

Introduced by Presiding Officer, on request of the County Executive

RESOLUTION NO. 823 -2012, ADOPTING LOCAL LAW NO. 54 -2012, A LOCAL LAW AUTHORIZING THE COUNTY EXECUTIVE TO EXECUTE AGREEMENTS FOR THE SALE OF THE JOHN J. FOLEY SKILLED NURSING FACILITY (PHASE II – BUDGET MITIGATION)

WHEREAS, there was duly presented and introduced to this County Legislature at a regular meeting held on August 7, 2012, a proposed local law entitled, "**A LOCAL LAW AUTHORIZING THE COUNTY EXECUTIVE TO EXECUTE AGREEMENTS FOR THE SALE OF THE JOHN J. FOLEY SKILLED NURSING FACILITY (PHASE II – BUDGET MITIGATION)**"; and said local law in final form is the same as when presented and introduced; now, therefore be it

RESOLVED, that said local law be enacted in final form as follows:

LOCAL LAW NO. 54 -2012, SUFFOLK COUNTY, NEW YORK

A LOCAL LAW AUTHORIZING THE COUNTY EXECUTIVE TO EXECUTE AGREEMENTS FOR THE SALE OF THE JOHN J. FOLEY SKILLED NURSING FACILITY (PHASE II – BUDGET MITIGATION)

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK, as follows:

Section 1. Legislative Intent.

This Legislature finds and determines that John J. Foley Skilled Nursing Facility (the "Facility") is a 264-bed facility located on approximately 14 acres in Yaphank in Suffolk County (the County). In addition to operating 252 residential health care facility beds (including an Alzheimer's unit) and 12 designated AIDS beds, the nursing facility operates a 60-slot Adult Day Health Care Program (ADHCP). In 1995, the Facility began operating in a newly-constructed building. The total building size is approximately 181,749 square feet with recent (2005) expansions to the adult day health and rehabilitation program space as well as dining and recreational areas on the second floor.

This Legislature further finds and determines that in light of the extraordinary fiscal crisis facing the County, it was prudent to examine operations at the Facility in order to determine the feasibility of continuing its operation as a County facility. As a result of this review, the Legislature has determined that, provided that continued excellence in resident care can be achieved under a new operator, due to business impediments unique to municipalities (rising municipal labor and employee benefit costs and unreliability of continued intergovernmental transfer (IGT) payments), operating a municipal skilled nursing home would no longer be in the best interest of the County.

This Legislature further finds that over the past several years three attempts have been made to change the operations and/or ownership of the Facility through a public bidding/proposal process, but that none of these attempts resulted in proposals that sufficiently

met the Legislature's desired goals of ensuring the continuing high level of care of Facility residents or securing ongoing employment for Suffolk County employees working at the Facility.

This Legislature finds that, as a result, the public bidding/proposal process does not serve the County's best interests in regard to the sale of the Facility and that a direct negotiated sale of the Facility better ensures that the County's interests are met and protected.

This Legislature finds that the County conducted meetings with several parties that had expressed interest in purchasing the Facility and that, in reaching a decision regarding which party to negotiate with, the County considered factors such as the quality of care currently provided in existing facilities, history of management-employee relations, the offering price, the audited financial statements of the prospective buyer, whether the prospective buyer would agree to maintain care for all existing residents at the Facility, and whether the prospective buyer would consider hiring all existing Facility staff.

The Legislature finds that after conducting a thorough due diligence and considering all of the factors heretofore mentioned, the County chose Sam Sherman and Israel Sherman, who will be acting as principals through their companies SSS Operating, LLC and SSS Realty, LLC, as the buyers of the Facility and that the County has negotiated an Asset Purchase Agreement and Land Sale Contract for the sale of the Facility for the purchase price of \$23,000,000.

This Legislature also finds that the Land Sale Contract and Asset Purchase Agreement (hereinafter referred to as "the Plan") has been subject to the Suffolk County Administrative Code Section A9-6 review process, including four separate public hearings at which comments were solicited.

Therefore, the purpose of this law is to approve the Plan, an agreement for the sale and purchase of the Facility by the County to SSS Operating, LLC and SSS Realty, LLC, and further, in light of, among other things, the direct negotiated sale of County property, to supersede all of the provisions of New York County Law Section 215 and any local laws to the contrary of the provisions set forth herein.

Section 1. Supersede New York County Law Section 215.

Pursuant to the provisions of Section 2 (b) of the New York County Law, Section 215 of the New York County Law shall not apply, in any manner, to the substantive and/or procedural provisions of this resolution or the local law contemplated therein.

Section 2. Approval of Negotiated Sale as Within the Best Interest of the County.

The County hereby approves the negotiated award to Sam and Israel Sherman for the sale of the Facility and all assets, property, real or personal, and rights used or usable in the operation of the Facility, of every type and description, tangible or intangible, wherever located.

Section 3. Declaration of Surplus Land.

The 14.06 acres of land, which acreage shall be subject to final survey, is surplus to County needs. The Facility and all associated assets and inventory used to carry out its functions as a skilled nursing facility, as more specifically set forth in the proposed Asset Purchase Agreement and Land Sale Contract, is likewise declared surplus to County needs.

Section 4. Sale of Surplus Land.

The sale by the County to SSS Realty, LLC of the County's right, title and interest in and to 14.06 acres of land, without recourse, is hereby authorized in exchange for the delivery, to or upon the order of the County, of (i) the payment of the purchase price as set forth in the proposed Land Sale Contract, and (ii) upon such other terms and conditions as are set forth in the proposed Land Sale Contract.

Section 5. Approval of Land Sale Contract.

The general form and substance of the Land Sale Contract, presented to the members of the Legislature at this meeting as Exhibit 1, is hereby approved.

Section 6. Execution and Delivery of Land Sale Contract.

The execution and delivery on behalf of and in the name of the County by the County Executive and/or his designee(s) of the Land Sale Contract substantially in the form and substance presented to the members of the Legislature at this meeting, is hereby authorized and directed.

Section 7. Sale of the Facility.

The sale by the County to SSS Operating, LLC of all assets, property, real or personal, and rights used or usable in the operation of the Facility, of every type and description, tangible or intangible, wherever located, without recourse, is hereby authorized in exchange for the delivery, to or upon the order of the County, of (i) the payment of the purchase price as set forth in the proposed Asset Purchase Agreement, and (ii) upon such other terms and conditions as are set forth in the proposed Asset Purchase Agreement.

Section 8. Approval of Asset Purchase Agreement.

The general form and substance of the Asset Purchase Agreement, presented to the members of the Legislature at this meeting as Exhibit 2, is hereby approved.

Section 9. Execution and Delivery of Asset Purchase Agreement.

The execution and delivery on behalf of and in the name of the County by the County Executive and/or his designee(s) of the Asset Purchase Agreement substantially in the form and substance presented to the members of the Legislature at this meeting, is hereby authorized and directed.

Section 10. Further Actions.

The County Executive and/or his designee(s) are further authorized to execute and deliver, on behalf of the County, such agreements, instruments or authorizations as may be contemplated by, or necessary or advisable to consummate or otherwise give full effect to, the Land Sale Contract, the Asset Purchase Agreement and this local law, and which are deemed necessary or desirable to effectuate the transactions contemplated by the Land Sale Contract, the Asset Purchase Agreement and this local law, and to perform all acts and do all things required or contemplated to be performed or done by the Land Sale Contract, the Asset

Purchase Agreement or by this local law or by any agreement, instrument or authorization approved, contemplated, necessary or authorized hereby.

Section 11. Suffolk County Administrative Code A9-6 Compliance.

The County has complied with the procedures set forth in Section A9-6 of the Administrative Code. A report to the Suffolk County Legislature pursuant to Suffolk County Administrative Code Section A9-6 is attached as Exhibit 3. In addition, attached as Exhibit 4 is a letter from the New York State Department of Health supporting Sam Sherman and Israel Sherman and/or the companies of which they are principals as purchasers of the Facility.

Section 12. Applicability.

This law shall apply to all actions and transactions occurring on or after the effective date of this law. Adoption of this law shall be conclusive evidence of full compliance with Suffolk County Administrative Code § A9-6, and shall apply to all actions and transactions occurring on or after the effective date of this law.

Section 13. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 14. SEQRA Determination.

This Legislature has independently considered the Environmental Assessment Form ("EAF"), the Council on Environmental Quality ("CEQ") recommendation, and any relevant testimony concerning the same; and

This Legislature, being the lead agency under State Environmental Quality Review Act ("SEQRA") and Chapter 450 of the Suffolk County Code, hereby determines that this local law constitutes an unlisted action, pursuant to 6 NYCRR Part 617 of the implementing regulations pertaining to Article 8 (SEQRA) of the Environmental Conservation Law; and

This Legislature hereby determines that implementation of this action will not have a significant adverse impact on the environment for the following reasons, as demonstrated in the EAF:

1. The action involves the simple transfer of the ownership of an existing operating facility and associated property with no change to the environment or facility operations;
2. The proposed action will not exceed any of the criteria in Section 617.7 of Title 6 NYCRR which sets forth threshold for determining significant impact on the environment;

3. The proposal does not appear to significantly threaten any unique or highly valuable environmental or cultural resources as identified in or regulated by the Environmental Conservation Law of the State of New York or the Suffolk County Charter and Code;
4. The parcel does not appear to suffer from any severe environmental development constraints (no poor soil properties, no high groundwater and no unmanageable slopes); and

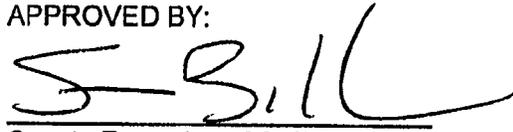
This Legislature hereby directs, in accordance with Section 450-5(c)(4) of the Suffolk County Code, the Suffolk County Council on Environmental Quality to prepare and circulate any appropriate notices or determinations in accordance with this resolution.

Section 15. Effective Date.

This Local Law shall not take effect until at least forty-five (45) days after its adoption, nor until approved by the affirmative vote of a majority of the qualified electors of the County of Suffolk voting on a proposition for its approval if within forty-five (45) days after its adoption there is filed with the Clerk of the County Legislature a petition protesting against such Local Law in conformity with the provisions of §24 (1) (a) of the MUNICIPAL HOME RULE LAW and upon filing in the Office of the Secretary of State.

DATED: September 13, 2012

APPROVED BY:

 9/24/12
County Executive of Suffolk County

Date:

After a public hearing duly held on September 24, 2012
Filed with the Secretary of State on October 2, 2012

SUFFOLK COUNTY
County Legislature
RIVERHEAD, NY



This is to Certify That I, TIM LAUBE, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on September 13, 2012 and that the same is a true and correct transcript of said resolution and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.

Tim Laube

Clerk of the Legislature

Intro. Res.

1811

Res. No.

823

September 13, 2012

Motion:

Romaine, Schneiderman, Browning, Muratore, Anker
Calarco, Montano, Cilmi, Lindsay, Hahn, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Spencer

Co-Sponsors:

Romaine, Schneiderman, Browning, Muratore, Anker
Calarco, Montano, Cilmi, Lindsay, Hahn, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Spencer

Second:

Romaine, Schneiderman, Browning, Muratore, Anker
Calarco, Montano, Cilmi, Lindsay, Hahn, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Spencer

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE					/
2	Jay H. SCHNEIDERMAN	/				
3	Kate M. BROWNING		/			
4	Thomas MURATORE		/			
5	Kara HAHN	/				
6	Sarah S. ANKER	/				
7	Rob CALARCO		/			
9	Ricardo MONTANO		/			
10	Thomas CILMI		/			
11	Thomas F. BARRAGA	/				
12	John M. KENNEDY, JR.		/			
13	Lynne C. NOWICK		/			
15	DuWayne GREGORY	/				
16	Steven H. STERN	/				
17	Lou D'AMARO	/				
18	William SPENCER	/				
14	Wayne R. HORSLEY, D.P.O.	/				
8	William J. LINDSAY, P.O.	/				
Totals		10	7	-	1	

MOTION
<input checked="" type="checkbox"/> Approve
Table: _____
<input type="checkbox"/> Send To Committee
<input type="checkbox"/> Table Subject To Call
<input type="checkbox"/> Lay On The Table
<input type="checkbox"/> Discharge
<input type="checkbox"/> Take Out of Order
<input type="checkbox"/> Reconsider
<input type="checkbox"/> Waive Rule _____
<input type="checkbox"/> Override Veto
<input type="checkbox"/> Close
<input type="checkbox"/> Recess
APPROVED <input checked="" type="checkbox"/> FAILED _____
No Motion _____ No Second _____

RESOLUTION DECLARED
<input checked="" type="checkbox"/> ADOPTED
<input type="checkbox"/> NOT ADOPTED

Roll Call Voice Vote _____

Tim Laube

Tim Laube, Clerk of the Legislature

EXHIBIT 1

AMENDED AS OF 8/10/2012

1811

AMENDED COPY AS OF 8/10/12

Foley Land Sale Contract
FINAL

Exh. 1

Agreement of Sale

This Land Sale Contract ("LSC") entered into as of this 30th day of July, 2012 is between the County of Suffolk ("Seller"), a municipal corporation of the State of New York, acting through its duly constituted Department of Health Services ("Department"), located at 225 East Rabro Drive, Hauppauge, New York 11788;

and

SSS Realty, LLC, a Delaware limited liability company, or its assignee ("Buyer");

The purpose of this LSC is to provide for the following transaction:

1. Seller's sale of, and Buyer's purchase of the building and land currently used by the Seller as the John J. Foley Skilled Nursing Facility (the "Facility"), together with certain easements for access thereto by both Seller and Buyer. The legal description of the land is attached hereto as Exhibit 1. A survey of the land is attached hereto as Exhibit 2. The legal descriptions of the easements are attached hereto as Exhibits 1 and 3;
2. The processing of all applications to obtain all necessary zoning changes or waivers, site-plan approvals, building and other permits, and approvals and variances, and
3. Establishing the payment terms of the purchase price.

RECEIVED
 2012 AUG 10 P 3 48
 COUNTY CLERK'S OFFICE
 SUFFOLK COUNTY, N.Y.
 HAUPPAUGE

**Foley Land Sale Contract
FINAL**

TABLE OF CONTENTS

Definitions

Article I	Sale of Premises
Article II	Due Diligence
Article III	Title Report, Exceptions
Article IV	Sale Requirements
Article V	Purchase Price
Article VI	Closing
Article VII	Environmental Remediation
Article VIII	Termination
Article IX	Default and Remedies
Article X	Representations
Article XI	Indemnification
Article XII	Miscellaneous

Exhibits

RECITALS

WHEREAS, the Seller owns a 264 certified bed licensed skilled nursing facility known as John J. Foley Skilled Nursing Facility (the "Facility"), an enterprise fund of the County of Suffolk, which Seller operates under the Department of Health Services of the County of Suffolk;

WHEREAS, following a negotiated sale, the Seller desires to sell, assign, and deliver to the Buyer, and the Buyer desires to acquire, purchase, accept assignment, and accept delivery from the Seller of, the assets of the Facility and the Adult Day Care Program, including the land on which the Facility is operated and the easements required to be conveyed therewith.

Now, therefore, in consideration of the mutual agreements contained in this LSC and other good and valuable consideration, the receipt of which is hereby acknowledged, Seller and Buyer agree as set forth herein for their own benefit and for the benefit of the residents of the County of Suffolk.

Definitions

Asset Purchase Agreement ("APA") means the contract dated as of the date hereof by and between Seller and SSS Operating, LLC ("Nursing Home Buyer") for the sale of the Facility assets, properties and rights used or usable in the operation of the Facility, other than those explicitly excluded or those related to the Premises, which purchase shall be addressed in this LSC. The APA is attached hereto as Exhibit A.

Closing means the simultaneous closing under the APA and under this LSC.

Confidentiality Agreement the confidentiality and non-disclosure agreement between the parties dated July 11, 2012.

Facility means the John J. Foley Skilled Nursing Facility operated at the Premises, including the 264 bed skilled nursing facility and the 60 slot adult day care facility.

Escrow Funds means the money paid to the Escrow Agent pursuant to the terms of the APA and the Escrow Agreement, attached hereto as Exhibit B.

Escrow Agent means Harris Beach, PLLC 333 Earle Ovington Blvd, Suite 912, Uniondale, New York 11553.

Excluded Assets shall be those listed on Schedule 1.2 of the APA.

Material Adverse Effect means, with respect to any Person or the Premises, any change, effect, or circumstance that, individually or in the aggregate, is or is reasonably likely to be materially adverse to the business, assets, financial condition or results of operations of such Person or the Premises; provided, however, that the following shall not be deemed to constitute a Material Adverse Effect on or with respect to such Person or the

**Foley Land Sale Contract
FINAL**

Premises: (a) any change, effect, or circumstance relating to conditions affecting the economy of any part of the world generally, or any change, effect, or circumstance relating to conditions generally affecting the health care industry, and, in either case, not affecting such Person or the Premises in a materially disproportionate manner, and (b) any change, circumstance or effect related to changes in third party reimbursement rates paid to the Facility for services rendered.

Monetary Lien means any lien that can be reduced to a fixed sum of money.

Premises means the property to be sold hereunder, together with the improvements thereon and the easements for access to be conveyed, all as described in Exhibits 1 and 3.

Buyer's Agents means any and all contractors, subcontractors, consultants, lenders, partners, joint venturers, and any other persons or entities acting to effectuate any of Buyer's rights or obligations under the LSC.

Legislature means the Suffolk County Legislature.

Regulatory Matters means all land use issues, laws, rules, regulations and statutes concerning the use of the Premises and the improvements thereon, which investigation, negotiation and approvals will include, but not be limited to, (i) environmental review, (ii) planning and zoning requirements and approvals; (iii) site plan approval; (iv) adequate public facilities; (v) public works; (vi) mass transit requirements; (vii) utilities; (viii) storm water management; (ix) certificates of authority; and (x) approvals, permits, consents, certificates and licenses necessary for operation of a duly certified and licensed 264 bed skilled nursing facility and adult day care program at the Premises, all as currently operated by Seller.

Town means the Town of Brookhaven.

Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

Words importing persons shall include firms, associations, limited liability companies, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons, and shall include successors and assigns.

Capitalized terms used, but not otherwise defined herein, shall have the meanings assigned to them in this LSC.

**Foley Land Sale Contract
FINAL**

**Article I
Sale of Premises**

Section 1-1. Sale. Seller agrees to sell, and Buyer agrees to purchase, all right, title and interest in the Premises.

The sale includes all fixtures attached or appurtenant to the Premises including without limitation building systems, furnaces, air conditioning, pipes, conduits, generation facilities, wires, pumps, transmission devices and the like that may exist upon the areas conveyed, but Seller makes no representations or warranties of the existence or presence of same. The sale does not include items of personal property used in connection with the operation of the Facility, nor the license issued by the State of New York for the operation of the Facility. Such items are subject to the APA.

Section 1-2. Financing. This LSC is not subject to any financing contingency but along with the APA is subject to the approval of the Suffolk County Legislature, the Suffolk County Executive, New York State Department of Health, and this LSC is contingent upon the issuance of all approvals for all the Regulatory Matters prior to Closing.

Section 1-3. "AS IS" Condition. Buyer hereby acknowledges that it is familiar with the Premises and its physical condition. Seller is transferring, and Buyer is accepting the Premises in "AS IS" physical condition, subject to the title contingencies in Article III, without any representation or warranty, express or implied, whatsoever by Seller except as set forth in this Agreement.

**Article II
Due Diligence**

Section 2-1. Due Diligence.

The Buyer shall have the right to conduct such due diligence reviews, analyses, and studies of the Facility and the Premises and related assets and operations during the twenty (20) calendar day period immediately following the Buyer's signing this Agreement. Seller shall fully cooperate with the Buyer during the Due Diligence Period and shall promptly provide Buyer with access to and copies of all information and materials pertaining to the Facility and the Premises as the Buyer may request.

Upon execution of this Agreement, Seller shall provide to Buyer copies of any documents and information relating to the Premises reasonably requested by Buyer.

The Buyer shall have until 5 pm EST through the last day of the Due Diligence Period in which to examine, inspect, and investigate the Facility and the Premises and documents and information relating thereto. The Buyer may request

**Foley Land Sale Contract
FINAL**

revisions to this Agreement during the Due Diligence Period and such revisions shall be considered by the Seller.

The Buyer may terminate this Agreement for any reason related to its due diligence review during the Due Diligence Period by giving written notice of termination to the Seller on or before the last day of the Due Diligence Period. Such written notice shall state the reason for termination. If the Buyer does not give a Due Diligence Termination Notice, this Agreement shall continue in full force and effect, Buyer shall be deemed to have waived its right to terminate this Agreement and the Buyer shall be deemed to have acknowledged that it has received or had access to all documents and conducted all inspections and tests of the Facility and Premises that it considers important.

**Article III
Title Report, Exceptions,**

Section 3-1. Title Report. No more than fifteen (15) days after the execution of this LSC Buyer shall deliver or cause to be delivered to Seller, at its sole cost and expense, a copy of a title report prepared by a title insurance company duly licensed by the State of New York or an abstract company authorized to do so by any such title insurance company.

Section 3-2. Title Exceptions. Seller shall convey insurable title, free and clear of all liens, claims and encumbrances, subject to no conditions, restrictions or encumbrances except as set forth herein at standard rates without any additional premium. The Premises shall be conveyed subject to the following conditions:

- a. Any state of facts an accurate survey may show, provided the same shall not render title uninsurable or materially and adversely affect the continued use of the Premises after the Closing as a licensed skilled nursing facility with an adult day care program, all as presently operated;
- b. All the terms, covenants and conditions of this LSC and the APA;
- c. The provisions of all laws, codes, statutes, ordinances, acts, rules and regulations of local, state or federal government, and any agency or subdivision thereof, to the extent same would be applicable herein provided the same shall not render title unmarketable or materially and adversely affect the continued use, after the closing hereunder, of the Premises as a licensed certified bed skilled nursing facility with an adult day care program, all as presently operated.
- d. Subject to Buyer's receipt prior to Closing of all required approvals, consents and waivers for all Regulatory Matters, all applicable health, building and zoning codes, ordinances and regulations of the Federal government, State of New York, County of Suffolk, and Town. Seller hereby informs Buyer that

**Foley Land Sale Contract
FINAL**

inasmuch as Seller is a superior municipality, no certificates of occupancy for the Premises have ever been issued by the Town.

Section 3-3. Objections to Title. Within fifteen (15) days of delivery of the title report and thereafter upon receipt of periodic updates thereof, Buyer shall notify Seller of any title defects, liens, or encumbrances ("Objections"), other than the exceptions set forth in **Section 3-2.** Buyer's failure to raise an objection to title within the time specified in this paragraph shall be deemed to be a waiver of that objection. Notwithstanding the foregoing, provided that the Seller receives a copy of the title report within fifteen calendar days of the date of such title report all matters noted in the title report or any continuations or periodic updates thereof delivered to Seller's counsel shall be deemed as timely made Objections.

Seller shall have sixty (60) days after receipt of the title report and any continuations or updates thereof within which to attempt to remove such defects. If, for any reason, Seller is unable to remove any title defects on or before the expiration of such sixtieth day, Seller shall so notify Buyer, in which case, Buyer may elect to waive the foregoing, or cure such title defects, liens or encumbrances at Buyer's own expense, , and close upon this transaction at the time(s) and in the manner provided in this LSC, or to terminate this LSC by giving Notice to Seller, as provided for herein, in which case, and surviving any such termination, Buyer's sole remedy shall be the payment to Buyer and the Nursing Home Buyer of the entire Escrow Funds plus accrued interest thereon.

Immediately prior to Closing, Buyer shall obtain an updated Title Commitment (the "Title Update") covering the period between the Title Commitment and the Closing. Solely with respect to any new matters affecting title that have occurred between the date of the original Title Report and the Title Update as may be set forth in the Title Update, Buyer shall have the same rights of objection and termination as provided for in this **Section 3-3.**

Seller shall have no obligation to bring any action or to incur any expense to make the title comply with the provisions of this LSC, other than for the removal of consensual liens and Monetary Liens which may be satisfied, in the aggregate, by payment of money.

**Article IV
Sale Requirements**

Section 4-1. Requirements of Sale. This conveyance is subject to and conditioned upon following being satisfied prior to Closing:

- a. Buyer obtaining all surveys that may be required at Buyer's own cost;
- b. Buyer obtaining all approvals for all Regulatory Matters, including but not limited to zoning changes or waivers, as may be necessary, at Buyer's own cost, upon Buyer's prompt and diligent application therefor;

Foley Land Sale Contract
FINAL

- c. Buyer obtaining site-plan, building and other permits, approvals and variances as may be necessary at Buyer's own cost;
- d. Buyer shall be responsible for any and all fees and charges associated with the usage of water and provision of sewage treatment for Facility, as well completing:
 - i. execution of a connection agreement with the County Sewer Agency on such terms and conditions as may be required by the County Sewer Agency for the continued use of the wastewater treatment plant to which the premises are connected; and
 - ii. payment of standard connection fees for connection to any existing publicly owned sewage plant, as required by law; and
 - iii. execution of any and all necessary easements and irrevocable offers of dedication required by the Sewer Agency and, if necessary, the Suffolk County Water Authority; and
 - iv. execution of all contracts required by the County Sewer Agency and compliance with all standard requirements for sewer connection, including posting of security and bonds;
 - v. payment of all usage fees for wastewater disposal as may be imposed by the County Sewer Agency or Sewer District.
 - vi. Execution of any and all appropriate agreements with the Suffolk County Water Authority or other agency for the provision of water service to the premises, including domestic water and fire protection systems.
 - vii. Subject to the rules and regulations governing the County Sewer Agency, Seller shall continue to provide waste water disposal service to Buyer through its existing facility so as long as Seller provides such service to other County departments. In the event the Seller's existing facility shall become part of a duly established sewer district, Buyer shall comply with all rules and regulations thereof.

Foley Land Sale Contract
FINAL

Section 4-2. Roads. All roads connecting to public roads or to easements conveyed herein to the Buyer shall be open for public use. All roads connecting to public roads shall be offered for dedication to the Town.

Section 4-3 Other Easements. The parties agree to grant to each other such other easements to maintain existing utilities and access across and through the property of the other as shall be reasonably required. Buyer shall grant to Seller an easement for vehicle traffic across the western border of the Premises as shall permit Seller to continue to access Seller's building to the west of the premises across the existing route to such building. Seller reserves the right to dedicate and open for public use any and all easements and rights of way herein granted to Buyer.

Section 4-4. Cooperation Between Seller and Buyer. Seller and Buyer shall, throughout the process of obtaining any necessary Regulatory Matter approvals, consents and waivers and State, Town, or County approvals, coordinate and cooperate in a reasonable manner with respect to the planning, preparation and pursuit of such approvals and shall share information on a timely basis. In addition, Buyer shall promptly provide Seller with copies of any studies, reports, analyses or other documents relevant to the approval process.

Section 4-5. Limitation on Use of Premises. Buyer represents that the Nursing Home Buyer intends to continue to use the premises as a skilled nursing facility as it has been operated by Seller.

Section 4-6. Seller's Covenants. Seller hereby covenants and agrees to perform the following:

- a. To continue to maintain and operate all areas in accordance with present practices;
- b. To promptly notify Buyer of any fact about which it becomes aware that has the effect of a Material Adverse Effect; and
- c. To cooperate with and assist Buyer in Buyer's efforts to obtain all required approvals, consents, waivers and variances pertaining to the Regulatory Matters.
- d. To use its best efforts to assist Buyer in obtaining a property and sales tax abatement from the Suffolk County Industrial Development Agency.

**Article V
Purchase Price**

Section 5-1. Payment of Purchase Price. In consideration of the sale, assignment and transfer of the Premises, the Buyer shall pay a purchase price to be determined

**Foley Land Sale Contract
FINAL**

as set forth in the APA. Such sum may be allocated among the assets purchased under this LSC by mutual agreement between the parties.

- a. The Escrow Funds paid upon the execution and exchange of this Agreement and the APA, shall be held by the Escrow Agent in accordance with the APA. The Escrow Agent will hold the Escrow Funds in escrow in accordance with the terms of the Escrow Agreement which shall be in substantially the same form as that attached hereto as Exhibit B. At the Closing the parties shall instruct the Escrow Agent to release the Escrow Funds to the Seller;
- b. The entire Purchase Price hereunder shall be paid at the Closing by Buyer to Seller by wire transfer or immediately available funds;
- c. For purposes of this Agreement, the "Escrow Funds" shall mean the sum of all amounts deposited by or on behalf of the Buyer and the Nursing Home Buyer together with all sums deposited with the Escrow Agent, and as set forth in the Escrow Agreement which shall be in substantially the same form as that attached hereto as Exhibit B, including any interest earned in such funds. At Closing Seller shall retain any interest earned on such funds. Unless express written consent is obtained from the Seller, in no event shall any interest earned on such funds be allocated to the balance of the Purchase Price.

**Article VI
Closing**

Section 6-1. Closing Date. The deed and other closing documents shall be delivered (the "Closing") and the Purchase Price paid concurrently with the closing of the transactions contemplated by the APA and at the place of closing of that contract.

Section 6-2. Deed and Easements. The deed and easements to be delivered by Seller at Closing, and to be accepted by Buyer, and the easements to be delivered by Buyer and accepted by Seller shall be quitclaim in nature. The deed may contain undertakings, waivers, covenants and restrictions, which include, but may not be limited to conditions of approval of any zoning change, site plan, building permit or any other permit, approval or variance required by the Town or any other governmental unit lawfully exercising jurisdiction over the premises, except that the Seller may not alter or modify its obligations under this agreement by any such requirement imposed by it. If any provision in a deed or easement conflicts with any provision of this LSC, the provisions of the deed or easement shall control.

Section 6-3. Closing Documents. Closing documents shall be delivered as follows:

Foley Land Sale Contract
FINAL

- a. Seller and Buyer shall each deliver to the other such evidence as may be reasonably required by the other of the authorization to complete the Closing;
- b. Buyer shall deliver to the title company, in a form acceptable to it, payment of all applicable real property transfer taxes in connection with the recording of any instrument;
- c. Seller shall execute, acknowledge and deliver such affidavits as the title company shall reasonably require; and
- d. Seller and Buyer shall execute and deliver to each other a closing statement.

Section 6-4. Closing Costs. Each party shall pay its own costs and expenses in connection with the sale at Closing, unless otherwise due at a different time. Each party shall pay for the fees and expenses of its attorneys, accountants, consultants, engineers and others employed or used arising out of or in connection with the sale of the interests being conveyed.

Without limiting the generality of the foregoing, Buyer shall pay:

- a. all expenses of or related to the issuance of title insurance; and
- b. any applicable recording tax due and payable by reason of the delivery or recording of any instrument.

Apportionments shall be computed as of 11:59 P.M. of the day before the Closing date. Any prorations shall be based on a twelve month calendar year and a thirty day month.

