

Change in Effective Control Application

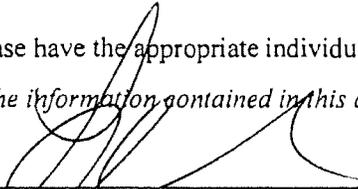
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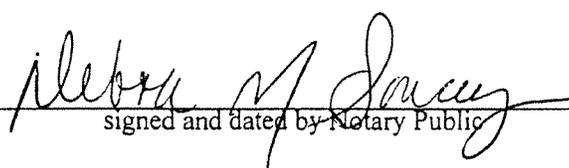
Name of Applicant: Athena Orchard View LLC- d/b/a Orchard View Manor
Name of Facility: Orchard View Manor
Date Application Submitted: May 31, 2012; Resubmitted June 20, 2012; Resubmitted July 13, 2012
Amount of Fee: \$20,000.00

All questions concerning this application should be directed to the Office of Health Systems  
Development at (401) 222-2788

Please have the appropriate individual attest to the following:

*"I hereby certify that the information contained in this application is complete, accurate and true."*

  
signed and dated by the President or Chief Executive Officer

  
signed and dated by Notary Public

**DEBRA M. SOUCEY**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES DEC. 31, 2015

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1. Please provide an executive summary describing the nature and scope of the proposal. Additionally, please include the following: (1) identification of all parties, (2) description of the applicant and its licensure track record, (3) the type of transaction proposed including description of the transaction and relevant costs, (4) summary of all transfer documents, and (5) summary of the organizational structure of the applicant and its affiliates.

Athena Orchard View LLC - d/b/a Orchard View Manor, a Rhode Island limited liability company (the "Applicant"), is requesting approval of the acquisition of Orchard View Manor. Orchard View Manor is a skilled nursing facility with a current licensed capacity of 180 beds that is currently utilizing 166 beds. The facility is located at 135 Tripps Lane, East Providence. This application addresses the acquisition of the operations of Orchard View Manor. Contemporaneously, another company, Athena Orchard View Landlord LLC (the "Landlord LLC"), with principals common to the Applicant, will acquire the Orchard View real estate as disclosed in the Purchase and Sale Agreement included as Attachment 14 of this application. The parties entered into the Purchase and Sale Agreement because both parties determined that its terms were beneficial to the entities' business and personal goals. Pursuant to the Purchase and Sale Agreement, the Applicant will purchase the real estate and then assign all right, title, and interest in such real estate to the Landlord LLC. The Landlord LLC will then lease the real estate to the Applicant (See Attachment 22 for form of proposed Lease). The total purchase price for the operations, real property, and all other assets, as set forth in the Purchase and Sale Agreement is \$13,000,000, subject to applicable adjustments and prorations. The portion of the purchase price attributable to the purchase of Orchard View's operations and the related tangible and intangible assets is \$9,119,600. The portion of the purchase price attributable to the purchase of the real property and the improvements thereon is \$3,480,400. Note, however, that the total capital cost associated with this transaction, as set forth in Appendix A #1, is \$14,950,000. The difference between the \$13,000,000 purchase price in the Purchase and Sale Agreement and the total capital cost set forth in Appendix A consists of an approximately \$1,000,000 reserve to be used for general renovations at the facility and approximately \$950,000 in fees, costs, and other miscellaneous closing expenses. The Applicant anticipates financing approximately 69.6% of the total capital cost of this transaction, which will result in an equity position of \$4,550,000 and incurred debt of \$10,400,000, with up front transaction costs of approximately \$234,250 (See Appendix A and E for more information).

The Applicant recognizes that the facility is currently well run and does not plan to make significant changes to operations. The principal of the Applicant is Lawrence G. Santilli. The Applicant's principal and all of the Applicant's owners (as set forth in Attachment 15 and throughout this application) have a proven track record in owning and operating skilled nursing facilities. Through various entities, they own or manage 26 skilled nursing facilities in Connecticut, Massachusetts, and Rhode Island, encompassing approximately 3260 beds. Collectively, these facilities employ approximately 4900 individuals. In Rhode Island they own and operate (i) Oakland Grove Associates, LP, d/b/a Oakland Grove Health Care Center, 560 Cumberland Hill Road, Woonsocket, (ii) Waterview RI SNF LLC d/b/a Waterview Villa Rehabilitation and Health Care Center, 1275 South Broadway, East Providence, and (iii) Summit RI SNF LLC d/b/a Summit Commons Rehabilitation and Health Care Center, 99 Hillside Avenue, Providence. All three Rhode Island entities are licensed in good standing with the Rhode Island Department of Health. The principal of the Applicant have been working for over 30 years in long term health care in Connecticut and combine a wide range of professional capabilities. As explained in the response to Question #8 below and the Management Agreement included as Attachment 8, the Applicant intends to engage Athena Health Care Associates, Inc. (the "Management Company") to manage Orchard View Manor. The Management Company and the Applicant are independent entities, but they share a similar ownership structure, as outlined in Attachment 15. Athena Health Care System RI, LLC, is an entity that owns Summit RI SNF LLC and Waterview RI SNF LLC, it is also independent of the Applicant, although it shares a similar ownership structure with the Applicant, as well.

The Applicant proposes that Orlando J. Bisbano, Jr. will serve as Administrator of Orchard View Manor. Mr. Bisbano's CV is attached hereto as Attachment 1.

2. Name and address of the applicant:

Name: Athena Orchard View LLC – d/b/a Orchard View Manor	Telephone: 860-751-3900
Address: 135 Tripps Lane, East Providence, RI	Zip Code: 02915

3. Name and address of facility (if different from applicant):

Name: Orchard View Manor	Telephone: 401-438-2250
Address: 135 Tripps Lane, East Providence, RI	Zip Code: 02915

4. Information of the President or Chief Executive Officer of the applicant:

Name: Lawrence G. Santilli	Telephone: 860-751-3900
Address: 135 South Road, Farmington, CT	Zip Code: 06032
E-Mail: lsantilli@athenahealthcare.com	Fax: 860-751-3999

5. Information for the person to contact regarding this proposal:

Name: Stephen D. Zubiago, Esq.	Telephone: 401-454-1017
Address: Nixon Peabody, LLP, 1 Citizens Plaza, Ste. 500, Providence, RI	Zip Code: 02903
E-Mail: szubiago@nixonpeabody.com	Fax: 866-947-1432

6. A. **EXISTING ENTITY:**

License category: Nursing Facility	
Name of Facility: Orchard View Manor	License #: LTC00675
Address: 135 Tripps Lane, East Providence, RI 02915	Telephone: 401-438-2250
Type of Ownership: <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Co.	
Tax Status: <input checked="" type="checkbox"/> For Profit <input type="checkbox"/> Non-Profit	

B. **PROPOSED ENTITY:**

License category: Nursing Facility	
Name of Facility: Orchard View Manor	License #: LTC00675
Address: 135 Tripps Lane, East Providence, RI 02915	Telephone: 401-438-2250
Type of Ownership: <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input checked="" type="checkbox"/> Limited Liability Co.	
Tax Status: <input checked="" type="checkbox"/> For Profit <input type="checkbox"/> Non-Profit	

7. Does this proposal involve a nursing facility? Yes  No

- If response to Question 7 is 'Yes', please complete Appendix C.

8. Will the facility be operated under management agreement with an outside party? Yes  No

- If response to Question 8 is "Yes", please provide copies of that agreement.

RESPONSE: A copy of the Management Agreement is attached hereto as Attachment 8.

9. Will the proposal involve the facility/ies providing healthcare services under contract with an outside party? Yes X No \_\_\_\_

- If response to Question 9 is "Yes", please identify and describe those services to be contracted out.

RESPONSE: The following services will be provided on a contracted basis:

Dialysis Center of East Providence - Dialysis Services  
Dorothy Weaver - Dietician Consultant  
Dr. Rocco Marzilli - Sub Acute Medical Director  
Dr. Tesfaye Meren - Medical Director  
Dr. Kenneth Segal - Podiatry  
Dr. Harrison Smiley - Optometry  
Dr. Kendall Gibbs - Optometry  
East Side Lab - Lab Services  
Sheily Mulcahy - Hairdresser  
Healthcare Service Group - Housekeeping Services  
Mary Marshall - Dietician Consultant  
Miriam Hospital - Psychiatry Services  
Med-Tech Coast Line - Ambulance/Transportation Services  
Omnicare of RI - Pharmacy Services  
Specialty Medical - Specialty Medical Equipment  
Mobilex - Radiology Services  
Technical Gas - Oxygen Services  
Therapy Resources Management-Physical, Speech & Occupational Therapy Services  
Infusion Resources - IV Therapy

10. Estimate the date (month and year) for the proposed transfer of ownership, if approved:

September 30, 2012

11. Please provide a concise description of the services currently offered by the licensed entity and identify any services that will be added, terminated, expanded, or reduced and state the reasons therefore:

The licensed entity currently provides skilled nursing services to residents. The Applicant does not contemplate terminating any services and will continue to provide high quality resident care. Specific services offered at the facility include, without limitation, sub-acute care, long term care, skilled nursing care, recuperative care, family and caregiver education, physical, occupational, and speech and language therapy, and limited transportation services.

12. Please identify the long-term plans of the applicant with respect to the health care programs and health care services to be provided at the facility:

There are no plans at this time to change the health care programs or health care services provided at the facility.

13. Does the entity seeking licensure plan to participate in Medicare or Medicaid (Titles XVIII or XIX of the Social Security Act)?

MEDICARE: Yes X No \_\_\_ MEDICAID: Yes X No \_\_\_

- If response to Question 13 for either Medicare and/or Medicaid is 'No', please explain.

14. Please provide all appropriate signed legal transfer documents (i.e. purchase and sale agreement, affiliation agreement); **NOTE:** these documents must cause both parties to be legally bound.

RESPONSE: Attached hereto as Attachment 14 is the Purchase and Sale Agreement by and between Orchard View Manor, Inc. ("Seller") and Athena Orchard View LLC ("Buyer").

15. Please provide organization charts of both agencies (existing entity and the applicant) for prior to transfer and post transfer, identifying all "parent" legal entities with direct or indirect ownership in or control, all "sister" legal entities also owned or controlled by the parent(s), and all "subsidiary" legal entities.

RESPONSE: Organization charts are attached hereto as Attachment 15.

16. If the proposed owner, operator or director owned, operated or directed a health care facility (both within and outside Rhode Island) within the past five years, please demonstrate the record of that person(s) with respect to access of traditionally underserved populations to its health care facilities.

RESPONSE: Nursing facilities managed and/or owned by the Applicant's principals have an excellent record with respect to access of traditionally underserved populations, as indicated by the current strong census numbers for these populations. For the period 1/1/11 – 12/31/11, approximately 11% of all residents at the facilities are Medicare and approximately 78% are Medicaid, for a total of 89 % of all residents. The total resident days for all of the health facilities for the period of 1/1/11 – 12/31/11 were 1,051,596. Therefore, over the 365 day period, approximately 935,900 days were occupied by underserved populations in the facilities.

17. Please identify the proposed immediate and long-term plans of the applicant to ensure adequate and appropriate access to the program and health care services to be provided by the health care facility/ies to traditionally underserved populations.

RESPONSE: Medicare and Medicaid residents currently comprise approximately 9% and 69.2% of the current census at Orchard View Manor, respectively. The Applicant plans to continue providing access to patients under the Medicare and Medicaid Programs.

18. Please provide a copy of charity care policies and procedures and charity care application form.

RESPONSE: A copy of the Charity Care Policy is attached hereto as Attachment 18.

19. After the proposed change in effective control, will the facility/ies provide medically necessary services to patients without discrimination, including the patients' ability to pay for services? Yes X No \_\_\_.

- If response to Question 19 is 'No', please explain.

20. Please provide a copy of the Quality Assurance Policies (for the services) and a detailed explanation of how quality assurance for patient services will be implemented at the facility/ies by the applicant.

RESPONSE: A copy of the Quality Assurance Policy is attached hereto as Attachment 20.

21. Please provide a detailed description about the amount and source of the equity and debt commitment for this transaction. (**NOTE:** If debt is contemplated as part of the financing, please complete Appendix E). Additionally, please demonstrate the following:

- A. The immediate and long-term financial feasibility of the proposed financing plan;
- B. The relative availability of funds for capital and operating needs; and
- C. The applicant's financial capability.

RESPONSE: As disclosed on Appendix A, the owners of Athena Orchard View LLC intend to make an equity contribution of \$4,550,000 which is approximately 30% of the \$14,950,000 transaction costs. The proposed financing is feasible immediately and long term. As set forth on both Appendix A and Appendix E, Athena Orchard View LLC plans to obtain a mortgage in the amount of \$10,400,000 with a term of 7 years (25 year amort.) at 5.00% interest. Next, with respect to availability of funds for capital and operating needs, as set forth in Section 3 of Appendix A, the Applicant projects that it will generate sufficient revenue to cover expenses and have sufficient cash to fund capital and operating needs. The sources of equity are Larry Santilli and Herbert J. Sims and investors affiliated with Herbert J. Sims. All are non-debt sources. Larry Santilli will provide approximately 55% of the equity funds and Herbert J. Sims and its affiliated investors will provide approximately 45% of the equity funds.

22. Please provide legally binding evidence of site control (e.g., deed, lease, option, etc.) sufficient to enable the applicant to have use and possession of the subject property, if applicable.

RESPONSE: Please refer to the Purchase and Sale Agreement included as Attachment 14. Please also refer to the form of proposed Lease between Applicant and Athena Orchard View Landlord, LLC included as Attachment 22.

23. If the facility is not-for-profit and/or affiliated with a not-for-profit, please provide written approval from the Rhode Island Department of Attorney General of the proposal.

RESPONSE: N/A.

24. Please provide each of the following documents applicable to the applicant's legal status:

- Certificate and Articles of Incorporation and By-Laws (for corporations)
- Certificate of Partnership and Partnership Agreement (for partnerships)
- Certificate of Organization and Operating Agreement (for limited liability corporations)

- If any of the above documents are proposed to be revised or modified in any way as a result of the implementation of the proposed change in effective control, please provide the present documents and the proposed documents and **clearly identify** the revisions and modifications.

RESPONSE: Attached hereto as Attachment 24 is a copy of the Applicant's Certificate of Organization and Operating Agreement, along with the same documents for Athena Orchard View Landlord LLC. The Applicant plans to amend the Operating Agreements to reflect certain employee ownership interests upon the approval of this CEC application and closing of the proposed transaction. Such employee ownership interests will derive from Lawrence Santilli's ownership interests and will result in the ownership percentages set forth on Exhibit G-1.

25. If the applicant and/or one of its parent companies (or ultimate parent) is a publicly traded corporation, please provide copies of its most recent SEC 10K filing.

RESPONSE: N/A.

26. Please provide audited financial statements (which should include an income statement, balance sheet and cash flow statement) for the last three years for the applicant, and/or its ultimate parent, and for the existing facility.

RESPONSE: Financial statements for the existing facility are attached hereto as Attachment 26. The Applicant is a newly formed entity and no financial statements are available.

27. All applicants must complete Appendix A, D, F and G.

A

## APPENDIX A

All applicants must complete this Appendix.

1. Please indicate the financing mix for the capital cost of this proposal. **NOTE:** the Health Services Council's policy requires a minimum 20 percent equity investment in CEC projects.

Source	Amount	Percent	Interest Rate	Terms (Yrs.)
Equity*	\$ 4,550,000.00	30.4%		
Debt**	\$10,400,000.00	69.6%	5.0%	25
Lease	\$ 0.00	0%	%	
<b>TOTAL</b>	<b>\$14,950,000.00</b>	<b>100%</b>		

\* Equity means non-debt funds contributed towards the capital cost related to a change in owner or change in operator of a healthcare facility which funds are free and clear of any repayment or liens against the assets of the proposed owner and/or licensee and that result in a like reduction in the portion of the capital cost that is required to be financed or mortgaged.

\*\* If debt financing is indicated, please complete Appendix E.

2. Please identify the total number of FTEs (full time equivalents) and the associated payroll expense (with fringe benefits) required to staff this proposal in the last full year and as projected in the first full year after the implementation of the proposal.

PERSONELL	CURRENT YEAR 2011		<-- FIRST FULL OPERATING YEAR 2013 -->			
	EXISTING		ADDITIONS/(REDUCTIONS)		NEW TOTALS	
	Number of FTEs	Payroll W/Fringes	Number of FTEs	Payroll W/Fringes	Number of FTEs	Payroll W/Fringes
Medical Director	0	\$	0	\$0	0	\$0
Physicians	0	\$	0	\$0	0	\$0
Administrator	1	\$ 406,417	0	\$ (194,672)	1	\$ 211,745
RNs	18.6	\$ 1,557,060	0	\$ 111,046	18.6	\$1,668,106
LPNs	13.1	\$ 1,144,613	0	\$ (52,172)	13.1	\$1,092,441
Nursing Aides	84	\$ 3,540,954	0	\$ 35,903	84	\$3,576,857
PTs	0	\$ 0	0	\$ 0	0	\$0
Ots	0	\$ 0	0	\$0	0	\$0
Speech Therapists	0	\$ 0	0	\$ 0	0	\$0
Clerical	12.5	\$ 592,750	0	\$ 5,359	12.5	\$598,109
Housekeeping	0	\$ 0	0	\$ 0	0	\$0
Other: Dietary	17.5	\$ 665,574	0	\$ 6,963	17.5	\$672,537
Recreation	3.0	\$ 100,503	0	\$ 1,442	3.0	\$101,945
Social services	2.5	\$ 176,398	0	\$ 9,285	2.5	\$185,683
Nursing Admin	0	\$ 0	0	\$ 0	0	\$0
Physical Plant	3.7	\$ 165,522	0	\$ 1,030	3.7	\$166,553
Laundry	5.3	\$ 136,843	0	\$ 1,070	5.3	\$137,913
<b>TOTALS</b>	<b>161.2</b>	<b>\$ 8,486,634</b>	<b>0</b>	<b>\$ (74,746)</b>	<b>161.2</b>	<b>\$8,411,888</b>

**APPENDIX A (CONT.)**

3. Please complete the following table for the facility for the last full year, the current year and for the first year after the implementation of the proposal. Round all amounts to the nearest dollar.

	ACTUAL PREVIOUS YEAR 2011	BUDGETED CURRENT YEAR 2012	<-- FIRST FULL OPERATING YEAR 2013-->		
			CEC DENIED	CEC APPROVED	INCREMENTAL DIFFERENCE
<b>REVENUES:</b>					
Net Patient Revenue	\$14,327,878	\$14,449,236	\$14,449,236	\$14,234,470	\$ (214,766)
Other: ( )	\$ 894,034	\$ 990,764	\$ 990,764	\$ 891,375	\$ (99,389)
<b>Total Revenue</b>	<b>\$15,221,912</b>	<b>\$15,440,000</b>	<b>\$15,440,000</b>	<b>\$15,125,845</b>	<b>\$ (314,155)</b>
<b>EXPENSES:</b>					
Payroll w/Fringes	\$8,486,634	\$8,328,500	\$8,328,500	\$8,411,888	\$83,388
Bad Debt	\$ 56,056	\$ 50,000	\$ 50,000	\$ 52,796	\$ 2,796
Supplies	\$ 958,232	\$ 943,500	\$ 943,500	\$ 868,460	\$(75,040)
Office Expenses	\$ 178,114	\$ 159,000	\$ 159,000	\$ 194,013	\$35,013
Utilities	\$ 281,030	\$ 298,000	\$ 298,000	\$ 296,970	\$(1,030)
Insurance	\$ 114,440	\$ 136,000	\$ 136,000	\$ 102,454	\$ (33,546)
Interest	\$ 256,565	\$ 254,500	\$ 254,500	\$ 524,912	\$270,412
Depreciation/Amortization	\$ 272,434	\$ 254,300	\$ 254,300	\$ 179,988	\$(74,312)
Leasehold Expenses	\$ 17,500	\$ 17,500	\$ 17,500	\$ 0	\$(17,500)
Other: housekeeping	\$ 233,738	\$ 235,000	\$ 235,000	\$ 234,344	\$(656)
Other: consult/profess/purch	\$ 180,513	\$ 177,000	\$ 177,000	\$ 86,015	\$(90,985)
Other: Management Fees	\$ 910,000	\$ 850,000	\$ 850,000	\$ 452,534	\$(397,466)
Other: Plant Maint	\$ 149,394	\$ 152,700	\$ 152,700	\$ 150,888	\$(1,812)
Other: Taxes	\$ 154,644	\$ 161,000	\$ 161,000	\$ 149,127	\$(11,873)
Other: Ancillaries	\$1,730,754	\$1,850,000	\$1,850,000	\$1,723,023	\$(126,977)
Other: Provider Tax	\$ 836,963	\$ 847,000	\$ 847,000	\$ 831,921	\$(15,079)
Other: Seminars & Educatio	\$ 18,843	\$ 19,500	\$ 19,500	\$ 20,849	\$1,349
<b>Total Expenses</b>	<b>\$14,835,854</b>	<b>\$14,733,500</b>	<b>\$14,733,500</b>	<b>\$14,280,183</b>	<b>\$(453,317)</b>
<b>OPERATING PROFIT:</b>	<b>\$ 386,058</b>	<b>\$706,500</b>	<b>\$706,500</b>	<b>\$845,662</b>	<b>\$139,162</b>

4. Please provide utilization statistics (both as a dollar value and percentage) for the existing facility by completing the table below for the requested years.

PAYOR SOURCE:	ACTUAL (PAST 3 YEARS)				BUDGETED CURRENT FY 2012		PROJECTED (IF CEC APPROVED)							
	FY 2009		FY 2010		FY 2011		FY 2013		FY 2014		FY 2015			
	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%		
Medicare	\$2,638,518	19.6%	\$2,310,333	16.8%	\$2,260,198	15.8%	\$2,223,623	15.4%	\$2,079,602	14.6%	\$2,121,194	14.6%	\$2,163,618	14.5%
Medicaid	\$6,934,599	51.4%	\$7,545,283	54.9%	\$8,170,811	57%	\$8,324,810	57.6%	\$8,401,742	59%	\$8,569,777	58.9%	\$8,741,173	58.8%
Blue Cross	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Commercial	\$2,610,942	19.4%	\$2,669,246	19.4%	\$2,454,132	17.1%	\$2,371,360	16.4%	\$2,240,250	15.7%	\$2,285,055	15.7%	\$2,330,756	15.7%
HMO's	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Self Pay	\$1,300,221	9.6%	\$1,222,519	8.9%	\$1,442,737	10.1%	\$1,529,443	10.6%	\$1,512,876	10.6%	\$1,573,392	10.8%	\$1,636,327	11%
Other: ( )	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
<b>TOTAL</b>	\$13,484,280	100%	\$13,747,381	100%	\$14,327,878	100%	\$14,449,236	100%	\$14,234,470	100%	\$14,871,874	100%	\$14,871,874	100%
Charity Care*	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%

\*Charity Care does not include bad debt, and is based on costs (not charges). For Home Nursing Care Providers the statewide community standard shall be one percent (1%) of net patient revenue earned on an annual basis.



**Appendix C**

**Nursing Home Proposals**

All change in effective control applications, which involve nursing homes, must be accompanied by responses to the questions posed herein.

1. Please provide the current patient census at the facility by payor source in the table below.  
Date of Census 4/11/2012, Licensed bed capacity 180

<b>Payor Source</b>	<b>Number of Patients</b>	<b>Percent of Total</b>
Medicaid	108	69.2%
Medicare	14	9.0%
Commercial	15	9.6%
Private Pay	14	9.0%
Veterans	5	3.2%
Other: ( )	0	0%
<b>TOTAL:</b>	<b>156</b>	<b>100%</b>

2. Please complete the following Medicaid per diem worksheet for the facility.

<b>Expense</b>	<b>COSTS</b>		<b>REIMBURSEMENT</b>		<b>MAXIMUM RATE</b>	
	<b>Current FY 2011</b>	<b>First FY 2012 Project Approved</b>	<b>Current FY 2011</b>	<b>First FY 2012 Project Approved</b>	<b>Current FY 2011</b>	<b>First FY 2012 Project Approved</b>
Pass Through Cost Center (\$)	8.48	8.42	8.42	8.42	8.42	8.42
Fair Rental Cost Center (\$)	10.80	13.64	15.13	15.13	15.13	15.13
Direct Labor Cost Center (\$)	165.50	165.86	140.39	140.56	144.47	144.47
Other Operating Expenses (\$)	64.75	50.56	38.66	37.50	38.21	38.21
<b>TOTAL (\$):</b>	<b>249.53</b>	<b>238.48</b>	<b>202.60</b>	<b>201.61</b>	<b>206.23</b>	<b>206.23</b>

3. Please demonstrate that the applicant or proposed license holder shall have sufficient resources to operate the nursing facility at licensed capacity for thirty (30) days, evidenced by an unencumbered line of credit, a joint escrow account established with the Department, or a performance bond secured in favor of the state or a similar form of security satisfactory to the Department.

RESPONSE: In addition to cash on hand, Applicant will have access to a \$1,400,000 credit facility from Webster Bank for the Orchard View facility that will allow the Applicant to obtain cash sufficient to cover more than thirty (30) days of expenses needed to operate the facility. The Webster Bank credit letter and terms sheet are included on the following page of this Appendix C.



Webster Bank, National Association  
CityPlace II  
185 Asylum Street, 5th Floor  
Hartford, CT 06103-3494  
860-692-1602 Fax  
860-692-1608

Elizabeth B. Shelley  
Senior Vice President  
Hartford Commercial Banking

May 15, 2012

Mr. Larry Santilli  
Mr. Michael Mosier  
Athena Health Care  
300 Queen Street  
Southington, CT 06489

**Re: Revolving credit facility financing for Orchard View skilled nursing facility in Rhode Island in the amount of \$1,400,000**

Dear Larry and Mike:

Webster Bank (the "Bank") is pleased to provide you with the attached term sheet outlining our proposed credit structure in response to your request for a \$1,400,000 revolving line of credit to support your acquisition of Orchard View skilled nursing facility in Rhode Island. This proposal is updated based on our recent discussions.

The Summary of Terms does not purport to include all of the conditions, covenants, representations, warranties, defaults, definitions and other terms that would be contained in the definitive documents for the transaction, all of which must be in customary form and reasonably satisfactory in form and substance to the Bank and their counsel and to the Borrower and its counsel. In issuing this Proposal, we have relied on the accuracy of all statements made and documents and information submitted to the Bank in support of the Credit Facility. If any such statements, documents or information are inaccurate, then without limiting any other remedies available to the Bank on account thereof, this Proposal shall, at the Bank's option, become void.

