

IN THE MATTER OF ACCEPTING THE "PRAIRIE CREEK BRANCH #2 DITCH" INTO THE COUNTY DITCH PERMANENT MAINTENANCE PROGRAM; ESTABLISHING A PRAIRIE CREEK #2 DITCH MAINTENANCE FUND WITH THE COUNTY AUDITOR.

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The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 12th day of July, 2012.

Commissioner Bergman moved the adoption of the following:

**RESOLUTION**

WHEREAS, the Prairie Creek Branch #2 county ditch consists of 1200 feet of open ditch draining a 455 acre watershed in Section 30 in Logan Township; and,

WHEREAS, the property owners within the watershed have reconstructed said open ditch to the specifications of the County and the Auglaize SWCD has prepared plans, a watershed boundary map and a schedule of landowners reflecting parcel assessments within the 455 acre watershed; and,

WHEREAS, the property owners have requested the Prairie Creek Branch #2 County Ditch to be placed under a permanent maintenance plan as prescribed under Section 6137 of the Ohio Revised Code;

WHEREAS, all property owners within the Prairie Creek Branch #2 County Ditch watershed were notified of their permanent maintenance assessment base and were invited to a public hearing was held by the Auglaize County Commissioners at their chambers on July 10, 2012 at 9:00 a.m.; and,

WHEREAS, at said public hearing, Don Shively and Ron Schwartz were the only landowners in attendance, and the Auglaize County Commissioners feel the need and long term benefits would be advantageous to the landowners and are in favor of the maintenance plan.

THEREFORE BE IT RESOLVED, the Auglaize County Commissioners does hereby accept the Prairie Creek Branch #2 Single County Ditch for permanent maintenance and this will provide a long term benefit and be conducive to the public welfare of those landowners within the watershed as prescribed under Section 6137 of the Ohio Revised Code; file the plans with the Auglaize County Engineer; the schedule of landowners with the Auglaize County Auditor to establish the assessment base for future collections; accept two checks for a total of \$200 to be deposited in the Prairie Creek Branch #2 Ditch permanent ditch maintenance fund.

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

Adopted this  
12th day of  
July, 2012

BOARD OF COUNTY COMMISSIONERS  
AUGLAIZE COUNTY, OHIO

<u>Douglas A. Spencer</u>	<u>Yes</u>
Douglas A. Spencer	
<u>Don Regula</u>	<u>yes</u>
Don Regula	
<u>John N. Bergman</u>	<u>yes</u>
John N. Bergman	

cc: County Engineer  
Auglaize County Auditor

**IN THE MATTER OF AUTHORIZING AN EXTENSION OF TIME TO COMPLETE THE MIAMI & ERIE PHASE #2 CANAL PROJECT.**

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The Board of Auglaize County Commissioners met in regular session on the 12th day of July, 2012.

Commissioner Bergman moved the adoption of the following:  
**RESOLUTION**

**WHEREAS**, on January 4, 2011, Resolution #11-005, the Board of County Commissioners approved the contract and bond with Tumbusch Construction for the construction of the Miami & Erie Canal Project Phase #1 Canal improvement, setting a completion date for said project of December 31, 2011; and,

**WHEREAS**, on July 5, 2012, the following correspondence was submitted by Douglas Reinhart, Auglaize County Engineer to the Board of County Commissioners:  
Board of Auglaize County Commissioners  
IN RE: Miami & Erie Canal Petition

Phase 8 of the Miami & Erie Canal Petition, from First Street to Seventh Street, has been completed. Of the 13 bids received for Phase I, Tumbusch Construction was determined to be the lowest and best and awarded the contract 34% below the engineer's estimate. Tumbusch's work on Phase I was timely, professionally done and completed under the estimated quantities.

The completion of Phase II (7<sup>th</sup> Street to SR#19) of the Miami and Erie Canal petition was based upon the delivery and leveling of 30,000 cubic yards of fill from private contractors completing other projects. At the time of the hearings, the completion date of Phase II was only an estimate, due to the reliance of the needed fill.

That fill has been delivered, leveled and sloped to the needed gradients and it is time now to move forward with the completion of Phase II which includes the placement of 5,000 tone of rip-rap and leveling/seeding 5.5 acres of berm.

Since the original bid of Phase I, awarded in December of 2010, the price or rip-rap from the stone quarry has risen along with the cost of diesel fuel to deliver said stone and operate the needed excavator to place the rip-rap.

Even with these increases, Tumbusch has agreed to honor the unit prices per ton for the rip-rap and per acre price for the leveling/seeding as shown on their original bid for Phase I.

Based upon the excellent work previously completed by Tumbusch on Phase I and the fact the company's willing to honor their 18+ month old prices submitted and awarded at a competitive bid, I am requesting the Commissioners agree to extend the existing contract with Tumbusch Construction and complete Phase II at the same unit prices Phase I was constructed at. With this contract extension, Phase II will be completed yet this fall of 2012.