Buyer acknowledges that the conveyed areas are currently wholly exempt from real property taxes and that upon transfer of title, the taxable status of conveyed areas shall be restored in accordance with the New York Real Property Tax Law. Buyer further acknowledges that a pro rata tax will be assessed. During the period between Closing and the tax year when the taxable status of the conveyed area is restored, Buyer shall make a payment in lieu of taxes in an amount equal to the taxes due as if the conveyed area was not tax exempt. Such payment shall be made under the same payment schedule and penalty requirements set forth in the Suffolk County Tax Act.

Article VII
Environmental Remediation

Section 7-1. Definitions. For the purposes of this Article, the following definitions shall apply:

- a. "Hazardous Substance" or "Hazardous Material" shall mean 1.) any solid, liquid, or gaseous chemical, material, or substance that is regulated by any present or future federal, state, regional, or local law, ordinance, rule, regulation, notice, order, or guidance, including but not limited to any chemical, material, or substance that is designated or regulated as a hazardous or toxic chemical, material or substance, or 2.) any chemical, material or substance the presence of which could be detrimental to the Premises or hazardous to human health or safety or the environment, including but not limited to radioactive materials, including radon, natural gas, natural gas liquids (all of the foregoing gas called "Natural Gas Products"), liquefied natural gas, synthetic gas, or mixtures of Natural Gas Products and synthetic gas, lead, asbestos containing materials, polychlorinated biphenyls, urea formaldehyde, and petroleum products.
- b. "Release" shall mean any release, spill, leak, discharge, disposal, pumping, pouring, emitting, employing, injecting, leaching, dumping, or allowing to escape or migrate into or through the environment.
- c. "Remediation" or "Remediate" means all work performed or to be performed to investigate, characterize and remove, contain, dispose, treat, or otherwise deal with the presence on, in, at, or under the Premises, of Hazardous Materials at levels of contamination that require remediation under Environmental Laws, or any spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing (including the abandonment or discarding of barrels, containers or other receptacles containing Hazardous Materials) of Hazardous Materials on or into the Premises, in order to render the Premises in compliance with applicable Environmental Laws.
- d. "Environmental Laws" means the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 et seq., as amended; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 et seq., as amended; the Clean Air Act ("CAA"), 42 U.S.C. 7401 et seq., as amended; the Clean Water Act ("CWA"), 33 U.S.C. 1251 et seq., as amended; and any other federal, state, local or municipal laws, statutes, regulations, rules or ordinances imposing liability or establishing standards for protection of the environment.

Foley Land Sale Contract
FINAL

Section 7-2. Environmental Examination. During a period of fifteen (15) days subsequent to the execution of this LSC, Seller is willing, subject to the terms provided in this section, to provide reasonable access to the Premises to the Buyer and its consultants for activities relating to a Phase I Environmental Site Assessment and, if deemed necessary by the Buyer, an additional period of fifteen (15) days for such additional tests and reviews as the Buyer may require including, but not limited to, tank tests and/or a Phase II environmental Site Assessment of the Premises (collectively or singly, the "Work).

- a. Seller grants to the Buyer and its consultants reasonable access to the Premises for activities associated with the Work, which access shall be granted pursuant to the terms of this section.
- b. This section is expressly limited to access to conduct the Work. Any additional activities at the Premises will be subject to further agreement between the parties.
- c. Access to the Premises shall be upon reasonable notice to the Seller, and best efforts shall be undertaken to minimize any disruption of the business activities at the Premises.
- d. Consultant used by Buyer to conduct the Work shall procure and maintain the following insurance while conducting the Work: (a) Workers' compensation insurance as required by law; (b) Employer's liability insurance in the amount of \$1,000,000; and (c) Commercial general liability insurance, including, but not limited to, blanket contractual liability insurance, premises/operations, products/completed operations, broad form property damage, personal injury and independent contractor's liability insurance in the combined single limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Consultants shall provide certifications of their brokers that the foregoing insurance is in full force and effect and that the Seller and Buyer are named as additional insured parties on the commercial general liability policy.
- e. Buyer shall indemnify, defend and hold harmless, Seller and its successors, heirs and assigns, from and against any and all obligations, liabilities, losses, damages, claims and demands, suits, costs and expenses, including attorneys' fees, (collectively "Claims"), arising out of negligent, reckless or intentional acts or omissions of Buyer and its consultants, and their employees, agents and contractors during the course of the activities provided for by this section; provided, however, in no event shall this section apply to claims which may arise out of, be occasioned by, or result from any condition existing on, or which did exist on the Premises on or before the effective date of this LSC or at any time prior to Closing, unless caused by Buyer and/or its consultants, their employees, agents and contractors. This indemnification shall survive the termination of the LCS and the Closing.

Foley Land Sale Contract
FINAL

- f. **Restoration of Premises.** As further consideration for this Agreement, following the completion of Premises activities, Buyer, shall, at its sole cost and expense, undertake such work as is necessary to remove any items brought on to the Premises as part of the activities and shall restore the Premises to the same condition as existed prior to the activities.
- g. Upon completion of the Work, within 1 day of the completion thereof, but not more than 30 days from the date hereof, Buyer shall notify Seller of the results of the Phase I Environmental Site Assessment, and if Buyer shall determine to conduct additional tests and reviews including, but not limited to, tank tests and/or a Phase II Environmental Site Assessment, within 10 days of the completion thereof, but not more than 30 days after the date hereof, Buyer shall notify Seller of the results thereof. In either event Buyer shall set forth those matters which Buyer in good faith believes require Remediation by Seller ("Notice to Remediate"). Within 14 days of receipt of such Notice to Remediate, Seller shall advise Buyer of whether or not Seller will perform the Remediation sought. In the event Seller agrees to perform such Remediation, this LSC shall continue, subject to the terms and conditions hereof and Seller shall complete the Remediation before the Closing. In the event Seller shall decline to perform such Remediation, Buyer may elect to proceed with this LSC without credit, abatement or modification of the purchase price, or to cancel this LSC in which event Buyer and Nursing Home Buyer shall be entitled to receive the return of the Escrow Funds together with interest earned thereon, if any, and all parties shall be released from any further obligation to the others.
- h. Failure of Buyer to notify Seller pursuant to this section within the time required shall constitute a waiver by Buyer of the provisions hereof.

Any notice required to be provided hereunder by Seller or Buyer shall be sent as specified in section 12-4 of this LSC.

Section 7-3. Further Indemnification. Buyer hereby agrees to defend, indemnify and hold Seller, harmless from and against any and all losses, liabilities, damages, liens, claims, demands, causes of action, costs and expenses, including reasonable attorneys' fees, arising out of or related to the Release of Hazardous Substances or Hazardous Materials arising out of Buyer's or Buyer's Agents' activities on the Premises prior to the Closing, or arising out of Buyer's Release of Hazardous Substances or Hazardous Materials and/or Buyer's or Buyer's Agents' activities on or after the Closing. This indemnification includes, without limitation, any and all costs incurred because of any investigation, review or testing of the Premises or any cleanup, removal of structures, or restoration required or requested by a federal, state or local agency or political subdivision, including, without limitation, any such costs associated with the contamination of adjacent property or ground water caused by Buyer's or Buyer's Agents' activities prior to and after the Closing. Subject to the qualifications contained in this Section, this indemnification shall include all third party claims related to, or arising

Foley Land Sale Contract
FINAL

out of a Release of Hazardous Substances or Hazardous Materials on or below the Premises.

Section 7-4. Buyer Remediation. Buyer covenants and agrees to Remediate, from and after Closing, at its sole cost and expense, the Premises when, if, and to the extent Remediation is required by Environmental Laws or governmental authority having jurisdiction over the Premises (the "Buyer Remediation Obligation"), provided that the Buyer Remediation Obligation shall not include any obligation by Buyer to indemnify or defend or hold harmless Seller against any of the following, provided in each instance, the claim asserted may or could have asserted against Seller on or before the Closing:

- a. any fine, penalty or claim by a non-governmental third party;
- b. any fine or penalty by a governmental authority; or
- c. any claim by a governmental authority other than a claim to Remediate the Premises.

Buyer shall have the right to contest any or all of the foregoing at any time and from time to time up to and including a final and non-appealable judgment of a court of competent jurisdiction.

Section 7-5. Additional Indemnification. In addition to the foregoing, Buyer shall indemnify, defend and hold Seller harmless from and against:

- a. all losses incurred by Seller arising out of Buyer's material breach of its covenants and obligations as provided in this Article;
- b. Buyer's breach of the Buyer Remediation Obligation; and
- c. any claim by any subsequent owner of the Premises for reimbursement for any costs of Remediation of the Premises required by Section 7-4.

Buyer shall have the right to contest any or all of the foregoing at any time and from time to time up to and including a final and non-appealable judgment of a court of competent jurisdiction.

Section 7-6. Material Inducement. Buyer acknowledges that Seller is expressly relying on the provisions contained herein, which are a material inducement for Seller to enter into the transaction contemplated by the LSC.

Section 7-7. Seller Remediation. Seller covenants and agrees to Remediate, until the Closing, at its sole cost and expense, the Premises when, if, and to the extent it is notified by a governmental authority having jurisdiction over the Premises that Remediation is required (the "Seller Remediation Obligation"), provided that the Seller Remediation

**Foley Land Sale Contract
FINAL**

Obligation shall not include any obligation by Seller to indemnify or defend or hold harmless Buyer against any of the following,:

- a. any fine, penalty or claim by a non-governmental third party;
- b. any fine or penalty by a governmental authority; or
- c. any claim by a governmental authority other than a claim to Remediate the Premises.

Seller shall have the right to contest any or all of the foregoing at any time and from time to time up to and including a final and non-appealable judgment of a court of competent jurisdiction.

Section 7-8. Additional Indemnification. In addition to the foregoing, Seller shall indemnify, defend and hold Buyer harmless from and against:

- a. all losses incurred by Buyer arising out of Seller's material breach of its covenants and obligations as provided in this Article; and
- b. Seller's breach of the Seller Remediation Obligation.

Seller shall have the right to contest any or all of the foregoing at any time and from time to time up to and including a final and non-appealable judgment of a court of competent jurisdiction.

Section 7-9. Material Inducement. Seller acknowledges that Buyer is expressly relying on the provisions contained herein, which are a material inducement for Buyer to enter into the transaction contemplated by the LSC.

**Article VIII
Termination**

Section 8-1. Zoning and Regulatory Matters. If the Town or any other governmental or quasi-governmental office does not approve Buyer's application for zoning changes and/or other permits or approvals, including but not limited to Regulatory Matters, required to permit the continued operation of the Premises from and after the Closing as a certified skilled nursing facility with an adult day care, all as currently operated, Buyer shall be entitled to terminate this Agreement and, together with Buyer as set forth in the APA, receive the immediate refund of the Escrowed Funds plus accrued interest thereon.

**Foley Land Sale Contract
FINAL**

Section 8-2. Termination Due to Title Objection. This Agreement may be terminated due to an objection to title as set forth in Section 3-3 upon Notice provided for in this Agreement at Section 12-4 whereupon Buyer together with Nursing Home Buyer shall receive the immediate return of the Escrowed Funds plus accrued interest thereon.

Section 8-3. Termination upon Termination of the APA. This Agreement shall terminate upon termination of the APA in accordance with its terms.

Section 8-4. Termination Pursuant to Article IX. This Agreement may be terminated in accordance with the provisions contained in Article IX.

**Article IX
Default and Remedies; Casualty; Risk of Loss**

Section 9-1. Defaults and Remedies. If Buyer defaults hereunder and has not cured the same within 30 days after Buyer's receipt of Seller's default notice specifying such default, Seller's sole remedy shall be to receive and retain the Escrow Funds plus accrued interest thereon as liquidated damages and its sole remedy, it being agreed that Seller's damages in case of Buyer's default might be impossible to ascertain and that the Escrow Funds plus accrued interest thereon constitutes a fair and reasonable amount of damages under the circumstances and is not a penalty. If Seller defaults hereunder, Buyer shall cumulatively have all rights and remedies available under this Agreement, at law and equity, including but not limited to an action seeking damages and/or to obtain specific performance of Seller's obligations under this Agreement, the termination of this Agreement and the immediate payment to Buyer and the Nursing Home Buyer of the Escrowed Funds plus accrued interest thereon, and the reimbursement of all costs and expenses, including but not limited to reasonable attorneys' fees and court costs incurred in connection with Seller's breach or default and/or the enforcement of this provision. This provision will survive any termination of this Agreement.

Section 9-2. Casualty; Condemnation.

- a. Seller shall bear all loss or damage to the Premises occurring prior to the Closing Date. In the event of any such loss or damage, Seller shall give notice thereof to Buyer. In the event repairs or replacement are required to be made promptly in the reasonable judgment of Seller, Seller shall proceed with the required repairs or replacements at its cost or expense. In the event repairs or replacement are not promptly required, Buyer may, within ten (10) business days after receipt of notice of the loss or damage, give notice to Seller that: (i) it does not require the repair or replacement of the loss or damage, in which case Seller shall have no obligation to make such repair or replacement and any insurance proceeds received by it as a result thereof shall belong to Seller and the Purchase Price shall be reduced by the value of such loss or damage

Foley Land Sale Contract
FINAL

plus the amount of the deductible attributable by the insurer to such loss or damage, or (ii) it elects to make the repair or replacement of the loss or damage after the Closing, in which case the Purchase Price shall be reduced by the value of such loss or damage plus the amount of the deductible attributable by the insurer to such loss or damage. Notwithstanding the foregoing, if in the reasonable judgment of Buyer or Seller a material part of the Premises is destroyed, either party may within thirty (30) days thereafter give notice to the other party that it elects to terminate this Agreement. In such event, the Escrowed Funds plus accrued interest thereon shall be returned to Buyer and Nursing Home Buyer and neither party hereto shall have any further obligation hereunder other than those provisions of this Agreement which specifically survive the termination.

- b. If, prior to the Closing, there shall be a taking by condemnation or eminent domain (a "taking") of five percent (5%) or more of the land constituting the Premises, which taking may reasonably be expected to interfere with Buyer's use of the Premises, Seller shall give notice thereof to Buyer, and Buyer may, by notice to Seller given the earlier of thirty (30) days after notice thereof from Seller or at the Closing, terminate this Agreement. In such event, the Escrowed Funds plus accrued interest thereon shall be returned to Buyer and Nursing Home Buyer and neither party hereto shall have any further obligation hereunder other than those provisions of this Agreement which specifically survive the termination.
- c. If, prior to the Closing, there shall be a taking of less than five percent (5%) of the land constituting the Premises, or if Buyer does not elect to terminate this Agreement if permitted to do so under (b) above, then this Agreement shall continue in full force and effect without abatement of the Purchase Price. In such event, Seller will assign without representation or warranty to Buyer all of its interest in any awards payable as the result of such taking, free and clear of any liens, claims or security interests. If any portion of such award has already been received by Seller, then the amount so received (net of costs of collection, if any) shall be paid or allowed to Buyer at the Closing, without interest.

Section 9-3. APA. It is expressly agreed and understood that the closing of the transaction contemplated under the APA is an express obligation of the parties to close the transactions contemplated by this Agreement. A default under the APA shall be a default hereunder and vice versa. In addition, if the Nursing Home Buyer is entitled to cancel or terminate the APA or otherwise be entitled to the return of the Escrow Funds, in accordance with the terms of the APA, the Buyer shall be entitled to cancel or terminate this Agreement and receive an immediate refund of the Escrow Funds, if any, plus accrued interest thereon. Similarly, if the Nursing Home Seller is entitled to cancel or terminate the APA or otherwise be entitled to the receipt of the Escrow Funds in accordance with the terms of the APA, the Seller shall be entitled to cancel or terminate

**Foley Land Sale Contract
FINAL**

this Agreement and immediately receive the Escrow Funds, if any plus accrued interest thereon. This provision shall survive any termination of this Agreement.

**Article X
Representations**

Section 10-1. Buyers Representations. Buyer understands the following:

- a. that it shall prepare, all at Buyer's expense, the surveys and maps and shall record the deeds, covenants and restrictions and maps necessary for the application seeking the approval for all Town, County and New York State permits and/or approvals;
- b. that it shall bear all on site infrastructure costs necessary to obtain required approvals and utilities.

Section 10-2. Seller's Representations. Seller represents and warrants to Buyer that as of the date hereof the following representations and warranties are true in all material respects and that the same shall be true in all material respects as of the date of Closing:

- a. Except as otherwise provided in this Agreement, there are no leases, tenancies, mortgages or deeds or other indentures to which Seller is a party which now encumbers the Premises or any portion thereof.
- b. there is no action, suit or other proceeding pending against Seller with respect to the Premises or the transactions contemplated by this Agreement.
- c. Except as disclosed in Schedule 10-2, there are no underground fuel tanks and no violations of any state, county or municipal laws, rules or regulations.
- d. Any and all easements and rights of way necessary for Buyer to use the Premises as contemplated hereby shall be granted by Seller to Buyer, to run with the land in perpetuity, without additional cost or expense, including (without limitation) those required by Buyer for sewer and water and other utilities, and respecting roads and curb cuts.
- e. All electrical, plumbing, heating, water and air conditioning systems are and shall at Closing be in their present condition, reasonable wear and tear excepted.
- f. Except as set forth in Schedule 10-2, there are no violations against the Premises.

Foley Land Sale Contract
FINAL

- g. This Agreement and Buyer's obligations to purchase the Premises are subject to and conditioned upon the accuracy as of the Closing Date of all of Seller's representations and warranties.

Article XI
Indemnification

Section 11-1. Buyer Indemnification. In addition to the indemnification requirements set forth elsewhere in this Agreement and in the APA, Buyer agrees that from and after closing it shall protect, indemnify and hold harmless Seller and its officers, officials, employees, contractors, agents and other persons from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and reasonable attorneys' fees, arising out of the acts or omissions or the negligence of Buyer after closing. Buyer shall defend Seller and its officers, officials, employees, contractors, agents and other persons in any such suit, including appeals, or at Seller's option, pay reasonable attorneys' fees for defense of any such suit.

Section 11-2. Seller Indemnification. In addition to the indemnification requirements set forth elsewhere in this Agreement and in the APA, Seller agrees that from and after closing it shall protect, indemnify and hold harmless Buyer and its principals, officers, officials, employees, contractors, agents and other persons from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and reasonable attorneys' fees, arising out of the acts or omissions or the negligence of Seller before closing. Seller shall defend Buyer and its principals, officers, officials, employees, contractors, agents and other persons in any such suit, including appeals, or at Buyer's option, pay reasonable attorneys' fees for defense of any such suit.

Section 11-3. Limits on Indemnification. In no event will the Seller's indemnity obligations hereunder, and under the APA or any other document executed in connection herewith or therewith exceed, in the aggregate \$500,000, plus the amount of any Excluded Liabilities; provided, however, that the foregoing limitation shall not apply to claims by third parties against Buyer.

In no event will the Buyer's indemnity obligations hereunder, and under the APA or any document executed in connection herewith or therewith, other than the Escrow Agreement, exceed, in the aggregate \$500,000; provided, however, that the foregoing limitation shall not apply to claims by third parties against Seller.

**Article XII
Miscellaneous**

Section 12-1. Investigate and Negotiate Regulatory Matters. Buyer is authorized by Seller to investigate and negotiate with all governmental, quasi-governmental and other entities having or claiming jurisdiction over the Premises regarding any one or more of the items enumerated in the definition of Regulatory Matters and Seller agrees to cooperate with Buyer in assisting Buyer in its efforts to obtain all approvals for all Regulatory Matters.

Section 12-2. Lawful Compliance. Buyer shall comply with any federal, state or local law, rule, or regulation affecting the transactions contemplated by this LSC.

Section 12-3. Restoration. In the event that this LSC is terminated by Buyer, Buyer shall repair and restore any damage or disturbance caused by Buyer's exercise of its rights under this LSC, to substantially the same condition as existed prior to such damage or disturbance occurring. In connection therewith, in the event that this LSC is terminated prior to Closing, Buyer is granted a right of access to enter the Premises from and after the termination of this LSC for the purpose of performing such restoration and repairs, which grant shall survive the termination of this LSC and shall not expire until such repairs and restoration are completed by Buyer. The terms of Article VII shall apply hereto.

Section 12-4. Notices. All notices, requests, demands, claims and other communications required or permitted to be delivered, given or otherwise provided under this Agreement must be in writing and must be delivered, given or otherwise provided: (a) by hand (in which case, it will be effective upon delivery); or (b) by overnight delivery by a nationally recognized courier service (in which case, it will be effective on the Business Day after being deposited with such courier service); and (c) by email, in each case, to the address or email address listed below (or at such other address for such Party as shall be specified by similar such notice):

If to Seller, to:

County of Suffolk
Department of Health Services
Attn: Margaret B. Bermel, MBA
Director of Health Administrative
Services
Suffolk County Department of Health
Services
Telephone: 631.853.3153
Email:
margaret.bermel@suffolkcountyny.gov

With copies to:

If to Buyer, to:

SSS Realty, LLC
255 Warner Ave.
Roslyn Heights, NY 11577
Attn: Samuel Sherman
Telephone: 718-930-9852
SSherman@sunharbormanor.com

With copies to:

Foley Land Sale Contract
FINAL

Dennis M. Cohen, County Attorney
Suffolk County Department of Law
H. Lee Dennison Building
100 Veterans Memorial Highway
Hauppauge, NY 11788-0099
Telephone: 631-853-5677
Email:
dennis.cohen@suffolkcountyny.gov

Novack Burnbaum Crystal LLP
300 East 42nd Street
New York, New York 10017
Attn: Edward H. Burnbaum, Esq.
and
Martha M. Dwyer, Esq.
Telephone: 212-682-4002
eburnbaum@nbolaw.com
mdwyer@nbclaw.com

Section 12-5. Disclosure Statement. Buyer represents and warrants that, unless exempt, it will file with the Comptroller of Suffolk County the verified public disclosure statement required by Suffolk County Administrative Code Section A5-7 and shall file an update of such statement with the said Comptroller on or before the 31st day of January in each year of this Agreement's duration. Buyer acknowledges that such filing is a material, contractual and statutory duty as per the aforementioned Administrative Code. This provision is subject to a cure period of forty-five (45) days upon receipt of Notice as provided for in Section 12-4.

Section 12-6. Confidentiality. The provisions of the Confidentiality Agreement shall govern this Agreement, as if the Buyer were a party thereto.

Section 12-7. Certification as to Relationships. Pursuant to applicable Suffolk County laws, the parties hereto hereby certify that, other than this Agreement and the APA and other valid agreements with the County, there is no known relationship within the third degree of consanguinity, life partner, or business, commercial economic or financial relationship between the parties, the signatories to this LSC and any partners, members, directors, or shareholders of five (5%) percent or more of any party to this Agreement.

Section 12-8. Execution of Documents. This LSC may be executed in any number of original or PDF or fax counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same agreement.

Section 12-9. Headings. Any headings or titles of the several parts, Articles, and Sections of this LSC are for convenience only and shall be disregarded in construing or interpreting any of its provisions.

Section 12-10. No Implied Waiver. No waiver shall be inferred from any failure or forbearance of a party to enforce any provision of this LSC in any particular instance or instances, but the same shall otherwise remain in full force and effect notwithstanding any such failure or forbearance.

Section 12-11. Entire Agreement. This Agreement contains the entire understanding between the parties and may not be amended or modified except by an instrument in writing duly executed by all of the parties hereto.

Foley Land Sale Contract
FINAL

Section 12-12. Severability. It is expressly agreed that if any term or provision of this LSC, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, the remainder of this LSC, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and every other term and provision of the LSC shall be valid and shall be enforced to the fullest extent permitted by law.

Section 12-13 Claims and Actions. No claim whatsoever shall be made by Buyer, its successors or assigns, against any officer, agent or employee of Seller for, or on account of, anything done or omitted to be done in connection with this LSC. No claim whatsoever shall be made by Seller, its successors or assigns, against any principal, officer, agent or employee of Buyer for, or on account of, anything done or omitted to be done in connection with this LSC. Each of the parties hereto agrees to render diligently to the other party, without compensation, any and all cooperation, that may be required to defend the other party, its employees and designated representatives against any third party claim, demand or action that may be brought against the other party, its employees or designated representatives in connection with this LSC.

Section 12-14. Cooperation. Seller and Buyer shall coordinate and cooperate in a reasonable manner to facilitate the transactions contemplated under this Agreement and shall share information on a timely basis as the need arises.

Section 12-15. Choice of Law and Consent to Jurisdiction and Venue. This LSC shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of law provisions. Venue shall be designated as Suffolk County, New York or the United States District Court for the Eastern District of New York.

Section 12-16. Brokers; no commission. A brokerage or fee or commission shall be due or payable by Seller for this transaction.

Section 12-17. Arrears. Buyer warrants that it is not in arrears to Seller upon debt or contract and is not in default as surety, contractor or otherwise on any obligation to or contract with Seller.

Section 12-18. Survival. None of the provisions of this LSC are intended to or shall be merged by reason of any deed transferring title to the Premises, and any such deed shall not be deemed to affect or impair the provisions and covenants in this LSC, all of which shall survive the delivery of such deed.

Section 12-19. Vendee's Lien. The Escrow Funds shall be a lien against the Premises, provided however such lien shall not continue after default by Buyer hereunder or be deemed an objection to title.

Section 12-20. Counsel. Each party to this Agreement represents to the other party that they have been represented in this transaction by counsel of their own choice and have

Foley Land Sale Contract
FINAL

consulted such counsel before entering into this Contract. This clause shall survive delivery of the Deed.

Section 12-21. Zoning and Certificates of Occupancy. Notwithstanding anything contained in this Agreement or in the APA to the contrary, Buyer's obligations under this Agreement are conditioned and contingent upon Buyer's receipt prior to Closing of all governmental, quasi-governmental and municipal authority consents and approvals required for Buyer's use and occupancy of the Premises after Closing as and for a 264 certified bed skilled nursing facility and for its use as an adult day health care center, all as currently used and operated, including but not limited to all necessary zoning changes or waivers, site plan approvals, building and other permits, certificates, approvals and variances. Buyer shall make prompt, truthful, complete and diligent application(s) therefor after approval by the County Legislature, and notice thereof to Buyer as provided in Section 12-4 hereof. After making prompt, truthful, complete and diligent application(s), in event that Buyer's application(s) for any of the foregoing shall at any time be denied Buyer shall have the option, exercisable in its sole discretion, to cancel this Agreement and receive the prompt return of the deposit, if any plus accrued interest thereon, whereupon neither party shall have any further obligation to the other. Seller agrees to fully and promptly cooperate with Buyer as and when Buyer may request in Buyer's effort to obtain all the necessary consents, waivers and approvals contemplated under this paragraph.

Section 12-22. Assignment. Neither Party may assign or delegate any rights or obligations set forth in this Agreement without the prior written consent of the other Party; provided, however, that SSS Realty, LLC may assign its rights and obligations hereunder to an affiliate with at least one principal in common with SSS Realty, LLC.

--End of Text--

Foley Land Sale Contract
FINAL

IN WITNESS WHEREOF, the Buyer and the Seller have caused this Agreement to be signed as of the date that appears in its first paragraph.

SSS REALTY, LLC

THE COUNTY OF SUFFOLK

By: [Signature]

By: [Signature]

Name: Samuel Sherman

Name: Regino M. Calcaterra

Title: Manager

Title: Chief Deputy County Executive

SUFFOLK COUNTY DEPARTMENT OF
HEALTH SERVICES

By: [Signature]

Name: Margaret B. Bernel, MPA

Title: Director of Health Administrative Services

Division of Real Property Acquisition &
Management

By: [Signature]

Name: Jill Rosen-Nikoloff

Title: Director of Real Estate

Approved as to Legality:
Dennis M. Cohen, County Attorney

By: [Signature]

Name: Dennis M. Cohen,

Title: County Attorney

Foley Land Sale Contract
FINAL

Exhibit 1
Description of Premises

COUNTY OF SUFFOLK - DEPARTMENT OF PUBLIC WORKS

Tax Map Nos. P/O 0200 - 742.00 - 01.00 - 003.001 &
P/O 0200 - 742.00 - 01.00 - 003.002

ALL that piece or parcel of land situate in the Hamlet of Yaphank, Town of Brookhaven, County of Suffolk, State of New York as shown on a Map prepared for Suffolk County and on file in the Office of the Commissioner of the Department of Public Works dated September 15, 2009 and described as follows:

COMMENCING at a point on the division line between the lands of the County of Suffolk on the east and the lands now or formerly of Harvey A. Auerbach, reputed owner on the west; said point also being on the division line between the lands of the County of Suffolk on the south, and the lands of the Metropolitan Transportation Authority and the Long Island Railroad, reputed owners on the north; thence S 04° 46' 00" E along the previously mentioned division line between the lands now or formerly of Harvey A. Auerbach, reputed owner on the west, and the County of Suffolk on the east, a distance of 1,834.49 feet to a point.

THENCE, N 84° 38' 50" E through the lands of the County of Suffolk, a distance of 4,700.34 feet to a point on the westerly boundary of Yaphank Avenue, CR 21;

THENCE, southerly along said boundary the following three (3) courses and distances:

1. S 05° 30' 19" E, a distance of 269.07 feet to a point;
2. S 10° 41' 32" E, a distance of 119.74 feet to a point;
3. S 05° 13' 41" E, a distance of 517.00 feet to the **Point Of Beginning**;

THENCE from said **Point Of Beginning** the following five (5) courses and distances:

1. S 84° 46' 19" W, a distance of 595.00 feet to a point;
2. N 05° 13' 41" W, a distance of 690.00 feet to a point;
3. S 84° 46' 19" W, a distance of 700.00 feet to a point;
4. S 05° 13' 41" E, a distance of 790.00 feet to a point;
5. N 84° 46' 19" E, a distance of 1,295.00 feet to a point on the aforementioned western boundary of Yaphank Avenue, CR 21;

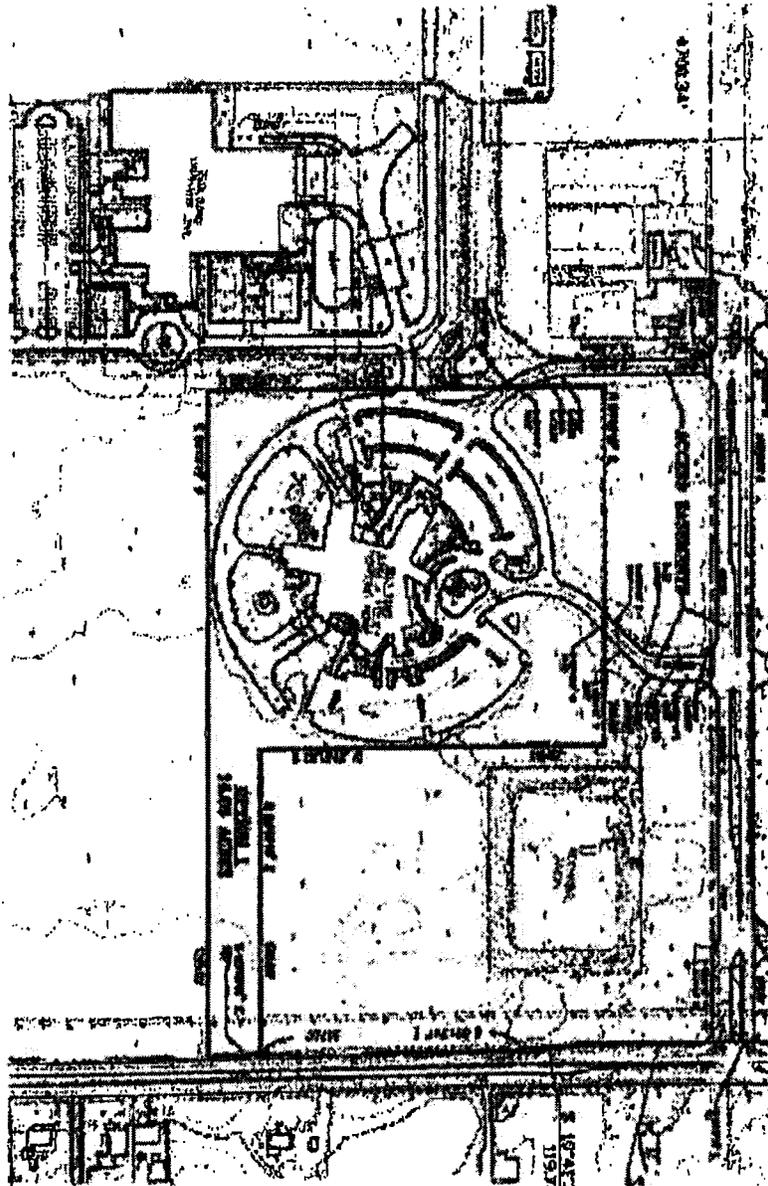
THENCE, N 05° 13' 41" W along said boundary a distance of 100.00 feet to the **Point Of Beginning**, being 612,500 ± square feet or 14,061 ± acres MORE OR LESS.