The transactions will be evidenced by instruments and documents prepared by the Bank and/or its counsel, containing such representations, warranties, covenants, and provisions as the Bank shall require. The Borrower acknowledges that no provisions hereof nor of the Summary of Terms attached hereto shall in any way limit the content of such instruments and documents and/or the Bank's right to have such instruments and documents contain such provisions as the Bank shall require, including without limitation waivers by the Borrowers of its right to notice and/or hearing prior to the exercise by the Bank of any prejudgment remedy, and including waivers of the right to trial by jury with respect to any controversy arising out of such instruments and documents.

The Bank shall not be responsible for any costs or expenses associated with the Credit Facility. By acceptance of this Proposal, the Borrowers jointly and severally, agree to bear, and to reimburse the Bank upon request for, all costs and expenses incurred by the Bank in connection with preparing to close and closing the Credit Facility, whether or not the Credit

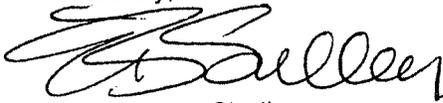
Facility actually closes, including, but not limited to, legal fees and disbursements, survey, engineering and appraisal costs, construction plan review and project oversight and other expenses. Further the Borrowers jointly and severally agree to indemnify the Bank from and against all damages and costs arising in any manner from the transaction contemplated hereby.

The issuance of this term sheet is predicated upon the Bank's present understanding of the proposed financing. As more facts become known through information provided or requested and further analysis is performed, some further assurances in the nature of additional security or additional terms and conditions may be required by the Bank.

This term sheet is for your exclusive use only and no portion of this letter may be disclosed to, discussed with or assigned to any person without the prior written consent of the Bank. If you would like Webster Bank to move forward with underwriting this request please indicate by signing below and returning the signed original to me by May 25, 2012 along with a check for the upfront fee of \$7,000.00.

As always, I look forward to working with you on this proposal and as well as any financial service needs that may be required in the future.

Sincerely,



Elizabeth B. Shelley  
Senior Vice President

**ACCEPTED: RLOC FINANCING**

**CO-BORROWERS**

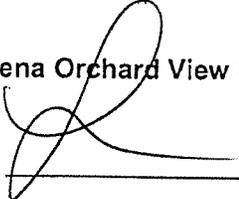
Athena Orchard View, LLC d/b/a Orchard View Manor

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

Date: 5/18/12

Its Manager, duly authorized

Athena Orchard View Landlord LLC

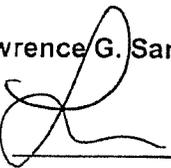
By:  \_\_\_\_\_

Date: 5/16/12

Its Manager, duly authorized

**GUARANTOR:**

Lawrence G. Santilli, individually

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

Date: 5/16/12

**CIP Webster Customer Personal & Business Notice**  
*Privacy, the Patriot Act, and Opening an Account*

*Federal law requires Webster to obtain, verify and record information that identifies each person or entity that opens an account. This information helps the government fight the funding of terrorism and money laundering activities.*

*When you open an account or apply for a loan or lease, at Webster we will ask you for your name, address, date of birth and Social Security or EIN number. For a business, we will ask for your company's name, address and Tax Identification number. In some instances we may also ask to see your driver's license or other identifying documents.*



## Proposed Financing Term Sheet

*The terms and conditions summarized below are provided for discussion purposes only. They do not represent an offer, agreement or commitment from Webster Bank to provide financing, nor are they all-inclusive. The terms and conditions contained herein are subject to satisfactory completion of due diligence, internal credit approval and such other conditions as may be required by the bank.*

### PROPOSED SUMMARY OF TERMS AND CONDITIONS

#### \$1,400,000 SENIOR SECURED REVOLVING CREDIT FACILITY

**CO-BORROWERS:** Athena Orchard View, LLC d/b/a Orchard View Manor and Athena Orchard View Landlord LLC

**GUARANTORS:** Lawrence G. Santilli

**SENIOR CREDIT FACILITY:** An aggregate revolving principal amount not to exceed \$1,400,000 in a mortgage loan facility but in no case shall total senior debt exceed the lesser of 75% of the total cost of the acquisition or 75% of the appraised value.

**PURPOSE:** Proceeds of the Senior Credit Facility shall be used to support the working capital needs of a 166-bed skilled nursing Located at 135 Tripps Lane, East Providence RI.

**CLOSING DATE:** The execution of definitive loan documentation and funding of the Senior Credit Facility to occur on or before September 30, 2012.

**INTEREST RATES:** Floating:  
30-day LIBOR + 2.75%, with auto rollover provision.  
(indicative 30-day LIBOR rate as of May 15, 2012 is 0.23875% for an all in rate of 2.98875%)  
- or -  
Webster's Base Rate + 0.50%, floating (currently 3.25% for an all in rate of 3.75%)

**UPFRONT FEE:** One half of one percent (\$7,000) due upon acceptance of this term sheet .

**MATURITY:** Up to two (2) years. Renewable biennially, at the bank's sole option

**REPAYMENT/  
AMORTIZATION:**

Monthly interest only. Interest shall be calculated on the basis of 360 days per year.

On the Maturity Date, all outstanding amounts, including all principal, will be due and payable.

Loan(s) will be auto debited from a Webster DDA. Failure of payments to clear from the Webster account for 2 consecutive months will cause the spread to be increased by 0.5%.

**OPTIONAL PREPAYMENTS  
AND COMMITMENT  
REDUCTIONS:**

The Borrower/Co-Borrowers may prepay the Senior Credit Facility in whole or in part at any time without premium or penalty, subject to standard make whole provisions.

**SECURITY:**

The Borrowers/Co-Borrowers shall grant to the Lead Bank, for the benefit of the Lenders, valid and perfected second priority liens and security interests in all of the following:

To primarily include:

- First mortgage lien on the subject property, located at: 135 Tripps Lane, E. Providence, RI
- Lien on all business assets of Borrower/Co-Borrowers including without limitation any nursing home operating licenses to the extent allowed by applicable law
- Fully funded replacement reserve account at \$750/bed held at Webster Bank
- Assignment of all Leases and Rents for the Premises, which shall be for a term no shorter than the term of subject loan
- Substantially all of the present and future property and assets of the Borrower/Co-Borrowers including but not limited to: machinery and equipment, inventory, accounts receivable, owned real estate, leaseholds, fixtures, bank accounts, general intangibles, financial assets, investment property, license rights, patents, trademarks, tradenames, copyrights, chattel paper, insurance proceeds, contract rights, hedge agreements, documents, instruments, indemnification rights, tax refunds and cash.
- Assignment of management contracts
- Personal guaranty of Lawrence Santilli

<b>APPRAISALS:</b>	A Current certified appraisal will be required on the real estate located at 135 Tripps Lane, East Providence, RI. The Bank will engage a review of said appraisal, which will be paid for by the Co-Borrowers. Approval of the proposed loan is contingent upon a maximum loan to value ratio of 75%.
<b>ENVIRONMENTAL:</b>	Receipt and satisfactory review of all necessary environmental reports or environmental insurance
<b>FINANCIAL COVENANTS:</b>	To mirror the mortgage covenants
<b>NON-FINANCIAL COVENANTS:</b>	To mirror the mortgage covenants. In addition, the Co-Borrowers, at their sole option, may establish a declining personal guarantor reserve collateral account funded by allowed distributions. Funds in this reserve will be used to reduce the amount of the personal guaranty of Lawrence Santilli on a dollar for dollar basis.
<b>FINANCIAL REPORTING:</b>	To mirror the mortgage reporting and to include <ul style="list-style-type: none"><li>• Personal financial statement of the Guarantor, annually.</li><li>• Personal federal tax return of the Guarantor annually within 30 days of filing</li></ul>
<b>CONDITION PRECEDENT:</b>	Closing of the acquisition mortgage financing with Webster Bank
<b>SUBORDINATION:</b>	All present and future indebtedness owed by the Borrower to any Guarantor and any affiliated entity to the Borrower and/or any Guarantor shall be subordinated to the indebtedness of the Borrower to the Bank and further all instruments evidencing such subordinated debt shall be endorsed, pledged and/or assigned to the Bank.
<b>INSURANCE:</b>	Borrower/Co-Borrowers shall provide and maintain (a) all-risk casualty insurance and such other forms of coverage as the Bank may require (e.g., business interruption coverage) in an amount equal to 100% of the full insurable value of the Collateral and building(s) and other improvements included in the Property, naming the Bank as first loss payee; (b) public liability insurance with minimum limits acceptable to the Bank, naming the Bank as additional insured; (c) flood insurance (if applicable); and (d) such other forms or types of insurance coverage as the Bank shall require. Borrower/Co-Borrowers shall provide such evidence of coverage, all of which shall name the Bank as loss payee.
<b>DOCUMENTATION:</b>	Approval of these proposed terms would require the execution and delivery of loan documentation acceptable to the Bank. This documentation would contain representations, warranties, covenants and events of default customary for financing of this type and other terms deemed appropriate by the Bank. All Bank legal costs are the responsibility of the Borrower/Co-Borrowers.

**Appendix C (CONT.)**

4. Please complete the following itemization of projected utilization and net patient revenue.

<b>&lt;-- FIRST FULL OPERATING YEAR 2013 --&gt;</b>			
<b>PAYOR</b>	<b>CEC APPROVED</b>	<b>CEC NOT APPROVED</b>	<b>DIFFERENCE</b>
<b>MEDICAID:</b>			
Per Diem Revenue	\$209.63999	\$209.63999	\$0
Patient Days	#40,077	#40,077	#0
Total Revenue	\$8,401,742	\$8,401,742	\$0
<b>MEDICARE:</b>			
Per Diem Revenue	\$508.7089	\$508.7089	\$0
Patient Days	#4,088	#4,088	#0
Total Revenue	\$2,079,602	\$2,079,602	\$0
<b>COMMERCIAL:</b>			
Per Diem Revenue	\$361.74312	\$361.74312	\$0
Patient Days	#5,384	#5,384	#0
Total Revenue	\$1,947,625	\$1,947,625	\$0
<b>PRIVATE PAY:</b>			
Per Diem Revenue	\$267.38706	\$267.38706	\$0
Patient Days	#5,658	#5,658	#0
Total Revenue	\$1,512,876	\$1,512,876	\$0
<b>VETERANS:</b>			
Per Diem Revenue	\$246.73187	\$246.73187	\$0
Patient Days	#1,186	#1,186	#0
Total Revenue	\$292,624	\$292,624	\$0
<b>OTHER: ( )::</b>			
Per Diem Revenue	\$0	\$0	\$0
Patient Days	#0	#0	#0
Total Revenue	\$0	\$0	\$0
<b>TOTAL PATIENT REVENUE:</b>	<b>\$14,234,470</b>	<b>\$14,234,470</b>	<b>\$0</b>
<b>TOTAL PATIENT DAYS:</b>	<b>#56,393</b>	<b>#56,393</b>	<b>#0</b>

## Appendix C (CONT.)

5. Based on the format below, please provide a summary of the applicant's administrative and operational policies and procedures to provide individualized and resident-centered care, services, and accommodations, and a sense of peace, safety, and community, and clearly identify how the proposal would advance these areas:

- a. Resident's physical environment:
  - i. Accommodations for privacy vs. congregate and common areas;
  - ii. Choice and autonomy in personal space, fixtures, furniture;
  - iii. Access to and involvement in decentralized services, such as, community kitchen(s), laundry, activities;
  - iv. Access to outdoors and outdoor activities (e.g., sunrooms, patios, gardens and gardening);
- b. Resident-centered systems of care:
  - i. Security systems and care delivery systems to foster autonomy, choice, and negotiated risk;
  - ii. Individualized daily/nightly scheduling (e.g., daily rhythm, going to bed, waking);
  - iii. Dining flexibility (e.g., time, access to dining style and menu choice);
  - iv. Lifestyle/activities flexibility;
- c. Workforce administration:
  - i. How do staffing schedules and assignments ensure consistent delivery of resident services and foster relationship building?
  - ii. Administrative status strategies for dealing with licensed staff turn-over (e.g. Registered nurses, Licensed Practical nurses, Nursing Assistants)

RESPONSE: Applicant owns and/or operates many facilities throughout Connecticut, Massachusetts and Rhode Island. The specific amenities and services described below may not apply to all of Applicant's facilities. The policy objectives described, however, apply uniformly to all of Applicant's facilities.

- a. Resident's physical environment:

The Applicant is committed to fostering a "homelike" environment for residents, and has implemented many quality of life initiatives to this end. Resident common areas, bath cores, dining rooms and corridors have all been recently renovated, and the Physical Plant Services Department has implemented a regular maintenance and painting schedule to keep the facilities in excellent condition. Other initiatives include the renovation of facility nursing stations, which were reconstructed at lower heights to make them more accessible to residents and to provide a more homelike appearance. Additionally, there has been a focused effort on increasing special events and improving routine recreational activities as part of the Quality of Life Initiatives, and the Applicant has invested in creating gardens with raised garden beds, indoor gardens, fountains, sensory gardens, gazebos, community sitting areas, and walking trails on facility property. Choice and autonomy in personal space is a key concept of the Quality Improvement initiatives that the Applicant has implemented, and residents are given the opportunity to personalize their living spaces with paint choice, quilts, bedspreads, wall hangings, photos, etc. The Applicant provides residents with frequent and varied opportunities for "community" trips, including fishing trips, theatre,

state parks, and fall foliage rides. Residents also enjoy “full-time” facility pets, including dogs, cats, birds, and fish.

b. Resident-centered systems of care:

The Applicant has identified several key “Care Areas” in which patient-centered care is paramount, including Behavior Management and Psychoactive Medication Use, Cognitive Status/Dementia Care, Falls Management and Prevention, Infection Control, Nutrition, Pain Management, Physical Functioning, Pressure Ulcers/Skin Care Program, and Restraint and Bed/Chair Alarm Use. Resident Nutrition and Dining have been carefully structured to accommodate resident choice while providing optimal nutritional benefits. The Applicant continues to make a concerted effort to provide a “homelike” dining experience for residents, including the use of linen tablecloths and napkins, enhanced lighting and décor, fresh baked bread for every dinner meal, and special attention is paid to food presentation, particularly for residents with modified consistency diets. Residents enjoy flexibility and variety with the various opportunities for activities that are provided to them, including “Happy Hours” with cocktails, “mock”tails and hors d’oeuvres, gardens and walking trails on facility property, increased volunteer and visitor programs, wireless internet and computer stations, and community involvement trips.

c. Workforce administration:

Staff assignments are designed to ensure consistent delivery of care and to foster relationships with a focus on individualized care, which in turn leads to better clinical outcomes and overall improved quality of life. Staff assignments are made on a regular rotating schedule which facilitates the development of a comfortable schedule for residents, and allows the staff to become more familiar with individual resident preferences with regard to care delivery. In addition to committing to establishing and implementing an improved QI process, the Applicant also demonstrated further dedication and commitment to Quality Improvement by recruiting for and hiring a full time Corporate Quality Improvement Specialist. This position was filled in December of 2008. Since starting in that role, our Corporate QI Specialist has focused on educating both Corporate and facility management staff on Root Cause Analysis, the Quality Improvement Process, and on the development of appropriate, targeted QI plans, including strategies for maintaining licensed staff and decreasing turnover.

**Appendix D**

**Source of Funds**

All applicants must complete this Appendix.

I. Please provide the total expenditures necessary to implement this proposal and allocate this amount to the sources of funds categories listed below:

TOTAL PROJECT COST: \$14,950,000.00 \_\_\_\_\_ \*

<u>SOURCE OF FUNDS</u>	<u>AMOUNT</u>
a. Funded depreciation	\$ _____
b. Other restricted funds (specify) _____	_____
c. Unrestricted funds (specify) _____	_____
d. Owner's equity	2,550,000.00
e. Sale of stock/other equity	2,000,000.00
f. Unrestricted donations or gifts	_____
g. Restricted donations or gifts	_____
h. Government grant (specify) _____	_____
i. Other non-debt funds (specify) _____	_____
<b>j. Sub-Total Equity Funds</b>	<b>\$4,550,000.00</b>
k. Subsidized loan (e.g. FHA etc.) _____	_____
l. Tax-exempt bonds (specify) _____	_____
m. Conventional mortgage	10,400,000.00
n. Lease or rental	_____
o. Other debt funds	_____
<b>p. Sub-Total Debt Funds</b>	<b>10,400,000.00</b>
<b>q. Total Source of Funds</b>	<b>14,950,000.00</b>

\* should equal the response for line "q"



## Appendix F

### **Disclosure of Ownership and Control Interest**

All applicants must complete this Appendix.

ATHENA ORCHARD VIEW LLC d/b/a Orchard View Manor

I. Please answer the following questions by checking either 'Yes' or 'No'. If any of the questions are answered 'Yes', please list the names and addresses of individuals or corporations.

- A. Will there be any individuals (or organizations) having a direct (or indirect) ownership or control interest of 5 percent or more in the applicant, that have been convicted of a criminal offense related to the involvement of such persons or organizations in any of the programs established by Titles XVIII, XIX of the Social Security Act? Yes \_\_\_ No X
- B. Will there be any directors, officers, agents, or managers of the applicant (or facility) who have ever been convicted of a criminal offense related to their involvement in such programs established by Titles XVIII, XIX of the Social Security Act? Yes \_\_\_ No X
- C. Are there (or will there be) any individuals employed by the applicant (or facility) in a managerial, accounting, auditing, or similar capacity who were employed by the applicant's fiscal intermediary within the past 12 months (Title XVIII providers only)? Yes \_\_\_ No X
- D. Will there be any individuals (or organizations) having direct (or indirect) ownership interests, separately (or in combination), of 5 percent or more in the applicant (or facility)? (Indirect ownership interest is ownership in any entity higher in a pyramid than the applicant) Yes X No \_\_\_ (Note, if the applicant is a subsidiary of a "parent" corporation, the response is 'Yes')

RESPONSE: Please see Attachment G-1.

- E. Will there be any individuals (or organizations) having ownership interest (equal to at least 5 percent of the facility's assets) in a mortgage or other obligation secured by the facility? Yes \_\_\_ No X
- F. Will there be any individuals (or organizations) that have an ownership or control interest of 5 percent or more in a subcontractor in which the applicant (or facility) has a direct or indirect ownership interest of 5 percent or more. (Also, please identify those subcontractors.) Yes \_\_\_ No X
- G. Will there be any individuals (or organizations) having a direct (or indirect) ownership or control interest of 5 percent or more in the applicant (or facility), who have been direct (or indirect) owners or employees of a health care facility against which sanctions (of any kind) were imposed by any governmental agency? Yes \_\_\_ No X
- H. Will there be any directors, officers, agents, or managing employees of the applicant (or facility) who have been direct (or indirect) owners or employees of a health care facility against which any sanctions were imposed by any governmental agency? Yes \_\_\_ No X

## Appendix G

### **Ownership Information**

All applicants must complete this Appendix

1. List all officers, members of the board of directors, and trustees, stockholder of the applicant and/or ultimate parent entity. For each individual, provide their home and business address, principal occupation, position with respect to the applicant and/or ultimate parent entity, and amount, if any, of the percentage of stock, share of partnership, or other equity interest that they hold.

RESPONSE: Please see Attachment G-1.

2. For each individual listed in response to Question 1 above, list all (if any) other health care facilities or entities within or outside Rhode Island in which he or she is an officer, director, trustee, shareholder, partner, or in which he or she owns any equity or otherwise controlling interest. For each individual, please identify: A) the relationship to the facility and amount of interest held, B) the type of facility license held (e.g. nursing facility, etc.), C) the address of the facility, D) the state license #, E) Medicare provider #, F) any professional accreditation (e.g. JACHO, CHAP, etc.), and G) complete Appendix B 'Compliance Report' and submit it to the appropriate state agency.

RESPONSE: Please see Attachment G-2.

3. If any individual listed in response to Question 1 above, has any business relationship with the applicant, including but not limited to: supply company, mortgage company, or other lending institution, insurance or professional services, please identify each such individual and the nature of each relationship.

RESPONSE: Athena Health Care Associates, Inc. majority owner Lawrence G. Santilli, provides management services to the Applicant pursuant to a management services contract.

4. Have any individuals listed in response to Question 1 above been convicted of any state or federal criminal violation within the past 20 years? Yes \_\_\_ No X.

- If response to Question 4 is 'Yes', please identify each person involved, the date and nature of each offense and the legal outcome of each incident.

5. Please list all licensed healthcare facilities (in Rhode Island or elsewhere) owned, operated or controlled by any of the entities identified in response to Question 15 of the application. For each facility, please identify: A) the entity, applicant or principal involved, B) the type of facility license held (e.g. nursing facility, etc.), C) the address of the facility, D) the state license #, E) Medicare provider #, F) any professional accreditation (e.g. JACHO, CHAP, etc.), and G) complete Appendix B 'Compliance Report' and submit it to the appropriate state agency.

RESPONSE: N/A.

6. Have any of the facilities owned, operated or managed by the applicant and/or any of the entities identified in Question 5 above during the last 5-years had bankruptcies and/or were placed in receiverships?

Yes\_\_\_ No\_X\_

- If response to Question 6 is 'Yes', please identify the facility and its current status.



**Appendix D**

**Source of Funds**

All applicants must complete this Appendix.

I. Please provide the total expenditures necessary to implement this proposal and allocate this amount to the sources of funds categories listed below:

TOTAL PROJECT COST: \$14,950,000.00 \_\_\_\_\_ \*

<u>SOURCE OF FUNDS</u>	<u>AMOUNT</u>
a. Funded depreciation	\$ _____
b. Other restricted funds (specify) _____	_____
c. Unrestricted funds (specify) _____	_____
d. Owner's equity	2,550,000.00
e. Sale of stock/other equity	2,000,000.00
f. Unrestricted donations or gifts	_____
g. Restricted donations or gifts	_____
h. Government grant (specify) _____	_____
i. Other non-debt funds (specify) _____	_____
<b>j. Sub-Total Equity Funds</b>	<b>\$4,550,000.00</b>
k. Subsidized loan (e.g. FHA etc.) _____	_____
l. Tax-exempt bonds (specify) _____	_____
m. Conventional mortgage	10,400,000.00
n. Lease or rental	_____
o. Other debt funds	_____
<b>p. Sub-Total Debt Funds</b>	<b>10,400,000.00</b>
<b>q. Total Source of Funds</b>	<b>14,950,000.00</b>

\* should equal the response for line "q"





**Conventional Mortgage**

Amount \$10,400,000  
Interest Rate 5.00%  
Amort 25  
Monthly Payment \$60,797

7 yr term

Payment #	Beg Principal Bal	Interest	Principal	End Principal Balance
1	\$10,400,000	\$522,513	\$207,051	\$10,192,949
2	\$10,192,949	\$511,768	\$217,796	\$9,975,152
3	\$9,975,152	\$500,465	\$229,099	\$9,746,053
4	\$9,746,053	\$488,576	\$240,988	\$9,505,066
5	\$9,505,066	\$476,070	\$253,494	\$9,251,572
6	\$9,251,572	\$462,915	\$266,649	\$8,984,923
7	\$8,984,923	\$449,077	\$280,487	\$8,704,436



## Appendix F

### Disclosure of Ownership and Control Interest

All applicants must complete this Appendix.

ATHENA ORCHARD VIEW LLC d/b/a Orchard View Manor

I. Please answer the following questions by checking either 'Yes' or 'No'. If any of the questions are answered 'Yes', please list the names and addresses of individuals or corporations.

- A. Will there be any individuals (or organizations) having a direct (or indirect) ownership or control interest of 5 percent or more in the applicant, that have been convicted of a criminal offense related to the involvement of such persons or organizations in any of the programs established by Titles XVIII, XIX of the Social Security Act? Yes\_\_\_ No\_X\_
- B. Will there be any directors, officers, agents, or managers of the applicant (or facility) who have ever been convicted of a criminal offense related to their involvement in such programs established by Titles XVIII, XIX of the Social Security Act? Yes\_\_\_ No\_X\_
- C. Are there (or will there be) any individuals employed by the applicant (or facility) in a managerial, accounting, auditing, or similar capacity who were employed by the applicant's fiscal intermediary within the past 12 months (Title XVIII providers only)? Yes\_\_\_ No\_X\_
- D. Will there be any individuals (or organizations) having direct (or indirect) ownership interests, separately (or in combination), of 5 percent or more in the applicant (or facility)? (Indirect ownership interest is ownership in any entity higher in a pyramid than the applicant) Yes\_X\_ No\_\_\_ (Note, if the applicant is a subsidiary of a "parent" corporation, the response is 'Yes')

RESPONSE: Please see Attachment G-1.

- E. Will there be any individuals (or organizations) having ownership interest (equal to at least 5 percent of the facility's assets) in a mortgage or other obligation secured by the facility? Yes\_\_\_ No\_X\_
- F. Will there be any individuals (or organizations) that have an ownership or control interest of 5 percent or more in a subcontractor in which the applicant (or facility) has a direct or indirect ownership interest of 5 percent or more. (Also, please identify those subcontractors.) Yes\_\_\_ No\_X\_
- G. Will there be any individuals (or organizations) having a direct (or indirect) ownership or control interest of 5 percent or more in the applicant (or facility), who have been direct (or indirect) owners or employees of a health care facility against which sanctions (of any kind) were imposed by any governmental agency? Yes\_\_\_ No\_X\_
- H. Will there be any directors, officers, agents, or managing employees of the applicant (or facility) who have been direct (or indirect) owners or employees of a health care facility against which any sanctions were imposed by any governmental agency? Yes\_\_\_ No\_X\_

G

## Appendix G

### Ownership Information

All applicants must complete this Appendix

1. List all officers, members of the board of directors, and trustees, stockholder of the applicant and/or ultimate parent entity. For each individual, provide their home and business address, principal occupation, position with respect to the applicant and/or ultimate parent entity, and amount, if any, of the percentage of stock, share of partnership, or other equity interest that they hold.

RESPONSE: Please see Attachment G-1.

2. For each individual listed in response to Question 1 above, list all (if any) other health care facilities or entities within or outside Rhode Island in which he or she is an officer, director, trustee, shareholder, partner, or in which he or she owns any equity or otherwise controlling interest. For each individual, please identify: A) the relationship to the facility and amount of interest held, B) the type of facility license held (e.g. nursing facility, etc.), C) the address of the facility, D) the state license #, E) Medicare provider #, F) any professional accreditation (e.g. JACHO, CHAP, etc.), and G) complete Appendix B 'Compliance Report' and submit it to the appropriate state agency.

RESPONSE: Please see Attachment G-2.

3. If any individual listed in response to Question 1 above, has any business relationship with the applicant, including but not limited to: supply company, mortgage company, or other lending institution, insurance or professional services, please identify each such individual and the nature of each relationship.

RESPONSE: Athena Health Care Associates, Inc. majority owner Lawrence G. Santilli, provides management services to the Applicant pursuant to a management services contract.

4. Have any individuals listed in response to Question 1 above been convicted of any state or federal criminal violation within the past 20 years? Yes \_\_\_ No X.

- If response to Question 4 is 'Yes', please identify each person involved, the date and nature of each offense and the legal outcome of each incident.