**THEREFORE, BE IT RESOLVED** that the Board of County Commissioners, Auglaize County, Ohio, does hereby grant the request for the extension of time to complete the Miami & Erie Canal Project to October 31, 2012; and,

**BE IT FURTHER RESOLVED** that the contractor's bond and securities for this project shall remain liable as if such extended time had been originally named in the bond and/or contract.

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

Adopted this  
12th day of  
July, 2012

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: County Engineer

**IN THE MATTER OF AUTHORIZING QUARANTINE FEES OF BITING ANIMALS FOR AUGLAIZE COUNTY DOG WARDEN FOR THE PROECTION OF THE PUBLIC HEALTH AND THE PREVENTION OF THE SPREAD OF RABIES .**

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The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 12th day of July, 2012.

Commissioner Bergman moved the adoption of the following:  
**RESOLUTION**

**WHEREAS**, the Board of County Commissioners and the Auglaize County Dog Warden have discussed the necessity of having a County quarantine fee for any dog that has bitten a person; and,

**WHEREAS**, when the Dog Warden needs to quarantine a dog on behalf of the pet's owner, the owners will be charged a \$10.00 (ten dollar) fee per day to quarantine the dog. The quarantine shall last for a period of ten days from the date of the bite and may be extended by the Dog Warden as necessary; and,

**WHEREAS**, on the tenth day of the quarantine, or by the next subsequent work day as determined by the Dog Warden if the tenth day lands on a weekend or holiday, the animal shall be examined for symptoms of rabies by the Dog Warden and Health Department representative. At this time the animal's owner will need to present a copy of the vaccination records before the animal can be removed from quarantine.

**THEREFORE BE IT RESOLVED**, the Board of Commissioners of Auglaize County, Ohio does hereby authorize and adopt the above mentioned Dog Warden Quarantine Fees for Auglaize County.

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

Adopted this  
12th day of  
July, 2012

BOARD OF COUNTY COMMISSIONERS  
AUGLAIZE COUNTY, OHIO

Douglas A. Spencer Y  
Douglas A. Spencer

Don Regula yes  
Don Regula

John N. Bergman yes  
John N. Bergman

cc: Dog Warden – Russ Bailey  
County Auditor – Janet Schuler

**IN THE MATTER OF APPROVING AN ESCROW AGREEMENT WITH VRC MANAGEMENT, INC. AND CHRIS FOLEY - EQUITY, INC AS THE ESCROW AGENT; AND AUTHORIZING PRESIDENT OF THE BOARD TO EXECUTE SAID AGREEMENT.**

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The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 12th day of July, 2012.

Commissioner Bergman moved the adoption of the following:  
**RESOLUTION**

**WHEREAS**, Auglaize Acres Administrator Connie Pierce submitted the following Escrow Agreement with VRC Management, Inc and Chris Foley as the escrow agent in connection with the "Sale of Beds" for Auglaize Acres; and,

**WHEREAS**, the purchaser, VRC Management, Inc. and seller is required to provide an earnest money deposit in the amount of \$25,000.00 (the "Escrowed Funds"). The Purchaser shall deposit the Escrowed Funds with Escrow Agent.

**THEREFORE, BE IT RESOLVED** that the Board of County Commissioners of Auglaize County, Ohio, does hereby approve and authorize the escrow agreement between VRC Management, Inc., Chris Foley – Equity Inc. as the Escrow Agent and Board of County Commissioners of Auglaize County, Ohio as mentioned above; and

**BE IT FURTHER RESOLVED** that the Board does authorize the President of the Board, Douglas A. Spencer, to execute said agreement.

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

Adopted this  
6th day of  
October, 2011

BOARD OF COUNTY COMMISSIONERS  
AUGLAIZE COUNTY, OHIO

John N. Bergman, yes  
John N. Bergman

Douglas A. Spencer, yes  
Douglas A. Spencer

Don Regula, yes  
Don Regula

- cc: ✓ Auglaize Acres – Connie Pierce
- ✓ VRC Management, Inc.
- ✓ Chris Foley – Equity, Inc.

## ESCROW AGREEMENT

This Escrow Agreement ("Agreement"), dated and effective as of July 12, 2012, is made by and among Board of County Commissioners of Auglaize County (the "Seller"), VRC Management, Inc., or its designee (the "Purchaser"), and Chris Foley, Equity, Inc. as escrow agent ("Escrow Agent").

The Purchaser, pursuant to a Purchase Agreement dated July 3, 2012, 2012, by and between Seller and Purchaser, is required to provide an earnest money deposit in the amount of \$25,000.00 (the "Escrowed Funds"). The Purchaser has agreed to tender the funds until such time as the Escrow Agent receives authority to release the Escrowed Funds as provided herein.

The parties, intending to be legally bound, hereby agree as follows:

### 1. Establishment Of Escrow

(a) The Purchaser shall deposit the Escrowed Funds with Escrow Agent.

