial space at the Facility that is unavailable for occupancy due to any repair or capital improvement project undertaken pursuant to the terms of Section 2(j)(ii); and "Disruption Period" shall mean that period commencing on the date any unit or space becomes a Disrupted Unit and ending on the date that is ninety (90) days following the date the work on the Disrupted Unit is completed and such unit is ready for occupancy.

(k) Bookkeeping and Accounting: Manager shall keep, prepare and maintain books and records in the ordinary course using a consistent method from period to period reflecting the operational and financial affairs of the Facility. All financial reports shall be prepared in accordance with GAAP. Manager will prepare or cause to be prepared, and file or cause to be filed, all property-level tax returns of the Facility, including sales and use tax returns, personal property tax returns and business, professional and occupational license tax returns. Subject to the provisions of this Agreement, Manager shall use commercially reasonable efforts to cause the Facility to be operated in a manner to assure that Tenant and the Facility receive all benefits of applicable tax exemptions or credits available thereto from any Governmental Authority. Manager shall provide Tenant data in Manager's possession, or otherwise available to Manager, relating to the Facility which Tenant may need for the preparation of federal and state tax returns. Manager shall provide such information promptly upon request by Tenant and in a timely manner so that Tenant shall have sufficient time to prepare and file any necessary tax returns. Manager shall not be responsible for the preparation of any of Tenant's tax returns.

(l) Reports: Manager shall deliver or cause to be delivered to Tenant the following financial statements and reports with respect to its operations at the Facility:

(i) annual unaudited financial statements (balance sheet, cash flow statement, income statement, and book and tax depreciation schedules), certified to be true, accurate and complete in all material respects, within thirty (30) days of the end of each calendar year (the "Annual Financial Statement");

(ii) each of the monthly reports set forth onSchedule 2(l) attached hereto (collectively, the "Monthly Reports"). The Monthly Reports shall be provided to Tenant in electronic Excel spreadsheet format within thirty (30) days after each such calendar month end and shall be certified by Manager to be true, accurate and complete in all material respects;

(iii) at Tenant's request, financial statements (balance sheet, cash flow statement and income statement) audited by an independent certified public accounting firm reasonably selected by Tenant. In addition, upon Tenant's request, Manager will deliver with the audited financial statements its forecasts or other analysis for the then current fiscal year; and

(i) any other reports or statements reasonably requested by Tenant.

All costs and expenses incurred in connection with the preparation of any statements, schedules, computations and other reports required under clauses (i) and (ii) above shall be at Manager's expense. All costs of audited financial statements pursuant to clause (iii) above shall be at Tenant's expense.

Manager shall have no liability for errors in the financial statements prepared during the Term of this Agreement which arise from errors in starting accounting balances created from the financial statements of the prior operator of the Facility. Manager acknowledges that the financial reports and other information provided by Manager under this Agreement may be included in Tenant or its Affiliates' public disclosure documentation in order for Tenant or its Affiliates to comply with any law applicable to a reporting company under the Securities Exchange Act of 1934 and any REIT reporting and certification obligations.

(m) Budgets: The Annual Budget for calendar year 2012 shall be the budget attached hereto as Schedule 2(m) (the "Initial Budget"). Each of Tenant and Manager agrees and acknowledges that it has had a reasonable opportunity to review, and have approved, the Initial Budget. With respect to each subsequent calendar year during the Term, Manager shall prepare and shall submit to Tenant, for Tenant's review and approval, an annual budget for the Facility setting forth the estimated receipts and expenditures (capital, operating and other) for the Facility on a monthly and an annual basis, which proposed annual budget ("Proposed Annual Budget") shall be comparable in form to the Initial Budget. "Annual Budget" refers to the then operable annual budget, which is either agreed upon by the parties or determined in accordance with Section 2(m)(iv) and Section 2(m)(v) below, subject to the terms of this Agreement. Manager shall use good faith efforts to submit to Tenant for approval the Proposed Annual Budget for the succeeding calendar year by November 30 of each year. Once the Proposed Annual Budget has been submitted to Tenant the following provisions shall apply with respect to the review and approval thereof:

(i) If Tenant disagrees with any portion of the Proposed Annual Budget, Tenant will notify Manager in writing of the same on or prior to the later of (x) thirty (30) days after delivery to Tenant of the Proposed Annual Budget and (y) December 31 of the year prior to the year covered by the Proposed Annual Budget (the "Budget Response Deadline"). If Tenant does not reject the Proposed Annual Budget for a given year on or prior to the Budget Response Deadline, then Tenant shall be deemed to have approved the entire Proposed Annual Budget.

(ii) If Tenant rejects in writing any Proposed Annual Budget for any calendar year on or prior to the Budget Response Deadline, Tenant and Manager shall use good faith efforts to resolve any disagreement with respect to the Proposed Annual Budget prior to the date that is the later of (x) ninety (90) days after the date of delivery to Tenant of the Proposed Annual Budget for such calendar year and (y) the March 31 immediately following delivery to Tenant of such Proposed Annual Budget (the "Budget Finalization Period").

(iii) Manager shall implement the Annual Budget and shall use its reasonable efforts not to incur expenses with respect to the Facility for any year in excess of the amounts contemplated by the Annual Budget for such year without Tenant's prior written consent. Notwithstanding the foregoing, Manager shall not be deemed to be in default of its obligations under this Section 2(m) or this Agreement in the event: (x) Manager incurs any expenditure required to cause the Facility to continuously operate in accordance with Applicable Laws, (y) Manager incurs any expenditures, in the aggregate, on a quarterly basis with respect to any department (such departments as reflected in the Annual Budget attached hereto as Schedule 2(m)) that do not exceed the applicable budgetary limit allocated, in the aggregate, on a quarterly basis for such department by

more than $10,000 and/or (z) Manager incurs any expenditures required to protect the Facility and/or the health and safety of the Facility occupants, provided Manager shall seek the prior approval of the Tenant therefore unless the same occurs on an emergency basis and providing prior notice thereof is not practicable (the foregoing, together with any other expenditures approved by Tenant and any expenditures contemplated by any Annual Budget, "Permitted Expenditures"). Any other expenditures, including capital expenditures for repairs, replacements or improvements, not contemplated by the Annual Budget and/or that exceed such budgetary limits shall be subject to the prior written approval of Tenant; provided, however, Tenant shall not be deemed to have unreasonably withheld its approval if (aa) Tenant lacks the financial resources to cover the cost of such expenditure or (bb) the cost of any expenditure will exceed $15,000 individually or in the aggregate with other unbudgeted expenditures in the same calendar year.

(iv) In the event an Annual Budget has not been agreed upon on or prior to the beginning of a given calendar year, the Annual Budget for the prior calendar year shall serve as the applicable operating budget until the earlier of (x) the date Tenant and Manager mutually agree upon the Annual Budget for such calendar year and (y) the expiration of the Budget Finalization Period; provided that (1) each line item in such operating budget shall be an amount equal to 103% of the corresponding line item amount reflected in the prior calendar year's Annual Budget, (2) such operating budget shall be further increased to reflect (A) all revenue increases and variable cost increases resulting from any increase in the rate of occupancy at the Facility over the rate of occupancy contemplated in the prior year's Annual Budget and (B) increased costs relating to utility expenses, fuel, general real estate taxes, insurance premiums and other items not within the control of the Manager and (3) any amounts included in the Annual Budget for the prior calendar year for specific capital improvements shall be disregarded only if such improvements have been completed and paid in full.

(v) To the extent that Manager and Tenant cannot resolve any disputed matters with respect to any Proposed Annual Budget on or prior to the expiration of the Budget Finalization Period, then Tenant shall make a final determination regarding such disputed matters and the Annual Budget for such calendar year shall reflect such final decisions.