5. Please list all licensed healthcare facilities (in Rhode Island or elsewhere) owned, operated or controlled by any of the entities identified in response to Question 15 of the application. For each facility, please identify: A) the entity, applicant or principal involved, B) the type of facility license held (e.g. nursing facility, etc.), C) the address of the facility, D) the state license #, E) Medicare provider #, F) any professional accreditation (e.g. JACHO, CHAP, etc.), and G) complete Appendix B 'Compliance Report' and submit it to the appropriate state agency.

RESPONSE: N/A.

6. Have any of the facilities owned, operated or managed by the applicant and/or any of the entities identified in Question 5 above during the last 5-years had bankruptcies and/or were placed in receiverships?

Yes\_\_\_ No\_X\_

- If response to Question 6 is 'Yes', please identify the facility and its current status.

1

Appendix G

Ownership Information

Answer to Question 1:

The following individuals/members have an equity interest in the applicant:

Athena Orchard View LLC

Lawrence G Santilli, Manager of LLC 135 South Road, Farmington, CT 06032	50.00%
Conservators for Lawrence E Santilli 135 South Road, Farmington, CT 06032	10.00%
Michael E Mosier 135 South Road, Farmington, CT 06032	6.00%
Debra Soucey 135 South Road, Farmington, CT 06032	6.00%
Valerie Santilli 135 South Road, Farmington, CT 06032	6.00%
Individual and entities affiliated with Athena Health Care Systems, with individual or entity owning more than 3%	22.00%

100.00%

Orchard View Landlord LLC

Lawrence G Santilli, Manager of LLC 135 South Road, Farmington, CT 06032	50.00%
Conservators for Lawrence E Santilli 135 South Road, Farmington, CT 06032	10.00%
Michael E Mosier 135 South Road, Farmington, CT 06032	6.00%
Debra Soucey 135 South Road, Farmington, CT 06032	6.00%
Valerie Santilli 135 South Road, Farmington, CT 06032	6.00%
Individual and entities affiliated with Athena Health Care Systems, with individual or entity owning more than 3%	22.00%

100.00%

2

**LAWRENCE G. SANTILLI      CONNECTICUT ENTITIES**

<b>LEGAL NAME AND ADDRESS OPERATING COMPANIES/LICENSEES</b>	<b>MEDICARE #</b>	<b>MEDICAID #</b>	<b>LICENSED BEDS</b>	<b>DATE ENTERED ENTITY</b>	<b>TITLE</b>	<b>OWNER- SHIP %</b>
ABBOTT TERRACE HEALTH CENTER, INC. 44 ABBOTT TERRACE WATERBURY, CT 06702	07-5351	1089C	205	4/1/1996	PRESIDENT	38.35%
301 ROPE FERRY ROAD, LLC DBA BAYVIEW HEALTH CARE CENTER 301 ROPE FERRY ROAD, LLC WATERFORD, CT 06385	07-5324	2050C	127	7/1/2006	MANAGER	33.33%
BRISTOL CCH GROUP, LLC DBA COUNTRYSIDE MANOR OF BRISTOL 1660 STAFFORD AVENUE BRISTOL, CT 06010	07-5415	2285	90	5/16/2003	MANAGER	46.27%
GLASTONBURY HEALTH CARE CENTER, INC 1175 HEBRON AVENUE GLASTONBURY, CT 06033	07-5316	2028C	105	10/1/1995	PRESIDENT	65.30%
ATHENA HOLDINGS, LLC DBA LAURELRIDGE HEALTH CARE CENTER 642 DANBURY ROAD RIDGEFIELD, CT 06877	07-5395	2247	126	8/2/2000	MANAGING MEMBER	37.59%
HIGHLAND VIEW MANOR, INC. DBA LITCHFIELD WOODS HEALTH CARE 255 ROBERTS STREET TORRINGTON, CT 06790	07-5319	2034C	160	5/23/1994	PRESIDENT	29.15%
MAEFAIR HEALTH CARE CENTER INC. 21 MAEFAIR COURT TRUMBULL, CT 06611	07-5404	2142C	134	2/18/1994	PRESIDENT	77.26%
NORTHBRIDGE HEALTH CARE CENTER, INC. 2875 MAIN STREET BRIDGEPORT, CT 06606	07-5413	2183C	145	10/18/1996	PRESIDENT	58.94%
ATHENA MIDDLESEX, LLC (Including MIDDLESEX CCH GROUP) DBA MIDDLESEX HEALTH CARE CENTER 100 RANDOLPH ROAD MIDDLETOWN, CT 06457	07-5106	2263	150	6/29/2001	MANAGING MEMBER	45.905%
SHADY KNOLL HEALTH CARE CENTER, INC. 41 SKOKORAT STREET SEYMOUR, CT 06483	07-5386	2107C	128	1/9/1991	PRESIDENT	56.02%
SHARON SNF CT LLC 27 HOSPITAL HILL ROAD SHARON, CT 06069	07-5379	2257	88	4/10/2012	MANAGER	39.00%
SHERIDEN WOODS HEALTH CARE CENTER, INC. 321 STONECREST DRIVE BRISTOL, CT 06010	07-5350	2004C	146	10/30/1985	PRESIDENT	53.18%
SOUTHINGTON SNF, LLC DBA THE SUMMIT OF PLANTSVILLE 261 SUMMIT STREET PLANTSVILLE, CT 06479	07-5420	2282	150	12/17/2001	MANAGER	58.55%

**MASS LANDLORD ENTITIES**

BERKSHIRE LANDLORD LLC 7 SANDISFIELD ROAD SANDISFIELD, MA 01255	LANDLORD OF BERKSHIRE MA SNF LLC	12/22/2010 MANAGER	(1)
SOUTHEAST LANDLORD LLC 184 LINCOLN STREET NORTH EASTON, MA 02356	LANDLORD OF SOUTHEAST MA SNF LLC	12/22/2010 MANAGER	(1)
SOUTH SHORE LANDLORD LLC 115 NORTH AVENUE ROCKLAND, MA 02370	LANDLORD OF SOUTH SHORE MA SNF LLC	12/22/2010 MANAGER	(1)
STONEHEDGE LANDLORD LLC 5 REDLANDS ROAD WEST ROXBURY, MA 02132	LANDLORD OF STONEHEDGE MA SNF LLC	12/22/2010 MANAGER	(1)
TREMONT LANDLORD LLC 605 MAIN STREET WAREHAM, MA 02571	LANDLORD OF TREMONT MA SNF LLC	12/22/2010 MANAGER	(1)

(1) THESE 5 ENTITIES ARE OWNED 100% BY ATHENA LANDLORD MA LLC OF WHICH SANTILLI OWNS 40%

**MASS HOSPICE ENTITIES**

ATHENA HOSPICE SERVICES OF MASSACHUSETTS LLC 577 MAIN STREET WAREHAM, MA 02571	221570 110087953A	12/22/2010 MANAGER	40%
ATHENA HOSPICE SERVICES OF WESTERN MASSACHUSETTS LLC 1325 SPRINGFIELD STREET, SUITE #12 FEEDING HILLS, MA 01030	221576 110087949A	12/22/2010 MANAGER	40%

CONSERVATORS FOR LAWRENCE E. SANTILLI		CONNECTICUT ENTITIES			
LEGAL NAME AND ADDRESS OPERATING COMPANIES/LICENSEES	MEDICARE #	MEDICAID #	LICENSED BEDS	DATE ENTERED ENTITY	OWNER- SHIP %
ABBOTT TERRACE HEALTH CENTER, INC. 44 ABBOTT TERRACE WATERBURY, CT 06702	07-5351	1089C	205	4/1/2007	6.20%
301 ROPE FERRY ROAD, LLC DBA BAYVIEW HEALTH CARE CENTER 301 ROPE FERRY ROAD, LLC WATERFORD, CT 06385	07-5324	2050C	127	7/1/2006	33.34%
BRISTOL CCH GROUP, LLC DBA COUNTRYSIDE MANOR OF BRISTOL 1660 STAFFORD AVENUE BRISTOL, CT 06010	07-5415	2285	90	5/16/2003	16.25%
GLASTONBURY HEALTH CARE CENTER, INC 1175 HEBRON AVENUE GLASTONBURY, CT 06033	07-5316	2028C	105	4/1/2007	12.51%
ATHENA HOLDINGS, LLC DBA LAURELRIDGE HEALTH CARE CENTER 642 DANBURY ROAD RIDGEFIELD, CT 06877	07-5395	2247	126	8/2/2000	37.59%
HIGHLAND VIEW MANOR, INC. DBA LITCHFIELD WOODS HEALTH CARE 255 ROBERTS STREET TORRINGTON, CT 06790	07-5319	2034C	160	5/23/1994	7.60%
MAEFAIR HEALTH CARE CENTER INC. 21 MAEFAIR COURT TRUMBULL, CT 06611	07-5404	2142C	134	4/1/2007	11.98%
NORTHBRIDGE HEALTH CARE CENTER, INC. 2875 MAIN STREET BRIDGEPORT, CT 06606	07-5413	2183C	145	4/1/2007	11.03%
ATHENA MIDDLESEX, LLC (including MIDDLESEX CCH GROUP) DBA MIDDLESEX HEALTH CARE CENTER 100 RANDOLPH ROAD MIDDLETOWN, CT 06457	07-5106	2263	150	6/29/2001	5.86%
SHADY KNOLL HEALTH CARE CENTER, INC. 41 SKOKORAT STREET SEYMOUR, CT 06483	07-5386	2107C	128	4/1/2007	23.97%
SHARON SNF CT LLC 27 HOSPITAL HILL ROAD SHARON, CT 06069	07-5379	2257	88	4/10/2012	6.00%
SHERIDEN WOODS HEALTH CARE CENTER, INC. 321 STONECREST DRIVE BRISTOL, CT 06010	07-5350	2004C	146	5/23/1994	17.48%

(1) THESE 5 ENTITIES ARE OWNED 100% BY ATHENA HEALTH CARE SYSTEMS MA LLC OF WHICH SANTILLI OWNS 8%

**MASS LANDLORD ENTITIES**

BERKSHIRE LANDLORD LLC 7 SANDISFIELD ROAD SANDISFIELD, MA 01255	LANDLORD OF BERKSHIRE MA SNF LLC	12/22/2010	(1)
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SOUTHEAST LANDLORD LLC 184 LINCOLN STREET NORTH EASTON, MA 02356	LANDLORD OF SOUTHEAST MA SNF LLC	12/22/2010	(1)
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SOUTH SHORE LANDLORD LLC 115 NORTH AVENUE ROCKLAND, MA 02370	LANDLORD OF SOUTH SHORE MA SNF LLC	12/22/2010	(1)
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STONEHEDGE LANDLORD LLC 5 REDLANDS ROAD WEST ROXBURY, MA 02132	LANDLORD OF STONEHEDGE MA SNF LLC	12/22/2010	(1)
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TREMONT LANDLORD LLC 605 MAIN STREET WAREHAM, MA 02571	LANDLORD OF TREMONT MA SNF LLC	12/22/2010	(1)
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(1) THESE 5 ENTITIES ARE OWNED 100% BY ATHENA LANDLORD MA LLC OF WHICH SANTILLI OWNS 8%

**MASS HOSPICE ENTITIES**

ATHENA HOSPICE SERVICES OF MASSACHUSETTS LLC 577 MAIN STREET WAREHAM, MA 02571	221570 110087953A	12/22/2010	8%
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ATHENA HOSPICE SERVICES OF WESTERN MASSACHUSETTS LLC 1325 SPRINGFIELD STREET, SUITE #12 FEEDING HILLS, MA 01030	221576 110087949A	12/22/2010	8%
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CHAKALOS FAMILY DYNASTY-VALERIE SANTILLI CONNECTICUT ENTITIES

LEGAL NAME AND ADDRESS OPERATING COMPANIES/LICENSEES	MEDICARE #	MEDICAID #	LICENSED BEDS	DATE ENTERED ENTITY	OWNER- SHIP %
ABBOTT TERRACE HEALTH CENTER, INC. 44 ABBOTT TERRACE WATERBURY, CT 06702	07-5351	1089C	205	7/1/2010	0.3555%
BRISTOL CCH GROUP, LLC DBA COUNTRYSIDE MANOR OF BRISTOL 1660 STAFFORD AVENUE BRISTOL, CT 06010	07-5415	2285	90	5/16/2003	2.61825%
GLASTONBURY HEALTH CARE CENTER, INC 1175 HEBRON AVENUE GLASTONBURY, CT 06033	07-5316	2028C	105	7/1/2010	2.4721%
ATHENA HOLDINGS, LLC DBA LAURELRIDGE HEALTH CARE CENTER 642 DANBURY ROAD RIDGEFIELD, CT 06877	07-5395	2247	126	7/1/2010	6.5375%
MAEFAIR HEALTH CARE CENTER INC. 21 MAEFAIR COURT TRUMBULL, CT 06611	07-5404	2142C	134	7/1/2010	2.6875%
NORTHBRIDGE HEALTH CARE CENTER, INC. 2875 MAIN STREET BRIDGEPORT, CT 06606	07-5413	2183C	145	7/1/2010	2.4875%
ATHENA MIDDLESEX, LLC DBA MIDDLESEX HEALTH CARE CENTER 100 RANDOLPH ROAD MIDDLETOWN, CT 06457	07-5106	2263	150	7/1/2010	4.40625%
SHADY KNOLL HEALTH CARE CENTER, INC. 41 SKOKORAT STREET SEYMOUR, CT 06483	07-5386	2107C	128	7/1/2010	5.00%
SHARON SNF CT LLC 27 HOSPITAL HILL ROAD SHARON, CT 06069	07-5379	2257	88	4/10/2012	6.00%
SHERIDEN WOODS HEALTH CARE CENTER, INC. 321 STONECREST DRIVE BRISTOL, CT 06010	07-5350	2004C	146	7/1/2010	1.9706%
SOUTHINGTON SNF, LLC DBA THE SUMMIT OF PLANTSVILLE 261 SUMMIT STREET PLANTSVILLE, CT 06479	07-5420	2282	150	7/1/2010	2.23625%
VALERIE MANOR, INC. 1360 TORRINGFORD STREET TORRINGTON, CT 06790	07-5332	1070C	151	7/1/2010	1.2907%

**MASS LANDLORD ENTITIES**

BERKSHIRE LANDLORD LLC 7 SANDISFIELD ROAD SANDISFIELD, MA 01255	LANDLORD OF BERKSHIRE MA SNF LLC	12/22/2010	(1)
SOUTHEAST LANDLORD LLC 184 LINCOLN STREET NORTH EASTON, MA 02356	LANDLORD OF SOUTHEAST MA SNF LLC	12/22/2010	(1)
SOUTH SHORE LANDLORD LLC 115 NORTH AVENUE ROCKLAND, MA 02370	LANDLORD OF SOUTH SHORE MA SNF LLC	12/22/2010	(1)
STONEHEDGE LANDLORD LLC 5 REDLANDS ROAD WEST ROXBURY, MA 02132	LANDLORD OF STONEHEDGE MA SNF LLC	12/22/2010	(1)
TREMONT LANDLORD LLC 605 MAIN STREET WAREHAM, MA 02571	LANDLORD OF TREMONT MA SNF LLC	12/22/2010	(1)

(1) THESE 5 ENTITIES ARE OWNED 100% BY ATHENA LANDLORD MA LLC OF WHICH SANTILLI OWNS 7.5%

**MASS HOSPICE ENTITIES**

ATHENA HOSPICE SERVICES OF MASSACHUSETTS LLC 577 MAIN STREET WAREHAM, MA 02571	221570 110087953A	12/22/2010	7.50%
ATHENA HOSPICE SERVICES OF WESTERN MASSACHUSETTS LLC 1325 SPRINGFIELD STREET, SUITE #12 FEEDING HILLS, MA 01030	221576 110087949A	12/22/2010	7.50%

**CHAKALOS FAMILY DYNASTY-ELAINE CHAKALOS**

**CONNECTICUT ENTITIES**

<b>LEGAL NAME AND ADDRESS OPERATING COMPANIES/LICENSEES</b>	<b>MEDICARE #</b>	<b>MEDICAID #</b>	<b>LICENSED BEDS</b>	<b>DATE ENTERED ENTITY</b>	<b>OWNER- SHIP %</b>
ABBOTT TERRACE HEALTH CENTER, INC. 44 ABBOTT TERRACE WATERBURY, CT 06702	07-5351	1089C	205	7/1/2010	0.3554%
BRISTOL CCH GROUP, LLC DBA COUNTRYSIDE MANOR OF BRISTOL 1660 STAFFORD AVENUE BRISTOL, CT 06010	07-5415	2285	90	7/1/2010	1.61825%
GLASTONBURY HEALTH CARE CENTER, INC 1175 HEBRON AVENUE GLASTONBURY, CT 06033	07-5316	2028C	105	7/1/2010	2.4723%
ATHENA HOLDINGS, LLC DBA LAURELRIDGE HEALTH CARE CENTER 642 DANBURY ROAD RIDGEFIELD, CT 06877	07-5395	2247	126	7/1/2010	6.5375%
MAEFAIR HEALTH CARE CENTER INC. 21 MAEFAIR COURT TRUMBULL, CT 06611	07-5404	2142C	134	7/1/2010	2.6875%
NORTHBRIDGE HEALTH CARE CENTER, INC. 2875 MAIN STREET BRIDGEPORT, CT 06606	07-5413	2183C	145	7/1/2010	2.4875%
ATHENA MIDDLESEX, LLC DBA MIDDLESEX HEALTH CARE CENTER 100 RANDOLPH ROAD MIDDLETOWN, CT 06457	07-5106	2263	150	7/1/2010	4.40625%
SHARON SNF CT LLC 27 HOSPITAL HILL ROAD SHARON, CT 06069	07-5379	2257	88	4/10/2012	6.00%
SHADY KNOLL HEALTH CARE CENTER, INC. 41 SKOKORAT STREET SEYMOUR, CT 06483	07-5386	2107C	128	7/1/2010	5.00%
SHERIDEN WOODS HEALTH CARE CENTER, INC. 321 STONECREST DRIVE BRISTOL, CT 06010	07-5350	2004C	146	7/1/2010	1.9705%
SOUTHINGTON SNF, LLC DBA THE SUMMIT OF PLANTSVILLE 261 SUMMIT STREET PLANTSVILLE, CT 06479	07-5420	2282	150	7/1/2010	2.23625%
VALERIE MANOR, INC. 1360 TORRINGFORD STREET TORRINGTON, CT 06790	07-5332	1070C	151	7/1/2010	1.2908%

**MASS LANDLORD ENTITIES**

BERKSHIRE LANDLORD LLC 7 SANDISFIELD ROAD SANDISFIELD, MA 01255	LANDLORD OF BERKSHIRE MA SNF LLC	12/22/2010	(1)
SOUTHEAST LANDLORD LLC 184 LINCOLN STREET NORTH EASTON, MA 02356	LANDLORD OF SOUTHEAST MA SNF LLC	12/22/2010	(1)
SOUTH SHORE LANDLORD LLC 115 NORTH AVENUE ROCKLAND, MA 02370	LANDLORD OF SOUTH SHORE MA SNF LLC	12/22/2010	(1)
STONEHEDGE LANDLORD LLC 5 REDLANDS ROAD WEST ROXBURY, MA 02132	LANDLORD OF STONEHEDGE MA SNF LLC	12/22/2010	(1)
TREMONT LANDLORD LLC 605 MAIN STREET WAREHAM, MA 02571	LANDLORD OF TREMONT MA SNF LLC	12/22/2010	(1)

(1) THESE 5 ENTITIES ARE OWNED 100% BY ATHENA LANDLORD MA LLC OF WHICH CHAKALOS OWNS 7.5%

**MASS HOSPICE ENTITIES**

ATHENA HOSPICE SERVICES OF MASSACHUSETTS LLC 577 MAIN STREET WAREHAM, MA 02571	221570 110087953A	12/22/2010	7.50%
ATHENA HOSPICE SERVICES OF WESTERN MASSACHUSETTS LLC 1325 SPRINGFIELD STREET, SUITE #12 FEEDING HILLS, MA 01030	221576 110087949A	12/22/2010	7.50%

**CHAKALOS FAMILY DYNASTY-LINDA CARMEN**

**CONNECTICUT ENTITIES**

<b>LEGAL NAME AND ADDRESS OPERATING COMPANIES/LICENSEES</b>	<b>MEDICARE #</b>	<b>MEDICAID #</b>	<b>LICENSED BEDS</b>	<b>DATE ENTERED ENTITY</b>	<b>OWNER- SHIP %</b>
ABBOTT TERRACE HEALTH CENTER, INC. 44 ABBOTT TERRACE WATERBURY, CT 06702	07-5351	1089C	205	7/1/2010	0.3554%
BRISTOL CCH GROUP, LLC DBA COUNTRYSIDE MANOR OF BRISTOL 1660 STAFFORD AVENUE BRISTOL, CT 06010	07-5415	2285	90	7/1/2010	1.61825%
GLASTONBURY HEALTH CARE CENTER, INC 1175 HEBRON AVENUE GLASTONBURY, CT 06033	07-5316	2028C	105	7/1/2010	2.4723%
ATHENA HOLDINGS, LLC DBA LAURELRIDGE HEALTH CARE CENTER 642 DANBURY ROAD RIDGEFIELD, CT 06877	07-5395	2247	126	7/1/2010	6.5375%
MAEFAIR HEALTH CARE CENTER INC. 21 MAEFAIR COURT TRUMBULL, CT 06611	07-5404	2142C	134	7/1/2010	2.6875%
NORTHBRIDGE HEALTH CARE CENTER, INC. 2875 MAIN STREET BRIDGEPORT, CT 06606	07-5413	2183C	145	7/1/2010	2.4875%
ATHENA MIDDLESEX, LLC DBA MIDDLESEX HEALTH CARE CENTER 100 RANDOLPH ROAD MIDDLETOWN, CT 06457	07-5106	2263	150	7/1/2010	4.40625%
SHADY KNOLL HEALTH CARE CENTER, INC. 41 SKOKORAT STREET SEYMOUR, CT 06483	07-5386	2107C	128	7/1/2010	5.00%
SHARON SNF CT LLC 27 HOSPITAL HILL ROAD SHARON, CT 06069	07-5379	2257	88	4/10/2012	6.00%
SHERIDEN WOODS HEALTH CARE CENTER, INC. 321 STONECREST DRIVE BRISTOL, CT 06010	07-5350	2004C	146	7/1/2010	1.9705%
SOUTHINGTON SNF, LLC DBA THE SUMMIT OF PLANTSVILLE 261 SUMMIT STREET PLANTSVILLE, CT 06479	07-5420	2282	150	7/1/2010	2.23625%
VALERIE MANOR, INC. 1360 TORRINGFORD STREET TORRINGTON, CT 06790	07-5332	1070C	151	7/1/2010	1.2908%

**MASS LANDLORD ENTITIES**

BERKSHIRE LANDLORD LLC  
7 SANDISFIELD ROAD  
SANDISFIELD, MA 01255

LANDLORD OF BERKSHIRE MA SNF LLC 12/22/2010 (1)

SOUTHEAST LANDLORD LLC  
184 LINCOLN STREET  
NORTH EASTON, MA 02356

LANDLORD OF SOUTHEAST MA SNF LLC 12/22/2010 (1)

SOUTH SHORE LANDLORD LLC  
115 NORTH AVENUE  
ROCKLAND, MA 02370

LANDLORD OF SOUTH SHORE MA SNF LLC 12/22/2010 (1)

STONEHEDGE LANDLORD LLC  
5 REDLANDS ROAD  
WEST ROXBURY, MA 02132

LANDLORD OF STONEHEDGE MA SNF LLC 12/22/2010 (1)

TREMONT LANDLORD LLC  
605 MAIN STREET  
WAREHAM, MA 02571

LANDLORD OF TREMONT MA SNF LLC 12/22/2010 (1)

(1) THESE 5 ENTITIES ARE OWNED 100% BY ATHENA LANDLORD MA LLC OF WHICH CHAKALOS OWNS 7.5%

**MASS HOSPICE ENTITIES**

ATHENA HOSPICE SERVICES OF MASSACHUSETTS LLC  
577 MAIN STREET  
WAREHAM, MA 02571

221570 110087953A

12/22/2010 7.50%

ATHENA HOSPICE SERVICES OF WESTERN MASSACHUSETTS LLC  
1325 SPRINGFIELD STREET, SUITE #12  
FEEDING HILLS, MA 01030

221576 110087949A

12/22/2010 7.50%

CHAKALOS FAMILY DYNASTY-CHARLENE GALLAGHER		CONNECTICUT ENTITIES			DATE	OWNER-
LEGAL NAME AND ADDRESS	MEDICARE #	MEDICAID #	LICENSED	ENTERED	SHIP %	
OPERATING COMPANIES/LICENSEES			BEDS	ENTITY		
ABBOTT TERRACE HEALTH CENTER, INC. 44 ABBOTT TERRACE WATERBURY, CT 06702	07-5351	1089C	205	7/1/2010	0.3554%	
BRISTOL CCH GROUP, LLC DBA COUNTRYSIDE MANOR OF BRISTOL 1660 STAFFORD AVENUE BRISTOL, CT 06010	07-5415	2285	90	7/1/2010	1.61825%	
GLASTONBURY HEALTH CARE CENTER, INC 1175 HEBRON AVENUE GLASTONBURY, CT 06033	07-5316	2028C	105	7/1/2010	2.4723%	
ATHENA HOLDINGS, LLC DBA LAURELRIDGE HEALTH CARE CENTER 642 DANBURY ROAD RIDGEBURY, CT 06877	07-5395	2247	126	7/1/2010	6.5375%	
MAEFAIR HEALTH CARE CENTER INC. 21 MAEFAIR COURT TRUMBULL, CT 06611	07-5404	2142C	134	7/1/2010	2.6875%	
NORTHBRIDGE HEALTH CARE CENTER, INC. 2875 MAIN STREET BRIDGEPORT, CT 06606	07-5413	2183C	145	7/1/2010	2.4875%	
ATHENA MIDDLESEX, LLC DBA MIDDLESEX HEALTH CARE CENTER 100 RANDOLPH ROAD MIDDLETOWN, CT 06457	07-5106	2263	150	7/1/2010	4.40625%	
SHADY KNOLL HEALTH CARE CENTER, INC. 41 SKOKORAT STREET SEYMOUR, CT 06483	07-5386	2107C	128	7/1/2010	5.00%	
SHARON SNF CT LLC 27 HOSPITAL HILL ROAD SHARON, CT 06069	07-5379	2257	88	4/10/2012	6.00%	
SHERIDEN WOODS HEALTH CARE CENTER, INC. 321 STONECREST DRIVE BRISTOL, CT 06010	07-5350	2004C	146	7/1/2010	1.9705%	
SOUTHINGTON SNF, LLC DBA THE SUMMIT OF PLANTSVILLE 261 SUMMIT STREET PLANTSVILLE, CT 06479	07-5420	2282	150	7/1/2010	2.23625%	
VALERIE MANOR, INC. 1360 TORRINGFORD STREET TORRINGTON, CT 06790	07-5332	1070C	151	7/1/2010	1.2908%	