(b) Escrow Agent hereby agrees to act as escrow agent and to hold, safeguard, disburse, release and deliver the Escrowed Funds pursuant to the terms of this Agreement. The Seller and Purchaser expressly agree (i) that the Escrow Agent is acting as their joint agent for the purposes of carrying out the terms of this Agreement, (ii) to execute and deliver such instruments as the Escrow Agent may from time to time reasonably request for the purpose of carrying out the terms of this Agreement, and (iii) that the Escrowed Funds may not be disbursed except pursuant to the terms of this Agreement. There is no fee or charge by Escrow Agent for the escrow of the funds, but Escrow Agent shall be entitled to be indemnified and held harmless as set forth below for any costs or expense related to the Escrowed Funds.

### 2. Deposit and Release of Funds

(a) The Escrow Agent shall deposit the Escrowed Funds in a non interest-bearing account to be established for such purpose (the "Escrow Account").

(b) The funds shall be disbursed upon the terms and conditions of the Purchase agreement, which is attached hereto as Exhibit "A" and incorporated herein by this reference.

### 3. Duties of Escrow Agent

(a) Escrow Agent shall not be under any duty to give the Escrow Funds held by it hereunder any greater degree of care than it gives its own similar property and shall not be required to invest any funds held hereunder except as directed in this Agreement.

(b) Escrow Agent shall not be liable, except for its own gross negligence or willful misconduct and, except with respect to claims based upon such gross negligence or willful misconduct that are successfully asserted against Escrow Agent, the Purchaser and Seller shall indemnify and hold harmless Escrow Agent (and any successor Escrow Agent) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees and disbursements, arising out of and in connection with this Agreement. Without limiting the foregoing, Escrow Agent shall in no event be liable in connection with its investment or reinvestment of any cash held by it hereunder in good faith, in accordance with the terms hereof, including, without limitation, any liability for any delays (not resulting from its gross negligence or willful misconduct) in the investment or reinvestment of the Escrow Fund.

(c) Escrow Agent shall be entitled to rely upon any order, judgment, certification, demand, notice, instrument or other writing delivered to it hereunder without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity of the service thereof. Escrow Agent may act in reliance upon any instrument or signature believed by it to be genuine and may assume that the person purporting to give receipt or advice or make any statement or execute any document in connection with the provisions hereof has been duly authorized to do so. Escrow Agent may conclusively presume that the Purchaser (or its representative if not an individual) and the Seller (or its representative if not an individual) has full power and authority to instruct Escrow Agent on such entity's behalf unless written notice to the contrary is delivered to Escrow Agent.

(d) Escrow Agent may act pursuant to the advice of counsel with respect to any matter relating to this Agreement and shall not be liable for any action taken or omitted by it in good faith in accordance with such advice.

(e) Escrow Agent makes no representation as to the validity, value, genuineness or the collectability of any security or other document or instrument held by or delivered to it.

(f) Escrow Agent shall not be called upon to advise any party as to the wisdom in taking or refraining from any action with respect to any property deposited hereunder.

(g) Escrow Agent (and any successor Escrow Agent) may at any time resign as such by delivering the Escrow Fund to any successor Escrow Agent designated by both Purchaser and Seller, in writing, or to any court of competent jurisdiction, whereupon Escrow Agent shall be discharged of and from any and all further obligations arising in connection with this Agreement. The resignation of Escrow Agent will take effect on the earlier of (i) the appointment of a successor (including a court of competent jurisdiction) or (ii) the day which is 30 days after the date of delivery of its written notice of resignation to the Purchaser and Seller. If at that time Escrow Agent has not received a designation of a

successor Escrow Agent, Escrow Agent's sole responsibility after that time shall be to retain and safeguard the Escrow Fund until receipt of a designation of successor Escrow Agent or a written disposition instruction by the Purchaser and Seller or a final non-appealable order of a court of competent jurisdiction.

#### 4. Limited Responsibility

This Agreement expressly sets forth all the duties of Escrow Agent with respect to any and all matters pertinent hereto. No implied duties or obligations shall be read into this agreement against Escrow Agent. Escrow Agent shall not be bound by the provisions of any agreement among the other parties hereto except this Agreement.

#### 5. Notices

Except as otherwise specifically set forth in this Agreement, all notices, consents, waivers and other communications under this Agreement must be in writing and will be deemed to have been duly given when (i) delivered by hand (with written confirmation of receipt), (ii) sent by telecopier (with written confirmation of receipt) provided that a copy is mailed by registered mail, return receipt requested, or (iii) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and telecopier numbers of the party as set forth on the signature pages to this Agreement (or to such other addresses and telecopier numbers as a party may designate by notice to the other parties):

#### 6. Governing Law; Jurisdiction; Service Of Process

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without regard to its principles of conflicts of laws. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the parties in the federal and state courts of the State of Ohio, County of Franklin, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

#### 7. Counterparts

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original and all of which, when taken together, will be deemed to constitute one and the same.

#### 8. Section Headings

The headings of sections in this Agreement are provided for convenience only and will not affect its construction or interpretation.

9. Waiver

The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (i) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (ii) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (iii) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

10. Exclusive Agreement And Modification

This Agreement supersedes all prior agreements among the parties with respect to its subject matter and constitutes (along with the documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter.