**Foley Land Sale Contract
FINAL**

Excepting, also and reserving to any and all utilities the right of access at all times for the update, maintenance and service of their facilities.

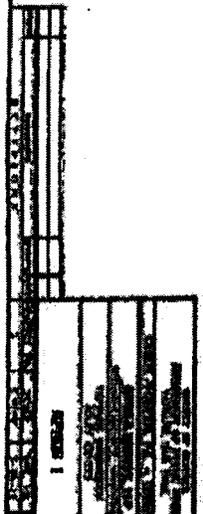
Foley Land Sale Contract
FINAL

Exhibit 2
Survey of Premises



± 05'13"41" 6 1287.33'

YAPHANK AVENUE
(COUNTY ROAD 21)



Foley Land Sale Contract
FINAL

Exhibit 3
Description of Easement

COUNTY OF SUFFOLK – DEPARTMENT OF PUBLIC WORKS

Tax Map Nos. P/O 0200-742.00-01.00-003.001 &
P/O 0200-742.00-01.00-003.002

Permanent Easement for Ingress and Egress

A permanent, non-exclusive easement to be exercised in, on and over the property herein delineated for the purpose of ingress and egress to the John J. Foley Skilled Nursing Facility and more particularly bounded and described as follows:

All that piece or parcel of land situate in the Hamlet of Yaphank, Town of Brookhaven, County of Suffolk, State of New York as shown on a Map on file with the Commissioner of the Department of Public works as prepared by Michael J. Wloks L.S. and dated September 15, 2009 and described as follows:

Commencing at a point on the division line between the lands of the County of Suffolk on the east and the lands now or formerly of Harvey A. Auerbach, reputed owner on the west; said point also being on the division line between the lands of the County of Suffolk on the south, and the lands of the Metropolitan Transportation Authority and the Long Island Railroad, reputed owners on the north; thence S 04°46'00" E along the previously mentioned division line between the lands now or formerly of Harvey A. Auerbach, reputed owner on the west, and the County of Suffolk on the east, a distance of 1834.49 feet to a point;

Thence, N 84°38'50" E through the land of Suffolk County a distance of 4700.34 feet to a point on the westerly boundary of Yaphank Avenue CR 21 and the Point of Beginning;

Thence, from said point of beginning and through the Land of Suffolk County the following twenty-three (23) courses and distance;

1. S 84°38'50" W, a distance of 160.00 feet to a point;
2. N 80°31'51" W, a distance of 43.00 feet to a point;
3. S 84°38'50" W, a distance of 462.49 feet to a point;

Foley Land Sale Contract
FINAL

4. along the arc of a curve to the left having a radius of 40.00 feet an arc length of 62.83 feet to a point;
5. S 05°21'10" E, a distance of 40.09 feet to a point;
6. along the arc of a curve to the right having a radius of 125.00 feet an arc length of 100.95 feet to a point;
7. S 40°55'13" W, a distance of 78.29 feet to a point on the northerly boundary of the John J. Foley Skilled Nursing Facility;
8. S 84°46'19" W, along said boundary, a distance of 40.42 feet to a point;
9. N 40°55'13" E, a distance of 90.54 feet to a point;
10. along the arc of a curve to the left having a radius of 75.00 feet an arc length of 60.57 feet to a point;
11. N 05°21'10" W, a distance of 67.66 feet to a point;
12. along the arc of a curve to the left having a radius of 40.00 feet an arc length of 62.83 feet to a point;
13. S 84°38'50" W, a distance of 473.70 feet to a point;
14. along the arc of a curve to the left having a radius of 40.00 feet an arc length of 62.83 feet to a point;
15. S 05°21'10" E, a distance of 249.32 feet to a point;
16. along the arc of a curve to the left having a radius of 222.00 feet an arc length of 98.86 feet to a point on the westerly boundary of the John J. Foley Skilled Nursing Facility;
17. S 05°13'41" E, along said boundary, a distance of 55.38 feet to a point;
18. N 37°16'56" W, a distance of 22.13 feet to a point;
19. along the arc of a curve to the right having a radius of 250.00 feet an arc length of 139.32 feet to a point;
20. N 05°21'10" W, a distance of 249.32 feet to a point;
21. along the arc of a curve to the left having a radius of 40.00 feet an arc length of 62.83 feet to a point;
22. N 05°13'41" W, a distance of 68.00 feet to a point;
23. N 84°38'50" E, a distance of 1372.69 feet to a point on the aforementioned westerly boundary of Yaphank Avenue CR 21;

Thence, S 05°17'54" E, along said boundary, a distance of 79.00 feet to the Point of Beginning; being 118,215± square feet or 2.714± acres, more or less.

**Foley Land Sale Contract
FINAL**

Excepting also and reserving to any and all utilities the right of access at all times for the update, maintenance and service of their facilities.

Foley Land Sale Contract
FINAL

Exhibit A
Asset Purchase Agreement

**Foley Land Sale Contract
FINAL**

**Exhibit B
Escrow Agreement**

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Agreement"), dated as of August 1, 2012, is by and among Suffolk County, New York, with offices at H. Lee Dennison Bldg, 12th Floor, 100 Veterans Memorial Hgwy, PO Box 6100, Hauppauge, NY 11788 (the "County"), SSS Operating, LLC ("Operating"), SSS Realty, LLC ("Realty") and Harris Beach PLLC, a New York professional limited liability company with an address at 333 Earle Ovington Blvd, Suite 912, Uniondale, New York 11553 ("Escrow Agent").

WHEREAS, pursuant to the terms and conditions of a certain Asset Purchase Agreement, dated as of even date herewith (the "APA"), Operating has agreed to purchase from the County, those certain assets identified in the APA.

Whereas, pursuant to the terms and conditions of a certain Land Sale Contract, dated as of even date herewith (the "Sale Contract"), Realty has agreed to purchase from the County, the building and land operated by the County as the John J. Foley Skilled Nursing Facility.

Whereas, pursuant to the APA and Land Sale Contract, Operating is to deposit \$800,000 with an escrow agent (the "Escrow Agent") as follows: \$500,000 upon the execution of the Land Sale Contract and the APA, and an additional \$300,000 upon the first business day immediately following the Due Diligence Period set forth in the APA, to be held by the Escrow Agent subject to the terms of an escrow agreement; and

Whereas, the County, Operating, Realty and the Escrow Agent hereby agree that, in consideration of the mutual promises and covenants contained herein, Escrow Agent shall hold in escrow and shall distribute the Escrow Property (as defined herein) in accordance with and subject to the following Instructions and Terms and Conditions:

I. INSTRUCTIONS:

1. Escrow Property

The Purchaser shall deposit with the Escrow Agent funds in the amount of \$500,000 upon the signing of the APA. On the first business day immediately following the Due Diligence Period set forth in the APA, the Purchaser shall pay additional sum of \$300,000 to the Escrow Agent. Such funds, plus all interest thereon received by Escrow Agent, less any property and/or funds distributed or paid in accordance with this Escrow Agreement, is collectively referred to herein as "Escrow Property".

2. Investment of Escrow Property

Escrow Agent shall hold the Escrow Property in Westbury I-- TD Bank, 6060 Brush Hollow Road, Westbury, NY 11590.

3. Distribution of Escrow Property

Escrow Agent is directed to hold and distribute the Escrow Property in the following manner:

- a. Upon receipt of a fully executed distribution letter substantially in the form attached hereto as Exhibit A, the Escrow Property shall be distributed in accordance with the instructions set forth in such distribution letter.
- b. Upon receipt of a fully executed distribution letter substantially in the form attached hereto as Exhibit B, the Escrow Property shall be distributed in accordance with the instructions set forth in such distribution letter.

4. Notices

All notices, requests, demands, claims and other communications required or permitted to be delivered, given or otherwise provided under this Agreement must be in writing and must be delivered, given or otherwise provided: (a) by hand (in which case, it will be effective upon delivery); or (b) by overnight delivery by a nationally recognized courier service (in which case, it will be effective on the Business Day after being deposited with such courier service); and (c) by email, in each case, to the address or email address listed below (or at such other address for such Party as shall be specified by similar such notice). Notices to Escrow Agent shall be deemed given when actually received by Escrow Agent. Notices shall be directed as follows:

If to the County:

Dennis M. Cohen, County Attorney
Suffolk County Department of Law
H. Lee Dennison Building
100 Veterans Memorial Highway
Hauppauge, NY 11788-0099
Telephone: 631-853-5677
Email: dennis.cohen@suffolkcountyny.gov

with a courtesy copies to:

Suffolk County Department of
Health Services
Attn: Margaret B. Bermel, MBA
Director of Health Administrative Services
Suffolk County Department of
Health Services
225 Rabro Drive, Hauppauge, NY 11788
Telephone: 631.853.3153
Email: margaret.bermel@suffolkcountyny.gov

If to Operating or Realty:

SSS Operating, LLC
255 Warner Ave.
Roslyn Heights, NY 11577
Attn: Samuel Sherman
Telephone: 718-930-9852
SSherman@sunharbormanor.com

with a courtesy copies to:

Novack Burnbaum Crystal LLP
300 East 42nd Street
New York, New York 10017
Attn: Edward H. Burnbaum, Esq.
and
Martha M. Dwyer, Esq.
Telephone: 212-682-4002
eburnbaum@nbclaw.com
mdwyer@nbclaw.com

If to Escrow Agent

Harris Beach PLLC
333 Earle Ovington Boulevard
Uniondale, New York
Attn:
Telephone:
[email]

II. TERMS AND CONDITIONS:

1. The duties, responsibilities and obligations of Escrow Agent shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. Escrow Agent shall not be subject to, nor required to comply with, any other agreement between Operating or Realty and any other party, or to which Operating or Realty is a party, even though reference thereto may be made herein, or to comply with any direction or instruction (other, than those contained herein or delivered in accordance with this Escrow Agreement) from Operating or Realty or any entity acting on their behalf. Escrow Agent shall not be required to, and shall not, expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

2. This Agreement is for the exclusive benefit of the parties hereto and their respective successors hereunder, and shall not be deemed to give, either expressed or implied, any legal or equitable right, remedy, or claim to any other entity or person whatsoever.

3. If at any time Escrow Agent is served with any judicial or administrative order, judgment,

decree, writ or other form of judicial or administrative process which in any way affects Escrow Property (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Escrow Property), Escrow Agent is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate; and if Escrow Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, Escrow Agent shall not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

4. (a) Escrow Agent shall not be liable for any action taken or omitted or for any loss or injury resulting from its actions or its performance or lack of performance of its duties hereunder in the absence of gross negligence or willful misconduct on its part. In no event shall Escrow Agent be liable: (i) for acting in accordance with or relying upon any, instruction, notice, demand, certificate or document from Operating, Realty or the County or any entity acting on behalf of Operating, Realty or the County, provided that such instruction, notice, demand, certificate or document is consistent with the requirements set forth in this Agreement; (ii) for any consequential, punitive or special damages; (iii) for the acts or omissions of its nominees, correspondents, designees, subagents or sub custodians; or (iv) for an amount in excess of the value of the Escrow Property, valued as of the date of deposit plus any interest earned thereon.

(b) Escrow Agent shall not maintain any security interest in the Escrow Property.

(c) Escrow Agent shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of Escrow Agent (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility).

5. Escrow Agent shall provide to Operating, Realty and the County monthly statements identifying transactions, transfers or holdings of Escrow Property and each such statement shall be deemed to be correct and final upon receipt thereof by Operating and the County unless Escrow Agent is notified in writing to the contrary within thirty (30) business days of the date of such statement.

6. Escrow Agent shall not be responsible in any respect for the form, execution, validity, value or genuineness of documents or securities deposited hereunder, or for any description therein, or for the identity, authority or rights of persons executing or delivering or purporting to execute or deliver any such document, security or endorsement.

7. Notices, instructions or other communications shall be in writing and shall be given in the manner and to the address set forth in paragraph 4 of Section I of this Agreement (or to such other address as may be substituted therefore by written notification to Escrow Agent, Operating, Realty or the County. Escrow Agent is authorized to comply with and rely upon any notices, instructions or other communications believed by it to have been sent or given by Operating, Realty or the County or by a person or persons authorized by Operating, Realty or the County.

Whenever under the terms hereof the time for giving a notice or performing an act falls upon a Saturday, Sunday, or banking holiday, such time shall be extended to the next day on which Escrow Agent is open for business.

8. Operating, Realty and the County shall be liable for and shall reimburse and indemnify Escrow Agent and hold Escrow Agent harmless from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable attorneys fees and expenses) (collectively, "Losses") arising from or in connection with or related to this Escrow Agreement or its service as Escrow Agent hereunder (including but not limited to Losses incurred by Escrow Agent in connection with its successful defense, in whole or in part, of any claim of gross negligence or willful misconduct on its part) provided, however, that nothing contained herein shall require Escrow Agent to be indemnified for Losses caused by its gross negligence or willful misconduct. Operating and Realty shall be responsible for 50% of such Losses and the County shall be responsible for 50% of such Losses, except that if any party is found by a court to be responsible for such Losses, such party shall pay the Losses and shall reimburse the other parties hereto for all related expenses.

9. (a) Operating, Realty and the County, by joint agreement, may remove Escrow Agent at any time by giving to Escrow Agent ten (10) calendar days' prior notice in writing signed by Operating, Realty and the County. Escrow Agent may resign at any time by giving to Operating, Realty and the County fifteen (15) calendar days prior written notice thereof.

(b) Within ten (10) calendar days after giving the foregoing notice of removal to Escrow Agent or receiving the foregoing notice of resignation from Escrow Agent, Operating, Realty and the County, by joint agreement, shall appoint a successor Escrow Agent. If a successor Escrow Agent has not accepted such appointment by the end of such 10-day period, Escrow Agent may, in its sole discretion: (i) during the term of this Agreement, retain possession of the Escrow Property until receiving notice of the successor Escrow Agent; or (ii) apply to the County District Court for the appointment of a successor Escrow Agent or for other appropriate relief.

(c) Upon receipt of notification of the identity of the successor Escrow Agent, Escrow Agent shall either deliver the Escrow Property then held hereunder to the successor Escrow Agent, less Escrow Agent's fees, costs and expenses or other obligations owed to Escrow Agent, or hold such Escrow Property (or any portion thereof), pending distribution, until all such fees, costs and expenses or other obligations are paid.

(d) Upon delivery of the Escrow Property to successor Escrow Agent, Escrow Agent shall have no further duties, responsibilities or obligations hereunder except for: (i) the obligation to provide monthly account statements as provided in paragraph 5 of Section II; and (ii) such obligations which expressly survive termination of this Agreement.

10. (a) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by Escrow Agent hereunder, Escrow Agent may, in its sole discretion, refrain from taking any action other than retaining possession of the Escrow Property during the term of this Agreement, unless Escrow Agent receives written instructions,

signed by Operating, Realty and the County, which eliminates such ambiguity or uncertainty.

(b) In the event of any dispute between or conflicting claims by or against Operating, Realty or the County and/or any other person or entity with respect to any Escrow Property, Escrow Agent shall be entitled, in its sole discretion, during the term of the Agreement, to refuse to comply with any and all claims, demands or instructions with respect to such Escrow Property so long as such dispute or conflict shall continue, and Escrow Agent shall not be or become liable in any way to Operating, Realty or the County for failure or refusal to comply with such conflicting claims, demands or instructions. Escrow Agent, in its sole discretion, shall be entitled to refuse to act, during the term of the Agreement, until: (i) such conflicting or adverse claims or demands shall, prior to the expiration of the Agreement have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in a writing satisfactory to Escrow Agent; (ii) Escrow Agent shall have received security or an indemnity satisfactory to it sufficient to hold it harmless from and against any and all Losses which it may incur by reason of so acting; or (iii) Escrow Agent may deposit the Escrow Property in the registry of the County District Court for the Eastern District of New York. The costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such dispute incurred by the Escrow Agent shall be paid by, and shall be deemed an obligation of, Operating, Realty or the County, as the case may be. In the event of an obligation of any of Operating, Realty or the County under the preceding sentence, each of Operating, Realty and the County reserves all rights to seek the repayment of such costs and expenses, and to seek the payment of its costs and expenses (including reasonable attorneys' fees and expenses) from any person, including the other parties to this Escrow Agreement.

11. Except as otherwise permitted herein, this Escrow Agreement may be modified only by a written amendment signed by all the parties hereto, and no waiver of any provision hereof shall be effective unless expressed in a writing signed by the party to be charged.

12. The rights and remedies conferred upon the parties hereto shall be cumulative, and the exercise or waiver of any such right or remedy shall not preclude or inhibit the exercise of any additional rights or remedies. The waiver of any right or remedy hereunder shall not preclude the subsequent exercise of such right or remedy.

13. Operating, Realty and the County each hereby represent that: (a) this Escrow Agreement has been duly authorized, executed and delivered on its behalf and constitutes its legal, valid and binding obligation; and (b) its execution, delivery and performance of this Escrow Agreement does not and will not violate any law or regulation applicable to it.

14. The invalidity, illegality or unenforceability of any provision of this Agreement shall in no way affect the validity, legality or enforceability of any other provision; and if any provision is held to be unenforceable as a matter of law, the other provisions shall not be affected thereby and shall remain in full force and effect.

15. This Agreement shall constitute the entire agreement of the parties with respect to the subject matter and supersedes all prior oral or written agreements in regard thereto.

16. This Agreement shall terminate upon the distribution of all Escrow Property from the Account. The provisions of this Section II shall survive termination of this Escrow Agreement and/or the resignation or removal of the Escrow Agent.

17. The headings contained in this Agreement are for convenience of reference only and shall have no effect on the interpretation or operation hereof.

18. This Escrow Agreement may be executed by each of the parties hereto in any number of counterparts, each of which counterpart, when so executed and delivered, shall be deemed to be an original and all such counterparts shall together constitute one and the same agreement.

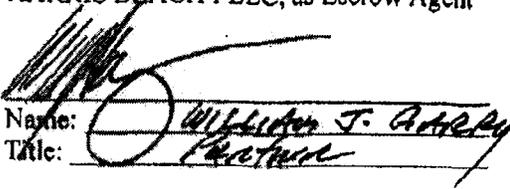
19. Any corporation into which Escrow Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which Escrow Agent shall be a party, or any corporation to which substantially all the corporate trust business of Escrow Agent may be transferred, shall, subject to the terms of the Escrow Agreement, be Escrow Agent under this Escrow Agreement without further act.

20. The Escrow Agent does not have any interest in the Escrow Property deposited hereunder but is serving as escrow holder only and having only possession thereof. Operating, Realty and the County, if applicable, shall pay or reimburse the Escrow Agent upon request for any transfer taxes or other taxes relating to the Escrow Property incurred in connection herewith and shall indemnify and hold harmless the Escrow Agent any amounts that it is obligated to pay in the way of such taxes. Operating and Realty shall be responsible for 50% of such taxes and the County shall be responsible for 50% of such taxes. Any payments of income from this Escrow Account shall be subject to withholding regulations, if applicable, then in force with respect to federal, state and local taxes. The parties hereto, if applicable, will provide the Escrow Agent with appropriate W-9 forms for tax I.D., number certifications, or W-8 forms for non-resident alien certifications. It is understood that the Escrow Agent shall be responsible for income reporting only with respect to income earned on investment of funds which are a part of the Escrowed Property and is not responsible for any other reporting. This paragraph and paragraph 8 of Section II shall survive.

[remainder of page intentionally blank]

IN WITNESS WHEREOF, each of the parties has caused this Escrow Agreement to be executed by a duly authorized representative as of the day and year first written above.

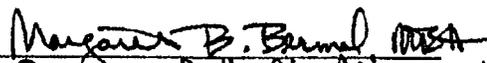
HARRIS BEACH PLLC, as Escrow Agent


Name: William J. Arbery
Title: Partner

THE COUNTY OF SUFFOLK

By: 
Name: Regina H. Calcutt
Title: Chief Deputy County Executive

SUFFOLK COUNTY DEPARTMENT OF HEALTH SERVICES

By: 
Name: Margaret B. Bernal
Title: Director of Health Administrative Services

Approved as to Legality:
Dennis M. Cohen, County Attorney

By: 
Name: Dennis M. Cohen
Title: County Attorney

SSS OPERATING, LLC

By: 
Name: Samuel Sherman
Title: Manager

SSS REALTY, LLC

By: 
Name: Samuel Sherman
Title: Manager

Foley Land Sale Contract
FINAL

Schedule 10-2

1. **Underground Fuel Storage Tanks.** There are underground fuel storage tank(s) containing diesel fuel used to power the back-up electrical generators at the Premises.
2. **Violations.** Violations are as set forth in Schedule 2.3 of the APA.

EXHIBIT 2

(PART 1)

AMENDED AS OF 8/10/2012

FINAL

1811

AMENDED COPY AS OF 8/10/12

ASSET PURCHASE AGREEMENT

By and Between

THE COUNTY OF SUFFOLK, a Municipal
Corporation of the State of New York,

and

SSS OPERATING, LLC

Dated as of July 30, 2012

2012 AUG 10 P 3:47
COUNTY CLERK
SUFFOLK COUNTY, N.Y.
HARRISBURG

RECEIVED

TABLE OF CONTENTS

ARTICLE I. SALE AND PURCHASE OF ASSETS

- 1.1 Purchase of Assets
- 1.2 Excluded Assets
- 1.3 Liabilities
- 1.4 Purchase Price
- 1.5 Purchase Price Allocation
- 1.6 Closing Adjustments
- 1.7 The Closing
- 1.8 Instruments of Conveyance and Transfer

ARTICLE II. REPRESENTATIONS AND WARRANTIES OF THE SELLER

- 2.1 Organization, Standing and Power
- 2.2 Authority; No Conflicts
- 2.3 No Violation of Law, Licenses, Permits, and Registrations
- 2.4 Approvals and Consents
- 2.5 Litigation; Compliance with Laws
- 2.6 Statement of Revenues and Expenses
- 2.7 Good Title to Assets
- 2.8 Contracts and Other Agreements
- 2.9 Compliance with Laws
- 2.10 Entire Business
- 2.11 No Material Adverse Change
- 2.12 Cost Reports
- 2.13 No Other Sale Agreements
- 2.14 Notices
- 2.15 Furniture, Fixtures and Equipment
- 2.16 Absence of Certain Changes or Events
- 2.17 Employees
- 2.18 HIPAA Compliance
- 2.19 Insurance
- 2.20 Engineering Plans and Projects
- 2.21 Disclosure
- 2.22 Inventory
- 2.23 Limitation

ARTICLE III. REPRESENTATIONS AND WARRANTIES OF THE BUYER

- 3.1 Organization, Standing, and Power
- 3.2 Authority; Conflicts
- 3.3 Approvals and Consents
- 3.4 Litigation; Compliance with Laws
- 3.5 Regulatory Approvals
- 3.6 Financial Resources
- 3.7 Own Investigation; etc.

ARTICLE IV. COVENANTS OF THE PARTIES PENDING CLOSING

- 4.1 Seller's Conduct of the Business.
- 4.2 Access to Information
- 4.3 Cooperation with Buyer
- 4.4 Certificate of Need Approval
- 4.5 Necessary Governmental Consents
- 4.6 Access to Premises and Information; Confidentiality
- 4.7 Reasonable Commercial Efforts
- 4.8 Provider Numbers
- 4.9 Expenses
- 4.10 Notice of Event
- 4.11 Risk of Loss
- 4.12 Employee Benefits

ARTICLE V. CONDITIONS PRECEDENT TO THE CLOSING

- 5.1 Conditions to Obligation of the Seller to Close
- 5.2 Conditions to Obligation of the Buyer to Close

ARTICLE VI. POST CLOSING COVENANTS

- 6.1 Resident Retention
- 6.2 Registrant Retention
- 6.3 Employee Retention
- 6.4 Further Information
- 6.5 Record Retention
- 6.6 Sale and Income Taxes
- 6.7 Covenants Regarding Tax Matters
- 6.8 Telephone Forwarding

ARTICLE VII. SURVIVAL; INDEMNIFICATION

- 7.1 Survival of Provisions and Indemnification
- 7.2 Limits on Indemnification
- 7.3 Rules Regarding Indemnification
- 7.4 Other Provisions

ARTICLE VIII. TERMINATION

- 8.1 Failure to Timely File Application
- 8.2 Buyer's Default
- 8.3 Seller's Default
- 8.4 Cross-Default with Land Sale Contract
- 8.5 Termination by Mutual Consent
- 8.6 Termination by Either Party
- 8.7 Material Adverse Effect
- 8.8 Survival

ARTICLE IX. OVERPAYMENTS, UNDERPAYMENTS AND APPEALS

- 9.1 Responsibility for Overpayments and Audits
- 9.2 Right to Appeal

- 9.3 Retroactive Payment Adjustments
- 9.4 Claim Notice
- 9.5 Rate Appeals
- 9.6 Capital Improvement Rate Increases
- 9.7 The provisions of this Article 9 shall survive the Closing

ARTICLE X. RESIDENT ASSETS

- 10.1 Delivery of Resident Assets
- 10.2 Indemnification
- 10.3 Notices

ARTICLE XI. GENERAL PROVISIONS

- 11.1 Notices
- 11.2 Interpretation
- 11.3 Rules of Construction
- 11.4 Entire Agreement
- 11.5 Governing Law
- 11.6 Waiver of Jury Trial
- 11.7 Counterparts
- 11.8 Severability
- 11.9 Expenses
- 11.10 Assignment
- 11.11 No Third Party Beneficiaries
- 11.12 Further Assurances and Records
- 11.13 Amendments and Waivers
- 11.14 Captions
- 11.15 Exhibits, Schedules and Annexes
- 11.16 Brokers

EXHIBITS

- A. Assignment and Assumption Agreement
- B. Bill of Sale
- C. Land Sale Contract
- D. Escrow Agreement

SCHEDULES

- 1.2 Excluded Assets
- 1.5 Allocation of Purchase Price
- 2.3 Schedule of Violations
- 2.4 Permits, Consents, Approvals
- 2.5 Litigation
- 2.8 Material Contracts/Other Agreements
- 2.11 Material Adverse Change
- 2.16 Absence of Certain Events
- 2.18 Management and Employment Agreements
- 3.4 Litigation
- 6.8 Telephone Numbers to be Forwarded

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of July 30, 2012, is entered into by and between the County of Suffolk, a municipal corporation of the State of New York, acting through its duly constituted Department of Health Services (the "Seller"), and SSS Operating, LLC, a Delaware limited liability company, or its assignee (the "Buyer"). The Seller and the Buyer are referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the Seller owns a 264 certified bed licensed skilled nursing facility known as John J. Foley Skilled Nursing Facility (the "SNF"), an enterprise fund of the County of Suffolk, which Seller operates under the Department of Health Services of the County of Suffolk;

WHEREAS, Seller is also the owner and licensed operator of an Adult Day Care Program (the "Adult Day Care Program" referred to collectively with the John J. Foley Skilled Nursing Facility as the "Facility"); and

WHEREAS, following a negotiated sale the Seller desires to sell, assign, and deliver to the Buyer, and the Buyer desires to acquire, purchase, accept assignment, and accept delivery from the Seller of, the assets of the Facility, including an assignment by the Seller of its rights, title and interest in and to the license to operate the Facility; provided that to the extent such license cannot be assigned, the Seller shall cooperate with the Buyer to assist the Buyer in obtaining a new license from the New York State Health Department;

WHEREAS, the Buyer and the Seller wish to set forth the terms and conditions under which the Buyer will buy and the Seller will sell, or cause to be sold, the assets of the Facility's business; and

WHEREAS, concurrently herewith Seller and SSS Realty, LLC, a Delaware limited liability company (the "Real Estate Buyer"), are entering into an agreement in the form annexed hereto as Exhibit A (the "Land Sale Contract") whereby Real Estate Buyer will purchase and acquire from Seller the real property site on which Seller operates the Facility (the "Real Estate", the "Real Property" or the "Premises"), the closing of which shall occur simultaneously with the Closing hereunder and shall be a contingency hereof.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants, agreements, representations, and warranties contained herein, and for other good and valuable consideration, the Seller and the Buyer hereby agree as follows:

DEFINITIONS

Definitions. When used in this Agreement, these terms shall have these meanings:

"Actions" means any action, claim, suit, litigation, proceeding, arbitration action, audit, or investigation by or before any Governmental Authority or Person.

"Adult Day Care Program" shall have the meaning assigned to such term in the Recitals hereto.

"Application" has the meaning assigned to such term in Section 4.4 hereof.

"Asset Purchase" means the sale by the Seller and the purchase by the Buyer of the Assets and the assumption of the Assumed Liabilities by the Buyer pursuant to this Agreement and the documents executed in connection herewith.

"Assets" mean those assets and all of the rights accruing thereunder after the Closing Date as more particularly described in Section 1.1.

"Assumed Liabilities" means those liabilities, if any, identified on Schedule 1.3.

