



April 27, 2023

Emily T. Marsal  
Executive Director  
Alabama State Health Planning & Development Agency  
100 N. Union St.  
Ste. 870  
Montgomery, AL 36104

**Re: Notice of Change of Ownership/Control**  
**SHPDA ID: 101-N3026**  
**Montgomery Health and Rehab LLC**

Dear Ms. Marsal:

Please find enclosed the Notice of Change of Ownership/Control form for Montgomery Health and Rehab LLC, a 121-bed skilled nursing facility located in Montgomery, Alabama. This notice proposes the change of ownership of the facility from 4490 Virginia Loop LLC (real property seller) to **Arabella Health & Wellness of Montgomery PropCo LLC** (proposed real property buyer, CON Holder and new lessor) and the transfer of operational control from Montgomery Health and Rehab LLC (outgoing operator/licensee) to **Arabella Health & Wellness of Montgomery OpCo LLC** (proposed facility operator/licensee and new lessee). The details of this transaction are outlined in the attached Contract of Sale executed on April 19, 2023.

Upon approval of the change of ownership by the Alabama Department of Public Health and evidenced by the issuance of a new Nursing Home License, the contemplated transaction will become effective on or after June 1, 2023 (Commencement Date). Arabella Health & Wellness of Montgomery PropCo LLC (lessor) and Arabella Health & Wellness of Montgomery OpCo LLC (lessee) will enter into a new lease agreement that will be effective on the Commencement Date.

The change of ownership application fee was paid online on April 25, 2023 and a copy of the receipt is enclosed.

If you have any questions or need additional information, please contact me at (478) 396-4777 or [blamberth@newlegacypro.com](mailto:blamberth@newlegacypro.com).

Sincerely,

Brandie P. Lamberth, CPA  
President, New Legacy Professional Services

Enclosures

915 Main Street, Suite C, Perry, GA 31069  
(478) 396-4777  
[www.newlegacypro.com](http://www.newlegacypro.com)

CO2023-014

State Health Planning and Development Agency

Alabama CON Rules &amp; Regulations

**NOTICE OF CHANGE OF OWNERSHIP/CONTROL**

The following notification of intent is provided pursuant to all applicable provisions of ALA. CODE § 22-21-270 (1975 as amended) and ALA. ADMIN. CODE r. 410-1-7-.04. This notice must be filed at least twenty (20) days prior to the transaction.

Change in Direct Ownership or Control (of a vested Facility; ALA. CODE §§ 22-20-271(d), (e))

Change in Certificate of Need Holder (ALA. CODE § 22-20-271(f))

Change in Facility Management (Facility Operator)

Any transaction other than those above-described requires an application for a Certificate of Need.

**Part I: Facility Information**

SHPDA ID Number: 101-N3026  
(This can be found at [www.shpda.alabama.gov](http://www.shpda.alabama.gov), Health Care Data, ID Codes)

Name of Facility/Provider: Montgomery Health and Rehab LLC  
(ADPH Licensure Name)

Physical Address: 4490 Virginia Loop Rd  
Montgomery, AL 36116

County of Location: Montgomery

Number of Beds/ESRD Stations: 121

CON Authorized Service Area (Home Health and Hospice Providers Only). Attach additional pages if necessary. N/A

**Part II: Current Authority** (Note: If this transaction will result in a change in direct ownership or control, as defined under ALA. CODE § 22-20-271(e), please attach organizational charts outlining current and proposed structures.)

Owner (Entity Name) of Facility named in Part I: 4490 Virginia Loop LLC

Mailing Address: 4490 Virginia Loop Rd  
Montgomery, AL 36116

Operator (Entity Name): Montgomery Health and Rehab LLC

**Part III: Acquiring Entity Information**

Name of Entity: Arabella Health & Wellness of Montgomery PropCo LLC

Mailing Address: 3440 Hollywood Blvd, Ste. 415  
Hollywood, FL 33021

Operator (Entity Name): Arabella Health & Wellness of Montgomery OpCo LLC

Proposed Date of Transaction is on or after: 06/01/2023

**Part IV: Terms of Purchase**

Monetary Value of Purchase: \$ 9,317,000

Type of Beds: Skilled Nursing Facility Beds

Number of Beds/ESRD Stations: 121

**Financial Scope:** to Include Preliminary Estimate of the Cost Broken Down by Equipment, Construction, and Yearly Operating Cost:

Projected Equipment Cost: \$ -----

Projected Construction Cost: \$ ----

Projected Yearly Operating Cost: \$ 10,754,665

Projected Total Cost: \$ 10,754,665

**On an Attached Sheet Please Address the Following:**

- 1.) The services to be offered by the proposal (the applicant will state whether he has previously offered the service, whether the service is an extension of a presently offered service, or whether the service is a new service).
- 2.) Whether the proposal will include the addition of any new beds.
- 3.) Whether the proposal will involve the conversion of beds.
- 4.) Whether the assets and stock (if any) will be acquired.

**Part V: Certification of Information**

**Current Authority Signature(s):**

The information contained in this notification is true and correct to the best of my knowledge and belief.

Owner(s): Shalom Lerner x 

Operator(s): Shalom Lerner x 

Title/Date: Member x 4/25/23

SWORN to and subscribed before me, this 25 day of April, 2023.

(Seal)



[Signature]  
Notary Public

My Commission Expires: 05/31/2024

**Acquiring Authority Signature(s):**

I agree to be responsible for reporting of all services provided during the current annual reporting period, as specified in ALA. ADMIN. CODE r. 410-1-3-.12. The information contained in this notification is true and correct to the best of my knowledge and belief.

Purchaser(s): Chaim N. Hertzal X

Operator(s): Chaim N. Hertzal X

Title/Date: Authorized Signatory X

SWORN to and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Author: Alva M. Lambert  
Statutory Authority: § 22-21-271(c), Code of Alabama, 1975  
History: New Rule

SWORN to and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**Acquiring Authority Signature(s):**

I agree to be responsible for reporting of all services provided during the current annual reporting period, as specified in ALA. ADMIN. CODE r. 410-1-3-.12. The information contained in this notification is true and correct to the best of my knowledge and belief.

Purchaser(s): Chaim N. Hertz x *CMH*

Operator(s): Chaim N. Hertz x *CMH*

Title/Date: Authorized Signatory x 04-25-2023

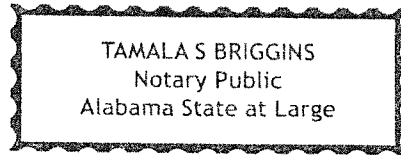
SWORN to and subscribed before me, this 25 day of April, 2023

*Tamala S. Briggins*

(Seal)

\_\_\_\_\_  
Notary Public

My Commission Expires: 5-24-23



Author: Alva M. Lambert

Statutory Authority: § 22-21-271(c), Code of Alabama, 1975

History: New Rule

Alabama State Health Planning & Development Agency

NOTICE OF CHANGE OF OWNERSHIP/CONTROL

Part IV: Terms of Purchase - Attachment

1. The services provided will be skilled nursing care as offered by the previous operator.
2. There will be no new beds added.
3. There will be no conversion of beds.
4. The proposed transaction will be a sale of assets (real property, personal property, equipment, and operational control). The operations will be transferred from Montgomery Health and Rehab, LLC to Arabella Health & Wellness of Montgomery OpCo LLC. The real estate will be transferred from 4490 Virginia Loop LLC to Arabella Health & Wellness of Montgomery PropCo LLC. There will be a new lease agreement executed between Arabella Health & Wellness of Montgomery OpCo LLC and Arabella Health & Wellness of Montgomery PropCo LLC once the sale has occurred.

Note:

The projected yearly operating costs of \$10,754,665 represent amounts which are consistent with current facility operating costs and no substantial increases are expected.

Part II: Current Authority

**Montgomery Health and Rehab LLC**

4490 Virginia Loop LC  
(Current Building Owner/Lessor)



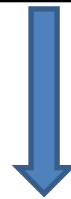
Leases to

Montgomery Health and Rehab LLC  
(Current Operator/Licensee)

Part II: Current Authority

**Montgomery Bay Health and Rehab LLC**

AL 6 Holdings LLC



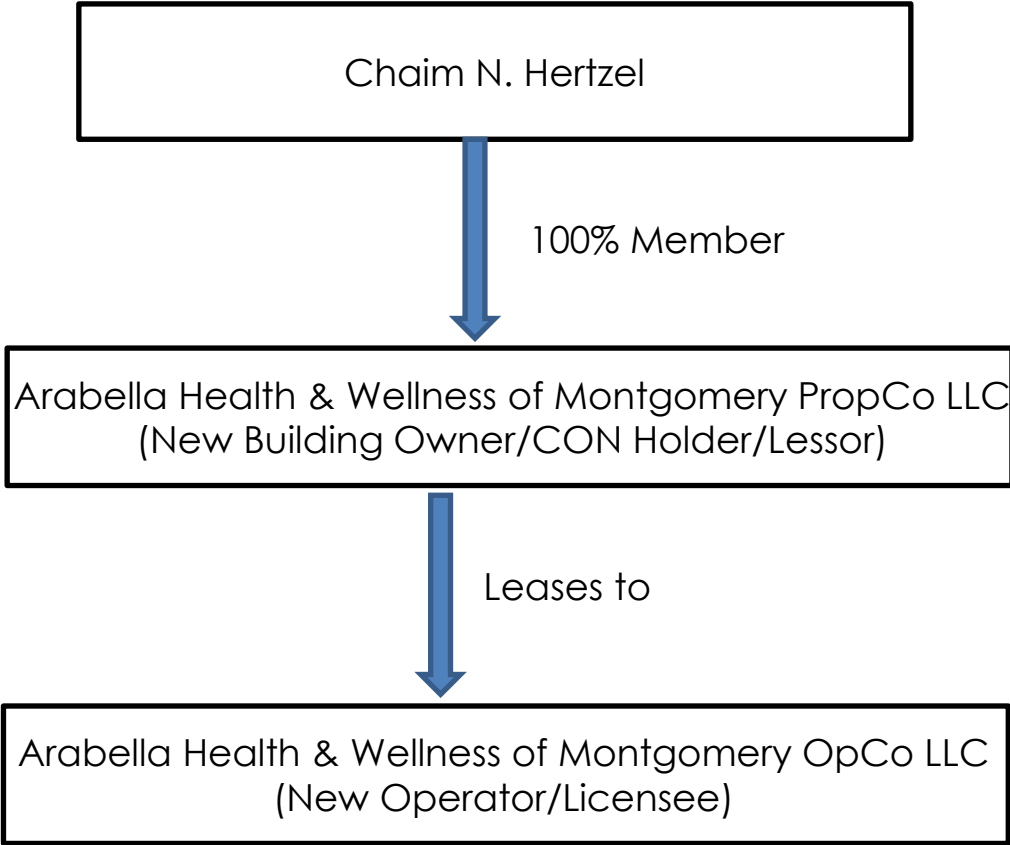
100% Member

Montgomery Health and Rehab LLC  
(Current Operator/Licensee)



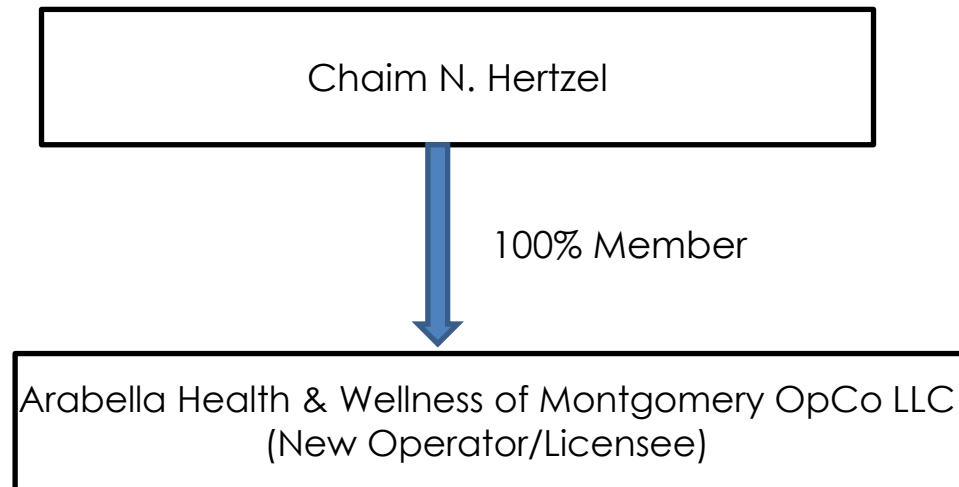
Part III: Acquiring Entity Information

**Arabella Health & Wellness of Montgomery**



## Part III: Acquiring Entity Information

### Arabella Health & Wellness of Montgomery



**From:** alabama <NoReplyOTC@egov.com>  
**Sent:** Tuesday, April 25, 2023 5:17:40 PM  
**To:** Nathan Hertzelt <NHertzelt@arabellahcm.com>  
**Subject:** alabama - Receipt

PURCHASE RECEIPT

**SHPDA**

PO Box 303025  
Montgomery AL 36130-3025  
(334)242-4109  
bradford.williams@shpda.alabama.gov  
OTC Local Ref ID: 81632954  
4/25/2023 05:17 PM

Status: **APPROVED**  
Customer Name: Chaim N Hertzelt  
Type: AmericanExpress  
Credit Card Number: \*\*\*\* \* 1025

Items	Quantity	TPE Order ID	Total Amount
Change of Ownership	6	91467216	\$15,000.00
Applicant Name: <b>Chaim N Hertzelt</b>			
Filing Date: <b>4/25/2023</b>			
Phone Number: <b>9019306124</b>			
Email Address: <b>Nhertzelt@arabellahcm.com</b>			
Total remitted to the SHPDA			\$15,000.00
Alabama total amount charged			\$15,526.00

SHPDA ID:

- 1) 073-N0012 - Birmingham
- 2) 023-N0001 - Butler
- 3) 003-N0003 - Fairhope
- 4) 097-N0012 - Mobile
- 5) 101-N3020 - Montgomery
- 6) 047-N0006 - Selma

$$\$2,500 \times 6 = \$15,000.00$$

## CONTRACT OF SALE

**THIS CONTRACT OF SALE** together with all exhibits, schedules and documents required herein (the “Agreement”), dated April 19, 2023 (the “Effective Date”), is by and between Arabella Health & Wellness of Bessemer PropCo LLC, Arabella Health & Wellness of Butler PropCo LLC, Arabella Health & Wellness of Fairhope PropCo LLC, Arabella Health & Wellness of Montgomery PropCo LLC and Arabella Health & Wellness of Selma PropCo LLC, each a Delaware limited liability company (individually and collectively, “Buyer”) and 1028 Bessemer LLC, 4490 Virginia Loop LLC, 22670 Main Street LLC, 11 Bell LLC and 1406 East LLC, each an Alabama limited liability company (individually and collectively, “Seller”).