**In Witness Whereof**, the parties have executed and delivered this Agreement as of the date first written above.

**[ESCROW AGENT]**

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

Its: \_\_\_\_\_

Address: 445 Hutchinson Avenue, Suite 800, Columbus, OH 43235

<b>SELLER:</b> Board of Auglaize County Commissioners	<b>BUYER:</b> VRC Management, Inc., a Delaware corporation, or its designee
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By: *Douglas A. Spence*  
Printed: Douglas A. Spence  
Title: Bee President

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

72052512.1

**IN THE MATTER OF APPROVING AGREEMENT FOR PURCHASE OF THE RIGHT TO OPERATE LICENSED SKILLED NURSING BEDS WITH VRC MANAGEMENT, INC. AND AUGLAIZE ACRES; AND AUTHORIZING THE PRESIDENT OF THE BOARD TO EXECUTE SAID AGREEMENT.**

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The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 12th day of July, 2012.

Commissioner Bergman moved the adoption of the following:

**RESOLUTION**

**WHEREAS**, the following agreement was received by the Board of County Commissioners from Auglaize Acres Administrator Connie Pierce; and,

**WHEREAS**, this agreement for the Purchase of the Right to Operate Licensed Skilled Nursing Beds with VRC Management, Inc. and the seller Auglaize Acres a county nursing home. VRC Management was the successful bidder in a public auction of the beds dated June 21, 2012 – Resolution #12-259; and,

**WHEREAS** Auglaize Acres desire to sell and transfer to VRC Management, Inc. the rights to operate forty (40) of the county home beds located at the Facility, and both parties acknowledge that it is expected that only thirty-six (36) of such bed will be eligible for relocation, and four (4) are to be relinquished by the Seller; and,

**WHEREAS**, the purchase price for the Beds shall be \$720,000.00. Within three (3) days of the execution of this Agreement by all parties, VRC Management, Inc. shall deposit with Chris Foley, Equity, Inc. (Escrow Agent) the sum of \$25,000.00 to be held in accordance with the terms hereof.

**THEREFORE, BE IT RESOLVED** that the Board of Commissioners, Auglaize County, Ohio, does hereby approve the agreement for purchase of the right to operate licensed skilled nursing beds with VRC Management, Inc.; and does authorize the execution by Douglas A. Spencer, President of the Board of Auglaize County Commissioners, for the said agreement.

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

Adopted this  
12th day of  
July, 2012.

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: Auglaize Acres – Connie Pierce  
VRC Management, Inc.  
Chris Foley – Equity, Inc.

**AGREEMENT FOR PURCHASE OF  
THE RIGHT TO OPERATE LICENSED SKILLED NURSING BEDS**

**THIS AGREEMENT FOR PURCHASE OF THE RIGHT TO OPERATE LICENSED SKILLED NURSING BEDS** ("Agreement") is entered into and effective as of the 12<sup>th</sup> day of July, 2012 ("Effective Date"), by and between **Board of County Commissioners Auglaize County, Ohio** ("Seller") located at 13093 Infirmary Road, 2<sup>nd</sup> Floor, Wapakoneta, Ohio 45895, and **VRC Management, Inc.**, a Delaware corporation, or its designee ("Buyer").

**RECITALS**

A. Seller operates a nursing home known as Auglaize Acres, 13093 Infirmary Road, Wapakoneta, Ohio 45895 Ohio ("Facility") operated under the following provider numbers: **Medicare ID: 366247**, and **Medicaid ID: 0318847**. Buyer was the successful bidder in a public auction of the beds dated June 21, 2012, County Ordinance, 12-259.

B. Ohio Revised Code Section 3702.593 authorizes the relocation of the Beds (as defined below) between counties, pursuant to an approved Certificate of Need application.

C. Seller desires to sell and transfer to Buyer, and Buyer desires to purchase and accept from Seller, the rights to operate forty (40) of the county home beds located at the Facility, and both parties acknowledge that it is expected that only thirty-six (36) of such beds will be eligible for relocation, and four (4) are to be relinquished by the Seller..

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller and Buyer (each, a "Party" and collectively, the "Parties") hereto, intending to be legally bound hereby, covenant and agree to incorporate the forgoing recitals and further agree as follows:

**Article 1.**

**Purchase and Sale of Right to Operate Beds**

**1.1 Beds.** At the closing of the purchase and sale contemplated by this Agreement ("Closing"), Seller shall sell, assign, transfer, convey, and deliver to Buyer, and Buyer shall purchase and accept from Seller, the right to operate forty (40) of the county home beds located at the Facility. The parties acknowledge that Buyer shall employ thirty-six (36) of the Beds in a CON application for relocation to Lake County, and that if required, four (4) beds shall be surrendered by Seller, as provided at Section 3702.593(G)(2), ORC. The foregoing right to operate licensed skilled nursing beds are hereinafter collectively referred to as the "Beds".

