

**IN THE MATTER OF APPROVING AND EXECUTING THE PURCHASE AND SALE AGREEMENT BETWEEN AUGLAIZE HOLDINGS LLC AND COUNTY OF AUGLAIZE, OHIO FOR THE AUGLAIZE ACRES FACILITY.**

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The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 7th day of August, 2018.

Commissioner Regula moved the adoption of the following:

**RESOLUTION**

**WHEREAS**, a Purchase and Sale Agreement was submitted to the Auglaize County Board of Commissioners (the "Seller") by Rolf Goffman Martin Lang LLP ("Rolf") with Auglaize Holdings LLC ("Purchaser") concerning the business and real property of the Auglaize Acres nursing home; and,

**WHEREAS**, the Seller is the owner and operator of the county home commonly known as "Auglaize Acres", and being a 91-bed skilled nursing facility, located at 13093 Infirmary Road, Wapakoneta, Auglaize County, Ohio 45895 (the "Facility"), and the real estate on which the Facility is located and all easements and rights appurtenant thereto (collectively, the "Real Estate"). The Facility and the Real Estate are referred to herein collectively as the "Project"; and,

**WHEREAS**, the Purchaser desires to acquire the Project, and Seller desires to sell, transfer and convey the Project to the Purchaser in accordance with the terms and conditions of the presented Purchase and Sale Agreement for One Million Seven Hundred Thousand and 00/100 Dollars (\$1,700,000.00); and,

**WHEREAS**, the Purchaser and Seller have set the target date for closing the transaction as October 1, 2018; and,

**WHEREAS**, the Board finds the Purchase and Sale Agreement to be in order.

**THEREFORE, BE IT RESOLVED** that the Board of Commissioners, Auglaize County, Ohio, does hereby approve and authorize the execution of the Purchase and Sale Agreement and any transaction documents related thereto.

Commissioner Bergman seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this  
7th day of  
August, 2018

**BOARD OF COUNTY COMMISSIONERS  
AUGLAIZE COUNTY, OHIO**

Douglas A. Spencer , Yes  
Douglas A. Spencer

John N. Bergman , yes  
John N. Bergman

Don Regula , yes  
Don Regula

- ✓cc: County Auditor
- ✓County Prosecutor
- ✓Auglaize Acres – Kim Sudhoff
- ✓Rolf Goffman Martin Lang LLP

## **PURCHASE AND SALE AGREEMENT**

**THIS PURCHASE AND SALE AGREEMENT** (this "Agreement"), dated this 7<sup>th</sup> day of August, 2018 (the "Effective Date"), is made by and between the **COUNTY OF AUGLAIZE, OHIO**, a county and political subdivision of the State of Ohio ("Seller"), and **AUGLAIZE HOLDINGS LLC**, an Ohio limited liability company ("Purchaser").

### **RECITALS**

A. Seller is the owner and operator of the county home commonly known as "Auglaize Acres", and being a 91-bed skilled nursing facility, located at 13093 Infirmary Road, Wapakoneta, Auglaize County, Ohio 45895 (the "Facility"), and the real estate on which the Facility is located and all easements and rights appurtenant thereto (collectively, the "Real Estate"), which Real Estate is legally described on Exhibit A attached hereto. The Facility and the Real Estate are sometimes referred to herein collectively as the "Project".

B. Purchaser desires to acquire the Project, and Seller desires to sell, transfer and convey the Project to Purchaser in accordance with the terms and conditions of this Agreement.

C. Contemporaneously with the purchase and sale of the Project, ALS Auglaize Acres Operating, Inc., an Ohio corporation ("Lessee"), shall lease the Facility from Purchaser in accordance with the terms and provisions of that certain Lease to be entered into on or prior to the Closing Date (as hereinafter defined) by and between Purchaser and Lessee (the "Lease").

D. Contemporaneously with the purchase and sale of the Project, Seller shall transition the operations at the Facility to Lessee in accordance with the terms and provisions of that certain Operations Transfer Agreement of even date herewith to be entered into on or prior to the Closing Date by and between Seller and Lessee (the "Operations Transfer Agreement").

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants and conditions herein contained, the receipt, sufficiency and adequacy of which are hereby mutually acknowledged, and other good and valuable consideration, the parties hereto agree as follows:

#### **1. Purchase and Sale Agreement.**

On the terms and conditions set forth herein, Seller shall sell, transfer, and convey to Purchaser, and Purchaser shall purchase and accept from Seller, as applicable, the following:

- (a) Fee simple title to the Project;
- (b) All personal property, furniture, supplies, inventory, fixtures, vehicles (if any), and equipment located in and upon the Project at the time of the Closing (as defined below) or used in the operation of the Project, including, without limitation, the personal property listed on Exhibit B attached hereto (collectively, the "Personal Property"). The term Personal Property shall include, to the extent assignable, all warranties and guarantees relating to the Project and the Personal Property;
- (c) All documents, charts, personnel records, manuals, resident/patient records (subject to the resident's/patient's right to access to its medical records as provided by law and confidentiality requirements), books, records, files and other business records attributable to the business or operations of the Facility;

(d) All existing agreements with: (i) residents/patients of the Facility, and (ii) customers of the Facility;

(e) All contracts, leases, and other agreements with vendors, residents, and other third parties relating to the Facility and to which Seller is a party and which are listed on Exhibit C, attached hereto and incorporated herein, including, but not limited to, those certain third party leases relating to the second floor of the Facility, that Purchaser in its sole discretion elects to assume and accept from Seller within thirty (30) days prior to the Closing (collectively, "Assumed Contracts"), pursuant to an Assignment and Assumption Agreement between Seller and Purchaser in the form set forth on Exhibit D, attached hereto and incorporated herein (the "Contracts Assignment Agreement");

(f) To the extent transferable, all approvals, consents, licenses, permits, certificates of need, certificates of exemption, franchises, registrations, accreditations, waivers, and other authorizations and other governmental licenses, permits and/or approvals required or issued by any governmental authority with respect to Seller, the Real Estate or the development, construction, occupancy and use of the Facility for its intended purpose, including, without limitation, any nursing home bed operating rights, license(s) and/or certificates of need or exemptions therefrom, certifications to participate in any state or federal reimbursement program such as Medicare or Medicaid under Title XVII or XIX of the "Social Security Act of 1935," as now or hereinafter amended; and

(g) The business of Seller as conducted at the Project as a going concern, including, without limitation, all telephone numbers presently in use in connection therewith.

The assets described above in this Section 1 shall hereinafter be collectively referred to as "Seller's Assets." Notwithstanding anything in this Agreement to the contrary, (i) Seller's Assets shall not include any of the assets described in Subsections 1(b) through 1(f) to the extent such assets are transferred to the Lessee pursuant to the Operations Transfer Agreement, and (ii) Purchaser, in its sole discretion, may direct Seller to convey all or any of Seller's Assets described in Subsections 1(b) through 1(f) directly to Lessee.

**2. Excluded Assets.** Notwithstanding anything to the contrary contained herein, Seller's Assets do not include the following items: (a) Seller's insurance policies and the rights to all proceeds and payments therefrom or thereunder (except to the extent that the underlying loss which such proceeds or payments relate to are losses for which Purchaser is otherwise entitled to indemnification pursuant to this Agreement or Lessee is entitled to indemnification pursuant to the Operations Transfer Agreement); (b) any tax refunds, workers' compensation dividends, rebates, or similar nomenclature, or reimbursement settlements due Seller from a period prior to the Closing Date; (c) Seller's corporate records and files; (d) Seller's cash (including petty cash), cash equivalents, bank accounts, and investment accounts; (e) Seller's accounts receivable, refunds, credits, and other revenue that arose from services performed or goods provided before the Closing Date, including the right to reimbursement under the Medicare and Medicaid programs relating to such period; (f) Seller's prepaid expenses pertaining to items such as, without limitation, utilities, supplies and equipment, insurance and workers' compensation premiums, taxes, employee benefits, and professional services; (g) all personal property owned by the employees, or residents of the Facility; (h) all of the interest of Seller in any contracts, leases, and other agreements to which Seller is a party, other than the Assumed Contracts; (i) those other excluded items that are listed on Exhibit E, attached hereto and incorporated herein; and (j) any and all rights in and to claims or causes of action of Seller

against third parties (including, without limitation, indemnification) with respect to, or which are made under or pursuant to any of the items set forth above in this Section 2, or Seller's ownership of the Facility prior to the Closing Date.

**3. Purchase Price.** The purchase price payable by Purchaser to Seller for Seller's Assets shall be One Million Seven Hundred Thousand and 00/100 Dollars (\$1,700,000.00) (the "Purchase Price"). The Purchase Price, as adjusted as provided herein, shall be allocated among the Seller's Assets as mutually determined by the parties as set forth on Exhibit F, attached hereto and incorporated herein. Seller and Purchaser each agree to not take a position on any income tax return, before any governmental authority, or in any judicial proceeding that is in any way inconsistent with the allocation set forth on Exhibit F.

**4. Deposit; Payment of Purchase Price.** The Purchase Price will be paid by Purchaser as follows:

(a) Within three (3) business days following the full execution of this Agreement and the Operations Transfer Agreement, Purchaser will deposit Six Hundred Thousand and 00/100 Dollars (\$600,000.00) with Madison Title Agency, LLC (the "Escrow Agent") (the "Earnest Money Deposit"). Three Hundred Thousand and 00/100 Dollars (\$300,000.00) of the Earnest Money Deposit shall be immediately transferred by Escrow Agent to Seller as an interest-free loan (the "Escrow Loan") evidenced by a promissory note in substantially the form attached hereto at Exhibit G (the "Promissory Note"). The remaining Three Hundred Thousand and 00/100 Dollars (\$300,000.00) of the Earnest Money Deposit shall remain in escrow. Subject in all respects to Section 6(b), Section 9, Section 10, Section 12, and Section 15, upon Lessee's receipt of licensure approval from the Ohio Department of Health for a nursing home license to operate with at least eighty-seven (87) licensed beds at the Facility (the "SNF License"), the Escrow Loan shall be cancelled, the Promissory Note shall be terminated, and the entire amount of the Earnest Money Deposit shall become non-refundable, and, if the transaction contemplated herein closes, the entire amount of the Earnest Money Deposit (including, for the avoidance of doubt, the portion of the Earnest Money Deposit attributable to the Escrow Loan) shall be applied to and credited against the Purchase Price at Closing. Following the release of the entire Earnest Money Deposit to Purchaser or to Seller upon a termination of this Agreement, the Escrow Loan shall be deemed paid back to Purchaser and the Promissory Note shall be cancelled.

(b) The Purchase Price less the Earnest Money Deposit shall be paid to Seller in immediately available funds by wire transfer on the Closing Date.

**5. Closing.** The closing of the purchase and sale of Seller's Assets (the "Closing") shall take place on the later of October 1, 2018 (the "Target Date") or the first (1<sup>st</sup>) day of the month following the date that Lessee has obtained the SNF License; provided, however, that the Closing shall take place simultaneously with the closing of the transactions contemplated by the Operations Transfer Agreement; and provided, further, that all of Purchaser's conditions to close set forth in this Agreement have either been satisfied or waived by Purchaser (the "Closing Date"). The Closing Date may be changed upon the written mutual agreement of Seller and Purchaser. Purchaser may in its sole discretion elect to extend the Closing Date to a later date not to exceed thirty (30) days from the originally scheduled Closing Date upon deposit of One Hundred Thousand and 00/100 Dollars (\$100,000.00) with the Escrow Agent (such amount, the "Extension Deposit"). The Extension Deposit shall be released, credited to the Purchase Price,

and otherwise treated in all respects in the same manner as the Earnest Money Deposit set forth herein. The Closing shall be consummated through an escrow in accordance with the general provisions of the customary form of deed and money escrow instructions then in use by the Escrow Agent for the closing of commercial real estate transactions and with such other provisions as are necessary to effectuate this Agreement (the "Closing Escrow"). Seller shall deliver possession of Seller's Assets to Purchaser at the Closing free of leases and other possessory rights of third parties (except for patients/residents), subject only to the Permitted Exceptions (as defined below). Notwithstanding anything herein to the contrary, in the event that the SNF License to operate with at least eighty-seven (87) licensed beds at the Facility is not received by Purchaser prior to the Target Date, Purchaser may elect to terminate this Agreement upon written notice to Seller, in which event the entire Earnest Money Deposit (including, for the avoidance of doubt, the portion of the Earnest Money Deposit attributable to the Escrow Loan and attributable to the Extension Deposit, if any) shall be returned to Purchaser.

**6. Purchaser's Due Diligence Review.**

(a) Until forty-five (45) days after the Effective Date (the "Due Diligence Expiration Date"), or the earlier termination of this Agreement, and subject to the provisions of this Section, Seller will: (a) permit Purchaser and its employees and agents, at Purchaser's election and sole cost and expense, and subject to all applicable confidentiality laws, to have reasonable access, during normal business hours, to conduct the following tests and inspections with respect to the Facility: Survey (as defined herein), Phase I Inspection (as defined herein), and physical plant inspection (collectively, the "Real Estate Due Diligence"). If the Real Estate Due Diligence reveals one or more conditions that necessitate additional tests and inspections, then the parties shall mutually agree upon the frequency and timing of such additional tests and inspections, which agreement shall not be unreasonably withheld, delayed, or conditioned. Notwithstanding anything to the contrary herein: (i) in no event shall any such examination or access to the Facility or Seller's Assets by Purchaser or its agents commence without Seller's prior written approval (which may be by e-mail and will not be unreasonably withheld) as to timing, location, number of individuals, and approach; (ii) after such written approval, Purchaser and its employees and agents shall first report to Seller to coordinate access to the Facility; (iii) neither Purchaser nor its employees or agents shall interfere with or disturb the operation of the Facility or any person or entity occupying or providing services at the Facility during the course of Purchaser's due diligence review; and (iv) Purchaser shall be solely responsible for any and all losses, costs, expenses, and/or damage to any person or property arising, directly or indirectly, from or related to Purchaser's due diligence review; provided, however that Purchaser's indemnity of Seller shall not cover or extend to (i) any claims to diminution in value of Seller's Assets as a consequence of the findings of the inspections, or (ii) the mere existence of Hazardous Materials located in, on or under Seller's Assets. After making such tests and inspections, Purchaser shall reasonably restore the Facility the condition prior to such tests and inspections.