<b>MASS LANDLORD ENTITIES</b>			
BERKSHIRE LANDLORD LLC 7 SANDISFIELD ROAD SANDISFIELD, MA 01255	LANDLORD OF BERKSHIRE MA SNF LLC	12/22/2010	(1)
SOUTHEAST LANDLORD LLC 184 LINCOLN STREET NORTH EASTON, MA 02356	LANDLORD OF SOUTHEAST MA SNF LLC	12/22/2010	(1)
SOUTH SHORE LANDLORD LLC 115 NORTH AVENUE ROCKLAND, MA 02370	LANDLORD OF SOUTH SHORE MA SNF LLC	12/22/2010	(1)
STONEHEDGE LANDLORD LLC 5 REDLANDS ROAD WEST ROXBURY, MA 02132	LANDLORD OF STONEHEDGE MA SNF LLC	12/22/2010	(1)
TREMONT LANDLORD LLC 605 MAIN STREET WAREHAM, MA 02571	LANDLORD OF TREMONT MA SNF LLC	12/22/2010	(1)

(1) THESE 5 ENTITIES ARE OWNED 100% BY ATHENA LANDLORD MA LLC OF WHICH CHAKALOS OWNS 7.5%

**MASS HOSPICE ENTITIES**

ATHENA HOSPICE SERVICES OF MASSACHUSETTS LLC 577 MAIN STREET WAREHAM, MA 02571	221570 110087953A	12/22/2010	7.50%
ATHENA HOSPICE SERVICES OF WESTERN MASSACHUSETTS LLC 1325 SPRINGFIELD STREET, SUITE #12 FEEDING HILLS, MA 01030	221576 110087949A	12/22/2010	7.50%

VALERIE SANTILLI

CONNECTICUT ENTITIES

LEGAL NAME AND ADDRESS OPERATING COMPANIES/LICENSEES	MEDICARE #	MEDICAID	LICENSED BEDS	DATE ENTERED ENTITY	OWNER- SHIP %
BRISTOL CCH GROUP, LLC DBA COUNTRYSIDE MANOR OF BRISTOL 1660 STAFFORD AVENUE BRISTOL, CT 06010	07-5415	2285	90	7/1/2010	1.00%
SHARON SNF CT LLC 27 HOSPITAL HILL ROAD SHARON, CT 06069	07-5379	2257	88	4/10/2012	5.00%

CONNECTICUT LANDLORD ENTITIES

1660 STAFFORD AVENUE, LLC 1660 STAFFORD AVENUE BRISTOL, CT 06010	LANDLORD OF COUNTRYSIDE MANOR	7/1/2010	1.00%
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**MASS ENTITIES**

BERKSHIRE MA SNF LLC 7 SANDISFIELD ROAD SANDISFIELD, MA 01255	225771 110087885A	57	12/22/2010	(1)
SOUTHEAST MA SNF LLC 184 LINCOLN STREET NORTH EASTON, MA 02356	225225 110087934A	171	12/22/2010	(1)
SOUTH SHORE MA SNF LLC 115 NORTH AVENUE ROCKLAND, MA 02370	225215 110087941A	96	12/22/2010	(1)
STONEHEDGE MA SNF LLC 5 REDLANDS ROAD WEST ROXBURY, MA 02132	225429 110087945A	79	12/22/2010	(1)
TREMONT MA SNF LLC 605 MAIN STREET WAREHAM, MA 02571	225488 110087908A	104	12/22/2010	(1)

(1) THESE 5 ENTITIES ARE OWNED 100% BY ATHENA HEALTH CARE SYSTEMS MA LLC OF WHICH MOSIER OWNS 4.5%

**MASS LANDLORD ENTITIES**

BERKSHIRE LANDLORD LLC 7 SANDISFIELD ROAD SANDISFIELD, MA 01255	LANDLORD OF BERKSHIRE MA SNF LLC	12/22/2010	(1)
SOUTHEAST LANDLORD LLC 184 LINCOLN STREET NORTH EASTON, MA 02356	LANDLORD OF SOUTHEAST MA SNF LLC	12/22/2010	(1)
SOUTH SHORE LANDLORD LLC 115 NORTH AVENUE ROCKLAND, MA 02370	LANDLORD OF SOUTH SHORE MA SNF LLC	12/22/2010	(1)
STONEHEDGE LANDLORD LLC 5 REDLANDS ROAD WEST ROXBURY, MA 02132	LANDLORD OF STONEHEDGE MA SNF LLC	12/22/2010	(1)
TREMONT LANDLORD LLC 605 MAIN STREET WAREHAM, MA 02571	LANDLORD OF TREMONT MA SNF LLC	12/22/2010	(1)

(1) THESE 5 ENTITIES ARE OWNED 100% BY ATHENA LANDLORD MA LLC OF WHICH MOSIER OWNS 4.5%

**DEBRA SOUCEY****CONNECTICUT ENTITIES**

<b>LEGAL NAME AND ADDRESS OPERATING COMPANIES/LICENSEES</b>	<b>MEDICARE · MEDICAID #</b>	<b>LICENSED BEDS</b>	<b>DATE ENTERED ENTITY</b>	<b>OWNER- SHIP %</b>
ATHENA HOLDINGS, LLC DBA LAURELRIDGE HEALTH CARE CENTER 642 DANBURY ROAD RIDGEFIELD, CT 06877	07-5395 2247	126	8/2/2000	0.50%
BRISTOL CCH GROUP, LLC DBA COUNTRYSIDE MANOR OF BRISTOL 1660 STAFFORD AVENUE BRISTOL, CT 06010	07-5415 2285	90	5/16/2003	1.00%
SOUTHINGTON SNF, LLC DBA THE SUMMIT OF PLANTSVILLE 261 SUMMIT STREET PLANTSVILLE, CT 06479	07-5420 2282	150	12/17/2001	1.00%
SHARON SNF CT LLC 27 HOSPITAL HILL ROAD SHARON, CT 06069	07-5379 2257	88	4/10/2012	6.00%

**CONNECTICUT LANDLORD ENTITIES**

1660 STAFFORD AVENUE, LLC 1660 STAFFORD AVENUE BRISTOL, CT 06010	LANDLORD OF COUNTRYSIDE MANOR		5/16/2003	0.50%
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**MASS ENTITIES**

BERKSHIRE MA SNF LLC 7 SANDSFIELD ROAD SANDSFIELD, MA 01255	225771 110087885A	57	12/22/2010	(1)
SOUTHEAST MA SNF LLC 184 LINCOLN STREET NORTH EASTON, MA 02356	225225 110087934A	171	12/22/2010	(1)
SOUTH SHORE MA SNF LLC 115 NORTH AVENUE ROCKLAND, MA 02370	225215 110087941A	96	12/22/2010	(1)
STONEHEDGE MA SNF LLC 5 REDLANDS ROAD WEST ROXBURY, MA 02132	225429 110087945A	79	12/22/2010	(1)
TREMONT MA SNF LLC 605 MAIN STREET WAREHAM, MA 02571	225488 110087908A	104	12/22/2010	(1)

**RHODE ISLAND ENTITIES**

SUMMIT RI SNF LLC 99 HILLSIDE AVENUE PROVIDENCE, RI 02906	415129 SU85797	130	9/1/2011	(1)
WATERVIEW RI SNF LLC 1275 SOUTH BROADWAY EAST PROVIDENCE, RI 02914	415042 WA85796	132	9/1/2011	(1)

(1) THESE 2 ENTITIES ARE OWNED 100% BY ATHENA HEALTH CARE SYSTEMS RI LLC OF WHICH SOUCEY OWNS 6.25%

**RHODE ISLAND LANDLORD ENTITIES**

SUMMIT RI LANDLORD LLC 99 HILLSIDE AVENUE PROVIDENCE, RI 02906	LANDLORD FOR SUMMIT RI SNF LLC		9/1/2011	(1)
WATERVIEW RI LANDLORD LLC 1275 SOUTH BROADWAY EAST PROVIDENCE, RI 02914	LANDLORD FOR WATERVIEW RI SNF LLC		9/1/2011	(1)

(1) THESE 2 ENTITIES ARE OWNED 100% BY ATHENA LANDLORD RI LLC OF WHICH SOUCEY OWNS 6.25%



**ORLANDO J. BISBANO, JR.**  
**14 Donna Court**  
**Bristol, Rhode Island 02809**  
**Home- (401) 253-2865**  
**Work- (401) 438-2250**  
**Email – OBisbano@cox.net**

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**PROFESSIONAL EXPERIENCE:**

**ADMINISTRATOR**

June 1987 – Present

Orchard View Manor, East Providence, Rhode Island 02915

Responsible for managing this 180-bed multi-level extended care facility: 200 employees, 14 million dollar operating budget. Complete responsibility for all aspects of the short and long term operations of the home including financial condition.

**PRESIDENT**

January 2001 - Present

Ocean State Post Acute Network, Providence, Rhode Island 02908

Responsibility for the operations of this network which contains 20 nursing facilities providing sub-acute and long term care to members of Geriatrix. Geriatrix provides a Medicare substitute insurance plan in Rhode Island, which OSPAN is the sole provider.

**SENIOR VICE PRESIDENT**

January 1970 –

June 1987

Roger Williams General Hospital, Providence, Rhode Island 02908

Promoted from Vice President-Operations to this position in August 1981. Responsible to the president for a variety of major functions on this 238-bed teaching hospital affiliated with Brown University.

1,400 employees, 45 million dollar operating budget. Responsible for the overall direction and coordination of the following functions and departments: Strategic Planning, Corporate Business Development, Facility Planning and Construction, Ambulatory Care Programs, Hospital and Satellite Offices, Management Engineering, Data Processing, Grants Administrator, Department of Medicine. Presented proposals and progress report of relevant activities to the hospital's Board of Trustees. In absence of president, assumed full responsibility for the hospital.

**SENIOR COST ACCOUNTANT**

May 1968 – January 1970

Bird & Son, Inc., East Walpole, Massachusetts

Responsible for preparation and installation of annual and monthly profit plan plus all accounting functions for three manufacturing installations. Supervised, trained, and evaluated accountants and junior accountants assigned to this division.

**MATERIAL COORDINATOR**

January 1968 – May 1968

Raytheon Company, North Dighton, Massachusetts

Correlated the flow of production material to the assembly areas in relation to priorities of production and shipping schedules. Maintained status on materials to insure production line would complete contracts on schedule.

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**EDUCATION:**

Bryant College, Smithfield, Rhode Island. MBA Program (non-Degree)

University of Rhode Island, Kingston, Rhode Island. Certificate of Executive Development Course. 1977

Providence College, Providence, Rhode Island. Bachelor of Science, Business Administration. 1967

Since entering the health care field, I have also attended ten education seminars each year. The list of these education courses is available upon request.

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**PROFESSIONAL ASSOCIATIONS AND BOARDS:**

Chair, Board of Licensure for Nursing Home Administrators

President of Ocean State Post Acute Network in Providence

Chair, Board of Quality Partners of Rhode Island

Past Chair, Rhode Island Health Care Association

Past Chair, American College Health Care Administrators

Board Member of Rhode Island Health Care Association

Member, American College of Health Care Administrators

Chair, American Health Care Association's Quality Improvement Committee



## **MANAGEMENT AGREEMENT**

This **MANAGEMENT AGREEMENT** (the "Agreement") is dated as of the 23rd day of April, 2011, by and between Athena Orchard View, LLC d/b/a Orchard View Manor (the "Owner"), a Rhode Island limited liability company with its principal place of business in East Providence, Rhode Island and Athena Health Care Associates, Inc., a Connecticut corporation with its principal place of business at 135 South Road, Farmington, Connecticut (the "Manager").

**WHEREAS**, the Owner has entered into a Purchase and Sale Agreement dated January 25, 2012 to purchase the assets of Orchard View Manor Inc ("Purchase Agreement") including the operations of a 180-bed nursing facility currently licensed at 166-beds located at 135 Tripps Lane, East Providence, Rhode Island, 02915 (the "Facility");

**WHEREAS**, the Owner has determined that the hiring of a management company to provide day-to-day management of the Facility is necessary for the efficient operation of the Facility;

**WHEREAS**, the Manager has represented that it is experienced in the management of health care facilities, is knowledgeable as to the state and federal requirements governing the licensure, operation, accreditation and reimbursement of health care facilities and that the owners and employees of Manager are qualified health care professionals;

**WHEREAS**, the Owner has determined that the hiring of the Manager is cost-effective and consistent with the Owner's desire to provide quality care to the patients at the Facility;

**WHEREAS**, the Owner has determined that the services provided by Manager will augment the services provided by employees of the Facility so as to increase productivity;

**WHEREAS**, the Owner has determined that the hiring of the Manager on the terms and conditions hereinafter set forth will not prevent it from exercising ultimate control over the policies and operations of the Facility; and

**WHEREAS**, the Manager is willing to manage the day-to-day operations of the Facility on the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, the parties hereto agree as follows:

1. **General Duties.** The Owner engages the Manager to manage, supervise and operate the Facility with the objective of providing quality care to patients of the Facility and to carry out the general duties with respect to the Facility under the general supervision and direction of the Owner which include, but are not limited to, the following: supervise the performance of all such

administrative functions as may be necessary in the management of the Facility; select, hire (or contract with), train, supervise, monitor the performance of, and discipline, promote, terminate or fire all personnel involved in the administration and the day-to-day operation of the Facility, including, without limitation, management, medical, nursing, and other health care personnel, custodial, food service, cleaning, maintenance and other operational personnel, and secretarial or bookkeeping personnel each of whom shall be employees of the Owner; provide centralized accounting, billing, purchasing and bill payment functions for the Facility; establish systems of accounts and supervise the maintenance of ledgers and other primary accounting records by the personnel of the Facility; supervise the financial affairs of the Facility, establish and supervise the implementation of operating and capital budgets, including those required to establish reimbursement rates with respect to state or federal entitlement programs as well as self pay rates; the preparation and maintenance of true, complete and accurate records necessary for the preparation of such operating budgets; determine which items of cost and expense properly relate to patient care; establish and administer financial controls over the operation of the Facility; develop and establish financial standards and norms by which the income, costs and operations of the Facility may be evaluated; serve as advisor and consultant in connection with policy decisions to be made by the Owner; furnish reports to the Owner as the Owner may reasonably request, and provide the Owner with economic and statistical data in connection with or relative to the operations of the Facility; represent the Facility in its day-to-day dealings with regulatory and rate-setting authorities (including preparation and submission of reports for reimbursement), creditors, patients, personnel, agents for collection, and insurers; act as agent for the Owner in disbursing or collecting the funds of the Facility, to assist in the development of an annual marketing plan and budget to maintain the patient census at a proper level; to do all other things necessary or proper for the daily operation and management of the Facility and, under the general supervision of the Owner, to plan for future operations and to establish long range policies and goals for the Facility; the Manager will, meet on an as needed basis with Owners' representatives and the administrator to review financial and operational statistics of the Facility; the administrator, in addition, may attend monthly regional administration meetings and educational programs.

**1.1 Opinion of Counsel.** The Manager shall have the duty to consult with counsel for the Owner whenever questions arise as to the meaning and interpretation of the phrase "relating to patient care" as such phrase is used above with reference to the submission of expenses for reimbursement pursuant to applicable state or federal statutes or regulations relating to entitlement programs. The Manager shall be entitled to rely upon any such opinion when rendered by counsel.

**1.2 Excluded Duties.** Nothing in this Agreement shall be construed to limit the authority of Owner's governing body or authorize the Manager to do any of the following:

- a) hire or fire Owner's manager or chief executive officer;
- b) maintain and control Owner's book and records;
- c) dispose of assets and incur liabilities on behalf of the Owner other than as allowed in this Agreement; or
- d) adopt and enforce policies regarding operation of Owner.

**2. Specific Duties.** Without limiting the generality of the foregoing, the Manager shall have the following specific duties:

**2.1 Employees.** The Manager shall recruit, evaluate, select, and recommend to Owner who shall then direct the hiring of a qualified and properly licensed administrator who shall be responsible for the functional operation of the Facility and supervision of personnel at the Facility, on a day-to-day basis, as well as all on-site medical, nursing, custodial, food service, cleaning, maintenance, secretarial and bookkeeping personnel for the day-to-day operations of the Facility. Such administrator and all such other personnel shall be employees of the Owner, and the Owner shall retain full responsibility for payment of their wages, salaries and other compensation and benefits. The Manager shall, subject to approval by the Owner, establish necessary and desirable personnel policies, wage structures and staff schedules. The Manager shall have authority to hire, discipline, promote and discharge employees of the Owner who participate in the day-to-day operation and administration of the Facility. The Manager shall maintain payroll records, withholding taxes and Social Security taxes and shall submit all required State and Federal Tax returns required with respect to employees, including, without limitation, the returns required by FICA, FUTA and all applicable unemployment compensation laws; shall maintain in force all required levels of workers' compensation insurance; and shall prepare and submit to the Owner any certificates of payroll expenses as may be reasonably requested. The Manager shall not be liable to any employee of the Facility or to the Owner for wages, salaries and other compensation and benefits. The Manager shall not be liable to the Owner or others for any criminal act, action or omission on the part of any employee of the Owner of the Facility. The Manager shall provide the Owner upon request reports of all hiring, disciplinary actions, promotions and firings at the Facility for the month.

**2.2 Purchasing.** The Manager shall purchase for the account of the Owner all necessary foodstuffs, supplies, materials, appliances, tools and equipment necessary in the operation of the Facility. The Manager shall arrange contracts for electricity, gas, telephone and any other utility or service necessary to the operation of the Facility as requested by the Owner. The Manager shall, on behalf of the Owner, contract for and supervise the making of any necessary

repairs, alterations, and improvements to the Facility; provided that in the case of any capital expenditure, alteration or improvement, the cost of which exceeds \$5,000, the Manager shall obtain the prior written approval of the Owner; and provided further, that no such prior written approval shall be required if the expenditure is made under circumstances reasonably requiring emergency action. The Manager shall prepare and submit to the Owner any certificates of purchasing expenses incurred for the Facility as may be reasonably requested.

**2.3 Collection of Accounts.** The Manager shall supervise the issuance of bills and the collection of accounts of the Owner, whether from patients or third party payors such as Medicare or Medicaid.

**2.4 Bookkeeping.** The Manager shall establish and maintain a record and bookkeeping system for the operation and conduct of business of the Facility in accordance with generally accepted accounting principles and in accordance with requirements of Medicare and Medicaid or other third party payors. Books and records at the Facility may be maintained by an employee of the Owner under the supervision of the Manager. Full books of account with entries of all receipts and expenditures related to the operation of the Facility shall be maintained at the offices of the Manager and shall at all times be open for inspection by representatives of the Owner. The Manager shall be responsible for filing all tax returns relating to the operation of the Facility, with the exception of income tax, pension and other non-health care returns.

**2.5 Financial Reports.** The Manager shall furnish to the Owner the following financial reports: (a) as soon as possible and not later than thirty (30) days after the close of each calendar month, a balance sheet as of the end of the month and a statement of income and retained earnings for the month and for the year to date together with a comparison to budget and a detailed statement of receipts, disbursements, accounts payable and accounts receivable as of the end of such monthly period, (b) as soon as possible and not later than five (5) weeks after the close of each fiscal year, a year-end compilation report including a balance sheet as of the end of such year and a statement of income and retained earnings, (c) as soon as possible after the close of the year for rate-setting purposes and not later than the applicable deadline, unless further extended by the appropriate rate setting agency, a year-end cost report showing cost and expenditures relating to patient care, such report, being in compliance with the requirements of Medicare, Medicaid or any other third party payer to whom the Owner may be obligated to furnish reports. It is the Owner's responsibility to provide a review or certified financial statement to be used in preparation of such year-end cost reports at a date no later than 30 days prior to the required filing date. Noncompliance by the Owner will shift the burden of responsibility to the Owner for any penalties incurred by a late filing.

**2.6 Patients.** In accordance with the provisions of Rhode Island statutes, as amended from time to time, the Manager shall use its best efforts to maintain

the patient census at the Facility in such numbers and in such a manner as, in the Manager's judgment, will tend to maintain the financial stability of the Facility. The Manager may negotiate contracts with third party payers such as insurers, federal agencies and state and local agencies, for care of patients with special medical, care, or rehabilitation needs, all for the purposes of, in the opinion of the Manager, improving the financial stability of the Facility. However, the Manager shall not introduce any additional function or service into the Facility's program of health care without first: (a) obtaining the consent of the Owner, and (b) obtaining any regulatory approvals required by law.

**2.7 Budgets.** The Manager shall prepare and submit to the Owner the following: (a) as soon as possible and not later than thirty (30) days after the close of each fiscal year, a detailed written capital and operating budget for the next succeeding fiscal year (broken down by month) showing projected expenditures and projected revenues for such budget period; and (b) such other budgets as may be reasonably required of the Owner or by regulatory authorities showing, inter alia, projected ordinary and extraordinary expenditures and projected revenues for such budget period.

**2.8 Certification, Licenses and Accreditation.** The Manager shall prepare all reports and materials and follow all procedures necessary to obtain and/or maintain all federal and state certificates and licenses necessary to maintain the Facility as a long-term care facility.

**2.9 Liaison with Agencies.** To the extent desired by the Owner, the Manager shall represent the Owner in all formal or informal proceeding before all state and federal agencies engaged in the regulation, payment, rate-setting, and/or licensing of long-term care facilities. The Owner reserves the right to approve all settlements prior to their finalization.

**2.10 Insurance.** The Manager shall obtain at the Owner's request and expense and on behalf of the Owner, all necessary liability, fire and extended coverage, workers' compensation, and malpractice insurance covering the Facility, its equipment, the employees of the Owner, and the employees of Manager, if any, who relate to the operations of the Facility, which policies of insurance shall name the Owner and the Manager as co-insured. The Owner shall bear the expense of the above. The Owner may provide such insurance on a self-insured basis and either way shall be written by a responsible insurance company or companies reasonably satisfactory to the Owner in kinds and amounts, and a certificate of insurance shall be provided to the Owner. The Owner shall retain the right to designate any insurance agent or agency of its choice through which such insurance shall be obtained.

**2.11 Technical and Professional Services.** The Manager may, with the prior written approval of the Owner and at the Owner's expense, secure such engineering, legal, and other specialized technical and professional services as

may be necessary to advise or to represent the Owner in connection with any matter involving or arising out of the ownership and operation of the Facility or the conduct of affairs of the Facility.

**2.12 Marketing.** The Manager shall agree to coordinate and supervise the agreed upon "Marketing Plan" for the Facility. Monthly statistical census analysis reports will be generated to the Owner; Manager will recommend adjustments in the "Marketing Plan" as needed to maintain full occupancy. Full occupancy for purposes of this Agreement is equal to 95% of its licensed beds. Manager will assist the Facility's management staff in the continued development and the coordination of advertising and promotional materials, internal and external public relations programs, sales and staff development programs, and customer satisfaction programs. The Manager shall assist the Facility's management staff in developing a yearly marketing plan and budget based on the Facility's yearly census program and image.

**2.13 Plant and Maintenance.** (i) Attention shall be given to preventive maintenance (this item may be provided by outside parties if economically feasible), and to the extent deemed feasible by Manager, the services or regular maintenance employees shall be used; and (ii) Manager shall be authorized to contract with qualified independent contractors for the maintenance and repair of air conditioning systems and laundry equipment for extraordinary repairs beyond the capability of regular maintenance employees.

**3. Management Fee.** The Manager shall be paid for the services rendered by it hereunder, a monthly management fee (the "Fee"). The Fee shall be 3.0% of net patient related revenue plus any applicable sales taxes. The Fee shall be estimated and paid monthly on or before the first (1st) day of each month. The Fee estimate shall be adjusted to actual at the end of each calendar quarter during the term of this Agreement. Said fee calculation shall remain in place for the term of this Agreement.

#### **4. Expenses.**

**4.1 Manager Expenses.** The Manager shall bear the following expenses incurred by it in the management of the business and properties of the Facility: (a) Salary and expenses (including, without limitation, payroll taxes, costs of employee benefit plans, travel, insurance, and fidelity bonds) of all personnel employed by the Manager to carry out all responsibilities detailed above. (b) Salary and expenses (including, without limitation, payroll taxes, cost of employee benefit plans, travel, insurance, and fidelity bonds) of financial and accounting personnel employed by the Manager to maintain accounting books and records of the Facility except as provided below.

**4.2 Owner Expenses.** Except as herein expressly otherwise provided, the Owner shall bear all the expenses of operating the Facility and rendering patient

care not assumed by the Manager, and without limiting the generality of the foregoing, it is specifically agreed that the following expenses of the Facility shall not be borne by the Manager: (a) fees and expenses of independent professional persons or consultants expressly retained by the Owner or the Facility, or retained by the Manager for the account of the Owner; (b) salaries, wages, other compensation, payroll taxes, workers compensation, health insurance, pension, training and education, recruitment or other benefits of associated with administrative, medical, nursing, other health care providers, therapy, custodial, security, food service, housekeeping, laundry, maintenance, operational, secretarial, and bookkeeping personnel employed to administer the day-to-day operations of the Facility and to perform health care and related services in the day-to-day operations of the Facility's business; (c) interest, principal, any other fees and discounts on any indebtedness incurred or assumed by the Owner; (d) taxes, imposts, levies or other charges on the existence, operation, receipts, income or property of the Owner, provided, however, that all interest and penalties incurred as a result of the Manager's failure to timely file all returns which the Manager is required to file pursuant to this Agreement, or to make timely payment of all taxes, levies, imposts, or other charges, to the extent that sufficient funds were available to the Manager as of the date such payments were due, shall be the responsibility of the Manager; (e) Medical, housekeeping, administrative, maintenance, security, laundry, food service, recreation, social services, ancillary, admissions and any other departmental supplies, equipment, utensils, food, utilities, furniture, communications connections, linens, tools, appliances, dishes, clothing and all other supplies, contracted/purchased services, membership dues, licensure fees and equipment used in supplying nursing home care and services to patients; (f) expenses connected directly or indirectly with the design, acquisition, deposition or ownership of real and personal property devoted, used, or consumed in the business of the Facility, including without limitation, purchase and/or construction of the land and buildings used for such purpose, maintenance, repair and improvement of property, all real estate and personal property tax assessed, premiums for property and liability insurance, brokerage commissions, and fees and expenses of consultants, managers, or agents retained directly by the Owner; (g) the Fee; (h) legal fees and related expenses pertaining to the acquisition, sale, mortgaging or leasing of property, litigation and proceedings relating to rates and charges at the Facility, collection of accounts receivable and any other litigation or proceedings to which the Owner is a party; (i) lease and or rent payments for any property and/or equipment of Owner or Facility; (j) costs of computer hardware, supplies and software, including but not limited to purchase or lease costs, maintenance fees or contracts, repair/replacement costs, consulting fees, upgrade costs, training costs, licensing fees, programming costs, forms and paper goods; (k) marketing costs for advertising and promotional materials, agency fees, public relations materials and customer satisfaction materials; (l) accounts receivable bad debts; (m) payroll processing services

**4.3 Deposit and Disbursement of Funds.** (i) Manager shall establish and administer the overall charge structure of the Facility and shall supervise the issuance of bills and the collection of accounts for Owner. Manager shall take possession of and endorse the name of the Owner on all notes, check, money orders, insurance payments and any other instruments received in payment of accounts described below. (ii) Manager shall establish such accounts for the Facility in Owner's name, separate from all other accounts and funds of Manager, with a bank or banks in which deposits are insured by the Federal Deposit Insurance Corporation ("FDIC") or with a savings and loan institution or institutions in which deposits are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") as it deems necessary or desirable. Manager, on behalf of the Owner, shall use reasonable efforts to collect (if necessary, using legal counsel approved and paid for by the Owner) when due all charges receivable by the Owner (whether from patients, third-party payors or others) in connection with the operation of the Facility and deposit all moneys received in such accounts. Manager and the Owner shall deposit into such accounts all moneys furnished by the Owner as working funds and all receipts and moneys arising from the operation of the Facility or otherwise received by Owner or by Manager for and on behalf of the Owner. (iii) Draws on such accounts may be made, by the sole signature or an authorized representative of the Manager (or by wiring instructions from such authorized representative of Manager). Manager (or its affiliates) shall also be reimbursed from Owner's account for payments made pursuant to services rendered by Manager (or its affiliates) not included in this Agreement. Owner hereby appoints Manager to withdraw, by writing checks against such accounts, funds for reimbursement of all amounts payable in connection with the operation of the Facility. Owner agrees to execute from time to time any additional documents required by any bank wherein such accounts are held to effectuate all powers of attorney referred to herein. Manager shall disburse and pay the same from such accounts on behalf and in the name of the Owner in such amounts and at such times as the same are deemed by Manager to be appropriate. In the event there are insufficient funds available to the Manager to pay expenses, which the Manager is authorized to incur and pay hereunder, the Manager shall promptly notify the Owner of the amount necessary to cure and the reason for such deficit.