**1.2 Rights.** The term "right(s) to operate", "operating rights", "right" or "rights" as used in this Agreement shall mean all rights, duties and obligations with respect to the Beds that may be transferred or are transferable in accordance with Ohio and federal law, including, but not limited to, the right of Buyer to apply for a Certificate of Need ("CON") for the relocation and/or replacement of the Beds, the right of Buyer to seek licensure of thirty-six (36) of the Beds as nursing home beds, the right of Buyer to seek Medicare and/or Medicaid

certification for the Beds, and all incidental, supplemental and ancillary rights attendant to the foregoing.

**1.3 No Assumed Liabilities or Obligations; No Other Assets.** Buyer shall not assume any liabilities or obligations of Seller, the Beds, or the Facility. The subject matter of this Agreement expressly excludes all other assets of Seller, other than the Beds, whether consisting of real, personal, tangible, or intangible property, including, but not limited to, real property, equipment, inventory, supplies and fixtures. Except as otherwise provided in this Agreement, Seller shall not assume and shall not discharge or be liable for any debts, liabilities or obligations of Buyer or any other party.

## **Article 2. Purchase Price**

**2.1 Purchase Price.** The purchase price for the Beds (the "Purchase Price") shall be Seven Hundred Twenty Thousand Dollars (\$720,000.00).

**2.2 Time of Payment.** Within three (3) days of the execution of this Agreement by all parties, Buyer shall deposit with Chris Foley, Equity, Inc. ("Escrow Agent") the sum of Twenty-Five Thousand Dollars (\$25,000.00) (the "Deposit") to be held in accordance with the terms hereof. In the event that the transaction contemplated hereunder (the "Transaction") is closed, Seller shall retain the Deposit to be applied against and reduce the Purchase Price. In the event that the Transaction does not close due to a breach of the Agreement by Seller, then the Deposit shall be returned to Buyer. In the event that the Transaction does not close due to a breach of the Agreement by Buyer, including a breach of Buyer's representations and warranties hereunder, or due to the failure of Buyer to obtain its approved CON, then Seller shall retain the Deposit as its sole remedy for the failure to close.

## **Article 3. CON Application and Appeals**

**3.1 CON Application.** Buyer shall in good faith apply for a CON (the "CON Application") to relocate and operate the Beds to a new facility located in Lake County, Ohio (the "Buyer's Facility"). Buyer shall file the CON Application no later than July 31, 2012, and, thereafter, shall pursue the CON Application diligently and in good faith, using its best efforts to try to ensure that the Beds are transferred as contemplated in this Agreement including, without limitation, to the extent reasonably possible, responding to any questions posed by the Ohio Department of Health ("ODH") within forty-five (45) days of receipt thereof. Buyer shall, upon request of Seller, provide copies of the CON Application, responses to questions and requests for additional information, the declaration of the completeness, and the decision of ODH on the CON to Seller. All expenses associated with the CON Application shall be borne by Buyer.

**3.2 Appeals.** Buyer may, at its sole discretion, pursue any and all appeals ("Appeals") made prior to or following the issuance of a CON. All costs and expenses associated with any Appeals shall be Buyer's responsibility. Buyer shall, upon request of Seller, provide Seller with copies of all pleadings, answers, briefs, and other filings associated

with any Appeals within a reasonable time after Buyer receives or submits copies of such documentation, and Buyer shall provide Seller with periodic updates regarding other developments with respect to any Appeals, including summaries of pre-trial conferences, hearings, and post-trial conferences. If Buyer breaches the provisions of this Section 3.2, the Deposit shall be retained by Seller.

#### **Article 4.**

### **Seller's Representations and Warranties**

Seller makes the following representations and warranties to Buyer as of the Effective Date and again as of the Closing Date: **Existence.** The Beds are existing beds in a County Home eligible to be relocated via a CON application submitted under Section 3702.593, ORC, and Rule 3701-12-23, OAC. The Beds are certified under Medicare ID: 366247, and Medicaid ID: 0318847 and have been so certified since 2002.

**4.2 Authorization of Agreement.** The execution and delivery of this Agreement will be duly authorized by all necessary action of Seller as of the Closing Date, at which point this Agreement will constitute the valid and binding obligation of Seller, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights of creditors generally and to general principles of equity.

**4.3 Taxes.** To Seller's knowledge, all applicable taxes, assessments, levies, and charges relating to the Beds that are due and payable have been timely paid and discharged. No franchise fees or bed taxes are payable with respect to the Beds.

**4.4 No Breach of Statute, Decree or Contract.** The execution, delivery and performance of this Agreement by Seller does not and will not breach or conflict with any statute, regulation or ordinance of any governmental authority and will not at Closing conflict with, or result in a breach of or default under, any of the terms, conditions or provisions of Seller's governing documents, or with any other order, writ, injunction, decree, agreement, lease, document or instrument to which Seller is a party or under which Seller or the Beds is or may be bound.

**4.5 No Litigation.** To Seller's knowledge, there is no litigation or governmental or agency investigation or proceeding pending or threatened against Seller that could materially impair or materially adversely affect Seller's ability to perform its obligations hereunder.