### **RECITALS:**

**WHEREAS**, Seller owns real property located at: (i) 1028 Bessemer Road, Birmingham, Alabama 35228, as more particularly described in the legal description attached as Exhibit A-1, which is improved by a duly licensed 163-bed skilled nursing facility commonly known as “Birmingham Health and Rehab” (the “Birmingham Facility”); (ii) 4490 Virginia Loop Road, Montgomery, Alabama 36116, as more particularly described in the legal description attached as Exhibit A-2, which is improved by a duly licensed 121-bed skilled nursing facility commonly known as “Montgomery Health and Rehab” (the “Montgomery Facility”); (iii) 22670 Main Street, Fairhope, Alabama 36532, as more particularly described in the legal description attached as Exhibit A-3, which is improved by a duly licensed 83-bed skilled nursing facility commonly known as “Baldwin Health and Rehab” (the “Baldwin Facility”); (iv) 11 Bell Road, Selma, Alabama 36701, as more particularly described in the legal description attached as Exhibit A-4, which is improved by a duly licensed 172-bed skilled nursing facility commonly known as “Selma Health and Rehab” (the “Selma Facility”); (v) 1406 E. Pushmataha Street, Butler, Alabama 36904, as more particularly described in the legal description attached as Exhibit A-5, which is improved by a duly licensed 120-bed skilled nursing facility commonly known as “Butler Health and Rehab” (the “Butler Facility”); together with the Birmingham Facility, the Montgomery Facility, the Baldwin Facility, the Selma Facility, and the Butler Facility, collectively, the “Facility”);

**WHEREAS**, Seller is currently leasing the Facility to Birmingham Health and Rehab LLC, Montgomery Health and Rehab LLC, Baldwin Health and Rehab LLC, Selma Health and Rehab LLC, and Butler Health and Rehab LLC (“Operator”) pursuant to a lease between Seller and Operator (the “Lease”);

**WHEREAS**, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the Property (as hereinafter defined), all upon the terms and conditions contained in this Agreement;

**WHEREAS**, in connection with the foregoing, Operator shall enter into an operations transfer agreement (the “OTA”) with Arabella Health & Wellness of Bessemer OpCo LLC, Arabella Health & Wellness of Butler OpCo LLC, Arabella Health & Wellness of Fairhope OpCo LLC, Arabella Health & Wellness of Montgomery OpCo LLC, and Arabella Health &

Wellness of Selma OpCo LLC (individually and collectively, the “New Operator”) in order to provide for an orderly transition of the operations of the Facility, and the transfer of certain assets related thereto; and

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Buyer and Seller agree as follows:

## ARTICLE 1

### SALE AND PURCHASE OF PROPERTY

#### **Section 1.1 Sale and Purchase of Property.**

Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date (as hereinafter defined), Seller, to the extent of its interest, agrees to sell, transfer, convey, assign and deliver to Buyer, and Buyer agrees to purchase, acquire and accept from Seller, free and clear of any lien, charge, encumbrance, security interest, mortgage, pledge, claim, or option except the Permitted Liens (as hereinafter defined), all of Seller’s right, title and interest in and to the following assets:

(a) **Real Property.** All of the land legally described on Exhibit A-1, A-2, A-3, A-4, and A-5 attached hereto and incorporated herein by this reference, together with all right, title and interest of Seller in and to the buildings, fixtures and improvements thereon, and Seller’s rights, title and interest, if any, in any land lying in the bed of the street, road, avenue or highway, opened or proposed, in front of or adjoining such premises to the center line thereof, all tenements, hereditaments, rights, privileges, interests, easements, licenses, appurtenances, estates and other rights and benefits now or hereafter belonging or in any way pertaining to such premises and any strips and gores of land adjoining such premises (collectively, the “Real Property”); and

(b) **Personal Property.** Seller’s right, title and interest in and to all furniture, fixtures, furnishing and equipment and other tangible property (collectively, the “Personal Property”) that the Seller may own and located at or used in connection with the Real Property and the Facility; and

(c) **Intangible Property.** All assignable or transferable licenses, certificates, and permits including, but not limited to, all authority and operational rights running to, in favor of, or in the name of Seller establishing the right to operate the licensed nursing facility beds, waivers and certificates of occupancy, plans and specifications, and contract rights (to the extent assumed by Buyer), and all other intangible property owned or held by Seller that relate to the Real Property or the Facility and all rights related thereto (collectively, the “Intangible Property”).

The Real Property, Personal Property, Intangible Property, are collectively hereinafter referred to as the "Property".

#### **Section 1.2 Evidence of Transfer.**

The transfer of the Real Property, free and clear of all liens and encumbrances and other matters of record, other than the Permitted Liens, shall be evidenced by a limited Warranty

Deed (“Deed”) in a form which is reasonably suitable to the Buyer and the Title Company (as hereinafter defined).

**Section 1.3 Inspection Period; As-Is.**

(a) Subject to the provisions of this Section 1.3, Buyer and its agents, employees, attorneys, accountants, consultants, advisors, lenders, investors, inspectors, appraisers, engineers and contractors (collectively “Buyer’s Representatives”) shall have the right, upon the advance notice required pursuant to subsection (b) below, to enter upon and pass through the Property during normal business hours to conduct such inspections, investigations, tests and studies with respect to the Property as Buyer shall deem necessary, including without limitation, a Phase I environmental study; provided that Buyer shall not conduct any invasive testing, such as a Phase II environmental study, without Seller’s prior written consent, at Seller’s sole discretion. Buyer shall not conduct interviews with the employees of the Facility without Seller’s prior written consent, at Seller’s sole discretion. Sellers shall reasonably cooperate with Buyer and Buyer’s Representatives in connection with its due diligence, including, without limitation, making available to Buyer (to the extent not already provided) such documents or information in Seller’s possession or control, including without limitation, the documents and materials set forth in Exhibit B attached hereto within seven (7) days of the Effective Date.

(b) In conducting any inspection of the Property or otherwise accessing the Property, Buyer shall at all times comply in all material respects with all laws and regulations of all applicable governmental authorities, and neither Buyer nor any of Buyer’s Representatives shall (i) interfere with the business of any of the tenants conducted at the Property or disturb the use or occupancy of any occupant of the Property or (ii) damage the Property. Buyer shall schedule and coordinate all inspections, including, without limitation, any environmental tests, and other access with Seller and shall give Seller at least one (1) business day’s prior notice thereof (which notice may be given by electronic mail). Seller shall be entitled to have a representative present at all times during each such inspection or other access. Buyer agrees to pay to Seller, in the event Buyer shall terminate this Agreement, on demand the cost of repairing and restoring any damage that Buyer or Buyer’s Representatives shall cause to the Property (which for purposes hereof shall specifically exclude the mere discovery of pre-existing conditions). All inspection fees, appraisal fees, engineering fees and other costs and expenses of any kind incurred by Buyer or Buyer’s Representatives relating to such inspection and its other access shall be at the sole expense of Buyer. Buyer shall keep all Proprietary Information (as defined below) obtained during its inspections and access to the Property confidential, subject to Buyer’s right to disseminate such Proprietary Information to the Buyer Representatives or any other consultant or agent of Buyer.

(c) Buyer promptly shall repair and restore any damage to the Property caused by the entry upon the Real Property or Facility by Buyer or the other Buyer’s Representatives, including any damage resulting from any inspection or testing by or on behalf of Buyer. Buyer indemnifies and agrees to defend and hold harmless Seller, Seller’s affiliates, and their respective officers, directors, shareholders, partners, members, managers, tenants, agents and employees (collectively, the “Seller Indemnified Parties”) from and against any and all actions, losses, costs, damages, claims, liabilities and expenses (including litigation expenses, actual, out-of-pockets court costs and reasonable attorneys’ fees) brought, sought or incurred by or against any of the

Seller Indemnified Parties resulting from, arising from or in any way relating to, entry upon the Real Property or Facility by Buyer or any of the other Buyer's representatives or otherwise related to the inspections, except to the extent caused by the gross negligence or willful misconduct of Seller or the Seller Indemnified Parties. The foregoing indemnification, defense, hold harmless, and repair and restoration obligations shall survive the Closing or any termination of this Agreement for a period of eighteen (18) months.

(d) Except as is expressly set forth in this Agreement and the other documents to be delivered at Closing (the "Closing Deliverables") to the contrary, Buyer is expressly purchasing the Property in its existing condition "AS IS, WHERE IS, AND WITH ALL FAULTS" with respect to all facts, circumstances, conditions and defects, and, except as is expressly set forth in this Agreement to the contrary, Seller has no obligation to determine or correct any such facts, circumstances, conditions or defects or to compensate Buyer for same. Except as expressly set forth in this Agreement and the Closing Deliverables to the contrary, Seller has specifically bargained for the assumption by Buyer of all responsibility to investigate the Property, laws and regulations, facts and of all risk of adverse conditions and has structured the Purchase Price and other terms of this Agreement in consideration thereof. Except as expressly set forth in this Agreement and the Closing Deliverables to the contrary, Buyer has, as of the Effective Date, undertaken all such investigations of the Property, laws and regulations and other facts as Buyer deems necessary or appropriate under the circumstances as to the status of the Property and based upon same, except for the representations, warranties and covenants of Seller set forth in this Agreement, Buyer is and will be relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel and officers and Buyer is and will be fully satisfied that the Purchase Price is fair and adequate consideration for the Property. The foregoing shall not absolve Seller of any liability with respect to a breach of for the representations and warranties set forth in this Agreement and the Closing Deliverables or as a result of any fraud by Seller.

#### **Section 1.4 Liability.**

Except as specifically set forth herein, Buyer shall not assume and shall not be liable for, any debts, liabilities or obligations of Seller of any kind or nature, at any time existing or asserted, whether or not accrued, whether fixed, contingent or otherwise, whether known or unknown, arising out of the transactions contemplated herein or any other transaction or event, including, but not limited to (the "Excluded Liabilities"): any (i) liabilities or obligations of Seller to any of its creditors, or (ii) liabilities or obligations of Seller with respect to any acts, events or transactions occurring prior to, on or after the Closing Date. Buyer is not the successor to liability of Seller and is not herein assuming any liability arising from, out of, or relating to, Seller's ownership or operation of the Property, except as set forth herein.

## **ARTICLE 2**

### **PURCHASE PRICE; CLOSING;**

#### **Section 2.1 Purchase Price; Allocations.**

(a) The aggregate purchase price, to be paid at Closing, for the sale and purchase of the Property (the "Purchase Price") shall be [REDACTED] Dollars (\$ [REDACTED]).

(b) The Purchase Price shall be paid by Buyer to Seller as follows:

(i) An earnest money deposit in the amount of \$ [REDACTED] (the "Initial Deposit") upon the mutual execution of this Agreement, paid by Buyer to Riverside Abstract or other such reputable title company as Buyer may select (the "Title Company") as escrow agent to be held in escrow and disbursed in accordance with the terms of this Agreement. On the thirtieth (30<sup>th</sup>) day following the Effective Date, Buyer shall deposit with the Title Company an additional earnest money deposit in the amount of \$ [REDACTED] (the "Additional Deposit", and together with the Initial Deposit, the "Deposit") to be held in escrow and disbursed in accordance with the terms of this Agreement;

(ii) Subject to any applicable adjustments, at the Closing, Buyer shall cause the delivery of the Purchase Price less the Deposit (and less the amount of the Promissory Note, if applicable) to Seller, by wire transfer of immediately available funds.

(iii) A portion of the Purchase Price up to Two Million and No/100 Dollars (\$2,000,000.00) shall be financed in the form of a Promissory Note in the form attached hereto as Exhibit D, to be executed and delivered by Buyer in favor of Seller or its designee at Closing (the "Promissory Note"). Subject to Section 8.3(h), the Promissory Note shall have a term of thirty-six (36) months and be secured with collateral reasonably acceptable to Seller.

(c) The Deposit shall be held by the Title Company, as escrowee, in accordance with an escrow agreement attached hereto as Exhibit C. The Deposit shall be applied against the Purchase Price at Closing, and shall be nonrefundable unless Buyer terminates pursuant to Section 5 of this Agreement and except as otherwise provided in this Agreement.

(d) Prior to the Closing Date, Seller and Buyer shall exchange proposed allocations of the Purchase Price (together with any liabilities assumed, and any other amounts, that are treated as purchase price for federal income tax purposes) among the Real Property and the other assets acquired hereunder according to the relative fair market values of such assets on the respective Closing Date and in accordance with Section 1060 of the Code. If the parties are able to agree upon the allocation of the Purchase Price, the attached Schedule 2.1(d) of this Agreement shall be completed setting forth the agreed upon allocations (the "Allocated Values") and Buyer and Seller shall report and file all tax returns (including any amended tax returns and claims for refund) consistent with such mutually agreed Purchase Price allocation, and shall take no position contrary thereto or inconsistent therewith (including in any audits or examinations by any taxing authority or any other proceedings). Buyer and Seller shall file or cause to be filed any and all forms (including U.S. Internal Revenue Service Form 8594), statements and schedules with respect to such allocation, including any required amendments to such forms. If, on the other hand, Buyer and Seller are unable mutually to agree upon the manner in which the Purchase Price should be allocated, each party shall have the right to use their own allocations at their own risk. Buyer's and Seller's obligations under this paragraph shall survive Closing.



## **Section 2.2 Closing.**

The closing of the transactions contemplated herein (the “Closing”) shall take place through a so-called “Mail-Away” closing, it being understood that neither Seller nor Buyer nor their respective counsel need be physically present at Closing so long as all documents that are required to be delivered at Closing are fully executed, delivered in escrow to the closing agent and available on the date of the Closing. The Closing shall occur within thirty (30) days following the date upon which Buyer or its designee receives approval of its license application to operate each of the Facilities (the “Closing Date”) and concurrently with the closing under the OTA.

## **Section 2.3 Closing Matters.**

Upon the terms and subject to the conditions set forth in this Agreement, at the Closing:

(a) Buyer shall deliver to Seller the Purchase Price (less the Deposit plus or minus any costs and prorations for which Seller and/or Buyer are responsible under the terms hereof, by wire transfer of immediately available funds in such amount to an account to be designated in writing by Seller;

(b) Seller shall duly execute and deliver to Buyer the Deed properly executed in the form attached hereto as Exhibit 2.3(b), conveying marketable title to the Real Property in fee simple, free and clear of all liens and encumbrances except Permitted Liens and for those approved in writing by Buyer together with such affidavits as the Title Company shall reasonably require in order to omit from its title insurance policy all exceptions for judgments, bankruptcies or other returns against persons or entities whose names are the same as or similar to Seller’s name;

(c) Seller shall execute and deliver to Buyer a bill of sale and general assignment (the “Bill of Sale”) in the form attached hereto as Exhibit 2.3(c), conveying and assigning to Buyer the Personal Property and Intangible Property (defined below) free and clear of all liens and encumbrances;

(d) Seller and Buyer shall each deliver to the other a certificate in the form attached hereto as Exhibit 2.3(d) (a “Bring Down Certificate”);

(e) Seller shall deliver a certification of non-foreign status, in the form required by the Code Withholding Section, signed under penalty of perjury. Seller understands that such certification will be retained by Buyer and will be made available to the Internal Revenue Service upon request;

(f) Seller shall deliver evidence of termination of the Lease;

(g) Seller and Buyer shall deliver any documents or affidavits reasonably requested by Title Company;

(h) Each party shall pay for any of the costs or prorations for which it is responsible pursuant to this Agreement;

(i) Seller shall execute and deliver to Buyer a certified copy of resolutions authorizing the sale of the Property and delivery of the documents set forth in this Section 2.3; and

(j) Each party shall provide such documents as reasonably requested by the other party in connection with the transactions contemplated herein.