(n) Occupancy Agreements: (i) Manager shall, on behalf of and solely as agent for Tenant (and not in its own capacity), enter into agreements with the residents of the Facility (the "Resident Agreements") and other agreements, if any, for the use or occupancy of space in the Facility (whether by residents, licensees, concessionaires, permissive use arrangement, subtenants, or otherwise) (such other agreements, together with the Resident Agreements, the "Occupancy Agreements") and perform, as and when required thereunder, the duties and responsibilities imposed on Tenant under the terms thereof. Manager shall use commercially reasonable efforts to ensure that all Occupancy Agreements entered into after the Effective Date, taken together in the aggregate, contain economic terms which are consistent with the then applicable Annual Budget as contemplated by Section 2(m). As of the Effective Date, Manager shall use the forms of Occupancy Agreement currently in use at the Facility. From time to time Manager may modify the forms of Occupancy Agreement provided such modification shall be in accordance with Applicable Law, subject to the prior written consent of Tenant.

(ii) Without limiting any consent or approval requirements otherwise provided for in this Agreement, for so long as the Facility is directly or indirectly owned by a REIT and leased to Tenant as part of an ownership structure that is subject to REIT tax requirements, Manager agrees that Manager shall not enter into any Occupancy Agreement for the Facility (or any part of it), except Resident Agreements of a form approved by Tenant, without first giving Tenant a copy of such document for Tenant's approval. Tenant may withhold such approval if: (a) such lease, sublease, or occupancy agreement violates this Agreement; (b) such lease, sublease or occupancy agreement (1) could provide for a rental to be paid by the occupant thereunder based (or considered to be based), in whole or in part, on the net income or profits derived by the business activities of the occupant, or any other formula such that any portion of the rent payable under the Occupancy Agreement could fail to qualify as "rents from real property" within the meaning of Code Section 856(d) or (2) otherwise could jeopardize such REIT's qualification as such for federal income tax purposes.

(o) Legal Proceedings: Manager shall, through legal counsel reasonably approved in advance in writing by Tenant, coordinate all legal matters and proceedings relating to the Facility with Tenant's counsel, provided Tenant shall have the exclusive right to approve (i) for so long as Tenant holds in its own name the licenses and certifications with respect to the Facility, all settlements of administrative proceedings and litigation related to the licensure or certification of the Facility, (ii) the initiation by Manager of any claim or lawsuit involving an amount equal to or greater than $25,000 or (iii) the settlement of any contract claim (other than any claim enforcing the obligations of any resident under any Resident Agreement) made by Manager or against Tenant or the Facility with respect to any matter relating to the Facility involving an amount equal to or greater than $25,000 or (iv) the settlement of any other (i.e. non contract) claim relating to the Facility of any other nature regardless of the amount in dispute. Notwithstanding the foregoing, (x) any legal matter or proceeding naming or involving the Manager which could not reasonably be expected to result in any judgment or lien against, or citation of, the Facility or the Tenant or any cost to Tenant directly or pursuant to Tenant's indemnity obligation hereunder (whether pursuant to a settlement or otherwise), may, at Manager's sole option, be controlled solely by Manager and counsel appointed by Manager in its sole discretion and at Manager's sole cost, and (y) Tenant agrees that Manager shall have the right to reasonably approve any legal counsel with respect to any legal matter or proceeding contemplated herein that names or otherwise involves Manager and all strategies, decisions and/or settlements with respect to any such matter or proceeding shall be subject to the prior consent of Manager, which consent may be granted or withheld in Manager's sole discretion. Nothing herein shall alter the indemnity obligation of Manager under Section 5 hereof.

(p) Health Care Licenses: Manager shall hold in its own name all licenses and certifications required by Applicable Law for the operation of the Facility. Manager shall use commercially reasonable efforts to obtain all licenses and certifications, including, but not limited to, Medicaid, if applicable, required by Applicable Law for the operation of the Facility and, once obtained, shall use commercially reasonable efforts to maintain the same in full force and effect during the Term of this Agreement. Upon request by Tenant, Manager shall advise Tenant of the terms and status of any such license or certification and provide reasonable evidence that the same is in full force and effect. To the extent permitted by Applicable Law, Tenant shall have the right to approve any plan of correction developed by Manager with respect to any survey which threatens revocation of the licensure or certification (including Medicaid, if applicable) of, or a ban on admissions at or the imposition of civil or criminal penalties against, Manager or the Facility and to approve the election by Manager to contest the application of any law to the operation of the Facility. Notwithstanding anything to the contrary contained herein, Tenant shall (and shall cause Owner to) obtain and maintain in full force and effect during the Term any and all licenses and certifications required to be maintained in the name of Tenant

(or Owner, as applicable), in addition to and not in lieu of the licenses and certifications maintained by Manager pursuant to the terms of this Agreement, that may be required from time to time by Applicable Law for the operation of the Facility.

(q) Standard of Performance: Manager shall manage the Facility at all times (i) in compliance with Applicable Laws, (ii) in accordance with the terms of this Agreement; (iii) in accordance with the terms of the Master Lease; and (iv) in accordance with the Facility Loan Documents.

(r) Limitations: Notwithstanding anything to the contrary contained in this Section 2 or elsewhere in this Agreement, without the prior written consent of Tenant, Manager may not (i) enter into any contract on behalf of the Facility unless the same has a term of less than sixty (60) days or can be terminated upon sixty (60) days notice or less without the payment of any termination fee in excess of $2,500, (ii) enter into or renew (or increase the payments with respect to) any contract on behalf of the Facility involving annual payments by Tenant (including if the contract could reasonably be expected to result in annual payments to Tenant) of more than $15,000, even if the amount contemplated by such contract is set forth in the then applicable Annual Budget or (iii) enter into on behalf of the Facility any contract with any Affiliate of Manager.

(s) Status; Authority; Binding Effect: Manager represents and warrants that, as of the date hereof, (i) Manager is duly organized and validly existing and in good standing under the laws of the jurisdiction in which it is formed, qualified to conduct business in the State in which the Facility is located, and has all requisite power and authority to manage the Facility and any other managed property, to carry on its business as it is now being conducted, to enter into this Agreement and to observe and perform its terms; (ii) the consummation of the transactions contemplated herein have been duly authorized and approved by all necessary limited liability company action of Manager; and (iii) assuming this Agreement is enforceable against Tenant, this Agreement shall constitute the legal, valid, and binding obligation of Manager, enforceable against Manager in accordance with its terms (except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by application of equitable principles).

(u) Notice of Events. Manager will, promptly after obtaining written notice or actual knowledge thereof, provide Tenant notice of (i) the occurrence of any material injury to any person at the Facility or any condition that could reasonably be expected to result in material injury to any person at the Facility, (ii) the occurrence of any material damage to the Facility or any condition that could reasonably be expected to result in material damage to the Facility, (iii) a material threat of litigation with respect to the Facility, (iv) an investigation by a Governmental Authority of an incident at the Facility or (v) any lapse in insurance coverage required to be maintained pursuant to the terms of this Agreement. Tenant has the right to require that notice of any such material threat of litigation be given to any insurance provider. Within forty-eight (48) hours of receipt by Manager of any material written notice from any Governmental Authority including, without limitation, any notice of violation or other material correspondence, surveys, complaint investigation report, licensing renewals or plan of correction, Manager shall provide Tenant with a copy of such notice by fax, overnight mail, email or other comparable means of expedited transmission. Within forty-eight (48) hours of receipt by Tenant of any material written notice from any Governmental Authority including, without limitation, any notice of violation or other material correspondence, surveys, complaint investigation report, licensing renewals or plan of correction, Tenant shall provide Manager with a copy of such notice by fax, overnight mail, email or other comparable means of expedited transmission.