"Assignment and Assumption Agreement" means that agreement substantially in the form attached hereto as Exhibit A, and subject to such amendments as may be required in order to obtain the necessary Governmental Authorizations, pursuant to which the Seller assigns to the Buyer and the Buyer assumes those obligations of the Seller accruing from and after the Closing under the Material Contracts which Buyer may elect to have assigned to it at Closing.

"Bill of Sale" means that certain bill of sale substantially in the form attached hereto as Exhibit B pursuant to which the Buyer agrees to purchase the Assets from the Seller.

"Business" means the business of operating the Facility as of the Closing Date.

"Business Days" means any day other than a Saturday or Sunday or any other day on which commercial banks located in the State of New York generally are authorized to close for business other than the retail depository business.

"Certificate of Need" shall mean the consent and/or approval, and such other authorizations or certifications, the Buyer is required to obtain from the Department of Health of New York and/or the Public Health Council of New York before the Buyer becomes licensed to operate the Facility enabling the Parties to consummate the transaction contemplated by this Agreement.

"Closing" means the closing of the sale, assignment, and purchase of the Assets by the Buyer effective as of the Closing Date, in accordance with and subject to Article I and all of the terms and conditions of this Agreement.

"Closing Date" means the date on which the Closing becomes effective.

"Code" means the Internal Revenue Code of 1986, as amended.

"Confidentiality Agreement" means that certain letter agreement, dated July 11, 2012, entered into by and between the Seller and the Buyer and attached hereto as Exhibit B.

"Contracts" means contracts the Facility and/or Seller has entered into concerning the operations and services at the Facility.

"Department of Health" means the New York State Department of Health and, when applicable, to the Public Health Council of the State of New York.

"Due Diligence Period" means the twenty (20) calendar day period immediately following the Buyer's signing of this Agreement.

"Enterprise Fund (Fund 632)" means the enterprise fund established by the Seller for operation of the Facility.

"ERISA" means the federal Employee Retirement Income Security Act of 1974, as amended from time to time.

"Escrow Deposit" has the meaning assigned to such terms in Section 1.4 hereof.

"Escrow Agent" means Harris Beach, PLLC 333 Earle Ovington Blvd, Suite 912, Uniondale, New York 11553.

"Excluded Assets" shall have the meaning assigned to such term in Section 1.2.

"Excluded Liabilities" shall have the meaning assigned to such term in Section 1.3.

"Exhibits" mean the exhibits attached hereto by the Seller and the Buyer which form part of this Agreement.

"Facility" shall have the meaning assigned to such term in the Recitals hereto.

"Governmental Authority" means court, tribunal, arbitrator or any government or political subdivision thereof, whether federal, state, county, local or foreign, or any agency, authority, official or instrumentality of any such government or political subdivision.

"Governmental Authorizations" means the licenses, permits, consents, approvals and other authorizations required by law or any Governmental Authority to be held by a Person for a particular purpose, including for the purposes of transferring, acquiring or using any of the Assets and/or the Premises.

"Hospital Contracts" has the meaning assigned to such term in Section 2.8 hereof.

"Land Sale Contract" has the meaning assigned to such term in the Recitals hereto.

"Law" means any law, statute, rule, regulation, ordinance and other pronouncement having the effect of law of the United States, any foreign country or any

domestic or foreign state, county, city or other political subdivision or of any Governmental Authority.

"Lien" means any lien, pledge, hypothecation, mortgage, assessment, charge, security interest, claim, lease, charge, option, right of first refusal, easement, servitude, transfer restriction under any stockholder or similar agreement, encumbrance or any other restriction or limitation or adverse claim whatsoever.

"Material Adverse Effect" means, with respect to the Facility, any change, effect, or circumstance that, individually or in the aggregate, is or is reasonably likely to be materially adverse to the business, assets, financial condition or results of operations of the Facility; provided, however, that the following shall not be deemed to constitute a Material Adverse Effect: (a) any change, effect, or circumstance relating to conditions affecting the economy of any part of the world generally, or any change, effect, or circumstance relating to conditions generally affecting the health care industry, and, in either case, not affecting the Facility in a materially disproportionate manner and (b) any change, circumstance or effect related to changes in third party reimbursement rates paid to the Facility for services rendered.

"Material Contracts" shall have the same meaning assigned to such term in Section 2.8 hereof.

"Medical Claims" means any and all claims, bills, invoices or requests for payment submitted to Payors for health care services rendered to Residents.

"Order" means any writ, judgment, award, decree, consent decree, injunction or similar order of any Governmental Authority, in each case whether preliminary or final.

"Payor Contracts" shall mean those agreements by and between Seller or the Facility and Payors governing, among other things, the terms and conditions for reimbursement of Medical Claims by Payor to the Facility for Services rendered to the Residents.

"Payors" means any individual or entity obligated by policy, contract or law to pay for goods and services rendered to a Resident of the Facility.

"Person" means any individual, partnership, limited liability company, corporation, estate, trust, unincorporated association, business, or other legal entity, and any government or any governmental agency or political subdivision thereof.

"Pre-Closing Receivables" means all rights to reimbursement or other funds related to, among other things, goods and services provided or rendered to a Resident occurring prior to 12:01 a.m. local time on the Closing Date.

"Programs" means, collectively, Medicare, Medicaid and all other government and commercial sources of payment or reimbursement for care and/or services provided at the Facility to a Resident.

"Provider" shall mean an individual or entity providing professional medical, dental, behavioral or other professional services at the Facility.

"Provider Agreements" has the meaning assigned to such term in Section 2.8 hereof.

"Purchase Price" has the meaning assigned to such term in Section 1.4.

"Premises" means the real property to be sold pursuant to the Land Sale Contract, together with the fixtures appurtenant thereto, the improvements thereon and the easements for access to be conveyed, including the real property upon which the Facility and the Program are located and the real property used in connection therewith.

"Real Estate Buyer" means the purchaser of the Premises sold pursuant to the Land Sale Contract.

"Registrants" means those individuals enrolled to attend the Adult Day Care Program.

"Representatives" means, with respect to any Party, such Party's counsel, accountants, investment bankers, employees, agents or other representatives.

"Residents" means those individuals residing at the SNF on the date of Closing.

"Responsible Person" means one of the following individuals who are employed by the Seller and are directly involved with the Facility:

Commissioner
Suffolk County Department of Health Services
225 Rabro Drive East

or

Director of Health Administrative Services
Suffolk County Department of Health Services
225 Rabro Drive East

"Seller's Knowledge" means, when modifying a representation or warranty of the Seller in this Agreement or in any other document delivered by the Seller pursuant to the provisions of this Agreement, that the fact, situation or circumstance described therein or the nonexistence of a fact, situation or circumstance referred to therein is actually known, or reasonably could or should be known, by a Responsible Person after due inquiry.

"Services" means those professional and related services rendered to Residents at the Facility or Registrants at the Adult Day Care Program by a Provider or other authorized individual.

"Transaction Documents" means this Agreement, the Bill of Sale, the Assignment and Assumption Agreement, and all other documents to be executed by the Parties hereto in connection with the consummation of the transactions contemplated hereby.

**ARTICLE I.
SALE AND PURCHASE OF ASSETS**

1.1 Purchase of Assets. At the Closing, on the terms and conditions set forth in this Agreement, the Seller shall sell, convey, assign, transfer, and deliver without recourse (except as expressly provided herein) to the Buyer, and the Buyer shall purchase, accept assignment and acquire from the Seller, the Assets free and clear of all liens. "Assets" shall mean all of the assets, properties and rights used or usable in the operation of the Facility, of every type and description, tangible or intangible, wherever located and whether or not reflected on the books and records of the Seller, other than the Premises, which purchase shall be addressed in the Land Sale Contract and those excluded pursuant to Section 1.2 hereof. Subject to such exceptions, Assets shall include, without limitation, all of the right, title and interest of the Seller in or to the following:

- (a) All of the Seller's rights to continue to participate in the Programs, including, but not limited to the rights of the Seller, to the extent transferable, pursuant to the Payor Contracts, or to enter into new contracts with the counterparties to the Payor Contracts, all rights to provide Services to Residents at the Facility and the Registrants at the Adult Day Care Program, and the corresponding rights to receive reimbursement and any other revenues payable for Services rendered to Residents and/or Registrants from and after the Closing;
- (b) To the extent transferable, all licenses, certificates and permits held or owned by Seller relating to the ownership or operation of the Facility and the Assets;
- (c) All of the Seller's rights, title and interests in Contracts, to the extent transferable and/or assignable and to the extent terminable by Buyer after Closing without cost or penalty or those contracts as Buyer may elect to have assigned to it at the Closing;
- (d) True and correct copies of the financials and other books, records, information and title documents necessary for the Buyer to operate the Facility on and after the Closing Date;
- (e) Books, records, medical charts and information pertaining to the Residents, including resident agreements, lists of all names, addresses, identification numbers, provider data, and copies (electronic and/or hard copy) of all books and records maintained for such Residents, including medical and claim histories;
- (f) to the extent permitted by Law, all personnel records of Seller's employees, inspection reports, advertising and promotional materials and mailing lists, if any used in connection with or related to the Facility;
- (g) Any payments made by Payors for goods or Services rendered on and after the Closing;

(h) Books, records, and information pertaining to the Facility's Providers, including without limitation, lists of all such Providers for the Services and the Provider Agreements, if any, including names, addresses, and other data maintained for each Provider; provided that the provision of such information does not violate any contractual confidentiality provisions or the confidentiality restrictions of applicable law;

(i) All tangible assets, including without limitation, those located on or within the Premises otherwise related to the Facility including without limitation machinery and equipment, including without limitation, those located at the Premises or otherwise related to the Facility (including without limitation beddings, linens, mattresses and purchased parts and supplies) furniture, office equipment, kitchen equipment, medicine, medical supplies, maintenance supplies, food and all inventories and supplies and all engineering plans relating to the Facility and the Premises;

(j) Originals or duplicate copies of all financial, accounting and operating data and records, including without limitation all books, records, notes, sales and sales promotional data, advertising materials, credit information, cost and pricing information, customer and supply lists, business plans, projections, reference catalogs, payroll and personnel records to the extent allowed by law, and other similar property, rights and information;

(k) Subject to the terms and conditions imposed by lessors and licensors and to the extent transferable, all computer software, programs and similar systems owned or leased by or licensed to the Facility are used in operation of the Facility together with menus, policies and procedure manuals and compliance programs;

(l) Seller's right to intellectual property, excluding the name John J. Foley Skilled Nursing Facility (the "Name"). Seller reserves the right to determine whether the Name shall be included as part of the assets purchased pursuant to this Agreement. Seller shall notify Buyer, in writing, of Seller's determination as to whether the Name shall be included or excluded from the sale of assets at least thirty (30) days prior to the Closing Date;

(m) Seller's Medicare and Medicaid provider numbers and provider agreements, to the extent assignable;

(n) All security deposits and prepayments, if any, for future services;

(o) All Resident funds held in trust for the Residents;

(p) All third party warranties and claims for warranties, except those claims made by Seller prior to the Closing Date, relating to the Facility or the Assets;

(q) All goodwill associated with the Facility;

(r) All claims and causes of action of Seller against third parties relating to the Assets whether such claims or causes of action now exist or accrue in the future to Seller solely to the extent that Seller decides not to pursue such claims and causes of action;

(s) All other assets of Seller used exclusively in the operation of the Facility, other than the Excluded Assets; and

(t) All other assets of Seller of the foregoing nature purchased or acquired by Seller between the date hereof and the Closing Date, other than the Excluded Assets.

1.2 Excluded Assets. Any provision of this Agreement to the contrary notwithstanding, the Buyer shall not acquire and there shall be excluded from the Assets, the following (the "Excluded Assets") to the extent existing as of 12:00 a.m. local time on the Closing Date:

(a) All cash on hand or in banks, cash equivalents, other investments, Pre-Closing Receivables, all rights in any funds of any nature wherever maintained or held, including, but not limited to, the balances remaining in the Enterprise Fund (Fund 632);

(b) The Seller's rights, title and interests in the Contracts to the extent that they give rise to Pre-Closing Receivables;

(c) The Seller's rights, title and interests in the insurance policies covering the Seller, its officers, directors, employees and agents, and any claims for refunds or recoveries under any insurance policy, including without limitation, directors and officers liability insurance, error and omissions insurance, and stop loss insurance related to Services or events prior to the Closing;

(d) The Seller's rights, title and interest in claims against third parties arising with respect to acts and omissions occurring on dates prior to the Closing Date, if any, including proceeds of insurance paid or payable, whether prior to or following the Closing Date, related to the period prior to the Closing Date or to any Excluded Liabilities;

(e) The Seller's rights, title and interest in and to any rebates, refunds, settlements from class actions or other legal proceedings and/or other amounts due to the Seller, related to the operation of the Facility for periods prior to the Closing;

(f) All accounts and loans receivable, regardless of when billed, relating to Services rendered by the Facility prior to the Closing Date;

(g) Subject to the provisions of Section 9.6, all retroactive rate increases and/or lump sum or other payments resulting from rate appeals, audits or otherwise with respect to third party payments from any source which may be paid on or after the Closing Date for goods or services rendered at the Facility prior to the Closing Date;

(h) All payments or cash equivalent credits relating to the Facility resulting from claims, insurance premium rate reductions or insurance or other dividends paid or accruing for periods prior to the Closing Date;

(i) All insurance policies not transferred to Buyer;

(j) All motor vehicles of every kind or description;

- (k) All telephone numbers and fax numbers associated with the Premises;
- (l) All rights and interests of Seller under and pursuant to this Agreement and any documents executed in connection with the Closing.
- (m) To the extent not otherwise addressed pursuant to clauses (a)-(l) above, those assets identified on Schedule 1.2 annexed hereto.

1.3 Liabilities.

(a) The Buyer shall only assume at the Closing, pursuant to a written assumption agreement to be entered into at Closing (collectively, the "Assumed Liabilities"): (i) the obligations of Seller exclusively arising on and after the Closing Date with respect to the Assets, and (ii) all such other liabilities of Seller as may be expressly assumed by Buyer and which are the subject of an adjustment at Closing pursuant to Section 1.6 hereof and limited to the amount of such adjustment. Notwithstanding anything in this Agreement to the contrary, Buyer shall not assume, nor be responsible or otherwise liable for anything related to or arising out of, any collective bargaining or other Labor or union contract or agreements related to the Facility, or any obligations under ERISA or any similar applicable laws or with respect to employee pensions or other employee benefits. Except as otherwise expressly provided in this Agreement, the Buyer shall not be responsible for any other obligations or liabilities of the Seller or the Facility arising from or relating to the period prior to the Closing.

(b) Notwithstanding the provisions of Section 1.3(a) hereof, the Buyer is not assuming, and the Seller is retaining and shall remain liable for, the following liabilities or obligations arising from or relating to the Assets, the ownership or operation of the Facility or the Premises prior to the Closing Date (collectively, the "Excluded Liabilities"):

- (i) the liabilities referred to in the last two sentences of Section 1.3(a);
- (ii) all accounts and loans payable;
- (iii) any other liabilities or obligations related to the Assets, the ownership or operation of the Facility or the Premises, arising from or relating to any period prior to the Closing Date, other than the Assumed Liabilities;
- (iv) any amounts due or to become due to Payors as a result of audit, rate change or otherwise, related to goods or services rendered at the Facility prior to the Closing Date;
- (v) all cash receipt assessments related to all revenue received by the Facility before and after the Closing Date relating to services rendered prior to the Closing Date;
- (vi) any and all liabilities arising from or relating to collective bargaining or other labor or union contracts or agreements relating to the Facility prior to the Closing Date, all COBRA obligations connected with the Facility relating to the termination of employment of any employee on or prior to the Closing Date, and any other obligation of every

kind or description owing to employees of the Facility arising out of their employment at the Facility on or prior to the Closing Date; and

(vii) any and all obligations of the Seller pursuant to this Agreement, the Transaction Documents, the Land Sale Contract and the documents executed in connection therewith.

1.4 Purchase Price. In consideration of the sale, assignment and transfer of the Assets pursuant to Section 1.1, the Buyer shall pay a purchase price of \$23,000,000, minus the price that the Real Estate Buyer agrees to pay for the Real Estate, which amount Buyer shall determine prior to the expiration of the Due Diligence Period (the "Purchase Price"), at the Closing. The Purchase Price shall be paid as follows:

(a) Immediately upon signing this Agreement, Buyer shall pay a sum of \$500,000 (the "Initial Escrow Deposit") to the Escrow Agent. On the first business day immediately following the Due Diligence Period, Buyer shall pay an additional sum of \$300,000 to the Escrow Agent ("Second Escrow Deposit"). The Initial Escrow Deposit and the Second Escrow Deposit shall together be referred to as the "Escrow Deposit" or "Escrow Funds" Escrow Deposit") to the Escrow Agent.

(b) At Closing the parties shall instruct the Escrow Agent to release the Escrow Deposit to the Seller in immediately available funds and the principal portion of the Escrow Deposit shall be applied against the Purchase Price;

(c) The balance of the Purchase Price as adjusted pursuant to the provisions of this Agreement (the "Balance Payment") shall be paid at the Closing by Buyer to Seller by wire transfer or immediately available funds; and

(d) For purposes hereof, the "Escrow Deposit" shall mean the sum of all amounts deposited by or on behalf of the Buyer and the Real Estate Buyer with the Escrow Agent as set forth in the Escrow Agreement annexed hereto as Exhibit C, including any interest earned in such funds.

1.5 Purchase Price Allocation. The Seller and the Buyer agree to cooperate with each other in meeting the requirements of the Internal Revenue Code of 1986, as amended, and each agree to file the requisite Internal Revenue Service Forms and any similar returns or reports required under other applicable law, in accordance with the allocation of the Purchase Price to the Assets as set forth in Schedule 1.5 hereto. The Parties agree that (i) they shall be bound by the allocations determined pursuant to this paragraph for the purpose of determining taxes, (ii) they shall prepare and file all tax returns in a manner consistent with such allocations and (iii) neither will take a position on any income tax return before any governmental agency charged with the collection of any income tax nor in any proceeding that is any way inconsistent with such allocation without the prior written consent of the other. In the event that any such allocation is disputed by any taxing authority, the Party receiving notice of such dispute shall promptly notify, consult and cooperate in good faith with the other Party concerning resolution of such dispute.

1.6 Closing Adjustments. The purpose and intent of the provisions of prorrations and apportionments set forth in this Section 1.6 and elsewhere in this Agreement are that Seller shall bear all expenses of ownership and operation of the Facility, and shall receive all income therefrom, accruing through midnight at the end of the day preceding the Closing Date, and Buyer shall bear all such expenses and receive all such income accruing thereafter. Except as specifically otherwise set forth hereinafter, the following closing adjustments (the "Closing Adjustments") shall be apportioned by and between Seller and Buyer as of midnight at the end of the day preceding the Closing Date and the net of the same ("Net Closing Adjustments") shall be added to or subtracted, as the case may be, from the Purchase Price:

(a) Security deposits and prepayments for Resident charges covering periods on and after the Closing Date, if any;

(b) Water taxes and sewer rentals, if any;

(c) Equipment lease, rental and service contract payments, pursuant to Contracts conveyed under this Agreement;

(d) Telephone, gas, water, electric and any other utility charges upon actual reading where practicable;

(e) Heating fuel;

(f) Prepaid fees, fees payable in installments and fees due prior to Closing, covering assigned licenses and permits, including, but not limited to, dues and subscriptions, if any;

(g) Prepayments, charges and security deposits, if any, relating to any of the Assets or the Premises, including, but not limited to, service, maintenance and other similar agreements assigned to Buyer under this Agreement; and

In the event an error is made in the calculation of any of the Closing Adjustments, the party discovering such error shall, within six (6) months after the Closing Date, send notice of such correction (the "Correction Notice") to the other party, and the party benefiting from such error shall pay the amount of such error to the party to which such payment is due within ten (10) days after the sending of the Correction Notice. If the Seller and Buyer can not agree on the Closing Adjustments or any correction(s) to the Closing Adjustments, then the parties shall submit their dispute to an arbitration administered by the American Arbitration Association and the judgment of the arbitrator shall be the final binding decision with respect to any such Closing Adjustment or correction to the Closing Adjustments.

In the event the Net Closing Adjustments change during the first six (6) months following the Closing Date, the party due payment for the resulting additional amount shall be paid such amount by the other Party in the form of an official bank teller check and an appropriate adjustment shall be deemed to have been made in the Purchase Price. The provision of this Section 1.6 shall survive the Closing.

1.7 The Closing. Subject to the fulfillment (or waiver, as applicable) of all conditions of Sections 5.1 and 5.2, and subject to the parties obligations pursuant to Section 4.7 to use reasonable commercial efforts to close on or before December 31, 2012 the closing of the purchase and sale of the Assets of the Facility as contemplated hereunder (the "Closing") shall take place on or prior to the 15th day following receipt by Buyer of the written non-contingent approval of the Public Health Council of Buyer's Application or at such other time as the parties may mutually agree in writing, but in all events on the last day of a calendar month (the "Closing Date"). Notwithstanding the foregoing, the Closing shall take place at the Suffolk County Offices at the H. Lee Dennison Building, 100 Veterans Memorial Highway, Hauppauge, New York, or, if required by the Buyer's lenders, at such location as may be designated by the Buyer's lenders, or at such other location as the parties shall mutually agree. The Closing shall occur simultaneously with the closing under the Land Sale Contract and shall be a contingency hereof. Upon consummation, the effective time of the Closing shall be deemed to have taken place at 12:01 a.m. on the Closing Date.

1.8 Instruments of Conveyance and Transfer. At the Closing or prior to Closing, the following deliveries shall be made:

- (a) The Purchase Price, as adjusted pursuant to this Agreement;
- (b) Seller will assign and transfer to the Buyer good and valid marketable title in and to all the Assets, free and clear of all Liens, subject to the Assumed Liabilities, by delivery of (i) the Bill of Sale (ii) the Assignment and Assumption Agreement for the Contracts and agreements referred to in and subject to the provisions of Section 1.1 and (iii) such other endorsements and other instruments of transfer, conveyance and assignment (in form and substance reasonably satisfactory to the Seller and the Buyer) as shall be necessary in the reasonable judgment of the Buyer to transfer, convey and assign the Assets to the Buyer;
- (c) Seller shall deliver to Buyer a schedule of any pending administrative and/or judicial proceedings contesting the Facility's third-party reimbursement rates;
- (d) Buyer and Seller shall deliver to the other a copy of the resolution(s), certified as true and of full force and effect as of the Closing Date, duly executed by a manager or the chief executive officer of such party, duly authorizing and approving: (i) the transactions contemplated herein; and (ii) the execution, performance and delivery of this Agreement, and of all of the documents to be executed and performed by such party in connection with the transactions contemplated herein;
- (e) Seller shall deliver the schedule of Residents' funds and related items referred to in Section 10.1 hereof; and
- (f) Seller and Buyer shall execute and deliver to each other certificates, which shall survive the Closing, certifying that all representations, warranties and covenants of such party as contained in this Agreement and all the information contained in the Schedules and Exhibits as provided by Seller hereunder or in connection herewith, are true and correct and without breach or default on each day after the date of this Agreement through and including the day of Closing.

**ARTICLE II.
REPRESENTATIONS AND WARRANTIES OF THE SELLER**

In order to induce Buyer to enter into this Agreement and close the transactions contemplated hereunder, the Seller represents and warrants to the Buyer that, except as specifically noted in a Schedule hereto:

2.1 Organization, Standing and Power. The Seller is a municipal corporation of the State of New York duly organized, validly existing, and in good standing under the laws of the State of New York, has the requisite power and authority to own the Assets and to operate the Facility, and to carry on the business of the Facility as now being conducted.

2.2 Authority; No Conflicts.

(a) Subject only to the permits, consents, certificates, authorizations and approvals described on Schedule 2.4, the Seller has all requisite power and authority to enter into this Agreement and the Land Sale Contract, to make the representations and warranties and provide the indemnification set forth herein and therein and to consummate the transactions contemplated hereby and thereby.

(b) Subject to Section (a) above, the execution and delivery of this Agreement and the Land Sale Contract by the Seller does not or will not, as the case may be, and the consummation by the Seller of the transactions contemplated hereby and thereby, and the performance of its obligations hereunder and thereunder will not, conflict with or result in any violation of, or constitute a default under: (A) any provision of its charter, or local laws or ordinances, codes, rules or regulations of the Seller, or (B) any loan or credit agreement, security agreement, note, mortgage, bond, indenture, lease, benefit facility or other agreement, obligation, instrument, permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Seller, or its properties or assets. Seller has not entered into any other agreement concerning the sale or transfer of any of the Assets or the Real Estate. There are no other applications filed with or pending at the Department of Health other than those filed in the ordinary course of business of the Seller as it relates to the Facility.

2.3 No Violation of Law, Licenses, Permits, and Registrations. Except as disclosed on Schedule 2.3, the Facility is not in violation of, and has not been given notice or been charged with any violation of, any law, statute, order, rule, regulation, ordinance, or judgment (including, without limitation, any applicable environmental law, ordinance, or regulation) of any Governmental Authority. Except as disclosed on Schedule 2.3, no investigation, audit or review by any Governmental Authority (including Medicare and Medicaid) is pending involving the Facility nor, to the Seller's Knowledge, has any Governmental Authority indicated an intention to conduct any such investigation, audit or review. Except as disclosed on Schedule 2.3, the Facility has all permits, licenses, approvals, and authorizations of, and registrations with and under all federal, state and local laws, and from all applicable Governmental Authorities, required thereby to operate the Facility. Except as disclosed on Schedule 2.3, the Facility is currently operating in substantial compliance in all

material respects with the laws, statutes, orders, rules, regulations, ordinances, and judgments of all federal, state, local, and foreign governmental and regulatory bodies and authorities.

2.4 Approvals and Consents. Except as disclosed on Schedule 2.4 annexed hereto, no permit, consent, approval, or authorization of, or declaration or notice to, or report of filing with, any Governmental Authority is required in connection with the execution, delivery, or performance by the Seller of this Agreement.

2.5 Litigation; Compliance with Laws. Except as disclosed on Schedule 2.5, there are no Actions pending or against or affecting the Facility or the Assets, nor is there any judgment, decree, injunction, rule, or order of any Governmental Authority or arbitrator outstanding against the Seller related to the operation of the Facility.

2.6 Statement of Revenues and Expenses. The audited balance sheets of the Facility as of December 31, 2011 and the related statements of revenue and expenses, changes in net assets and cash flow for the periods then ended (the "Facility Financial Statements") are, to the best of Seller's knowledge, true and complete copies of which have been heretofore delivered to the Buyer, and to the best of Seller's knowledge, fairly present, in all material respects, the financial position of the Facility as at such dates or the results of operations of the Facility for the periods then ended. The Facility Financial Statements have been prepared on a consistent basis throughout the periods presented and are consistent with each other. The Facility Financial Statements, to the best of Seller's knowledge, fairly and accurately present the revenues and expenses, and the operating income (loss), of the Facility as of the dates, and for the periods, indicated therein. The Facility maintains a system of internal accounting controls sufficient to provide reasonable assurance that transactions are executed in accordance with management's general or specific authorizations, and transactions are recorded as necessary to permit preparation of the Facility Financial Statements.

2.7 Good Title to Assets. The Seller has good and insurable title to the Assets. As of the date of Closing, the Assets shall be free and clear of all liens, charges and other encumbrances. Except as disclosed on Schedule 2.3, the Assets are being utilized by the Seller in substantial compliance with all applicable federal, local, and state rules, regulations, laws, statutes, and permits applicable to the Assets. The Seller has not created nor suffered to exist any Lien on any of the Assets or any current or future revenues resulting from the Assets.

2.8 Contracts and Other Agreements. Schedule 2.8 contains a complete list of all Contracts and other Agreements (i) entered into by the Seller exclusively related to the Facility; (ii) entered into between the Seller and any Provider which provides Services to Residents of the Facility (the "Provider Agreements"); (iii) entered into by the Facility and any hospital which provides Services to Residents of the Facility (the "Hospital Contracts"); (iv) that cannot be terminated without cost or penalty on 30 days or less notice, to which the Facility is a party or by which the Facility or the Assets are bound (collectively, the "Material Contracts"). All of the Material Contracts are valid, subsisting, in full force and effect and the Facility has satisfied or provided for all of its liabilities and obligations thereunder requiring performance prior to the date hereof, is not in default in any material respect under any of them, nor, to the Seller's Knowledge, does any condition exist that with the giving of notice or the lapse of time or both would constitute such a default. To the Seller's Knowledge, no other

party to any such Material Contract is in default thereunder, nor does any condition exist that with notice or the lapse of time or both would constitute such a default.

2.9 Compliance with Laws. Except as disclosed on Schedule 2.3, the Facility (i) is, and at all times during the last twelve months has been, in substantial compliance, in all material respects, with all, and not in violation of any, and has not received any claim or notice that it is not in compliance with any, or that it is in violation of any, Laws or Orders to which the Facility or any of its business, operations, assets or properties are subject, and (ii) has not failed at any time to obtain or to adhere to the requirements of any governmental permit, license, registration and other governmental consent or authorization necessary in connection with the operation of the Facility.

2.10 Entire Business. By delivering the Assets to the Buyer pursuant to this Agreement and by closing the sale of the Premises pursuant to the Land Sale Contract, the Seller will convey to the Buyer the Facility, its Assets and all of the tangible and intangible property used by the Seller in connection with the conduct of the Facility's business as heretofore conducted by the Seller (except for the Excluded Assets). There are no facilities, services, assets or properties shared with any other Person which are used by the Seller or used in the business of the Facility (except for the Excluded Assets).

2.11 No Material Adverse Change. Except as otherwise disclosed pursuant to due diligence, since December 31, 2011, there has been no material adverse change in the business, operations, prospects or condition (financial or otherwise) of the Facility, or in the Assets of the Facility, nor to the Seller's Knowledge is any such change threatened, which could materially affect the Business, operations, products or condition (financial or otherwise) of the Facility (except for changes generally affecting health facilities similar to the Facility).

2.12 Cost Reports. Buyer has been provided with, to the best of Seller's knowledge, true and correct copies of Seller's Medicare and Medicaid cost reports for the year ending 2010 (the "Cost Report"). Medicare and Medicaid Cost Reports filed in 2011 applicable to Seller and the Facility are, to the best of Seller's knowledge, accurate and have all been timely filed. Seller shall file all Medicare and Medicaid Cost Reports which are required to be filed for any periods prior to the Closing Date. This provision shall survive the Closing.

2.13 No Other Sale Agreements. There are no outstanding contracts or options to purchase any of the Assets or the Premises.

2.14 Notices. Except as disclosed on Schedule 2.3, the Facility has not been served with any notice which: (a) requires the performance of any work or alterations on the Facility, or in the streets bounding thereon; or (b) orders the installation, repair or alteration of any improvements on the Facility or the streets bounding thereon, in each case, including but limited to, notices received under the Americans With Disabilities Act of 1990, as amended.

2.15 Furniture, Fixtures and Equipment. The furniture, fixtures and equipment included in the Assets are of sufficient quality and quantity to operate the Facility in material compliance with applicable statutes, rules and regulations which govern the Facility.