**Section 2.4 Closing Adjustments; Costs and Prorations.**

(a) The Closing costs shall be paid as follows:

(i) Seller shall pay for the preparing and recording of the Deed;

(ii) Buyer shall pay for transfer taxes due in connection with the transfer of the Real Property;

(iii) Buyer shall pay for any costs associated with its financing, including the recording of any mortgage granted to Buyer;

(iv) Buyer and Seller shall split equally the escrow fees and costs;

(v) Buyer and Seller shall each pay their own attorneys' fees;

(vi) Seller shall pay the cost of Buyer's title policy premium, including extended coverage. Buyer shall pay the cost of any mortgagee's policy of insurance and the cost of any endorsements required by Buyer or any lender of Buyer for the Property;

(vii) Buyer shall pay the cost of any survey; and

(viii) All other closing costs shall be in accordance with the local custom of the area in which the Property is located, as reasonably determined by the Title Company.

(b) Adjustments of revenue and expenses shall be made as follows, and the Purchase Price shall be adjusted accordingly:

(i) Real estate taxes, water, sewer and other utility charges and other assessments typically pro-rated between buyers and sellers of commercial real estate in the county of situs of property will be prorated between Seller and Buyer as of the date of Closing based on the number of days of the applicable period that each party owns the Premises; provided that if the Closing shall occur before the real estate tax rate or personal property tax rate is fixed, the apportionment of said taxes shall be prorated based on the most recently ascertainable real estate tax fiscal year and shall be re-prorated following receipt of the actual bill with respect to the applicable period. To the extent practicable, all

such prorations and payments will be made on the day of Closing, with the balance to be made as soon as practicable following the Closing upon delivery by Buyer or Seller, as applicable, of reasonable documentation of such payment to the other party. If, at the Closing, the Property or any part thereof is affected by an assessment which, at the option of Seller, is payable in installments, then Seller shall be responsible to pay any such installments which are assessed against the Property and/or due and payable for the period of time prior to the Closing Date.

(ii) Seller is not conveying to Buyer, but is expressly reserving and retaining, all of its right, title and interest in any claims for refund or other claims owned in connection with any real estate taxes or assessments which relate to a period or periods prior to the Closing. In the event that any proceeds from such proceedings which belong to Seller are paid to Buyer after the Closing, an amount equal to the amount of the proceeds which belong to Seller as aforesaid shall be held in trust for Seller and paid by Buyer to Seller within ten (10) business days of Buyer's receipt of such funds. Buyer shall not have any responsibility or liability to file any protest or institute any proceeding for reduction of real estate taxes for periods prior to the Closing. Any expenses of recovery for tax certiorari or other proceedings which benefit both Seller and Buyer shall be allocated in accordance with their respective percentage shares in the recovery. This Section 2.4(b) shall survive the Closing.

(iii) Unless otherwise addressed in the OTA, all charges and payments for utility services; provided that if there is no meter or if the current bill for any of such utilities has not been issued prior to the Closing Date, then such charges shall be adjusted at the Closing on the basis of the charges for the prior period for which bills were issued and shall be further adjusted when the bills for the current period are issued; provided further, to the extent possible, Seller shall terminate its accounts with the utility service providers and Buyer shall establish its accounts with such utility service providers and Buyer shall establish its accounts with such utility service providers effective on the Closing Date, in which event, there shall be no proration for such utility services. All deposits shall be returned to the Seller or reimbursed at Closing.

### ARTICLE 3

#### REPRESENTATIONS AND WARRANTIES OF SELLER

In order to induce Buyer to enter into this Agreement, Seller hereby represents and warrants to Buyer as follows:

##### **Section 3.1 Organization and Qualification.**

Seller is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Alabama, and has all requisite power and authority and has taken all action necessary to authorize the execution and delivery of this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Seller and constitutes the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

### **Section 3.2 Authority.**

Seller has all requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Seller, the performance of this Agreement by Seller, and the consummation of the transactions contemplated hereby, have been duly authorized by Seller and no other proceeding on the part of Seller is necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Seller and constitutes the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

### **Section 3.3 No Conflict; Required Filings and Consents.**

(a) The execution and delivery of this Agreement by Seller, and the performance of this Agreement by Seller and the consummation of the transactions contemplated hereby will not, conflict with or violate or constitute, with or without notice or the lapse of time or both, a breach of or default under: (i) any provision of United States federal, state, local or foreign law, statute, ordinance, rule, regulation, order, writ, judgment, injunction, decree, determination, or award of any court, governmental agency or instrumentality, (ii) any franchise, mortgage, deed of trust, indenture, agreement or (iii) any other instrument to which Seller is a party or by which any of the foregoing may be bound or to which Seller or any portion of the Property are subject.

(b) The execution and delivery of this Agreement by Seller and the performance of this Agreement by Seller and the consummation of the transactions contemplated hereby will not, with or without notice or the lapse of time or both, give to others any rights of termination, amendment, acceleration or cancellation of, or require payment under, or result in the creation of any lien, charge, encumbrance, security interest, mortgage, pledge, claim, option, lease, license, easement, liability or restriction of any kind whatsoever, direct or indirect, whether accrued, absolute, contingent or otherwise (collectively "Liens") or adversely affect any of the Property. Without limiting the generality of the foregoing, the execution and/or performance of this Agreement will not, with or without the giving of notice or the passage of time or both, create a right to accelerate or loss of rights under, or result in, cause or create any liability, negative reassessment or revaluation of any material assets or have any negative effect upon the value of the Property.

### **Section 3.4 Title.**

(a) As used in this Agreement, "Permitted Liens" means: (i) all currently existing and future liens for unpaid real estate taxes and water and sewer charges not due and payable as of the date of the Closing, subject to adjustment as provided below in this Agreement; (ii) all present and future zoning, building, environmental and other laws, ordinances, codes, restrictions and regulations of all governmental authorities having jurisdiction with respect to the Property, provided the same are not violated by, or materially interferes with, the current use of the Property or the Facility; (iii) provided Buyer does not object to such matter in accordance with Section 5.1, and subject to lender approval, minor variations between tax lot lines and lines of record title but only if such variation is the result of a correctable tax mapping error, does not

adversely affect title or the insurability (at regular title insurance rates) or marketability of title, and can be addressed via affirmative coverage or with an appropriate title endorsement issued by the title company; and (iv) provided Buyer does not object to such matters in accordance with Section 5.1 and assuming they do not create survey exceptions that adversely impact the insurability (at regular title insurance rates) or marketability of the Property, and subject to lender approval, possible encroachments or projections of stoop areas, roof cornices, window trims, vent pipes, cellar doors, steps, columns and column bases, flue pipes, signs, piers, lintels, window sills, fire escapes, satellite dishes, protective netting, sidewalk sheds, ledges, fences, coping walls (including retaining walls and yard walls), air conditioners and the like, if any, on, under or above any street or highway or any adjoining property, not to exceed three (3) feet.

(b) Seller is the true and lawful owner of, and owns all right, title and interest in and to, all of the Property, free and clear of all Liens (except for Permitted Liens). Upon the sale of the Property to Buyer pursuant to this Agreement, all right, title and interest in and to all of the Property, free and clear of all Liens (except for Permitted Liens), will pass to Buyer on the Closing Date.

### **Section 3.5 Brokers.**

No person or entity is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based on arrangements made by or on behalf of Seller. Seller agrees to indemnify and hold Buyer harmless from and against any and all claims or demands with respect to any brokerage fees or agents' commissions or other compensation asserted by any person, firm or corporation in connection with this Agreement or the transactions contemplated hereby, insofar as any such claim is based upon any conversation, contact or contract with Seller relating to the proposed purchase of the Property by Buyer. The provisions hereof shall expressly survive the Closing.

### **Section 3.6 Environmental Matters.**

(a) Seller has not received any written notice of alleged, actual or potential responsibility for, or any inquiry or investigation regarding, the presence or Release of any Hazardous Substance at the Property, which Hazardous Substances were allegedly manufactured, used, generated, processed, treated, stored, disposed or otherwise handled at, or transported or released from the Property, or regarding compliance with Environmental Laws. Seller has not received any written notice of any other claim, demand or action by any individual or entity alleging any actual or threatened injury or damage to any person or entity, property, natural resource or the environment arising from or relating to the presence or Release of any Hazardous Substances at, on, under, in, to or from the Property. In the event Seller is notified prior to Closing by EPA, state dept. of environmental management, or other similar agency of a violation of any environmental law or regulation with regard to the Property, Seller agrees to immediately notify Buyer regarding such notice within ten (10) days after Seller receives actual notice of same, and in such an event, Buyer shall have the option within five (5) days of receipt of said notice to either proceed to Closing or terminate this Agreement and receive a refund of the Deposit and all rights and obligations hereunder shall cease and terminate. If Buyer receives notice of any violation of any environmental law related to the Property, Buyer will give Seller written notice of the same and all information it receives with respect thereto within ten (10) days after Buyer receives notice of same.

(b) For purposes of this Agreement, the term “Environmental Laws” shall mean any applicable statutes, ordinances, directives or other written, published laws, any written, published rules or regulations, orders, guidelines or policies, and any licenses, permits, orders, judgments, notices or other requirements issued pursuant thereto, enacted, promulgated or issued by any Governmental authority, relating to pollution or protection of public health or the environment, or to the identification, reporting, generation, manufacture, processing, distribution, use, handling, treatment, storage, disposal, transporting, presence, or Release of any Hazardous Substances. Without limiting the generality of the foregoing, Environmental Laws shall include the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Toxic Substances Control Act, as amended, the Hazardous Materials Transportation Act, as amended, the Resource Conservation and Recovery Act, as amended, the Clean Water Act, as amended, the Safe Drinking Water Act, as amended, the Clean Air Act, as amended, the Occupational Safety and Health Act, as amended, and all analogous laws enacted, promulgated or lawfully issued by any Governmental authority.

(c) For purposes of this Agreement, the term “Hazardous Substances” shall mean any pollutants, contaminants, substances, chemicals, carcinogens, wastes, dangerous wastes, or any ignitable, corrosive, reactive, toxic or other hazardous substances or materials, whether solids, liquids or gases (including, but not limited to, petroleum and its derivatives, PCBs, asbestos, radioactive materials, waste waters, sludge, slag and any other substance, material or waste), as defined in or regulated by any Environmental Laws or as determined by any Governmental authority.

(d) For purposes of this Agreement, the term “Release” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migration, dumping or disposing into the environment.

### **Section 3.7 Absence of Litigation.**

Except as set forth in Exhibit 3.7, as of the Effective Date, there is no claim, action, suit, administrative matter, arbitration, proceeding or investigation of any kind, at law, equity (including actions or proceedings seeking injunctive relief), by or before any governmental authority pending or, to the knowledge of Seller, threatened against Seller or which pertains to the Property. Any and all matters reflected on Exhibit 3.7 are either covered by Seller’s insurance policies or will be otherwise covered by Seller.

### **Section 3.8 Condemnation.**

There are no pending condemnation actions or special assessments of any nature with respect to the Property or any part thereof, and Seller has no knowledge of any such threatened or contemplated condemnation action or special assessment.

### **Section 3.9 Compliance with Laws.**

To the Seller’s knowledge, Seller and the Property are in compliance with all laws, rules, regulations, health and sanitation codes, zoning ordinances, environmental assessment and impact requirements and with the terms of all permits applicable to the Property.

### **Section 3.10 Insurance.**

Seller has not received notice from any insurance company of any defects or inadequacies in the Property that would affect adversely its insurability or increase the cost of insurance. All existing insurance policies covering the Property shall be maintained by Seller in full force and effect until the Closing Date.

### **Section 3.11 Tax Returns.**

All tax returns required of Seller for the Property have been filed or, if not now due, will be duly filed by Seller in a timely and accurate manner. All taxes shown on the returns as being due as of the Closing Date have been paid or will be paid in the ordinary course after Closing. Seller has not compromised any dispute involving the Property's tax liabilities.

### **Section 3.12 Employees.**

Seller has no employees which will be binding on Buyer after the Closing.

### **Section 3.13 Absence of Recent Changes.**

Except as expressly provided in this Agreement or as set forth on Schedule 3.13, through the Closing Date, Seller has not and will use commercially reasonable efforts not to have:

(a) Except in the usual and ordinary course of business, consistent with past practice, and in an amount that is usual and normal incurred any indebtedness or other liabilities (whether accrued, absolute, contingent or otherwise), sold any of its assets;

(b) Except with respect to liens or encumbrances arising by operation of law, permitted or allowed any of the Property to be subjected to any mortgage, pledge, lien, security interest, encumbrance, restriction or charge of any kind;

(c) Written down the value of any of the Property, except for write-downs and write-offs in the ordinary course of business and consistent with past practice, none of which are material or revalued any of the Property;

(d) To the knowledge of Seller, entered into a material transaction pertaining to the Property other than in the ordinary course of business or made any change in any method of accounting or accounting practice; or

(e) Canceled, or failed to continue, insurance coverages pertaining to the Property.

### **Section 3.14 Assessments.**

To Seller's knowledge, all assessments that are now Liens on the Real Property are shown on the public records or on the tax assessor's records; no improvements have been installed by Seller or any public authority, the cost of which are to be assessed against the Real Property in the future. Seller has not received written notice of any possible future

improvements, the cost of which or any part thereof will or would reasonably be expected to be assessed against the Real Property.

**Section 3.15 No Improvements Made.**

To Seller's knowledge, no labor has been performed or material furnished for any Facility or the Real Property, in any material amounts, for which it has not heretofore fully paid, or for which any mechanics' or materialmans' liens, or any other Lien, can be lawfully claimed by any Person.

**Section 3.16 Assets Necessary to Business.**

Seller presently has and at Closing will have and transfer to Buyer title to all property and assets, real, personal and mixed, tangible and intangible, owned by Seller and currently used in the ownership of the Property and operation of the Facility, and will use its commercially reasonableness to transfer to Buyer all leases, licenses and other agreements currently used in the ownership of the Property and operation of the Facility to the extent the same can legally be transferred by Seller, and to the extent assumed by Buyer. To the knowledge of Seller, such assets and the assets of Operator are all of the assets necessary to permit Buyer to carry on the business of the Facility as presently conducted.