**5. Relationship of the Parties.** The Owner and the Manger are not partners or joint ventures with each other, and nothing herein shall be construed so as to make them such partners or joint venturers or impose on either of them any liability as partners or joint venturers. All dealings between the Owner and the Manager are at arms length as between non-related parties.

**6. Term and Termination**

**6.1 Period of the Term.** This Agreement shall commence on the closing date of the Purchase Agreement and continue in force through December 31, 2023 and thereafter shall be extended on a year-to-year basis unless six months

prior to the renewal date in each subsequent year either party gives written notice of its intention not to renew the Agreement for the next subsequent year. Notwithstanding the right of the parties to renew this Agreement on an annual basis, this Agreement shall automatically terminate on the fifteenth (15th) anniversary of the commencement date.

**6.2 Termination for Cause.** Either party may terminate this Agreement for "cause" by delivering thirty (30) days written notice to the other. "Cause" shall include, but not be limited to, each of the following: (i) the violation by either party of any material provision in or obligation imposed by this Agreement which violation shall not have been cured to the reasonable satisfaction of the other party within thirty (30) days following the date on which written notice of termination has been received by the party who has violated a material provision or obligation imposed by this Agreement; (ii) any illegal or improper act engaged in by either party in the operation of the Facility; (iii) if the other party files or has a petition or complaint in receivership or bankruptcy filed against it which has not been dismissed within ninety (90) days of such filing; or (iv) the willful misconduct or gross negligence, relating to obligations under this Agreement, of either party. If this Agreement is terminated for cause, the Owner shall pay the Manager any installments of the Fee then accrued under this Agreement together with any reimbursable expenses then due, and neither party shall have any further obligations to the other.

**6.3 Termination for Failure to Pay Fee on a Timely Basis.** The Manager may terminate this Agreement upon thirty (30) days written notice of the Owner's failure to pay the Fee when due unless the Owner cures the payment default within thirty (30) days after receiving written notice from the Manager.

**6.4 Termination Arising from Unresolved Dispute.** In the event that a dispute arises between the parties regarding the interpretation of a material provision of this Agreement or the performance of one of the parties of a material obligation hereunder, and the parties are unable to reach a mutual agreement regarding the dispute within thirty (30) days of written notice of an unresolved dispute given by one of the parties, which notice shall describe the nature of the dispute, either party may elect to terminate this Agreement by giving one hundred and twenty (120) days written notice to the other of its intent to terminate. Unless the parties reach mutual agreement regarding the matter in dispute within such one hundred and twenty (120) day period of time, this Agreement shall terminate on midnight of the one hundred and twentieth (120th) day following the other party's receipt of notice of termination and all obligations due and owing hereunder shall forever cease except to the extent that a right or obligation has accrued prior to the termination date. The right of a party to terminate this Agreement pursuant to this Section shall be in addition to, and not to the exclusion of, any other remedies, whether at law or in equity, of the parties hereunder.

7. **Indemnification.** The Owner shall indemnify the Manager and hold it harmless of, from, and against all costs, claims, damages or expenses, including reasonable attorney's fees (collectively "Costs"), incurred or suffered by the Manager and arising out of acts performed within the scope of this Agreement. Notwithstanding the foregoing, the Owner shall have no obligation to indemnify the Manager or hold it harmless of, from, and against Costs incurred or suffered by the Manager as a result of the Manager's gross negligence, fraud or willful misconduct.

8. **Access to Books and Records.** As a subcontractor that may be subject to Section 1861(v)(1)(I) of the Social Security Act (the "Act"), the Manager shall, upon written request, and in accordance with the above-mentioned section of the Act and regulations promulgated pursuant thereto, make available to the Comptroller General, the Secretary of Health and Human Services, and their duly authorized representatives, a copy of this Agreement and access to the Manager's books, documents, and records necessary to verify the nature and extent of the costs of services provided to the Owner. Such access will be available until the expiration of four (4) years after the services to which the costs related have been furnished. The provision of this Section 8 shall apply only if this Agreement is covered by the Act and such provisions shall become void and shall be of no further force or effect, if, at the time a request is made, this Agreement is not subject to the Act. The Manager agrees that if it carries out any of the duties of this Agreement through subcontract with a related organization which subcontract has a value or cost of \$10,000 or more over a twelve (12) month period, the Manager will obtain an identical access requirement in such subcontract.

9. **Fidelity Bond.** The Manager agrees to obtain a fidelity bond or employee dishonesty insurance policy or other similar coverage in form and amount satisfactory to the Owner.

10. **Amendments.** This Agreement shall not be changed modified, terminated, or discharged, in whole or in part, except by an instrument in writing signed by the Owner and the Manager or their respective successors or assigns, or otherwise as provided herein.

11. **Governing Law.** The provisions of this Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of Connecticut. Any change in any applicable law which has the effect of rendering any part of this Agreement invalid, illegal, or unenforceable shall not render the remainder of this Agreement invalid, illegal, or unenforceable, and the parties hereto agree that, in the event that any part of this Agreement is rendered invalid, illegal, or unenforceable, that they shall negotiate in good faith to amend any such part of this Agreement so as to comply with any such law, as amended, and further the respective objectives of the parties hereto.

**12. Assignment.** Neither the Owner nor the Manager shall assign its interests in this Agreement without the prior written consent of the other.

**13. Successors.** This Agreement shall be binding upon and inure to the benefit of the parties and to their respective successors and assigns.

**14. Captions.** The captions of this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any Agreement.

**15. Notices.** Any notice, demand, consent, or other written instrument to be given or received under this Agreement ("Notice") required or permitted to be given shall be in writing signed by the party giving such Notice and/or consent and shall be hand delivered or sent, postage repaid, by Certified or Registered Mail, Return Receipt Requested, to the other party at the addresses listed below:

As to Owner:

Manager  
Athena Orchard View, LLC  
135 South Road  
Farmington, Connecticut 06032

As to Manager:

Lawrence G. Santilli, President  
Athena Health Care Systems  
135 South Road  
Farmington, Connecticut 06032

cc: Robert Giunta, Esq.  
Murtha Cullina LLP  
City Place 1  
185 Asylum Street  
Hartford, CT 06103

Any party shall have the right to change the place to which such Notice shall be sent or delivered by similar notice sent in like manner to all other parties hereto. All notices sent by certified mail shall be deemed received three (3) days after the date postmarked. All notices that are hand delivered or by overnight carrier shall be deemed received upon delivery to the office or address of the addressee.

**16. Property.** Trade names, marketing material, marketing ideas and development material and records developed specifically for and related to this

Facility shall be the property of the Owner. Trade names, ideas and documents, forms and development material not developed specifically for this Facility are to be considered proprietary and will remain the property of the Manager. All operational forms and documents including but not limited to policy and procedure manuals, operational forms, level of care determination systems, management policy books, inspection control manuals, and nursing management books are and will remain the property of the Manager. All financial management forms, documents and software systems including but not limited to bookkeeping manuals, financial forms, financial spreadsheets, database or word processing forms, and financial accounting packages are and will remain the property of the Manager. Upon termination of this agreement, the Owner shall have the option to purchase operational material, except for the financial accounting packages, belonging to the Manager at a mutually agreed upon price.

17. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement.

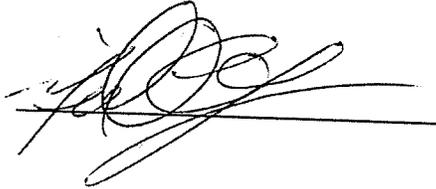
18. **Partial Invalidity.** The invalidity of one or more of the phrases, sentences, clauses, sections or provisions contained in this Agreement shall not affect the validity of the remaining portions so long as the material purposes of this Agreement can be determined and effectuated.

19. **Entire Agreement.** This Agreement sets forth the parties' final and entire agreement with respect to the subject matter hereof and supersedes any and all prior understandings and agreements with respect to the subject matter hereof.

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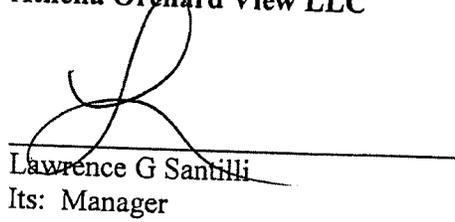
**IN WITNESS WHEREOF**, the parties have executed this Management Agreement as of the date first set forth above.

**WITNESS:**



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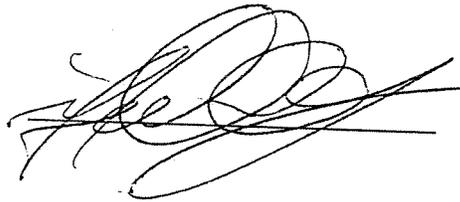
**Athena Orchard View LLC**



A handwritten signature in black ink, featuring a large, stylized 'L' followed by a horizontal line.

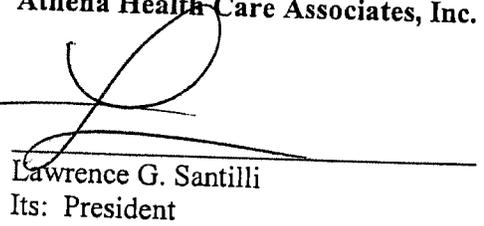
Lawrence G Santilli  
Its: Manager

**WITNESS:**



A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a horizontal line.

**Athena Health Care Associates, Inc.**



A handwritten signature in black ink, featuring a large, stylized 'L' followed by a horizontal line.

Lawrence G. Santilli  
Its: President





**PURCHASE AND SALE AGREEMENT**

**BY AND BETWEEN**

**ORCHARD VIEW MANOR, INC.**

**AS SELLER;**

**AND**

**ATHENA ORCHARD VIEW LLC**

**AS BUYER**

## **PURCHASE AND SALE AGREEMENT**

This Purchase and Sale Agreement (this "Agreement") is made as of January 25, 2012, by and between Orchard View Manor, Inc. ("Seller"), and Athena Orchard View LLC, a Rhode Island limited liability company ("Buyer").

### **RECITALS**

- A. Seller owns the Property;
- B. Seller desires to sell, and Buyer desires to purchase the Property upon and subject to the terms and conditions set forth herein.

### **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller agrees to sell and Buyer agrees to purchase the Property in accordance with the following terms and conditions:

#### **ARTICLE 1. DEFINITIONS**

**1.1 Definitions.** Initially capitalized terms which are used but not otherwise defined in this Agreement shall have the meanings ascribed to them in Exhibit A attached hereto and incorporated herein by this reference.

#### **ARTICLE 2. CONSIDERATION, DEPOSIT AND ESCROW PROVISIONS**

**2.1 Purchase Price.** The Purchase Price for the Property, subject to the prorations and adjustments set forth herein, shall be paid as follows:

- (a) Fifty Thousand and 00/100 Dollars (\$50,000) (the "Deposit") shall be paid by Buyer to Escrow Agent upon execution of this Agreement by Seller and Buyer;
- (b) \$2,500,000 by Buyer at Closing by delivery of the Buyer Note.
- (c) The balance of the Purchase Price shall be paid in cash at the time of Closing.

The Deposit shall be applied to the Purchase Price at Closing, notwithstanding any provision hereof as to the refundability of the Deposit or any portion thereof.

**2.2 Deposit; Escrow Agent.** Upon receipt from Buyer of the Deposit, Escrow Agent shall invest the Deposit in an interest-bearing account or money market fund mutually acceptable to Seller and Buyer. Escrow Agent shall agree to hold and dispose of the Deposit in accordance with the terms and provisions of this Agreement. If the Closing occurs, any interest on the Deposit shall be credited to Buyer and applied to the Purchase Price. If the Closing does not occur, any interest earned on the Deposit shall follow the Deposit.

**2.3 Escrow Provisions.** Escrow Agent hereby acknowledges receipt by Escrow Agent of the Deposit paid by Buyer to be applied as provided herein. Escrow Agent agrees to hold, keep and deliver said Deposit and all other sums delivered to it pursuant hereto, in accordance with the terms and provisions of this Agreement. Escrow Agent shall not be entitled to any fees or compensation for its services hereunder. Escrow Agent shall be liable only to hold said sums and deliver the same to the parties named herein in accordance with the provisions of this Agreement, it being expressly understood that by acceptance of this Agreement Escrow Agent is acting in the capacity of a depository only and shall not be liable or responsible to anyone for any damages, losses or expenses unless same shall have been caused by the gross negligence or willful malfeasance of Escrow Agent. In the event of any disagreement between Buyer and Seller resulting in any adverse claims and demands being made in connection with or for the monies involved herein or affected hereby, Escrow Agent shall be entitled to refuse to comply with any such claims or demands so long as such disagreement may continue; and in so refusing Escrow Agent shall make no delivery or other disposition of any of the monies then held by it under the terms of this Agreement, and in so doing Escrow Agent shall not become liable to anyone for such refusal; and Escrow Agent shall be entitled to continue to refrain from acting until (a) the rights of the adverse claimants shall have been finally adjudicated as to the monies involved herein or affected hereby by binding arbitration as provided in Section 10.19, or (b) all differences shall have been adjusted by agreement between Seller and Buyer, and Escrow Agent shall have been notified in writing of such agreement signed by the parties hereto. Escrow Agent shall not be required to disburse any of the monies held by it under this Agreement unless in accordance with either a joint written instruction of Buyer and Seller or an Escrow Demand from either Buyer or Seller in accordance with the provisions hereinafter. Upon receipt by Escrow Agent from either Buyer or Seller (the "Notifying Party") of any notice or request (an "Escrow Demand") to perform any act or disburse any portion of the monies held by Escrow Agent under the terms of this Agreement, Escrow Agent shall give written notice to the other party (the "Notified Party"). If within five (5) days after the giving of such notice, Escrow Agent does not receive any written objection to the Escrow Demand from the Notified Party, Escrow Agent shall comply with the Escrow Demand. If Escrow Agent does receive written objection from the Notified Party in a timely manner, Escrow Agent shall take no further action until the dispute between the parties has been resolved pursuant to either clause (a) or (b) above. Further Escrow Agent shall have the right at all times to pay all sums held by it (i) to the appropriate party under the terms hereof, or (ii) into any court of competent jurisdiction after a dispute between or among the parties hereto has arisen, whereupon Escrow Agent's obligations hereunder shall terminate. Buyer and Seller jointly and severally agree to indemnify and hold harmless said Escrow Agent from any and all costs, damages and expenses, including reasonable attorneys' fees, that said Escrow Agent may incur in compliance with and in good faith in accordance with the terms of this Agreement; provided, however, this indemnity shall not extend to any act of gross negligence or willful malfeasance on the part of the Escrow Agent.

**2.4 Payment of Monies.** Any monies payable under this Agreement, unless otherwise specified in this Agreement, shall be paid by wire transfer or certified or cashier's check.

**2.5 Allocation of Purchase Price.** The Purchase Price shall be allocated among the Real Property and Personal Property comprising the Property as determined by mutual agreement of Buyer and Seller no later than fourteen (14) days prior to Closing provided no such allocation shall have a negative impact on Buyer's rate of reimbursement under any State or Federal rate setting programs. The Buyer and Seller shall complete and file their respective federal income tax returns for the tax year in which the Closing occurs in accordance with said allocation and neither shall, without the written consent of the other, take a position on any tax return or before any governmental agency charged with the collection of any such tax, or in any judicial proceeding, that is in any manner inconsistent with the terms of any such allocation.

### **ARTICLE 3. ACCESS; INSPECTIONS**

**3.1 Seller's Delivery of Specified Documents.** Within ten (10) business days after the Effective Date, Seller shall deliver to Buyer true, correct and complete originals or copies of each item described in Exhibit G attached hereto (the "Seller Deliverables") in Seller's possession or control.

**3.2 Access and Inspection Rights.** Buyer and its agents, employees and representatives, contractors and consultants shall at any time, and from time to time, between the Effective Date and the Closing Date, have reasonable access during normal business hours to the Facility and all books and records for the Facility that are in Seller's possession or control for the purpose of conducting surveys, inspections, tests and studies, including, without limitation, engineering, geotechnical and environmental inspections and tests as provided below. In the course of its investigation of the Property, Buyer may make inquiries to third parties, including, without limitation, lenders, (including, without limitation, employees thereof, provided that Buyer shall not interview any Employees prior to the expiration of the Due Diligence Period), parties to Service Contracts and municipal, local and other government officials and representatives. Seller shall cooperate with Buyer's due diligence during normal business hours. Buyer shall (i) give Seller at least twenty-four (24) hours' notice prior to any entry upon the Facility by Buyer or its agents or contractors, (ii) conduct such due diligence during normal business hours and in a manner which is not disruptive to the operation of Seller's business at the facility, and (iii) use commercially reasonable efforts to keep Buyer's interest in the Facility confidential (provided that the foregoing shall not limit Buyer's right to inform Buyer's contractors, agents, lenders and counsel of its interest in the Facility).

### **3.3 Title and Survey Review.**

(a) Buyer shall have the right to obtain a title commitment for owner's title insurance policies (the "Title Commitment") and survey of the Real Property (the "Survey"). Buyer shall give notice to Seller of any objection to any exception or other matter shown in the Title Commitment on or before the date of expiration of the Due Diligence Period and shown on the Survey on or before forty-five (45) days following the end of the Due Diligence Period. If Buyer makes any such written objection, then Seller shall use best efforts to cure such objection, and the Closing Date shall be extended for a period of up to thirty (30) days (the "Title Cure Period"). Without limiting the foregoing,

Seller shall be obligated to fully discharge on or before Closing (i) all mortgages, security interests and other monetary liens and encumbrances (mortgages and other security, interests, liens and encumbrances being referred to therein as "Monetary Liens"), and (ii) any exceptions or encumbrances to title or survey matters which arise after the date of the Title Commitment or the Survey. If Buyer fails to give written notice to Seller of any objection to title within the Due Diligence Period or to the Survey within 45 days following the end of the Due Diligence Period, then Buyer shall be deemed to have approved the state of title and survey, except for Monetary Liens and any matters which arise after the date of the Title Commitment or Survey.

(b) If Seller fails to cure an objection to title or survey in the manner set forth above, then Buyer may elect, on or prior to the Closing Date to (i) terminate this Agreement, in which event the Deposit and all interest earned thereon shall be returned to Buyer and no party shall have any further obligations hereunder, except as specifically set forth herein, or (ii) accept the Property subject to such objections and proceed to Closing, with the further right to deduct from the Purchase Price amounts secured by any Monetary Lien which Seller has failed to remove as provided herein. If Buyer makes no such election, then Buyer shall be deemed to have elected to waive its right to terminate this Agreement as provided above in this Section 3.3(b).

**3.4 Service Contracts.** Not more than thirty (30) days after receipt of a copy of a Service Contract from Seller, Buyer shall notify Seller in writing as to whether Buyer shall assume such Service Contract (the "Accepted Service Contract"). Buyer shall assume the obligations of Seller arising from and after the Closing Date under the Accepted Service Contracts that are not in default as of the Closing Date. If Buyer fails to timely give written notice of acceptance of any Service Contract, then Buyer shall be deemed to have elected not to assume such Service Contract. Seller shall terminate on or before Closing all Service Contracts that Buyer does not elect to assume as aforesaid. Seller shall pay all termination or assumption fees penalties costs or fees. Seller will not enter into any new Service Contracts after the Effective Date without Buyer's consent.

**3.5 Employees.** Seller shall terminate all Employees at the Facility effective as of the Closing. Buyer hereby acknowledges that it is Buyer's intention to hire substantially all of the Employees at Closing. Buyer shall notify Seller before ten (10) days prior to Closing any Employees to whom it does not expect to offer employment, including any Employees hired by Seller after delivery of Exhibits O and P (the "Hiring Notice"). Buyer agrees that the number of Seller's employees identified on Buyer's Hiring Notice will be sufficient to ensure that Seller will not be subject to the notice requirements under any federal or state plant closing law ("WARN Laws"). Any and all offers of employment shall be on terms that are reasonably consistent with existing compensation and benefits currently being offered these Employees. Buyer shall have no liability for any matter concerning any Employee which accrued prior to Closing except for accrued vacation and other accrued paid time off and benefits ("Accrued Employee Benefits") related to any Employee hired by Buyer at Closing with respect to which Buyer receives a credit in accordance with the provisions of Section 6.4 hereof or which are included in Assumed Liabilities as provided in Section 6.7. Except for any Accrued Employee Benefits which Buyer assumes under Section 6.4 or 6.7 as aforesaid, Buyer is assuming

no liability attributable to any Employee which accrued prior to Closing, and Seller shall be solely liable to pay to its Employees all severance and Accrued Employee Benefits to which the Employees are entitled through the Closing Date. Without limiting the generality of the foregoing, it is the express understanding and agreement of Buyer and Seller that: (i) Seller shall remain liable and responsible for and shall pay all taxes relating to employee wages, salaries and benefits prior to the Closing Date; (ii) Seller shall remain liable and responsible for all obligations to give notice of and to provide health care continuation coverage for its employees, former employees (and their respective dependents and qualified beneficiaries) in accordance with COBRA ("**COBRA Coverage**"), including without limitation, all liabilities, taxes, sanctions, interest and penalties imposed upon, incurred by or assessed against Buyer (or any affiliated corporation within a controlled group relationship with Buyer (as determined under Section 414 of the Code)) and any of their respective employees, arising by reason of or relating to any failure to provide the COBRA Coverage, including, but not limited, Buyer's failure to provide COBRA Coverage to employees or former employees who are receiving COBRA Coverage under Seller's plans on the Closing Date as well as any of Seller's employees who are not hired by Buyer; (iii) Seller shall remain liable and responsible for providing notice of the availability of COBRA Coverage to all of its employees and former employees, whether or not such employees will be employed by Buyer after the Closing, and all such employees' dependents who are entitled to such notice because of a qualifying event occurring before or on the Closing or as a result of the Closing; and (iv) Seller shall remain liable and responsible for providing COBRA Coverage for all such employees or their dependents who elect or have elected such coverage.

Notwithstanding the foregoing, if the Seller and all affiliated entities within a controlled group relationship with the Seller (as determined under Section 414 of the Code) cease to provide any group health plan to any employee in connection with this transaction, the Buyer agrees to be responsible to provide COBRA Coverage for "M&A Qualified Beneficiaries" beginning on the later of (i) the Closing Date; and (ii) the date the Seller and all affiliated entities within a controlled group relationship with the Seller (as determined under Section 414 of the Code) ceases to provide any group health plan to any employee. The term "M&A Qualified Beneficiaries" shall be defined in accordance with Section 54.4980B-9, Q&A 4 of the Regulations issued under Section 4980B of the Code, and shall include only those qualified beneficiaries (for COBRA purposes) whose qualifying event (for COBRA purposes) occurred prior to or in connection with this transaction and who is, or whose qualifying event occurred in connection with, a covered employee whose last employment prior to the qualifying event was associated with the assets being sold in connection with this transaction. The parties hereto intend that the obligation of the Buyer to provide COBRA continuation coverage to M&A Qualified Beneficiaries shall only apply to the extent required under Section 54.4980B-9, Q&A-8 of the Regulations issued under Section 4980B of the Code, and that this provision shall be interpreted in a manner which is consistent with this intention. Seller agrees to cooperate with Buyer and to provide Buyer with such information as Buyer reasonably requests in order to satisfy its obligations hereunder.

(a) Notwithstanding any provision hereof to the contrary, at any time after expiration of the Due Diligence Period, Buyer may discuss employment arrangements with any Employee and may make offers of employment to any Employee contingent upon Closing occurring hereunder and otherwise upon such terms and conditions of employment, compensation and benefits as Buyer shall determine in its sole discretion. Seller and Buyer shall coordinate an announcement to the Employees regarding Buyer's intention to purchase the Property and to schedule discussions between Buyer and the Employees concerning possible employment arrangements. Seller, on behalf of itself, hereby consents to the hiring of any Employee by Buyer upon Closing and waives any claims or rights that Seller may have against Buyer or any Employee that the hiring of such Employee violates any non-competition, confidentiality or employment agreement. Seller shall cooperate with Buyer's process of interviewing the Employees.

(b) At Closing Seller shall deliver for all Employees hired by Buyer a certificate of Seller in substantially the form of Exhibit E (a "Seller Certificate") certifying as to the wages and benefits of each such Employee.