(b) Purchaser shall have completed its due diligence review, as contemplated in this Section 6, by the Due Diligence Expiration Date. If Purchaser determines and notifies Seller in writing no later than the Due Diligence Expiration Date that it is not satisfied with the results of its due diligence and/or does not wish to proceed with the transaction contemplated hereby for any reason or no reason whatsoever, then this Agreement shall automatically terminate, and Purchaser shall receive the immediate return of its Earnest Money Deposit. If the Due Diligence

Termination Notice is not timely delivered to Seller by the Due Diligence Expiration Date, the parties shall proceed with the transaction contemplated hereby, and the condition to Purchaser's obligation to close the transaction contemplated in this Section 6 shall be deemed satisfied and waived in all respects.

7. **Seller's Representations and Warranties.** Seller represents and warrants to Purchaser as follows, as of the Effective Date and at all times through and including the Closing Date:

(a) Seller is duly organized, validly existing and in good standing under the laws of the State of Ohio.

(b) The execution, delivery and performance of this Agreement by Seller will not breach any statute or regulation of any governmental authority, agency or court, and will not conflict with or result in a breach of or default under any of the terms, conditions or provisions of Seller's formation documents or any order, writ, injunction, decree, agreement or instrument to which Seller is a party, or by which it or its property, may be bound.

(c) The execution, delivery and performance of this Agreement has been duly (or will be by the Closing) authorized by all necessary action of Seller, and this Agreement constitutes the valid and binding obligation of Seller, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, and moratorium laws and other laws of general application affecting the enforcement of creditors' rights generally.

(d) Seller is not in default in the performance, observation, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument to which it is a party, which default could adversely affect Seller's Assets or this transaction.

(e) Seller has or will have at the Closing, good and marketable title to, and is in possession of, Seller's Assets, free and clear of all liens and encumbrances except those exceptions to title set forth on Exhibit H attached hereto (the "Permitted Exceptions"), and Seller has the full right to convey Seller's Assets to Buyer.

(f) Seller owns all of the Personal Property, and such ownership will, as of the Closing Date, be free and clear of all liens, claims, security interests, leases and rights of others.

(g) There is no litigation or governmental or agency investigation or proceeding pending or, to Seller's knowledge, threatened against Seller that could impair or adversely affect Seller's ability to perform its obligations hereunder.

(h) Except in compliance with applicable law, Seller has not used, generated, manufactured, refined, produced, processed, stored or disposed of, on, under or about the Real Estate, or transported to or from the Real Estate for the purpose of generating, manufacturing, refining, producing, storing, handling, transferring, processing or transporting Hazardous Materials (as hereinafter defined), including, without limitation, discharge of materials or wastes into or through a sanitary sewer serving the Real Estate. The Real Estate and its current use comply in all material respects with all applicable Hazardous Materials Laws (as hereinafter defined).

"Hazardous Materials" shall mean any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive or corrosive, including petroleum, PCBs, asbestos, materials known to cause cancer or reproductive problems and those materials,

substances and/or wastes, including infectious waste, medical waste, and potentially infectious biomedical waste, which are or later become regulated by any governmental authority of the State of Ohio or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; all corresponding, similar and related State and local statutes, ordinances and regulations, including without limitation, any dealing with underground storage tanks; and in any other environmental law, regulation or ordinance now existing or hereinafter enacted (collectively, "Hazardous Materials Laws").

(i) Seller has maintained or caused to be maintained policies of insurance of the type and in amounts customarily carried by those conducting businesses similar to the Facility and reasonable in light of the assets of Seller. Also: (i) all premiums with respect thereto are currently paid and are not subject to adjustment, and Seller is not in default in any material respect with regard to its obligations under such policies; and (ii) Seller has not received any notice that any of such policies has been or shall be canceled or terminated or will not be renewed on substantially the same terms as are now in effect.

(j) Real Estate.

(i) Seller has good title to the Seller has enjoyed the continuous and uninterrupted quiet possession, use and operation of the Real Estate, without material complaint or objection by any person.

(ii) There is no pending, threatened or, to Seller's knowledge, contemplated condemnation proceeding relating to the Real Estate, and Seller has not received any written notice from any governmental or quasi-governmental agency or official to the effect that any such proceeding is contemplated.

(iii) Seller has not received any written notice from any governmental agency requiring the correction of any condition with respect to the Real Estate, or any part thereof, by reason of a violation of any applicable federal, state, county or municipal law, code, rule or regulation (including those respecting the Americans with Disabilities Act), which has not been cured or waived.

(iv) Seller has not received any written notice of and Seller has no knowledge of an intention to revoke any certificate of occupancy, license, provider agreement, or permit issued in connection with the Real Estate or Facility.

(v) Seller has received no notices or requests from any insurance company issuing any policy of insurance covering the Real Estate requesting performance of any work with respect to the Real Estate of the Facility located thereon which has not been fully complied with.

(vi) The Real Estate is zoned B2 (i.e., "General Business"), Seller is unaware of any pending or any proposed proceedings which would alter said zoning, and the Real Estate, and the current use thereof, conform with all applicable zoning codes, ordinances, and regulations;

(k) All contracts, leases, and other agreements with vendors, residents, and other third parties relating to the Facility to which Seller is a party are listed on Exhibit C. Seller has provided true and complete copies of all contracts, leases, and other agreement set forth on Exhibit C to Purchaser.

(l) To Seller's knowledge, there exists no defective condition, structural or otherwise, with respect to the Facility that would reasonably be considered to have a material adverse effect on Purchaser's ability to lease the Facility as a skilled nursing facility. In addition, Seller has not received any written notice from any insurance company which has issued a policy with respect to the Facility 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 Facility or suggesting or requesting the performance of any repairs, alterations or other work to the Facility.

The foregoing representations and warranties are true, correct and complete as of the Effective Date, and Seller shall provide Purchaser at the Closing with a certificate that such representations and warranties are true, correct, complete and deemed remade as of the Closing Date.

**8. Representations and Warranties of Purchaser.** Purchaser represents and warrants to Seller as follows, as of the Effective Date and at all times through and including the Closing Date:

(a) Purchaser is a limited liability company duly organized, validly existing, and in full force and effect under the laws of the State of Ohio with all requisite power and authority to carry on its business as presently conducted.

(b) The execution, delivery and performance of this Agreement by Purchaser will not breach any statute or regulation of any governmental authority, agency or court, and will not conflict with or result in a breach of or default under any of the terms, conditions or provisions of Purchaser's formation documents or any order, writ, injunction, decree, agreement or instrument to which Purchaser is a party, or by which it or its property, may be bound.

(c) The execution, delivery and performance of this Agreement has been duly authorized by all necessary entity action of Purchaser, and this Agreement constitutes the valid and binding obligation of Purchaser, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, and moratorium laws and other laws of general application affecting the enforcement of creditors' rights generally.

(d) There is no litigation or governmental or agency investigation or proceeding pending or, to Purchaser's knowledge, threatened against Purchaser that could impair or adversely affect Purchaser's ability to perform its obligations hereunder.

(e) Purchaser is not prohibited from purchasing Seller's Assets or consummating the transaction provided herein under any statute, rule, or regulation.

(f) Purchaser has or at Closing will have sufficient funds available to pay the Purchase Price hereunder and to timely and fully pay all other costs, fees, and expenses required to be paid by Purchaser in connection with the transaction contemplated herein.

**9. Eminent Domain.** In the event that prior to the Closing, any judicial, administrative or other proceeding relating to the proposed taking of the Project or any portion



thereof by condemnation or eminent domain or any act in the nature of eminent domain affecting the Project is commenced or threatened by a governmental body having the power of eminent domain, Seller shall immediately give Purchaser written notice thereof. If any such proceeding relates to a Substantial Portion (as defined below) of the Project or would adversely affect Purchaser's ability to lease the Project to Lessee, Purchaser may elect to terminate this Agreement by written notice to Seller prior to the Closing, in which event the Earnest Money Deposit shall be returned to Purchaser and thereafter the parties shall have no further rights, obligations or liability hereunder. If Purchaser does not exercise its right to terminate under this Section 9, this Agreement shall remain in full force and effect, and at the Closing Purchaser shall be credited or assigned all of Seller's right, title and interest with respect to such proceeding and any proceeds or awards relating thereto. Unless or until this Agreement is terminated in its entirety pursuant to this Section 9, Seller shall not take any action with respect to any pending or threatened eminent domain proceeding without the prior written consent of Purchaser. If the proceeding does not involve a Substantial Portion of the Project and would not adversely affect Purchaser's ability to lease the Project to Lessee, Purchaser shall not have the right to terminate this Agreement, but shall be credited or assigned, at the Closing, all of Seller's rights to the proceeds or awards relating thereto. For the purposes of this Section, the proceeding shall be deemed to involve the "Substantial Portion" of the Project if the proceeding (a) affects more than the equivalent of One Hundred Seventy Thousand and 00/100 Dollars (\$170,000.00) in value, as reasonably determined by Purchaser, (b) causes a material deprivation of access to or from the Project, (c) involves a taking of parking areas located on the Project such that subsequent to such taking, the Project will be in violation of municipal zoning codes and ordinances, or (d) involves the relocation of utility facilities serving the Project.

**10. Risk of Loss; Casualty.**

(a) At all times prior to the Closing, the entire risk of loss or damage to the Project by fire or other casualty occurring prior to the Closing is and shall be borne and assumed by Seller.

(b) If prior to the Closing Date, the Project or any portion thereof shall be destroyed or damaged in an amount equal to or in excess of the Material Damage Amount (as defined below), by fire or other casualty, or if the Project is damaged as a result of fire or other casualty to such extent that Purchaser is unable to lease such Project to an operator (or gives any such operator the right to terminate its lease), Purchaser shall have the option to terminate this Agreement, in which event the Escrow Money Deposit shall be returned to Purchaser and thereafter the parties shall have no further rights, obligations or liability hereunder. If Purchaser does not exercise its right to terminate this Agreement under this Section 10, or if the Project or any portion thereof shall be destroyed or damaged in an amount less than the Material Damage Amount, this Agreement shall remain in full force and effect, and at the Closing, Purchaser shall be credited or assigned all of Seller's right, title and interest with respect to the insurance proceeds arising from such fire or other casualty. Seller agrees to give Purchaser notice of any fire or other casualty within forty-eight (48) hours after any such event, and Purchaser may exercise its termination option by delivering written notice to Seller within five (5) business days from receipt of the notice from Purchaser. In the event of fire or other casualty to the Project and Purchaser does not have the right to terminate this Agreement or has such right but elects not to do so, then Purchaser shall have the right prior to the Closing Date, to control the adjustment and settlement of any insurance claim relating to said damage, and, on the Closing Date, Seller shall assign to Purchaser Seller's interest in and to any insurance proceeds with respect to said

damage. For the purposes hereof, the term "Material Damage Amount" shall mean damage reasonably determined by Purchaser to be in excess of One Hundred Seventy Thousand and 00/100 Dollars (\$170,000.00) to repair or restore.

**11. Closing Documents.**

(a) At the Closing, Seller shall deposit or cause to be deposited in the Closing Escrow the following, in form and substance acceptable to Purchaser and its counsel:

(i) Limited Warranty Deed for the Project conveying to Purchaser good, indefeasible, and marketable fee simple title to the Project, subject only to the Permitted Exceptions;

(ii) Bill of Sale and/or assignments for the Personal Property;

(iii) Contracts Assignment Agreement for the Assumed Contracts;

(iv) A certificate executed by Seller stating that all of the representations and warranties by Seller contained in this Agreement are remade and are true and correct as of the Closing Date;

(v) The executed Operations Transfer Agreement; and

(vi) Any and all other documents, instruments, title affidavits, certificates or writings that may be reasonably required by the Escrow Agent to effect the consummation of this Agreement and the transaction contemplated hereby, including, without limitation, an agreed-upon settlement statement prepared by the Escrow Agent.

(b) At the Closing, Purchaser shall deposit or cause to be deposited in the Closing Escrow the following, in form and substance acceptable to Seller and its counsel;

(i) The balance of the Purchase Price;

(ii) Contracts Assignment Agreement for the Assumed Contracts;

(iii) A certificate executed by Purchaser stating that all of the representations and warranties by Purchaser contained in this Agreement are remade and are true and correct as of the Closing Date; and

(iv) Any and all other documents, instruments, title affidavits, certificates or writings that may be reasonably required by the Escrow Agent to effect the consummation of this Agreement and the transaction contemplated hereby, including, without limitation, an agreed-upon settlement statement prepared by the Escrow Agent.

(c) After the Closing, each of Seller and Purchaser agree that it will take such actions and execute and deliver such further instruments of assignment, conveyance and transfer as may reasonably be requested by any other party to give effect to the transaction contemplated by this Agreement.

(d) To secure Seller's indemnification obligations under Section 14(b) of this Agreement and Section 14(a) of the Operations Transfer Agreement (collectively, "Indemnification Obligations"), at the Closing a portion of the Purchase Price in the principal of One Hundred Thousand and 00/100 Dollars (\$100,000.00) (the "Escrow Funds") shall be deposited by Purchaser with the Escrow Agent and retained in escrow by the Escrow Agent for a period of twenty-four (24) months from the Closing Date (the "Escrow Period") and pursuant to

the terms and conditions of an Escrow Agreement, substantially in the form of Exhibit I attached to this Agreement (the "Escrow Agreement"). Purchaser may notify Seller that Purchaser believes that Seller has an Indemnification Obligations and Purchaser is entitled to a disbursement from the Escrow Funds. In any such event, upon Seller and Purchaser agreeing in writing to the existence, nature, and amount of any Indemnification Obligation, Seller and Purchaser shall provide joint written instructions to Escrow Agent (a "Disbursement Request") that request an agreed-upon amount of Escrow Funds to be disbursed to Purchaser in satisfaction of such Indemnification Obligation. Escrow Agent shall disburse such Escrow Funds, as requested by the parties in the Disbursement Request, within five (5) days after Escrow Agent receives the Disbursement Request.