**Section 3.17 Absence of Undisclosed Liabilities.**

Except as set forth in Schedule 3.17, and except as and to the extent reflected or reserved against in the Seller Financial Statements and except for commitments and obligations incurred in the ordinary course of business accruing after the date of the most recent Seller Financial Statements, Seller as the date of the most recent Seller Financial Statements, had, or will have at Closing, no liabilities, claims or obligations (whether accrued, absolute, contingent, unliquidated or otherwise, whether or not known to Seller or any directors, officers or employees of Seller, whether due to become payable and regardless of when or by whom asserted).

**Section 3.18 Service Contracts.**

Seller is not a party to any service, maintenance, equipment, supply or operating contracts, management agreements or other agreements, however termed, written or oral, affecting the use, ownership, maintenance or operation of all or any part of the Property, including commercial leases and equipment leases.

**Section 3.19 Financial Statements.**

Seller will provide a profit and loss statement for the annual periods ending December 31, 2021, and December 31, 2022 as well as interim statements for the period ending February, 2023 with periodic updates thereof (such unaudited financial statements being herein called "Seller Financial Statements"), together with such other financial information as Buyer shall reasonably request. To the knowledge of Seller, the Seller Financial Statements are materially true, complete and accurate, have been based upon the information contained in the books and records of Seller and present fairly the assets, liabilities and financial condition of Seller as at the respective dates thereof and the results of its operations for the periods ended at the respective



dates thereof, in each case prepared in conformity with GAAP applied on a consistent basis throughout the periods involved and with prior periods, except for the profit and loss statement for the annual periods ending December 31, 2020, and December 31, 2021, the Seller Financial Statements are unaudited, and do not contain “audit adjustments” or footnotes. To the knowledge of Seller, the Seller Financial Statements do not contain any material inaccuracy and do not suffer from any material omissions in accordance with GAAP.

**Section 3.19 Miscellaneous.** To Seller’s actual knowledge,

- (a) Other than the leases pursuant to which Operator operates the Property (which shall be terminated at Closing) and rights of residents thereof under resident agreements with Operator, there are currently and as of the Closing Date there shall be, no occupancy rights (written or oral), leases or tenancies presently affecting the Property.
- (b) Seller has delivered to Buyer all of the material certificates, licenses and permits from governmental authorities held by the real estate owner in Seller’s possession in connection with the ownership, use, occupancy, operation and maintenance of the Property; provided, however, that this provision shall not apply to any wall license for the operation of any Facility, each of which shall either be the subject of the OTA or a change of ownership.
- (c) No consent, order, approval or authorization of, or declaration, filing or registration with, any governmental or regulatory authority is required in connection with the execution or delivery by Seller of this Agreement. Seller has not received any written notice from any insurance company which has issued a policy with respect to the Property or from any board of fire underwriters (or other body exercising similar functions) and any governmental authority or any other third party claiming any defects or deficiencies in the Property Assets or suggesting or requesting the performance of any repairs, alterations or other work to the Property. The Property shall be delivered at the time of the Closing in the same condition as they are in on the date hereof, reasonable wear and tear expected.
- (d) To Seller’s actual knowledge there are no (1) pending or, threatened special assessments affecting the Property except as may appear on the Title Commitment or (2) to the knowledge of Seller any contemplated improvements affecting the Purchased Assets that may result in special assessments affecting the Property, including but not limited to, no tax abatements, phase-ins or exemptions affecting the Property.
- (e) To Seller’s actual knowledge, no representation or warranty by or on behalf of Seller contained in this Agreement and no statement by or on behalf of Seller in any certificate, list, exhibit or other instrument furnished to Buyer by or on behalf of Seller pursuant hereto contains any untrue statement of fact, or omits or will omit to state any facts which are necessary in order to make the statements contained therein,

in light of the circumstances under which they are made, not misleading in any respect.

- (f) Seller has not received written notice of any notes or notices or violations of law or municipal ordinances, orders or requirements imposed or issued by any governmental or quasi-governmental authority having or asserting jurisdiction, against or affecting the Property or any conditions which may result in violations or any other uncured violation of any federal, state or local law relating to the use or operation of the Property or any violation of a restrictions, easement or other document recorded against or applicable to the Property which remains uncured as of the date hereof.

**Section 3.20 Representation and Warranties on Closing Date.**

The representations and warranties contained in this Article 3 shall be true and complete on the Effective Date and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date. This Article 3 shall survive Closing for a period of eighteen (18) months.

**ARTICLE 4**

**REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to Seller as follows:

**Section 4.1 Organization and Authority.**

Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and will be authorized to do business in the State of Alabama. Buyer has all requisite power and authority and has taken all action necessary to authorize the execution and delivery of this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Buyer and constitutes the valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

**Section 4.2 No Conflict; Required Consents and Approvals.**

(a) The execution and delivery of this Agreement by Buyer does not, and the performance of this Agreement by Buyer and the consummation of the transactions contemplated hereby and thereby will not, (i) conflict with or violate any United States federal, state, local or foreign law, statute, ordinance, rule, regulation, order, judgment or decree applicable to Buyer or by or to which any of its properties or assets is bound or subject, or (ii) result in any breach of, or constitute a default (or an event that with notice or lapse of time or both would constitute a default) under, any Contracts to which Buyer is a party or by which any of its properties or assets is bound.

(b) The execution and delivery of this Agreement by Buyer does not, and the performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby and thereby will not, require Buyer to obtain any consent, approval, authorization or

permit of, or to make any filing with or notification to, any court, administrative agency or commission or other governmental authority, or any third party, except for any approvals required under the OTA.

**Section 4.3 Brokers.**

No person or entity is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based on arrangements made by or on behalf of Buyer which have not been paid as and when due. If any fees or commissions are claimed or payable as a result of any person's claimed representation of Buyer, the same shall be the Buyer's sole responsibility.

**Section 4.4 Representation and Warranties on Closing Date.**

The representations and warranties contained in this Article 4 shall be true and complete on the Effective Date and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date. This Article 4 shall survive Closing for a period of eighteen (18) months.

**ARTICLE 5**

**COVENANTS AND AGREEMENTS**

**Section 5.1 Searches and Survey.**

(a) Buyer shall promptly order an examination of title with respect to the Real Property (the "Title Report"), issued by the Title Company, a new or updated survey of the Real Property (the "Survey"), and a zoning report with respect to the Real Property (the "Zoning Report"). Buyer shall cause a copy of the Title Report, Survey and Zoning Report to be forwarded to Seller's attorney promptly upon receipt. Buyer further agrees that no later than the date that is the later of thirty (30) days after the Effective Date and ten (10) Business Days after its receipt of the Title Report, the Survey and Zoning Report (the "Title Report Objection Date"), Buyer shall furnish to Seller's attorney a writing (the "Title Report Objection Notice") specifying any exceptions to title to the Property set forth in the Title Report, Survey or Zoning Report that Buyer objects to or believes it is not required to accept title, other than the Permitted Liens. Buyer's failure to deliver the Title Report Objection Notice to Seller on or before the Title Report Objection Date shall constitute Buyer's irrevocable acceptance of the Title Report, Survey and Zoning Report and Buyer shall be deemed to have unconditionally waived any right to object to any matters set forth therein. If, after giving the Title Report Objection Notice to Seller, Buyer learns, through continuation reports, title updates or other written evidence, of any title defects that Buyer objects to or subject to which Buyer believes it is not required to accept title, Buyer shall give written notice thereof to Seller within five (5) Business Days after the date Buyer learns of same, and Buyer shall be deemed to have unconditionally waived any such matters as to which it fails to give such written notice to Seller within such five (5) Business Day period. Notwithstanding anything to the contrary set forth in this Agreement, Buyer shall not be required to object to, and Seller shall be required to pay off at the Closing, any financing obtained or assumed by Seller and secured by a mortgage covering the Property, and to either pay off or cause the Title Company to omit any mechanic's or

materialmen's liens for work or materials undertaken or acquired by or on behalf of Seller; and any tax or judgement lien against Seller (provided, however, Seller shall be entitled to utilize the Purchase Price proceeds to effectuate any or all of the foregoing), together with the standard pre-printed exceptions that can be removed by delivery from Seller of an owner's affidavit.

(b) In the event Buyer shall notify Seller of objections to any item contained in the Title Report, Survey or Zoning Report, or to any matter shown on a continuation report or an update of the Title Report, Survey or Zoning Report, Seller shall have the right, but not the obligation, to elect to attempt to cure such objections. Within five (5) Business Days after Buyer's notice of objections has been given to Seller, Seller shall notify Buyer in writing whether Seller has elected to attempt to cure such objections. If Seller fails to give Buyer such notice of election, then Seller shall be deemed to have elected not to attempt to cure such objections. If Sellers elect to attempt to cure any such objections, Seller shall have until the Closing Date to attempt to remove, satisfy or cure the same and for this purpose Seller shall be entitled to a reasonable adjournment of Closing if additional time is required, but in no event shall the adjournment exceed thirty (30) days in the aggregate after Closing Date. If Seller elects (or is deemed to have elected) not to attempt to cure any objections specified in Buyer's notice, or if Seller, having initially elected to attempt to cure any objection, later notifies Buyer that Seller cannot cure the same, despite their commercially reasonable efforts, by the date for Closing (or any date to which Closing has been adjourned), then Buyer shall have the following options: (x) to accept a conveyance of the Property subject to any matter objected to by Buyer which Seller is unable to cure or does not cure without any reduction of the Purchase Price; or (y) to terminate this Agreement by giving written notice thereof to Seller and, upon delivery of such notice of termination, this Agreement shall terminate, the Deposit shall be returned to Buyer and thereafter neither party hereto shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement. If Seller notifies Buyer that Seller does not intend to attempt to cure any title objection or are deemed to have so notified Buyer; or if, having initially elected to attempt to cure any objection, Seller later notifies Buyer that Seller cannot cure the same despite their commercially reasonable efforts, then Buyer shall, within five (5) Business Days after such notice has been given, notify Seller in writing whether Buyer shall elect to accept the conveyance under clause (x) above or to terminate this Agreement under clause (y) of above. If Buyer fails to give Seller notice of its election, then Buyer shall be deemed to have elected to terminate this Agreement under clause (y) above.

Notwithstanding anything to the contrary in the foregoing, Seller shall, at or prior to the Closing, pay, discharge or remove of record or cause to be paid, discharged or removed of record at Seller's sole cost and expense all of the following items: (a) Voluntary Liens (defined below) and (b) other liens encumbering the Property (including judgments) (other than open real estate taxes, water and sewer charges that are subject to adjustment in accordance with Section 2.4(b)(i) hereof) that are in liquidated amounts and that may be satisfied solely by the payment of money (including the preparation or filing of appropriate satisfaction instruments in connection therewith). The term "Voluntary Liens" as used herein shall mean liens and other encumbrances that Seller has knowingly and intentionally suffered or allowed to be placed on the Property, including, without limitation, mortgages, fines and penalties associated with violations of building, fire, housing and similar laws, federal, state and municipal tax liens and mechanic's liens, but shall expressly exclude judgments.

### **Section 5.2 Access.**

Seller shall provide Buyer and its authorized representatives reasonable access to the Property during regular business hours and upon reasonable notice, and Seller shall promptly furnish to Buyer such information as Buyer may from time to time reasonably require with respect to the Property. Seller shall upon request, during regular business hours and upon reasonable notice permit Buyer to conduct on-site due diligence investigations of the Property as set forth above. No investigation by Buyer or its representatives hereunder shall affect or be deemed to modify any representation or warranty made by Seller herein.

### **Section 5.3 Confidentiality.**

Each party acknowledges that they will be providing each other with information that is non-public, confidential or proprietary in nature (the "Proprietary Information"). Each party agrees and will each cause its respective affiliates, counsel, accountants, representatives, agents and employees (collectively "Affiliates") to agree, to keep all such Proprietary Information confidential prior to Closing. For purposes of this Agreement, Proprietary Information shall not include information that: (i) becomes generally available to the public absent any breach of this Agreement; (ii) was available on a non-confidential basis to any party or any of such party's Affiliates from a third party prior to its disclosure pursuant to this Agreement; (iii) becomes available on a non-confidential basis from a third party who is not bound to keep such information confidential; or (iv) was already known or independently developed by the receiving party.

### **Section 5.3 Public Announcements.**

No party shall issue any public announcement, report, statement or press release or otherwise make any public statement regarding this Agreement or the transactions contemplated hereby without the prior written consent of the other parties, except as otherwise required by law.

### **Section 5.4 Further Assurances.**

At any time and from time to time after the Closing, Seller shall, at the reasonable request of Buyer, execute and deliver any further deeds, bills of sale, endorsements, assignments, and other instruments of conveyance and transfer, and take such other actions as Buyer may reasonably request in order (a) to more effectively transfer, convey, assign and deliver to Buyer, and to place Buyer in actual possession and operating control of, and to vest, perfect or confirm, of record or otherwise, in Buyer all right, title and interest in, to and under the Property, (b) to assist in the collection or reduction to possession of any and all of the Property or to enable Buyer to exercise and enjoy all rights and benefits with respect thereto, or (c) to otherwise carry out the intents and purposes of this Agreement.

### **Section 5.5 No Negotiation.**

Until such time as this Agreement may be terminated pursuant to Section 8.1, Seller shall not directly or indirectly solicit, initiate, encourage or entertain any inquiries or proposals from, or discuss or negotiate with any person or entity other than Buyer or its

representatives relating to an acquisition or other disposition of Property. From the Effective Date until Closing, Seller shall (a) cause operator maintain the Property consistent with its ordinary course; (b) maintain its current insurance policies in full force and effect through the Closing Date; (c) not create any lien or encumbrance upon or affecting title to the Property except Permitted Liens which will not be paid in full on or before Closing, without Buyer's prior written consent; (d) not take any action which will or would cause any of the representations or warranties in this Agreement to become untrue or be violated; (e) perform all of their obligations in respect of the Property whether pursuant to any contracts, or other requirements affecting the Property, in the ordinary course of business; (f) promptly inform Buyer in writing of any material event adversely affecting the ownership, use, occupancy, operation, management or maintenance of the Property, whether or not insured against.

#### **Section 5.6 Conduct of Business.**

Between the Effective Date and the Closing Date, except as otherwise expressly approved in writing by Buyer, Seller shall conduct its business with respect to the Property only in the ordinary course thereof consistent with past practice and in such a manner that the representations and warranties contained in this Agreement shall be true and correct at and as of the Closing Date (except for changes contemplated, permitted or required by this Agreement) and so that the conditions to be satisfied by Seller at the Closing shall have been satisfied. Seller will, consistent with conducting its business with respect to the Property in accordance with reasonable business judgement, preserve the Property intact.