**4.6 No Other Contracts.** The Beds are not subject in any way to, nor shall Buyer be obligated to assume on the purchase of the Beds, any of the following obligations:

- (1) any power of attorney in favor of any person, firm or corporation, for any purpose;
- (2) any joint venture, contract or arrangement, or any other agreement involving a sharing of profits; or

(3) any agreement of sale, lease or option or right of first refusal.

**4.7 No Defaults in Contracts.** To Seller's knowledge, Seller is not in default of its obligations pursuant to any agreement, contract or provider agreement with any other person, third party provider or governmental agency, and/or any order, judgment, and/or decree of any governmental body, whether administrative, judicial, or otherwise, which could materially affect Seller's ability to complete this transaction and, to Seller's knowledge, no event exists which, with notice or passage of time, would become an event of default by Seller with respect to any such agreement, contract, order, judgment, and/or decree which materially affects Seller's ability to meet its obligations hereunder.

**4.8 Broker's Fees.** Seller is solely responsible for all broker fees payable to Chris Foley, Equity, Inc., and no other broker fees are payable by Seller with respect to the transaction contemplated by this Agreement.

#### **Article 5. Buyer's Representations and Warranties**

Buyer makes the following representations and warranties to Seller as of the Effective Date and again as of the Closing Date:

**5.1 Existence.** Buyer is a duly formed and validly existing Ohio corporation that is in good standing under the laws of the State of Ohio.

**5.2 Authorization of Agreement.** The execution and delivery of this Agreement has been duly authorized by all necessary limited company action of Buyer, and this Agreement constitutes the valid and binding obligation of Buyer, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights of creditors generally and to general principles of equity.

**5.3 No Breach of Statute, Decree or Contract.** The execution, delivery and performance of this Agreement by Buyer does not and will not breach or conflict with any statute, regulation or ordinance of any governmental authority and will not at Closing conflict with, or result in a breach of or default under, any of the terms, conditions or provisions of Buyer's governing documents, or with any other order, writ, injunction, decree, agreement, lease, document or instrument to which Buyer is a party or under which Buyer is or may be bound.

**5.4 No Litigation.** There is no litigation or governmental or agency investigation or proceeding pending or threatened against Buyer that could impair or adversely affect Buyer's ability to perform its obligations hereunder.

**5.5 Broker's Fees.** Buyer is not a party to any contract or agreement with any broker or third party who has or may have a claim for any remuneration or compensation from Buyer or Seller with respect to the transactions contemplated in this Agreement.

**5.6 CON Criteria.** To the best of Buyer's knowledge, Buyer and the operator/lessee proposed by Buyer to operate the Buyer's Facility (the "Proposed Operator") are not prohibited under any statute, rule or regulation from purchasing the Beds or receiving a CON for the relocation of the Beds. Buyer's Facility is not an existing health care facility. During the sixty (60) month period preceding the Effective Date, no notice of any proposed revocation of the nursing home license has been issued under Ohio Revised Code Section 3721.03 to Buyer or the Proposed Operator or to any other health care facility owned or operated by Buyer or the Proposed Operator or any principal participant in the same entity or other business. Neither Buyer's Facility, nor any other health care facility owned or operated by Buyer or the Proposed Operator or any principal participant in the same entity or other business, has had a long-standing pattern of violations of Ohio Revised Code Chapter 3702 or long-standing pattern of deficiencies that caused one or more residents physical, emotional, mental, or psychosocial harm.

**5.7 Buyer's Capacity and Financial Responsibility.** Buyer has the capacity and the available financial resources to meet in full all of its obligations hereunder and this Agreement is not contingent upon financing or the acquisition of the Real Estate.

#### **Article 6. Conduct of Seller Pending Closing**

Between the Effective Date and the Closing, Seller will cause or accomplish the following:

**6.1 Representations and Warranties.** Seller shall take no action and shall use all available and lawful means to resist any action to be taken that would cause any of Seller's representations or warranties set forth in Article 4 to be materially untrue as of Closing.

**6.2 Conduct of Business.** Seller shall not engage in any conduct or activity that would impair Seller's ability to perform its obligations under this Agreement. Seller shall pay and discharge when due in the ordinary course of its business all of its valid debts and obligations in connection with the Beds which are due or may become due, except for any debts or obligations reasonably disputed by Seller. Buyer acknowledges and agrees that Seller may close the Facility and withdraw from the Medicaid and Medicare programs prior to the Closing, and the same shall not constitute a breach of this Agreement.

**6.3 Notice.** Seller shall promptly notify Buyer whenever Seller becomes aware that any of Seller's representations or warranties has become untrue in any material respect.

**6.4 Conditions Precedent.** Seller shall not intentionally take any action that would prevent the satisfaction, prior to or at Closing, of any of the conditions to Buyer's obligation to close set forth in Article 8.