2.16 Absence of Certain Changes or Events. Except as disclosed pursuant to due diligence, since December 31, 2011, Seller has not:

(a) made any material change in the Facility or operations or in the manner of conducting the business of the Facility;

(b) suffered any Material Adverse Effect with respect to the Facility and no fact or condition exists or is contemplated or threatened that might reasonably be expected to cause a Material Adverse Effect with respect to the Facility in the future;

(c) suffered any material casualty loss (whether or not insured) or condemnation or other taking adversely affecting the Facility;

(d) incurred any liability or indebtedness (whether absolute, accrued, contingent or otherwise and whether due to or to become due directly related to the operation of the Facility) that will obligate the Buyer or the Facility following the Closing;

(e) terminated or amended or suffered the termination or amendment of any contract related to the operation of the Facility, except in each case in the ordinary course of its business consistent with past practice and, only, as disclosed in the attached Schedule 2.16 provided that no such amendment shall obligate the Buyer or the Facility following the Closing;

(f) sold, transferred, or leased any property or assets (real, personal or mixed, tangible or intangible) used or useful in connection with the operation of the Facility other than the sale of inventory in the ordinary course of business;

(g) created, granted or suffered to exist any Liens or encumbrances of any kind or description on any of the Assets that will survive the Closing; or

(h) entered into any transaction involving, or suffered any development affecting, the Facility or the Assets other than in the ordinary course of business.

2.17 Employees. Seller has complied with all laws relating to the employment of all employees of Seller at the Facility (the "Employees"), including, without limitation provisions relating to wages, hours, ERISA, equal opportunity, and the payment of Social Security, withholding, unemployment insurance and other taxes. There are no ERISA or other benefit plan arrangements for which the Buyer will assume liability. Except as disclosed on Schedule 2.17, there are no written or oral employment agreements between Seller and any of its officers or employees employed at the Facility. Except as pursuant to those agreements disclosed on Schedule 2.17, to the best of Seller's knowledge, all other employees are terminable at will and, in any event, Buyer shall not assume or be liable for any obligations pursuant to any such agreements at Closing.

2.18 HIPAA Compliance. The Seller has been determined to be a Covered Entity pursuant to the Health Insurance Portability and Accountability Act of 1996 and any regulations promulgated thereunder ("HIPAA") Seller (i) is executing transactions in compliance with, or is capable of submitting transactions in compliance with (in the event that insurers or payors are not yet accepting standard transactions), the standard transaction

requirements established by HIPAA for "Covered Entities;" (ii) is operating in compliance in all material respects with the HIPAA privacy regulations and comparable state statutes and regulations for "Covered Entities" including without limitation executing all necessary business associate agreements as required by HIPAA; and (iii) has developed and implemented appropriate safeguards to comply with the final HIPAA security regulations and comparables statutes and regulations.

2.19 Insurance. The Seller is self-insured.

2.20 Engineering Plans and Projects. Seller has made available to Buyer all of the current engineering plans and projects in its possession relating to the Facility.

2.21 Disclosure. All information to be supplied by Seller to Buyer pursuant to this Article II is true and correct to the best of Seller's knowledge.

2.22 Inventory. The inventory of the Facility is of a quality and quantity previously used by the Facility in the ordinary course of the Facility's business consistent with past practice and contains no significant excess, dated or obsolete inventory.

2.23 Limitation. Except as explicitly provided in this Article II, Buyer's purchase of the Assets is on an "as is, where is" basis, and the Seller has not made and shall not be deemed to have made any representation or warranty regarding the Assets.

ARTICLE III. REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Seller that, except as specifically noted in a Schedule hereto, as of the date of execution of this Agreement:

3.1 Organization, Standing, and Power. The Buyer is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware, has the requisite power and authority to own and operate its properties and to carry on its business as now being conducted, except where the failure to be so organized, existing, and in good standing or to have such power and authority would not reasonably be expected to have a Material Adverse Effect on the Buyer.

3.2 Authority; No Conflicts.

(a) The Buyer has all requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Buyer. This Agreement has been duly executed and delivered by the Buyer and constitutes a valid and binding agreement of the Buyer, enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting creditors generally or by general equity principles (regardless of whether such

enforceability is considered in a proceeding in equity or at law) or by an implied covenant of good faith and fair dealing.

(b) The execution and delivery of this Agreement by the Buyer does not or will not, as the case may be, and the consummation by the Buyer of the Asset Purchase and the other transactions contemplated hereby will not, conflict with or result in any violation pursuant to, or constitute a default under: (A) any provision of the articles of incorporation or bylaws of the Buyer, or (B) except as would not reasonably be expected to have a Material Adverse Effect on the Buyer, subject to obtaining or making the consents and filings referred to in Section 3.3 below, any loan or credit agreement, note, mortgage, bond, indenture, lease, benefit Facility or other agreement, obligation, instrument, permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Buyer, or its properties or assets.

3.3 Approvals and Consents. Except as disclosed on Schedule 2.4 annexed hereto, no permit, consent, approval, or authorization of, or declaration or notice to, or report or filing with, any Governmental Authority is required to be obtained by Buyer in connection with the execution, delivery or performance by the Buyer of this Agreement.

3.4 Litigation; Compliance with Laws. Except as disclosed in Schedule 3.4 hereto, there is no suit, action, investigation, or proceeding pending or, to the Buyer's knowledge, threatened against, or affecting the Buyer having, or which would reasonably be expected to have, a Material Adverse Effect on the Buyer, nor is there any judgment, decree, injunction, rule, or order of any Governmental Authority or arbitrator outstanding against the Buyer having, or which would reasonably be expected to have, a Material Adverse Effect on the Buyer.

3.5 Regulatory Approvals. To the knowledge of the Buyer, there is no reason that the Department of Health or any other governmental authority would reject or delay the processing and approval of the Application. No requirement that may be imposed by the Department of Health as a condition of its approving the transfer of the operation of the Facility to the Buyer or the establishment of the Buyer as the operator of the Facility or which may be imposed subsequent to the Closing shall be deemed an obligation of the Seller and all expenses of compliance with such requirements shall be the obligation of the Buyer.

3.6 Financial Resources. The Buyer has or will have at Closing sufficient unencumbered funds to complete the transaction contemplated hereby and to provide necessary working capital for the Facility. The Closing obligation of the Buyer with respect to the transactions contemplated by this Agreement is not contingent upon the Buyer obtaining any financing for the Purchase Price, the Facility, the Assets or working capital.

3.7 Own Investigation; etc.

(a) The Buyer understands and agrees to the limitations and other matters set forth in this Section 3.7 and that THE SELLER IS NOT MAKING ANY, AND THE SELLER DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED

WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR AS TO THE CONDITION OF THE SELLER OR THE ASSETS OR THE FACILITY, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT.

(b) The Buyer acknowledges and agrees that (i) following the Due Diligence Period, it will have made its own inquiry and investigation into, and, based thereon and upon the representations and warranties made by the Seller, have formed an independent judgment concerning the Seller, the Facility and the Assets, and (ii) it will have relied upon the representations of Seller to the effect that it is furnished with or been given adequate access to such information about the Seller, the Facility and the Assets, as it has requested, and (iii) except as set forth in Section 8.8, the Buyer's exclusive remedy for breach of the Seller representations and warranties shall be to assert indemnification claims in accordance with this Agreement.

(c) In connection with the Buyer's investigation of the Seller, the Facility and the Assets, the Buyer has received information from the Seller that the Buyer could use to prepare projections and other forecasts, facilities and budgets. The Buyer acknowledges that there are uncertainties inherent in attempting to make such projections, forecasts, facilities and budgets, that the Buyer is familiar with such uncertainties and is not relying upon such projections, forecasts, facilities or budgets, that the Buyer is taking responsibility for making its own evaluation of the adequacy and accuracy of all estimates, projections, forecasts, facilities and budgets based on such information, and that the Buyer will not assert or permit to be asserted any claim against the Seller or any direct or indirect owner of any of them or any of their respective directors, officers, employees, agents, managers, affiliates, consultants, counsel, accountants, investment bankers or representatives, or hold the Seller or any of the foregoing liable with respect thereto, provided however that Seller represents and warrants that Seller in good faith believes such information to be reasonably based. The Buyer acknowledges and agrees that the Seller has not made, directly or indirectly, any representations or warranties regarding pro-forma financial information, financial projections or other forward-looking statements regarding the Seller or the Facility.

(d) Other than as specifically set forth in this Agreement, the Buyer is acquiring the Assets "as is and where is" and in their then present physical condition.

ARTICLE IV.
COVENANTS OF THE PARTIES PENDING CLOSING

4.1 Seller's Conduct of the Business. From and after the date of this Agreement and until the date of the Closing, or until this Agreement has been terminated, except as otherwise consented to by Buyer in writing:

(a) Seller shall operate the business of the Facility only in the ordinary course, in a businesslike manner and in substantially the same manner as it has heretofore, in material compliance with applicable Federal and State laws, regulations and rules;

(b) Seller shall not option, sell, dispose of or make any other disposition or abandonment of any of the Assets of the Facility;

(c) Seller shall preserve, maintain, repair and replace and keep all Assets and properties used or useful in the operation of the Facility and the Assets in their current condition, repair and working order, ordinary wear and tear excepted;

(d) Seller shall maintain insurance with respect to the Assets of the Facility in accordance with past practice;

(e) Seller shall keep proper books of record and accounts in accordance with past practice;

(f) Seller shall keep in full force and effect all licenses currently in effect unless such licenses are no longer necessary for the operation of the Facility;

(g) Seller shall not engage in any activity which breaches any term or condition of this Agreement.

4.2 Access to Information. From and after the date hereof, Seller shall provide Buyer and its authorized agents and representatives (including but not limited to its auditors) reasonable access to its books, contracts, records, properties, and proceedings relating to the Facility and the Premises during regular business hours upon one (1) business days' prior written notice. Seller shall deliver to Buyer such regularly prepared periodic audited and unaudited financial statements and/or operating data with respect to the Assets and/or the Facility as and when the same are prepared and/or delivered to Seller and/or its representatives along with any cost reports that are required to be filed for any periods prior to Closing (which Seller shall timely file) and Seller shall provide Buyer with such additional information as Buyer may reasonably and periodically request Seller shall provide Buyer with monthly internal operating statements.

4.3 Cooperation with Buyer. Seller shall assist and cooperate with Buyer upon Buyer's reasonable requests in regard to Buyer's Application and in regard to the Department of Health requirements for approval of Buyer's Application and in regard to any financing Buyer may seek to obtain for the consummation of the transactions herein described. Seller shall promptly deliver to Buyer all materials that may be in Seller's possession and/or other documents periodically requested or required by the Department of Health as part of the Application and/or for the approval of the same. Seller further agrees with Buyer that in Buyer's Application, Buyer may propose additional individuals to become members of Buyer upon the approval of the Application by the Department of Health; however, the parties understand and agree that in the event any such new parties cause the Application to be disapproved, Buyer shall not be relieved of its obligations hereunder. Furthermore, Buyer shall not propose additional individuals without first having obtained the consent of Seller, which consent shall not be unreasonably withheld, delayed or conditioned.

4.4 Certificate of Need Approval. Contingent upon Seller's cooperation and required timely deliveries as set forth elsewhere in this Agreement, Buyer, at Buyer's own expense, will promptly prepare and submit to the Department of Health not later than fifteen (15)

calendar days after the date Seller provides Buyer with notice of the Suffolk County Legislature approval of this transaction, and shall diligently prosecute, the Buyer's Certificate of Need application seeking the establishment and licensure of the Buyer as the operator of the entire 264 certified bed SNF and the Adult Day Care Program (the "Application"). As part of such Application, Buyer may propose additional individuals to become members of Buyer upon the approval of the Application by the Department of Health provided that any such additional individuals must be approved in advance by Seller, which approval shall not be unreasonably withheld, delayed or conditioned. Buyer shall promptly (and no later than fifteen (15) business days after the receipt thereof) fully comply with requests for additional information from such agencies, and shall take all other steps required to obtain consent for the transactions contemplated hereby including approval of the Application. Buyer shall deliver to Seller, within five regular (5) business days of its submission or receipt, a complete copy of the Application and all correspondence and submissions to or from the Department of Health relating thereto.

4.5 Necessary Governmental Consents. Each party shall provide promptly to the other parties all correspondence and keep the other parties apprised of all communications by and between itself and any Governmental Authority related to the governmental consents which are its responsibility to obtain. In the event that the Seller on the one hand, or the Buyer, on the other hand, is informed that any of the governmental consents or approvals will not be obtained, the party that received such notice will attempt in good faith and use its reasonable best efforts to make inquiry to the applicable Governmental Authority as to the reason that the consent or approval was not obtained and to share promptly any responses related thereto with the other party.

4.6 Access to Premises and Information; Confidentiality. Seller shall afford to Buyer, and its Representatives, upon appointment, reasonable access during normal business hours during the period prior to the Closing Date to the Facility and Premises systems, books, contracts, commitments, personnel (for the purpose of evaluating future employment with the Buyer or otherwise) and records and, during such period, Seller shall furnish promptly to the Buyer (a) a copy of each report, schedule and other document filed by Seller during such period pursuant to the requirements of Federal or state laws and (b) consistent with its legal obligations all other information concerning Seller and its business, properties and personnel as the Buyer may reasonably request; provided, however, that Seller may restrict the foregoing access to the extent that any law, treaty, rule or regulation of any Governmental Authority applicable to Seller (including, without limitation, patient confidentiality laws) requires Seller to restrict access to such properties or information. Buyer shall hold, and shall cause its Representatives to hold, all information received from the Seller, directly or indirectly, as well as this Agreement, in confidence in accordance with the Confidentiality Agreement, attached as Exhibit B. No investigation pursuant to this Section 4.6 or information provided, made available or received by Buyer pursuant to this Agreement will affect any of the representations or warranties of the parties hereto contained in this Agreement or the conditions hereunder to the obligations of the parties hereto.

4.7 Reasonable Commercial Efforts. Upon the terms and subject to the conditions set forth in this Agreement, each of the parties agree to use its reasonable commercial efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties hereto in doing, all things necessary, proper or advisable to

consummate and make effective in the most expeditious manner practicable, the transactions contemplated by this Agreement, by December 31, 2012, including using reasonable best efforts to accomplish the following: (a) the taking of all acts necessary on its part to cause the conditions to Closing to be satisfied as promptly as practicable; (b) the obtaining of all necessary actions or nonactions, waivers, consents and approvals from Governmental Authorities that it is required to obtain and the making of all necessary registrations and filings and the taking of all steps as may be necessary that it is required to make or take to obtain approval or waiver from, or to avoid an action or proceeding by any Governmental Authority; (c) the obtaining of all necessary consents, approvals or waivers from third parties, including the governmental consents and approvals required to on Schedule 2.4 and (d) the execution and delivery of any additional instruments consistent with the terms hereof that are necessary to consummate the transactions contemplated by, and to fully carry out the purposes of this Agreement. In furtherance of the foregoing, the Seller shall provide in a reasonable and timely manner, to the extent permitted by applicable law, all documentation within its control as may be requested by the Buyer in connection with its processing of the Application and securing Certificate of Need approval. If the parties have used reasonable commercial efforts to close the transactions contemplated hereby but have been unable to effect a closing on or before December 31, 2012, such failure shall not relieve the parties of the obligations to proceed hereunder.

4.8 Provider Numbers. At the request of the Buyer, the Seller shall execute such documents as may be necessary to assign Seller's Medicaid and Medicare provider numbers and provider agreements to the Buyer.

4.9 Expenses. Subject to the indemnification provisions of this Agreement, each party hereto shall bear their own fees and expenses incurred in connection with this Agreement and the consummation of the transaction contemplated hereunder.

4.10 Notice of Events. Each party shall promptly notify the other of any event, circumstance or condition which would cause any representation or warranty made by such party to be untrue or incorrect in any material respect as of the Closing Date. To the extent that any event or condition occurs following execution at delivery of this Agreement which causes a representation or warranty of a party to be untrue, such party shall modify its disclosure schedules or to add additional disclosure schedules to the extent necessary to permit it to make its representations and warranties hereunder at Closing, provided that, in such event, the other party shall have the rights specified in Section 8.8 hereof.

4.11 Risk of Loss. Seller shall bear all loss or damage to the Assets of the Facility occurring prior to the Closing Date. In the event of any such loss or damage, Seller shall give prompt notice thereof to Buyer. In the event repairs or replacement are required to be made promptly in the reasonable judgment of Seller, Seller shall proceed with the required repairs or replacements at its cost or expense. In the event repairs or replacement are not promptly required, Buyer may, within ten (10) business days after receipt of notice of the loss or damage, give notice to Seller that: (a) it does not require the repair or replacement of the loss or damage, in which case Seller shall have no obligation to make such repair or replacement and any insurance proceeds received by it as a result thereof shall belong to Seller and the Purchase Price shall be reduced by the value of such loss or damage plus the amount of the deductible attributable by the insurer to such loss or damage, or (b) it elects to make the repair or

replacement of the loss or damage after the Closing, in which case the Purchase Price shall be reduced by the value of such loss or damage plus the amount of the deductible attributable by the insurer to such loss or damage. Notwithstanding the foregoing, in the event that the loss or damage to the Facility is significant and materially interferes with the operation of the Facility the Seller may elect not to proceed with such repair or replacement and to close the Facility. In such event, this Agreement shall be deemed terminated and Buyer shall receive the Escrow Deposit, and all interest accrued thereon as its sole remedy. The parties shall have no further obligations hereunder.

4.12 Employee Benefits. Seller shall take no action nor omit to take any action that would result in Buyer or any of its affiliates becoming a "successor employer" under COBRA, including, but not limited to, discontinuing any health care benefit plans covering employees of the Facility.

ARTICLE V. CONDITIONS PRECEDENT TO THE CLOSING

5.1 Due Diligence Period.

(a) The Buyer shall have the right to conduct such due diligence reviews, analyses, and studies of the Facility and the Premises and related assets and operations during the twenty (20) calendar day period immediately following the Buyer's signing this Agreement. Seller shall fully cooperate with the Buyer during the Due Diligence Period and shall promptly provide Buyer with access to and copies of all information and materials pertaining to the Facility and the Premises as the Buyer may request.

(b) The Buyer shall have until 5 pm EST through the last day of the Due Diligence Period in which to examine, inspect, and investigate the Facility and the Premises and documents and information relating thereto. The Buyer may request revisions to this Agreement during the Due Diligence Period and such revisions shall be considered by the Seller.

(c) The Buyer may terminate this Agreement for any reason related to its due diligence review during the Due Diligence Period by giving written notice of termination to the Seller on or before the last day of the Due Diligence Period. Such written notice shall state the reason for termination. If the Buyer does not give a Due Diligence Termination Notice, this Agreement shall continue in full force and effect, Buyer shall be deemed to have waived its right to terminate this Agreement and the Buyer shall be deemed to have acknowledged that it has received or had access to all documents and conducted all inspections and tests of the Facility and Premises that it considers important.

5.2 Conditions to Obligation of the Seller to Close. The obligation of the Seller to close the transactions contemplated under this Agreement shall be further subject to the satisfaction and fulfillment, at or prior to the Closing, of each of the following conditions, any of which may be waived in writing by the Seller:

(a) Compliance With Agreements and Covenants. The Buyer shall have performed and complied in all material respects with all of its covenants, obligations, and agreements contained in this Agreement that are required to be performed and complied with on or prior to the Closing Date;

(b) Representations and Warranties. The representations and warranties of the Buyer contained herein (i) shall be true and correct in all material respects on and as of the date of this Agreement, and (ii) shall also be true and correct on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date;

(c) Closing Certificate. The Seller shall have received a certificate of Chief Executive Officer of the Buyer, dated the Closing Date, certifying that the conditions set forth in Sections 5.1(a) and 5.1(b) have been satisfied; and the Seller shall also have received a certificate of the Buyer, dated the Closing Date, certifying as to the Buyer's authority to consummate the transactions hereunder;

(d) Payment of Purchase Price. The Buyer shall have delivered immediately available funds in the amount of the Purchase Price to the Seller in accordance with Section 1.4(b) hereof;

(e) Other Closing Documents. Each of the Transaction Documents shall have been executed and delivered by the Buyer and be in full force and effect as of the Closing Date, including:

(i) the Assignment and Assumption Agreement; and

(ii) the Bill of Sale.

(f) Governmental Approvals. The Buyer shall have received in final, non-contingent written approval of the Department of Health to the Application, and all other governmental approvals referred to in Schedule 2.4 shall have been obtained;

(g) No Adverse Proceedings. There shall not be in effect any Order or Law restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement;

(h) Closing of Real Property. Simultaneously herewith Seller shall have closed with the Real Estate Buyer on the Land Sale Contract concerning the real property upon which the Facility is situated.

5.3 Conditions to Obligation of the Buyer to Close. The obligations of the Buyer to close the transactions contemplated under this Agreement shall be further subject to the satisfaction and fulfillment, at or prior to the Closing, of each of the following conditions, any of which may be waived in writing by the Buyer:

(a) Compliance With Agreements and Covenants. The Seller shall have performed and complied in all material respects with all of covenants, obligations, and

agreements contained in this Agreement that are required to be performed and complied with on or prior to the Closing Date;

(b) Representations and Warranties. The representations and warranties of the Seller contained herein (i) shall be true and correct in all material respects on and as of the date of this Agreement and (ii) shall also be true and correct on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date;

(c) Closing Certificate. The Buyer shall have received a certificate of a Responsible Person, dated the Closing Date, certifying that the conditions set forth in Sections 5.2(a) and 5.2(b) have been satisfied;

(d) Other Closing Documents. The Seller shall have executed and delivered to the Buyer (i) an Assignment and Assumption Agreement, (ii) a Bill of Sale and (iii) such further instruments and documents as may be reasonably requested by the Buyer in order to complete the transfer of the Assets to the Buyer;

(e) Proceedings; Certificates. All municipal proceedings of the Seller that are required in connection with the transactions contemplated hereby shall be reasonably satisfactory in form and substance to the Buyer and its counsel, and the Buyer and its counsel shall have received such evidence of such proceedings, certified if requested, by the Buyer;

(f) No Material Adverse Effect. No Material Adverse Effect shall have occurred with respect to the Seller or the Assets;

(g) Governmental Approvals. The Buyer shall have received a final, non-contingent written approval of the Department of Health to the Application and all other governmental approvals referred to in Schedule 2.4 shall have been obtained;

(h) No Adverse Proceedings. No suit of any kind or nature shall have been commenced which would materially adversely affect the Assets, the Facility or the Premises and no injunction, temporary restraining order, judgment or other order of any court or governmental agency or instrumentality shall have issued or have been entered which would be violated by the consummation of the transactions contemplated herein; and no suit, action or other proceedings brought by the United States or the State of New York, or any agency or instrumentality of the United States or the State of New York shall be pending in which it is sought to restrain or prohibit the effectuation of this Agreement or the consummation of the transactions contemplated herein.

(i) Closing of Real Property. Simultaneously herewith Seller shall have closed with the Real Estate Buyer on the Land Sale Contract concerning the real property upon which the Facility is situated.

ARTICLE VI. POST CLOSING COVENANTS

The parties covenant to take the following actions after the Closing Date:

6.1 Resident Retention. The Buyer shall retain all Residents currently receiving services at the Facility as of the date of Closing. Only Residents requiring services not available at the Facility may be eligible for transfer. To the extent any Resident is being treated at a facility other than the Facility, the Buyer shall reserve such Resident's bed in accordance with applicable law and comply with all applicable "bed hold" regulations.

6.2 Registrant Retention. As of the date of Closing, the Buyer shall continue providing Services to Registrants in the Adult Day Care Program.

6.3 Employee Retention.

(a) The Buyer shall offer employment to all employees who are employed at the Facility immediately prior to the date of Closing. For purposes hereof, such employees are referred to as the "Existing Employees". This Section 6.3 shall not require Buyer to employ such employees on the same terms and conditions as they are employed by the Seller prior to Closing. To the extent that Buyer offers employment to Existing Employees, their rates of pay shall be consistent with nursing homes in Suffolk County. Each such employee hired by Buyer is hereinafter referred to as a "Hired Employee."

(b) Buyer shall not assume any responsibility for any of the Seller's obligations to employees arising out of their employment prior to the Closing Date.

(c) Buyer will be responsible for providing compensation and benefits to Hired Employees for periods on and after the Closing Date during the respective periods of employment of such Hired Employees with Buyer. On and after the Closing Date, the Hired Employees will accrue employment benefits only in accordance with the policies applicable to Buyer's employees.

(d) As of the first day following the Closing Date, all Hired Employees shall be permitted to participate in the plans, programs and arrangements of Buyer relating to compensation and employee benefits as may be available on such date.

(e) If any of the arrangements described in this Section are determined to be prohibited by applicable legal requirement, Seller and Buyer shall modify such arrangements to as closely as possible reflect their expressed intent and retain the allocation of economic benefits and burdens to the parties contemplated herein in a manner that is not prohibited by applicable legal requirement.

6.4 Further Information. Following the Closing, Seller will afford to the Buyer, or its Representatives, during normal business hours, reasonable access to the books, records and other data of the Seller relating to the Facility, the Assets, the Excluded Assets, the Assumed Liabilities of the Seller in its possession with respect to periods prior to the Closing and the right to make copies and extracts therefrom, to the extent that such access may be reasonably required by the requesting party (i) to facilitate the investigation, litigation and final disposition of any claims which may have been or may be made by or against such requesting party or its Affiliates, and (ii) for any other reasonable business purpose.

6.5 Record Retention. Each party agrees that for a period of not less than six (6) years following the Closing Date, it shall not destroy or otherwise dispose of any of the Books and Records relating to the Facility, the Assets, the Assumed Liabilities or the Excluded Assets in its possession with respect to the periods prior to the Closing. Each party shall have the right to destroy all or part of such Books and Records (other than the Tax Returns and related work papers and letters from the accountants of each party) after the sixth anniversary of the Closing Date or, at an earlier time by giving the other party hereto thirty (30) days prior written notice of such intended disposition and by offering to deliver to the other parties, at the other parties' expense, custody of such Books and Records (other than the Tax Returns and related work papers and letters from the accountants of each party) as such party may intend to destroy.

6.6 Sales and Income Taxes.

(a) The Buyer shall pay all sales taxes ("Taxes"), if any, applicable to, imposed upon or arising out of or in connection with the transactions effected pursuant to this Agreement, and shall indemnify, defend and hold harmless the Seller and its Affiliates with respect to any such Taxes. The Seller shall prepare and file all necessary documentation and Tax Returns with respect to such Sales Taxes.

(b) The Buyer shall pay all taxes applicable to, imposed upon or arising out of the sale of the Assets to the Buyer other than taxes imposed on or measured by the income of the Seller.

6.7 Covenants Regarding Tax Matters. The Seller and the Buyer shall (i) each provide the other with such assistance as may reasonably be requested by either of them in connection with the preparation of any return, audit or other examination by any tax authority or judicial or administrative proceedings relating to a liability for taxes, (ii) each retain and provide the other with any records or other information which may be relevant to any such return, audit or examination, proceeding or determination, and (iii) each provide the other with any final determination of any such audit or examination, proceeding or determination that affects any amount required to be shown on any return of the other for any period.

6.8 Telephone Forwarding. The Seller agrees that, for the period commencing on the Closing Date and continuing until the first anniversary of the Closing Date, Seller shall at its expense forward all calls received on the twenty-five (25) telephone lines identified on Schedule 6.8 to telephone numbers identified by the Buyer. Following the first anniversary of the Closing Date, the Seller shall have no further obligation to Buyer with respect to such telephone lines.

**ARTICLE VII.
SURVIVAL; INDEMNIFICATION**

7.1 Survival of Provisions and Indemnification.

(a) The representations and warranties set forth in Articles II and III shall survive for the eighteen (18) month period subsequent to the Closing. Notwithstanding any

implication to the contrary contained in this Agreement, so long as any party delivers written notice of a claim to the other party hereunder no later than the applicable limitation date, the indemnifying party shall be required to indemnify the indemnified party as provided in this Article VII for all losses subject to the limitations set forth in Section 7.2) that the indemnified party may incur in respect of the matters that are subject of such claim, regardless of when occurred.

(b) **Indemnification by the Seller** – Subject to the provisions of Section 7.2, The Seller shall promptly indemnify, defend, and hold harmless the Buyer and its affiliates, against any and all losses, costs, expenses (including reasonable cost of investigation, court costs and legal fees actually incurred) and other damages resulting from (i) any breach by Seller of any of the covenants, obligations or representations or warranties contained in this Agreement, (ii) any claim that is brought or asserted by any third party(s) against the Buyer arising out of the ownership, licensing, operation or conduct of the Facility or the conduct of any of the Seller's employees, agents or independent contractors, relating to all periods of time ending on or prior to Closing, (iii) any Excluded Liabilities, and (iv) any actions, suits, proceedings, judgments, costs and expenses, including reasonable attorneys' fees, incident to any of the foregoing, or incurred in enforcing any of the obligations under this Section 7.1(b).

(c) **Indemnification by the Buyer**. Subject to the provisions of Section 7.2, the Buyer shall promptly indemnify, defend and hold the Seller harmless against any and all losses, costs and expenses (including reasonable cost of investigation, court costs and legal fees) and other damages resulting from (i) any breach by the Buyer of any of the covenants, obligations or representations or warranties contained in this Agreement or any certificate or document of the Buyer delivered pursuant to this Agreement, (ii) any claim that is brought or asserted by any third party(s) against the Seller arising out of the ownership, licensing, operation or conduct of the Facility or the conduct of any of the Buyer's employees, agents or independent contractors, relating to all periods of time from and after the Closing, and (iii) any actions, suits, proceedings, judgments, costs and expenses, including reasonable attorneys' fees, incident to any of the foregoing, or incurred in enforcing any of the obligations under this Section 7.1(c). Without limiting the foregoing, the Buyer specifically agrees to indemnify the Seller for all losses, costs and expenses incurred by the Seller in the event that the Buyer fails to perform its obligations under Section 1.7 hereof.

7.2 Limits on Indemnification.

(a) In no event will the Seller's indemnity obligations hereunder, and under the Land Sale Contract or any other document executed in connection herewith or therewith exceed, in the aggregate \$500,000, plus the amount of any Excluded Liabilities; provided, however, that the foregoing limitation shall not apply to claims by third parties against Buyer.

(b) In no event will the Buyer's indemnity obligations hereunder, and under the Land Sale Contract or any document executed in connection herewith or therewith, other than the Escrow Agreement, exceed, in the aggregate \$500,000; provided, however, that the foregoing limitation shall not apply to claims by third parties against Seller.

(c) The indemnification provisions set forth in this Article VII are the

exclusive remedy of the parties hereto for breaches of the representations and warranties contained in this Agreement; provided however, nothing in this Agreement (including this Section 7.2) shall limit or restrict any party's right to maintain or recover any amounts in connection with any action or claim based upon intentional misstatement or fraud.