#### **Section 5.7 Violations.**

Seller shall pay, at or prior to Closing, whether or not they are a lien, all costs, expenses, fines, penalties and/or interest associated with any and all violations of building, fire, sanitary, environmental, housing and similar laws affecting the Property, noted or issued prior to the Closing Date.

### **ARTICLE 6**

#### **CASUALTY; CONDEMNATION**

#### **Section 6.1 Fire or Other Casualty.**

If on or before the Closing Date, all or any material portion of the Real Property shall be destroyed or damaged by one or more incidents of fire or other casualty, then Seller shall promptly give Buyer notice of such occurrence, and Buyer shall, within fifteen (15) days after receipt of such notice, elect by written notice to Seller to either (y) terminate this Agreement, in which event the Deposit shall be returned to Buyer, this Agreement shall be deemed null and void and all further rights and obligations of the parties hereunder shall terminate (other than those matters which, pursuant to the terms of this Agreement, expressly survive any termination of this Agreement); or (z) proceed to close the transaction contemplated hereby as scheduled with no adjustment to the Purchase Price, (provided, however, that Buyer shall have the right to participate with Seller in the adjustment and settlement of any insurance claim relating to said

damage), and Seller shall, at Closing, (I) assign to Buyer all of Seller's interest in any then unpaid insurance proceeds claimed with respect to said loss or damage, and (II) pay to Buyer all insurance proceeds theretofore paid to Seller with respect to same and not theretofore used for restoration or repair, with a credit for the amount of any deductible. Buyer's failure to give notice within the time period specified above shall be deemed to be Buyer's election of option (z) above. For purposes of this Section 6.1, damage to the Real Property shall not be deemed to be "material" unless the cost of restoring damage to the Real Property, in the aggregate, exceeds Three Hundred Thousand and No/100 Dollars (\$300,000.00) with respect to each Facility or such damage results in a reduction in the number of beds at the Facility. With respect to any such damage which is not material, Buyer shall have no right to terminate this Agreement provided that closing and insurance adjustment procedures described in clause (z) above shall still apply. In the event of a material casualty to one or more Properties but not all Properties, Buyer shall have the right to elect to terminate this Agreement with respect to the damaged Property or Properties only, in which event the Deposit shall be applied to the purchase for the other Facilities and the Purchase Price shall be reduced by the Allocated Value for such Property set forth on Schedule 2.1(d).

### **Section 6.2 Eminent Domain.**

If, subsequent to the Effective Date and on or before the Closing Date, any proceeding which shall relate to the proposed taking of any material portion of the Real Property by condemnation or eminent domain is instituted or commenced, then Seller shall promptly give Buyer notice of such proceeding, and Buyer shall, within fifteen (15) days after receipt of such notice, elect by written notice to Seller to either (y) terminate this Agreement, in which event the Deposit shall be returned to Buyer, this Agreement shall be deemed null and void and all further rights and obligations of the parties hereunder shall terminate (other than those matters which, pursuant to the terms of this Agreement, expressly survive any termination of this Agreement); or (z) proceed to close the transaction contemplated hereby as scheduled with no adjustment to the Purchase Price, provided, however, that, at Closing, Seller shall (I) credit to Buyer any condemnation proceeds theretofore paid to Seller with respect to the taking (and not theretofore used for restoration or repair), and (II) assign to Buyer all of Seller's right to any other proceeds therefrom. Buyer's failure to give notice within the time period specified above shall be deemed to be Buyer's election of option (y) above. For purposes of this Section 6.2, a taking of the Real Property shall not be deemed to be "material" unless the value of the portion of the Real Property taken exceeds, in the aggregate, Three Hundred Thousand and No/100 Dollars (\$300,000.00) with respect to each Facility, or the current use thereof is materially affected (including without limitation any reduction in the number of licensed beds at the Facility). With respect to any such a taking of the Real Property which is not material, Buyer shall have no right to terminate this Agreement provided that closing procedures described in clause (z) above shall still apply. In the event of a material taking with respect to one or more Properties but not all Properties, Buyer shall have the right to elect to terminate this Agreement with respect to the damaged Property or Properties only, in which event the Deposit shall be applied to the purchase for the other Facilities and in which event the Purchase Price shall be reduced by the Allocated Value for such Property set forth on Schedule 2.1(d).

## **ARTICLE 7**

## CONDITIONS

### **Section 7.1 Conditions Precedent to Obligations of Buyer.**

The obligations of Buyer to consummate the transactions contemplated hereby are subject to the satisfaction at or prior to the Closing of the following conditions, any or all of which may be waived, in whole or in part, to the extent permitted by applicable law, in a written instrument executed and delivered by Buyer:

(a) Title Insurance. The Title Company shall be irrevocably committed to insure marketable title to the Real Property in the amount of the Purchase Price at regular rates and without additional premium, unless Seller is willing to pay same, in the form of Buyer's approved proforma policy, subject only to the Permitted Liens and as otherwise provided in this Agreement.

(b) Representations and Warranties. Each of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date, as though made on and as of the Closing Date.

(c) Agreements and Covenants. Seller shall have performed or complied, in all material respects, with all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(d) Closing Documents. Seller shall have delivered all of the items required to be delivered by it pursuant to Section 2.3.

(e) No Order. No litigation or other proceeding by or before any governmental authority shall have been instituted, and no governmental authority, including any federal or state court of competent jurisdiction, shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, judgment, decree, injunction or other order (whether temporary, preliminary or permanent), which, in either case, is in effect and which has the effect of making the transactions contemplated by this Agreement illegal, or otherwise restrains consummation of the transactions contemplated hereby, or that could reasonably be expected to affect Buyer's ownership and control or rights to use or otherwise receive the benefit of the Property following the Closing Date (collectively, an "Order").

(g) No Material Adverse Change. Since the date of execution of this Agreement, there shall have occurred no Material Adverse Change (as defined in the OTA).

(h) Simultaneous Closing with OTA. The Closing shall take place simultaneously with the closing under the OTA and all of New Operator's conditions to closing set forth therein shall have been satisfied.

(i) Special Focus Candidate List. On the Closing Date, no Facility shall be listed on the Special Focus list. In the event the Selma Facility or any other Facility is officially listed on the Special Focus list, Buyer shall have the right to remove such Facility from



the transaction contemplated hereunder, close on the remaining Facilities, and receive a discount to the Purchase Price based on the allocated purchase price of such Facility.

**Section 7.2 Conditions to Obligations of Seller.**

The obligations of Seller to consummate the transactions contemplated hereby are subject to the satisfaction at or prior to the Closing Date of the following conditions, any or all of which may be waived, in whole or in part, to the extent permitted by applicable law, in a written instrument executed and delivered by Seller:

(a) Representations and Warranties. Each of the representations and warranties of Buyer contained in this Agreement shall have been true and correct in all material respects on and as of the Closing Date, as though made on and as of the Closing Date.

(b) Agreements and Covenants. Buyer shall have performed or complied, in all material respects, with all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) Closing Documents. Buyer shall have delivered all of the items required to be delivered by it pursuant to Section 2.3.

(d) Pharmacy Contract. The Parties shall have entered into a binding contract of sale for Alabama LTC Pharmacy LLC (the “Pharmacy”) where the Buyer, or affiliate of the Buyer shall have purchased from the Seller, or affiliate of the Seller, on or before the date of the Closing hereunder, the Pharmacy, for the purchase price of \$2,250,000, payable as follows: (i) \$500,000 due at closing (ii) \$1,750,000 payable pursuant to a guaranteed promissory note, satisfactory to the Seller, over 36 months, interest only, at 6.4% per annum, with a balloon payment at maturity.

(e) Simultaneous Closing with OTA. The Closing shall take place simultaneously with the closing under the OTA and all of Operator’s conditions precedent set forth therein shall have been satisfied.

**ARTICLE 8**

**TERMINATION; INDEMNIFICATION**

**Section 8.1 Termination.**

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

(a) by written consent of Seller and Buyer;

(b) by Buyer, if there shall have been any material breach by Seller of any of its representations, warranties, covenants and agreements set forth herein, which breach is not cured within fifteen (15) days after Seller receives written notice thereof; or

(c) by Seller, if there shall have been any material breach by Buyer of any of its representations, warranties, covenants and agreements set forth herein, which breach is not cured within fifteen (15) days after Buyer receives written notice thereof.

(d) by either party as a result of a termination of the OTA prior to Closing; or

(e) by either party as a result of the failure of a condition precedent which the party to which it benefits elects not to waive.

### **Section 8.2 Procedure and Effect of Termination.**

(a) In the event of termination of this Agreement pursuant to this Article 8, the terminating party shall give written notice thereof to the other party and this Agreement shall terminate, and the transactions contemplated hereby shall be abandoned, without further action by any of the parties.

(b) If this Agreement is terminated as provided herein, no party shall have any liability or further obligation hereunder to any other party to this Agreement, except (i) as specifically provided in this Agreement and (ii) that nothing herein will relieve any party from liability for any breach of this Agreement.

(c) In the event of a failure of a Buyer's condition precedent with respect to one or more Properties but not all Properties, Buyer shall have the right to elect to terminate this Agreement with respect to the affected Property or Properties only, in which event the Purchase Price shall be reduced by the Allocated Value of such Property. In the event of a failure of Seller's condition precedent, Seller shall have the right to terminate this Agreement and retain the Deposit as liquidated damages; provided, if such failure of Seller's condition precedent is caused by Seller's breach of this Agreement, the Deposit shall promptly be returned to Buyer.

(d) A default by Operator under the OTA shall be a default of Seller hereunder and entitle Buyer to terminate this Agreement pursuant to 8.1(b) above, and a default by New Operator under the OTA shall be a default of Buyer hereunder and entitle Seller to terminate this Agreement pursuant to 8.1(c), in each case subject to the cure rights therein.

(e) If this Agreement is terminated by Buyer under Section 8.1(b), then Buyer's sole and exclusive remedy shall be a return of the Deposit or Buyer may pursue a claim for specific performance.

(f) If this Agreement is terminated pursuant to Section 8.1(c), then Seller's sole remedy shall be to retain the Deposit as Seller's liquidated damages. THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO ASCERTAIN THE ACTUAL DAMAGES SUFFERED BY SELLER AS A RESULT OF BUYER'S FAILURE TO COMPLETE THE PURCHASE OF THE ASSETS PURSUANT TO THIS AGREEMENT, AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE EFFECTIVE DATE, THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION 8.2(d) REPRESENT A REASONABLE ESTIMATE OF THE DAMAGES WHICH SELLER WILL INCUR AS A RESULT OF SUCH FAILURE. THE PARTIES ACKNOWLEDGE THAT

THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER.

**Section 8.3 Indemnification.**

(a) Buyer shall indemnify, save, protect, defend and hold harmless Seller and its respective employees, affiliates, managers, partners, officers, directors and agents, from and against all claims, liabilities, losses, damages, demands and causes of action of any nature whatsoever (including demands and causes of action relating to injury or death to persons or loss of or damage to property), and all actual, out-of-pocket costs and expenses (including penalties and reasonable attorneys' and other professional fees and disbursements incurred in the investigation or defense of any such claims, or in asserting, pursuing or enforcing any such claims), whether or not resulting from third-party claims (collectively, "Losses") arising from, out of, or relating to (i) operation of the Property by Buyer on or after the Closing Date, (ii) Buyer's use or occupancy of the Property or the condition thereof on or after the Closing Date, and (iii) any inaccuracy or breach of any representation, warranty, covenant, agreement or obligation contained in this Agreement or in any of the closing deliveries set forth in Section 2.3 hereof.

(b) Seller agrees to indemnify, save, protect, defend and hold harmless Buyer and its employees, affiliates, managers, members, officers, directors and agents, from and against all Losses arising from, out of, or relating to (i) operation of the Property by Seller prior to the Closing Date, (ii) Seller's use or occupancy of the Property or the condition thereof prior to the Closing Date, and (iii) the Excluded Liabilities; and (iv) any inaccuracy or breach of any representation, warranty, covenant, agreement or obligation contained in this Agreement or in any of the closing deliveries set forth in Section 2.3 hereof.

(c) In the event that any liability, claim, demand or cause of action which is indemnified against by or under any term, provision, section or paragraph of this Agreement ("Indemnitee's Claim") is made against or received by any indemnified party (hereinafter "Indemnitee") hereunder, said Indemnitee shall use commercially reasonable efforts to notify the indemnifying party (hereinafter "Indemnitor") in writing within thirty (30) calendar days of Indemnitee's receipt of written notice of said Indemnitee's Claim, provided, however, that Indemnitee's failure to timely notify Indemnitor of Indemnitee's receipt of an Indemnitee's Claim shall not impair, void, vitiate or invalidate Indemnitor's indemnity hereunder nor release Indemnitor from the same, which duty, obligation and indemnity shall remain valid, binding, enforceable and in full force and effect so long as Indemnitee's delay in notifying Indemnitor does not, solely by itself, directly and materially prejudice Indemnitor's right or ability to defend the Indemnified Claim. Upon its receipt of any or all Indemnitee's Claim(s), Indemnitor shall, in its sole, absolute and unreviewable discretion, diligently and vigorously defend, compromise or settle said Indemnitee's Claim at Indemnitor's sole and exclusive cost and expense and shall promptly provide Indemnitee evidence thereof within fourteen (14) calendar days of the final, unappealable resolution of said Indemnitee's Claim. Upon the receipt of the written request of Indemnitee, Indemnitor shall within two (2) calendar days provide Indemnitee a true, correct,

accurate and complete written status report regarding the then current status of said Indemnitee's Claim. Prior to an Indemnification Default (as defined herein), Indemnitee may not settle or compromise an Indemnitee's Claim without Indemnitor's prior written consent. Failure to obtain such consent shall be deemed a forfeiture by Indemnitee of its indemnification rights hereunder. In the event that Indemnitor fails or refuses to indemnify, save, defend, protect or hold Indemnitee harmless from and against an Indemnitee's Claim and/or to diligently pursue the same to its conclusion, or in the event that Indemnitor fails to timely report to Indemnitee the status of its efforts to reach a final resolution of an Indemnitee's Claim, on seven (7) calendar days prior written notice to Indemnitor during which time Indemnitor may cure any alleged default hereunder, the foregoing shall immediately, automatically and without further notice be an event of default hereunder (an "Indemnification Default") and thereafter Indemnitee may, but shall not be obligated to, immediately and without notice to Indemnitor, except such notice as may be required by law and/or rule of Court, intervene in and defend, settle and/or compromise said Indemnitee's Claim at Indemnitor's sole and exclusive cost and expense, including but not limited to attorneys' fees, and, thereafter, within seven (7) calendar days of written demand for the same Indemnitor shall promptly reimburse Indemnitee all said Indemnitee's Claims and the reasonable costs, expenses and attorneys' fees incurred by Indemnitee to defend, settle or compromise said Indemnitee's Claims.

(d) This Section 8.3 is effective from and after the Closing. Each Party hereby waives any provision of law to the extent that it would limit or restrict the agreement contained in this Section 8.3.