**6.5 Cooperation with Buyer.** Seller shall cooperate with Buyer and shall promptly furnish all information that Buyer may reasonably request in order to complete a

CON Application to relocate the Beds and to submit such CON Application to ODH and to respond to any questions posed by ODH in connection with the CON Application. Any delay of Seller beyond three (3) business days in responding to a request by Buyer for information required to be supplied to the ODH as part of the Certificate of Need application process will result in the provision to Buyer of a corresponding extension of any applicable filing deadline herein. Seller shall reasonably cooperate with Buyer and assist Buyer in connection with any appeals or hearing requests that may be filed in connection with the CON Application.

#### **Article 7. Conduct of Buyer Pending Closing**

Between the Effective Date and the Closing, Buyer will cause or accomplish the following:

**7.1 Representations and Warranties.** Buyer shall take no action and shall not permit any action to be taken that would cause any of Buyer's representations or warranties set forth in Article 5 to be materially untrue as of Closing.

**7.2 Conduct of Business.** Buyer shall not engage in any conduct or activity that would impair Buyer's ability to perform its obligations under this Agreement.

**7.3 Notice.** Buyer shall promptly notify Seller whenever Buyer becomes aware that any of Buyer's representations or warranties has become untrue in any material respect.

**7.4 Conditions Precedent.** Buyer shall not intentionally take any action that would prevent the satisfaction, prior to or at Closing, of any of the conditions to Seller's obligation to close set forth in Article 9. Buyer shall pursue the CON Application in accordance with Section 3.1 of this Agreement.

#### **Article 8. Conditions to Buyer's Obligation to Close**

Buyer's obligation to close shall be subject to the satisfaction of each of the following conditions, unless waived in writing by Buyer:

**8.1 Representations and Warranties of Seller True at Closing.** The representations and warranties made by Seller in this Agreement shall be true and correct on and as of Closing with the same effect as though such representations and warranties had been made or given on and as of Closing.

**8.2 Compliance with Agreement.** Seller shall have performed and complied with all of its obligations under this Agreement that are to be performed or complied with by Seller prior to or at Closing.

**8.3 CON Approval.** Buyer shall have obtained a CON that has not been appealed and/or is not subject to appeal to enable Buyer to obtain licenses, permits,

approvals, and other authorizations necessary to operate the Beds as licensed and certified nursing facility Beds at the location identified in Buyer's CON application (the "Final CON").

**Article 9.**  
**Conditions to Seller's Obligation to Close**

Seller's obligation to close shall be subject to the satisfaction of each of the following conditions, unless waived in writing by Seller:

**9.1 Representations and Warranties of Buyer True at Closing.** The representations and warranties made by Buyer in this Agreement shall be true on and as of Closing with the same effect as though such representations and warranties had been made or given on and as of Closing.

**9.2 Compliance with Agreement.** Buyer shall have performed and complied with all of its obligations under this Agreement that are to be performed or complied with by Buyer prior to or at Closing.

**9.3 Litigation.** Other than an Appeal, no litigation or other legal, administrative, or other proceeding or investigation shall be pending or threatened against Seller or Buyer that objects to the granting and/or approval of the CON Application or which would or could affect Buyer's purchase of the Beds or operation of the Beds after the Closing.

**9.4 Board of County Commissioners Approval.** Seller shall have received approval for the execution of this Agreement from the Board of Auglaize County Commissioners.

**9.5 CON Approval.** Buyer shall have obtained the Final CON.

**Article 10.**  
**Closing**

**10.1 Closing.** The Closing shall take place as provided in Section 10.4 of this Agreement within ten (10) business days after Buyer's receipt of the Final CON (the "Closing Date").

**10.2 Seller's Deliveries.** At Closing, Seller shall deliver to Buyer:

(1) Bill of Sale that transfers, sells and assigns the Beds to Buyer, consistent with the provisions of Article 1 hereof, free and clear of all encumbrances;

(2) Copy of resolutions duly adopted by the Seller authorizing and approving the performance by Seller of the Transaction and the execution and delivery of this Agreement and the documents described herein, certified as true and of full force as of Closing by an appropriate officer of Seller;

(3) Certificate of an officer of Seller certifying that (a) each covenant and agreement of Seller to be performed prior to or as of Closing pursuant to this Agreement has been performed in all material respects, and (b) as of Closing all of the respective representations and warranties by or on behalf of Seller contained in this Agreement are true and correct in all material respects; and

(4) Any and all other documents, instruments, certificates or writings that may be reasonably required by Buyer to effect the consummation of this Agreement and the Transaction.

**10.3 Buyer's Deliveries.** At Closing, Buyer shall deliver or cause to be delivered to Seller:

(1) The balance of the Purchase Price as specified in Article 2 of this Agreement;

(2) Payment for all obligations for any License or Franchise Fees for the Beds as set forth in Article 5.8 of this Agreement;

(3) Copies of resolutions duly adopted by the shareholders and directors of Buyer authorizing and approving the performance by Buyer of the Transaction and the execution and delivery of this Agreement and the documents described herein, certified as true and of full force as of Closing by an appropriate officer or manager of Buyer;

(4) Certificates of an officer of Buyer certifying that (a) each covenant and agreement of Buyer to be performed prior to or as of Closing pursuant to this Agreement has been performed in all material respects, and (b) as of Closing all of the representations and warranties by Seller contained in this Agreement are true and correct in all material respects;

(5) Any and all other documents, instruments, certificates or writings that may be reasonably required by Seller to effect the consummation of this Agreement and the transaction contemplated hereby.