**3.6 CCRs.** If the Property is subject to any declaration of covenants, conditions and restrictions or similar instrument ("CCRs") governing or affecting the use, operation, maintenance, management or improvement of the Property, then, as a condition to Buyer's obligation to close, Seller shall use commercially reasonable efforts to obtain and deliver at Closing: (i) an estoppel certificate, in form and substance reasonably satisfactory to Buyer, from the declarant, association, committee, agent and/or other person or entity having governing or approval rights under the CCRs (provided, however, that Seller may satisfy the foregoing obligation by delivery of a certificate from Seller in substantially the form of such estoppel certificate if Seller is unable to obtain such estoppel certificate from the holder of such rights after the exercise by Seller of such efforts and such Seller certificate is satisfactory to the Title Company) and (ii) a recordable assignment, in form and substance satisfactory to Buyer, assigning any and all developer, declarant or other related rights or interests of Seller (or any Affiliate of Seller) (if any) pursuant to any CCR.

**3.7 Buyer Note.** At Closing in partial payment of the Purchase Price, Buyer shall execute and deliver to Seller the Buyer Note in the amount of Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000) with interest of the rate of six percent (6%) per annum payable in equal semi-annual installments of interest and principal six years from Closing. The Buyer Note will be unsecured and subordinated to the New Money Commitment and the Working Capital Loan. The payment and performance of the Buyer Note shall be guaranteed by either Lawrence G. Santilli or Athena Health Care Associates, Inc. (as selected by Seller) in the form of guaranty included as part of Exhibit C.

**ARTICLE 4. OPERATIONS; RISK OF LOSS;  
LICENSING; FURTHER AGREEMENTS**

**4.1 Ongoing Operations.** From the Effective Date through the earlier of the Closing Date or the date of termination of this Agreement:

(a) **Conduct of Business Pre-Closing.** Seller agrees that, unless Buyer shall consent in writing, which consent shall not be unreasonably delayed or withheld, Seller (i) will continue to operate the Facility in the ordinary course in a manner consistent with past practices (including but not limited to maintenance of supplies and inventory at adequate levels), (ii) shall use its commercially reasonable efforts, including but not limited to actions in the ordinary course of business, to keep available the services of their employees and to preserve their current relationships with such of the patients, suppliers, physicians and other persons with which the Facility has significant business relations in order to preserve substantially intact the Business, and (iii) shall use its commercially reasonable efforts to preserve intact its assets (ordinary wear and tear excepted) and the operations of the Facility. By way of amplification and not limitation, between the date hereof and the Closing, Seller shall not, and shall neither cause nor permit any of their officers, directors, employees and agents to, directly or indirectly, do, or agree to do, any of the following with respect to the Property or the Facility:

(i) Sell, pledge, dispose of, grant, transfer, lease, license, guarantee, encumber, or authorize the sale, pledge, disposition, grant, transfer, lease, license, guarantee or encumbrance of their assets, or any equity interest of the Seller, except in the ordinary course of business and in a manner consistent with past practice, and this section shall in no way limit distributions to members of the Seller, and except as otherwise provided or contemplated by this Agreement;

(ii) Acquire (including, without limitation, by merger, consolidation or acquisition of stock or assets) for or in connection with the Facility any interest in any corporation, partnership or other business organization, person or any division thereof or any assets, other than acquisitions of assets in the ordinary course of business and consistent with past practice;

(iii) Enter into, amend, permit or consent to the renewal of, terminate, cancel or make any material change in any lease or other contract, including any Service Contract in excess of \$15,000 and not cancelable on less than 60 days' notice, perform any construction on or modification to the Facility, other than normal repair and maintenance and other than as required by law;

(iv) Make or authorize any capital expenditure in excess of \$25,000 in the Facility, except such expenditures in the ordinary course consistent with past practice. Buyer acknowledges that Seller is in the process of completing improvements to the nursing stations and upgrading to the fire alarm system to meet fire code in an approximate aggregate amount of \$75,000, which are specifically excluded from this section (iv).

(v) Increase the compensation payable or to become payable (including any employee benefit) to any Seller employee, or grant any rights to severance or termination pay to, or enter into any employment or severance agreement with, any Seller employee, or establish, adopt, enter into or amend any collective bargaining, bonus, profit sharing, thrift, compensation, pension, retirement, deferred compensation, employment, termination, severance or other plan, agreement, trust, fund, policy or arrangement for the benefit of any Seller employee; except that from the Effective Date until the earlier of March 23, 2012 or the date Buyer files its application for change of ownership with the Rhode Island Health Department, Seller may, consistent with past practice, provide individual employees whose employment commencement anniversary occurs between the Effective Date and the applicable cut off date, raises not in excess of 2% of such employee's compensation to employees .

(vi) Modify any accounting policies, procedures or methods;

(vii) Waive, release, assign, settle or compromise any claims or litigation involving amounts in excess of \$50,000 or enter into any agreements limiting in any way the conduct of the Business;

(viii) Take any action that is reasonably likely to cause the representations and warranties set forth in Article 7 to become false or inaccurate;

(ix) Fail to pay payables and other debts as they become due;

(b) Listings and Other Offers. Seller will not list the Property with any broker or otherwise solicit or make or accept any offers to sell all or any part of the Property or any direct or indirect interest therein, engage in any discussions or negotiations with any third party with respect to the sale or other disposition of the Property or any direct or indirect interest therein, or enter into any contracts or agreements (whether binding or not) regarding any disposition of all or any part of the Property or any direct or indirect interest therein.

(c) Removal and Replacement of Tangible Personal Property. Seller will not remove or suffer or permit Michael H. Marra to remove any Personal Property except for any Personal Property belonging to Michael H. Marra listed on Exhibit H or as may be required for necessary repair or replacement in the ordinary course of business.

(d) Maintenance of Insurance. Seller shall carry worker's compensation, occurrence based commercial general liability insurance (with coverage in the amount of at least \$1 million per occurrence and \$3 million in the aggregate) and property damage insurance for the full replacement value of the Improvements through the Closing Date. Seller shall not allow any breach, default, termination or cancellation of any such insurance policies or agreements to occur or exist prior to Closing.

(e) Maintenance of Permits. Seller shall maintain (or cause to be maintained) in existence all Permits in full force and effect.

(f) Approvals. Seller shall work diligently and cooperate with Buyer to obtain all waivers, consents, approvals and authorizations required in connection with the transactions contemplated hereunder, including without limitation all licenses and approvals required by governmental agencies charged with regulating or licensing senior housing facilities.

(g) Delivery of Financial Statements. Within thirty (30) days of the end of each calendar month prior to the Closing, Seller will deliver to Buyer income statements and balance sheets of Seller, and monthly census and payor mix reports in such form as usually prepared, for the calendar month then ending and year to date, which statements shall be true and correct in all material respects and present fairly the financial condition and results of operation of Seller for the period. Within ten (10) days of executing this Agreement, Seller shall provide Buyer for the periods ending December 31, 2009 and 2010 copies of all audits in conformity with GAAP (as defined in Section 7.1(i)) and other annual financial reports Seller filed with its lender or the Department of Housing and Urban Development ("HUD").

(h) Notice by Seller of Certain Events. Seller shall give prompt written notice to Buyer of (i) any notice or other communication from any person alleging that the consent of such person is or may be required in connection with the consummation of the transactions contemplated by this Agreement; (ii) any notice or other communication from any governmental entity adverse to the Seller in connection with the Facility or in connection with the transactions contemplated by this Agreement; (iii) the status of any ongoing survey activity in any of the Facility; (iv) any actions, suits, claims, investigations or proceedings commenced or, to the Seller's knowledge, threatened against, relating to or involving or otherwise affecting Seller, the Facility or the transactions contemplated by this Agreement; (v) the occurrence of a breach or default or event that, with notice or lapse of time or both, could become a breach or default under this Agreement; and (vi) any change, event or circumstance which is likely to delay or impede the ability of Seller to consummate the transactions contemplated by this Agreement or to fulfill their obligations set forth herein.

(i) Cost Reports. Seller shall be responsible for accurately completing and filing on a timely basis all Medicare and Medicaid Cost Reports, including stub period filings, for the period up to the Closing Date. Seller shall provide Buyer copies of final Medicare and Medicaid Cost Reports filed in 2010 and 2011 and all future final Cost Reports within three (3) days after filing. Buyer shall be responsible for completing and filing Medicare and Medicaid Cost Reports for the periods beginning on and after the Closing Date. Each of the parties shall provide reasonable access to their respective employees and the records to the other party for the purpose of completing all such Cost Reports.

(j) Further Assurances. Each party to this Agreement shall, from time to time, execute and deliver such additional documents, instruments, conveyances or assurances and take such other actions as shall be necessary, or otherwise reasonably requested by any other party to confirm and assure the rights and obligations provided for

in this Agreement and render effective the consummation of the transactions contemplated hereby.

**4.2 Damage.** Risk of loss with respect to the Real Property up to and including the Closing Date shall be borne by Seller. Seller shall promptly give Buyer written notice of any damage to the Facility, describing such damage, stating whether such damage and loss of rents is covered by insurance and the estimated cost of repairing such damage. In the event of any material damage (described below) to or destruction of the Facility or any portion thereof, Buyer may, at its option, by notice to Seller given within ten (10) business days after Seller has provided the above described notice to Buyer together with all relevant information concerning the nature and extent of such damage (and if necessary the Closing Date shall be extended to give Buyer the full ten (10) business day period to make such election): (i) terminate this Agreement, in which event the Deposit and all interest earned thereon shall be returned to Buyer and no party shall have any further obligations hereunder, except as expressly set forth herein, or (ii) proceed under this Agreement as to all of the Property, receive any insurance proceeds (including any rent loss insurance applicable to any period on and after the Closing Date, if payable) due Seller as a result of such damage or destruction and assume responsibility for such repair, and Buyer shall receive a credit at Closing for any deductible, under said insurance policies (other than the deductibles, if any, under any rent loss insurance policy). If Buyer fails to timely make such election, Buyer shall be deemed to have elected to proceed under clause (ii) above. If Buyer elects (or is deemed to have elected) to proceed under clause (ii) above, then Buyer may extend the Closing Date for up to an additional ninety (90) day period in which to obtain insurance settlement agreements with Seller's insurers, and Seller will cooperate with Buyer in obtaining the insurance proceeds and such agreements from Seller's insurers. If the Facility is not materially damaged, then (A) Buyer shall not have the right to terminate this Agreement, (B) Seller shall, to the extent requested and directed by Buyer, repair the damage before the Closing in a manner reasonably satisfactory to Buyer, and (C) at Closing, Buyer shall receive any insurance proceeds (including any rent loss insurance applicable to any period on and after the Closing Date, if payable) due Seller as a result of such damage or destruction and Buyer shall receive a credit at Closing for any deductible, under said insurance policies (other than the deductibles, if any, under any rent loss insurance policy). To the extent Seller has incurred reasonable costs in effecting the repairs requested and directed in writing by Buyer (which costs have not been assumed by Buyer), Seller shall be paid a portion of such insurance proceeds in an amount equal to such costs. "Material damage" and "materially damaged" means, with respect to the Facility, damage (x) which, in Buyer's reasonable estimation, exceeds \$500,000 to repair, or (y) which, in Buyer's reasonable estimation, will take longer than ninety (90) days to substantially repair or restore.

**4.3 Condemnation.** In the event any proceedings in eminent domain are contemplated, threatened or instituted by any body having the power of eminent domain with respect to the Real Property or any portion thereof, the taking of which would substantially and negatively interfere with the operation of the Facility, Buyer may, at its option, by notice to Seller given within ten (10) business days after Seller provides written notice to Buyer of such proceedings together with all relevant information concerning

such proceedings (and if necessary the Closing Date shall be extended to give Buyer the full ten (10) business day period to make such election): (i) terminate this Agreement, in which event the Deposit and all interest earned thereon shall be returned to Buyer and no party shall have any further obligations thereunder, except as expressly set forth herein, or (ii) proceed under this Agreement as to all of the Property, in which event Seller shall, at the Closing, assign to Buyer its entire right, title and interest in and to any condemnation award, and Buyer and Seller shall jointly have the right during the pendency of this Agreement to negotiate and otherwise deal with the condemning authority in respect of such matter. If Buyer fails to timely make such election, Buyer shall be deemed to have elected to proceed under clause (ii) above.

**4.4 Timing for Certain Filings.** Buyer shall use its best efforts to prepare and submit its proposed change of ownership and licensure application to the State of Rhode Island Department of Public Health ("Health Department") no later than March 23, 2012.

**4.5 Medicare Provider Number.** Seller will permit Buyer to assume its existing Medicare Provider number(s) as more specifically described in Section 6.7.

## **ARTICLE 5. CLOSING**

**5.1 Closing.** The consummation of the transactions contemplated herein (the "Closing") shall occur at 10:00 a.m. (Eastern Time) on the date which is thirty (30) days after the later of (i) the date of expiration of the Due Diligence Period, and (ii) satisfaction of all conditions to Buyer's obligation to close set forth in Section 5.2(a), except that Buyer may elect to extend the Closing Date for up to thirty (30) days if necessary in connection with the closing of any loan relating to acquisition of the Property or Health Department approval, so long as Buyer delivers to Seller on or before the date of such extension evidence that Buyer expects to satisfy such condition(s) and close within such thirty (30) day period. The date of Closing shall be referred to herein as the "Closing Date." Closing shall be effectuated through an escrow with the Escrow Agent. Buyer and Seller shall execute such supplemental escrow instructions as may be reasonably requested by either party or Escrow Agent to comply with the terms of this Agreement, so long as such instructions are not in conflict with this Agreement.

### **5.2 Conditions to the Parties' Obligations to Close.**

(a) Conditions to Buyer's Obligation to Close. As a condition to Buyer's obligation to close with respect to the Property on the Closing Date:

(i) The representations and warranties of Seller contained herein shall be true and correct in all material respects as of the Effective Date and as of the Closing Date without giving effect to any knowledge-based qualifications.

(ii) There shall be no default with respect to any material obligation of Seller hereunder which Seller has not cured within thirty (30) days after written notice from Buyer.

(iii) There shall be no notice issued after the Effective Date of any violation or alleged violation of any law, rule, regulation or code, including, without limitation, any building code, with respect to the Facility, which has not been corrected to the satisfaction of the issuer of the notice.

(iv) There shall be no default on the part of Seller or any other party under any agreement to be assigned to, or obligation to be assumed by, Buyer under this Agreement.

(v) All licenses, consents, approvals or other authorizations from third parties or governmental authorities required in connection with the transactions contemplated hereunder, including, without limitation, all licenses and approvals by agencies charged with regulating or licensing Senior Housing Facilities, shall have been obtained by, and issued in the name of, Buyer or its property manager or designee.

(vi) There shall have been no Material Adverse Change in the business, properties, operations or condition (financial, physical, title, licensing, environmental or otherwise) of Seller or the Facility since the Effective Date which has not been cured to Buyer's satisfaction.

(vii) On January 1, 2010 pursuant to Rhode Island law, Seller temporarily removed from service 14 of the 180 beds at the Facility. The Facility is, as of the Effective Date, certified as a 180 bed facility and licensed as a 166 bed facility. Seller shall not increase or decrease the number of licensed beds at the Facility and keep and maintain the Facility as certified for 180 beds and licensed for 166 beds until Closing.

(viii) No proceedings shall be pending or threatened that could or would involve the change, redesignation, redefinition or other modification of the zoning classifications of (or any building, environmental or code requirements applicable to) the Property in a manner which would have a Material Adverse Effect.

(ix) Seller shall have obtained payoff letters good through the Closing Date from all holders of mortgages or other indebtedness encumbering the Property stating the amount required to pay off such debt as of the Closing Date. Such letters shall be referred to as the "Payoff Letters."

(x) Buyer shall, at its sole cost and expense, to obtain written confirmation from the State of Rhode Island Department of Human Services ("DHS") that the per diem prospective rate for State aided Medicaid residents at the Facility to be paid to Buyer after the Closing will not be less than the \$202.93. If Buyer shall fail to obtain such confirmation, or if Buyer otherwise determines, in its sole and absolute discretion, that DSS has imposed other unacceptable conditions on Buyer's right to receive Medicaid reimbursement for patients at the Facility after the Closing, then Buyer and Seller shall negotiate in good faith for a reduction to the Purchase Price and adjustment to the other terms of the Agreement satisfactory to both parties and failing such Agreement, within a reasonable period of time, Buyer shall have the right, at its option, by written notice to Seller to terminate this Agreement and, upon such termination, the

Deposit (and any and all interest earned thereon) shall be immediately refunded to Buyer and the parties hereto shall have no further liabilities one to the other.

(xi) Buyer shall obtain change of ownership approval for the transactions contemplated herein from the Health Department and to bear their own costs and expenses in connection with the same.

(xii) Buyer shall, at its sole cost and expense to obtain written commitments for (1) a combination of a first mortgage loan, mezzanine financing and/or equity investment (the "New Money Commitment") to finance the acquisition by the Buyer of the Property and (2) a working capital line of credit loan ("Working Capital Loan") in the amount and with the terms acceptable to the Health Department. The New Money Commitment and Working Capital Loan shall also have terms, amortization periods, interest rates, and rates of return, with such additional terms and conditions as shall be acceptable to Buyer in its reasonable discretion. Buyer will use its best efforts to obtain such commitments on or before March 23, 2012.

(xiii) Receipt by Buyer of appraisal reports addressed to Buyer and Buyer's lenders prepared at Buyer's sole cost and expense by an appraisal firm acceptable to Buyer as required by and evidencing an asset value acceptable to Buyer and Buyer's lenders in the sole discretion of each.

(xiv) Receipt by Buyer of environmental site assessments addressed to Buyer and Buyer's lenders for the Real Property prepared at Buyer's sole cost and expense by an environmental firm acceptable to Buyer as required by and acceptable to Buyer and Buyer's lenders in the sole discretion of each.

(xv) Receipt by Buyer of an ALTA survey or surveys of the Real Property addressed to Buyer and Buyer's lenders prepared at Buyer's sole cost and expense by a surveying firm acceptable to Buyer as required by and acceptable to Buyer and Buyer's lenders in the sole discretion of each.

(xvi) Provision by Seller at and after Closing of Working Capital as provided in Section 6.7 hereof.

(b) Conditions to Seller's Obligation to Close. As a condition to Seller's obligation to close with respect to the Property on the Closing Date:

(i) The representations and warranties of Buyer contained herein shall be true and correct in all material respects as of the Effective Date and as of the Closing Date, without giving effect to any knowledge-based qualifications.

(ii) There shall be no default with respect to any material obligation of Buyer hereunder which Buyer has not cured within thirty (30) days after written notice from Seller.

**5.3 Failure of Condition.** Provided that a party is not in default of any material obligation of such party, if any condition to such party's obligation to proceed with the

Closing set forth in this Agreement has not been satisfied as of the Closing Date, then such party may, in its sole discretion, elect, by notice given to the other party on or before the Closing Date, to: (i) terminate this Agreement, in which event the Deposit and all interest earned thereon shall be returned to Buyer and no party shall have any further obligation hereunder, except as expressly set forth herein; (ii) extend the time available for the satisfaction of such condition by up to a total of thirty (30) business days; or (iii) close, notwithstanding the non-satisfaction of such condition, in which event such party shall be deemed to have waived such condition. If such party elects to proceed pursuant to clause (ii) above, and such condition remains unsatisfied after the end of such extension period, then, at such time, such party may elect to proceed pursuant to either clause (i) or (iii) above. Any failure to timely elect to proceed under clauses (i), (ii) or (iii) above, shall be deemed an election to proceed under clause (ii) above.

**5.4 Due Diligence Review and Termination Right.** During the Due Diligence Period Buyer shall conduct its due diligence review of the Facility, including the business, assets, financial performance and all aspects of the operations, market and regulatory and reimbursement environment affecting the Facility (specifically including the Seller Deliverables). Buyer shall undertake such due diligence review in a manner that minimizes disruption to residents and staff of the Facility. If as a result of Buyer's due diligence review, Buyer determines in its sole discretion that the Facility is not suitable for Buyer's purchase, Buyer may terminate this Agreement, in which event the Deposit and all interest earned thereon shall be returned to Buyer and no party shall have any further obligation hereunder, except as otherwise expressly set forth herein.

**5.5 Seller's Deliveries.** On or before the Closing Date, Seller shall deliver in escrow to the Escrow Agent or outside of escrow to Buyer the following, each duly executed and, where appropriate, in recordable form and notarized:

(a) **Deed.** A deed (with covenants of title equal to the covenants of title in the deed to Seller), executed and acknowledged by Seller, conveying to Buyer good, indefeasible and marketable fee-simple title to the Real Property, subject only to the Permitted Exceptions (individually and collectively, the "Deed");

(b) **Bill of Sale and Assignment Agreement.** A bill of sale and assignment agreement in the form of Exhibit I attached hereto (the "Bill of Sale"), executed and acknowledged by Seller, pursuant to which Seller shall assign, and Buyer shall assume, Seller's rights and obligations under and with respect to the contracts and property described therein free of any claims, except for the Permitted Personal Property Liens, and including, without limitation, the Accepted Service Contracts and the loan for (and lease of) any vehicle to be assumed by Buyer pursuant to the terms hereof;

(c) **Assignment of Leases and Residency Agreements.** An assignment of Leases and Agreements in the form of Exhibit J attached hereto (the "Assignment of Agreements"), executed and acknowledged by Seller, pursuant to which Seller shall assign, and Buyer shall assume, Seller's rights and obligations under and with respect to the Residency Agreements and any other leases which Buyer elects to assume prior to Closing;

- (d) Payoff Letters. The Payoff Letters;
- (e) Notice to Residents and Vendors. A notice to each resident in a form requested by Buyer as well as a notice to each vendor under the Accepted Service Contracts in form acceptable to Seller and Buyer;
- (f) State Law Disclosures. Such disclosures and reports as are required by applicable state and local law in connection with the conveyance of real property;
- (g) FIRPTA. An affidavit of Seller substantially in the form of Exhibit K attached hereto. If Seller fail to provide the necessary affidavit and/or documentation of exemption on the Closing Date, Buyer may proceed in accordance with the withholding provisions imposed by Section 1445 of the Internal Revenue Code of 1986, as amended;
- (h) Service Contract Estoppels. Estoppels from the parties obligated under the Accepted Service Contracts, confirming no defaults and other matters reasonably requested by Buyer;
- (i) Terminations and any Service Contract. Terminations, effective no later than Closing, of the Existing Management Agreements, which are not Accepted Service Contracts;
- (j) Seller Certificate. Seller Certificate for Employees being hired by Buyer;
- (k) CCRs. The estoppels and assignments concerning the CCRs, as provided in Section 3.6;
- (l) Certificates of Title. Certificates of title for each Vehicle not subject to a loan being assumed by Buyer pursuant to the provisions hereof.
- (m) Authority. Evidence of the existence, organization and authority of Seller and of the authority of the persons executing documents on behalf of Seller reasonably satisfactory to the Title Company and Buyer;
- (n) Title Documents. Affidavits required by the Title Company sufficient to have the general exceptions deleted together with such other documents and instruments required by the Title Company in order to issue the Title Policy;
- (o) Due Diligence Materials. To the extent not previously delivered to Buyer, true, correct and complete originals, or copies, if originals are not available, of each Seller's Deliverables;
- (p) Occupancy. An occupancy list for the Facility, prepared as of a date no earlier than two (2) business days prior to the Closing Date, certified by Seller to be true, complete and correct through such date;

(q) Closing Certificate. A certificate, signed by Seller, certifying to Buyer that the representations and warranties of Seller contained in this Agreement are true and correct in all material respects as if made on and as of the Closing Date and that all covenants required to be performed by Seller prior to the Closing Date have been performed in all material respects;

(r) Settlement Statement. A settlement statement, duly executed by Seller;

(s) Permits and Approvals. All licenses, permits and approvals related to the construction, development ownership, operation and use of the Property, including without limitation, certificate(s) of occupancy;

(t) Plans and Specifications. All plans and specifications relating to the Property in Seller's possession and control or otherwise available to Seller;

(u) Accounting. List and accounting of all Assumed Expenses and Accounts Receivable as provided in Section 6.8;

(v) Evidence of Occurrence Insurance Coverage. Evidence satisfactory to Buyer that at all times during the three (3) years prior to Closing, Seller has maintained workers compensation and occurrence based commercial general liability insurance of at least \$1,000,000 per occurrence and \$3,000,000 in the aggregate. If Seller fails to provide such evidence, Seller shall purchase and maintain at and after the Closing so-called "tail insurance" policies for a period of not less than three years in such amounts and with deductibles acceptable to Buyer and shall name Buyer as additional insured on such policies.

(w) Other Deliveries. Such other documents, certificates and instruments reasonably necessary in order to effectuate the transaction described herein, including, without limitation, transfer tax declarations, broker lien waivers and any documents or representations necessary to comply with any applicable environmental transfer disclosure laws and any other Closing deliveries required to be made by or on behalf of Seller.

**5.6 Buyer's Deliveries.** On or before the Closing Date, Buyer shall deposit the cash portion of the Purchase Price, plus or minus applicable prorations and adjustments as set forth herein, in immediately available, same-day federal funds wired for credit into the Escrow Agent's escrow account. In addition, except as specified below, on or before the Closing Date, Buyer shall deliver in escrow to the Escrow Agent or outside of escrow to Seller the following, each duly executed and, where appropriate, in recordable form and notarized:

(a) Bill of Sale. The Bill of Sale, executed by Buyer;

(b) Assignment of Residency Agreements. The Assignment of Residency Agreements, executed by Buyer;

- (c) Buyer Note. The Buyer Note.
- (d) State Law Disclosures. Such disclosures and reports as are required by applicable state and local law in connection with the conveyance of real property;
- (e) Settlement Statement. A settlement statement, duly executed by Buyer;
- (f) Guaranty. The guaranty of the Buyer Note signed by Lawrence G. Santilli or Athena Health Care Associates, Inc.; and
- (g) Other Deliveries. Such other documents, certificates and instruments reasonably necessary in order to effectuate the transactions described herein and any other Closing deliveries required to be made by or on behalf of Buyer.

**5.7 Possession.** Seller shall deliver possession of the Property to Buyer at the Closing, subject only to the Permitted Exceptions.

**5.8 Delivery of Books and Records.** Immediately after Closing, Seller shall deliver the following to (1) the Facility or (2) 125 Tripps Lane, East Providence, RI 02915, offices of Buyer (or the parties shall arrange for delivery of the following at each Facility): the original documents and instruments (or copies thereof if originals are not available) assigned to Buyer pursuant to the terms hereof; copies or originals of all books and records of account, copies of correspondence with tenants and suppliers, receipts for deposits, unpaid bills and other papers or documents which pertain to the Facility; all advertising materials, booklets, keys and other items, if any, pertaining to the Facility; electronic and hard copies of data bases for residents and prospective residents of the Facility; and, if in Seller's possession or control, the original "as-built" plans and specifications, and all other available plans and specifications for the Facility. Buyer shall maintain all books and records for a 10-year period as required by the Rhode Island Department of Human Services. Seller shall cooperate with Buyer after Closing, to transfer to Buyer any such information stored electronically.