(e) Upon the expiration of the Escrow Period, if there are any Escrow Funds remaining in escrow that are not then subject to any pending Indemnification Claim or Disbursement Request, Escrow Agent shall automatically disburse the Escrow Funds remaining in escrow to Seller within five (5) days following the expiration of the Escrow Period.

**12. Conditions Precedent to Performance of Agreement by Purchaser and Seller.**

(a) The obligation of Purchaser to close the transaction contemplated hereby shall be subject to the satisfaction of the following conditions prior to, or concurrently with, the Closing:

(i) Seller shall have performed and complied with all material agreements, covenants and obligations which under this Agreement are required to be performed or complied with by Seller prior to or at the Closing, and all of Seller's representations and warranties contained herein shall be true and correct in all material respects at and as of the Closing Date.

(ii) Seller shall have performed and complied with all material agreements, covenants and obligations which under the Operations Transfer Agreement are required to be performed or complied with by Seller prior to or at the Closing, all of Seller's representations and warranties contained therein shall be true and correct in all material respects at and as of the Closing Date, and all conditions to Lessee's obligation to close under the Operations Transfer Agreement shall have been satisfied.

(iii) Purchaser shall not have terminated this Agreement pursuant to Section 6(b), Section 9, Section 10, or Section 15.

(iv) Purchaser and Lessee shall have executed a mutually-acceptable lease for the Facility by the Due Diligence Expiration Date.

In the event that any of the foregoing conditions set forth in this Section 12(a) has not been satisfied prior to or as of the Closing, Purchaser may, at its option, elect at any time either (i) to terminate this Agreement upon written notice to Seller, in which event the entire Earnest Money Deposit (including, for the avoidance of doubt, the portion of the Earnest Money Deposit attributable to the Escrow Loan) and the entire Extension Deposit, if any, shall be returned to Purchaser (without waiving or releasing any of its remedies for any Seller's Default); or (ii) to waive any one or more of the foregoing conditions contained in this Section 12(a) and proceed to the Closing.

(b) The obligation of Seller to close the transaction contemplated hereby shall be subject to the satisfaction of the following conditions prior to, or concurrently with, the Closing:

(i) Purchaser shall have performed and complied with all material agreements, covenants and obligations which under this Agreement are required to be performed or complied with by Purchaser prior to or at the Closing, and all of Purchaser's representations and warranties contained herein shall be true and correct in all material respects at and as of the Closing Date.

(ii) Lessee shall have performed and complied with all material agreements, covenants and obligations which under the Operations Transfer Agreement are required to be performed or complied with by Lessee prior to or at the Closing, and all of Lessee's representations and warranties contained therein shall be true and correct in all material respects at and as of the Closing Date, and all conditions to Seller's obligation to close under the Operations Transfer Agreement shall have been satisfied.

In the event that either of the foregoing conditions set forth in this Section 12(b) has not, in Seller's judgment, been satisfied prior to or as of the Closing and such failure is not cured within ten (10) days after written notice thereof to Purchaser, Seller may, at its option, elect at any time either (i) to terminate this Agreement upon written notice to Purchaser, in which event (A) the Earnest Money Deposit shall be paid to Seller as Seller's sole remedy, and (B) thereafter, the parties shall have no further rights, obligations or liability hereunder; provided that in the event that Purchaser has the right to terminate this Agreement pursuant to Section 12(a) at the time of Seller's actual termination of this Agreement, the Earnest Money Deposit shall be released to Purchaser instead of Seller; or (ii) to waive any one or more of the foregoing conditions contained in this Section 12(b) and proceed to the Closing.

**13. Closing Expenses.**

(a) Seller shall be responsible for the payment of: (i) its own attorneys' fees and expenses; (ii) the costs incident to filing/recording the Deed, (iii) any real estate transfer taxes, documentary stamps, and conveyance fees arising out of the transfer of the Real Estate; (iv) one half of the cost of the Escrow Agent fees; (v) the costs of satisfying any taxes, assessments, liens, or encumbrances required to be cured by Seller under this Agreement whether by payment or title endorsement; (vi) the cost of the premium for Owner's Title Insurance Policy, including the cost of the premium for any extended coverage; (vii) the cost of the title search and Title Commitment; and (viii) the fees or commissions payable to any broker or consultant engaged by Seller.

(b) Purchaser shall be responsible for the payment of: (i) Purchaser's due diligence investigations, the Survey, and Phase I Inspection; (ii) its own attorneys' fees and expenses; (iii) one half of the cost of the Escrow Agent fees; (iv) the costs incident to filing/recording any mortgage(s) placed on the Real Estate by Purchaser; (v) the cost of any endorsements to Purchasers' or lender's policies of title insurance, other than those required to cure any title or survey defects; and (vi) the cost of Purchaser's lender's title insurance policy and all endorsements thereto, and the recording fees for any recordable loan documents.

**14. Survival; Indemnity.**

(a) Each of the representations, warranties, indemnities and covenants made by any party in this Agreement shall survive the Closing and shall not be merged into any instrument of conveyance delivered at the Closing.

(b) Subject to the extent provided by law and the limitations provided herein, Seller

shall indemnify, defend and hold harmless Purchaser and its members, managers, officers, affiliates, and agents (collectively, the "Purchaser's Indemnified Parties"), from and against, and reimburse Purchaser's Indemnified Parties on demand for, any and all demands, claims, causes of action, proceedings, judgments, losses, liabilities, settlements, penalties, fines, obligations, damages, costs and expenses, including reasonable attorneys' fees and other costs of defense (collectively, "Damages"), suffered or incurred by Purchaser's Indemnified Parties arising by reason of (i) any breach of any representation or warranty by Seller hereunder, (ii) any breach of any covenant by Seller or arising from any Seller's Default (as hereinafter defined) hereunder, (iii) the operation, use, and ownership of the Project prior to the Closing Date, and (iv) any other liability of Seller, if any, not expressly assumed by Purchaser under this Agreement.

(c) Subject to the extent provided by law, Purchaser shall indemnify, defend and hold harmless Seller, and its Board, Elected Officials and employees (collectively, the "Seller's Indemnified Parties"), from and against any Damages, suffered or incurred by Seller's Indemnified Parties and arising by reason of (i) any breach of any representation, warranty or covenant by Purchaser or arising from any Purchaser's Default (as hereinafter defined) hereunder, (ii) the operation, use and ownership of the Project on and after the Closing Date, and (iii) any other liability of Purchaser, if any, expressly assumed by Purchaser under this Agreement.

(d) The respective indemnification obligations of Seller and Purchaser pursuant to this Section 14 shall be conditioned upon compliance by Seller and Purchaser with the following procedures for indemnification claims based upon or arising out of any claim, action or proceeding by any person not a party to this Agreement:

(1) If at any time a claim shall be made or threatened, or an action or proceeding shall be commenced or threatened, against a Purchaser's Indemnified Party or a Seller's Indemnified Party (each an "Aggrieved Party") which could result in liability of the other party (the "Indemnifying Party") under its indemnification obligations hereunder, the Aggrieved Party shall give to the Indemnifying Party prompt notice of such claim, action or proceeding. Such notice shall state the basis for the claim, action or proceeding and the amount thereof (to the extent such amount is determinable at the time when such notice is given) and shall permit the Indemnifying Party to assume the defense of any such claim, action or proceeding (including any action or proceeding resulting from any such claim). Failure by the Indemnifying Party to notify the Aggrieved Party of its election to defend any such claim, action or proceeding within a reasonable time, but in no event more than thirty (30) days after notice thereof shall have been given to the Indemnifying Party, shall be deemed a waiver by the Indemnifying Party of its right to defend such claim, action or proceeding; provided, however, that the Indemnifying Party shall not be deemed to have waived its right to contest and defend against any claim of the Aggrieved Party for indemnification hereunder based upon or arising out of such claim, action or proceeding.

(2) If the Indemnifying Party assumes the defense of any such claim, action or proceeding, the obligation of the Indemnifying Party as to such claim, action or proceeding shall be limited to taking all steps necessary in the defense or settlement thereof and, provided the Indemnifying Party is held to be liable for indemnification hereunder, to holding the Aggrieved Party harmless from and against any and all Damages caused by or arising out of any settlement approved by the Indemnifying Party or any judgment or award rendered in connection with such claim, action or proceeding. The Aggrieved Party may participate, at its expense, in the defense

of such claim, action or proceeding provided that the Indemnifying Party shall direct and control the defense of such claim, action or proceeding. The Aggrieved Party agrees to cooperate and make available to the Indemnified Party all books and records and such officers, employees and agents as are reasonably necessary and useful in connection with the defense. The Indemnifying Party shall not, in the defense of such claim, action or proceeding, consent to the entry of any judgment or award, or enter into any settlement, except in either event with the prior consent of the Aggrieved Party, which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Aggrieved Party of a release from all liability in respect of such claim, action or proceeding.

(3) If the Indemnifying Party does not assume the defense of any such claim, action or proceeding, the Aggrieved Party may defend against such claim, action or proceeding in such manner as it may deem appropriate. The Indemnifying Party agrees to cooperate and make available to the Aggrieved Party all books and records and such officers, employees and agents as are reasonably necessary and useful in connection with the defense. If the Indemnifying Party, within fifteen (15) days after notice shall have been given to it by the Aggrieved Party of the latter's intention to effect a settlement of any such claim, action or proceeding, which notice shall describe with particularity the terms of any such proposed settlement, shall not deposit with an escrowee mutually satisfactory to the Aggrieved Party and the Indemnifying Party a sum equivalent to the total amount demanded in such claim, action or proceeding or deliver to the Aggrieved Party a surety bond or an irrevocable letter of credit for such sum in form and substance reasonably satisfactory to the Aggrieved Party, then the Aggrieved Party may settle such claim, action or proceeding on the terms detailed in its notice to the Indemnifying Party, and the Indemnifying Party shall be deemed to have agreed to the terms of such settlement and shall not thereafter in any proceeding by the Aggrieved Party for indemnification question the propriety of such settlement. If the Indemnifying Party makes an escrow deposit or delivers a surety bond or letter of credit as aforesaid and thereafter the Aggrieved Party settles such claim, action or proceeding, then in any proceeding by the Aggrieved Party for indemnification in the event the Indemnifying Party is held liable for indemnification thereunder, the Aggrieved Party shall have the burden of proving the amount of such liability of the Indemnifying Party, and the amount of the payments made in settlement of any claim, action or proceeding shall not be determinative as between the Aggrieved Party and the Indemnifying Party of the amount of such indemnification liability, except that the amount of the settlement payments shall constitute the maximum amount of the indemnification liability of the Indemnifying Party with respect to such claim, action, or proceeding. Such escrow deposit, surety bond or letter of credit shall by their respective terms be payable to the Aggrieved Party in an amount determined in accordance with the last sentence of this paragraph (d) and provided that the Indemnifying Party is held liable for indemnification hereunder. If the Indemnifying Party neither makes an escrow deposit nor delivers a surety bond or letter of credit as aforesaid, so that no settlement of such claim, action or proceeding is effected, in any proceeding by the Aggrieved Party for indemnification in the event the Indemnifying Party is held liable for indemnification hereunder, such liability shall be for the amount of any judgment or award rendered with respect to such claim or in such action or proceeding and of all expenses, legal and otherwise, incurred by the Aggrieved Party in the defense against such claim, action or proceeding.

(e) If Purchaser, pursuant to a claim made prior to the Escrow Expiration Date, becomes entitled to any indemnification payment under this Agreement as a result of (i) Seller's agreement to a claim from Purchaser or as otherwise provided in this Section 14, or (ii) a court

order by a court having jurisdiction over the matter (which court order is final and non-appealable) or an arbitrator's decision (which decision is final and non-appealable), then Purchaser shall be entitled to make a claim for payment for the amounts due out of the Escrow Funds (a "Escrow Claim"), and the parties will promptly execute a joint written instruction to the Escrow Agent directing the Escrow Agent to deliver such amounts to Purchaser.

(f) Notwithstanding any other provision of this Agreement, the maximum amount of Damages for which Seller may be responsible under Section 14(b)(i) of this Agreement and Section 14(A)(i) of the Operations Transfer Agreement shall not exceed, in the aggregate, the amount of the Escrow Funds (the "Cap"); provided that the Cap shall not apply to any Damages arising from Seller's willful misrepresentation or fraud committed by Seller.

#### **15. Defaults.**

(a) In the event that Seller fails to perform any material covenant or agreement contained in this Agreement prior to the Closing and such failure is not cured within ten (10) days after written notice thereof to Seller, or if any of Seller's warranties or representations contained in this Agreement shall not be true and correct in any respect prior to the Closing (the foregoing being referred to as a "Seller's Default"), Purchaser may at its option elect to do any one or more of the following: (i) waive such breach and proceed to close this Agreement; (ii) terminate this Agreement by written notice to Seller, in which event the entire Earnest Money Deposit (including, for the avoidance of doubt, the portion of the Earnest Money Deposit attributable to the Escrow Loan) and the entire Extension Deposit, if any, shall be returned to Purchaser; provided that in the event of Purchaser's Default (as hereinafter defined) occurring prior to Seller's Default, the Earnest Money Deposit shall be released to Seller instead of Purchaser, and Purchaser shall be entitled to recover from Seller its own damages and any damages incurred by Lessee (including, without limitation, reasonable attorneys' fees and related costs); or (iii) maintain an action for specific performance.

(b) In the event Purchaser fails to perform any material covenant or agreement contained in this Agreement prior to the Closing and such failure is not cured within ten (10) days after written notice thereof to Purchaser, or if any of Purchaser's warranties or representations contained in this Agreement shall not be true and correct in any respect prior to the Closing (the foregoing being referred to herein as a "Purchaser's Default"), Seller may terminate this Agreement by written notice to Purchaser, in which event the Earnest Money Deposit shall be released to Seller, as liquidated damages and not as a penalty, and thereafter, the parties shall have no further rights, obligations, or liability hereunder; provided that in the event of Seller's Default occurring prior to Purchaser's Default, the Earnest Money Deposit shall be released to Purchaser instead of Seller. The parties agree that in the event of such a default, it would be extremely difficult or impossible to determine Seller's actual damages and that the liquidated damages amount is a reasonable estimate thereof. Except as expressly set forth in this Section 15(b), Seller expressly waives any right to seek other damages or remedies in the event of Purchaser's default hereunder.