(v) Manager's Obligations Generally. Notwithstanding anything to the contrary contained in this Agreement, (i) Manager shall not be in default hereunder for failure to perform any agreement or obligation required hereunder or otherwise for failure to comply with the terms of this Agreement (including, without limitation, Manager's obligation to cause the Facility to comply with Applicable Law) if (A) after Manager's use of commercially reasonably efforts, Manager is unable to perform in accordance with the terms of this Agreement because the Annual Budget is not sufficient, provided Manager has provided written notice to Tenant identifying the insufficiency of the applicable line item (the parties agreeing that delivery of the Proposed Annual Budget alone does not satisfy the foregoing notice requirement), and Tenant elects not to adjust the Annual Budget as necessary or (B) Tenant fails to fund any amount required to be funded to the Operating Account (including funds required to pay Permitted Expenditures) in accordance with the terms of this Agreement to operate the Facility as set forth herein; and (ii) Manager shall not be in default hereunder if the condition giving rise to such default existed on or prior to the Effective Date, provided that Manager shall use commercially reasonably efforts to rectify such condition upon receipt of actual notice by any corporate employee or the executive director (as opposed to any Facility Employee or any other on-site employee) of the existence of such condition, and shall diligently pursue the cure of such condition in good faith.

3. Operating Responsibilities and Operating Account:

(a) Operating Costs: Except as otherwise specifically provided to the contrary in this Agreement with respect to certain costs for which Manager is expressly responsible in consideration for the payment of the Fee or for which Manager may be held responsible under the default and/or indemnification provisions of this Agreement, all on-site operating costs, wages, salaries, expenses, fees, obligations and liabilities incident to or arising out of the ownership, leasing or operation of the Facility (including, without limitation, if direct payment by Manager is permitted by Facility Lender, debt service (and all fees, penalties and costs related thereto) and the funding of reserves and/or escrows required by any Facility Loan Documents, as applicable), whether or not specified in this Agreement, and otherwise incurred by Manager in accordance with the terms of this Agreement including, without limitation, reasonable travel expenses of Manager related to the performance of its duties and obligations hereunder, not to exceed Nine Thousand Dollars ($9,000.00) annually, and all Permitted Expenditures (collectively, the "Facility Expenses"), shall be the responsibility of Tenant or Owner, as applicable, and shall be paid by Manager as and when due from the funds in the Operating Account as contemplated by Section 3(b). Notwithstanding the foregoing, in the event the funds available in the Operating Account are insufficient to pay payroll (to the extent Permitted Expenditures) or to pay amounts due under National Contracts when owed (to the extent Permitted Expenditures) or to pay expenditures required to cause compliance with Applicable Law or to pay expenditures required to protect the Facility and/or the health and safety of the Facility occupants, Manager shall have the right, but not the obligation, to pay such expenses from its own funds and to seek reimbursement therefor from Tenant or from funds in the Operating Account. Facility Expenses shall also include a pro rata portion of any expenses incurred by Manager for the benefit of the Facility which also benefit one or more other facilities operated by Manager or an Affiliate of Manager, provided the methodology used to allocate expenses to the Facility is reasonable and provided to Tenant. Notwithstanding the foregoing, Manager is specifically responsible for all expenses relating to all corporate offsite personnel and other offsite overhead expenses of Manager and its Affiliates (excluding pursuant to any contract with any Affiliate, which contract is approved by Tenant).

(b) Operating Account: Manager shall establish and maintain two bank accounts in the name, and for the benefit, of Tenant with regard to the operation of the Facility: one account an operating account (the "Operating Account") and the other a security deposit account (the "Security Deposit Account" and together with the Operating Account, the "Accounts"). On or prior to the Effective

Date, Tenant shall deposit $568,000 (the "Minimum Balance") in the Operating Account. With respect to the Accounts, during the Term and subject to the Facility Loan Documents, Manager shall have sole control of the Accounts and shall be authorized to deposit funds, check balances, withdraw funds, execute checks, and make disbursements. Pursuant to written authorization which shall be given by Manager to the Bank, Tenant shall have the right to deposit funds and the right to view-only on-line access to account information (the parties agreeing that Tenant shall have no right to withdraw funds, execute checks and/or make or direct any other disbursements whatsoever from the Accounts or to close the Accounts). Such Accounts shall be established with a bank(s) designated by Tenant (the "Bank") from time to time. All funds received from or in the operation of the Facility (other than security deposits, which shall be deposited in the Security Deposit Account) shall be deposited in the Operating Account and, subject to Tenant fulfilling its obligations hereunder with respect to funding any Cash Flow Shortfall (as defined below), Manager shall pay when due the payroll obligations for the Facility Employees, taxes and insurance premiums (except to the extent paid from an escrow account pursuant to the Facility Loan Documents), accounts payable incurred in the operation of the Facility, if direct payment by Manager is permitted by Facility Lender, debt service (and all fees, penalties and costs related thereto) and the amounts needed for Owner to fund reserves and/or escrows required by any Facility Loan Documents, as applicable, and all other Facility Expenses. In the event Manager fails to pay when due any amounts due in connection with operation of the Facility for which sufficient funds were available in the Operating Account, Manager shall be responsible for any fees or penalties resulting from such delinquent payment and shall indemnify Tenant with respect any Claims (as defined in Section 5) related thereto. Notwithstanding anything to the contrary contained herein, in the event that operating cash flows of the Facility are, at any time, insufficient to cause the Operating Account to have a balance at least equal to the greater of (x) the amount necessary to pay Facility Expenses from time to time or (y) the Minimum Balance (such amount required to be maintained, the "Required Balance", and such insufficiency, a "Cash Flow Shortfall"), then Tenant shall, within fifteen (15) days after receipt of a request of Manager (such period, the "Funding Cure Period"), deposit in the Operating Account funds sufficient to cover such Cash Flow Shortfall. Promptly following delivery by Manager to Tenant of the Monthly Reports for any month during the Term, Manager shall disburse to Tenant any surplus funds from the Operating Account (the parties agreeing that "surplus funds" is the amount, if any, of cash in the Operating Account as of the last day of the month for which the Monthly Reports were delivered minus the Required Balance. The Security Deposit Account shall be used exclusively for depositing resident security deposit funds. Manager shall not deposit funds related to the Facility in any account other than the Accounts, nor shall Manager co-mingle funds belonging to Manager in the Accounts.

(c) Authority and Responsibility: Subject to the terms of this Agreement, Manager shall (i) prepare the payroll and prepare and file all payroll tax returns and reports, (ii) prepare and sign checks, (iii) pay all accounts payable as they become due, and (iv) prepare and file such cost reports as required to establish reimbursement rates and/or receive payment under all federal or state third party reimbursement programs. It is specifically agreed that Manager has sole responsibility, power and authority for the preparation, filing and payment of all payrolls and payroll taxes of every nature with respect to the Facility Employees.

(d) Collection of Accounts: Manager shall issue bills and collect accounts and monies owed for goods and services performed and furnished at the Facility during the Term, including, but not limited to, enforcing the rights of Tenant, Manager and/or the Facility as creditor under any contract or in connection with the rendering of any services; provided, however, regardless of any standard of performance set forth in this Agreement, Tenant acknowledges and agrees that there can be no assurances that Manager will be able to collect any or all of such accounts receivable.

4. Books and Records: Manager shall maintain records, books and accounts with respect to the management and operation of the Facility and shall retain those records during the Term and, to the extent a subsequent operator of the Facility elects not to take possession of the same upon termination of the Term, for a period of three (3) years thereafter. Upon the expiration of the Term or termination of this Agreement, Manager will provide all files, books, records and checks to Tenant in an electronic or other format reasonably requested by Tenant. Manager shall maintain all required records pertaining to the care of individual residents in accordance with Applicable Law, including maintaining the privacy of such records of care provided to the individual residents under the Privacy and Security rules in the Federal Health Insurance Portability and Accountability Act of 1996 (collectively, the "Patient Confidentiality Laws").

Subject to the requirements of the Patient Confidentiality Laws, during the Term, Tenant and its agents, representatives, employees and auditors may, at such reasonable times as Tenant may request, inspect, audit and copy (i) the books and records of the Facility that are reasonably requested by such auditor and of the type that would customarily be required for the purpose of the performance of a standard audit for an Tenant of senior living facilities and (ii) any other books, records or materials pertaining exclusively to the Facility. If an audit by Tenant discloses any sum due Tenant by Manager or any overpayment to Manager, Manager will promptly reimburse Tenant for any amounts due. If the audit discloses any sum due to Manager by Tenant, Tenant shall promptly reimburse Manager for any amounts due. If the audit discloses any sum due Tenant or any overpayment to Manager of more than five percent (5%) of the aggregate amounts to which Tenant is entitled hereunder, Manager will be solely responsible for the reasonable cost of the audit. Otherwise, the audit will be at Tenant's sole expense.