## **ARTICLE 6. PRORATIONS; COSTS; ADJUSTMENTS**

**6.1 Prorations.** Not less than three (3) business days prior to Closing, Seller shall provide to Buyer such information and verification reasonably necessary to support the prorations under this Article 6. The items in this Section 6.1 shall be prorated between Seller and Buyer as of the close of business on the day immediately preceding the applicable Closing Date, the Closing Date being a day of income and expense to Buyer. Credits to Buyer shall be credited against the Purchase Price to be paid hereunder and, if such amount is exhausted, shall be paid in cash by Seller to Buyer at the Closing. Post-closing re-prorations and adjustments shall be paid in cash. Subject to the foregoing and for the other provisions of this Article 6, the following items shall be prorated and adjusted at Closing:

- (a) Taxes and Assessments. Buyer shall receive a credit for any accrued but unpaid real estate taxes, personal property taxes and special assessments

and betterments ("Taxes") (including, without limitation, any assessments imposed by private covenant) applicable to any period before the Closing Date, whether or not such Taxes are not yet due and payable, and Seller shall receive a credit for any Taxes applicable to any period after the Closing Date paid prior to the Closing Date. If the amount of any such Taxes have not been determined as of the Closing Date, then such credit shall be based on the most recent ascertainable taxes. Such undetermined Taxes shall be re prorated upon issuance of the final tax bill. Buyer shall assume and pay any Taxes applicable to any period after Closing, and the parties shall adjust in favor of Seller any and all Taxes covering any period after Closing which Seller has paid in advance. Notwithstanding the foregoing, (i) Buyer shall receive from Seller a credit for any special assessments and betterments which are levied or charged against the Property or the Real Property with respect to any infrastructure improvements specifically made to serve the Facility, whether or not then due and payable, and (ii) any other special assessments and betterments shall be prorated only for the year of Closing.

(b) Collected Patient Revenue. Buyer shall receive from Seller a credit for any patient under the Residency Agreements collected by Seller on or before Closing that applies to any period after Closing. Uncollected patient reversions and other uncollected income shall not be prorated at Closing.

(c) Resident Funds. All resident funds (and interest thereon if required by law or contract to be earned thereon) shall be transferred or credited to Buyer at Closing (provided that Buyer provides evidence to Seller at Closing that any amounts so transferred or credited will be held by Buyer in compliance with all applicable legal requirements). As of Closing, Buyer shall assume Seller's obligations related to such funds, but only to the extent they are properly transferred to Buyer.

(d) Other Revenues and Income. At Closing, Seller shall pay to or at the direction of Buyer any and all revenues and income in connection with the operation of the Property not covered above and collected by or on behalf of Seller before the Closing and applicable to Buyer's period of ownership, and if such amount cannot be determined at Closing, such payment shall be based upon Buyer's reasonable estimate. The parties shall use reasonable efforts to make a final determination of such amount and make an appropriate adjusting payment within ninety (90) days after Closing. In addition, each party shall promptly remit or cause to be remitted to the other any such revenues and income collected by such party after Closing and applicable to the other party's period of ownership.

## **6.2 Utilities.**

(a) Except for utilities which are in the name of and billed directly to others, Seller shall cause the meters, if any, for utilities to be read the day on which the Closing Date occurs and to pay the bills rendered on the basis of such readings. If any such meter reading for any utility is not available, then adjustment therefor shall be made on the basis of the most recently issued bills therefor which are based on meter readings no earlier than thirty (30) days before the Closing Date; and such adjustment shall be re prorated when the next utility bills are received.

(b) Seller shall receive a credit for the amount of deposits, if any, with utility companies and other service providers, if any, that are transferable and that are assigned to Buyer at the Closing.

**6.3 Service Contracts, Other Items of Prepaid Expense.** Seller or Buyer, as the case may be, shall receive a credit for regular charges under Accepted Service Contracts and any other items of prepaid expense with respect to any obligation of Seller assumed by Buyer pursuant to the terms and conditions hereof paid and applicable to Buyer's period of ownership or payable and applicable to Seller's period of ownership, respectively. Seller shall pay at Closing all amounts owing under those Service Contracts that are not Accepted Service Contracts.

**6.4 Accrued Employee Benefits.** At Buyer's option, to the extent any Accrued Employee Benefit is not included in Assumed Liabilities pursuant to Section 6.7, Seller shall either (i) pay to any Employee hired by Buyer pursuant to Section 3.5 hereof the amount of all Accrued Employee Benefits for such Employee accruing prior to the Closing Date, or (ii) give Buyer a credit against the Purchase Price in such amount.

**6.5 Sales, Transfer, and Documentary Taxes; Closing Costs.**

(a) All sales, gross receipts, compensating, stamp, excise, documentary, transfer, deed or similar taxes and fees imposed in connection with this transaction under applicable state, county or local law shall be paid by Seller. Seller and Buyer shall execute any applicable city, county and state transfer tax or other declarations.

(b) Buyer shall pay: (i) the costs associated with Buyer's due diligence activities, and (ii) the cost of the Title Policy and Survey. Seller shall pay all recording fees or other charges incurred in connection with clearing title to the Property. Each party shall be responsible for its own attorney's and other professional fees.

**6.6 Sales Commissions.** Seller and Buyer each represents and warrants to the other that it has not dealt with any real estate broker, sales person or finder in connection with this transaction other than Red Capital Markets, LLC the payment of which shall be the sole obligation of Seller. In the event of any claim for broker's or finder's fees or commissions in connection with the negotiation, execution or consummation of this Agreement or the transactions contemplated hereby, each party shall indemnify, defend and hold harmless the other party from and against any such claim based upon any actual or alleged statement, representation or agreement of the indemnifying party.

**6.7 Assumption of Expenses, Collection of Accounts Receivable and Use as Working Capital.** Buyer shall collect after closing on behalf of itself and Seller all accounts receivable of the Facility outstanding on the day of closing. Buyer shall be entitled to retain the proceeds of all receivables paid by Medicaid, Medicare and any third party payers for periods prior to Closing but received after the Closing up to a maximum amount of \$1,000,000 to provide Buyers with working capital to fund operating expenses ("Working Capital"). In return for providing the Buyer the Working Capital, Buyer shall

assume specific accounts payable or other accrued liabilities at an amount equal to the Working Capital ("Assumed Liabilities"). The specific detail of such Assumed Liabilities shall be determined by Buyer and Seller from Seller's accounts payable and accrued liabilities listings 10 days prior to the Closing and shall be agreed to in writing prior to Closing. Buyer agrees that all Seller accounts payables and other accrued liabilities that are specifically identified to be assumed by Buyer shall be paid in the ordinary course of business. If necessary, Buyer shall provide written notice to vendors with whom it has assumed specific liabilities, that Buyer has assumed such liabilities as part of the acquisition and as such is responsible for payment of such particularly identified invoices. Buyer shall at Closing assume Seller's Medicare Provider Number(s) and utilize such number(s) until such time as Buyer shall receive its own Provider number. As Medicare makes payments electronically to accounts associated with Seller's Provider number(s), Seller shall assign its interest in its existing Medicare clearing account(s) and such account(s) shall be the property of Buyer at Closing. Any funds paid into such account(s) properly belonging to Seller shall be paid by Buyer to Seller as provided herein.

Any receivables collected by Buyer in excess of the Assumed Liabilities and any receivables collected after such period will be first offset against any liabilities paid but not assumed by Buyer and then promptly remitted to Seller. Buyer shall provide Seller monthly updates regarding collection of Seller's receivables and shall provide reasonable access to Buyers' employees for the purpose of providing specific updates to Seller as to collection efforts on Seller's accounts receivable.

**6.8 Post-Closing Corrections and Final Reconciliation.** Notwithstanding any provision hereof to the contrary, within one hundred twenty (120) days after Closing, the parties shall complete a good faith reconciliation of all closing costs, prorations and adjustments under this Article 6 and shall make any payments due to the other party pursuant thereto. Without limiting the foregoing, any party hereto shall be entitled to a post-Closing adjustment for any incorrect proration or adjustment, provided such adjustment is claimed by such party within one (1) year after the Closing Date.

**6.9 No Other Obligations/Recoupments.** No expense related to the ownership or operation of the Property shall be charged to or paid or assumed by Buyer under this Agreement, other than those obligations expressly assumed by Buyer in writing. Without limiting the foregoing, Buyer and Seller specifically acknowledge that Buyer shall not be liable for any recoupment or other amounts due, including but not limited to any credit balances, user fees or rate recoupment due to any governmental agency for any periods prior to the Closing. Without limiting the foregoing, Buyer and Seller specifically acknowledge that Seller shall be entitled to receive any refund or credit from a vendor or any governmental agency for any periods prior to the Closing not specifically identified in Section 6.7.

Any such item recouped from Buyer shall be promptly paid by Seller to Buyer and if not so paid within fourteen (14) days after notice, at its option the Buyer may (i) set off such amount against any accounts receivable collected in excess of the Working Capital received by it as described in Section 6.7, (ii) set off such amount against any amount

due under the Seller Note, or (iii) make a claim in such amount against the Escrow Account as described in Section 7.4(e).

## **ARTICLE 7. REPRESENTATIONS AND WARRANTIES**

**7.1 Seller's Representations and Warranties.** As a material inducement to Buyer to execute this Agreement and consummate this transaction, Seller represents and warrants to Buyer as follows as of the date hereof (which representations, warranties shall also be true on the Closing Date as if made on the Closing Date:

(a) Organization and Authority of Seller. Seller has been duly organized, is validly existing, and is in good standing as a corporation in the State of Rhode Island. Seller is in good standing and is qualified to do business in each state in which the Real Property is located. Seller has the full right, power and authority and has obtained any and all consents required to enter into this Agreement, all of the documents to be delivered by Seller at the Closing and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Seller at the Closing will be, authorized and properly executed and constitutes, or will constitute, as appropriate, the valid and binding obligation of Seller, enforceable in accordance with their terms.

(b) Pending Actions or Proceedings. There is no action or proceeding pending or, to Seller's knowledge, threatened against Seller or otherwise relating to the Facility. To Seller's knowledge, no condemnation, eminent domain or similar proceedings are pending or threatened with regard to the Facility. Seller has not received any notice and has no knowledge of any pending or threatened liens, special assessments, impositions or increases in assessed valuations to be made against the Facility.

(c) Conflicts; Filings. Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will: (i) violate any law to which Seller is subject, or any provision of its operating agreement or certificate of formation; or (b) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Seller is a party or by which it is bound or to which any of its assets is subject. Seller is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any government or governmental agency in order for the parties to consummate the transactions contemplated by this Agreement.

(d) Title and Condition of Assets. The Property constitutes all of the assets and properties used or held for use in the conduct of the Facility, and are generally adequate to conduct the Facility as currently conducted. The Seller has good, valid and marketable title to, or a valid leasehold interest in, the Property, free and clear of all liens or other encumbrances except for Permitted Exception and Permitted Personal Property Liens. Further:

(i) All leases and other agreements with respect to the real property or personal property related to the Facility are in good standing and are valid, binding and, to its knowledge, are enforceable in accordance with their respective terms, and there does not exist under any such lease or agreement any material default by the Seller or, to its knowledge, by any other party thereto, or any event that, with notice or lapse of time or both, would constitute a material default by it or, to its knowledge, by any other party thereto.

(ii) To the Seller's knowledge, the buildings, fixtures, improvements, structures and equipment included in the purchased assets have no material defects, are in good operating condition and repair and have been maintained consistent with standards generally followed in the industry and are suitable for their present uses.

(iii) The buildings and structures used in connection with the Facility currently have access to: (i) public roads or valid easements over private streets, private property for such ingress to and egress from all such buildings and structures, and (ii) water supply, storm and sanitary sewer facilities, telephone, electrical connections, fire protection, drainage and other public utilities, as is necessary for the conduct of the Facility.

(iv) To the Seller's knowledge, none of the material structures on the real property encroaches upon real property of another person, and no structure of any other person encroaches upon any such real property.

(v) To the Seller's knowledge, except as disclosed on Schedule 1, no violation of any law, regulation or ordinance (including, laws, regulations or ordinances relating to zoning, fire code, disabled persons, environmental, city planning or similar matters) relating to the Facility or any purchased asset currently exists.

(vi) The purchased inventory is used in the ordinary course of the Facility and the quantities of all inventory items are justified in light of the present and anticipated volume of the Facility. The purchased inventory is good, usable, merchantable and saleable in the ordinary course of the Facility.

(vii) Except as disclosed on Schedule 1, there is no action, suit or proceeding pending as to which the Seller (or its agents) have received written notice and, to the Seller's knowledge, there is no action, suit or proceeding threatened by any third party fiscal intermediary or carrier administering any Medicaid or Medicare program, by any governmental authority or by any third party payor against Seller or relating to the Facility or the Property, affecting the Facility or the Property or seeking to suspend payments to, or recoup or offset overpayments from, the Seller or seeking civil and/or money penalties from the Seller.

(e) Vehicles and Equipment; Personal Property. Attached hereto as Exhibit F is a list of all vehicles owned or leased by Seller in connection with the operation of the Facility. The vehicles are not subject to any liens or encumbrances

except as set forth on Exhibit F. Except for the personal property owned by Michael H. Marra listed on Exhibit H attached hereto, Seller owns and has good title to all Personal Property free and clear of any liens and encumbrances.

(f) Occupancy. Set forth on Exhibit M hereto is a list of all residents and their payor status (the "Resident Roll"). All information set forth in the Resident Roll is true, correct, and complete in all material respects as of its date.

(g) Service Contracts. Set forth on Exhibit N is a list of all of the Services Contracts. The documents constituting the Service Contracts that are delivered to Buyer pursuant to Section 3.1 are true, correct and complete copies of all the Service Contracts affecting the Facility. Neither Seller nor, to Seller's knowledge, any other party is in default in under any Service Contract.

(h) Employment Matters.

(i) Exhibit O attached hereto contains a list of all employees of Seller directly employed in the operation and management of the Facility (collectively, the "Employees"), including employees who are receiving short-term disability benefits or are on family and medical, medical/long-term disability, administrative, or military leave or any other type of leave that entitles the Employee to reinstatement upon completion of the leave under the applicable leave policies of Seller. The Employees are employees of Seller (and not any Affiliate of Seller), except as otherwise expressly stated on Exhibit O.

(ii) Except for the Employees, there are no other persons directly employed in the operation or management of the Facility.

(iii) There are no contracts, express or implied, between Seller or any of its Affiliates and any Employees of the Facility for any term of duration of employment.

(iv) Neither Seller nor any of its respective Affiliates has received any notice from any labor organization claiming to be, or seeking to be, a collective bargaining representative for any Employees of the Facility.

(v) Neither Seller nor any of its respective Affiliates has received any notice from any Employees of the Facility that he or she is or claims to be represented for purposes of collective bargaining by a labor organization.

(vi) There is no pending or, to Seller's knowledge, threatened action, litigation, governmental proceeding, grievance, arbitration proceeding, unfair labor practice charge, or any complaint or charge issued by any federal, state or local governmental agency concerning any Employees of any of the Facility.

(vii) Except as provided in Section 3.5 hereof, all Employees of the Facility have been paid (or will be paid by Seller on or before Closing) all wages, salary, incentive payments, bonuses, commissions, draws, severance pay, vacation pay, holiday pay, sick pay, automobile or transportation pay or reimbursements, expense

reimbursements, benefits, and any other form of remuneration whatsoever due to any past or present employee of the Facility for services provided to Seller and its Affiliates prior to the Closing. In all payments to Employees of the Facility, all payroll withholdings, and deductions required by applicable law have been made, and all withheld amounts timely have been paid or will be paid by Seller or its Affiliates to the appropriate entities.

(viii) Exhibit P attached hereto lists each "employee benefit plan" (as such term is defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) and each other material employee benefit plan, policy or arrangement sponsored by Seller or its respective Affiliates for the benefit of Employees associated with the Facility (each item listed on Exhibit P, a "Benefit Plan" and, collectively, the "Benefit Plans").

(ix) Each Benefit Plan has been maintained, funded and administered in material compliance with its terms and the requirements of applicable law.

(x) Each Benefit Plan that is intended to meet the requirements of a "qualified plan" under Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code") has received a favorable determination letter from the Internal Revenue Service to the effect that it meets the requirements of Section 401(a) of the Code.

(xi) Neither Seller nor any other entity that is treated as a single employer with Seller for purposes of Section 414 of the Code has any liability under Section 302 or Title IV of ERISA that could become a liability of Buyer.

(xii) No action, suit, proceeding, hearing or investigation with respect to the Benefit Plans (other than routine claims for benefits) is pending or threatened.

(xiii) Neither Seller nor any of its respective Affiliates is a party to any collective bargaining agreement or other labor agreement with any union or labor organization.

(i) Financial Information. All internally generated monthly and audited annual financial statements provided by Seller as required by Section 4.1(g) (collectively, the "Financial Statements") fully and fairly represent the financial condition of the Facility, as of the dates thereof and for the periods covered therein and the audited annual financial statements have been prepared in accordance with GAAP. "GAAP" means generally accepted accounting principles, as in effect from time to time.

(j) Permits, Legal Compliance, and Notice of Defects.

(i) Seller has all material licenses, permits and certificates necessary for the ownership, use and operation of the Property, including, without limitation, all certificates of occupancy necessary for the occupancy of the Property (the "Permits"). All of the Permits are in full force and effect, and Seller has not taken or failed

to take any action that would result in their revocation, suspension or limitation, nor received any written notice of an intention to revoke, suspend or limit any of them. To Seller's knowledge, neither the Property nor the use thereof violates any Permit, governmental law or regulation or any covenants or restrictions encumbering the Property. To Seller's knowledge, there are no material physical defects in the Improvements. Seller has not received any written notice from any insurance company or underwriter, or is otherwise aware, of any defects that would materially adversely affect the insurability of the Property or cause an increase in insurance premiums. Seller has not received notice from any governmental authority or other person of, nor has any knowledge of, any violation of zoning, building, fire, health, environmental, or other statutes, ordinances, regulations or orders (including, without limitation, those respecting the Americans with Disabilities Act), or any restriction, condition, covenant or consent in regard to the Property or any part thereof which have not been corrected to the satisfaction of the issuer.

(ii) Without limiting the generality of the foregoing, the Seller and, to the knowledge of Seller, each of Seller's licensed employees are, and have been at all relevant times (or, with respect to such employees, such employees have been during their employment with Seller), in compliance with all applicable statutes, laws, ordinances, rules, orders, and regulations of any governmental authority with respect to matters primarily relating to patient health care (including, without limitation, Section 1128B(b) of the Social Security Act, as amended, 42 U.S.C. Section WP 7)b)(Criminal Penalties Involving Medicare or State Health Care Programs) commonly known as the "Federal Anti Kickback Statute", all applicable laws that regulate relationships between providers of, or fraud and abuse in connection with the provision of, medical or health care services, and The Social Security Act, as amended, Section 1877, 41 U.S.C./ Section WP (Prohibition Against Certain Referrals), commonly referred to as the "Stark Statute"))(collectively, "Health Care Laws"). The Seller maintained all records required to be maintained by the Food and Drug Administration, Drug Enforcement Agency and State Board(s) of Pharmacy and the Medicare and Medicaid programs as required of the Seller by applicable Health Care Laws, and there are no presently existing circumstances which would result or likely would result in violations of Health Care Laws.

(iii) Seller has not received notice from any person (including in connection with the Medicare or Medicaid program, any Person administering such programs or any other third party payor) of any pending or threatened investigation or survey, notice of denial of reimbursement or payment, notice of recoupment or setoff, related to any services provided by Seller; and Seller has no reason to believe that any such investigation, survey or notice is pending, threatened or imminent.

(iv) "**Governmental Authority**" means any government, court, regulatory or administrative agency or commission, or other governmental authority, agency or instrumentality, whether federal, state or local (domestic or foreign).

(k) Environmental. Seller has no knowledge of any violation of any Environmental Law related to the Real Property or the presence or release of any Hazardous Materials on or from the Real Property except as disclosed in the

environmental reports listed in Exhibit Q attached hereto (the "Environmental Reports"). Except for de minimis amounts of Hazardous Materials used, stored and disposed of in accordance with Environmental Laws, and used in connection with the ordinary maintenance and operation of the Property, Seller has not manufactured, introduced, released or discharged from or onto the Property any Hazardous Materials or any toxic wastes, substances or materials (including, without limitation, asbestos), and Seller has not used the Property or any part thereof for the generation, treatment, storage, handling or disposal of any Hazardous Materials. Except as set forth in the Environmental Reports, there are no underground storage tanks located on the Real Property. Seller is not aware of any environmental assessments or studies which exist with respect to the Real Property except for the Environmental Reports.

There are no outstanding or, to the best of Seller's Knowledge, threatened actions, claims, proceedings, determinations or judgments by any party, including but not limited to any Governmental Authority, against or involving Seller, or any matter arising under any Environmental Law. Seller has not received any notice of, nor is Seller aware of, any outstanding or threatened orders, determinations or notices of violation issued by any Governmental Authority administering any Environmental Law in connection with ownership of or operation by Seller of the Property and/or the Facility which have not been complied with or resolved to the satisfaction of such Governmental Authority.

There are no pending or, to the best of Seller's Knowledge, threatened actions, claims, proceedings or judgments against Seller by any present or former officers, agents or employees of Seller alleging or involving personal injury or damage as a result of the violation of any Environmental Laws or otherwise involving environmental conditions under which such persons were employed.

The transactions contemplated by this Agreement are not subject to any environmental transfer act in any jurisdiction in which Seller maintains any tangible personal property or fixtures, or owns, leases, rents or occupies any real property, nor are there any permits or approvals or the transfer of any permits or approvals required by a Governmental Authority for the transactions contemplated by this Agreement.

Seller is not in violation of, nor is it the subject of, any enforcement action by any Governmental Authority under, the Medical Waste Tracking Act, 42 U.S.C. §§. 6992 et seq., or any other applicable Law dealing with the generation, handling, storage, transportation, or disposal of medical wastes or requiring training related to any such activities ("Medical Waste Laws"). Seller has not received any written notice of any investigation or inquiry by any Governmental Authority under the Medical Waste Laws.

(l) ERISA. Seller is not acting on behalf of (i) an "employee benefit plan" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, (ii) a "plan" within the meaning of Section 4975 of the Internal Revenue Code of 1986, as amended or (iii) an entity deemed to hold "plan assets" within the meaning of 29 C.F.R. §2510.3-101 of any such employee benefit plan or plans.

(m) Bankruptcy Matters. Seller has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors, suffered the appointment of a receiver to take possession of all or substantially all of its assets, suffered the attachment or other judicial seizure of all or substantially all of its assets, admitted its inability to pay its debts as they come due, or made an offer of settlement, extension or composition to its creditors generally.

(n) No Rent Subsidies. Except as set forth in the Rent Roll, the senior housing units in the Property are not subject to, nor do said senior housing units receive the benefit of, any rent subsidies or rental assistance programs. To the knowledge of Seller, no senior housing unit is subject to any rent control law, ordinance or regulation.

(o) Medicare; Medicaid; Third Party Payor Programs. Seller has (i) maintained its billing arrangements with payors in full compliance with all federal and state laws and regulations, and any policies, rules or laws of any third-party payors such as Medicare, pertinent state Medicaid programs, and (ii) filed on a timely basis all claims, cost reports or annual filings required to be filed to secure payment under the Medicare, Medicaid and any other third-party payment programs to which it is a participant and provide on a timely basis all audits and notices of final settlement or equivalent notices received by the Seller for Medicare and for Medicaid, and pay or cause to be paid, all refunds, discounts, adjustments, or amounts owing, which have become due to such third-party payors pursuant to such reports.

(p) Patient Records and Funds/HIPAA. To the best of Seller's Knowledge, the patient records of the Facility have been created or maintained in substantial compliance with all applicable federal and state Law governing such records.

Seller and/or Parent has maintained patient funds on behalf of the residents of the Facility in compliance with all applicable Laws, and has maintained an accurate and updated accounting of such trust funds, including of any amounts owing to residents or their legally authorized representatives, and will at Closing provide to Buyer a current version of such accounting.

Seller has established and implemented policies, programs, procedures, contracts and systems in order to comply with the Health Insurance Portability and Accountability Act of 1996; Title II, Subtitle F, Sections 261-264, Public Law 104-191, and the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160-164, and has received no notice of violation of either of such laws from any Governmental Authority.

(q) Third-Party Reimbursement. Seller is certified for participation and reimbursement under the Government Programs. Seller has current provider numbers and provider agreements for the Government Programs and for the Private Programs. To Seller's Knowledge, the Facility is in material compliance with the applicable Medicare

Conditions of Participation, and other regulatory and contractual requirements for the Government Programs and Private Programs.

(r) Real Property. Schedule 7.1(s) sets forth a true and complete legal description of the Real Property. Seller is not party to any real property leases. Except as set forth on Schedule 7.1(s), the Real Property constitutes all interests in real property held by Seller including, without limitation, all fee interests and leasehold interests. There is no planned or, to Seller's Knowledge, threatened taking or condemnation of all or any part of the Real Property. There are no construction activities currently in progress at the Real Property.

(s) Insurance. Schedule 7.1(t) contains a list of each insurance policy currently maintained by Seller with respect to the Facility, which policies shall remain in full force and effect through the Closing Date, except to the extent the same expires prior to the Closing Date and is replaced with substantially similar coverage. All such policies are in full force and effect and, to the Knowledge of Seller, no event has occurred that would, by the terms of the policy, give any insurance carrier a right to terminate any such policy prior to its expiration.

(t) Utilities. Public utility services (including, without limitation, all applicable electric lines, sewer and water lines, gas, cable, television and telephone lines) are available to service the Property at the property line, and, to Seller's knowledge, said public utility services are adequate to service the requirements of the Property and its tenants and occupants as presently operated, and all payments currently due for the same have been made, and all necessary easements, permits, licenses and agreements in respect of any of the foregoing exist and are in full force and effect and are installed and operating and all installation and connection charges have been paid for in full. Neither Seller, nor to Seller's knowledge, any prior owner of the Property has received notice of any fact or condition existing and would or could result in the termination or reduction of the current access from the Property to existing roads and highways, or to sewer or other utility services available to the Property.

(u) Disclosure. Other than this Agreement, the documents delivered at Closing pursuant hereto, the Permitted Exceptions, the Residency Agreements, and the Accepted Service Contracts, there are no contracts or agreements of any kind relating to the Property to which Seller is a party and which would be binding on Buyer after Closing. Seller has delivered to Buyer all written materials in Seller's possession or control which contain information or disclose facts or conditions that would have a material adverse impact on the use, operation or marketability of the Property. The originals and copies of Seller Deliverables delivered to Buyer pursuant to Section 3.1 hereof are true, correct and complete originals or copies of the respective documents, instruments, agreements or other items, and Seller is not aware of any material inaccuracy or omission in the information in Seller Deliverables.