**16. Successors and Assigns.** This Agreement shall inure to the benefit of, and shall be binding upon Seller and Purchaser, and their respective successors and assigns; provided, however, that neither party shall assign the Agreement without the prior written consent of the other party.

**17. Time of the Essence.** Time is of the essence of all undertakings and agreements

of the respective parties hereto, and all undertakings and agreements will be promptly performed by the respective parties within the time and in the manner herein provided.

**18. Entire Agreement.** This Agreement constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, between the parties are merged into this Agreement. Neither this Agreement nor any provisions hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

**19. Non-Business Days.** If any date herein set forth for the performance of any obligations either by Seller or by Purchaser or for the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday or holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday, or holiday. As used herein, the term "holiday" means any state or federal holiday for which financial institutions or post offices are generally closed in the State of Ohio for observance thereof and the following Jewish holidays: Passover, Shavuot, Rosh Hashona, Yom Kippur, Sukkot, Shmini Atzeret, and Simchat Torah.

**20. Broker.** Other than Marcus & Millichap Real Estate Investment Services ("Seller's Broker"), no broker, finder, or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of Seller. Seller shall be solely responsible for the payment of any fees or commissions to Seller's Broker.

**21. Section Headings.** The section headings used herein are descriptive only and shall have no legal force or effect whatsoever.

**22. Notices.** Any notice, demand or request which may be permitted, required or desired to be given in connection herewith shall be given in writing and directed to Seller and Purchaser as follows:

If to Seller:                   Auglaize County Commissioners  
209 S. Blackhoof Street, Room 201  
Wapakoneta, Ohio 45895  
Attention: Board President  
Phone: (419) 739-6710  
Email: commissioners@auglaizecounty.org

With a copy to:               Rolf Goffman Martin Lang LLP  
30100 Chagrin Boulevard  
Cleveland, Ohio 44124-5705  
Attention: Paul A. Lang, Esq.  
Fax: (216) 682-2135  
Email: lang@rolflaw.com

If to Purchaser:               Auglaize Holdings LLC  
31100 Solon Road, Suite 9  
Solon, Ohio 44139



Attn: Elliott Jacobs and Joel Goldman  
Phone: (440) 248-3722  
Email: ejacobs@j-dek.com and  
jgoldman@j-dek.com

With a copy to: Ulmer & Berne LLP  
1660 West 2<sup>nd</sup> Street, Suite 1100  
Cleveland, Ohio 44118  
Attention: Daniel A. Gottesman, Esq.  
Phone: (216) 583-7166  
Fax: (216) 583-7167  
Email: dgottesman@ulmer.com

Notices shall be either (i) personally delivered to the offices set forth above, in which case they shall be deemed delivered on the date of delivery to said offices, (ii) sent by certified mail return receipt requested, in which case they shall be deemed delivered on the date set forth in the return receipt, (iii) sent by facsimile to the telephone numbers indicated above, in which case they shall be deemed received on the confirmation date indicated on such facsimile, (iv) sent by email to the email addresses indicated above, in which case they shall be deemed received immediately upon sending of the email, or (v) sent by air courier (Federal Express or like service), in which case they shall be deemed received on the date of delivery set forth in the courier's receipt.

**23. Governing Law; Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. Each party hereto hereby irrevocably submits to the exclusive jurisdiction of any Ohio state court sitting in Auglaize County, Ohio, and in the case of Federal jurisdiction, of the United States District Court of Ohio, Northern District, Western Division, over any action or proceeding arising out of or relating to this Agreement.

**24. Litigation.** Subject to the limitations imposed by Section 14(e) of this Agreement, in the event of litigation between the parties with respect to this Agreement, the transaction contemplated hereby, the performance of their obligations (in whole or in part) hereunder or the effect of a termination hereunder, the losing party shall pay all costs and expenses incurred by the prevailing party in connection with such litigation, including reasonable attorneys' fees. Notwithstanding any provision of this Agreement to the contrary, the obligations of the parties under this Section 24 will survive the Closing or any termination of this Agreement.

**25. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Counterparts may be executed in either original or electronically transmitted form (e.g., faxed or emailed portable document format (PDF) form), and the parties hereby adopt as original any signatures received via electronically transmitted form.

**26. Prorations and Adjustments.** General and special real estate and other ad valorem taxes and assessments levied or assessed against the Project, the Personal Property and/or any other Seller's Assets shall be prorated as of the Closing Date on the basis of the most recent ascertainable tax bill(s), and the net credit to Purchaser or Seller shall be paid in cash or

credited against the Purchase Price. The items prorated under the immediately preceding sentence shall be re-prorated when the actual bills for such items become available, and the appropriate party shall make any re-proration payment to the other party within thirty (30) days after demand therefor.

**27. Confidentiality.** Subject to Seller's compliance with the Ohio Public Records Law (Ohio Revised Code Section 149.43 and related statutes), all information regarding Purchaser, Seller and the Project which have been provided by Seller and Purchaser to each other in connection with the negotiation, execution, and performance of this Agreement are confidential, and will be treated as such by each party and their members, managers, agents, and employees, who will not make use of such confidential information or reveal any such information to any other persons other than parties who need to know the information for the purpose of performing due diligence or evaluating the transaction contemplated by this Agreement on behalf of the parties hereto or unless ordered by a court of competent jurisdiction or otherwise compelled to do so. This confidentiality provision shall not apply to information which is generally available to the public or becomes generally available to the public from sources other than as a result of disclosure by either party hereto in violation of the terms hereof. If this Agreement is terminated, upon written notice from the disclosing party the other party shall immediately return such confidential information or destroy such information as requested.


**28. Enforceability.** The parties agree that each and every provision of this Agreement is severable, and if any term or provision of this Agreement shall be held invalid or unenforceable to any extent, the remaining terms and provisions of this Agreement (including, without limitation, the remaining terms and provisions of the affected Section) shall not be affected thereby, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.

[Signature Page Follows]


IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

**SELLER:**

**COUNTY OF AUGLAIZE, OHIO,**  
a county and political subdivision of the State of Ohio

By:   
Name: Douglas A. Spencer  
Title: Commissioner

By:   
Name: Don Regula  
Title: Commissioner

By:   
Name: John N. Bergman  
Title: Commissioner

**PURCHASER:**

**AUGLAIZE HOLDINGS LLC,**  
an Ohio limited liability company

By:   
Name: \_\_\_\_\_ Elliott Jacobs  
Title: \_\_\_\_\_ Member

## **LIST OF EXHIBITS**

<u>Exhibit A</u>	Legal Description of Real Estate
<u>Exhibit B</u>	Personal Property
<u>Exhibit C</u>	Assumed Contracts
<u>Exhibit D</u>	Contracts Assignment Agreement
<u>Exhibit E</u>	Excluded Assets
<u>Exhibit F</u>	Purchase Price Allocation
<u>Exhibit G</u>	Promissory Note
<u>Exhibit H</u>	Permitted Exceptions
<u>Exhibit I</u>	Escrow Agreement

Exhibit A

Legal Description of Real Estate

Exhibit B

Personal Property

(see attached)

Exhibit C

Assumed Contracts

[TBD]

Exhibit D

Contracts Assignment Agreement

(Attached)



Exhibit E

**Excluded Assets**

[TBD]

Exhibit F

Purchase Price Allocation

[TBD]

Exhibit G

Promissory Note

(Attached)

Exhibit H

Permitted Exceptions

1. General real estate taxes not yet due and payable.

[Additional exceptions to be determined upon receipt and review of title commitment]

Exhibit I

Escrow Agreement

(Attached)

County Commissioners Office  
Auglaize County, Ohio  
August 7, 2018

NO. 18-307

**IN THE MATTER OF APPROVING AND EXECUTING THE OPERATIONS TRANSFER AGREEMENT  
BETWEEN ALS AUGLAIZE ACRES OPERATING, INC AND COUNTY OF AUGLAIZE, OHIO FOR THE  
AUGLAIZE ACRES FACILITY.**

\*\*\*\*\*

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 7th day of August, 2018.

Commissioner Regula moved the adoption of the following:

**RESOLUTION**

**WHEREAS**, an Operations Transfer Agreement was submitted to the Auglaize County Board of Commissioners (the "Board") by Rolf Goffman Martin Lang LLP ("Rolf") with ALS Auglaize Acres Operating, Inc. ("Entering Operator") concerning the transfer of operations of the Auglaize Acres nursing home, physically located at, 13093 Infirmary Road, Wapakoneta, Ohio 45895 ("Facility"); and,

**WHEREAS**, the County and Auglaize Holdings LLC, an Ohio limited liability company ("Purchaser"), have entered into a Purchase and Sale Agreement on even date herewith, pursuant to which County has agreed to sell, transfer, and convey to Purchaser, the Facility including but not limited to the real estate on which the Facility is located; and,

**WHEREAS**, the "Purchaser" and "Entering Operator" have entered into a lease agreement for the Facility so that Entering Operator can lease and operate the Facility while Purchaser maintains ownership of the Facility; and,

**WHEREAS**, the Parties wish to provide for an orderly transition of the operations of the Facility from County to Entering Operating as of the date of the closing of the transaction contemplated in the Purchase and Sale Agreement; and,

**WHEREAS**, the Board finds the Operations Transfer Agreement to be in order.

**THEREFORE, BE IT RESOLVED** that the Board of Commissioners, Auglaize County, Ohio, does hereby approve and authorizes the execution the Operations Transfer Agreement and any transaction documents related thereto.

Commissioner Bergman seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this  
7th day of  
August, 2018

BOARD OF COUNTY COMMISSIONERS  
AUGLAIZE COUNTY, OHIO

Douglas A. Spencer, yes  
Douglas A. Spencer

John N. Bergman, yes  
John N. Bergman

Don Regula, yes  
Don Regula

cc: County Auditor  
County Prosecutor  
Auglaize Acres – Kim Sudhoff  
Rolf Goffman Martin Lang LLP

## **OPERATIONS TRANSFER AGREEMENT**

**THIS OPERATIONS TRANSFER AGREEMENT** (this "Agreement") made as of this 7<sup>th</sup> day of August, 2018, by and between the **COUNTY OF AUGLAIZE, OHIO**, a county and political subdivision of the State of Ohio ("County") and **ALS AUGLAIZE ACRES OPERATING, INC.**, an Ohio corporation ("Entering Operator"). Entering Operator and County are sometimes hereinafter referred to individually as a "Party" and collectively referred to as the "Parties".

### **RECITALS**

**WHEREAS**, County is the owner and operator of the county home commonly known as "Auglaize Acres", located at 13093 Infirmary Road, Wapakoneta, Auglaize County, Ohio 45895 (the "Facility");

**WHEREAS**, County and Auglaize Holdings LLC, an Ohio limited liability company ("Purchaser"), have entered into a Purchase and Sale Agreement dated of even date herewith (the "P&SA"), pursuant to which County has agreed to sell, transfer, and convey to Purchaser, and Purchaser has agreed to purchase and accept from County, Seller's Assets (as defined in the P&SA);

**WHEREAS**, Purchaser and Entering Operator have entered into a Lease dated of even date herewith (the "Entering Operator Lease"), pursuant to which Purchaser has agreed to lease to Entering Operator, and Entering Operator has agreed to lease from Purchaser, the Facility; and

**WHEREAS**, the Parties wish to provide for an orderly transition of the operations of the Facility from County to Entering Operator as of the date of the closing of the transactions contemplated in the P&SA (the "Closing Date") as more fully set forth herein.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### **AGREEMENT**

1. **Transferred Assets.** Subject to the terms and conditions of this Agreement, as of the Closing Date, County will directly transfer to Entering Operator, to the extent requested by Purchaser under the P&SA, free and clear of all liens, encumbrances, liabilities, claims, assessments, security interests and defects in title whatsoever, all of County's right, title and interest, if any, in and to the following assets that are used in connection with the operation of the Facility: (A) all Personal Property (as defined in the P&SA); (B) the Assumed Contracts (as defined in the P&SA) assumed by Entering Operator pursuant to Section 10 of this Agreement; and (C) all other transferable rights to operate the business of County as conducted at the Facility as a going concern. The Personal Property, Assumed Contracts, and the other rights set forth in the immediately

preceding sentence are hereinafter collectively referred to as the "Transferred Assets". County and Entering Operator shall each execute a Bill of Sale substantially in the form and substance of Exhibit A hereto with respect to the transfer of the Personal Property, and an Assignment and Assumption of Contracts Agreement substantially in form and substance of Exhibit B hereto with respect to the assignment and assumption of the Assumed Contracts.

2. **Excluded Assets.** Subject to the terms and conditions of this Agreement, the following assets of County shall not be transferred to Entering Operator, and are not considered "Transferred Assets": (A) any cash balances; (B) retroactive payments from governmental authorities that relate to periods prior to the Closing Date; (C) insurance proceeds, if any, that relate to insurance policies maintained by County; (D) accounts receivable, as further described in Section 7 of this Agreement; (E) contracts that are not assumed by Entering Operator pursuant to Section 10 of this Agreement; (F) non-transferable software and vendor-owned equipment set forth on Schedule 2(F); and (G) those other excluded items that are listed on Exhibit C attached hereto.

3. **Non-Assumption of Liabilities.** Entering Operator shall not assume or be obligated to pay nor shall the Transferred Assets be subject to or bound by any liability of County, whether fixed or contingent, recorded or unrecorded, including any of the following (collectively, the "Excluded Liabilities"): (A) the accounts payable of County; (B) accrued expenses of County; (C) unpaid claims or premiums relating to County's programs of unemployment and workers' compensation; (D) any gain on sale and any recapture that may be recognized under the Medicare, Medicaid and other third-party payor programs based on the transactions herein contemplated; (E) liabilities associated with any pension plan, state retirement or welfare benefit plan, or any other benefit plan or arrangement sponsored by, participated in or contributed to by County or Facility; (F) third-party payor settlements, retroactive adjustments, overpayments, recoupments, and fines, penalties, and assessments, if any, arising under the Medicare Program, the Medicaid Program, and/or other third-party payor programs; (G) liabilities or obligations arising out of any breach by County of any Contract (as hereinafter defined); (H) the professional liability claims or other claims for acts or omissions of County; (I) any liabilities with respect to the excluded assets set forth in Section 2 of this Agreement; and (J) any other liability related to the acts or omissions of County with respect to the Facility prior to the Closing Date, including any claims under Ohio Revised Code Chapters 4117 and 124.