7.3 Rules Regarding Indemnification. The obligations and liabilities of each party which may be subject to indemnification liability hereunder (the "indemnifying party") to the other party (the "indemnified party") shall be subject to the following terms and conditions:

(a) **Third-Party Claims.** The indemnified party shall, within twenty (20) calendar days of first learning thereof, give written notice to the indemnifying party of any claim by a third party (including, without limitation, any audit, examination or other proceeding relating to taxes) (a "Third Party Claim") which is likely to give rise to a claim by the indemnified party against the indemnifying party, stating the nature of said claim and the amount thereof, to the extent known (including copies of any writings received) and stating that, pursuant to the indemnity, the indemnified party is asserting against the indemnifying party a claim with respect to a potential loss from the Third Party Claim, provided, however, that the failure to provide such written notice within such twenty (20) day period shall in no event impair the rights of the indemnified party or limit the obligations of the indemnifying party except to the extent that such failure materially prejudices the indemnifying party's ability to defend the claim. If, within twenty (20) days after receiving such notice, the indemnifying party advises the indemnified party that it will provide indemnification and assume the defense at its expense, then so long as such defense is being conducted, the indemnified party shall not settle or admit liability with respect to the claim and shall afford to the indemnifying party and defending counsel reasonable assistance (at indemnifying party's sole cost and expense) in defending against the claim. If the indemnifying party assumes the defense, counsel shall be selected by such party and if the indemnified party then retains its own counsel, it shall do so at its own expense. If within the aforesaid twenty (20) day period the indemnified party shall have received written objection to a claim (which written objection shall briefly describe the basis of the objection to the claim or the amount thereof, all in good faith), then for a period of ten (10) days after receipt of such objection the parties shall attempt to settle the dispute as between the indemnified and indemnifying parties. The indemnifying party may settle any such Third Party Claim without the consent of the indemnified party if the settlement, (A) involves only the payment of money against which the indemnified party is indemnified under this Agreement and (B) provides for full release of the indemnified party.

7.4 Claims by a Party. The determination of a claim asserted by a party hereunder (other than as set forth in section (a) above) pursuant to this Article VII shall be made as follows: The indemnified party shall give written notice to the indemnifying party of any claim by the indemnified party which has not been made pursuant to subsection (a) above, and shall cause such notice to specify in reasonable detail to the extent then known each individual item of losses suffered or incurred, the basis for any anticipated liability and the nature of the misrepresentation, breach of warranty, breach of covenant or agreement or other claim to which each such item is related and the computation of the amount to which the indemnified party claims to be entitled hereunder. If, within twenty (20) days after receiving the notice, the indemnified party shall have received written objection to a claim (which written objection shall

briefly describe the basis of the objection to the claim or the amount thereof, all in good faith) then for a period of ten (10) days after receipt of such objection the parties shall attempt to settle the disputed claim as between the indemnified and indemnifying parties. The indemnified party shall reasonably cooperate and assist the indemnifying party in determining the validity of any claim. Such assistance and cooperation will include providing reasonable access to and copies of information, records and documents relating to such matters and furnishing employees to assist in the investigation and resolution of such matters.

7.5 Other Provisions. Notwithstanding anything to the contrary, the provisions of this Article VII are not intended to and shall not limit or modify the parties' obligations under Article IX below. The obligations of the parties under Article IX are in addition to and are independent of their indemnification obligations pursuant to this Article VII.

ARTICLE VIII. TERMINATION

8.1 Due Diligence. In the event that this Agreement is terminated by Buyer pursuant to Section 5.1 the Escrowed Funds and accrued interest thereon shall be paid to Buyer.

8.2 Failure to Timely File Application. Contingent upon Seller's cooperation, if Buyer shall fail to file the Application for Establishment within fifteen (15) calendar days after the date Seller provides Buyer with written notice of the Suffolk County Legislature approval of this transaction, Seller may terminate this Agreement. Upon termination of this Agreement, pursuant to this Section 8.2, Escrowed Funds plus accrued interest thereon shall be paid to Seller as its sole remedy and the parties shall have no further obligations under this Agreement.

8.3 Buyer's Default. If Buyer shall be disapproved by the Department of Health or the Public Health Council due to a character and competence issue or inability to demonstrate sufficient financial resources necessary for the acquisition of the Assets under this Agreement, or if a negative staff report shall be issued by the Department of Health or the Public Health Council regarding the Buyer upon its review of the Application, then, within fifteen (15) days of such disapproval or report, the Buyer shall have the right to substitute members and/or assign this Agreement to another purchaser ("Assignee") which shall assume this Agreement on Buyer's behalf, and Buyer may amend the Application to reflect such substitution of members and/or Assignee, subject to Seller's consent which shall not be unreasonably conditioned, withheld or delayed. If (a) after such member substitution and/or assignment the Department of Health or Public Health Council still denies approval of Buyer's or its Assignee's Application, as amended, due to a character and competence issue or inability to demonstrate sufficient financial resources necessary for the acquisition of the Assets under this Agreement, (b) Buyer breaches any of its obligations hereunder, in any material respect, and fails to cure such default within thirty (30) days after notice from Seller of the event causing default, (c) Buyer fails to close within the time period set forth in Section 1.7 (other than Buyer's failure to close as a result of Seller's failure to comply with its obligations under this Agreement), then Buyer shall be deemed to have breached its obligations hereunder and Seller may at its option and upon ten (10) days prior notice to Buyer, cancel this Agreement, as its sole remedy, in which event this Agreement shall be terminated and the Escrowed Funds plus accrued interest thereon shall be paid to the

Seller as and for its liquidated damages and not as penalty and the parties shall have no further obligations under this Agreement. Notwithstanding anything herein to the contrary, in the event the Department of Health or Public Health Council denies approval of Buyer's or its Assignee's Application due to a public need issue or any other issue other than character and competence or inability to demonstrate sufficient financial resources necessary for the acquisition of the Assets under this Agreement, then this Agreement shall be deemed cancelled and the Escrowed Funds and accrued interest thereon shall be paid to Buyer and neither party shall have any further claim against the other pursuant to this Agreement. This provision shall survive any termination of this Agreement.

8.4 Seller's Default. If Seller breaches any of its obligations hereunder in any material respect, and fails to cure such default within thirty (30) days after notice from Buyer of the event causing default, then Seller shall be deemed to have breached its obligations hereunder and Buyer may at its option and upon ten (10) days prior notice to Seller, to cancel this Agreement, in which event this Agreement shall be deemed cancelled and the Escrowed Funds and accrued interest thereon shall be paid to Buyer and neither party shall have any further claim against the other pursuant to this Agreement. This provision will survive any termination of this Agreement.

8.5 Cross-Default with Land Sale Contract. Subject to any opportunity to cure as may be set forth in this Agreement: (a) a default by Land Sale Contract Seller under the Land Sale Contract shall be deemed as a Seller default hereunder and a default by Seller hereunder shall be deemed as a Land Sale Contract Seller default under the Land Sale Contract, and (b) a default by Real Estate Buyer under the Land Sale Contract shall be deemed as a Buyer default hereunder and a default by Buyer hereunder shall be deemed as a Real Estate Buyer default under the Land Sale Contract. In addition, if (i) Real Estate Buyer is entitled to cancel or terminate the Land Sale Contract in accordance with its terms, Buyer shall be entitled to cancel or terminate this Agreement and visa versa, and (ii) Real Estate Seller is entitled to cancel or terminate the Land Sale Contract, Seller shall be entitled to cancel or terminate this Agreement and visa versa. Upon any cancellation or termination of the Land Sale Contract, other than as a result of a Real Estate Buyer uncured default, or upon any cancellation or termination of the Land Sale Contract entitling the Real Estate Buyer to the deposit paid thereunder or the Escrowed Funds in accordance with its terms, the Buyer under this Agreement shall be entitled to terminate this Agreement and shall be entitled to receive the Escrowed Funds and all interest thereon and vice versa. Upon any cancellation or termination of the Land Sale Contract as a result of a Real Estate Buyer uncured default entitling the Real Estate Seller to the deposit paid thereunder or the Escrowed Funds in accordance with its terms, the Seller under this Agreement may terminate this Agreement and shall be entitled to receive the Escrowed Funds and all interest thereon and vice versa.

8.6 Termination by Mutual Consent. This Agreement may be terminated and abandoned at any time prior to the Closing by the mutual written agreement of the Parties hereto whereupon the Escrowed Funds plus all accrued interest thereon shall be paid to the Buyer and the parties shall have no further obligations under this Agreement.

8.7 Termination by Either Party. This Agreement may be terminated by either the Seller or the Buyer by written notice to the other that a United States federal or state

court of competent jurisdiction or United States federal or state governmental, regulatory, or administrative agency or commission shall have issued an order, decree, or ruling or taken any action permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling, or other action shall become final and non-appealable. Upon any termination pursuant to this Section 8.7, the Escrowed Funds plus all accrued interest thereon shall be paid to the Buyer and the parties shall have no further obligations under this Agreement.

8.8 Material Adverse Effect.

(a) This Agreement may be terminated at any time prior to Closing by the Buyer if, following the date of this Agreement, any event or circumstance occurs which causes (i) the Seller to be unable to satisfy the conditions precedent to Closing set forth in Section 5.3 hereof or (ii) results in a Material Adverse Effect as defined in herein. Upon any termination pursuant to this Section 8.8(a), the Escrowed Funds, plus all accrued interest thereon shall be paid to the Buyer and the parties shall have no further obligations under this Agreement.

(b) This Agreement may be terminated at any time prior to Closing by the Seller if, following the date of this Agreement, any event or circumstance occurs which causes (i) the Buyer to be unable to satisfy the conditions precedent to Closing set forth in Section 5.2 hereof or (ii) causes the Buyer to materially modify its disclosure schedules pursuant to Section 4.10 hereof. Upon any termination pursuant to this Section 8.8(b), the Escrowed Funds, plus accrued interest thereon, shall be paid to the Seller and the parties shall have no further obligations under this Agreement.

8.9 Survival. The provisions of this Article VIII shall survive termination of this Agreement.

**ARTICLE IX.
OVERPAYMENTS, UNDERPAYMENTS AND APPEALS**

9.1 Responsibility for Overpayments and Audits. Seller is, and after the Closing shall remain, liable for all overpayments or audit liabilities due to Medicare, Medicaid or any other health care reimbursement or payment intermediary or third party payor, and all cash receipts assessments relating to such revenues, and all other third party payor liabilities with respect to services provided at the Facility prior to the Closing Date (collectively, the "Overpayment Obligations"). Seller acknowledges that the Department of Health or other third party payors may collect the Overpayment Obligations by lump sum or by decreasing the third party payments that are otherwise payable to Buyer for services provided by Buyer on or after the Closing Date. Seller shall reimburse Buyer with respect to Overpayment Obligations paid by or withheld from the Buyer as provided below in this Article IX.

9.2 Right to Appeal. Each party shall retain the sole and absolute right to protest, contest or appeal any Medicaid or Medicare rate determinations or any other third party reimbursement relating solely to services rendered by the Facility during such party's period of ownership and operation of the Facility and to receive and retain any additional reimbursement

resulting therefrom limited, however, to the reimbursement for services rendered during such party's period of ownership and operation of the Facility.

9.3 Retroactive Payment Adjustments. If any retroactive adjustment in payments is made as a result of an audit, rate appeal or otherwise, with respect to Medicaid or Medicare rate payments, cash receipts assessments or other liabilities to the State of New York or any other third party reimbursement paid or owing to or by Seller for services rendered by the Facility before the Closing Date and such adjustment is made by increasing or decreasing the Medicare, Medicaid or other third party payments made by such payor to Buyer for the Facility on or after the Closing Date, then:

(a) Buyer shall promptly notify the Seller of such retroactive adjustment;

(b) in the case of an increase, the monies received by Buyer attributable to such increase, net of assessments thereon, shall be deemed trust funds belonging to Seller and Buyer shall pay the net of the same to Seller within ten (10) calendar days of the receipt thereof by Buyer. Buyer shall pay the cash receipts assessments relating to the monies referred to in the first sentence of this subsection utilizing the withheld portion of the monies referred to in the first sentence of this subsection allocable to such assessments and shall provide Seller with all statements and supporting documentation relating thereto;

(c) in the case of a decrease, as a result of which money is withheld or otherwise recovered from payments due to Buyer, Seller shall pay to Buyer the amount withheld within ten (10) calendar days after receipt of notice from Buyer of such withholding, together with all statements and supporting documentation relating thereto and failure of Seller to so pay shall provide Buyer with the right, not to the exclusion of any other right or remedy, to setoff any such sums against any sums otherwise owing to Seller under this Agreement; and

(d) any amounts required to be paid by Seller or Buyer to the other pursuant to this Section 9.3 that are not paid when due shall bear interest at the rate of 3% per annum from the date payment was due until the date payment is received.

9.4 Claim Notice. After the Closing Date, if either party receives a notice relating to any audit, rate appeal, retroactive rate adjustment, or other rate determination, or of the results of any protest, contest or appeal thereof, which is attributable in whole or in part to pre-Closing Date periods (the "Claim Notice") the receiving party shall deliver to the other party, within ten (10) business days of receipt, a true and correct copy of any such Claim Notice.

9.5 Rate Appeals.

(a) **Participating Appeals.** If on or after the Closing Date, either Buyer or Seller (an "Initiating Party") intends to protest, contest or appeal any Medicaid or Medicare rate determinations or any third party reimbursement relating to any period that commenced prior to the Closing Date and ends after the Closing Date, then the Initiating Party shall notify the other party (the "Receiving Party") of such intention in writing (a "Protest Notice") within twenty (20) days after receipt of the Claim Notice. The Receiving Party shall have the right to participate in such protest, contest or appeal by giving the Initiating Party notice of such election within ten (10) business days after the receipt of the Protest Notice.

(b) Effect of Participation. If the Receiving Party elects to participate in such protest, contest or appeal, then:

(i) it shall pay its *pro rata* share of the Initiating Party's legal, accounting and other costs of pursuing such protest, contest or appeal. The Receiving Party's *pro rata* share of such costs shall be equal to the product of (A) the amount of such costs and (B) the number of calendar days in the period which is subject to the protest, contest or appeal that Receiving Party operated the Facility divided by the total number of calendar days in the period which is the subject of the protest, contest or appeal;

(ii) the Receiving Party shall cooperate in the protest, contest or appeal to the extent reasonably necessary to pursue such action and shall provide access to the Facility's books and records;

(iii) so long as either party is contesting any such claim in good faith, the other party shall not pay or settle such claim;

(iv) Seller shall be entitled to receive all increased reimbursements resulting from such protest, contest or appeal that relate to services provided at the Facility prior to the Closing Date; and

(v) Buyer shall be entitled to receive all increased reimbursements resulting from such protest, contest or appeal that relate to services provided at the Facility on or after to the Closing Date.

(c) Failure to Elect. If the Receiving Party does not elect in a timely manner to participate in any such protest, contest or appeal, then the Initiating Party shall bear the entire cost of such proceeding and, notwithstanding any other provision of this Agreement, shall be entitled to receive and retain all increased reimbursements resulting from such proceeding regardless of when the services were provided subject, however, to a maximum aggregate sum equal to the costs of such proceeding actually incurred by such Initiating Party. Upon recoupment of such costs by the Initiating Party all increased reimbursements resulting from the proceeding shall be allocated between Buyer and Seller as set forth in 9.5 (b) (iv) and (v) above.

9.6 Capital Improvement Rate Increases - Notwithstanding anything to the contrary, all capital improvement related rate increases for which Seller shall have filed a rate appeal prior to Closing and capital improvement related retroactive payment increases for which Seller shall have filed a rate appeal prior to Closing shall belong to Seller.

9.7 The provisions of this Article IX shall survive the Closing.

ARTICLE X. RESIDENT ASSETS

10.1 Delivery of Resident Assets. At Closing, Seller shall deliver to Buyer (i) a schedule, certified by Seller as being accurate to its best knowledge after reasonable inquiry, of

all Resident funds held by it as of the close of business on the day prior to the Closing Date, with all such funds designated on a Resident by Resident basis; (ii) a check drawn on the Residents' Allowance Account maintained by Seller for the full amount of any such account which shall be deposited by the Buyer in a new Residents' Allowance Account to be maintained by Buyer for the benefit of such Residents in accordance with legal requirements; (iii) a schedule, certified by Seller as being accurate to its best knowledge after reasonable inquiry, of all bank accounts maintained by the Facility on behalf of its Residents; (iv) all bankbooks and other assets belonging to Residents of the Facility maintained in the custody of the Facility together with a schedule thereof listing such bankbooks and other assets and the name of the Resident for whom they are being so held; and (v) a schedule, certified by Seller as being accurate to its best knowledge after reasonable inquiry, of all Resident security deposits and prepayments designated on a patient by patient basis, together with a check in the amount of such security deposits and unexpended prepayments (collectively, "Resident Accounts"). Seller shall correct any discrepancies between the amounts actually in such accounts and the amounts shown as belonging to the Residents and shall transfer all the correct sums due hereunder.

10.2 Indemnification. Buyer shall acknowledge receipt of the schedules described in Section 10.1 above and the Resident Accounts in writing and, provided that any discrepancies referred to in Section 10.1 have been corrected, Buyer shall indemnify, defend and hold Seller harmless against any claims made by or on behalf of Residents or others relating to Resident Accounts, including but not limited to all costs, expenses and reasonable attorneys fees but in all events limited to the amounts actually transferred by Seller to Buyer under this Article. Seller shall indemnify, defend and hold Buyer harmless against any claims made by or on behalf of Residents, including but not limited to all costs, expenses and reasonable attorneys fees, relating to any Resident Accounts which claims arise on account of periods prior to the Closing Date, or in respect of which Seller fails to properly schedule, correct and/or remit the proper funds in accordance with Section 10.1. The provisions of this Section 10.2 shall survive the Closing.

10.3 Notices. Buyer and Seller will jointly and promptly give all notices required by law in connection with the aforesaid transfer of the Residents' assets. This provision shall survive the Closing.

ARTICLE XI. GENERAL PROVISIONS

11.1 Notices. All notices, requests, demands, claims and other communications required or permitted to be delivered, given or otherwise provided under this Agreement must be in writing and must be delivered, given or otherwise provided: (a) by hand (in which case, it will be effective upon delivery); or (b) by overnight delivery by a nationally recognized courier service (in which case, it will be effective on the Business Day after being deposited with such courier service); and (c) by email, in each case, to the address or email address listed below (or at such other address for such Party as shall be specified by similar such notice):

If to the Seller:

County of Suffolk
Department of Health Services
Attn: Margaret B. Bermel, MBA
Director of Health Administrative Services
Suffolk County Department of Health Services
225 Rabro Drive, Hauppauge, NY 11788
Telephone: 631.853.3153
Email: margaret.bermel@suffolkcountyny.gov

with copies to:

Dennis M. Cohen, County Attorney
Suffolk County Department of Law
H. Lee Dennison Building
100 Veterans Memorial Highway
Hauppauge, NY 11788-0099
Telephone: 631-853-5677
Email: dennis.cohen@suffolkcountyny.gov

If to the Buyer, to:

SSS Operating, LLC
255 Warner Ave.
Roslyn Heights, NY 11577
Attn: Samuel Sherman
Telephone: 718-930-9852
SSherman@sunharbormanor.com

with copies to:

Novack Burnbaum Crystal LLP
300 East 42nd Street
New York, New York 10017
Attn: Edward H. Burnbaum, Esq.
and
Martha M. Dwyer, Esq.
Telephone: 212-682-4002
eburnbaum@nbclaw.com
mdwyer@nbclaw.com

11.2 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

11.3 Rules of Construction. The Parties hereto agree that they have been represented by counsel during the negotiation, preparation, and execution of this Agreement, and therefore waive the application of any law, regulation, holding, or rule of construction providing that ambiguities in an agreement or other document will be construed against the Party drafting such agreement or document.

11.4 Entire Agreement. This Agreement (including the documents and instruments referred to herein and the Exhibits and Schedules attached hereto) constitutes the entire agreement, and supersedes all other prior agreements and understandings (both written and oral), among the parties hereto, or any of them, with respect to the subject matter hereof. This Agreement shall not be assigned by operation of law or otherwise except as otherwise provided in this Agreement.

11.5 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED AND TO BE PERFORMED WHOLLY WITHIN SUCH STATE AND ANY AND ALL DISPUTES SHALL BE RESOLVED IN THE SUPREME COURT FOR THE STATE OF NEW YORK IN AND FOR THE COUNTY OF SUFFOLK OR IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE NON EXCLUSIVE JURISDICTION OF SAID COURTS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR THE RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED BY SUCH NEW YORK STATE COURT OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT.

11.6 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF THE PARTIES HERETO IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

11.7 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. Furthermore, the parties agree that the signature of any party may be delivered by facsimile, or transmission of a PDF file or any other form of electronic delivery.

11.8 Severability. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is deemed unenforceable, such provision shall be deemed to be reformed and modified to the

EXHIBIT 2

(PART 2)

AMENDED AS OF 8/10/2012

minimum amount required to make such provision enforceable. Unless otherwise specifically set forth in this Agreement, all provisions of this Agreement shall survive the Closing.

11.9 Expenses. The Buyer and the Seller shall each pay their own costs and expenses relating to this Agreement, the negotiations leading up to this Agreement, and the performance of this Agreement.

11.10 Assignment. Neither Party may assign or delegate any rights or obligations set forth in this Agreement without the prior written consent of the other Party; provided, however, that SSS Operating, LLC may assign its rights and obligations hereunder to an affiliate with at least one principal in common with SSS Operating, LLC.

11.11 No Third Party Beneficiaries. This Agreement is for the sole benefit of the Buyer and the Seller and is not for the benefit of any third party. Nothing contained in this Agreement is intended to relieve or discharge the obligations or liability of any third party to the Seller or the Buyer, nor shall this Agreement give any third party any right of subrogation or action over or against the Seller or the Buyer.

11.12 Further Assurances and Records. From time to time after the Closing Date, the Buyer or the Seller, at the request of the other and without further consideration but at the expense of the requesting party, shall sign and deliver or cause to be signed and delivered such other instruments of transfer and take such other actions as reasonably may be requested by the other in order further to effectuate the consummation of the Asset Purchase. In addition, the Buyer and the Seller acknowledge that there may be occasions in the future when a Party or Affiliates of a Party will need access to certain documentation of the other in order to prepare financial statements, tax returns or other reports to third parties, or in order to facilitate audits or legal proceedings, comply with laws or Governmental Authorizations or otherwise conduct its affairs in a proper manner. Accordingly, the Buyer and the Seller shall exercise their respective reasonable commercial efforts to achieve the purposes of this Section in such case at the expense of the requesting party.

11.13 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing signed by the Buyer and the Seller. No waiver by any Party of any provision of this Agreement or any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

11.14 Captions. The titles of the Articles and Sections of this Agreement are for convenience only and shall not be construed as limiting, defining or affecting the substantive terms of this Agreement.

11.15 Exhibits, Schedules and Annexes. The Exhibits, Schedules and Annexes are a part of this Agreement as if fully set forth herein. All references herein to Sections,

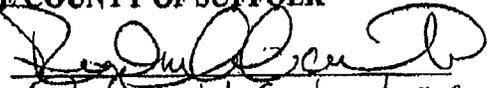
subsections, clauses, Exhibits, Schedules and Annexes shall be deemed references to such parts of this Agreement, unless the context shall otherwise require.

11.16 Brokers. Each Party to this Agreement agrees that it shall be responsible to pay fees, commissions and expenses of any broker, financial advisor or other third party retained by it in connection with the transactions contemplated hereby.

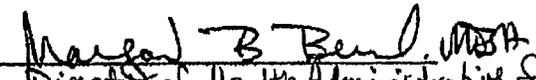
[THE NEXT TWO PAGES ARE THE SIGNATURE PAGES]

IN WITNESS WHEREOF, the Buyer and the Seller have caused this Agreement to be signed as of the date that appears in its first paragraph.

THE COUNTY OF SUFFOLK

By: 
Name: Regina M. Calcaterra
Title: Chief Deputy County Executive

**SUFFOLK COUNTY DEPARTMENT OF
HEALTH SERVICES**

By: 
Title: Director of Health Administrative Services
Name: Margaret B. Bermel, MBA

Approved as to Legality:
Dennis M. Cohen, County Attorney

By: 
Name: Dennis M. Cohen
Title: Assistant County Attorney

SSS OPERATING, LLC

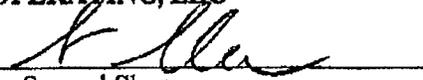
By: 
Name: Samuel Sherman
Title: Manager

EXHIBIT A

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is entered into as of _____, 2012 by and among County of Suffolk, a municipal corporation of the State of New York, acting through its duly constituted Department of Health Services (the "Assignor"), and _____, a New York _____ (the "Assignee").

WHEREAS, Assignor and Assignee entered into that certain Asset Purchase Agreement dated the date hereof (the "Purchase Agreement"); and

WHEREAS, pursuant to the Purchase Agreement, Assignor has agreed to assign certain rights and agreements to Assignee, and Assignee has agreed to assume certain obligations of Assignor, as set forth herein.

NOW, THEREFORE, in consideration of the premises, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto mutually covenant and agree as follows:

1. Effective as of 12:01 a.m. EST on the date hereof (the "Effective Time"), Assignor hereby sells, transfers and assigns (collectively the "Assignment") to Assignee all of Assignor's right, title, benefit, privileges and interest in and to the contracts, agreements or commitments listed on Schedule A hereto ("Rights"), and Assignee hereby accepts the Assignment and agrees to assume, observe and perform any obligations arising from or in connection with the Rights from and after the Effective Time, provided that Assignee assumes no Excluded Liabilities and the parties hereto agree that all such Excluded Liabilities shall remain the sole responsibility of Assignor. The foregoing assignment shall be subject, in case of contracts, to a valid assignment of such contracts to the Assignee.

2. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

3. This Agreement shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of New York, without regard to its conflict of law principle provisions.

4. This Agreement may be executed in counterpart signature pages all of which when so executed and attached hereto shall constitute one and the same original.

5. Capitalized terms used but not otherwise defined herein have the meanings given them in the Purchase Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Assignment and Assumption Agreement as of the date first set forth above.

ASSIGNOR:

COUNTY OF SUFFOLK

By: _____

Name:

Title:

ASSIGNEE:

By: _____

Name:

Title:

SCHEDULE A
TO ASSIGNMENT AND ASSUMPTION TO AGREEMENT

EXHIBIT B

BILL OF SALE

THIS BILL OF SALE dated as of _____, 2012 by County of Suffolk, a municipal corporation of the State of New York, acting through its duly constituted Department of Health Services (the "Seller"), and _____, a New York (the "Buyer").

WITNESSETH:

WHEREAS, the parties hereto have entered into an Asset Purchase Agreement dated the date hereof (the "Purchase Agreement") providing for the purchase by the Buyer of substantially all of the assets of the Seller used in connection with the business of the John J. Foley Skilled Nursing Facility, other than the Excluded Assets, and the parties now desire to carry out such transaction by the Seller's execution and delivery to the Buyer of this instrument evidencing the vesting in the Buyer of all of the assets and rights of the Seller hereinafter described. Capitalized terms used but not defined herein have the meanings given them in the Purchase Agreement.

NOW, THEREFORE, in consideration of the premises and of other valuable consideration to the Seller in hand paid by the Buyer, at or before the execution and delivery hereof, the receipt and sufficiency of which by the Seller is hereby acknowledged, the Seller hereby conveys, grants, bargains, sells, transfers, sets over, assigns, remises, releases, delivers and confirms unto the Buyer, its successors and assigns forever, effective as of 12:01 a.m. EST on the date hereof (the "Effective Time"), all of the Seller's right, title and interest in the Assets, free and clear of all Liens.

TO HAVE AND TO HOLD all of the foregoing business, rights, privileges, properties, and assets unto the Buyer, its successors and assigns for its and their own use forever.

The Seller hereby covenant that, from time to time after the delivery of this instrument, at the Buyer's request and without further consideration, the Seller will do, execute, acknowledge, and deliver, or will cause to be done, executed, acknowledged and delivered, all and every such further acts, deeds, conveyances, transfers, assignments, powers of attorney and assurances as reasonably may be required more effectively to convey, transfer to and vest in the Buyer, and to put the Buyer in possession of, any of the Assets.

Nothing in this instrument, express or implied, is intended or shall be construed to confer upon, or give to, any person, firm or corporation other than the Buyer and its successors and assigns, any remedy or claim under or by reason of this instrument or any terms, covenants or condition hereof, and all of the terms, covenants and conditions, promises and agreements in this instrument contained shall be for the sole and exclusive benefit of the Buyer and its successors and assigns.

This instrument is executed by, and shall be binding upon, the Seller and its successors and assigns for the uses and purposes above set forth and referred to, effective as of the Effective Time.

This instrument shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of New York, without regard to its conflict of law principle provisions.

This instrument may be executed in counterpart signature pages all of which when so executed and attached hereto shall constitute one and the same original.

IN WITNESS WHEREOF, the Seller has executed this Bill of Sale by a duly authorized officer as of the date first above written.

COUNTY OF SUFFOLK

By: _____
Name:
Title:

BUYER

By: _____
Name:
Title:

SCHEDULE 1.2

Excluded Assets

In addition to all items listed in Section 1.2 of this APA, the following are excluded from sale:

Excluded Assets	
1.	All separately titled and registered autos, vans, trucks, buses or vehicles.
2.	Personal hand tools of maintenance mechanics.
3.	Contents of the Department of Public Works tool room, including table saw, drill press, band saw, 50 gal upright air compressor, pressure washer, 2 bench grinders, 2 radial arm saws, and any DPW equipment being used to make capital improvements.
4.	Residents' personal possessions, including televisions, hot plates, compact disc players, etc.
5.	Leased photocopiers, pagers and owned blackberry devices.
6.	Fax machines (Owned by Chem-Rx)
7.	Fire alarm monitoring
8.	Phone service
9.	Computer data trunk
10.	Jett Sanitation Garbage Compactors
11.	Bioterrorism Hub - Cablevision cable modem and other related equipment, including any generators and trailers stored at the facility.
12.	Any donated furniture stored at the facility and not required for the operation of the facility.
13.	Any and all items under lease, license, or rental to the County.

SCHEDULE 1.5
Allocation of Purchase Price

The parties agree that the Purchase Price will be allocated to the Assets for all purposes in a manner consistent with the Internal Revenue code and the regulations promulgated thereunder. The parties shall endeavor in good faith to agree the asset allocation prior to the Closing Date.