5. Indemnification:

(a) In addition to any indemnity obligations set forth elsewhere in this Agreement, Manager shall reimburse, indemnify, defend and hold harmless Tenant and its Affiliates, and their respective direct and indirect owners, directors, officers, employees, agents and advisors for, from and against any and all Claims (as defined below) sustained or incurred by or asserted against any one or more of them caused by (i) the gross negligence, willful misconduct, fraud or illegal acts by Manager or its agents or employees as a result of, or in connection with, Manager's performance of duties hereunder and (ii) any breach by Manager of any provision of this Agreement; provided that Manager shall have no indemnification obligation hereunder with respect to Claims arising from the acts and omissions of employees at the Facility (as compared to the corporate employees) ("Facility Employees"); provided, however, nothing herein shall be construed as limiting any indemnification obligation which Manager may have with respect to Manager's gross negligence, willful misconduct, fraud or illegal acts in connection with the hiring, firing or supervision of the Facility Employees.

(b) In addition to indemnity obligations set forth elsewhere in this Agreement, Tenant shall reimburse, indemnify, defend and hold harmless Manager and its Affiliates and their respective direct and indirect owners, directors, officers, employees, agents and advisors for, from and against any and all Claims sustained or incurred by or asserted against any one or more of them (including, without limitation, any losses, costs and/or expenses result from loss of license) caused by (i) the gross negligence, willful misconduct, fraud or illegal acts of Tenant or its agents (other than Manager) or employees, (ii) Manager's performance of its duties and obligations within the scope of its authority pursuant to the terms of this Agreement, and/or (iii) any breach by Tenant of any provision of this Agreement including, without limitation, any failure of Tenant to timely fund to the Operating Account amounts necessary to pay, or to reimburse Manager for, Permitted Expenditures.

(c) As used in this Agreement, "Claims" means any claims, demands, causes of action, losses, damages, fines, penalties, liabilities, costs and expenses, including reasonable attorneys' fees and court costs. Notwithstanding the foregoing, none of the indemnified parties hereunder shall be entitled to collect any amounts pursuant to this Section 5 if such party has been fully compensated with proceeds made available from insurance carried or required to be carried pursuant to this Agreement, provided no party shall be required to seek reimbursement pursuant to any insurance policy prior to exercising its rights and remedies pursuant to the terms of this Agreement. The terms of this Section 5 shall survive the expiration or termination of this Agreement.

(d) The parties hereto agree and acknowledge that the indemnification rights and obligations herein do not, and will not, diminish any other rights and remedies available hereunder in the event of a default by any party hereunder.

6. Insurance: Manager shall at all times during the Term maintain the insurance listed on Schedule 6 (the "Required Insurance"). For the property insurance, auto, and the professional liability insurance (but not the professional liability insurance required as a Manager Paid Insurance), Tenant shall be listed as the named insured and if applicable and customary, Manager shall be listed as additional named insured or additional insured. For the D&O, EPLI, professional liability and crime/fiduciary insurance identified on Schedule 6 (the "Manager Paid Insurance"), Manager shall be listed as the named insured and, if applicable and customary, Tenant shall be listed as additional insured. With respect to all other Required Insurance, Manager shall be listed as the named insured and Tenant shall be listed as additional named insured or additional insured, as applicable. Notwithstanding the foregoing, Manager shall comply with any and all Facility Lender requirements for insurance, provided such requirements are customary and available in the industry using commercially reasonable efforts and provided Manager has received reasonable prior notice and adequate time to obtain the same. No later than the Effective Date, and from time to time thereafter promptly following any reasonable request therefor, Manager shall provide to Tenant a certificate of insurance confirming its compliance with the terms of this Section 6. The cost of the Required Insurance (including any applicable deductibles or retention amounts, but excluding the Manager Paid Insurance), shall be Tenant's expense and paid by Manager to the extent funds are available in the Operating Account. The cost of the Manager Paid Insurance, including any applicable deductibles or retention amounts should losses occur, shall be at Manager's expense.

7. Payment:

(a) Calculation of Fee: As consideration for the services rendered by Manager in accordance with this Agreement, Tenant shall pay to Manager during the Term a monthly fee equal to (i) six percent (6.0%) of the monthly Effective Gross Income (as defined below) of the Facility for the period commencing on the Effective Date and ending on the second (2nd) anniversary of the Effective Date, and (ii) seven percent (7.0%) of the monthly Effective Gross Income of the Facility thereafter (the "Fee"). Payment of the Fee shall be due on the fifth (5th) business day of the immediately succeeding calendar month. The Fee shall be payable by deduction from the Operating Account.

(b) Effective Gross Income: "Effective Gross Income" means all revenues during such period from the operation of the Facility, from whatever source, determined in accordance with GAAP (including without limitation, income from residents, space rentals, service fee income and beverage income, income from vending machines, assisted living income, guest fees, and any other income generated from the operation of the Facility, but excluding, insurance proceeds (except for business interruption insurance proceeds), condemnation awards, security deposits (unless forfeited) and loan proceeds and advances, and interest on investments).

(c) Pro-Rata Fee Payment: If the services of Manager commence or terminate other than on the first (1st) day of the month, the Fee shall be pro-rated proportionate to the number of days in the month for which services are actually rendered.

(d) Source of Payment: Any Fee due to Manager hereunder may be disbursed by Manager to itself out of the Operating Account. To the extent the Operating Account has insufficient funds to cover any Fee owed to Manager hereunder, or to reimburse Manager for any Facility Expenses paid from its own funds as contemplated by Section 3(a), then Tenant shall be obligated to pay any such amounts to Manager upon demand.

(e) Casualty: If the Facility is damaged as the result of a casualty covered by business interruption insurance and such damage results in temporary or permanent closure of the Facility, thereby interrupting the Effective Gross Income upon which Manager's payment of the Fee is based, Tenant shall pay to Manager for the period of such interruption covered by business interruption insurance or for the first twelve (12) months thereof, whichever time period is shorter, monthly amounts equal to 50% of the average monthly Fee earned by Manager pursuant to this Section 7 for the twelve (12) months immediately preceding the interruption. Tenant hereby directs Manager to maintain business interruption insurance during the Term and any cost incurred in connection therewith shall be funded into the Operating Account, as necessary, by Tenant.

8. Term: The Term of this Agreement shall commence on the Effective Date and, unless earlier terminated in accordance with the provisions hereof, shall expire on the tenth (10th) anniversary of the Effective Date (the "Initial Term"), provided the Initial Term shall be extended continuously and automatically for one (1) year periods (each, an "Extended Period" and together with the Initial Term, the "Term") unless either Tenant or Manager delivers to the other a written notice of termination of this Agreement not less than ninety (90) days prior to commencement of the next Extended Period.

9. Remedies/Termination: Any party shall be deemed to be in "Default" hereunder if such party breaches, in any material respect, this Agreement and fails to cure the same within thirty (30) days of written notice from the non-breaching party of the breach, provided if such breach cannot be cured with the use of reasonable and diligent efforts within such 30-day period, such breaching party shall have an additional thirty (30) days to cure so long as such party continuously and diligently pursues such cure. In the event of any Default hereunder, the other party shall have any and all rights and remedies available at law and in equity, which rights and remedies shall survive the expiration and/or termination of this Agreement, provided that, subject to Section 9(c), each party's right to terminate this Agreement shall be limited to the provisions of this Section 9 and Section 13. This Agreement may be terminated by mutual agreement of Manager and Tenant, or otherwise upon the written notice of the party terminating this Agreement to the other party, after the occurrence of any of the events described in Section 9(a) or Section 9(b), as applicable.