4. **Nursing Home License; Provider Agreements; Medicare Provider Number.**

(A) The Parties acknowledge and agree that neither County nor Entering Operator is currently licensed to operate a nursing home, and that Entering Operator cannot assume operations at the Facility until Entering Operator is issued a nursing home license by the Ohio Department of Health ("ODH") to operate with at least eighty-seven (87)



licensed beds at the Facility (collectively, the "Licensure Contingency"). The Parties agree to proceed as follows with respect to the Licensure Contingency:

(1) Upon complete execution of this Agreement, Entering Operator covenants and agrees to complete and submit an initial nursing home licensure application with respect to the Facility within five (5) business days from the date of this Agreement. County agrees to provide reasonable assistance, cooperation, and information in connection with Entering Operator's initial nursing home licensure application, including, without limitation, providing the following documentation with respect to the Facility:

- 8 ½" x 11" schematic drawing that clearly shows the bath/toilet rooms, room numbers and number of beds in each room;
- Copy of the Facility's Certificate of Occupancy permit showing the appropriate 12 use group; and
- Copy of the facility's current State Fire Marshal Inspection report.

County also agrees to execute and file any and all forms, consents and applications required by the ODH to satisfy the Licensure Contingency. Entering Operator covenants and agrees to use commercially reasonable efforts to faithfully and diligently pursue the initial nursing home licensure application and shall promptly respond to and provide any additional information and/or documentation requested by ODH in connection with Entering Operator's initial nursing home licensure application.

(2) ODH will need to conduct a survey of the Facility and Entering Operator (the "Licensure Survey") in order to satisfy the Licensure Contingency. County agrees to provide reasonable assistance, cooperation, and information to facilitate the Licensure Survey, including, without limitation, providing access to the Facility and, if necessary, entering into a written agreement with Entering Operator so that ODH can survey Entering Operator's management of the Facility prior to the Closing Date.

(3) Entering Operator covenants and agrees to comply with the provisions of Ohio Revised Code Chapter 3721 and the regulations promulgated thereunder pertaining to the requirements for nursing home license applicants, as opposed to the physical building requirements in which the nursing home services are to be provided by the applicant (collectively, the "Licensure Requirements"). Entering Operator further covenants and agrees to take all actions necessary to comply with the Licensure Requirements

(B) Within the time frame required by applicable law, Entering Operator covenants and agrees to timely complete and submit a Medicare change of provider application to the Centers for Medicare and Medicaid Services ("CMS"), and a Medicaid change of provider application to the Ohio Department of Medicaid (the "ODM"), with respect to the Facility (collectively, the "Provider Agreement Applications"). County agrees to provide reasonable assistance, cooperation, and information in connection with the Provider Agreement Applications, including, without limitation, timely providing information reasonably requested by Entering Operator and executing and filing any and

all forms, consents and applications required by CMS or ODM as may be necessary to transfer or issue any provider agreement related to the operation of the Facility.

(C) As of the Closing Date, Entering Operator shall assume any and all of County's rights and interests in and to County's Medicare provider number and Medicare provider reimbursement agreement (collectively, the "Provider Agreement"). Entering Operator and County acknowledge and agree that Entering Operator is not expected to have received its "tie in" notice from CMS with respect to County's Medicare provider agreement or a new Medicare provider agreement as of the Closing Date. Entering Operator shall be permitted to bill under County's Medicare provider agreement and provider number during the period (the "Transition Period") that commences on the Closing Date and that ends on the earlier of (A) the issuance of the Medicare "tie in" notice, or (B) the date which is nine (9) months following the Closing Date. If, notwithstanding Entering Operator's continuing diligent and active pursuit of the "tie in" notices, any Medicare "tie in" notice shall not have been issued within such nine (9) month period, County, upon Entering Operator's written request, shall agree to such reasonable extensions of the Transition Period as may be necessary for Entering Operator to complete the certification process. All obligations, liabilities, claims, recoupments, penalties, or audit findings that arise under or relate to the Provider Agreement for periods prior to the Closing Date, shall remain the sole responsibility and liability of County, and County agrees to indemnify and hold Entering Operator harmless with respect thereto, subject to the limitation imposed by Section 14. All obligations, liabilities, claims, recoupments, penalties, or audit findings that arise under or relate to the Provider Agreement for periods on and after the Closing Date shall be the sole responsibility and liability of Entering Operator, and Entering Operator agrees to indemnify and hold County harmless with respect thereto. Entering Operator agrees that it will not bill for its services under County's Medicaid provider number. County agrees to cooperate with Entering Operator in the assignment of the Provider Agreement to Entering Operator and the issuance of a new Medicaid provider agreement to Entering Operator, including completing those portions of Form 855A which confirm the change of ownership of the Facility and the assignment by County of the Provider Agreement to Entering Operator and providing to Entering Operator or any governmental entity any information requested to effect the transfer of the Provider Agreement.

5. **Cost Reports.** County shall prepare and file (or cause its certified public accountants to prepare and file) with ODM and CMS County's final Medicaid and Medicare cost reports with respect to its operation of the Facility in accordance with applicable law, and shall thereafter timely provide (or cause its certified public accountants to timely provide) any additional information which may be requested by ODM and/or CMS with respect to such final cost report or any prior cost report. County hereby assigns, conveys and transfers to Entering Operator, as of the Closing Date, all bad debt carried on the books of the Facility arising from services to beneficiaries of the Medicare program (the "Bad Debt Claims"). Entering Operator agrees that, in connection with its cost reports submitted following the Closing Date and to the extent permitted by law, Entering Operator will include in all such cost reports, all such Bad Debt Claims. County agrees to provide

Entering Operator with such documentation and information in County's possession that is reasonably requested to include such Bad Debt Claims on such costs reports. On settlement of such amount under the Medicare Program, Entering Operator will promptly forward all amounts related to such Bad Debt Claims back to County. Entering Operator shall continue to include such bad debt amounts on its cost reports until reimbursement for such amounts is finally made or denied. Entering Operator shall fully cooperate with County and/or its consultants in the preparation of all cost reports and the processing of all billings and receivables related to County's operation of the Facility. County shall fully cooperate with Entering Operator and/or its consultants in the preparation of all cost reports and the processing of all billings and receivables related to Entering Operator's operation of the Facility. Furthermore, the Parties recognize and agree that County's final Medicare cost report cannot be filed until Entering Operator receives a tie-in notice from CMS or the applicable fiscal intermediary acting on behalf of CMS. Accordingly, Entering Operator covenants and agrees to prepare and submit, within the timeframes required by applicable law and at its sole cost and expense, all notices, forms, and applications, and make all other necessary filings, as required or appropriate under applicable law in connection with the transfer of operations at the Facility and in order for Entering Operator to become the dually-certified Medicare and Medicaid provider at the Facility as of the Closing Date.

**6. Employees.**

(A) County shall terminate all of County's employees at the Facility (including any such employees who are on medical disability or leaves of absence and who worked at the Facility immediately prior to such disability or leave) effective as of 11:59:59 p.m. EST on the date immediately preceding the Closing Date. County shall be solely responsible for the payment to all such employees of any and all accrued but unpaid salary and wages earned by such employees as of the Closing Date in accordance with County's policies and procedures. County does not represent or warrant to Entering Operator whether any employees of the Facility on and after the Closing Date will be deemed "public employees", as defined by Ohio Revised Code Section 145.01, or whether Entering Operator will be deemed an "employer", as defined by Ohio Revised Code Section 145.01, or whether the employees of the Facility and/or Entering Operator will be subject to the Public Employee Retirement System (commonly known as "PERS"). For Hired Employees (as hereinafter defined) who choose to continue to contribute to PERS ("Opt-In Employees"), County shall make all required employer contributions to PERS and each Opt-In Employee shall make all required employee contribution to PERS and any required contributions to the federal Social Security program, or shall reimburse Entering Operator for the forgoing contributions should Entering Operator be required to make such payments. Without limiting the foregoing, County shall be responsible to pay all PERS costs above and beyond payments that would have been required to be made by Entering Operator should any employee or employees have elected participation in Social Security, rather than PERS. Entering Operator shall fully cooperate with County and the Opt-In Employees in the administration of contributions to PERS, including, but not limited to, providing County with a list of Opt-In Employees upon request and notifying County when an Opt-In Employee retires or is no longer employed by Entering Operator. For the

avoidance of doubt, nothing in this Agreement authorizes Entering Operator or Purchaser to act as agent for or on behalf of County in the operation of the Facility.

(B) Entering Operator shall offer employment to such employees of County (including any such employees who are on medical disability or leaves of absence and who worked at the Facility immediately prior to such disability or leave) employed at the Facility on the date immediately preceding the Closing Date as Entering Operator so chooses in its sole discretion. All of such employees who accept employment with Entering Operator are hereinafter referred to as the "Hired Employees". Schedule 6(B) sets forth a complete and accurate list of all current employees employed at the Facility, including information as to salary, benefits, and paid time off benefits for each. Five (5) business days prior to the Closing Date, County shall provide Entering Operator with a complete and accurate written list of all then current employees employed at the Facility, including information as to salary, benefits, and paid time off benefits for each. Terms and conditions offered to Hired Employees will comport with the WARN Act (as hereinafter defined) so as to not constitute constructive discharge. County and Entering Operator acknowledge and agree that these provisions are designed solely to ensure that neither Party is required to give notice to the employees of a "mass layoff" under the Worker Adjustment and Retraining Notification Act, or under any comparable Ohio law (collectively, the "WARN Act"), and are not intended to create any rights in favor of any person who is not a party hereto, including the employees of County. In the event that any post-closing action of Entering Operator is determined to create obligations and/or liability under the WARN Act, Entering Operator agrees to indemnify County.

(C) By \_\_\_\_\_, 2018 (the "Due Diligence Expiration Date"), Entering Operator may choose to assume, in its sole discretion, the liability for one hundred percent (100%) of the earned and accrued unpaid vacation pay and sick pay of the Hired Employees, if any, that such Hired Employees are eligible to be paid as of the Closing Date (collectively, the "Pre-Closing Date Accrued Paid Time Off"). In the event Entering Operator elects to assume the liability for the Pre-Closing Date Accrued Paid Time Off, (i) upon receipt of the payment from County in an amount equal to the Pre-Closing Date Accrued Paid Time Off, Entering Operator shall be responsible for the Pre-Closing Date Accrued Paid Time Off of all Hired Employees on and after the Closing Date, and (ii) County shall pay to Entering Operator on the Closing Date the amount of the liability of such Pre-Closing Date Accrued Paid Time Off. Notwithstanding anything else herein to the contrary, the amount of the liability of any Pre-Closing Date Accrued Paid Time Off shall include the amount of any payroll Taxes associated therewith. In the event that Entering Operator elects not to assume the liability for the Pre-Closing Date Accrued Paid Time Off, County shall pay to each employee of the Facility, including the Hired Employees, on or prior to the first payroll date following the Closing Date, an amount equal to such employee's Pre-Closing Date Accrued Paid Time Off. County shall be responsible for paying or providing all applicable employees with all other benefits to be provided to such employees for all periods prior to the Closing Date. All Pre-Closing Date Accrued Paid Time Off payable to all employees shall be set forth in a document to be provided to Entering Operator by County at least fifteen (15) days prior the Closing Date, which shall identify amounts that are earned, accrued, and payable to each employee. For the

avoidance of doubt, in no event shall Entering Operator be liable for any earned and accrued unpaid vacation pay and sick pay of any employees of County employed at the Facility who are not Hired Employees or for PTO due to Hired Employees and not specifically identified and paid as Pre-Closing Date Accrued Paid Time Off. Notwithstanding the foregoing sentence, if County subsequently identifies and pays Entering Operator for PTO due to a Hired Employee that was not identified and paid due to an accounting error, then Entering Operator shall be liable for such Pre-Closing Date Accrued Paid Time Off.

(D) Entering Operator shall remain solely responsible for the satisfaction of all claims for medical, dental, life insurance, health, accident or disability benefits brought by or in respect of Hired Employees, dependents or beneficiaries thereof, which claims relate to events occurring on and after the Closing Date. Entering Operator shall offer health insurance sufficient to terminate COBRA rights. Entering Operator also shall remain solely responsible for all workers' compensation claims of any Hired Employees, which relate to events occurring on or after the Closing Date. County shall remain solely responsible for all workers' compensation claims of any Hired Employees, which are brought prior to the Closing Date. Entering Operator shall pay, or cause to be paid, all such amounts to the appropriate persons as and when due.

(E) To ensure continuity of care to residents, County shall provide Entering Operator an opportunity to meet with Facility employees and independently-contracted workers, in the following distinct groups (instead of on an individual basis), on a date that is no earlier than thirty (30) days prior to the Closing Date to discuss the transfer of operations contemplated hereunder: (a) the director of nursing at the Facility and the administrator at the Facility (the "Administrator"); (b) the management staff at the Facility; and (c) the remainder of the staff at the Facility. In addition to having access to the Administrator, as provided in the immediately preceding sentence, County will provide Entering Operator with additional reasonable access to communicate with the Administrator within the thirty (30) day period preceding the Closing Date to discuss the transfer of operations contemplated hereunder. The Parties acknowledge and agree that, notwithstanding anything to the contrary contained in this Section 6(E): (i) any and all access to, communication with, or requests of Facility employees, independently-contracted workers, or the Administrator must be coordinate with, and approved in advance by Erica L. Preston, or another individual designated in writing by County to Entering Operator (collectively, the "Representative"), as provided herein; (ii) any and all requests by or on behalf of Entering Operator to access, or communicate with, or make requests of Facility employees, independently-contracted workers, or the Administrator (each, a "Written Request for Access") must be submitted in writing in advance to the Representative for review and approval; and (iii) the Representative shall either approve or deny (by e-mail or otherwise) such Written Request for Access, with such approval not being unreasonably withheld by the Representative, within one (1) business day after the receipt of the Written Request for Access by the Representative.