**SCHEDULE 2.3
SCHEDULE OF VIOLATIONS**

#	Determination Date	Title	Liability	From
1	11/20/09	42 CFR 483.70(a) NFPA 101-2000 Life Safety Code: 19.3.7.7,8.3 10 NYCRR, 415.25(a) (2), 711.2(a) (1) NFPA 101-1997 Life Safety Code: 13-3.7.3, 6-3	Facility did not ensure that smoke barrier walls were constructed to have at least a ½-hour fire resistance rating	New York State Department of Health
2	11/20/09	42 CFR 483.70(a) NFPA 101-2000 Life Safety Code: 19.3.1.1,8.2.5.2 10 NYCRR, 415.25(a) (2), 711.2(a) (1) NFPA 101-1997 Life Safety Code: 13-3.1.1,6-2.4	Facility did not ensure that exit stairways are enclosed with at least one hour fire resistant rated construction.	New York State Department of Health
3	11/20/09	42 CFR 483.70(a) NFPA 101-2000 Life Safety Code: 19.5.2.1,9-2,NFPA 90A-1999 3-3.4 10 NYCRR, 415.29 (a) (2), 711.2 (a) (1) NFPA 101-1997 Life Safety Code: 13-5.2.1, 7-2, NFPA 90A	Facility did not ensure that vertical ventilation ducts that passed through floors of the building were protected in accordance with NFPA 90A.	New York State Department of Health
4	11/20/09	42 CFR 483.70(a) NFPA 101-2000 Life Safety Code: 19.5.1,9.1.2, NFPA 70-1999 National Electrical Code: Article 700-9, Article 517-41, NFPA 99-1999 Standard for Health Care Facilities: 16-3.3.2 10NYCRR, 711.2(a)(1) NFPA 101-1997 Life	Facility did not ensure that electrical wiring for emergency power systems was kept entirely independent of all other wiring and equipment.	New York State Department of Health

		Safety Code: 13-6.5.1, 7-1, NFPA 70, NFPA 99		
5	Audit – ongoing	NYS Office of Inspector General: Bed Reserve Audit for calendar years 2007 and 2008 (notification March 15, 2012).		
6.	Audit – ongoing	Medicaid audit for 2007 thru 6/30/2011 (notification December 23, 2011).		
7.	Audit - closed	Medicare audit for 2010: finalized with no recoveries or adjustments.		

SCHEDULE 2.4
Permits, Consents and Approvals

- Approval of the Suffolk County Legislature, together with all necessary committees thereof.
- Any required approvals from the New York State Public Health and Planning Council and New York State Department of Health and any related or successor entities thereof.
- Any required approvals from the Town of Brookhaven or any divisions thereof.
- Any approvals as may be necessary for access and provision of utilities including but not limited to, approvals of Suffolk County Water Authority and the Suffolk County Sewer Agency.

SCHEDULE 2.5
Litigation

LITIGATION			
	CAPTION	INDEX #	SUMMARY
1.	<i>Resident A, by Administrator Debra Pomposello v. County of Suffolk, et. al.</i>	40758/10 Suffolk County Supreme Ct.	Negligence
2.	<i>Resident B, by Proposed Administratrix Eileen Fogarty v. Suffolk County Department of Health, et. al.</i>	21242/11 Suffolk County Supreme Ct.	Negligence
3.	<i>Resident C., by her Proposed Guardian, Alma Colacrai v. County of Suffolk, et. al.</i>	Pending	Negligence
4.	<i>Resident D. v County of Suffolk, Suffolk County Skilled Nursing Facility, Dr. Korpi, Nurses DiCarlo and Malaze, the Department of Health Services</i>	04669/97 Suffolk County Supreme Ct.	Negligence
5.	<i>Foley Operating LLC and Foley Land LLC v. County of Suffolk and Farrell Fritz P.C.</i>	12840/2011 Suffolk County Supreme Ct.	Suit for retention of escrow deposit

SCHEDULE 2.8
Material Contracts
Other Agreements

Material Contracts/Other Agreements				
	Vendor	Service Provided	From	To
1	KKCSC Inc.	Administrator and Management Services	11/17/10	12/31/12
2	Home Audiology Services, PC	Audiology Services	8/1/2008	7/31/2012
3	Tetra Dynamics, Inc.	Dental Laboratory Services	2/1/2010	12/31/2012
4	DentServ Dental Services, PC	General Dental Services	4/1/2010	12/31/2012
5	East End Hospice, Inc.	Hospice Care- No Cost	1/1/2010	12/31/2012
6	Brookhaven Memorial Hospital Hospice	Hospice Care – No Cost	1/1/2012	12/31/2014
7	Visiting Eyecare Service, Inc.	Optometry Services	1/1/2008	12/31/2012
8	Sharon A. Pollick, DMD, PC	Oral Surgery Services	5/1/2008	12/31/2012
9	SUNY Stony Brook, School of Dental Medicine	Oral and Maxillofacial Surgery Services	1/1/2011	8/31/2013
10	Rx Consulting Solutions, LLC	Pharmacy Consultation Services	2/1/2008	12/31/2012
11	Chem Rx Pharmacy Services, LLC	Pharmacy Services	7/1/2007	12/31/2012
12	Behavioral Health Medical Practice, PC	Physician – No Cost	1/1/2010	12/31/2012
13	Goldenberg, M.D., Alan	Physician – No Cost	6/1/2011	12/31/2012
14	Ilkay, M.D., Altan	Physician – No Cost	1/1/2010	12/31/2012
15	Jayamaha, M.D., Sharmini	Physician – No Cost	1/1/2010	12/31/2012
16	Latt, M.D., Khin M.	Physician – No Cost	1/1/2010	12/31/2012
17	Long Island Surgery, PC	Physician – No Cost	1/1/2010	12/31/2012
18	Matthew, M.D., Jacob K.	Physician – No Cost	1/1/2010	12/31/2012
19	Pascual, M.D., Margarita C.	Physician – No Cost	1/1/2010	12/31/2012
20	Peconic Bay Primary Medical Care	Physician – No Cost	6/1/2009	12/31/2012
21	Peconic Regional Hematology/Oncology, PC	Physician – No Cost	1/1/2010	12/31/2012
21	Weitzman, M.D., Stephen	Physician – No Cost	1/1/2010	12/31/2012
22	Crowley, Brooke V, D.P.M.	Physician – Podiatry	1/1/2010	12/31/2012
23	Eastern Portable X-Ray Corp.	Portable Radiology Services	4/1/2010	12/31/2012
24	RG Psychological Services, P.C.	Psychology	1/1/2008	12/31/2012
25	North Fork Radiology, P.C.	Radiology Services	1/1/2010	12/31/2012

26	Medical Staffing Network Healthcare, LLC	Short Term Administrator Services	11/1/2011	12/31/2012
Material Contracts/Other Agreements				
	Vendor	Service Provided	From	To
27	Mid Island Therapy Associates, LLC	Short Term Administrator Services	11/1/2011	12/31/2013
28	Huberman, Debra	Speech Therapy	1/1/2011	12/31/2012
29	Medical Staffing Network Healthcare, LLC	Speech Therapy	1/1/2010	12/31/2012
30	Beacon Speech-Language Pathology, Physical and Occupational Therapy, Psychological Services, Registered Professional Nursing	Temporary Healthcare Staffing	1/1/2010	12/31/2012
31	ExecuSearch Group Inc.	Temporary Healthcare Staffing	1/1/2010	12/31/2012
32	HealthPro Nursing Solutions, LLC dba Perfect Choice Staffing	Temporary Healthcare Staffing	1/1/2010	12/31/2012
33	Horizon Healthcare Staffing Corporation	Temporary Healthcare Staffing	1/1/2010	12/31/2012
34	J&P Watson, Inc. d/b/a Interim HealthCare of Greater New York	Temporary Healthcare Staffing	1/1/2010	12/31/2012
35	Maxim Healthcare Services Inc., d/b/a Maxim Staffing Solutions	Temporary Healthcare Staffing	1/1/2010	12/31/2012
36	Medical Staffing Network Healthcare, LLC	Temporary Healthcare Staffing	1/1/2010	12/31/2012
37	Onward Healthcare, Inc. dba All Care Nursing Services	Temporary Healthcare Staffing	1/1/2010	12/31/2012
38	Hunter EMS, Inc.	Transportation Services	1/1/2008	12/31/2012
39	Ricar Medical Transportation Service, Inc.	Transportation Services	1/1/2008	12/31/2012
40	Health Net Federal Services, LLC	Tri-Care Program	1/1/2008	12/31/2012
41	Bruno, Carl	Entertainer Services	1/1/2010	12/31/2012
42	Bruno, Patricia	Entertainer Services	1/1/2010	12/31/2012
43	Faltz, Amos C.	Entertainer Services	9/1/2010	12/31/2012
44	Fuhr, Bob	Entertainer Services	1/1/2010	12/31/2012
45	Goldberg, Elliot	Entertainer Services	1/1/2010	12/31/2012
46	Grant, Tony	Entertainer Services	1/1/2010	12/31/2012
47	Graziano, Anthony	Entertainer Services	1/1/2010	12/31/2012
48	Izzo, Ralph	Entertainer Services	1/1/2010	12/31/2012

49	Maida, Donna	Entertainer Services	1/1/2010	12/31/2012
50	Maselli, George	Entertainer Services	1/1/2010	12/31/2012
Material Contracts/Other Agreements				
	Vendor	Services Provided	From	To
51	McFadden, Roseann	Entertainer Services	1/1/2010	12/31/2012
52	McNeill, Carol	Entertainer Services	1/1/2010	12/31/2012
53	Melhus, Glenn, d/b/a Glenn Miller	Entertainer Services	4/1/2010	12/31/2012
54	Patchogue Rotary Animal Assisted Therapy	Entertainer Services	1/1/2010	12/31/2012
55	Singer, Andrea	Entertainer Services	6/1/2010	12/31/2012
56	Smith, Lillian	Entertainer Services	1/1/2010	12/31/2012
57	Horan, Martello, Morrone, PC	Financial Management Services	3/1/2011	12/31/2013
58	ACS Service Bureau, Inc.	Medicare Part B Billing Service	6/1/2012	12/31/2012
59	Quality Improvement – 10 th Statement of Work	Island Peer Review Organization, Inc. (IPRO)	8/1/2011	7/31/2014
60	Affinity Health Plan, Inc.	Network Participation	9/1/2009	8/31/2012
61	Empire Blue Cross Blue Shield	Network Participation	8/15/2009	8/14/2012
62	GuildNet Inc.	Network Participation	9/1/2009	8/31/2012
63	Health Insurance Plan of Greater New York	Network Participation	10/1/2005	1/15/2013
64	Heritage New York IPA, Inc. dba HealthCare Partners IPA	Network Participation	9/1/2009	8/31/2012
65	MagnaCare Administrative Services LLC	Network Participation	1/1/2011	12/31/2012
66	Serviceair, LLC	Transportation Management Services	9/1/2008	6/30/2012
67	Emergency Ambulance Service	Transportation Services	1/1/2008	12/31/2011

END SCHEDULE 2.8

SCHEDULE 2.11
Material Adverse Change

None.

SCHEDULE 2.16
Absence of Certain Events

None.

SCHEDULE 2.17

Management & Employment Agreements				
#	Vendor	Service	From	To
1	KKCSC, Inc.	Administrator & Management Services	11/17/10	12/31/12
2	Association of Municipal Employees White Collar Unit No. 2	Collective Bargaining Agreement	1/1/09	12/31/12
3	Association of Municipal Employees Blue Collar Unit No. 6	Collective Bargaining Agreement	1/1/09	12/31/12

SCHEDULE 3.4

Litigation

**SCHEDULE 6.8
Telephone Numbers**

Buyer may choose up to 25 of the following numbers to have forwarded for a period of one year, post Closing Date.

**John J. Foley Skilled Nursing Facility
Telephone Directory**

Department	EXT.	Department	EXT.
<u>Administration</u>		<u>Nurse Practitioners</u>	
Kevin J. Carey, LNHA, Administrator	2-4404	Alison Abrams, N.P.	2-4431
Assistant – Christine Ebmeyer	2-4403	Vicki Steizel, N.P.	2-4409
	2-5522	<u>Nursing Administration</u>	
<u>Admissions</u>		Barbara Parrillo, RN -	2-4442
Jennifer Hayes, LPN	2-4470	Director of Nursing	
Linda Chester, LPN	2-6818	Alice Larkin, RN, Ass't -	2-4443
	2-4431	Director of Nursing	
		Secretary – Kari Ingegno	2-4444
		MDS Trisha Elden-Loesch,	2-4481
			2-4453
<u>ADHC</u>		<u>Employee Health</u>	
Director of ADHC	2-5421	<u>Nursing Rehab,</u>	
Sec. Cheryl Milward	2-4677	Cheryl Holmes, LPN	2-4411
RN Supervisor	2-4479	<u>Nursing Supervisor's Ofc.</u>	2-4440
Nursing Office Lynn Garvey, RN	2-4478	<u>Nursing Stations</u>	
Social Worker:		2N 2-5402 / 2-4455	
Lois Byalick, LMSW Acting Dir. ADHC	2-4478	2S 2-5412 / 2-4446	
ADHC Kitchen			
Activity Rooms			
<u>Beauty Parlor</u>			
<u>Dental</u> Delroy Thomas, DDS	2-4452		
<u>Dietary</u> Steve Sacher, Acting Dir. Dietary			

Dietitian Marianne Moro	2-4477	3N 2-5403 / 2-4456	
Dietetic Technician Kelly Jack			
Secretary Lorraine Spataro	2-5228	3S 2-5413 / 2-4448	
Asst. Foodservice Supervisor – Catherine Beardslee/Steve Sacher	2-4421	4N 2-5404 / 2-4454	
Kitchen			
Dining Room (Staff)	2-4423	4S 2-5411 / 2-4457	
Dining Rooms (Residents)			
2 nd Floor	2-4435	5T 2-5405 / 2-4447	
3 rd Floor			
4 th Floor	2-5229		Nursing Unit Managers
5 th Floor		2N 2-5401	
DPW Brian Formhals/Dave Nulty DPW Shop	2-5227		
EMR Computer Training Room		2S 2-4472	
Exam Room 5 th Floor	2-4434		
Finance Gary Vonatski, Director		3N 2-4439	
Financial Analyst/Contracts- Barbara Russo @ Rabro	2-4436	3S 2-5698	
Barbara Russo @ JFoley		4N 2-4441	
Accounts Payable	2-4437		
Medicaid - Joann Miano	2-4438		2-4469
Cash Receipts/Patients Funds – Anastasia Zoas-Haining			Occupational Therapy
Insurance			
Housekeeping – Diane Blum, Director	2-4482		Pantries
Assistant Housekeeper			2 nd Floor
Human Resources Colleen Trucchio, Dir.	2-4483		2-4493
Secretary - Denise Barrett	2-4484		3 rd Floor
Information Technology – Rich Palazzo/Susan Nappi-Bonilla	2-4485		4 th Floor
In Service Coordinator Leondra Allomar LPN			2-4465
In Service Coordinator 5 Tower	2-4490/2-	Physical Therapy Gary	
Laundry – Sewing Room	4460	Gibbs, P.T.,	
Lobby Phone			2-4410
Maintenance Mike Barone, Director	2-4413	Rehab Director	
Maintenance Shop			
Material Control –	2-5407	Physical Therapist, Joe	
Victor Quartuccio/John Thornton		Clemente, PT	2-4409
Medical Director Maureen Crowley, M.D., MPH	2-4464	Physician	
Medical Records-Carol Salvatore		Maria Hayes, M.D.	2-5416
Multi-Purpose Room	3-2940	Psychologists –	2-5416
	2-4405	Karen Schlee/Bonnie	2-4400

2-5409	McClusky, MD	2-4412
2-5523	Bob Katz/Jay Schlesinger, MD	2-4433
	Reception Desk Sec. Guard on Duty	2-4430
2-4406	Small Conference Room	
2-4333	Social Work Services	2-4432
2-4425	Director Lata Agnihotri,	2-5418
2-4458	LMSW	2-4781
2-4466	Secretary	2-4420
2-4467	Medical Social Worker 1 - James Mammone	2-4445
2-4674	Social Work Assistant	
2-4787	Soc Work Asst Michele Burstin SWA	
2-4676	Speech Therapy Debbie	2-4415
2-4459	Huberman	2-4416
2-5420	Staffing Office/Nursing –	
2-4428	Linda Morgan	2-4491
2-4429	Therapeutic Recreation & Volunteer Program	2-4468
2-4418	Laura Stein, CTRS, Director	
2-4476	Assistant Pat Culkin	
	Therapeutic Activity Rooms	
2-4451/2- 4450	4 th Floor 2 nd Floor	
2-4473		

Intercoms**Administration**

Administrator Kevin J. Carey 226
Assistant Christine Ebmeyer

227

ADHC**Director**

Secretary Cheryl Milward

Dietetics & Food Service

Secretary Lorraine Spataro

Assistant Food Service Supervisors

Dietetic Technicians

221

DPW Dave Nulty**EMR Computer Training Room**

229

Housekeeping Diane Blum**Human Resources Colleen Truocchio**

228

Secretary Denise Barrett

Infection Control

230

Maintenance Mike Barone**Material Control -**

231

Victor Quartuccio / John Thornton

MDS Alice Larkin, RN

236

Medical Director Maureen Crowley, MD

274

Medical Records Carol Salvatore**Nursing Administration**

268

Director of Nursing Barbara Parrillo, RN

225

Secretary Kari Ingegno

224

Nursing Stations

275

2 North

2 South

3 North

3 South

4 North

4 South

234

5 Tower

Reception Desk Security on Duty

252

Rehabilitation Therapy Gary Gibbs, P.T.**Social Work Services**

253

Lata Agnihotri, LMSW

Fax Numbers**Administration** 852-4475

Admissions 852-5261

Adult Day Care Program 852-4414

Chart Room 2N 852-4449

Chart Room 2S 852-4894

Chart Room 3N 852-4487

Chart Room 3S 852-4497

Chart Room 4N 852-4488

Chart Room 4S 852-4498

Chart Room 5T 852-4899

Dietary & Food Service 852-4338

Infection Control 852-4787

Material Control 852-4337

Medical Records 852-4424

Nursing Administration 852-4678

Nursing Office 852-4784

Personnel 852-4762

Social Service/Admission 852-5400

Patient Account 852-4373

**COUNTY EMERGENCY
PHONE NOS.**

Secretary	237	Fifth Precinct	4-8500
SWA - Michelle Burstin			
SWA	260	Firematic	2-4800
MSW1 James Mammone			
Staffing Office Linda Morgan	233	Police – Emergency	911
Therapeutic Recreation Laura Stein			
Assistant Pat Culkin	223	DPW	2-4256
	242	Social Services	4-9100
	248	<u>Frequently Called</u>	
	222	<u>Numbers</u>	
			319-4099
	235	AME Benefit Fund	589-8400
	243	AME Union	2-4500
	238	Board of Elections	3-5175
	245	Civil Service Test Inquiries	3-5500
	239	Civil Service Hauppauge	2-4600
	247	County Farm	3-2924
	241	IS @ Health Help Desk (Computers)	924-8000
	265	Credit Union	2-4010
	267	DPW Yaphank Commissioner	3-4866
		SC Employee Benefits	2-4853
	257	Fire Marshall	2-4700
	255	Minimum Security – Yaphank	1-800-342- 9871
	256		2-6000
	270	NYSDOH Hotline	
	259	Police Headquarters – Yaphank	1-800-275- 8777
	261		1-866-805- 0990
	249	Post Office – General Inquiries	

250

Retirement Fund

Paging # 25422-00

To Transfer Calls:

Hit Link, dial #, when it rings, hit release.

END SCHEDULE 6.8

EXHIBIT A
LAND SALE CONTRACT

EXHIBIT B
CONFIDENTIALITY AGREEMENT

SUFFOLK COUNTY DEPARTMENT OF HEALTH SERVICES
CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS AGREEMENT (this "Agreement") is made as of the 11 day of July, 2012, by and between Sam Sherman, 255 Warner Avenue, Roslyn Heights, NY 11577-1065 ("Proposed Buyer") in favor of SUFFOLK COUNTY ("Seller").

WHEREAS, Proposed Buyer is interested in purchasing from Seller operations commonly known as JOHN J. FOLEY SKILLED NURSING FACILITY (the "Property"); and

WHEREAS, Proposed Buyer desires to obtain certain information regarding the Property from Seller and Proposed Buyer understands that Seller will provide such information only if Proposed Buyer enters into this Agreement with respect to such information.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Proposed Buyer covenants and agrees as follows:

1. Confidential Information. For purposes of this Agreement, the term "Confidential Information" shall mean all information disclosed, distributed or presented to Proposed Buyer by Seller, including the proposed offering whether in writing, electronic form or at oral presentations or interviews, in connection with the Property, including financial, technical, tenant, marketing, and strategic information, and any supplements or updates to any of the foregoing. The term Confidential Information does not include any information which becomes or is generally available to and known by the public (other than as a result of a disclosure in violation of this Agreement).

2. Use/Nondisclosure of Information. Proposed Buyer agrees that it shall not, without the express written consent of the Seller: (i) disclose, furnish or deliver any of the Confidential Information or communicate any of the Confidential Information, in any manner, to any person, company, corporation, entity, institution, cooperative, venture, limited liability company, partnership, individual or any consultant, or (ii) utilize the Confidential Information, whether directly or indirectly, to compete against the Seller or utilize such information in conjunction with any other venture or business combination to compete against the Seller.

Proposed Buyer may disclose the Confidential Information to its legal counsel and accountants utilized by it for purposes of conducting its due diligence review of the Property ("Representatives"); provided, however, that Proposed Buyer shall: (i) inform each of the Representatives receiving the Confidential Information of the confidential nature of the Confidential Information and of this Agreement, (ii) direct the Representatives to treat the information confidentially, (iii) use reasonable efforts to take appropriate precautions (including but not limited to) ensuring that the Representatives are under confidentiality restrictions sufficient to protect Seller, and (iv) have the Representatives acknowledge and agree to the terms of this Agreement in writing.

3. Compelled Disclosure. In the event that either Party or their Representatives are requested or required by law, regulation, or legal process to disclose Evaluation Material, that party shall notify the other Party within five (5) business days of learning of such request or requirement, so that the other Party may seek a protective order or other appropriate remedy, and/or waive its right to seek such relief. Notice to the County shall be delivered to Dennis M. Cohen, County Attorney, Suffolk County Department of Law, P.O. Box 6100, 100 Veterans Memorial Highway, Hauppauge, New York 11788-0099 in the following manner: (i) personally (personal service on the County must be pursuant to New York Civil Practice Law and Rules Section 311; or (ii) by nationally recognized overnight courier services; or (iii) mailed by

regular and certified mail in an addressed postpaid envelope. Proposed Buyer shall cooperate in the efforts of the Seller to obtain a protective order or other reasonable assurance that confidential treatment shall be accorded the Confidential Information.

4. Treatment of Information. Upon the written request of Seller, Proposed Buyer shall return to Seller all tangible Confidential Information and copies thereof and shall use commercially reasonable efforts to destroy all tangible materials and copies thereof prepared by the Proposed Buyer or its Representatives containing or referring to the Confidential Information. Any Confidential Information not so returned or destroyed shall remain subject to the terms and conditions of this Agreement.

All submissions from the Buyer for the County's consideration will be held in confidence pending final execution of contract(s), except as otherwise required by law. However, fully executed agreements, including, but not limited to, leases, bill of sales, and all other forms of contract, are subject to the New York State Freedom of Information Law (FOIL). Therefore, if the Buyer believes that any information in its submission constitutes a trade secret or is otherwise information which if disclosed would cause substantial injury to the competitive position of the Buyer's enterprise and the Buyer wishes such information to be withheld if requested pursuant to FOIL (Article 6 of the Public Officers' Law), the Buyer shall submit with its submission a separate letter addressed to Margaret Berniel, Director of Health Administrative Services Suffolk County Department of Health Services, Suffolk County Department of Health Services, 225 Rabro Drive East, Hauppauge, New York 11787, specifically identifying the page number(s), line(s) or other appropriate designation(s) containing such information, explaining in detail why such information is a trade secret or is other information which if disclosed would cause substantial injury to the competitive position of the Buyer's enterprise, and formally requesting that such information be kept confidential. Failure by a Buyer to submit such a letter with its submission will constitute a waiver by the Buyer of any rights it may have under Section 89(3) of the Public Officers' Law relating to protection of trade secrets. The proprietary nature of the information designated confidential by the Buyer may be subject to disclosure if it is subject to release pursuant to FOIL or ordered by a court of competent jurisdiction. A request that an entire submission be kept confidential may not be considered reasonable since a submission cannot reasonably consist of all data subject to FOIL proprietary status.

5. Enforcement. Both parties agree that breach of this Agreement will produce severe damage and injury to the non-breaching party and that money damages may be inadequate to fully compensate the other resulting from such breach. In the event of a breach or a proposed breach of this Agreement, the non-breaching party shall be entitled to seek equitable and other relief, in the form of injunctive relief, both preliminary and permanent, enjoining and restraining such breach or threatened breach. Such remedies shall be in addition to all other remedies available at law or in equity. In addition, the breaching party agrees to compensate the non-breaching party for any and all reasonable attorney's fees and costs incurred by Seller in enforcing its obligations under this Agreement. If any term, provision, covenant or restriction of this Agreement is unenforceable, the remainder of the terms, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or in any way invalidated by such court action.

6. General Provisions. The breaching party shall be responsible for any breach of this Agreement by its Representatives. No failure or delay in exercising any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the principles of conflict of laws thereof.

7. Term. This Agreement will begin on the date specified above and will remain in effect unless terminated by mutual agreement of the parties hereto.

IN WITNESS WHEREOF, the undersigned has executed this Confidentiality and Non-Disclosure Agreement as of the date first above written.

PROPOSED BUYER:

By: [Signature]
Print Name: Samuel Sherman
Title: _____

SELLER:

By: [Signature]
Print Name: Margaret B Bernel, MBA
Title: Director of Health Administrative Services

EXHIBIT C
ESCROW AGREEMENT

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Agreement"), dated as of August 1, 2012, is by and among Suffolk County, New York, with offices at H. Lee Dennison Bldg, 12th Floor, 100 Veterans Memorial Hgwy, PO Box 6100, Hauppauge, NY 11788 (the "County"), SSS Operating, LLC ("Operating"), SSS Realty, LLC ("Realty") and Harris Beach PLLC, a New York professional limited liability company with an address at 333 Earle Ovington Blvd, Suite 912, Uniondale, New York 11553 ("Escrow Agent").

WHEREAS, pursuant to the terms and conditions of a certain Asset Purchase Agreement, dated as of even date herewith (the "APA"), Operating has agreed to purchase from the County, those certain assets identified in the APA.

Whereas, pursuant to the terms and conditions of a certain Land Sale Contract, dated as of even date herewith (the "Sale Contract"), Realty has agreed to purchase from the County, the building and land operated by the County as the John J. Foley Skilled Nursing Facility.

Whereas, pursuant to the APA and Land Sale Contract, Operating is to deposit \$800,000 with an escrow agent (the "Escrow Agent") as follows: \$500,000 upon the execution of the Land Sale Contract and the APA, and an additional \$300,000 upon the first business day immediately following the Due Diligence Period set forth in the APA, to be held by the Escrow Agent subject to the terms of an escrow agreement; and

Whereas, the County, Operating, Realty and the Escrow Agent hereby agree that, in consideration of the mutual promises and covenants contained herein, Escrow Agent shall hold in escrow and shall distribute the Escrow Property (as defined herein) in accordance with and subject to the following Instructions and Terms and Conditions:

I. INSTRUCTIONS:

1. Escrow Property

The Purchaser shall deposit with the Escrow Agent funds in the amount of \$500,000 upon the signing of the APA. On the first business day immediately following the Due Diligence Period set forth in the APA, the Purchaser shall pay additional sum of \$300,000 to the Escrow Agent. Such funds, plus all interest thereon received by Escrow Agent, less any property and/or funds distributed or paid in accordance with this Escrow Agreement, is collectively referred to herein as "Escrow Property".

2. Investment of Escrow Property

Escrow Agent shall hold the Escrow Property in Westbury I -- TD Bank, 6060 Brush Hollow Road, Westbury, NY 11590.

3. Distribution of Escrow Property

Escrow Agent is directed to hold and distribute the Escrow Property in the following manner:

- a. Upon receipt of a fully executed distribution letter substantially in the form attached hereto as Exhibit A, the Escrow Property shall be distributed in accordance with the instructions set forth in such distribution letter.
- b. Upon receipt of a fully executed distribution letter substantially in the form attached hereto as Exhibit B, the Escrow Property shall be distributed in accordance with the instructions set forth in such distribution letter.

4. Notices

All notices, requests, demands, claims and other communications required or permitted to be delivered, given or otherwise provided under this Agreement must be in writing and must be delivered, given or otherwise provided: (a) by hand (in which case, it will be effective upon delivery); or (b) by overnight delivery by a nationally recognized courier service (in which case, it will be effective on the Business Day after being deposited with such courier service); and (c) by email, in each case, to the address or email address listed below (or at such other address for such Party as shall be specified by similar such notice). Notices to Escrow Agent shall be deemed given when actually received by Escrow Agent. Notices shall be directed as follows:

If to the County:

Dennis M. Cohen, County Attorney
Suffolk County Department of Law
H. Lee Dennison Building
100 Veterans Memorial Highway
Hauppauge, NY 11788-0099
Telephone: 631-853-5677
Email: dennis.cohen@suffolkcountyny.gov

with a courtesy copies to:

Suffolk County Department of
Health Services
Attn: Margaret B. Bermel, MBA
Director of Health Administrative Services
Suffolk County Department of
Health Services
225 Rabro Drive, Hauppauge, NY 11788
Telephone: 631.853.3153
Email: margaret.bermel@suffolkcountyny.gov

If to Operating or Realty:

SSS Operating, LLC
255 Warner Ave.
Roslyn Heights, NY 11577
Attn: Samuel Sherman
Telephone: 718-930-9852
SSherman@sunharbormanor.com

with a courtesy copies to:

Novack Burnbaum Crystal LLP
300 East 42nd Street
New York, New York 10017
Attn: Edward H. Burnbaum, Esq.
and
Martha M. Dwyer, Esq.
Telephone: 212-682-4002
eburnbaum@nbclaw.com
mdwyer@nbclaw.com

If to Escrow Agent

Harris Beach PLLC
333 Earle Ovington Boulevard
Uniondale, New York
Attn:
Telephone:
[email]

II. TERMS AND CONDITIONS:

1. The duties, responsibilities and obligations of Escrow Agent shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. Escrow Agent shall not be subject to, nor required to comply with, any other agreement between Operating or Realty and any other party, or to which Operating or Realty is a party, even though reference thereto may be made herein, or to comply with any direction or instruction (other, than those contained herein or delivered in accordance with this Escrow Agreement) from Operating or Realty or any entity acting on their behalf. Escrow Agent shall not be required to, and shall not, expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.
2. This Agreement is for the exclusive benefit of the parties hereto and their respective successors hereunder, and shall not be deemed to give, either expressed or implied, any legal or equitable right, remedy, or claim to any other entity or person whatsoever.
3. If at any time Escrow Agent is served with any judicial or administrative order, judgment,

decree, writ or other form of judicial or administrative process which in any way affects Escrow Property (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Escrow Property), Escrow Agent is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate; and if Escrow Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, Escrow Agent shall not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

4. (a) Escrow Agent shall not be liable for any action taken or omitted or for any loss or injury resulting from its actions or its performance or lack of performance of its duties hereunder in the absence of gross negligence or willful misconduct on its part. In no event shall Escrow Agent be liable: (i) for acting in accordance with or relying upon any, instruction, notice, demand, certificate or document from Operating, Realty or the County or any entity acting on behalf of Operating, Realty or the County, provided that such instruction, notice, demand, certificate or document is consistent with the requirements set forth in this Agreement; (ii) for any consequential, punitive or special damages; (iii) for the acts or omissions of its nominees, correspondents, designees, subagents or sub custodians; or (iv) for an amount in excess of the value of the Escrow Property, valued as of the date of deposit plus any interest earned thereon.