(a) Termination by Tenant:

(i) Breach: Tenant may terminate this Agreement if Manager breaches, in any material respect, this Agreement (except with respect to any event or condition set forth in subsection (iii) below) and fails to cure the same (x) with respect to any breach that would result in a default under the Master Lease or any Facility Loan Document, at least five (5) days prior to the expiration of any notice and cure period provided in the Master Lease or Facility Loan Document, as applicable, and (y) with respect to any other breach, within thirty (30) days of written notice from Tenant of such breach, provided if such breach contemplated by this subsection (y) cannot be cured with the use of reasonable and diligent efforts within such 30-day

period, Manager shall have an additional thirty (30) days to cure so long as Manager continuously and diligently pursues the same. Tenant shall be deemed to have waived the right to terminate if the termination notice is not received by Manager within ninety (90) days after its receipt of the notice of breach and no notice of termination shall be effective if the breach was previously cured.

(ii) Bankruptcy or Dissolution and Certain Other Events: Tenant may terminate this Agreement upon the occurrence of any Bankruptcy/Dissolution Event with respect to Manager. For purposes of this clause (ii), a "Bankruptcy/Dissolution Event with respect to Manager" shall mean the commencement or occurrence of any of the following: Manager shall apply for or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial part of Manager's assets, file a voluntary petition in bankruptcy, make a general assignment for the benefit of creditors, file a petition or any answer seeking reorganization or arrangement with creditors, or take advantage of any insolvency law, or if any order, judgment, or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating Manager as bankrupt or insolvent or approving a petition seeking reorganization of Manager, or appointing a receiver, trustee, or liquidator with respect to all or a substantial part of Manager's assets, and such order, judgment, or decree shall continue for any period of ninety (90) consecutive days.

(iii) Suspension or Termination of Licensure: Tenant may terminate this Agreement if any material license for the operation of the Facility that has been issued in the name of Manager or Tenant is suspended, terminated or revoked for any reason other than the act or omission of Tenant, and such suspension, termination or revocation shall continue in effect after all appeals have been exhausted.

(iv) Casualty or Condemnation: Tenant may terminate this Agreement in the event Tenant permanently discontinues the operation of the Facility on account of damage to or destruction of, or a taking by (or sale under threat of) eminent domain of, all or a substantial part of the Facility.

(v) Termination Notice: At any time after the first (1st) anniversary of the Effective Date, Tenant may terminate this Agreement upon sixty (60) days prior written notice to Manager provided Tenant pays the Termination Fee to Manager prior to the effective date of termination. The Termination Fee shall be determined as of the effective date of such termination. For the purposes of this Agreement, "Termination Fee" shall mean an amount equal to the Prior Fees multiplied by the number that is the lesser of the number of months remaining on the Term (not including any additional extensions) and forty-eight (48). For the purposes of this Agreement, "Prior Fees" shall mean, as of the date of determination, the average of the monthly Fee paid by Tenant to Manager during the twelve (12) full calendar months immediately prior to such date.

(vi) Termination for Performance: At any time after the first (1st) anniversary of the Effective Date, Tenant may terminate this Agreement upon thirty (30) days prior written notice to Manager if the Net Operating Income for any calendar year following such first (1st) anniversary is less than eighty percent (80%) of the lesser of (a) the Net Operating Income as set forth in the Annual Budget for such calendar year and (b) the Net Operating Income for the Facility during the twelve (12) calendar months of the prior calendar year. For the purposes of this Agreement, "Net Operating Income" means: (x) Effective Gross Income of the Facility less (y) the sum of operating expenses. In addition to other operating expenses, for clarity, the

following are expressly included among operating expenses: (1) insurance costs and expenses pertaining to the Facility, (2) real and personal property taxes or related governmental charges payable by or assessed against Manager, Tenant, or the Facility relating exclusively to the Facility (other than income or other taxes based on Manager's or Tenants' s receipt of income from the operation of the Facility), (3) any and all payments under personal property leases used in the operation of the Facility (but excluding payments relating to any real property lease(s)), (4) all fees paid by Tenant to Manager pursuant to this Agreement, and (5) all legal and accounting costs related to the Facility.

(vii) Default/Termination under Master Lease or Facility Loan Documents. Subject to the terms of any subordination and attornment agreement contemplated by Section 10 hereof, Tenant may terminate this Agreement if Owner terminates the Master Lease, and this Agreement shall terminate if (a) Owner exercises its right to terminate this Agreement following a default under the Master Lease or (b) any Facility Lender exercises its right to terminate this Agreement following a default under the Facility Loan Documents; provided, however, that Tenant shall be obligated to pay the Termination Fee to Manager if this Agreement is terminated pursuant to the terms of this subsection (vii) and such termination results from the fault of Tenant and/or any Affiliate of Tenant (as opposed to the fault of Manager, a Manager default hereunder, a condition caused by Manager or some other reason not caused by Tenant and/or any Affiliate of Tenant).

(viii) Other Defaults. Tenant may terminate this Agreement, upon ten (10) days prior written notice, in the event any other management agreement between Tenant (or an Affiliate of Tenant) and Manager (or an Affiliate of Manager) (such other management agreement, the "Other Terminated Management Agreement") is terminated by Tenant (or its Affiliate); provided, however, that Tenant shall be obligated to pay the Termination Fee to Manager in connection with a termination of this Agreement pursuant to this subsection (ix) if (1) a termination fee was required to be paid in connection with the termination of the Other Terminated Management Agreement, or (2) the termination of the Other Terminated Management Agreement was the result of:

(A) a failure of Tenant or its Affiliate to maintain licenses required to be maintained pursuant to the terms of the Other Terminated Management Agreement (as contemplated by Section 9(a)(iii) hereof);

(B) the exercise of a termination election by Tenant in its sole discretion (as contemplated by Section 9(a)(v) hereof), or

(C) the exercise of rights of a landlord or lender pursuant to the terms of the master lease or facility loan documents to which the Other Terminated Management Agreement has been subordinated if a termination fee was required to be paid in connection therewith under such Other Terminated Management Agreement (as contemplated by Section 9(a)(vii) hereof).

(b) Termination by Manager:

(i) Breach: Manager may terminate this Agreement if Tenant breaches, in any material respect, this Agreement (except with respect to any event or condition set forth in subsections (iii) and/or (v) below) and fails to cure the same within thirty (30) days of written notice from Manager of the breach, provided if such default cannot be cured with the use of

reasonable and diligent efforts within such 30-day period, Tenant shall have an additional thirty (30) days to cure so long as Tenant continuously and diligently pursues the same. Manager shall be deemed to have waived the right to terminate if the termination notice is not received by Tenant within ninety (90) days after its receipt of the notice of breach and no notice of termination shall be effective if the breach was previously cured. Notwithstanding anything to the contrary contained herein, Tenant shall be obligated to pay the Termination Fee to Manager if this Agreement is terminated by Manager pursuant to the terms of this subsection (i).

(ii) Bankruptcy or Dissolution: Manager may terminate this Agreement upon the occurrence of any Bankruptcy/ Dissolution Event with respect to Tenant. For purposes of this clause (ii), a "Bankruptcy/Dissolution Event with respect to Tenant" shall mean the commencement or occurrence of any of the following: If Tenant shall apply for or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial part of Tenant's assets, file a voluntary petition in bankruptcy, make a general assignment for the benefit of creditors, file a petition or any answer seeking reorganization or arrangement with creditors, or take advantage of any insolvency law, or if an order, judgment, or decree shall be entered by a court of competent jurisdiction, on the application of a creditor, adjudicating Tenant as bankrupt or appointment a receiver, trustee, or liquidator of Tenant with respect to all or a substantial part of Tenant's assets, and such order, judgment or decree shall continue in effect for any period of ninety (90) consecutive days.