(F) County represents that it is a party to, and gives notice thereof to Entering Operator, and Entering Operator acknowledges notice and receipt of, the collective bargaining agreement described in Schedule 6(F) attached hereto (the "CBA"). As of the

Closing Date and continuing thereafter for as long as required by law, Entering Operator does hereby recognize the union that is party to the CBA (the "Union") as the sole and exclusive bargaining representative for the classification of employees set forth in the CBA, shall not be bound by the terms of the existing CBA, and shall upon request negotiate in good faith a new CBA with the Union. However, the Parties understand and agree that Entering Operator has not agreed to assume any of County's collective bargaining agreements, nor has the Entering Operator agreed to adopt as initial terms and conditions, any of the provisions contained in any current or expired CBAs to which the County is a party.

7. **Revenues and Expenses.**

(A) County shall retain its right, title and interest in and to all unpaid accounts receivable with respect to the Facility and Transferred Assets which relate to the period prior to the Closing Date, as well as the sole right to collect the same, including, but not limited to, any accounts receivable arising from rate adjustments which relate to the period prior to the Closing Date, including workers' compensation rebates, even if such adjustments occur after the Closing Date and cost report settlements for all fiscal years prior to the Closing Date. Entering Operator agrees that it will cooperate and provide County with such information as County reasonably requests in connection with County's billing and collection of its accounts receivable. Entering Operator shall have all right, title and interest in and to all unpaid accounts receivable with respect to the Facility and Transferred Assets which relate to the period on and after the Closing Date, as well as the right to collect the same, including, but not limited to, any accounts receivable arising from rate adjustments which relate to the period prior, on and after the Closing Date and cost report settlements for all fiscal years on and after the Closing Date. In addition, County agrees that it will cooperate and provide Entering Operator with such information as Entering Operator reasonably requests in connection with Entering Operator's billing and collection of its accounts receivable.

(B) Payments received by Entering Operator on and after the Closing Date from third party payors (including, without limitation, Medicare and Medicaid), private pay residents and any other source shall be handled as follows:

(i) If such payments either specifically indicate on the accompanying remittance advice, or if the Parties agree, that they relate to the period prior to the Closing Date, they shall be forwarded to County, along with the applicable remittance advice, within five (5) days to the extent possible, but in no event later than ten (10) days, of receipt by Entering Operator.

(ii) If such payments indicate on the accompanying remittance advice, or if the Parties agree, that they relate to the period on or after the Closing Date, they shall be retained by Entering Operator.

(iii) If such payments indicate on the accompanying remittance advice, or if the Parties agree, that they relate to periods for which both Parties are entitled to

reimbursement under the terms hereof, the portion thereof which relates to the period on and after the Closing Date shall be retained by Entering Operator, and the balance shall be remitted to County as provided at Section 7(D), below, to the extent of any pre-Closing Date balances.

(iv) Except for payments related to the residents listed on Schedule 7(B)(iv) for a period of one (1) year following the Closing Date, any payments received by Entering Operator during the first sixty (60) days after the Closing Date from or on behalf of residents with outstanding balances as of the Closing Date which fail to designate the period to which they relate will first be applied to pre-Closing Date balances and paid over to County as provided at Section 7(D), below, with any excess applied to balances due for services rendered by Entering Operator on and after the Closing Date.

(v) Commencing upon the sixty-first (61<sup>st</sup>) day after the Closing Date, all non-designated payments will first be applied to any post-Closing Date balances, with the excess, if any, remitted to County and credited to pre-Closing Date balances.

(C) If the Parties mutually determine that any payment hereunder was misapplied by the Parties, the Party which erroneously received said payment shall remit the same to the other at the next scheduled reconciliation, as provided at Section 7(D), below. Nothing herein shall be deemed to limit in any way either Party's rights and remedies to recover accounts receivable due and owing under the terms of this Agreement.

(D) On or before the fifteenth (15<sup>th</sup>) day following the last business day of each month following the Closing Date, and extending through the first one hundred eighty (180) days after the Closing Date, Entering Operator will produce and provide to County an accurate and complete accounting and reconciliation of all funds received under Section 7(B) above (along with all supporting documentation). If the accounting performed hereunder results in a determination that Entering Operator owes money to County, such amount shall be paid by Entering Operator within a reasonable time following the date on which the accounting is sent to County. If the accounting performed hereunder results in a determination that County owes money to Entering Operator, such amount shall be paid by County within ten (10) business days of receipt of the accounting. Nothing in this Section 7 may be construed so as to create any obligation on behalf of Entering Operator to pursue collection of any accounts receivable of County, provided, however, that Entering Operator shall reasonably cooperate with County in its efforts with respect thereto.

#### **8. Patient Trust Funds.**

(A) Prior to the Closing Date, County shall provide Entering Operator with an accounting of all patient trust funds being held by County as of the most recent date available, which accounting shall be certified by County as being true, complete, and accurate (the "Trust Funds"). County, with the cooperation of Entering Operator, shall transfer the Trust Funds to a bank account designated by Entering Operator pursuant to the Assignment and Assumption of Trust Funds Agreement attached hereto as Exhibit D. On

the Closing Date, Entering Operator will assume all such obligations and be directly accountable to the residents of the Facility for the Trust Funds transferred to it. Within ten (10) business days after the Closing Date, the Parties shall true-up the Trust Funds as of the Closing Date, with County paying Entering Operator for any short-fall in the Trust Funds transferred as of the Closing Date, or Entering Operator paying County for any overpayments in the Trust Funds transferred as of the Closing Date.

(B) County will keep the bank account(s) into which resident social security payments are received for no less than ninety (90) days following the Closing Date, so as to provide Entering Operator time to make arrangements to have such payments directed to Entering Operator's accounts.

9. **Books and Records.**

(A) County shall cause the Designated Record Sets (as hereinafter defined) of the residents of the Facility to be (i) located at the Facility as of the Closing Date; (ii) transferred to Entering Operator as of the Closing Date; provided, however, that, notwithstanding anything to the contrary contained herein, County shall transmit to Entering Operator all resident care data (including, but not limited to, MDS records) contained in the Designated Record Sets prior to the Closing Date for the sole purpose of ensuring continuity of care of the residents of the Facility on and following the Closing Date; or (iii) if such records are stored offsite, Entering Operator and County shall mutually agree on the proper delivery of such records as of the Closing Date. Nothing herein shall be construed as precluding County from removing from the Facility the originals of business and financial records that relate to its operations at the Facility and/or its overall operations; provided, however, that County shall give Entering Operator and its agents and representative reasonable access to (upon reasonable prior notice and during normal business hours), and to make copies of, any such removed original records to the extent reasonably necessary to enable Entering Operator to, without limitation, investigate and defend employee or other claims, to file or defend tax returns or cost reports, to assist with the collection of and to verify accounts receivable, or for any other reasonable purpose.

(B) Subsequent to the Closing Date, Entering Operator shall allow County and its agents and representatives to have reasonable access to (upon reasonable prior notice and during normal business hours), and to make copies of, the books, records, files, and supporting documents of the Facility relating to any period prior to the Closing Date, including, but not limited to, the Designated Record Sets, to the extent reasonably necessary to enable County to, without limitation, investigate and defend employee or other claims, to file or defend tax returns or cost reports, to assist with the collection of and to verify accounts receivable, or for any other reasonable purpose.

(C) County shall be entitled to remove the originals of any records pursuant to Section 9(B), including, but not limited to, the Designated Record Sets, if an officer of a court of competent jurisdiction, agency official, or counsel for County certifies that such original must be produced in order to comply with applicable law or the order of a court of competent jurisdiction. A copy of any record so removed shall be made at County's



expense and left at the Facility until the original record is returned to the Facility. Any record so removed shall be promptly be returned to Entering Operator following its use.

(D) Entering Operator agrees to maintain in accordance with applicable laws, and shall not destroy without the prior written consent of County, such books, records, files, and supporting documents of the Facility relating to any period prior to the Closing Date, including, but not limited to, the Designated Record Sets.

(E) For purposes of this Section 9, the term "Designated Record Set" shall mean the group of records maintained by or for the Facility that consists of the MDS records for the eighteen (18) months immediately preceding the Closing Date, medical records and billing records of a resident (including, without limitation, any discharged residents), including any item, collection, or grouping of information (including Protected Health Information (as hereinafter defined)), that has been maintained, collected, used or disseminated by or for the Facility during the eighteen (18) months immediately preceding the Closing Date. For purposes of this definition, "Protected Health Information" means individually identifiable health information that is transmitted by or maintained in an electronic medium or transmitted or maintained in any other form or medium, including oral.

(F) Entering Operator shall deliver any invoices or mail (including faxes, e-mails, and courier deliveries) it receives belonging to County at least every two weeks; provided, however, that Entering Operator shall deliver any service of process pertaining to County within five (5) business days of receipt.

10. **Contracts.** Attached hereto is a true and complete list (Schedule 10) of all contracts, leases, and other agreements with vendors, residents, and other third parties relating to the Facility and to which County is a party ("Contracts"). County has delivered, true and correct copies of all Contracts to Entering Operator. At least thirty (30) days prior to the Closing Date, Entering Operator shall notify County of which Contracts Entering Operator desires to assume, in Entering Operator's sole and absolute discretion. If Entering Operator does not so notify County within such thirty (30) day period, such Contracts shall be deemed to not have been assumed by Entering Operator. County shall use commercially reasonable efforts to obtain the consent (each a "Required Consent" and collectively, the "Required Consents") of the vendors of each assumed Contract that requires consent to assignment and shall provide Entering Operator with periodic status reports with respect thereto.

11. **County's Representations and Warranties.** County represents and warrants to Entering Operator as follows:

(A) The execution, delivery and performance of this Agreement by County will not breach any statute or regulation of any governmental authority, and will not as of the Closing Date conflict with or result in a breach of or default under any of the terms, conditions or provisions of any order, writ, injunction, decree, agreement or instrument to which County is a party, or by which it or its property, may be bound.

(B) The execution, delivery and performance of this Agreement has been or will be at the Closing Date duly authorized by all necessary legal action of County and this Agreement constitutes the valid and binding obligation of County, enforceable in accordance with its terms.

(C) There is no suit, claim, action or legal, administrative, arbitration, or other proceeding or governmental investigation pending or threatened, by or against County, which could prevent the consummation of the transactions contemplated by this Agreement or adversely affect County's performance of the terms and conditions hereunder.

(D) As more particularly set forth on Schedule 11(D), County has received certain assurances from ODH that the Facility is able to be licensed to operate with at least eighty-seven (87) licensed beds at the Facility.

(E) County has furnished the Entering Operator with true, accurate and complete copies of all surveys, inspection reports, any waivers of deficiencies, plans of correction, and any similar investigation or examination reports relating to any inspections, investigations or examinations by any Governmental Body having jurisdiction over the Facility during the eighteen (18) month period preceding the Closing Date (collectively, the "Facility Surveys"), and such Facility Surveys do not contain any violations of any Laws applicable to it except as have been cured or addressed by a plan of corrective action or are expected to be corrected in the ordinary course of the survey process. All deficiencies and violations have been corrected or are expected to be corrected in the ordinary course of the survey process.

(F) The Facility (i) is not, and, within the three year period immediately preceding the Closing Date, has not been designated as a Special Focus Nursing Home Facility as defined by CMS Special Focus Nursing Home Facility Program, and (ii) has not received written notice, and County has no knowledge, that such action will or may be taken or that County or the Facility is under investigation or review with respect to the foregoing.

(G) County has not received any written notice of the commencement of any proceeding under federal Medicare and Medicaid statutes, 42 U.S.C. Sections 1320a-7, 1320a-7(a) and 1320a-7b, or the regulations promulgated pursuant to such statutes or related state or local statutes or regulations. County has not received written notice that with respect to the Facility it has been charged or implicated in any violation of any state or federal statute or regulation involving false, fraudulent or abusive practices relating to its participation in state or federally sponsored reimbursement programs, including but not limited to false or fraudulent billing practices.

(H) County is in substantial compliance, in all material respects, with all federal, state, and local statutes, regulations, rules, ordinances, charters, constitutions, codes, orders, decrees, or other requirements or laws (collectively, the "Laws"), and has timely

filed all reports, data and other information required to be filed with governmental authorities in connection with the Facility pursuant to such Laws, including, but not limited to, 42 U.S.C. § 1320a-7b(b), as amended (commonly known as the "Federal Anti-Kickback Statute"); 31 U.S.C. § 3729, as amended (commonly known as the "False Claims Act"); 42 U.S.C. § 1320d et seq., as amended (commonly known as "HIPAA" or the "Health Insurance Portability and Accountability Act of 1996"); the Health Information Technology for Economic and Clinical Health Act of 2009 (commonly known as "HITECH"); the Patient Protection and Affordable Care Act (commonly known as "PPACA"); the exclusion laws, SSA § 1128 (42 U.S.C. 1320a-7); the Federal TRICARE Statute; and any other applicable Laws governing arrangements among providers, patients and health care professionals or rules of professional conduct, relating to the regulation of the Facility. County has not received any written notice of, and to County's knowledge there is no investigation pending or threatened, asserting non-compliance with any Laws.

(I) County is not and, to any County's knowledge, no other party to any of the Contracts to be assumed by Entering Operator pursuant to this Agreement is in material breach or default, and, no event has occurred which with notice or lapse of time would constitute such a material breach or default, or permit termination, modification or acceleration under such Contract. County has not nor, to County's knowledge, has any other party to any of the Contracts to be assumed by Entering Operator repudiated any material provision of such Contracts.

(J) County has good and marketable title to, an enforceable leasehold interest in, or right to use, the Transferred Assets, and none of the Transferred Assets are subject to any Encumbrance other than Permitted Liens. Except as set forth on Schedule 11(J), all contractors, subcontractors and other persons furnishing work, labor, materials or supplies for the development and construction of the Facility and/or Transferred Assets have been paid, or prior to Closing shall be paid, whether the work is in progress or completed, for all work performed, material, supplies and the like up to and including the Closing Date, and there are no claims against County or the Facility, or any of the Transferred Assets in connection therewith which may give rise to a mechanic's lien against the Facility, the Transferred Assets or any portion thereto.