(b) Escrow Agent shall not maintain any security interest in the Escrow Property.

(c) Escrow Agent shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of Escrow Agent (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility).

5. Escrow Agent shall provide to Operating, Realty and the County monthly statements identifying transactions, transfers or holdings of Escrow Property and each such statement shall be deemed to be correct and final upon receipt thereof by Operating and the County unless Escrow Agent is notified in writing to the contrary within thirty (30) business days of the date of such statement.

6. Escrow Agent shall not be responsible in any respect for the form, execution, validity, value or genuineness of documents or securities deposited hereunder, or for any description therein, or for the identity, authority or rights of persons executing or delivering or purporting to execute or deliver any such document, security or endorsement.

7. Notices, instructions or other communications shall be in writing and shall be given in the manner and to the address set forth in paragraph 4 of Section I of this Agreement (or to such other address as may be substituted therefore by written notification to Escrow Agent, Operating, Realty or the County. Escrow Agent is authorized to comply with and rely upon any notices, instructions or other communications believed by it to have been sent or given by Operating, Realty or the County or by a person or persons authorized by Operating, Realty or the County.

Whenever under the terms hereof the time for giving a notice or performing an act falls upon a Saturday, Sunday, or banking holiday, such time shall be extended to the next day on which Escrow Agent is open for business.

8. Operating, Realty and the County shall be liable for and shall reimburse and indemnify Escrow Agent and hold Escrow Agent harmless from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable attorneys fees and expenses) (collectively, "Losses") arising from or in connection with or related to this Escrow Agreement or its service as Escrow Agent hereunder (including but not limited to Losses incurred by Escrow Agent in connection with its successful defense, in whole or in part, of any claim of gross negligence or willful misconduct on its part) provided, however, that nothing contained herein shall require Escrow Agent to be indemnified for Losses caused by its gross negligence or willful misconduct. Operating and Realty shall be responsible for 50% of such Losses and the County shall be responsible for 50% of such Losses, except that if any party is found by a court to be responsible for such Losses, such party shall pay the Losses and shall reimburse the other parties hereto for all related expenses.

9. (a) Operating, Realty and the County, by joint agreement, may remove Escrow Agent at any time by giving to Escrow Agent ten (10) calendar days' prior notice in writing signed by Operating, Realty and the County. Escrow Agent may resign at any time by giving to Operating, Realty and the County fifteen (15) calendar days prior written notice thereof.

(b) Within ten (10) calendar days after giving the foregoing notice of removal to Escrow Agent or receiving the foregoing notice of resignation from Escrow Agent, Operating, Realty and the County, by joint agreement, shall appoint a successor Escrow Agent. If a successor Escrow Agent has not accepted such appointment by the end of such 10-day period, Escrow Agent may, in its sole discretion: (i) during the term of this Agreement, retain possession of the Escrow Property until receiving notice of the successor Escrow Agent; or (ii) apply to the County District Court for the appointment of a successor Escrow Agent or for other appropriate relief.

(c) Upon receipt of notification of the identity of the successor Escrow Agent, Escrow Agent shall either deliver the Escrow Property then held hereunder to the successor Escrow Agent, less Escrow Agent's fees, costs and expenses or other obligations owed to Escrow Agent, or hold such Escrow Property (or any portion thereof), pending distribution, until all such fees, costs and expenses or other obligations are paid.

(d) Upon delivery of the Escrow Property to successor Escrow Agent, Escrow Agent shall have no further duties, responsibilities or obligations hereunder except for: (i) the obligation to provide monthly account statements as provided in paragraph 5 of Section II; and (ii) such obligations which expressly survive termination of this Agreement.

10. (a) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by Escrow Agent hereunder, Escrow Agent may, in its sole discretion, refrain from taking any action other than retaining possession of the Escrow Property during the term of this Agreement, unless Escrow Agent receives written instructions,

signed by Operating, Realty and the County, which eliminates such ambiguity or uncertainty.

(b) In the event of any dispute between or conflicting claims by or against Operating, Realty or the County and/or any other person or entity with respect to any Escrow Property, Escrow Agent shall be entitled, in its sole discretion, during the term of the Agreement, to refuse to comply with any and all claims, demands or instructions with respect to such Escrow Property so long as such dispute or conflict shall continue, and Escrow Agent shall not be or become liable in any way to Operating, Realty or the County for failure or refusal to comply with such conflicting claims, demands or instructions. Escrow Agent, in its sole discretion, shall be entitled to refuse to act, during the term of the Agreement, until: (i) such conflicting or adverse claims or demands shall, prior to the expiration of the Agreement have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in a writing satisfactory to Escrow Agent; (ii) Escrow Agent shall have received security or an indemnity satisfactory to it sufficient to hold it harmless from and against any and all Losses which it may incur by reason of so acting; or (iii) Escrow Agent may deposit the Escrow Property in the registry of the County District Court for the Eastern District of New York. The costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such dispute incurred by the Escrow Agent shall be paid by, and shall be deemed an obligation of, Operating, Realty or the County, as the case may be. In the event of an obligation of any of Operating, Realty or the County under the preceding sentence, each of Operating, Realty and the County reserves all rights to seek the repayment of such costs and expenses, and to seek the payment of its costs and expenses (including reasonable attorneys' fees and expenses) from any person, including the other parties to this Escrow Agreement.

11. Except as otherwise permitted herein, this Escrow Agreement may be modified only by a written amendment signed by all the parties hereto, and no waiver of any provision hereof shall be effective unless expressed in a writing signed by the party to be charged.

12. The rights and remedies conferred upon the parties hereto shall be cumulative, and the exercise or waiver of any such right or remedy shall not preclude or inhibit the exercise of any additional rights or remedies. The waiver of any right or remedy hereunder shall not preclude the subsequent exercise of such right or remedy.

13. Operating, Realty and the County each hereby represent that: (a) this Escrow Agreement has been duly authorized, executed and delivered on its behalf and constitutes its legal, valid and binding obligation; and (b) its execution, delivery and performance of this Escrow Agreement does not and will not violate any law or regulation applicable to it.

14. The invalidity, illegality or unenforceability of any provision of this Agreement shall in no way affect the validity, legality or enforceability of any other provision; and if any provision is held to be unenforceable as a matter of law, the other provisions shall not be affected thereby and shall remain in full force and effect.

15. This Agreement shall constitute the entire agreement of the parties with respect to the subject matter and supersedes all prior oral or written agreements in regard thereto.

16. This Agreement shall terminate upon the distribution of all Escrow Property from the Account. The provisions of this Section II shall survive termination of this Escrow Agreement and/or the resignation or removal of the Escrow Agent.

17. The headings contained in this Agreement are for convenience of reference only and shall have no effect on the interpretation or operation hereof.

18. This Escrow Agreement may be executed by each of the parties hereto in any number of counterparts, each of which counterpart, when so executed and delivered, shall be deemed to be an original and all such counterparts shall together constitute one and the same agreement.

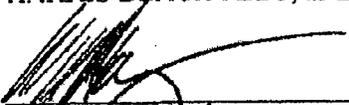
19. Any corporation into which Escrow Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which Escrow Agent shall be a party, or any corporation to which substantially all the corporate trust business of Escrow Agent may be transferred, shall, subject to the terms of the Escrow Agreement, be Escrow Agent under this Escrow Agreement without further act.

20. The Escrow Agent does not have any interest in the Escrow Property deposited hereunder but is serving as escrow holder only and having only possession thereof. Operating, Realty and the County, if applicable, shall pay or reimburse the Escrow Agent upon request for any transfer taxes or other taxes relating to the Escrow Property incurred in connection herewith and shall indemnify and hold harmless the Escrow Agent any amounts that it is obligated to pay in the way of such taxes. Operating and Realty shall be responsible for 50% of such taxes and the County shall be responsible for 50% of such taxes. Any payments of income from this Escrow Account shall be subject to withholding regulations, if applicable, then in force with respect to federal, state and local taxes. The parties hereto, if applicable, will provide the Escrow Agent with appropriate W-9 forms for tax I.D., number certifications, or W-8 forms for non-resident alien certifications. It is understood that the Escrow Agent shall be responsible for income reporting only with respect to income earned on investment of funds which are a part of the Escrowed Property and is not responsible for any other reporting. This paragraph and paragraph 8 of Section II shall survive.

[remainder of page intentionally blank]

IN WITNESS WHEREOF, each of the parties has caused this Escrow Agreement to be executed by a duly authorized representative as of the day and year first written above.

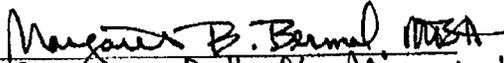
HARRIS BEACH PLLC, as Escrow Agent


Name: William J. Ardley
Title: Partner

THE COUNTY OF SUFFOLK


By: _____
Name: Reginald H. Calcuterra
Title: Chief Deputy County Executive

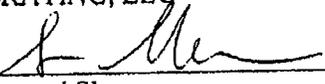
SUFFOLK COUNTY DEPARTMENT OF HEALTH SERVICES


By: _____
Name: Margaret B. Bernal, MBA
Title: Director of Health Administrative Services

Approved as to Legality:
Dennis M. Cohen, County Attorney


By: _____
Name: Dennis M. Cohen
Title: County Attorney

SSS OPERATING, LLC


By: _____
Name: Samuel Sherman
Title: Manager

SSS REALTY, LLC


By: _____
Name: Samuel Sherman
Title: Manager

EXHIBIT 3

REPORT TO THE SUFFOLK COUNTY
LEGISLATURE PURSUANT TO SUFFOLK
COUNTY ADMINISTRATIVE CODE,
SECTION A9-6

*PROCEDURES FOR REVIEW OF
PRIVATIZATION INITIATIVES*

SUBMITTED BY THE SUFFOLK COUNTY
DEPARTMENT OF HEALTH SERVICES

SUFFOLK COUNTY
DEPARTMENT OF HEALTH SERVICES



August 2012

INTRODUCTION & PURPOSE

Suffolk County Administrative Code, Article IX, Section A9-6, "*Procedures for Review of Privatization Initiatives*," details a process that must be followed if a proposal or plan to provide services at Suffolk County's skilled nursing facility is submitted to the County Executive for the purpose of providing these services through entities other than Suffolk County Government and/or the Suffolk County Department of Health Services. The process specified in the code includes submission of written reports that address a variety of items, including the evaluation of the proposal, identification of expenditures under the plan, and a comparison of the level and quality of services to be provided under the plan as compared to Suffolk County.

A proposal for the sale of the John J. Foley Skilled Nursing Facility (JJFSNF) was recently negotiated, and a resolution authorizing the sale of the facility to a private entity has been submitted to the Suffolk County Legislature for consideration. This report has been prepared in accordance with the reporting requirements of Section A9-6. It also provides important historical background information regarding the efforts made by the Suffolk County Department of Health Services to improve nursing home operations, and outlines a four year process that has resulted in the recommendation to sell of the JJFSNF.

HISTORICAL OVERVIEW OF THE JJFSNF, OPERATIONAL STUDIES AND FACILITY IMPROVEMENTS

John J. Foley Skilled Nursing Facility Historical Overview

The John J. Foley Skilled Nursing Facility (JJFSNF) is a 264 bed skilled nursing facility located in Yaphank, New York. The Suffolk County Department of Health Services holds the New York State operating license for the facility.

The origins of the facility date back to the 1870's, when the County purchased a farm in Yaphank to construct an almshouse for the poor, aged and destitute. An adjacent building was acquired in 1919 and became the infirmary for the almshouse. A new facility was constructed in 1937 with federal assistance to be used as a nursing home as well as a hospital for the aged and chronically ill population. In 1995, a new facility on County property was opened, which is the current nursing home structure.

In the 100+ years since the County nursing home was established, there have been vast changes to the health care environment in both the availability of government funded nursing home care and the type of long term care in demand. Where the County had once been a home of last resort for County residents who had no where else to go, this is no

longer the case. All nursing homes are eligible to receive payments from Medicaid and uninsured and underinsured patients can be cared for at any of Suffolk's 40+ nursing homes. Suffolk County reviews all patients prior to admittance to determine a clear payor source. Those patients without a clear payment source are not necessarily admitted.

Operating Losses & Impact on County Nursing Homes in New York State

County administered nursing homes generally require taxpayer subsidies to fund operations. Counties throughout New York State have been struggling with increasing operational losses from their nursing homes operations. Labor costs associated with municipal employee contracts are generally higher than those of private sector nursing homes, and have increased at a rate that surpasses the cost of living increases built into Medicaid reimbursement rates. This creates an ever widening gap between expenditures and revenues resulting in operating losses that must be covered by county tax dollars.

The Suffolk County General Fund pays the JJFSNF's annual operating losses. The net operating losses for operation of the JJFSNF totaled approximately \$76 million between 2007 and 2011.¹ A number of New York State counties have closed, downsized, privatized or are considering privatizing their nursing homes in recent years due to the fiscal pressure of continuing operations. Most recently, several county operated nursing homes have contracted with the Center for Governmental Research, Inc. (CGR) to assess options regarding future operations, including Orange County, Chautauqua County and Rockland County.² CGR recommended that Orange County seek buyers for the public nursing home, concluding that "although CGR identified ways to reduce costs if the county continues to own the home, we concluded that any potential cost savings and revenue enhancements will fall far short of closing the home's annual operating deficit."³ Chautauqua County is considering two qualified offers⁴ for its nursing home and Rockland County is considering its options after the May 2012 release of the report.⁵ In addition, both Ontario⁶ and

¹ John J. Foley Skilled Nursing Facility Audited Financial Statements for years ending 2008, 2009, 2010, and 2011. Independent Auditors: Ernst & Young, LLP.

² Center for Governmental Research, Inc., http://www.cgr.org/research_health.aspx.

³ Center for Governmental Research, Inc., *Orange County Valley View Nursing Home: Current Reality and Future Options*, August 2011, http://www.cgr.org/reports/11_R-1650_OrangeCountyValleyViewNursingHome.pdf.

⁴ *Company Bids \$16.5M Up Front For County Home*, *The Post-Journal*, 7/13/12.

⁵ Toski & Co., PC, *Rockland County PBC Evaluation and Privatization Alternatives*, 5/17/12, http://rocklandgov.com/files/4613/3823/8996/Rockland_PBCComplete_Final_Report_v_3_06_17_12.pdf

⁶ Finger Lakes Health System Agency (FLHSA), *FLHSA Analysis to Support Ontario County's Process for Deciding Whether to Continue to Operate the Ontario County Health Facility*, 5/23/11, <http://www.co.ontario.ny.us/DocumentCenter/Home/View/783> and *Discussion Planned on Ontario County Health Facility*, 3/7/12, <http://www.mpnw.com>

Washington⁷ Counties are considering the sale of their nursing homes. Both Essex⁸ and Fulton⁹ Counties sold their county operated nursing homes in 2012.

PROCESS OVERVIEW

The John J. Foley Skilled Nursing Facility has been a major focus of Suffolk County government for the past five years. Both Executive and Legislative branches of government have worked diligently to improve operations and reduce costs. Efforts have included:

- Hiring private consultants to provide short and long term recommendations for improving operations and generating revenue
- Issuing an RFP in 2008 to transfer ownership and/or operation and management of the JJFSNF to an entity other than Suffolk County. After a lengthy process, a contract was executed with a private bidder, however, the private bidder attempted to cancel the contract which has resulted in pending litigation.
- Issuing two RFPs in 2011
 - Legislative RFP for a Private/Public Partnership at the John J. Foley Skilled Nursing facility. The RFP committee received one proposal which was deemed unacceptable. The RFP closed with no award.
 - Executive RFP for acquisition of 264 Skilled Nursing Beds, including 12 AIDS beds, 60 Adult Day Health Care Program slots and lease or sale for the facility for John J. Foley Skilled nursing facility. The RFP Committee reviewed three proposals in early 2012 and voted no award based on information submitted.

Following the close out of those RFPs, the County contracted with a private, third-party, Peter Degere, who solicited several parties interested in discussing an acquisition.

The administration conducted meetings with four such parties, all of whom own and operate skilled nursing facilities in New York State.

⁷ *Public health privatization deals set to be signed in Washington County*, 7/3/12, http://m.poststar.com/news/local/public-health-privatization-deals-set-to-be-signed-in-washington/article_fdabdcfc-c542-11e1-9015-001a4bcf887a.html

⁸ *Essex County Board Votes to Sell Nursing Home*, *Adirondack Daily Enterprise*, 6/5/12, <http://www.adirondackdailyenterprise.com/page/content.detail/id/531236/Essex-County-board-votes-to-sell-nursing-home.html?nav=5047>

⁹ *Date for Nursing Home Sale Set*, *The Leader-Herald*, 1/12/12, <http://www.leaderherald.com/page/content.detail/id/543709/Date-for-nursing-home-s-sale-set.html?nav=5011>

Each party was provided with the same data and information on John J. Foley Skilled Nursing Facility, including two years of audited financial statements; Case Mix Index (CMI); current Medicaid and Medicare rates; and related financial and operational data. Three of the parties responded with offers to acquire John J. Foley Skilled Nursing Facility.

In reaching its decision on which potential buyer to engage in negotiations, the administration considered a variety of factors, including: offering price, quality of care currently provided in existing facilities, history of management-employee relations, audited financial statements of the prospective buyer, and whether the prospective buyer would agree to maintain care for all existing residents of John J. Foley Skilled Nursing Facility and consider hiring all existing staff.

At the conclusion of this process, using the criteria established for selection, SSS Operating, LLC was chosen as the entity to which John J. Foley Skilled Nursing Facility would be sold. This entity is operated by Samuel Sherman and Israel Sherman, who also operate Absolut Facilities Management, LLC, of East Aurora, N.Y., which owns several skilled nursing facilities in New York State, including Niagara Rehabilitation and Nursing Center and Sunharbor Manor nursing facility of Roslyn, N.Y.

A9-6 D – EVALUATION AND ANALYSIS

According to Suffolk County Administrative Code, Article IX, Section A9-6D:

“A written evaluation shall accompany any such plan or proposal [to privatize the county nursing home]. Such written report shall include an evaluation and analysis of the cost of performing services through county government as compared to the cost of performing the services through the pertinent plan or proposal and shall include an evaluation and analysis of the quality of services to be provided by the plan or proposal, as compared to the quality of services being provided by the County of Suffolk through the Department of Health Services.”

The total net benefit to Suffolk County for selling the JJFSNF to the SSS Operating, LLC is calculated by analyzing the net proceeds from the actual sale and adding the operational savings achieved by no longer operating the facility. A five-year analysis of the fiscal impact for selling the facility as proposed totals \$79 million, as summarized on the following page:

2013 – 2017 Five Year Total Net Benefit to Suffolk County for Sale of JJFSNF	
Net Sale Impact	\$23,381,051
Net Operating Savings	\$55,983,472
Grand Total Net Benefit	\$79,364,523

Note: Sale Proceeds Realized in 2012

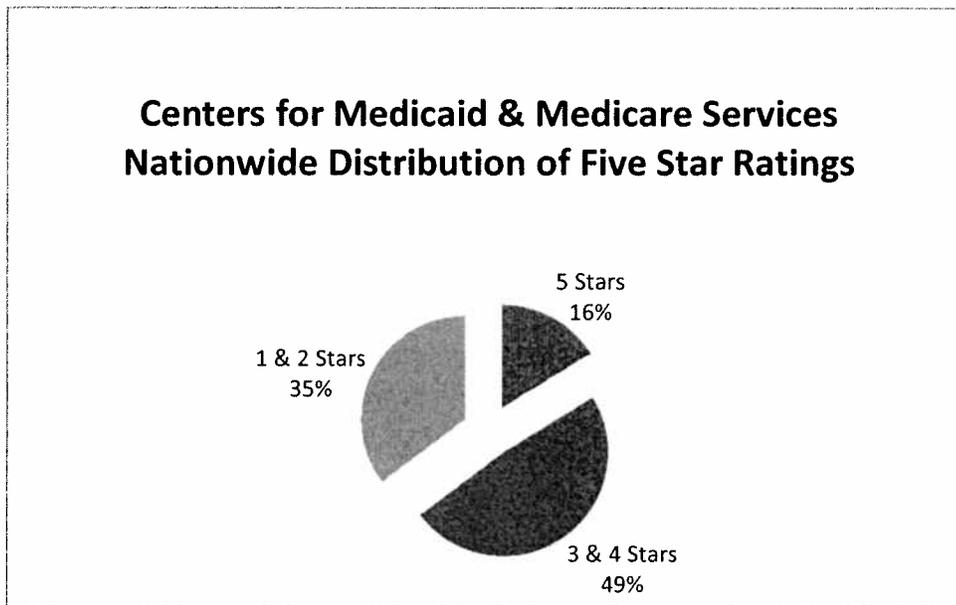
A detailed five-year analysis of the net sale and operating savings resulting from the sale of the JJFSNF and the cost of performing services through Suffolk County as compared to the proposed bidder follows. In accordance with Section A9-6H, the proposed plan *“will result in a cost savings to the county in at least each of the first five years of said plan or proposal of at least 10% in each of those first five years, as measured by net county expenditures...”*

Suffolk County Administrative Code A9-6D Written Evaluation & Analysis of the Cost of Performing Services Through County Government as Compared to the Cost of Performing the Services Through the Pertinent Plan			
Year	County Net Operating Costs	County Legacy Costs	Net Cost Savings to the County
2013	\$22,222,155	\$2,865,279	\$19,356,876
2014	\$9,313,828	\$2,578,751	\$6,735,077
2015	\$10,853,282	\$2,320,876	\$8,532,407
2016	\$12,474,666	\$2,088,788	\$10,385,878
2017	\$12,853,143	\$1,879,909	\$10,973,233
2013 - 2017 FIVE YEAR TOTAL	\$67,717,074	\$11,733,603	\$55,983,472

SSS Operating, LLC, the proposed new owners, will be operating JJFSNF as a skilled nursing facility consistent with current operations, federal regulations and regulations of the State of New York. To compare the quality of services that are being provided by Suffolk County at the JJFSNF as compared to the services that will be provided by the proposed bidder, several quality measures can be examined:

1. Centers for Medicare & Medicaid Services (CMS) Five-Star Quality Rating System for Nursing Homes

- CMS ranks nursing homes throughout the United States on a five star basis, with one being the lowest rating and five being the highest rating. The rating is based on a number of factors, which are weighted and displayed as an Overall Rating.
- Nursing homes with five stars are considered to have much above average quality compared to other nursing homes, while those with one star have quality much below the average (*but still meet Medicare's minimum requirements.*)
- The nationwide distribution of Five Star ratings is as follows:



Source: USA Today Analysis of Centers for Medicare & Medicaid Services data, 2011.

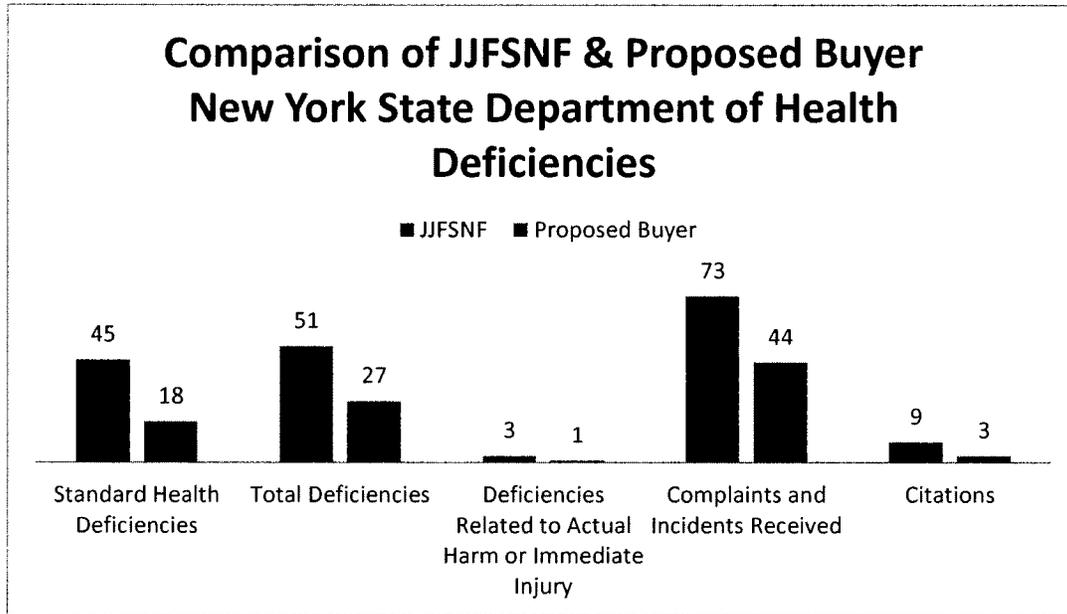
- The ratings are not meant to be used as the only way to evaluate a facility's quality. According to CMS, the ratings should be used with other sources of information on nursing homes, i.e. inspections from state health departments.

- The CMS most recent Overall Rating for the John J. Foley Skilled Nursing Facility is two out of five, or below average.
- The proposed buyer of the JJFSNF currently operates thirteen nursing homes in New York State, with over 1,700 total beds. The average Overall Rating for the Centers for Specialty Cares nursing homes is 3 on the Five Star Scale.
- The proposed buyer is included in the top 65% of CMS' Five Star Ratings, while JJFSNF is in the bottom 35%.

2. New York State Department of Health Survey Deficiencies

- A comparison of the number of NYS Department of Health Deficiencies may be used to assess the quality of services being provided to residents. The New York State Health Department website of Nursing Home profiles includes information about various survey results and deficiencies of all nursing homes in New York State.
- A review of State Health Department reports of several major survey indicators including complaints received, show that the proposed buyer has a better rating than the JJFSNF for deficiencies related to actual harm or immediate jeopardy, total deficiencies, life safety code violations and standard health deficiencies.
- The proposed buyer's nursing homes have a high quality of care according to major quality indicators tracked by the New York State Department of Health. Comparing the JJFSNF to the buyer's nursing homes in major quality indicators:
 - JJFSNF had 66% more complaints and incidents received.
 - JJFSNF had 160% more deficiencies related to actual harm or immediate jeopardy.
 - JJFSNF had 87% more total deficiencies.
 - JJSNF had 418% more standard health deficiencies.
 - JJFSNF had 255% more citations.

- The following chart illustrates the JJFSNF's score as compared to an average of the proposed buyer's thirteen nursing home scores.



Source: New York State DOH Nursing Home Profiles, July 2012, <http://nursinghomes.nyhealth.gov>

A9-6 E – WRITTEN DOCUMENTATION FROM NEW YORK STATE

According to Suffolk County Administrative Code, Article IX, Section A9-6E:

“Written documentation from the appropriate state department or state governmental entity, including a statement expressing approval of the plan or proposal and outlining projected subsequent state aid for such plan or proposal, shall accompany the proposal or plan.”

Throughout this process, the County has communicated with New York State Department of Health (NYSDOH). On July 27, 2012, a formal letter was submitted to the NYSDOH Office of Health Systems Management and Division of Long Term Care informing them of the proposed sale and requesting a preliminary letter of approval by August 9, 2012. It is recognized that all required conditions of approval need to be met prior to formal State approval. The County, however, is confident that since the principals

of SSS Operating, LLC have received prior approval to operate in New York State and have a history of providing a higher quality of care that approval will be granted.

A9-6 F – EXPENDITURE & SERVICE ANALYSIS

According to Suffolk County Administrative Code, Article IX, Section A9-6F:

“A report identifying expenditures for services under the proposal or plan, including such sums as must be expended by the County of Suffolk and/or voluntary agencies, shall also accompany the plan or proposal and shall specifically identify the precise level of services to be provided under the plan or proposal, as compared to the level of the services provided by the County of Suffolk..”

The below chart identify expenditures for services under the proposal.

Suffolk County Administrative Code A9-6F, Written Expenses for Services Under the Proposal or Plan		
	Net Sale Price	\$22,440,000
2012	Plus Revenue: Collection Agency Accounts Receivable	\$2,608,152
	Less Expenses: Employee Accrual Pay- Out	(\$1,667,101)
Net Impact from Privatization Plan		\$23,381,051

SSS Operating, LLC, the proposed new owners, will be operating JJFSNF as a skilled nursing facility consistent with current operations, federal regulations and regulations of the State of New York.

SUMMARY

As this report details, it is evident from the financial analysis and quality comparison that the County will benefit significantly from the proposed transaction. We are confident that the requirements of A9-6 have been fully met and that this transaction will result in the best outcomes for the County as well as the residents of the John J. Foley Skilled Nursing Facility.

EXHIBIT 4

1811

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

August 10, 2012

Dr. James L. Tomarken, MD, MSW, MPH, MBA, FRCPC, FACP
Commissioner of Health Services
Suffolk County Department of Health Services
225 Rabro Drive East
Hauppauge, NY 11788

RE: John J. Foley Skilled Nursing Facility

Dear Commissioner Tomarken:

In a letter dated July 27, 2012, the Suffolk County Department of Health informed the New York State Department of Health (the Department), that the County was contemplating the sale of the John J. Foley Skilled Nursing Facility (JJFSNF) to Israel and Samuel Sherman.

We have been informed by the Suffolk County Executive's Office that the County has completed negotiations with the Shermans as principals of an entity formed or to be formed to purchase JJFSNF. Our understanding is that the sale plan is to continue to operate JJFSNF with the existing bed complement.

Entities of which Israel and Samuel Sherman are members have received approval from the Public Health and Health Planning Council to be Nursing Home Operators in the recent past. Accordingly, if all certificate of need conditions as required pursuant to Article 28 of the Public Health Law and its implementing regulations are met, we believe that the Shermans' entity would receive the approval of the Public Health and Health Planning Council to purchase and operate the JJFSNF.

This letter shall not be construed as a limitation of the ability of either the Public Health and Health Planning Council or the Department to make any final determination respecting this transaction it deems appropriate in its sole discretion, including disapproval if necessary. If you have any questions regarding this letter, please contact, Charles Abel in the Division of Health Facility Planning at 518-402-0967.

Sincerely,



Richard M. Cook
Deputy Commissioner
Office of Health Systems Management