(iii) Suspension or Termination of Licensure: Manager may terminate this Agreement if any material license for the operation of the Facility that has been issued in the name of Tenant or Manager is at any time suspended, terminated or revoked for any reason other than as a result of the acts or omissions of Manager, and such suspension, termination or revocation shall continue in effect after all appeals have been exhausted. Notwithstanding anything to the contrary contained herein, Tenant shall be obligated to pay the Termination Fee to Manager if this Agreement is terminated by Manager pursuant to the terms of this subsection (iii) as the result of a failure of Tenant to maintain the required licenses.

(iv) Casualty or Condemnation: Manager may terminate this Agreement in the event Tenant permanently discontinues the operation of the Facility on account of damage to or destruction of, or a taking by (or sale under threat of) eminent domain of, all or a substantial part of the Facility.

(v) Insufficient Funds: Manager may terminate this Agreement if the Facility is not generating sufficient revenue to pay the costs and expenses of the Facility that are Permitted Expenditures, there are insufficient funds in the Operating Account, and Tenant has failed, within five (5) business days of the expiration of the applicable Funding Cure Period, to deposit sufficient funds in the Operating Account to pay all such costs and expenses. Notwithstanding anything to the contrary contained herein, Tenant shall be obligated to pay the Termination Fee to Manager if this Agreement is terminated by Manager pursuant to the terms of this subsection (v).

(vi) Budget. Manager may terminate this Agreement at any time on five (5) business days written notice to Tenant if Manager has a reasonable basis to believe that any or all of the amounts set forth in any Annual Budget are not sufficient to allow Manager to operate the Facility for the applicable calendar year in compliance with the terms of this Agreement, unless Tenant adopts the operating budget then proposed by Manager for such year within such five (5) business day period.

(vii) Sale or Transfer. In the event Tenant sells, assigns, transfers or otherwise disposes of its interest in the Master Lease to an unaffiliated buyer or transferee (or there occurs a sale, transfer or other disposition, in one or more transactions, that results, directly or indirectly, in a change in control of Tenant), Manager may terminate this Agreement, effective the date of such transaction.

(viii) Default/Termination under Master Lease or Facility Loan Documents. Subject to the terms of any subordination and attornment agreement executed pursuant to the terms of Section 10 hereof, Manager may terminate this Agreement if Owner terminates the Master Lease, and this Agreement shall terminate if (a) Owner exercises its right to terminate this Agreement following a default under the Master Lease or (b) any Facility Lender exercises its right to terminate this Agreement following a default under the Facility Loan Documents; provided, however, that Tenant shall be obligated to pay the Termination Fee to Manager if this Agreement is terminated pursuant to the terms of this subsection (viii) and such termination results from the fault of Tenant (as opposed to the result of a Manager default hereunder, a condition caused by Manager or some other reason not caused by Tenant).

(ix) Other Defaults. Manager may terminate this Agreement upon ten (10) days prior written notice, in the event any other management agreement between Tenant (or an Affiliate of Tenant) and Manager (or an Affiliate of Manager) is terminated by Manager (or its Affiliate).

(c) Effect of Termination: Termination of this Agreement, or expiration of the Term as contemplated by Section 8, shall terminate all rights and obligations of the parties hereunder, except for any provision of this Agreement which is expressly described as surviving any expiration or termination of this Agreement. Such termination or expiration, however, shall not terminate the rights and obligations of the parties (including any compensation due to Manager under this Agreement) which accrued prior to the effective date of termination or expiration nor shall it prejudice the rights of either party against the other for any breach or Default under this Agreement. Upon termination or expiration of this Agreement, Tenant, in its sole discretion, may select another entity to succeed Manager, subject to approval by any applicable regulatory authorities (if required).

(d) Final Accounting: Upon the expiration of the Term or any other termination of this Agreement as herein provided, Manager shall (i) deliver to Tenant a final accounting within forty-five (45) days of such expiration or termination; (ii) surrender and deliver to Tenant possession of the Facility; (iii) surrender and deliver possession and control of the Accounts, and all rents and income (including resident security deposits) of the Facility and other monies of Tenant on hand and in any bank account as soon as reasonably practicable (but not later than five (5) business days after the effective date of such termination or expiration); (iv) deliver to Tenant, as received, any monies due Tenant under this Agreement but received after such termination or expiration as soon as reasonably practicable (but not later than five (5) business days after receipt); (v) deliver to Tenant all materials and supplies, keys, contracts and documents, and such other accounting papers and records pertaining exclusively to the Facility as Tenant shall request as soon as reasonably practicable; (vi) subject to Section 2(f), assign contract rights with respect to the Facility to Tenant as soon as reasonably practicable (but no later than five (5) business days after such termination or expiration); (vii) deliver to Tenant, or Tenant's duly appointed agent, all other books and records, contracts, leases, resident's agreements, receipts for deposits and unpaid bills relating exclusively to the Facility as soon as reasonably practicable (but no later than five (5) business days after such termination or expiration) which shall include access to all data files (either through the cloud or Manager's servers); and (viii) reasonably cooperate with Tenant in good faith (but at no cost to Manager) with respect to the transition. The terms of this subsection (d) shall survive the expiration or termination of this Agreement.

(e) Cooperation During Term: If at any time during the Term of this Agreement, Tenant (or Owner), in it sole discretion, elects by written notice to Manager to become the licensed operator and, if applicable, Medicaid certified provider of the Facility, Manager shall use its commercially reasonable efforts to assist Tenant (or Owner, as applicable) in its efforts to apply for and acquire health care licenses required under Applicable Laws for the operation of the Facility in the name of Tenant and shall keep Tenant (and Owner, as applicable) fully informed of all efforts and status of said applications. In such event, Tenant and Manager will also enter into such amendments to this Agreement as may be reasonably necessary to allow Tenant (or Owner, as applicable), rather than Manager, to be the licensed operator of the Facility.

(f) Cooperation After Term:

(i) In the event this Agreement is terminated or expires, Manager shall reasonably cooperate with Tenant to ensure that operational responsibility for the Facility is transferred to Tenant or such other entity as may be designated by Tenant as soon as practicable, but not sooner than such time as either Tenant or Tenant's designee is duly licensed to operate the Facility. In the event that neither Tenant nor such designee is duly licensed by the date on which this Agreement terminates or expires, then, to the extent required and permitted by Applicable Law, Manager shall enter into an interim operating agreement in form reasonably acceptable to Manager and Tenant, pursuant to which either Tenant or such designee shall be permitted to operate the Facility under Manager's license until such time as a new license is issued to Tenant or such designee; provided, however, such interim operating agreement shall, at a minimum, include an appropriate indemnity to Manager from a creditworthy entity from any liability Manager may incur as a result of the operation of the Facility under its license. Such interim operating agreement shall also provide, at Tenant's request, that Manager enter into an agreement with Tenant that shall provide that Tenant shall lease the Facility Employees from Manager for up to sixty (60) days after such termination or expiration at cost.

(ii) Manager shall, for a period of thirty (30) days after expiration or termination of this Agreement, make itself reasonably available, at no cost to Tenant or Manager, to answer questions regarding the prior operation and maintenance of the Facility and the transfer of accounts and accounting systems. For a period of five (5) years following the expiration or termination of this Agreement, Manager (at Tenant's sole cost and expense) shall reasonably cooperate with Tenant with respect to any third party claim arising out of events that occurred at the Facility during the Term.

(iii) As of the expiration or termination of this Agreement, Tenant or its designee may, with respect to each then current Facility Employee (whether directly employed by Manager or leased by Manager from an Affiliate), either (x) offer such employee employment with Tenant or such designee or (y) inform Manager that Tenant does not intend to offer employment to such employee, in which case, Manager (or Manager's Affiliate, as applicable) may continue to employ such Facility Employee or terminate such Facility Employee's employment. For those Facility Employees hired by Tenant or its designee upon termination of this Agreement, Tenant (or such designee) will credit such employees with all vacation, paid time off, or other leave benefits that such employees had earned and accrued but not yet used while employed by Manager (or its Affiliate) and Manager shall pay Tenant (or Tenant's designee) a cash amount for such as of the date of expiration or termination of this Agreement.

(iv) Survival: The terms of this subsection (f) shall survive the expiration or termination of this Agreement.