(K) Except as set forth on Schedule 11(K), there are no pending claims, nor, to County's knowledge, claims threatened, demands or other notices of or action alleging the overpayment of Medicaid, Medicare or other governmental or quasi-governmental reimbursements or demanding the return of such alleged overpayments by any third party payor, nor, to County's knowledge, are there any grounds for such claim or demand.

(L) Except as otherwise disclosed in Schedule 11(L), or as contemplated by this Agreement, since [DATE], (a) the business undertaken at the Facility has been conducted in all material respects in the ordinary course consistent with past practice, and (b) nothing has occurred which would constitute a Material Adverse Effect.

(M) Except as set forth on Schedule 11(M), County has not engaged, nor is County liable to pay any fees, costs or commissions to, any broker, finder, agent or financial advisor in connection with the transactions contemplated hereby.

(N) Except as set forth in Schedule 11(N), County is not a party to any collective bargaining agreement with any labor union or similar organization related to the operation of the Facility, nor does County have knowledge of any such organization which represents or claims to represent any of the Facility's employees or intends to organize any of the Facility's employees.

(O) Except as set forth in Schedule 11(O), all employees of County employed at the Facility are classified "non-exempt" employees.

(P) Except as set forth on Schedule 11(P), neither County nor Facility is or ever has been a party to, participates in, has participated in, or has any liability or contingent liability with respect to, any of the following as they relate to the current employees employed at the Facility: (i) any employee benefit plan including, but not limited to, any medical, vision, dental, life insurance, disability or other welfare plan, or any profit sharing, pension or collectively bargained plan; (ii) any retirement or deferred compensation plan, incentive compensation plan, stock plan, unemployment compensation plan, vacation pay, severance pay, bonus or benefit arrangement, insurance or hospitalization program or any other fringe benefit arrangements for any current or former employee, director, consultant or agent, whether pursuant to contract, arrangement, custom or informal understanding, written or unwritten; or (iii) any fringe benefit plans, as that term is defined in Section 6039D(d) of the Code (collectively, the "Employee Plans"), and under no circumstances will Entering Operator have any liability with respect to any Employee Plan.

(Q) All Employee Plans maintained by County or Facility are governmental plans as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) and are exempt from Titles I and IV of ERISA, and nothing has occurred that would cause such Employee Benefit Plans to be subject to ERISA. Except as otherwise set forth in Schedule 11(Q), neither County nor Facility is or has been a participant in, or is or has been obligated to maintain or to make contributions to, a collectively bargained pension or welfare plan. Neither County nor Facility has incurred any withdrawal liability, nor do any of them have any potential withdrawal liability. Neither County nor Facility has sponsored, contributed to or been obligated to contribute to a "defined benefit plan" or a plan that was ever subject to Sections 412 or 430 of the Code, and under no circumstances will Entering Operator have any liability with respect to any Employee Plan maintained by County or Facility, regardless of whether such Employee Plan relates to the current employees employed at the Facility.

(R) None of the Employee Plans promises or provides medical, life or other welfare benefits to any current or future retired employees, managers, members or directors (or any spouse or dependents thereof), except as required by the Consolidated Omnibus Budget Reconciliation Act (COBRA).

(S) County and Facility have complied in all respects with the notice and continuation coverage requirements of Section 4980B of the Code and the regulations thereunder with respect to each Employee Plan that is a group health plan within the meaning of Section 5000(b)(1) of the Code. Each Employee Plan that is a group health plan is in material compliance with the PPACA and the Health Care and Education Reconciliation Act, to the extent applicable. County shall be responsible for providing COBRA Notices and COBRA continuation healthcare coverage for all "M & A Qualified Beneficiaries" (as that term is defined in Section 4980B of the Code and Title 6 of ERISA and the regulations thereafter) in connection with the transaction.

(T) All Tax Returns required to be filed by County in connection with its ownership or operation of the Facility on or before the date hereof have been timely filed with the appropriate federal, state or municipal governmental agency or authority in all jurisdictions in which such Tax Returns are required to be filed, and all Taxes shown as due in connection therewith have been paid. All Taxes which have become due or payable or are required to be collected by County or are otherwise attributable to any periods ending on or before the Closing Date and all interest and penalties thereon, whether disputed or not, have been paid or will be paid in full or adequately reflected in County's books and records in accordance with generally accepted accounting principles on or prior to the Closing Date. All deposits required by law to be made by County with respect to employees' withholding Taxes have been duly made, and, as of the Closing Date, all such deposits due will have been made. All Taxes that County is or was required by Law to withhold, deduct or collect have been duly withheld, deducted and collected and, to the extent required, have been paid to the proper federal, state or municipal governmental agency or authority or other person. No examination of any Tax Return of County is currently in progress. There are no outstanding agreements or waivers extending the statutory period of limitations applicable to any such Tax Return. There are no Encumbrances for Taxes upon the Transferred Assets other than statutory liens for Taxes not yet due or payable.

(U) To County's knowledge, there exists no defective condition, structural or otherwise, with respect to the Facility that would reasonably be considered to have a material adverse effect on Entering Operator's ability to operate the Facility as a skilled nursing facility. In addition, County has not received any written notice from any insurance company which has issued a policy with respect to the Facility 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 Facility or suggesting or requesting the performance of any repairs, alterations or other work to the Facility.

(V) There is a sprinkler system at the Facility that is in material operational compliance with all applicable requirements.

(W) The schedule of patient trust funds to be attached to Exhibit D at Closing is true and accurate in all material respects.

12. **Entering Operator's Representations and Warranties.** Entering Operator represents and warrants to County as follows:

(A) Entering Operator is a limited liability company duly organized, validly existing and in full force and effect under the laws of the State of Ohio. The execution, delivery and performance of this Agreement will not violate any provision of Entering Operator's Articles of Organization or other governing documents.

(B) The execution, delivery and performance of this Agreement by Entering Operator will not breach any statute or regulation of any governmental authority, and will not as of the Closing Date conflict with or result in a breach of or default under any of the terms, conditions or provisions of any order, writ, injunction, decree, agreement or instrument to which Entering Operator is a party, or by which it or its property, may be bound.

(C) The execution, delivery and performance of this Agreement has been or will be at the Closing Date duly authorized by all necessary individual, corporate, member and/or partner action of Entering Operator and this Agreement constitutes the valid and binding obligation of Entering Operator, enforceable in accordance with its terms.

(D) There is no suit, claim, action or legal, administrative, arbitration, or other proceeding or governmental investigation pending or threatened, by or against Entering Operator, which could prevent the consummation of the transactions contemplated by this Agreement or adversely affect Entering Operator's performance of the terms and conditions hereunder.

13. **Conditions Precedent to Closing Date.**

(A) The obligations of County to consummate the transactions contemplated under this Agreement are (unless waived in writing by County) subject to the satisfaction of all of the following conditions at or before the Closing Date:

(1) Each of the representations and warranties of Entering Operator set forth in this Agreement as of the date of execution of this Agreement shall be true, complete and correct as of the date of the Closing Date as if made at that time, and Entering Operator shall have delivered its certificate to such effect.

(2) Entering Operator shall have performed and complied with all agreements, undertaking, obligations, and covenants which are required to be performed or complied with by it at or prior to the Closing Date, and shall have delivered to County its certificate to such effect.

(3) As of the Closing Date, Entering Operator shall deliver or cause to be delivered any documents required to be delivered by Entering Operator under this Agreement.

(4) No notice shall have been received as to litigation commenced or threatened against any Party, by any person, firm, corporation, or other entity or enterprise, or any governmental agency or authority with regard to this Agreement, or the transactions provided for in this Agreement, and Entering Operator shall have delivered to County its certificate to such effect.

(5) The P&SA shall close immediately prior, or simultaneously with, this Agreement.

(6) All legal matters in connection with this Agreement and the transactions contemplated hereby, and the form and substance of all legal proceedings and papers, instruments, and documents used or delivered herewith, or incident hereto, shall be reasonably satisfactory to counsel for County.

(B) The obligations of Entering Operator to consummate the transactions contemplated under this Agreement are (unless waived in writing by Entering Operator) subject to the satisfaction of all of the following conditions at or before the Closing Date:

(1) Each of the representations and warranties of County set forth in this Agreement as of the date of execution of this Agreement shall be true, complete and correct as of the date of the Closing Date as if made at that time, and County shall have delivered its certificate to such effect.

(2) County shall have performed and complied with all agreements, undertaking, obligations, and covenants which are required to be performed or complied with by it at or prior to the Closing Date, and shall have delivered to Entering Operator its certificate to such effect.

(3) As of the Closing Date, County shall deliver or cause to be delivered any documents required to be delivered by County under this Agreement.

(4) No notice shall have been received as to litigation commenced or threatened against any Party, by any person, firm, corporation, or other entity or enterprise, or any governmental agency or authority with regard to this Agreement, or the transactions provided for in this Agreement, and County shall have delivered to Entering Operator its certificate to such effect.

(5) The Licensure Contingency shall be satisfied.

(6) The P&SA shall close immediately prior, or simultaneously with, this Agreement.

(7) Purchaser and Entering Operator shall have executed the Entering Operator Lease by the Due Diligence Expiration Date.

(8) A Material Adverse Effect shall not have occurred.

(9) All legal matters in connection with this Agreement and the transactions contemplated hereby, and the form and substance of all legal proceedings and papers, instruments, and documents used or delivered herewith, or incident hereto, shall be reasonably satisfactory to counsel for Entering Operator.

14. Indemnification.

(A) County shall, to the extent permitted by law and subject to the limitations provided in Section 14(D), at Entering Operator's request, defend, indemnify and hold Entering Operator and its shareholders, members, partners, officers, directors, managers, affiliates, and agents (collectively, the "Entering Operator Indemnified Parties") harmless against, and reimburse Entering Operator's Indemnified Parties on demand for, any and all demands, claims, losses, liabilities, settlements, penalties, fines, obligations, actions, proceedings, judgments, costs and expenses (including attorneys' fees and expenses) (collectively, "Losses") incurred by Entering Operator's Indemnified Parties resulting from (i) any breach of County's representations or warranties in this Agreement, (ii) any breach of County's covenants in this Agreement, including, without limitation, Section 8(A) of this Agreement, or (iii) the Excluded Liabilities.

(B) Entering Operator shall, at County's request, defend, indemnify and hold County's board of commissioners, elected officials and employees (collectively, "County's Indemnified Parties") harmless against, and reimburse County's Indemnified Parties on demand for, any Losses incurred by County's Indemnified Parties resulting from any breach of Entering Operator's representations, warranties or covenants in this Agreement.

(C) The respective indemnification obligations of County and Entering Operator pursuant to this Section 14 shall be conditioned upon compliance by County and Entering Operator with the following procedures for indemnification claims based upon or arising out of any claim, action or proceeding by any person not a party to this Agreement:

(1) If at any time a claim shall be made or threatened, or an action or proceeding shall be commenced or threatened, against an Entering Operator Indemnified Party or a County Indemnified Party (an "Aggrieved Party") which could result in liability of the other Party (the "Indemnifying Party") under its indemnification obligations hereunder, the Aggrieved Party shall give to the Indemnifying Party prompt notice of such claim, action or proceeding. Such notice shall state the basis for the claim, action or proceeding and the amount thereof (to the extent such amount is determinable at the time when such notice is given) and shall permit the Indemnifying Party to assume the defense of any such claim, action or proceeding (including any action or proceeding resulting from any such claim). Failure by the Indemnifying Party to notify the Aggrieved Party of its election to defend any such claim, action or proceeding within a reasonable time, but in no event more than thirty (30) days after notice thereof shall have been given to the Indemnifying Party, shall be deemed a waiver by the Indemnifying Party of its right to defend such claim, action or



proceeding; provided, however, that the Indemnifying Party shall not be deemed to have waived its right to contest and defend against any claim of the Aggrieved Party for indemnification hereunder based upon or arising out of such claim, action or proceeding.

(2) If the Indemnifying Party assumes the defense of any such claim, action or proceeding, the obligation of the Indemnifying Party as to such claim, action or proceeding shall be limited to taking all steps necessary in the defense or settlement thereof and, provided the Indemnifying Party is held to be liable for indemnification hereunder, to holding the Aggrieved Party harmless from and against any and all Losses caused by or arising out of any settlement approved by the Indemnifying Party or any judgment or award rendered in connection with such claim, action or proceeding. The Aggrieved Party may participate, at its expense, in the defense of such claim, action or proceeding provided that the Indemnifying Party shall direct and control the defense of such claim, action or proceeding. The Aggrieved Party agrees to cooperate and make available to the Indemnified Party all books and records and such officers, employees and agents as are reasonably necessary and useful in connection with the defense. The Indemnifying Party shall not, in the defense of such claim, action or proceeding, consent to the entry of any judgment or award, or enter into any settlement, except in either event with the prior consent of the Aggrieved Party, which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Aggrieved Party of a release from all liability in respect of such claim, action or proceeding.