(e) The parties shall cooperate with each other with respect to resolving any claim or liability with respect to which one party is obligated to indemnify the other party hereunder, including by making commercially reasonable efforts to mitigate or resolve any such claim or liability. Each party shall use commercially reasonable efforts to address any claims or liabilities that may provide a basis for an indemnifiable claim hereunder such that each party shall respond to any claims or liabilities in the same manner it would respond to such claims or liabilities in the absence of the indemnification provisions of this Agreement. In the event that any party shall willfully fail to make such commercially reasonable efforts to mitigate or resolve any claim or liability, then notwithstanding anything else to the contrary contained herein, the other party shall not be required to indemnify any person for any Loss that could reasonably be expected to have been avoided if such party, as the case may be, had made such efforts.

(f) All indemnification obligations of Seller and Buyer under this Agreement shall survive the Closing Date and shall continue in effect for a period of eighteen (18) months after the Closing Date; provided that if there is an Indemnitee's Claim made prior to the eighteen (18) month anniversary of the Closing Date, such indemnification obligation shall continue to survive until the final, non-appealable resolution of such Indemnitee's Claim.

(g) The foregoing to the contract notwithstanding, all indemnification obligations relating to the Recapture Claims (as defined in the OTA) and any other Losses relating to the Medicaid and Medicare programs shall survive indefinitely, subject to any applicable statutes of limitations.

(h) Seller's indemnification obligations under this Agreement and Operator's indemnification obligations under the OTA shall be secured by the Buyer's right to set off against the Promissory Note pursuant to the terms set forth therein. Further, the Azalea Seller's indemnification obligations under the Azalea APA and the Azalea Operator's indemnification obligations under the Azalea OTA shall be secured by the Azalea Buyer's right to set off against the Promissory Note pursuant to the terms set forth therein. As used herein: (i) "Azalea Seller" means Azalea Propco LLC, an Alabama limited liability company; (ii) "Azalea Operator" means Azalea Health and Rehab LLC, an Alabama limited liability company; (iii) "Azalea Buyer" means Arabella Health & Wellness of Mobile PropCo LLC, a Delaware limited liability company; (iv) "Azalea APA" means that certain Contract of Sale dated the date hereof between Azalea Seller and Azalea Buyer, as the same may be amended from time to time; and (v) "Azalea OTA" means that certain Operations Transfer Agreement dated the date hereof between Azalea Operator and Arabella Health & Wellness of Mobile OpCo LLC, a Delaware limited liability company, as the same may be amended from time to time.

(i) Notwithstanding anything to the contrary set forth herein or in the OTA, the aggregate amount of all Losses for which Buyer may be liable under this Agreement shall not exceed ten percent (10%) of the Purchase Price ("Buyer's Cap").

## ARTICLE 9

### MISCELLANEOUS

#### **Section 9.1 Payment of Expenses.**

Whether or not the transactions contemplated by this Agreement are consummated, each party shall pay its own expenses incident to preparing for, entering into and carrying out this Agreement and the transactions contemplated hereby.

#### **Section 9.2 Entire Agreement; Assignment; Etc.**

This Agreement constitutes the entire agreement, and supersedes all other agreements, understandings, representations and warranties, written, oral, electronic, or otherwise, between the parties with respect to the subject matter hereof, and is not intended to create any obligations to, or rights in respect of, any persons and entities other than the parties. This Agreement shall not be assignable by operation of law or otherwise. Notwithstanding the foregoing, Buyer each, and for their successor and assigns acknowledge, that both Buyer shall have the rights, without the Seller's consent, but upon at least five (5) business days' notice to Seller, prior to the Closing, to assign this Agreement to any entity which is controlled by or under common control with Buyer.

#### **Section 9.3 Severability.**

If any term or other provision of this Agreement, or any portion thereof, is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms and provisions of this Agreement, or remaining portion thereof, shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated

hereby is not affected in any manner materially adverse to any party. Upon such determination that any such term or other provision, or any portion thereof, 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 in an acceptable manner to the end that the transactions contemplated hereby are consummated to the fullest extent possible.

**Section 9.4 Modification or Amendment.**

The parties may modify or amend this Agreement at any time, only by a written instrument duly executed and delivered by each party.

**Section 9.5 Construction of Agreement.**

The parties to this Agreement acknowledge that each of them has been represented by counsel in connection with this Agreement and the transactions contemplated hereby. The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual intent. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against a party that drafted it has no application and is expressly waived.

**Section 9.6 Notices.**

All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given on the first business day after timely delivery to Federal Express or other reputable overnight courier service for next business day delivery, on the fifth business day after being mailed by registered or certified mail (postage prepaid, return receipt requested), in each case, to the parties at the following addresses, or on the date sent and confirmed by electronic transmission to the telecopier number or email specified below (or at such other address or telecopier number for a party as shall be specified by notice given in accordance with this Section):

(a) If to Buyer, to: c/o North Atlantic Healthcare LLC  
Attn: Jeffrey Kaufman  
Email: jeffrey@jkaufmancpa.com

with a copy to: NBC Law  
675 Third Avenue, Flr 8  
New York, NY 10017  
Attn: Brett Burnbaum  
Email: bburnbaum@nbclaw.com

(b) If to Seller, to: c/o Koss & Schonfeld

160 Broadway 8th Floor  
New York NY 10038  
Attn: Allen Koss  
Email: avk@kandsllp.com

No provision of this Agreement, including this Section, shall be deemed to constitute consent to the manner and address for service of process in connection with any legal proceeding (including such arising out of or in connection with this Agreement), which service shall be effected as required by applicable law.

**Section 9.7 Failure or Delay Not Waiver; Remedies Cumulative.**

No failure or delay on the part of any party in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty, covenant or agreement herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other right. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

**Section 9.8 Governing Law; Consent to Jurisdiction.**

This Agreement shall be governed by and construed in accordance with the law of the Alabama without regard to the conflicts of laws principles thereof. Each of the parties (a) consents to submit itself to the personal jurisdiction of the state and federal courts having such jurisdiction with venue in where the Property is located in the event any dispute arises out of this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court and (c) agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than a federal or state court sitting in the State of Alabama or a Alabama state court, in each case located in the county in which the Property is located. Each of the parties further irrevocably unconditionally waives and agrees not to plead or claim any such action or proceeding brought in any such court has been brought in an inconvenient forum. EACH OF THE PARTIES HEREBY WAIVE ANY AND ALL RIGHTS TO TRIAL BY JURY.

**Section 9.9 Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Telecopied or PDF (exchanged via e-mail) signatures may be used in place of original signatures on this Agreement.

**Section 9.13 Miscellaneous.**

(a) Time is of the essence.

(b) The Title Company shall be responsible for obtaining and maintain any required 1099.


[Signature Page Follows]



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

**BUYER:**

**Arabella Health & Wellness of Bessemer PropCo LLC  
Arabella Health & Wellness of Butler PropCo LLC  
Arabella Health & Wellness of Fairhope PropCo LLC  
Arabella Health & Wellness of Montgomery PropCo LLC  
Arabella Health & Wellness of Selma PropCo LLC,**  
each a Delaware limited liability company

By:   
Name: Jeffrey Kaufman  
Title: Authorized Signatory

**SELLER:**

**1028 Bessemer LLC  
4490 Virginia Loop LLC  
22670 Main Street LLC  
11 Bell LLC  
1406 East LLC,**  
each an Alabama limited liability company

By: \_\_\_\_\_  
Name: Shalom Lerner  
Title: Manager

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


**BUYER:**

**Arabella Health & Wellness of Bessemer PropCo LLC  
Arabella Health & Wellness of Butler PropCo LLC  
Arabella Health & Wellness of Fairhope PropCo LLC  
Arabella Health & Wellness of Montgomery PropCo LLC  
Arabella Health & Wellness of Selma PropCo LLC,**  
each a Delaware limited liability company

By: \_\_\_\_\_  
Name: Jeffrey Kaufman  
Title: Authorized Signatory

**SELLER:**

**1028 Bessemer LLC  
4490 Virginia Loop LLC  
22670 Main Street LLC  
11 Bell LLC  
1406 East LLC,**  
each an Alabama limited liability company

By:  \_\_\_\_\_  
Name: Shalom Lerner  
Title: Manager

## Exhibit A-1

### Legal Description

Birmingham Health and Rehab - 1028 Bessemer Road, Birmingham, Alabama 35228

#### Parcel I:

Lot 1, according to the Survey of Monte Sano Estates, First Addition, as recorded in Map Book 54, Page 85, in the Probate Office of Jefferson County, Alabama; being situated in Jefferson County, Alabama.

#### PARCEL II:

That part of the NW 1/4 of the NW 1/4 of Section 18, Township 18 South, Range 3 West, situated in Jefferson County, Alabama, more particularly described as follows: Begin at the Southwest corner of said 1/4-1/4 section and run thence Northwardly along the West line thereof for a distance of 499.92 feet to Point of Beginning of lot herein described; from Point of Beginning thus obtained turn an angle to the right of 92 degrees 50 minutes and run Eastwardly for a distance of 120 feet; thence turn an angle to the left of 92 degrees 50 minutes and run Northwardly for a distance of 80 feet; thence turn an angle to the left of 87 degrees 10 minutes and run Westwardly for a distance of 120 feet to the West line of said 1/4-1/4 section; run thence Southwardly along said West line for a distance of 80 feet to Point of Beginning. Less and Except that part described in deed recorded in Real Volume 50, Page 896 in the Probate Office of Jefferson County, Alabama.

#### Parcel III:

The Northerly 15 feet of Lot 2, according to the map and survey of Monte Sano Estates, First Addition, as recorded in Map Book 54, Page 85, in the Probate Office of Jefferson County, Alabama; being situated in Jefferson County, Alabama.

#### Parcel IV:

That part of the Northwest Quarter of the Northwest Quarter of Section 18, Township 18 South, Range 3 West, more particularly described as follows: Commence at the Northwest corner of said Quarter-Quarter section and run South along the West line of said Quarter-Quarter section 660.2 feet to Point of Beginning of the property herein conveyed; from the Point of Beginning thus obtained, continue South along the West line of said Quarter-Quarter section 80.8 feet; thence turn an angle to the left of 87 degrees 10 minutes and run Eastwardly 260.28 feet to the West line of a tract heretofore conveyed to One Hill; thence an angle to the left of 90 degrees and run Northerly along the West line of the Hill property 80.8 feet; thence Westerly in a straight line 260.28 feet, more or less, to the Point of Beginning.

#### PARCEL V:

Lot 2, according to the Survey of Monte Sano Estates, First Addition, as recorded in Map Book 54, Page 85, in the Probate Office of Jefferson County, Alabama, Less and Except the Northerly 15 feet of said Lot 2, as previously conveyed.

Note: Tax Parcel ID Numbers: 29-00-18-2-004-009.000, 29-00-18-2-004-010.000 and 29-00-18-2-004-011.000, City of Birmingham, County of Jefferson, State of Alabama.

## Exhibit A-2

### Legal Description

Montgomery Health and Rehab - 4490 Virginia Loop Road, Montgomery, Alabama 36116

Map of Cedar Crest Plat # 2, being a replat of Lot "A" and Lot "B" and part of Lot "C" of Amended Plat of Cedar Crest Plat and additional property to the South and West in the Southeast 1/4 of Section 34, and the Southwest 1/4 of Section 35, Township 16 North, Range 18 East, said Plat being recorded in the Office of the Judge of Probate of Montgomery County, Alabama, in Plat Book 33, at page 217; being situated in Montgomery County, Alabama, being more particularly described as follows:

Begin at the intersection of the South right of way margin of Lynchburg Drive and the Northwest right of way margin of Virginia Loop Road, said point being the Point of Beginning; thence run South 03°43'54" West along the Northwest right of way margin of Virginia Loop Road for a distance of 443.97 feet to a point; thence leaving said right of way margin and run South 88°05'50" West for a distance of 386.14 feet to a point; thence run North 01°50'44" West for a distance of 392.47 feet to a point; thence run North 87°58'56" East for a distance of 42.90 feet to a point; thence run North 02°01'04" W West for a distance of 48.50 feet to a point on the South right of way margin of Lynchburg Drive; thence run North 87°59'00" East along said right of way margin for distance of 386.54 feet to the Point of Beginning. Said land containing 177,877.73 square feet or 4.084 acres more or less.

Together with the rights and benefits for vehicular and pedestrian access, ingress and egress as described in the Reciprocal Access Easement Agreement recorded in RLPY 2985, Page 0007, in the Probate Office of Montgomery County, Alabama, as follows:

Commencing at the intersection of the South right of way of Lynchburg Drive and the Northwest right of way line of Virginia Loop Road; thence South 87°58'59"00" West, along the said south line of Lynchburg Drive, 386.54 feet to a point on said right of way line and the Point of Beginning of the centerline of a 30 foot wide joint driveway ingress/egress easement (being 15 feet each side of the described centerline); thence departing said right of way line, South 02°01'04" East, 48.50 feet to the end of said centerline and the end of said easement.

Being the same property described in deed dated December 10, 2004 from Living Centers-East, Inc. to SMV Montgomery Cedar Crest LLC recorded on February 4, 2015 in Real Property Book 3036 at Page 652 in the Office of the Judge of Probate of Montgomery County, Alabama.

Being also the same property shown on ALTA/NSPS Land Title Survey dated March 27, 2018 by Landco, L.P. bearing Job No: 17-7434.

### Exhibit A-3

#### Legal Description

Baldwin Health and Rehab - 22670 Main Street, Fairhope, Alabama 36532

Parcel A:

A tract of land situated in Section 7, Township 6 South, Range 2 East, being more particularly described as follows:

From the Southeast corner of the John Forbes Grant, Section 7, Township 6 South, Range 2 East, run North 14 deg. 30 min. West 891.0 feet to the center of Parker Road; thence run South 69 deg. 12 min. West along the center of Parker Road 659.1 feet; thence run North 0 deg. 40 min West, 42.6 feet to a point on the North right of way line of Parker Road for a Point of Beginning; thence run South 69 deg. 12 min. West along said North right of way line 514.1 feet; thence run North 55 deg. 44 min West 57.3 feet to the East right of way line of U.S. Route 98; thence run North 0 deg. 40 min. West along said East right of way line 374.0 feet; thence run North 89 deg. 20 min. East, 530.0 feet; thence run South 0 deg. 40 min. East, 229.4 feet to the Point of Beginning.

Parcel B:

From the Southeast corner of the John Forbes Grant, Section 7, Township 8 South, Range 2 East, Baldwin County, Alabama; thence run North 14 deg. 30 min West, a distance of 891.0 feet to the center of Parker Road; thence run South 69 deg. 12 min. West along the center of Parker Road; a distance of 659.1 feet; thence run North 0 deg. 40 min. West a distance of 42.6 feet to the North right of way line of Parker Road for a Point of Beginning; thence continue North 0 deg. 40 min. West a distance of 229.4 feet; thence run North 89 deg. 20 min East a distance of 100.0 feet; thence run South 9 deg. 54 min East a distance of 184.3 feet to the North right of way line of Parker Road; thence run South 69 deg. 12 min West along the North right of way line of Parker Road a distance of 138.0 feet to the Point of Beginning.