10. Subordination of Management Agreement: Manager agrees to execute upon request in favor of Owner, and/or any Facility Lender, (i) a subordination and attornment agreement in favor of Owner with customary provisions and in a form reasonably acceptable to Tenant and Manager; and (ii) a consent to collateral assignment of management agreement and other customary agreements required by Tenant, Owner or such Facility Lender in connection with the Master Lease and/or the Facility Loan Documents, in each case in form reasonably acceptable to Manager and the applicable counterparty, which agreement shall include, without limitation, customary subordination provisions, representations and covenants by Manager.

11. Proprietary Materials: Those separate forms and operating procedures developed and employed by Manager in the performance of this Agreement are proprietary in nature and shall remain the property of Manager, provided that to the extent such forms are in use at the Facility as of termination or expiration of this Agreement, Manager hereby grants Tenant and its designee a license to continue to use and modify such forms exclusively in the operation of the Facility, provided any derivative works shall remain the property of Manager. The terms of this Section 11 shall survive the expiration or termination of this Agreement.

12. Eligible Independent Contractor: Manager represents and warrants (i) that the management fee payable under this Agreement is an arm's length management fee that provides adequate compensation for Manager's services hereunder and (ii) that, as of the Effective Date, Manager is an Eligible Independent Contractor. Throughout the Term, (i) Manager shall maintain such Eligible Independent Contractor status, and (ii) Manager shall not cause the Facility to fail to qualify as "qualified health care property" as defined in Section 856(e)(6)(D)(i) for purposes of Section 856(d)(8)(B) and Section 856(d)(9) of the Code. Manager shall, from time to time, provide to Tenant information requested by Tenant (including a certificate, dated as of the date of this Agreement and executed by an officer of Manager's direct or indirect parent entity, that Tenant's direct or indirect parent entities may rely on in connection with opinions regarding whether such entities qualify as a REIT) to allow Tenant to confirm Manager's status as an Eligible Independent Contractor and the Facility's status as a qualified health care property. If Manager or any Affiliate of Manager becomes aware that Manager may no longer constitute an Eligible Independent Contractor or the Facility may no longer be a qualified health care property, then Manager shall promptly (but in any event within five (5) days) so notify Tenant. This Section 12 shall apply for so long as the Facility is owned by an entity, or through an ownership structure, that is subject to REIT tax requirements.

13. REIT Status: Manager acknowledges that: (i) Tenant (or Tenant's direct or indirect owner) intends to qualify as a "taxable REIT subsidiary" under the Code, (ii) one or more of Tenant's direct or indirect parent entities intend to qualify as REITs and (iii) Tenant and its direct or indirect owners therefore are subject to operating and other restrictions under the Code. Notwithstanding anything to the contrary in this Agreement, if Tenant determines that this Agreement or Manager's operation of the Facility under this Agreement could jeopardize Tenant's (or Tenant's owner's) qualification as a taxable REIT subsidiary or the qualification of Tenant's direct or indirect parent as a REIT, Manager shall reasonably cooperate with Tenant to revise this Agreement or restructure this arrangement so that Tenant is satisfied with such qualification; provided, that (a) any such actions shall be completed at no additional cost to Manager and (b) the economic terms of this Agreement shall not be materially modified or changed. If Tenant and Manager cannot take actions to the satisfaction of Tenant to protect such tax status, Tenant shall have the right to terminate this Agreement upon thirty (30) days notice to Manager. This Section 13 shall apply for so long as the Facility is owned by an entity or through an ownership structure that is subject to REIT tax requirements.

14. Assignment: This Agreement may not be assigned or transferred by either of Manager or Tenant to any Person without the prior written consent of the other party hereto, except that (i) either party may assign or transfer this Agreement and its rights and obligations hereunder to an Affiliate of Fortress Investment Group LLC ("Fortress") or any fund managed by Fortress (provided that the transferring party shall remain liable for all of its obligations hereunder; and, provided, further, that the transferee of Manager shall hold all licenses and certifications necessary for the lawful operation of the Facility, (ii) subject to the terms of Section 9(b)(vii), in connection with the sale, assignment, transfer or other disposition of Tenant's interest in the Master Lease, Tenant may assign this Agreement to any such transferee, and (iii) subject to the terms of Section 10 hereof, Tenant may, on notice to but without the need to secure the consent of Manager, assign this Agreement as collateral security for any debt secured by the Facility. Notwithstanding the foregoing, Manager shall not assign or otherwise transfer this Agreement if the assignee would not qualify as an Eligible Independent Contractor or such assignment would violate Section 13.

15. Attorney's Fees: In the event either party brings an action to enforce this Agreement, the prevailing party in such action shall be entitled to receive costs and reasonable attorney's fees incurred by it in such amount as a court may deem reasonable, whether at trial or appellate court level. The terms of this Section 13 shall survive the expiration or termination of this Agreement.

16. Confidentiality: All nonpublic information provided by one party to the other party (the "Receiving Party") pursuant to or relating to this Agreement shall be kept confidential by the Receiving Party; provided, however, that the Receiving Party shall be permitted to disclose any such information to its Affiliates and its and their respective employees, officers, directors, managers, agents and advisors and shall be permitted to disclose any such information as required by Applicable Law or stock exchange rule or by mutual agreement of the parties hereto; in each instance such persons receiving any confidential information shall be subject to this confidentiality provision and shall be notified accordingly. The covenants confirmed herein shall continue for three (3) years after the termination of or expiration of this Agreement.

17. Notices: All notices, demands and other communications which may be or are required to be given hereunder or with respect hereto shall be in writing and shall be deemed to have been duly given if delivered (a) personally, (b) by overnight courier service, (c) by United States registered mail, postage prepaid, or (d) via electronic mail, in each case directed to the respective parties as follows, or to such other address as either party may, from time to time, designate by notice pursuant to this Section 15. Notices sent by personal delivery, overnight courier and electronic mail shall be deemed given when delivered, and notices sent by United States registered mail shall be deemed given four (4) business days after the date of deposit in the United States mail:

MANAGER

Willow Park Management LLC
c/o Fortress Investment Group LLC
1345 Avenue of the Americas, 46th Floor
New York, NY 10105
Attn: Andrew White
Phone: (212) 479-5271
Fax: (212) 798-6070
E-mail: awhite@fortress.com

TENANT

Willow Park Leasing LLC
c/o Fortress Investment Group LLC
1345 Avenue of the Americas, 46th Floor
New York, NY 10105
Attn: Brian Sigman
Phone: (212) 479-5343
E-mail: bsigman@fortress.com

18. Entire Agreement; Binding Nature: This Agreement constitutes the entire agreement between the parties and supersedes and cancels any and all other agreements between the parties relating to the subject matter hereof. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assignees as provided in this Agreement.

19. No Waiver: No waiver by either party of any breach of the other party or of any event, circumstance or condition permitting a party to terminate this Agreement or to otherwise exercise remedies shall constitute a waiver of any other default of the other party or of any other event, circumstance or condition permitting such termination or exercise of remedies, whether of the same or of any other nature or type and whether preceding, concurrent or succeeding; and no failure on the part of either party to exercise any right it may have by the terms hereof or by law upon the default of the other party and no delay in the exercise of such right shall prevent the exercise thereof by the party not in breach at any time when the other party may continue to be so in default, and no such failure or delay and no waiver of default shall operate as a waiver of any other default, or as a modification in any respect of the provisions of this Agreement. The subsequent acceptance of any payment or performance pursuant to this Agreement shall not constitute a waiver of any preceding default by a party not in breach or of any preceding event, circumstance or condition permitting termination hereunder, other than default in the payment of the particular payment or the performance of the particular matter so accepted, regardless of the knowledge of the party not in breach of the preceding breach or the preceding event, circumstance or condition, at the time of accepting such payment or performance, nor shall the acceptance by the party not in default of such payment or performance after termination constitute a reinstatement, extension or renewal of this Agreement or revocation of any notice or other act by the party not in breach.