(3) If the Indemnifying Party does not assume the defense of any such claim, action or proceeding, the Aggrieved Party may defend against such claim, action or proceeding in such manner as it may deem appropriate. The Indemnifying Party agrees to cooperate and make available to the Aggrieved Party all books and records and such officers, employees and agents as are reasonably necessary and useful in connection with the defense. If the Indemnifying Party, within fifteen (15) days after notice shall have been given to it by the Aggrieved Party of the latter's intention to effect a settlement of any such claim, action or proceeding, which notice shall describe with particularity the terms of any such proposed settlement, shall not deposit with an escrowee mutually satisfactory to the Aggrieved Party and the Indemnifying Party a sum equivalent to the total amount demanded in such claim, action or proceeding or deliver to the Aggrieved Party a surety bond or an irrevocable letter of credit for such sum in form and substance reasonably satisfactory to the Aggrieved Party, then the Aggrieved Party may settle such claim, action or proceeding on the terms detailed in its notice to the Indemnifying Party, and the Indemnifying Party shall be deemed to have agreed to the terms of such settlement and shall not thereafter in any proceeding by the Aggrieved Party for indemnification question the propriety of such settlement. If the Indemnifying Party makes an escrow deposit or delivers a surety bond or letter of credit as aforesaid and thereafter the Aggrieved Party settles such claim, action or proceeding, then in any proceeding by the Aggrieved Party for indemnification in the event the Indemnifying Party is held liable for indemnification thereunder, the Aggrieved Party shall have the burden of proving the amount of such liability of the Indemnifying Party, and the amount of the payments made in settlement of any claim, action or proceeding shall not be determinative as between the Aggrieved Party

and the Indemnifying Party of the amount of such indemnification liability, except that the amount of the settlement payments shall constitute the maximum amount of the indemnification liability of the Indemnifying Party with respect to such claim, action, or proceeding. Such escrow deposit, surety bond or letter of credit shall by their respective terms be payable to the Aggrieved Party in an amount determined in accordance with the last sentence of this paragraph (C) provided that the Indemnifying Party is held liable for indemnification hereunder. If the Indemnifying Party neither makes an escrow deposit nor delivers a surety bond or letter of credit as aforesaid, so that no settlement of such claim, action or proceeding is effected, in any proceeding by the Aggrieved Party for indemnification in the event the Indemnifying Party is held liable for indemnification hereunder, such liability shall be for the amount of any judgment or award rendered with respect to such claim or in such action or proceeding and of all expenses, legal and otherwise, incurred by the Aggrieved Party in the defense against such claim, action or proceeding.

(D) Notwithstanding any other provision of this Agreement, the maximum amount of Losses for which County may be responsible under Section 14(A)(i) of this Agreement and Section 14(b)(i) of the P&SA shall not exceed, in the aggregate, the maximum dollar amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00) (the "Indemnity Cap"); provided that the Indemnity Cap shall not apply to any Losses arising from fraud committed by County. The Indemnity Cap shall be withheld from the Purchase Price (as defined in the P&SA) as provided in Section 11(d) of the P&SA.

15. **Utilities.** County shall arrange for a final statement with respect to all utilities serving the Facility prior to the Closing Date and shall pay all costs identified thereon, less any prepaid expenses and/or deposits held by utility providers in the name of County. Entering Operator shall arrange for all such utilities to be billed in its name on and after the Closing Date, and shall pay all fees due therefor on and after the Closing Date.

16. **Notices.** All notices, demands and requests contemplated hereunder by either Party to the other shall be in writing, and shall be deemed given when delivered by hand, or national recognized overnight courier, telephonic facsimile (fax), emailed or mailed, postage prepaid, registered, or certified mail return receipt requested:

If to Entering Operator: ALS AUGLAIZE ACRES OPERATING, INC.,  
3546 Dunfee Road  
Coolville, Ohio 45723  
Attn: Bryan Casey  
Phone: (740) 350-9095  
Email: bryan@daybreakohio.com

With a Copy to: Taft, Stettinius & Hollister, LLP  
200 Public Square, Suite 3500  
Cleveland, Ohio 44114  
Attn: Eric M. Simon

Phone: (216) 241-2838  
Email: esimon@taftlaw.com

And to: AUGLAIZE HOLDINGS LLC  
31100 Solon Road, Suite 9  
Solon, Ohio 44139  
Attn: Elliott Jacobs and Joel Goldman  
Phone: (440) 248-3722  
Email: ejacobs@j-dek.com and  
Email: jgoldman@j-dek.com

With a Copy to: Ulmer & Berne LLP  
1660 West 2<sup>nd</sup> Street, Suite 1100  
Cleveland, Ohio 44118  
Attention: Daniel A. Gottesman, Esq.  
Phone: (216) 583-7166  
Fax: (216) 583-7167  
Email: dgottesman@ulmer.com

If to County: Auglaize County Commissioners  
209 S. Blackhoof Street, Room 201  
Wapakoneta, Ohio 45895  
Attention: Board President  
Phone: (419) 739-6710  
Fax: (419) 639-6711  
Email: commissioners@auglaizecounty.org

With a Copy to: Rolf Goffman Martin Lang LLP  
30100 Chagrin Boulevard  
Cleveland, Ohio 44124-5705  
Attention: Paul A. Lang, Esq.  
Phone: (216) 682-2135  
Fax: (216) 682-2135  
Email: lang@rolflaw.com

or such other address, and to the attention of such other person as either Party may designate by written notice.

17. **Waiver**. Any waiver by any part of any act, failure to act or breach on the part of the other Party shall not constitute a waiver by such waiving Party of any prior or subsequent act, failure to act or breach by such other Party.

18. **Severability**. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or

circumstance shall, for any reason and to any extent, be invalid or unenforceable, but the extent of such invalidity or unenforceability does not destroy the basis of the bargain among the Parties as expressed herein, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

19. **Binding Effect; Assignment.** This Agreement shall inure to the benefit of, and shall be binding upon County and Entering Operator, and their respective successors and assigns, and shall not be assigned without the prior written consent of the other party.

20. **Governing Law.** This Agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of Ohio.

21. **Captions and Headings.** The captions and headings of this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

22. **Entire Agreement.** This Agreement evidences the entire agreement of the Parties hereto with respect to the subject matter hereof. Any amendments or modifications of this Agreement shall not be effective except in writing executed by all of the Parties hereto.

23. **Interpretation, No Presumption.** It is acknowledged by the Parties that this Agreement has undergone several drafts with the negotiated suggestions of both and, therefore, no presumptions shall arise favoring either Party by virtue of the authorship of any of its provisions.

24. **Further Assurances.** The Parties hereto covenant and agree to promptly execute and deliver such additional documents and instruments and promptly take such additional action as the other Party may at any time, and from time to time, reasonably request in order to give effect to or carry out the terms or intent of this Agreement.

25. **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

26. **Counterparts; Facsimile or E-Mail Execution.** This Agreement may be executed in any number of counterparts, all of which taken together shall be deemed to be an original. Signatures transmitted by facsimile or e-mail shall have the same effect as original signatures.

27. **Gender and Number.** Whenever the context hereof requires, the gender of all words shall include the masculine, feminine, and neuter, and the number of all words shall include the singular and plural.

28. **Survival of Representations and Warranties.** Except as specifically provided otherwise in this Agreement, all representations and warranties of County and Entering Operator shall survive the execution of this Agreement.

29. **Incorporation of Recitals, Schedules and Exhibits.** The aforesaid Recitals are hereby incorporated into this Agreement as if fully set forth herein. All Schedules and Exhibits to this Agreement are hereby incorporated into this Agreement as if fully set forth herein.

30. **Consent to Jurisdiction.** Each party hereto hereby irrevocably submits to the exclusive jurisdiction of any Ohio state court sitting in Auglaize County, Ohio, and in the case of Federal jurisdiction, of the United States District Court of Ohio, Northern District, Western Division, over any action or proceeding arising out of or relating to this Agreement.

31. **Litigation.** Subject to the limitations imposed by Section 14(D) of this Agreement, in the event of litigation between the parties with respect to this Agreement, the transaction contemplated hereby, the performance of their obligations (in whole or in part) hereunder or the effect of a termination hereunder, the prevailing party shall be entitled to reimbursement from the non-prevailing party for the prevailing party's costs and expenses incurred in connection with such litigation, including reasonable attorneys' fees. Notwithstanding any provision of this Agreement to the contrary, the obligations of the parties under this Section 31 will survive the Closing Date or any termination of this Agreement.

32. **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings (all terms used in this Agreement which are not defined in this paragraph shall have the meanings set forth elsewhere in this Agreement):

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Encumbrances" shall mean liens, mortgages, pledges, deeds of trust, security interests, charges, encumbrances and other adverse claims or interests of any kind.

"Material Adverse Effect" shall mean any event, change, development or occurrence that has had or would reasonably be expected to have a material and adverse effect on the operations, condition (financial or otherwise) or results of operations of the County or the Facility taken as a whole, specifically excluding any such event, change, development or occurrence attributable to or resulting from (i) any change in any Law or the interpretation thereof, (ii) any change in any accounting standard or the interpretation thereof, (iii) any events, changes, developments or occurrences generally affecting the industries in which County operates, (iv) general economic, political or market conditions, (v) any disasters, calamities, emergencies, acts of war, sabotage or terrorism (or an escalation or worsening of any of the foregoing), or (vi) any breach by Entering Operator of this Agreement, but specifically including (and not subject to items (i) – (v) above), (w) if the resident census at the Facility as of the Closing Date falls below fifty (50) residents,

(x) following the date hereof, the loss of any licensure, certification or other material permit necessary to operate the Facility as a skilled nursing facility, (y) following the date hereof, the designation of the Facility as a Special Focus Nursing Home Facility as defined by the CMS Special Focus Nursing Home Facility Program; or (z) following the date hereof, the decertification of County or the Facility from or under Medicare, Medicaid or any other governmental health care program.

*"Permitted Liens"* shall mean (i) statutory liens that are in the aggregate less than \$10,000, which were incurred in the ordinary course of business and are not yet due and payable and (ii) liens to be paid off at or prior to Closing.

*"Tax"* or *"Taxes"* means any and all (a) domestic or foreign, federal, state or local taxes, charges, fees, levies, imposts, escheat for unclaimed property, duties and governmental fees or other like assessments or charges of any kind whatsoever, including income taxes (whether imposed on or measured by net income, gross income, income as specially defined, earnings, profits, or selected items of income, earnings, or profits), capital taxes, gross receipts taxes, environmental taxes, sales taxes, use taxes, value added taxes, goods and services taxes, accumulated earnings taxes, fuel taxes, transfer taxes, franchise taxes, license taxes, withholding taxes or other withholding obligations, payroll taxes, employment taxes, excise taxes, severance taxes, social security premiums, workers' compensation premiums, employment insurance or compensation premiums, stamp taxes, occupation taxes, premium taxes, ad valorem taxes, property taxes, windfall profits taxes, alternative or add-on minimum taxes, franchise permit fee or "bed taxes," and customs duties, (b) interest, penalties, fines, additions to tax or additional amounts imposed by any taxing authority in connection with (i) any item described in clause (a) or (ii) the failure to comply with any requirement imposed with respect to any Tax Returns and (c) liabilities in respect of any items described in clause (a) or clause (b) payable by reason of contract, assumption, transferee liability, operation of law or otherwise.

*"Tax Return"* means any report, return, statement or other written information, including any schedules or attachments thereto and any amendment thereof, supplied or required to be supplied to a taxing authority in connection with Taxes.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this instrument as of the date first above written.

**COUNTY:**

County of Auglaize, Ohio

By: Douglas A. Spencer  
Name: Douglas A. Spencer  
Title: Commissioner

By: Don R. Rubin  
Name: Don R. Rubin  
Title: County Commissioner

By: John W. Benjamin  
Name: John W. Benjamin  
Title: County Commissioner

**ENTERING OPERATOR:**

ALS AUGLAIZE ACRES OPERATING, INC., an Ohio corporation

By: [Signature]  
Name: J. S. Dickerson  
Title: Director

## **SCHEDULE AND EXHIBIT LIST**

<b><u>Exhibit</u></b>	<b><u>Subject Matter</u></b>
A	Bill of Sale
B	Assignment and Assumption of Contracts Agreement
C	Excluded Assets
D	Assignment and Assumption of Trust Funds
<b><u>Schedule</u></b>	<b><u>Subject Matter</u></b>
2(F)	Non-Transferable Software and Vendor-Owned Personal Property
6(B)	Employees
6(F)	Collective Bargaining Agreement
7(B)(iv)	Exiting Operator AR Residents
10	Contracts
11(D)	ODH License Assurance
11(J)	Liens
11(K)	Overpayments
11(L)	Absence of Changes
11(M)	Brokers
11(N)	Unions
11(O)	Category of Employees
11(P)	Employee Plans
11(Q)	Multiemployer Plans



**EXHIBIT A**  
**BILL OF SALE**  
**(see attached.)**

**EXHIBIT B**

**ASSIGNMENT AND ASSUMPTION OF CONTRACTS AGREEMENT**

**(see attached.)**

**EXHIBIT C**  
**EXCLUDED ASSETS**  
**(see attached.)**

**EXHIBIT D**  
**ASSIGNMENT AND ASSUMPTION OF TRUST FUNDS**  
**(see attached.)**

**IN THE MATTER OF DOCUMENTING THE RECEIPT OF BIDS FOR THE PURCHASE OF A BALER AND FEED CONVEYOR FOR USE AT THE AUGLAIZE COUNTY RECYCLE CENTER; AWARDING THE PURCHASE FROM A & L COMPACTION.**

\*\*\*\*\*

The Board of Auglaize County Commissioners met in regular session on the 7th day of August, 2018.

Commissioner Regula moved the adoption of the following:

**RESOLUTION**

**WHEREAS**, on July 10, 2018, Resolution #18-270 the Board of County Commissioners set August 2, 2018 at 10:00 a.m. as the date to receive bids for the purchase of a baler and feed conveyor to be used at the Auglaize County Recycle Center; and,

**WHEREAS**, the following bids were received:

From: A & L Compaction \$299,794.90;  
Hoosier Machinery Solutions \$605,564.05; and,  
Estimate was \$304,490.00; and,

**WHEREAS**, the bid was given to the Solid Waste Coordinator Scott Cisco for review and comparison and upon review of the bids, as received, the Mr. Cisco recommended the award for the purchase of the baler and feed conveyor to A & L Compaction as its bid is the best and lowest bid.

**THEREFORE, BE IT RESOLVED** that the Board of County Commissioners, Auglaize County, Ohio, does hereby award the bid for the purchase of the baler and feed conveyor to A & L Compaction in the amount of \$299,794.90; and,

**BE IT FURTHER RESOLVED** that the Solid Waste Coordinator Scott Cisco is hereby directed to prepare all the necessary documents, having secured the signatures of said bidder and its surety present the same to the Board of County Commissioners for approval and execution.

Commissioner Bergman seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the resolution as follows:

Adopted this  
7th day of  
August, 2018

BOARD OF COUNTY COMMISSIONERS  
AUGLAIZE COUNTY, OHIO

Douglas A. Spencer Yes  
Douglas A. Spencer

Don Regula yes  
Don Regula

John N. Bergman yes  
John N. Bergman

cc: Solid Waste Coordinator  
✓ Bidders