**10.4 Closing Procedures.** Prior to the Closing Date, each of Buyer and Seller shall have reviewed and approved the form on the other party's closing deliveries. Upon approval of the closing deliveries, Seller shall deliver the original copies of Seller's closing deliveries to Buyer, and Buyer shall deliver the original copies of Buyer's closing deliveries to Seller, and the escrow agent shall release the balance of the Purchase Price to Seller.

## **Article 11. Confidentiality**

**11.1 Confidentiality.** To the extent permitted by law, any information obtained by either Seller or Buyer with respect to either Party's operations or finances pursuant to the terms of this Agreement is confidential information and shall be disclosed only to such of the personnel and advisors as necessary for the purposes of completing this Agreement and consummating the transactions contemplated hereunder and shall not be disclosed to any other persons or corporations, except as is reasonably necessary to carry out the terms of this Agreement or as otherwise required by law. Buyer may be required to disclose information, and is authorized to do so, to government agencies for such purposes as the CON Application. Upon request of either Party, each shall disclose in writing to the other the names of all individuals who have access or knowledge of any of the confidential information shared hereunder. Upon the earlier of the Closing or the termination of this Agreement, any written information obtained from the other Party concerning the operation of the business of the other shall be returned to the possession of the disclosing Party and the returning Party shall verify in writing that all such information has been returned to the owner thereof. In the event of a breach of this provision, the aggrieved Party shall be entitled, in addition to all other remedies available in equity or law, to an immediate injunction, without the posting of bond, prohibiting the offending Party from committing any further or continued breach of confidentiality by filing an appropriate legal proceeding in any court of competent jurisdiction. The prevailing Party shall also be entitled to recover such damages as may be applicable including reasonable attorney fees and costs.

## **Article 12. Miscellaneous**

**12.1 Notices.** All notices, approvals or other communications that a Party may desire or be required to give to another Party under the terms of this Agreement shall be in writing and shall be deemed to have been properly given, served and received: (1) if delivered by messenger, when delivered; (2) if mailed in the United States certified or registered mail, postage prepaid, return receipt requested, on the third (3<sup>rd</sup>) business day after mailing; or (3) if sent for overnight delivery by reputable express carrier, freight prepaid, the next business day after dispatch to such carrier, addressed to such Party as follows:

Seller: Board of Auglaize County Commissioners  
13093 Infirmary Road, 2nd Floor  
Wapakoneta, Ohio 45895

Copy to: Edwin A. Pierce  
Auglaize County Court House

Suite G4  
P.O. Box 1992  
Wapakoneta, Ohio 45895

Buyer: VRC Management, Inc.  
405 Tallmadge Road  
Cuyahoga Falls, Ohio 44221  
Attn: Michael Francus

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

**12.2 Expenses.** Except as otherwise provided for in this Agreement, each Party shall bear its own expenses in the negotiation, preparation and performance of this Agreement.

**12.3 Headings.** The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

**12.4 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

**12.5 Assignment.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns. Neither Party shall assign this Agreement without the written consent of the other Party.

**12.6 Counterparts; Facsimile.** This Agreement may be executed in one or more counterparts, all of which will be considered one and the same instrument. Signatures transmitted by facsimile shall be deemed to be original signatures.

**12.7 Entire Agreement; Integration.** This Agreement embodies all of the representations, warranties and agreements of the Parties hereto with respect to the subject matter hereof, and all prior understandings, representations and warranties (whether oral or written) with respect to such matters are superseded and may not be amended, modified, waived, discharged or orally terminated except by an instrument in writing signed by the Party against whom enforcement of the amendment, modification, waiver, discharge or termination is sought.

**12.8 Severability.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted. Furthermore, in lieu of such invalid or unenforceable provision there shall be added automatically as a part of this Agreement, a valid and enforceable provision as similar in terms to such invalid or unenforceable provision.

**12.9 Gender and Number.** As used herein, the masculine gender shall include the feminine and neuter genders and vice versa, and the singular case shall include the plural and the plural the singular, wherever the same may be applicable.

**12.10 Time of the Essence.** The Parties hereto acknowledge and agree that time is of the essence for the performance of each Party's obligations set forth in this Agreement.

**12.11 Survival.** Except as stated otherwise in this Agreement, the representations and warranties made by the Parties hereto shall survive Closing for a period of one (1) year.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

**SELLER:**  
**Board of Auglaize County Commissioners**

By: Douglas A. Spencer  
Printed: Douglas A. Spencer  
Title: Bocc President

Signatures continued on following page

**BUYER:**  
**VRC Management, Inc., a Delaware corporation**

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_