20. Severability: If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and, each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

21. Governing Law: THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO ITS CONFLICT OF LAWS PROVISION OR THE CONFLICT OF LAWS PROVISIONS OF ANY OTHER JURISDICTION WHICH WOULD CAUSE THE APPLICABLE OF ANY OTHER LAW OTHER THAN THAT OF THE STATE OF NEW YORK.

22. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, binding on the parties, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart. This Agreement may be delivered by facsimile or email transmission. This Agreement shall be effective if each party hereto has executed and delivered at least one counterpart hereof.

23. Employee Obligations: Notwithstanding anything to the contrary contained herein, Manager may fulfill its obligations under this Agreement regarding employees by leasing any or all of such employees from an Affiliate, provided that the economic terms of such a leasing arrangement are consistent with the amounts allocated to personnel expenses qualify as Permitted Expenditures.

24. Force Majeure: Notwithstanding anything to the contrary contained herein, neither party will be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder for any reason beyond its control, including, without limitation, strikes, shortages, war, acts of God or any statute, regulation or rule of federal, state or local government or agency thereof.

25. Relationship of the Parties: The relationship of the parties shall be that of a principal and independent contractor and all acts performed by Manager during the Term shall be deemed to be performed in its capacity as an independent contractor. Nothing contained in this Agreement is intended to or shall be construed to give rise to or create a partnership or joint venture or lease between Tenant, its successors and assigns on the one hand, and Manager, its successors and assigns, on the other hand.

26. Construction: Each of the parties acknowledges and agrees that it has participated in the drafting and negotiation of this Agreement. Accordingly, in the event of a dispute with respect to the interpretation or enforcement of the terms hereof, no provision shall be construed so as to favor or disfavor either party hereto.

27. Consents: Except as otherwise specifically provided herein, in any instance that consent of any party is required hereunder, such consent shall not be unreasonably withheld, conditioned or delayed by the party having such consent right.

28. Withholding Taxes and State Income Tax Returns: Manager confirms that: (a) Tenant is not required to withhold taxes from any amounts payable to Manager under this Agreement under the Code; (b) to the extent required by law, to exempt Tenant from withholding on payments to Manager, Manager shall promptly deliver a Form W-9 to Tenant dated as of the date of this Agreement (and shall update such form as necessary or upon request); and (c) Manager files, or is included in state income tax returns filed by Manager's direct or indirect parent and such entity files, state income tax returns in each state where Manager, directly or indirectly or through its subsidiaries, leases or operates any property owned by Owner or its Affiliates.

29. Certain Definitions:

(a) "Affiliates" means a person that, directly or indirectly, controls or is controlled by, or is under common control with, the person specified.

(b) "Applicable Law(s)" means all statutes, laws, ordinances, rules, regulations, requirements, judgments, orders and decrees of any Governmental Authority including, without limitation, any requirement(s) or standard of any agency or other Governmental Authority required for any party to maintain licensure or certifications.

(c) "Code" means the Internal Revenue Code of 1986, as amended from time to time. References to Code Sections include any similar or successor provisions thereto.

(d) "Eligible Independent Contractor" means a person that satisfies the following requirements, at all times while they are a party to this Agreement or while their status as an Eligible Independent Contractor is relevant under this Agreement (except as specifically set forth in subsection (iii) below):

(i) Such person does not own, directly or indirectly (for purposes of Code Section 856(d)), more than 35% of the shares of Tenant, Owner or any Affiliate of Tenant or Owner;

(ii) Not more than 35% of the total combined voting power (or value) or the total shares of such person's stock is owned, directly or indirectly, by one or more persons that own 35% or more of the shares of Tenant, Owner or any Affiliate of Tenant or Owner; provided, that, for any class of stock of Tenant, Owner or any Affiliate of Tenant or Owner that is regularly traded on an established securities market, only persons owning, directly or indirectly, more than 5% of such class of stock (for purposes of Code Section 856(d)) shall be taken into account as owning any stock of such class (but all of the outstanding stock of such class shall be considered outstanding in order to compute the denominator for purposes of determining the applicable percentage of ownership);

(iii) Such person or a person related (for purposes of Code Section 856(d)) to such person is actively engaged in the trade or business of operating qualified health care facilities (as defined in Code Section 856(e)) for any person that is not related to Tenant or Owner or any of their Affiliates at the time such person enters into this Agreement or other service contract with respect to the Facility;

(iv) None of Tenant, Owner or any related person (for purposes of Code Section 856) thereto derives any income from such person, any Affiliate of such person or any entity in which such person owns a direct or indirect interest (such person, such Affiliates and such entities, the "Manager Group") without the prior written consent of Tenant, which Tenant may grant or withhold in its sole and absolute discretion;

(v) To the extent that any of Tenant, Owner or any related person (for purposes of Code Section 856) derives income from any direct or indirect owner of Manager or any entity that has a common parent with Manager, such owner or entity shall keep its own books and records, operate as a separate entity from its Affiliates and have, or its direct or indirect parent shall have, its own officers and employees; and

(v) Such person otherwise qualifies as an "eligible independent contractor" for purposes of Code Section 856.

(e) "Facility Lender" means Oak Grove Commercial Mortgage, LLC, a Delaware limited liability company, its successors and assigns, or any other lender pursuant to a loan made by such lender to Owner or Tenant on or after the Effective Date, which loan is secured by the Facility.

(f) "Facility Loan Documents" means any agreement, document or other instrument evidencing or securing debt obligations of Owner and/or Tenant to Facility Lender, which debt obligations are secured by the Facility, but only to the extent (i) Manager has received written notice of, and an opportunity to consult and comment on, such obligations prior to the imposition of such obligations and (ii) such obligations are reasonable and customary for facilities similar to the Facility; provided in no event shall Manager be in default hereunder for any failure to comply with financial covenants imposed pursuant to any such agreement, document or instrument. The Facility Loan Documents existing as of the Effective Date are approved by Manager.

(g) "Governmental Authority" means (i) any government or political subdivision thereof, whether foreign or domestic, national, state, county, municipal or regional; (ii) any agency or instrumentality of any such government, political subdivision or other government entity (including any central bank or comparable agency); and (iii) any court, in each case to the extent having jurisdiction over the Facility, the Tenant or the Manager, as applicable.

(h) “GAAP” means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the US accounting profession), which are applicable to the circumstances as of the date of determination.

(i) “Person” means any individual, sole proprietorship, joint venture, corporation, partnership, governmental body, regulatory agency or other entity of any nature.

(j) “REIT” means a “real estate investment trust” within the meaning of Code Sections 856 through 860.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

MANAGER

WILLOW PARK MANAGEMENT LLC, a
Delaware limited liability company

By: /s/ Andrew White
Name: Andrew White
Title: Chief Executive Officer, President & Secretary

Date: July 5, 2012

TENANT

WILLOW PARK LEASING LLC, a
Delaware limited liability company

By: /s/ Brian Sigman
Name: Brian Sigman
Title: Chief Financial Officer

Date: July 5, 2012

Schedule 2(l)

Monthly Reports

(a) balance sheet as of month end (including current month, prior month, and period to period change);

(b) detailed profit and loss statement, showing monthly and year-to-date comparisons to Annual Budget, with summary explanation of any material variances from the Annual Budget;

(c) 12-month profit and loss trend report;

(d) rent roll as of month end;

(e) resident day calculation report;

(f) general ledger;

(g) cash disbursements journal;

(h) cash receipts journal;

(i) incident reports; and

(j) such other reports as are required by applicable law by, or customarily required or requested by a reporting company under the Securities Exchange Act of 1934, or as otherwise reasonably requested by Tenant.

Schedule 2(m)

2012 Annual Budget

See attached.

Schedule 6

Required Insurance

Manager Paid Insurance, in each case with respect to off-site employees:

- PL/GL
- EPLI
- D&O
- E&O
- Crime & Fiduciary
- Workers Compensation

Owner / Tenant Paid Insurance

- Property
- PL/GL
- Auto
- D&O
- E&O
- Crime & Fiduciary
- Workers Compensation