Being the same land conveyed to Montrose Bay AL SNF Realty LLC, an Alabama limited liability company by virtue of Warranty Deed from SMV Montrose Bay LLC, a Delaware limited liability company, dated March 30, 2018, recorded April 9, 2018, in Instrument No. 1689186, in the Office of the Judge of Probate of Baldwin County, Alabama.

**Exhibit A-4**

Legal Description

Selma Health and Rehab - 11 Bell Road, Selma, Alabama 36701

Lot 7 of Block "A" of Charles E. Wilkerson Subdivision, Plat 12, according to map thereof recorded in Map Book 5, at Page 307, in the Probate Office of Dallas County, Alabama; being situated in Dallas County, Alabama and being more particularly described as follows:

Beginning at a mag nail set at the intersection of the North right-of-way margin, of Ravenwood Drive and the West right-of-way margin of Bell Road, said point being the True Point of Beginning; thence running North 90°00'00" West along the north right-of-way margin of Ravenwood Drive for a distance of 621.30 feet to an iron pin; thence running North 00°00'00" East for a distance of 180.18 feet to an iron pin; thence running South 87°33'23" West for a distance of 37.15 feet to a monument; thence running North 00°01'35" West for a distance of 211.29 feet to an iron pin; thence running South 89°54'23" East for a distance of 658.20 feet to an iron pin on the wet right-of-way margin of Bell Road; thence running South 00°02'50" East along said right-of-way margin for a distance of 388.84 feet to a mag nail set, said point being the True Point of Beginning, and containing 249.52 Sq. Ft. or 5.731 acres more or less.

Note: Being Parcel No. 11-07-26-2-000-006.000 of the City of Selma, County of Dallas, State of Alabama.

## Exhibit A-5

### Legal Description

Butler Health and Rehab - 1406 E. Pushmataha Street, Butler, Alabama 36904

Commencing at an iron rod with survey cap (Shamburger-13198) at the Northeast corner of Block Three of Bumara Heights Subdivision, Butler, Alabama as recorded in the Choctaw County Probate Office in Town Plat Book No. 1; Page 30; at the intersection of the West right-of-way of Ida Avenue with the South right-of-way of Alabama Highway No. 10 at station T.S.(1022-41.24): Thence S 0 degrees 54 minutes 41 seconds E along said West right-of-way of Ida Avenue for a distance of 155.76 feet to an iron rod with survey cap (Shamburger-13198) at the Point of Beginning of the herein described tract of land; Thence from said Point of Beginning, S 0 degrees 54 minutes 41 seconds E along said West right-of-way of Ida Avenue for a distance of 527.45 feet to an iron rod with survey cap (Shamburger-13198); Thence S 89 degrees 19 minutes 56 seconds W for a distance of 399.48 feet to an iron rod with survey cap (Shamburger-13198) on the East right-of-way of Harrell Avenue; Thence N 0 degrees 54 minutes 41 seconds W along said East right-of-way of Harrell Avenue for a distance of 182.09 feet to an iron rod with survey cap (Shamburger-13198); thence S 89 degrees 54 minutes 04 seconds E for a distance of 94.37 feet to an iron rod with survey cap (Shamburger-13198); Thence N 2 degrees 10 minutes 32 seconds E for a distance of 67.98 feet to an iron rod with survey cap (Shamburger-13198); Thence S 84 degrees 46 minutes 07 seconds W for a distance of 98.30 feet to an iron rod with Survey cap (Shamburger-13198) on the aforesaid East right-of-way of Harrell Avenue; Thence N 0 degrees 54 minutes 41 seconds W along said East right-of-way of Harrell Avenue for a distance of 380.47 feet to intersect the South right-of-way of Alabama Highway No. 10 an iron rod with survey cap (Shamburger -13198) Reference Monument is N 0 degrees 54 minutes 41 seconds W a distance of 1.00 foot from the corner; Thence N 80 degrees 31 minutes 38 seconds E along said South right-of-way of Alabama Highway No. 10 for a distance of 158.41 feet to an iron rod with survey cap (Shamburger-13198); Thence S 9 degrees 08 minutes 14 seconds E for a distance of 152.72 feet to an iron rod with survey cap (Shamburger-13198); Thence N 80 degrees 51 minutes 46 seconds E for a distance of 223.28 feet to the Point of Beginning.

Lying and being situate in Block Three of Bumara Heights Subdivision, Butler, Alabama, recorded in Town Plat Book No 1; Page 30; containing 5.02 acres, more or less.

Note: Being parcels 15-13-04-20-2-001-001000 and 15-13-04-20-1-001-019.000, Town of Butler, County of Choctaw, State of Alabama.

Also, the 20' easement as described in that certain Party Driveway and Awning Agreement between Adams Family Partnership and Skylar Alabama, Inc. dated November 27, 1996 and filed for record in Book 293, at Page 762, in the Office of the Judge of Probate of Choctaw County, Alabama.

**Exhibit B**  
**Due Diligence Materials**



**Exhibit C**  
**Escrow Agreement**

## DEPOSIT ESCROW AGREEMENT

**THIS ESCROW AGREEMENT ("Agreement")** is entered into as of April 19, 2023, by and between Riverside Abstract, LLC, ("**Escrow Agent**"), 1028 Bessemer LLC, 4490 Virginia Loop LLC, 22670 Main Street LLC, 11 Bell LLC and 1406 East LLC, each an Alabama limited liability company (individually and collectively, "**Seller**"), and Arabella Health & Wellness of Bessemer PropCo LLC, Arabella Health & Wellness of Butler PropCo LLC, Arabella Health & Wellness of Fairhope PropCo LLC, Arabella Health & Wellness of Montgomery PropCo LLC and Arabella Health & Wellness of Selma PropCo LLC, each a Delaware limited liability company (individually and collectively, "**Purchaser**") (collectively, the "**Parties**").

**WHEREAS**, Seller and Purchaser have entered into a Contract of Sale dated as of April 19, 2023 ("**PSA**") pursuant to which Seller will be selling and Purchaser will be purchasing the fee estate in that certain real property more particularly described in Exhibit A hereto;

**WHEREAS**, the PSA requires that Purchaser deposit the initial sum of \$ [REDACTED] (the "Initial Deposit", and together with any additional earnest money deposit made by Purchase pursuant to the PSA, the "**Escrow Funds**") with an escrow agent in connection therewith; and

**WHEREAS**, Escrow Agent, Seller and Purchaser have agreed that Escrow Agent will hold the Escrow Funds pursuant to the terms and conditions of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Appointment of Escrow Agent

The Seller and the Purchaser do hereby appoint the Escrow Agent to act in accordance with and subject to the terms and conditions of this Agreement and the Escrow Agent hereby accepts such appointment in accordance with and subject to the terms and conditions set forth herein.

2. Deposit of Escrow Funds

Seller and Purchaser agree that the Escrow Funds will be delivered to the Escrow Agent. Seller and Purchaser further acknowledge that Escrow Agent is serving solely as an accommodation to the parties hereto. The Escrow Agent shall have no duty to invest the Escrow Funds.

3. Disbursement of Escrow Funds

3.1 At Closing (as defined in the PSA), the Escrow Funds shall be delivered by Escrow Agent to Seller and credited against the payment of the purchase price.

3.2 In the event Seller is entitled to receive the Escrow Funds pursuant to the PSA other than at Closing, Seller shall be required to present simultaneously to Purchaser and Escrow Agent

Seller's affidavit (the "Seller's Affidavit"), executed under penalty of perjury by an authorized representative of Seller, certifying to Purchaser and Escrow Agent that Seller is entitled to the Escrow Funds pursuant to the PSA. If within five (5) business days after the date on which the Seller's Affidavit is delivered to Purchaser, Escrow Agent has not received from Purchaser a notice ("Objection Notice") objecting to Escrow Agent's compliance with the Seller's Affidavit, Escrow Agent shall deliver the Escrow Funds to Seller in accordance with Seller's Affidavit without any further notice or authorization required from Purchaser.

3.3 In the event Purchaser is entitled to the return of the Escrow Funds from Escrow Agent pursuant to the terms of the PSA, Purchaser shall be required to present simultaneously to Seller and Escrow Agent Purchaser's affidavit (the "Purchaser's Affidavit") executed under penalty of perjury by an authorized representative of Purchaser certifying to Seller and Escrow Agent that Purchaser is entitled to return of the Escrow Funds pursuant to the PSA. If, within five (5) business days after the date on which the Purchaser's Affidavit is delivered to Seller, Escrow Agent has not received from Seller an Objection Notice, objecting to Escrow Agent's compliance with the Purchaser's Affidavit, Escrow Agent shall deliver the Escrow Funds to Purchaser in accordance with Purchaser's Affidavit without any further notice or authorization required from Seller.

3.4 If Escrow Agent receives an Objection Notice from either Seller or Purchaser within the time period set forth above in this Section 3, then Escrow Agent shall refuse to comply with the applicable Seller's Affidavit or Purchaser's Affidavit then in question until Escrow Agent receives either (a) joint written instructions executed by both Purchaser and Seller, or (b) a final non-appealable order with respect to the disposition of the Escrow Funds from a court of competent jurisdiction, in either of which events Escrow Agent shall then disburse the Escrow Funds in accordance with such instructions or order, as the case may be.

3.5 In the event that an Objection Notice is not received by the Escrow Agent, Seller and Purchaser hereby expressly acknowledge, agree and authorize Escrow Agent to unilaterally disburse the Escrow Funds pursuant to Sections 3.2 and 3.3 above, as the case may be.

#### 4. Term

This Agreement shall terminate, and the Escrow Agent shall be relieved of all liability and responsibility hereunder, upon the disbursement or return of the Escrow Funds in accordance with the terms of this Agreement.

#### 5. Duties of Escrow Agent

5.1 The duties, responsibilities and obligations of the Escrow Agent shall be limited to those expressly set forth in this Agreement and no implied duties, responsibilities or obligations shall be read into this Agreement against the Escrow Agent. Without limiting the generality of the foregoing, the Escrow Agent shall have no duty to take action to preserve or exercise rights in any property held by it hereunder (including, without limitation, against prior parties or otherwise).

5.2 The Escrow Agent may rely upon, and shall be indemnified by the parties hereto in acting or refraining from acting upon, any written notice, instruction, statement, request, waiver, order, judgment, certification, consent, receipt or other paper or document furnished to it (not only as to genuineness, but also as to its due execution and validity, the genuineness of signatures appearing thereon and as to the truth and accuracy of any information therein contained), which it in good faith believes to be genuine and signed or presented by the proper person.

5.3 Neither the Escrow Agent nor any of its member or employees shall be liable to anyone for any error of judgment, or for any act done or step taken or omitted to be taken by it or any of its member or employees, or for any mistake of fact or law, or for anything which it, or any of its member or employees, may do or refrain from doing in connection with or in the administration of this Agreement, unless and except to the extent the same constitutes bad faith or willful misconduct on the part of the Escrow Agent.

5.4 The Escrow Agent shall be indemnified and held harmless by the Seller and the Purchaser from and against any and all liabilities, losses, costs and expenses, including, without limitation, attorneys' fees and disbursements, suffered or incurred by the Escrow Agent in connection with any action, suit or other proceeding involving any claim, or in connection with any claim or demand, which in any way, directly or indirectly, arises out of or relates to this Agreement, the services of the Escrow Agent hereunder, the Escrow Funds, or any other property held by it hereunder.

5.5 Following the receipt by the Escrow Agent of notice of any demand or claim or the commencement of any action, suit or proceeding that involves the Escrow Funds, the Escrow Agent shall notify the Seller and Purchaser in writing, but the failure by the Escrow Agent to give such notice (whether promptly or otherwise) shall not relieve the Seller and Purchaser from any liability which it may have to the Escrow Agent hereunder. In the event of receipt of any such notice, the Escrow Agent, in its sole discretion, may commence an action in the nature of interpleader in an appropriate court to determine ownership or disposition of the Escrow Funds, and deposit the Escrow Funds with the clerk of any appropriate court, or it may retain the Escrow Funds in its possession pending receipt of a final determination from a court of competent jurisdiction, without further right of appeal, directing to whom and under what circumstances the Escrow Funds are to be delivered.

5.6 From time to time on and after the date hereof, the Seller and the Purchaser shall deliver or cause to be delivered to the Escrow Agent such further documents and instruments and shall do or cause to be done such further acts as the Escrow Agent shall reasonably request (it being understood that the Escrow Agent shall have no obligation to make any such request) to carry out more effectively the provisions and purposes of this Agreement, to evidence compliance herewith or to assure itself that it is protected in acting hereunder.

5.7 The Escrow Agent may resign at any time and be discharged from its duties as the Escrow Agent hereunder by providing the Seller and Purchaser at least ten (10) days prior written notice. As soon as practicable after its resignation, the Escrow Agent shall turn over to a successor escrow agent appointed by the Seller and Purchaser, the Escrow Funds held hereunder upon presentation of the document appointing the new escrow agent and its acceptance thereof. If a new

escrow agent is not appointed within thirty (30) days following the date of the notice of resignation, the Escrow Agent may deposit the Escrow Funds with any court it deems appropriate.

5.8 The Escrow Agent shall resign and be discharged from its duties as the Escrow Agent hereunder by the mutual written agreement of Seller and Purchaser; provided, however, that such resignation shall become effective only upon the acceptance by a successor escrow agent to serve in such capacity as provided for in Section 5.7.

5.9 Following the resignation or discharge of Escrow Agent, the provisions of this Section 5 shall survive such resignation or discharge and nonetheless continue to be applicable with respect to the Escrow Agent.

## 6. Notices

Any notice or other communication required or permitted hereunder shall be delivered by hand or sent by certified mail, return receipt requested, postage prepaid, overnight mail, facsimile or e-mail transmission addressed as follows:

### **If to the Seller:**

c/o Koss & Schonfeld  
160 Broadway 8th Floor  
New York NY 10038  
Attn: Allen Koss  
Email: avk@kandsllp.com

### **If to Purchaser:**

c/o North Atlantic Healthcare LLC  
Attn: Jeffrey Kaufman  
Email: jeffrey@jkaufmancpa.com

With a copy to:

NBC Law  
675 Third Avenue, Flr 8  
New York, NY 10017  
Attn: Brett Burnbaum  
Email: bburnbaum@nbclaw.com

### **If to Escrow Agent:**

Riverside Abstract  
212 Second Street, Suite 508  
Lakewood, NJ 08701  
718-252-4200

## 7. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict-of-law and choice of law principles.

8. Entire Agreement

This Agreement sets forth the entire understanding of the parties hereto with regard to the subject matter hereof and there are no representations, warranties or commitments except as set forth herein. This Agreement supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, that relate to the subject matter hereof. This Agreement may be modified only by a written agreement executed by all of the parties hereto.

9. Waiver of Breach; Partial Invalidity

The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. If any provision, or part thereof, of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision and not in any way affect or render invalid or unenforceable any other provisions of this Agreement.

10. Binding Nature

This Agreement shall be binding upon the successors, assigns and legal representatives of the parties hereto.

11. Headings

The paragraph headings of this Agreement are for convenience and reference only and do not in any way modify, interpret or construe the intent of the parties or affect any of the provisions of this Agreement.

12. Counterparts; Effectiveness

This Agreement may be executed in counterparts, each of which shall be an original, but all of which taken together shall constitute one agreement.

13. Facsimile Signatures

Signatures transmitted by facsimile or electronically shall be deemed as original signatures.

14. Third Party Beneficiary

This Agreement is for the sole benefit of the parties hereto. No third party shall have any beneficial interest herein, directly or indirectly, nor may any third party rely on the terms, provisions, or conditions of this Agreement.

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

**SELLER:**

1028 Bessemer LLC  
4490 Virginia Loop LLC  
22670 Main Street LLC  
11 Bell LLC  
1406 East LLC,  
each an Alabama limited liability company

By: \_\_\_\_\_  
Name: Shalom Lerner  
Title: Manager

**PURCHASER:**

Arabella Health & Wellness of Bessemer PropCo LLC  
Arabella Health & Wellness of Butler PropCo LLC  
Arabella Health & Wellness of Fairhope PropCo LLC  
Arabella Health & Wellness of Montgomery PropCo LLC  
Arabella Health & Wellness of Selma PropCo LLC,  
each a Delaware limited liability company

By: \_\_\_\_\_  
Name: Jeffrey Kaufman  
Title: Authorized Signatory

**ESCROW AGENT:**

Riverside Abstract, LLC

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

**Exhibit D**

**Form of Promissory Note**

Attached



## PROMISSORY NOTE

\$2,000,000.00

, 2023  
New York, New York

1. **Agreement to Pay.** FOR VALUE RECEIVED, \_\_\_\_\_, a Delaware limited liability company (the “Borrower”) hereby promises to pay to the order of \_\_\_\_\_, a \_\_\_\_\_ (with its successors and assigns, the “Lender”), the principal sum of TWO MILLION 00/100 DOLLARS (\$2,000,000.00) (“Loan”), at the place and in the manner hereinafter provided, together with and any and all other amounts which may be due and payable hereunder from time to time pursuant to and upon the terms and conditions set forth below in this Promissory Note (“Note”), on or before [Insert 36 months from the date of this Note] (“Maturity Date”).

2. **Payment Terms.**

2.1 **Note Payments.** The outstanding principal balance of this Note, if not sooner paid or declared to be due in accordance with the terms hereof, together with accrued and unpaid interest hereon, any other amounts due and payable hereunder, shall be due and payable in full on the Maturity Date. If any amount payable hereunder is not paid when due, whether at stated maturity, by acceleration or otherwise, then such overdue amount shall bear interest at the rate of five percent (5%) per annum over the regular interest rate (the “Default Rate”) from the date of such non-payment until such overdue amount is paid in full.

2.2 **Application of Payments.** Prior to the occurrence of an Event of Default, all payments and prepayments on account of the indebtedness evidenced by this Note shall be applied as follows: (a) first, to fees, expenses, costs and other similar amounts then due and payable to Lender, (b) second, to the payment of principal due under this Note, and (c) third, to any other amounts then due Lender hereunder. After an Event of Default has occurred and is continuing, payments may be applied by Lender to amounts owed hereunder.

2.3 **Method of Payments.** Borrower agrees that all interest and principal payments, and any fees and expenses owed Lender from time to time will be made by wire transfer to an account designated by Lender in writing.

2.4 **Prepayment.** Borrower may voluntarily prepay this Note, in whole or in part and shall prepay this Note without penalty.

3. **Interest.** Interest shall accrue on the outstanding principal balance of this Note from the date hereof through the Maturity Date at a rate of one percent (1%) per annum.

4. **Indemnification Offset Rights.** Borrower and, by its acceptance of this Note, Lender, agrees that: (i) the principal amount and accrued and unpaid interest due under this Note secures the indemnification obligations of the Sellers under the APAs and the indemnification obligations of Old Operators under the OTAs; and (ii) following any final determination or agreement between the parties that a Seller or an Old Operator is obligated to make any indemnification payment to any Buyer pursuant to any APA or any New Operator pursuant to any OTA, Borrower shall have the right to offset dollar for dollar against the principal amount and accrued and unpaid interest due under this Note, the amount of such indemnification payment; provided however, in no event shall Borrower offset more than One Million Five Hundred Thousand Dollars (\$1,500,000) of the principal amount of this Note. As used herein, the following terms shall have the following meanings:

4.1 “**Alabama 5 APA**” means that certain Contract of Sale dated [\_\_\_\_\_] between Alabama 5 Sellers and Alabama 5 Buyers, as amended.

4.2 “**Alabama 5 Buyers**” mean collectively Arabella Health & Wellness of Bessemer PropCo LLC, Arabella Health & Wellness of Butler PropCo LLC, Arabella Health & Wellness of Fairhope PropCo LLC, Arabella Health & Wellness of Montgomery PropCo LLC and Arabella Health & Wellness of Selma PropCo LLC, each a Delaware limited liability company

4.3 “**Alabama 5 New Operators**” mean collectively Arabella Health & Wellness of Bessemer OpCo LLC, Arabella Health & Wellness of Butler OpCo LLC, Arabella Health & Wellness of Fairhope OpCo LLC, Arabella Health & Wellness of Montgomery OpCo LLC, and Arabella Health & Wellness of Selma OpCo LLC, each a Delaware limited liability company.

4.4 “**Alabama 5 Old Operators**” mean collectively Birmingham Health and Rehab LLC, Montgomery Health and Rehab LLC, Baldwin Health and Rehab LLC, Selma Health and Rehab LLC, and Butler Health and Rehab LLC, each an Alabama limited liability company.

4.5 “**Alabama 5 OTA**” means that certain Operations Transfer Agreement dated [\_\_\_\_\_] between Alabama 5 Old Operators and Alabama 5 New Operators, as amended.

4.6 “**Alabama 5 Sellers**” mean collectively 1028 Bessemer LLC, 4490 Virginia Loop LLC, 22670 Main Street LLC, 11 Bell LLC and 1406 East LLC, each an Alabama limited liability company.

4.7 “**APAs**” mean collectively the Alabama 5 APA and Azalea APA.

4.8 “**Azalea APA**” means that certain Contract of Sale dated [\_\_\_\_\_] between Azalea Seller and Azalea Buyer, as amended.

4.9 “**Azalea Buyer**” means Arabella Health & Wellness of Mobile PropCo LLC, a Delaware limited liability company.

4.10 “**Azalea New Operator**” means Arabella Health & Wellness of Mobile OpCo LLC, a Delaware limited liability company.

4.11 “**Azalea Old Operator**” means Azalea Health and Rehab LLC, an Alabama limited liability company.

4.12 “**Azalea Seller**” means Azalea Propco LLC, an Alabama limited liability company.

4.13 “**Azalea APA**” means that certain Contract of Sale dated [\_\_\_\_\_] between Azalea Seller and Azalea Buyer, as amended.

4.14 “**Azalea OTA**” means that certain Operations Transfer Agreement dated [\_\_\_\_\_] between Azalea Old Operator and Azalea New Operator, as amended.

4.15 “**OTAs**” mean collectively the Alabama 5 OTA and Azalea OTA.

5. **Events of Default.** The failure by Borrower to pay to Lender the outstanding principal balance of this Note, together with accrued and unpaid interest hereon, any other amounts due and payable hereunder, on or before the Maturity Date shall constitute an “**Event of Default**” under this Note:

6. **Remedies.** At the election of the holder hereof, and without notice, the principal balance

remaining unpaid under this Note, and any other amounts due hereunder, shall be and become immediately due and payable in full upon the occurrence of any Event of Default. Failure to exercise this option shall not constitute a waiver of the right to exercise same in the event of any subsequent Event of Default. No holder hereof shall, by any act of omission or commission, be deemed to waive any of its rights, remedies or powers hereunder or otherwise unless such waiver is in writing and signed by the holder hereof, and then only to the extent specifically set forth therein. The rights, remedies and powers of the holder hereof, as provided in this Note, are cumulative and concurrent, and may be pursued singly, successively or together against Borrower, all at the sole discretion of the holder hereof. If any suit or action is instituted or attorneys are employed to collect this Note or any part hereof, Borrower promises and agree to pay all costs of collection, including reasonable attorneys' fees and court costs.

7. **Covenants and Waivers.** Borrower and all others who now or may at any time become liable for all or any part of the obligations evidenced hereby expressly agree to be jointly and severally bound, and jointly and severally: (i) waive and renounce any and all homestead, redemption and exemption rights and the benefit of all valuation and appraisal privileges against the indebtedness evidenced by this Note or by any extension or renewal hereof; (ii) waive presentment and demand for payment, notices of nonpayment and of dishonor, protest of dishonor, and notice of protest; (iii) waive any and all notices in connection with the delivery and acceptance hereof and all other notices in connection with the performance, default, or enforcement of the payment hereof or hereunder; (iv) waive any and all lack of diligence and delays in the enforcement of the payment hereof; (v) agree that the liability of Borrower shall be unconditional and without regard to the liability of any other person or entity for the payment hereof, and shall not in any manner be affected by any indulgence or forbearance granted or consented to by Lender to any of them with respect hereto; (vi) consent to any and all extensions of time, renewals, waivers, or modifications that may be granted by Lender with respect to the payment or other provisions hereof, and to the release of any security at any time given for the payment hereof, or any part thereof, with or without substitution, and to the release of any person or entity liable for the payment hereof; (vii) consent to the addition of any and all other makers, endorsers, guarantors, and other obligors for the payment hereof, and to the acceptance of any and all other security for the payment hereof, and agree that the addition of any such makers, endorsers, guarantors or other obligors, or security shall not affect the liability of Borrower and all others now liable for all or any part of the obligations evidenced hereby, and (viii) in any action or proceeding to enforce this Note waive the defense of civil or criminal usury. This provision is a material inducement for Lender making the Loan to Borrower.

8. **Other General Agreements.**

8.1 Time is of the essence for any act or conduct of Borrower under this Note.

8.2 This Note is governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the statutes, laws and decisions of the State of New York. This Note may not be changed or amended orally but only by an instrument in writing signed by the party against whom enforcement of the change or amendment is sought.

8.3 Lender shall not be construed for any purpose to be a partner, joint venturer, agent or associate of Borrower or of any lessee, operator, concessionaire or licensee of Borrower in the conduct of its business, and by the execution of this Note, and Borrower agrees to indemnify, defend, and hold Lender harmless from and against any and all damages, costs, expenses and liability that may be incurred by Lender as a result of a claim that Lender is such partner, joint venturer, agent or associate.

8.4 This Note has been made and delivered at New York, New York and all funds disbursed to or for the benefit of Borrower will be disbursed in New York, New York.

8.5 If this Note is executed by more than one party, the obligations and liabilities of

each Borrower under this Note shall be joint and several and shall be binding upon and enforceable against each Borrower and their respective successors and assigns. This Note shall inure to the benefit of and may be enforced by Lender and its successors and assigns.

8.6 If any provision of this Note is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Borrower and Lender shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of, and the validity and enforceability of, this and the remaining provisions, or portions or applications thereof, and the remaining provisions, or portions or applications thereof shall not be affected thereby and shall remain in full force and effect.

8.7 If for any reason the payment of principal or other charges otherwise required to be paid under this Agreement would exceed the limit which the Lender may lawfully charge Borrower, then the obligation to any such amount shall automatically be reduced to such limit and, if any amounts in excess of such limit shall have been paid, then such amounts shall at the sole option of the Lender either be refunded to Borrower or credited to the principal (or any combination of the foregoing) so that under no circumstances shall the principal, or other charges required to be paid by Borrower hereunder exceed the maximum rate or charges allowed by applicable law, and Borrower shall not have any action against Lender for any damages arising out of the payment or collection of any such excess amounts. In no event shall any agreed to or actual exaction as consideration for this Loan transcend the limits imposed or provided by the law applicable to this transaction.

8.8 Lender may at any time assign its rights in this Note, or any part thereof. Borrower may not assign its interest in this Note, or any other agreement with Lender or any portion thereof, either voluntarily or by operation of law, without the prior written consent of Lender.

8.9 Borrower acknowledges and agrees that the Loan is a business loan.

9. Notices. All notices, requests, demands, consents, or other communications required or permitted to be given hereunder shall be in writing and given to Borrower or Lender, as applicable, at the following address:

If to Lender: [\_\_\_\_\_]

If to Borrower: [\_\_\_\_\_]

10. **Consent to Jurisdiction.** TO INDUCE LENDER TO ACCEPT THE NOTE, EACH BORROWER IRREVOCABLY AGREES THAT ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK, COUNTY OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK ; **PROVIDED** THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION. EACH BORROWER HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH BORROWER FURTHER WAIVES PERSONAL SERVICE OF PROCESS UPON ANY BORROWER AND IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID (AND SERVICE SO MADE

WILL BE DEEMED TO BE COMPLETED TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED), OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK . EACH BORROWER HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

**11. WAIVER OF JURY TRIAL. BORROWER (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS NOTE OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. BORROWER AGREES THAT IT WILL NOT ASSERT ANY CLAIM OR COUNTERCLAIM AGAINST LENDER ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES WHETHER OR NOT IN AN ACTION OR PROCEEDING BROUGHT BY LENDER TO ENFORCE THE PROVISIONS OF THIS NOTE.**

*[Signature page follows]*

**IN WITNESS WHEREOF**, Borrower has executed and delivered this Promissory Note as of the day and year first written above.

**BORROWER:**

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

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

Name:

Title:

**Exhibit 2.3(b)**

**Deed**

**Exhibit 2.3(c)**

**Bill of Sale**



**Exhibit 2.3(d)**

**Bring Down Certificate**

This Certificate is delivered pursuant to the Contract of Sale (“Agreement”), dated as of \_\_\_\_\_, 2022, between (“Buyer”) and (“Seller”).

The undersigned, \_\_\_\_\_, does hereby certify that the undersigned is the [title] of [Buyer/Seller] and is authorized to execute this Certificate, that the representations and warranties made by [Buyer/Seller] in the Agreement are true and correct in all material respects as of [Closing Date]; and that the covenants to be performed by [Buyer/Seller] pursuant to the Agreement have been performed and complied with in all material respects as of [Closing Date]. The [Buyer/Seller] may rely upon this certificate.

**Exhibit 3.7**

**Litigation**

**Exhibit 5.8**  
**Service Contracts**