**7.2 Buyer's Representations and Warranties**. As a material inducement to Seller to execute this Agreement and consummate this transaction, Buyer represents and

warrants to Seller as follows as of the date hereof (which representations, warranties shall also be true on the Closing Date as if made as of the date thereof):

(a) Organization and Authority. Buyer has been duly organized and is validly existing as a Rhode Island limited liability company. Buyer has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Buyer at the Closing will be, authorized and properly executed and constitutes, or will constitute, as appropriate, the valid and binding obligation of Buyer, enforceable in accordance with their terms.

(b) Pending Action. There is no agreement to which Buyer is a party or to Buyer's knowledge binding on Buyer which is in conflict with this Agreement. There is no action or proceeding pending or, to Buyer's knowledge, threatened against Buyer which challenges or impairs Buyer's ability to execute or perform its obligations under this Agreement.

(c) Conflicts; Filings. Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will: (i) violate any law to which Buyer is subject, or any provision of its operating agreement or certificate of formation; or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Buyer is a party or by which it is bound or to which any of its assets is subject. Buyer is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any government or governmental agency in order for the parties to consummate the transactions contemplated by this Agreement.

### 7.3 Indemnity.

(a) Seller hereby agrees to indemnify, defend and hold Buyer harmless from any liability, claim, demand, loss, expense or damage, including, without limitation, attorneys fees and costs (collectively, "Claims") arising out of (i) any breach of any representation or warranty of Seller set forth herein (after giving effect to any knowledge qualification to which such representation or warranty is subject), (ii) any act or omission of Seller or any of its agents, employees or contractors, (iii) the ownership or operation of the Property accruing prior to the Closing Date including, without limitation, any recoupment described in Section 6.9, and claims made by or relating to any Employee, except for any claim by any Employee hired by Buyer for payment of Accrued Employee Benefits which Buyer assumes pursuant to Section 6.4 or Section 6.7 at Closing; (iv) any breach by Seller, any Principal or any of their respective Affiliates, of the covenants set forth in Section 9.1 and Section 9.2 hereof; or (v) any breach of covenants and agreements of Seller set forth in this Agreement.

(b) Buyer hereby agrees to indemnify, defend and hold Seller harmless from any Claim arising out of (i) any breach of any of representation or warranty of Buyer set forth herein, (ii) any act or omission of Buyer, its agents, employees or contractors, or (iii) the ownership or operation of the Property accruing on or after the Closing, or (iv) breach by Buyer of its obligations under Section 6.4, Section 6.7 and Section 9.3 hereof.

(c) The following provisions govern all actions for indemnity under this Section 7.3 and any other provision of this Agreement. Promptly after receipt by an indemnitee of notice of any claim, such indemnitee will, if a claim in respect thereof is to be made against the indemnitor, deliver to the indemnitor written notice thereof. After such notice, the indemnitor shall be entitled, if it so elects at its own cost, risk and expense, (i) to take control of the defense and investigation of such lawsuit or action, (ii) to employ and engage attorneys of its own choice to handle and defend the same unless the named parties to such action or proceeding include both the indemnitor and the indemnitee and the indemnitee has been advised in writing by counsel that there exists a bona fide and recognized ethical conflict which would require that such counsel obtain a waiver or similar consent from each of the indemnitor and the indemnitee to undertake such joint defense, in which event the indemnitor shall be entitled, at the indemnitor's cost, risk and expense, to separate counsel of its own choosing only if it reasonably determines in good faith that such waiver or consent cannot be given, and (iii) to compromise or settle such claim, which compromise or settlement shall be made only with the written consent of the indemnitee, such consent not to be unreasonably withheld. If the indemnitor fails to assume the defense of such claim within thirty (30) calendar days after receipt of the claim notice, the indemnitee against which such claim has been asserted will (upon delivering notice to such effect to the indemnitor) have the right to undertake, at the indemnitor's sole cost and expense (to be reimbursed as accrued), the defense, compromise or settlement of such claim on behalf of and for the account and risk of the indemnitor. In the event the indemnitee assumes the defense of the claim, the indemnitee will keep the indemnitor reasonably informed of the progress of any such defense, compromise or settlement. The indemnitor shall be liable for any settlement of any action effected pursuant to and in accordance with this Section 7.3 subject to the written consent of the indemnitor and for any final judgment (subject to any right of appeal), and the indemnitor agrees to indemnify and hold harmless an indemnitee from and against any losses by reason of such settlement or judgment; provided, however, that if an indemnitee settles a claim without the prior written consent of the indemnitor, then the indemnitor shall be released from liability with respect to such claim unless the indemnitor has unreasonably withheld such consent. The failure of indemnitee to deliver written notice to the indemnitor within a reasonable time after indemnitee receives notice of any such claim shall relieve such indemnitor of any liability to the indemnitee under this indemnity only if and to the extent that such failure is prejudicial to the indemnitor's ability to defend such action, and the omission so to deliver written notice to the indemnitor will not relieve it of any liability that it may have to any indemnitee other than under this indemnity.

#### **7.4 Survival of Representations, Warranties and Indemnity; Limitations.**

(a) The representations and warranties set forth in this Article 7 are made as of the Effective Date, and each party shall be deemed to have remade all of their respective representations and warranties as of the Closing Date. No representations or warranties shall be deemed to be merged into or waived by the instruments of Closing, but shall survive the Closing for a period of forty-eight (48) months.

(b) The indemnity obligations of the parties under this Section 7.3 and any other provision of this Agreement, shall survive for the maximum period allowed under the applicable statute of limitations; provided, however, that no party shall be liable for any indemnity obligation with respect to breach of any representation or warranty of such party if the other party fails to give written notice of the alleged breach of representation or warranty within forty-eight (48) months after Closing.

(c) Notwithstanding the foregoing provisions of this Article 7, the respective indemnification rights and obligations of the parties set forth in this Article 7 shall be subject to the following:

(i) No party shall assert a claim for indemnification hereunder relating to the Facility unless the amount of such claim, together with all other claims for indemnification which may be asserted by such indemnified party hereunder, exceeds Ten Thousand Dollars (\$10,000.00) in the aggregate with all other claims with respect to the Facility (the "Basket"); provided, however, that if any claim or claims with respect to the Facility exceeds Ten Thousand Dollars (\$10,000.00) in the aggregate, then the indemnitor shall be responsible for the entire amount of such claim(s) with respect to the Facility, including the portion which is less than Ten Thousand Dollars (\$10,000.00) and the portion which exceeds Five Thousand Dollars (\$5,000.00); and

(ii) Buyer may set off any claim against any and all amounts due under the Buyer Note provided, however, that the Buyer shall provide Seller thirty (30) days notice. Any amounts due Buyer shall be set off against all amounts next due (including principle and interest) until such claim amount is fully paid. Buyer shall provide Seller with written notice of any such set off.

(d) Any indemnified claim based on fraud or willful, intentional or reckless misrepresentation or willful omission of a material fact in connection with this Agreement and the transactions contemplated hereby (individually and collectively "Fraud") and claims for recoupment from Medicare or Medicaid including, without limitation, any credit balances, rate recoupment or user fees shall not be limited to forty-eight (48) months following Closing and may be asserted within any otherwise applicable statute of limitations.

#### **ARTICLE 8. DEFAULT AND REMEDIES**

**8.1 Buyer's Remedies.** If this transaction fails to close as a result of any default on the part of Seller which has not been cured within thirty (30) days after written

notice thereof from Buyer), then Buyer shall be entitled to such remedies for breach of contract as may be available at law and in equity, including, without limitation, immediate refund of the Deposit and all interest earned thereon, a suit for damages and the remedy of specific performance. In addition, if, after Seller's default, Buyer elects not to proceed with the Closing, then if Seller's default is voluntary or willful, Seller shall, on demand, reimburse Buyer for all out-of-pocket expenses incurred by Buyer in connection with this Agreement (including, without limitation, all legal and other professional fees), due diligence expenses and expenses relating to licensing.

**8.2 Seller's Remedies.** If this transaction fails to close as a result of any default on the part of Buyer which has not be cured within thirty (30) days after written notice thereof from Seller, then Seller's sole remedy shall be to terminate this Agreement and receive the Deposit, as liquidated damages, as Seller's sole and exclusive remedy at law or in equity (Seller waiving all other rights or remedies in the event of such default by Buyer and the parties hereby acknowledging that Seller's actual damages in the event of a default by Buyer under this Agreement will be difficult to ascertain, and that such liquidated damages represent the parties' best estimate of such damages).

**8.3 Other Expenses.** If this Agreement is terminated due to the default of any party, then the defaulting party shall pay any fees due to the Escrow Agent.

**ARTICLE 9. NON SOLICITATION; NON COMPETE;  
CONFIDENTIALITY SURVIVE CLOSING**

**9.1 Non-Solicitation.** In consideration of the premises contained herein, the consideration to be received hereunder and in consideration of and as an inducement to Buyer to consummate the transactions contemplated hereby, Seller hereby agrees that until the second (2<sup>nd</sup>) anniversary of the Closing Date, Seller shall not and shall not suffer or permit any of its Affiliates (including Orland J. Bisbano) to, directly or indirectly (i) solicit or attempt to induce any employee of Buyer or any Affiliate of Buyer to terminate his or her employment with Buyer or any Affiliate of Buyer; or (ii) hire or attempt to hire any employee of Buyer or any Affiliate of Buyer employed at the Facility except on an unsolicited basis at the request of such employee.

**9.2 Non-Compete.** In consideration of the premises contained herein, the consideration to be received hereunder and in consideration of and as an inducement to Buyer to consummate the transactions contemplated hereby, Seller hereby agrees that if the Closing hereunder occurs, then Seller shall not, and shall not suffer or permit any Principal or any of Seller's or Principal's Affiliates (including Orlando J. Bisbano) to, develop, construct, own, lease, acquire, manage, operate or otherwise directly or indirectly participate in any Competing Project prior to the fifth (5<sup>th</sup>) anniversary of the Closing Date, except that Orlando J. Bisbano may be employed in any capacity, including as facility administrator, by a Competing Project during such period.

**9.3 Confidentiality.** Buyer agrees that it shall not disclose to any third party any Proprietary Information learned during the Due Diligence Period or thereafter, either directly from Seller unless the Closing occurs. Buyer shall advise all Employees who

have access to Proprietary Information of the obligations contained herein. Buyer shall use such Proprietary Information solely for the purpose of evaluating its interest in acquiring the Facility unless the Closing occurs. For purposes of this section, the term "Proprietary Information" shall mean any and all information owned or possessed by Seller which Seller desires to protect as confidential, including, but not limited to, business information hardware, software, plans, and financial information, forecast models, procedures, policies, manuals or documentation, other than any Intangible Property conveyed to Buyer pursuant to the terms of this Agreement. Notwithstanding the foregoing or any other provision hereof to the contrary, the term "Proprietary Information" shall not include information which (i) is or becomes generally available to the public other than as a result of disclosure by Buyer in violation of this Agreement, (ii) was known by Buyer or any of its agents, contractors or representatives prior to its disclosure to Buyer by Seller pursuant to this Agreement, (iii) is obtained by Buyer or any of its agents, contractors or representatives from a source other than Seller, provided that such source was not known by Buyer or any of its agents, contractors or representatives to be bound by an obligation of confidentiality to Seller, or (iv) is independently developed by Buyer or any of its agents, contractors or representatives without reliance on, or the use of, any Proprietary Information disclosed to Buyer pursuant to this Agreement.

**9.4 Enforcement.** Seller and Buyer acknowledge and recognize the highly competitive nature of the senior housing industry. Seller and Buyer have each carefully considered the nature and extent of their respective restrictions set forth herein and acknowledges that the same are reasonable with respect to scope, duration and territory. It is the desire and intent of the parties that the provisions of this Article 9 be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Article 9 shall be adjudicated to be invalid or unenforceable, such provision without any action by any party shall be deemed amended to delete therefrom or to modify the provisions thereof so as to restrict (including, without limitation, a reduction in duration, geographical area or prohibited business activity) the portion adjudicated to be invalid or unenforceable, such deletion or modification to apply only with respect to the operation of such provision in the particular jurisdiction in which such adjudication is made, and such deletion or modification to be made only to the extent necessary to cause the provision as amended to be valid and enforceable. The parties hereto recognize and acknowledge that a breach by Seller or Buyer of their respective obligations under this Article 9 may cause irreparable and material loss and damage to Buyer or Seller (as the case may be) as to which Buyer or Seller (as the case may be) may not have an adequate remedy at law or in damages. Accordingly, each party acknowledges and agrees that the issuance of an injunction or other equitable remedy is an appropriate remedy for any such breach in addition to, and without limiting, any other remedies that the Buyer or Seller (as the case may be) may have at law or in equity.

## **ARTICLE 10. MISCELLANEOUS**

**10.1 Parties Bound.** Neither party may assign this Agreement without the prior written consent of the other, and any such prohibited assignment shall be void; provided, however, that Buyer may assign its rights and obligations under this Agreement without

Seller's consent to any entity in which Buyer or any Principals thereof will have an ownership interest. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties.

**10.2 Headings.** The article and paragraph headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

**10.3 Invalidity and Waiver.** If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and, to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

**10.4 Governing Law.** This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the laws of the State of Connecticut.

**10.5 Survival.** The provisions of this Agreement that contemplate performance after the Closing including, without limitation, Section 5.7, Article 6, Article 7 and Article 9, the obligations of the parties not fully performed at the Closing, and all indemnities set forth in this Agreement shall survive the Closing and shall not be deemed to be merged into or waived by the instruments of Closing.

**10.6 No Third Party Beneficiary.** This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person or entity as a third party beneficiary, decree, or otherwise.

**10.7 Entirety and Amendments.** This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Property. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

**10.8 Time.** Time is of the essence in the performance of this Agreement.

**10.9 Confidentiality.** Neither party shall make any public announcement or other disclosure of this Agreement or any information related to this Agreement to outside brokers or third parties, before or after the Closing, without the prior written consent of the other party; provided, however, that each party may make disclosure of this Agreement to its lenders, creditors, officers, employees, representatives, investors, consultants and agents as necessary or appropriate to consummate the transactions contemplated herein.

**10.10 Enforcement Expenses.** Should either party employ attorneys to enforce any of the provisions hereof, the party against whom any final judgment is entered agrees

to pay the prevailing party all reasonable costs, charges, and expenses, including attorneys' fees and costs, expended or incurred in connection therewith.

**10.11 Notices.** All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Exhibit R. Any such notices shall be either (i) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered on the date of deposit with such courier, (ii) sent by certified or regular U.S. mail, postage prepaid, in which case notice shall be deemed delivered on the date of deposit with the U.S. Postal Service, (iii) sent by facsimile, in which case notice shall be deemed delivered upon the mechanical confirmation of delivery, or (iv) sent by personal delivery, in which case notice shall be deemed delivered upon receipt or refusal of delivery. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to Buyer shall be deemed given by Buyer and notices given by counsel to Seller shall be deemed given by Seller.

**10.12 Construction.** The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and the documents to be executed at the Closing and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be applied in the interpretation of this Agreement, the documents to be delivered at Closing or any exhibits or amendments thereto.

**10.13 Calculation of Time Periods.** Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of such period is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the Commonwealth of Massachusetts, or the state in which any facility is located in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday.

**10.14 Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

**10.15 Further Assurances.** In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by either party at Closing, each party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby or to further perfect the conveyance, transfer and assignment of the Property to Buyer.

**10.16 Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**10.17 Bulk Sales.** If any applicable provisions of law require that any state or local taxation authorities be notified of the transactions contemplated herein, or if clearance is required of such authorities, each in order to permit the transfer of the Real Property as contemplated herein without liability to Buyer for any state or local taxes required to be paid or collected by Seller prior to the Closing Date, it shall be a condition precedent to the obligations of Buyer hereunder that all such notification and clearance requirements shall have complied with and the Buyer shall have received the requisite clearances and releases from further liability. Seller shall, within ten (10) days after the Effective Date make all filings necessary to obtain such clearances, and shall contemporaneously provide Buyer with copies of all such filings.

**10.18 Mutual Execution.** Until this Agreement has been duly executed by both Buyer and Seller and a fully executed copy has been delivered to each of Buyer and Seller (which may occur by facsimile transmission), this Agreement shall not be legally binding against the parties. Execution of this Agreement by Buyer shall constitute an offer to acquire the Property on the terms and conditions set forth herein and to avoid any ambiguity this Agreement supersedes any prior letters, agreements, discussions or otherwise, including but not limited to the letter of interest dated November 2, 2011, between the Buyer and Seller; but, if not executed by Seller within five (5) days after delivery by Buyer, it may be withdrawn by Buyer in its discretion at any time thereafter.

**10.19 Dispute Resolution.** Except as provided below in this Section 10.19, any controversy or claim hereunder including any arising out of or relating to the Deposit held pursuant to Section 2.2 and Section 2.3 hereof or the Indemnity set forth in Section 7.3 shall be first referred to the chief executive officers of the parties for resolution. Any such dispute that is not resolved by said chief executive officers within thirty (30) days after notice thereof (or such longer period as both parties may then agree) shall be settled by arbitration before a single arbitrator with experience in the arbitration of disputes involving health care providers. All arbitration hearings shall be held in Hartford, Connecticut. The arbitrator shall have authority to award compensatory damages and equitable relief only and no authority to award punitive damages or multiple damages.

The decision of the arbitrator shall be final and binding on the parties, and judgment confirming the arbitrator's award may be entered in any court of competent jurisdiction and shall be binding on the Escrow Agent. All costs and expenses of the arbitration proceeding shall be shared equally by the parties thereto.

Anything to the contrary herein notwithstanding, each party shall have the right to seek, before, during or after arbitration, from a court of competent jurisdiction, any provisional remedies needed to avoid irreparable harm, including, but not limited to, temporary restraining orders or preliminary injunctions. Seeking any such remedies shall not be deemed to be a waiver of either party's right to compel arbitration.

**10.20 Exhibits to this Agreement.** Any Exhibit or Schedule to this Agreement not completed as of the Effective Date shall be completed and added to this Agreement no later than fourteen (14) days prior to the end of the Due Diligence Period.

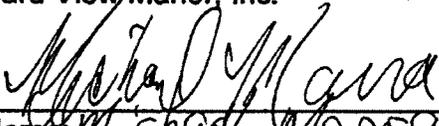
[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement on the day and year written below.

SELLER:

Orchard View Manor, Inc.

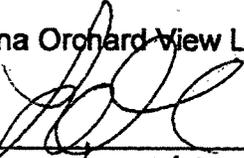
Dated: 2/6/12

By:   
Name: Michael Marra  
Title: President

BUYER:

Athena Orchard View LLC

Dated: 2/6/12

By:   
Name: Jennifer Smith  
Title: Sys Admin

**LIST OF EXHIBITS**

<b><u>Exhibit</u></b>	<b><u>Description</u></b>
A	Definitions
B	Property Information
C	Buyer Note and Individual Guaranty
D	Description of Land
E	Form of Seller Certificate
F	Vehicles
G	Seller Deliverables
H	Personal Property Owned by Michael H. Marra
I	Form of Bill of Sale
J	Form of Assignment and Assumption of Residency Agreement
K	Form of FIRPTA Affidavit
L	Intentionally Omitted
M	Occupancy
N	Service Contracts
O and P	List of Employees
Q	Environmental Reports
R	Notice Addresses
S	Excluded Assets
T	Plans and Specifications
U	Consent of Escrow Agent

## Exhibit A

### Definitions

"Affiliate" shall mean (i) as to Seller, and any Principal, or any entity that directly or indirectly is controlled by, or is under common control with Seller, or any Principal; or at least a ten percent (10%) of whose economic interest is owned, directly or indirectly, by Seller, or any Principal; and (ii) as to Buyer, any member of Buyer or any entity that directly or indirectly is controlled by, or is under common control with, Buyer or any such member or Buyer, or at least ten percent (10% of whose economic interest is owned, directly or indirectly, by Buyer or any such member of Buyer; and the term "control" means the power to direct the management of such entity through voting rights, ownership or contractual obligations.

"Buyer Note" shall mean the promissory note from Buyer to Seller in the form attached hereto as Exhibit C.

"Competing Project" shall mean any Senior Housing Facility located within (i) the non-compete area the Facility set forth on Exhibit B attached hereto, or (ii) the city or town in which the Facility is located.

"Due Diligence Period" shall mean the period expiring forty-five (45) days after the date of delivery by Seller of a certificate certifying that Seller has delivered or made available to Buyer all of the Seller Deliverables in Seller's possession or control.

"Effective Date" shall mean the date that this Agreement has been executed and delivered by all parties hereto.

"Environmental Laws" shall mean all applicable federal, state, county, municipal and other local laws governing or relating to Hazardous Materials or the environment, together with their implementing regulations, ordinances and guidelines, including without limitation, the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act.

"Escrow Agent" shall mean the Title Company.

"Excluded Assets" shall mean those assets listed on Exhibit S which are not included in the transaction.

"Facility" shall mean the senior housing facility operated by Seller set forth on Exhibit B attached hereto.

"Hazardous Materials" shall mean, without limitation, polychlorinated biphenyls, urea formaldehyde, radon gas, lead paint, radioactive matter, medical waste, asbestos, petroleum products, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas or such synthetic gas), and any substance, material, waste, pollutant or contaminant

listed or defined as hazardous, infectious or toxic under any applicable federal, state or local law.

"Improvements" shall mean all buildings, improvements, fixtures, structures, parking areas and landscaping located on or appurtenant to the Land including the single family home at 125 Tripps Land, East Providence, RI 02915.

"Intangible Property" shall mean all right, title and interest of Seller in and to all intangible personal property owned by Seller and now or hereafter used in connection with the operation, ownership, maintenance, management, or occupancy of the Facility, including, without limitation, any and all of the following: trade names and trademarks associated with the Facility, including, without limitation, the trade names set forth on Exhibit B attached hereto; the plans and specifications for the Improvements, including as-built plans; warranties, guarantees, indemnities and claims against third parties benefiting Seller; contract rights related to the construction, operation, repair, renovation, ownership or management of the Facility; pending permit or approval applications as well as existing permits, approvals and licenses (to the extent assignable); insurance proceeds and condemnation awards to the extent provided in Sections 4.2 or 4.3 of this Agreement; and books and records relating to the Facility.

"Knowledge" an individual will be deemed to have "Knowledge" of a fact or other matter if:

- (i) such individual is actually aware of that fact or matter; or
- (ii) a prudent individual could be expected to discover or otherwise become aware of that fact or matter in the course of conducting a reasonably comprehensive investigation regarding the accuracy of any representation or warranty contained in this Agreement.

Seller will be deemed to have "Knowledge" of a particular fact or other matter if Michael H. Marra or Orlando J. Bisbano (the "Listed Persons) and/or any other individual who is serving as a director or officer (or in any similar capacity) of Seller or has Knowledge of that fact or other matter as set forth in (i) and (ii) above.

"Land" shall mean, individually and collectively, the land described in Exhibit D attached hereto and is intended to include land allocated to any adjacent single family home at 125 Tripps Lane, East Providence, RI 02915 and all and singular the rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereon or in anywise appertaining to such land, including any and all mineral rights, development rights, water rights and the like; and all right, title, and interest of Seller in and to all strips and gores and any land lying in the bed of any street, road or alley, open or proposed, adjoining such land.

"Lease" shall mean and refer to any lease, license or other agreement other than residence agreements, pursuant to which any person or entity has the right to occupy or use the Real Property or any portion thereof.

"Material Adverse Effect" shall mean a material adverse effect on the business, operations, properties or condition (financial, physical, title, environmental or otherwise) of the Seller or the Facility and shall specifically include any reduction in the amount of Medicare Part B revenue.

"Permitted Exceptions" shall mean: (i) title and survey exceptions approved by Buyer pursuant to Section 3.3 of this Agreement; (ii) provisions of existing building and zoning laws, provided the same continue to permit the Land to be used as a Senior Housing Facility as presently operated without necessity of any additional special permit, variance or other discretionary permit or approval; (iii) any liens for municipal betterments assessed after the date of this Agreement; (iv) existing rights and obligations in party walls which are not the subject of written agreement; (v) such taxes for the then current year as are not due and payable on the Closing Date; and (vi) parties in possession of individual senior living units as residents only.

"Permitted Personal Property Liens" shall mean, for the Property (i) leases, license rights or restrictions incurred in the ordinary course of business which do not in any case materially detract from the value of the property subject thereto; (ii) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation and deposits securing liability to insurance carriers under self-insurance arrangements; (iii) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business; (iv) purchase money security interests in respect of (x) any vehicle being assumed by Buyer as provided herein, and (y) any new equipment in an aggregate amount not in excess of \$50,000 at any time, provided Buyer shall receive a credit against the Purchase Price in an amount equal to any such purchase money indebtedness for vehicles and new equipment assumed by Buyer.

"Personal Property" shall mean all Tangible Personal Property and Intangible Personal Property.

"Principal" shall mean for Buyer, Lawrence G. Santilli, and for Seller, Michael H. Marra.

"Property" shall mean the Real Property and the Personal Property.

"Purchase Price" shall mean Thirteen Million Dollars (\$13,000,000) subject to adjustments and prorations as set forth herein.

"Real Property" shall mean the Land and the Improvements.

"Rents" shall mean all rental income from the Real Property, including without limitation, base rent and additional rent or fees paid by residents pursuant to the Residency Agreements.

"Residency Agreements" shall mean all nursing home resident agreements or other occupancy agreements between Seller or its agents and any other person or entity with respect to the Facility.

"Senior Housing Facility" shall mean a facility (including a licensed nursing home) which provides any one or more of the following types of senior living: (i) nursing home services; (ii) independent living for seniors at which services are provided to residents for assistance with activities of daily living, (iii) assisted living for seniors or (iv) Alzheimer's/dementia care for seniors.

"Service Contracts" shall mean all service contracts and other contracts, agreements or instruments relating to the use, operation, maintenance or management of the Facility.

"Tangible Personal Property" shall mean all right, title and interest of Seller in and to all tangible personal property now or hereafter used in connection with the use, operation, maintenance or management of the Real Property, including, without limitation, the motor vehicles listed on Exhibit F attached hereto (the "Vehicles"), all tools, equipment, machinery, heating, ventilating and air conditioning units, furniture, art work, furnishings, trade fixtures, office equipment and supplies, but excluding the Excluded Assets.

"Title Company" shall mean Chicago Title Insurance Company.

**Exhibit B**

**Property Information**

<u>Facility</u>	<u>Trade Name/Address</u>	<u>Units</u>	<u>Non-Compete Area</u>
Orchard View Manor, Inc.	135 Tripps Lane East Providence, RI 02915	180 (166 licensed)	The entire state of Rhode Island
Single Family Home	125 Tripps Lane East Providence, RI 02915	N/A	N/A

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**Exhibit C**  
**Buyer Note and Guaranty**

NOTE

\$2,500,000

\_\_\_\_\_, \_\_\_\_\_,  
Dated as of \_\_\_\_\_, 2012

FOR VALUE RECEIVED, the undersigned ("Maker") promises to pay to \_\_\_\_\_ ("Holder"), at \_\_\_\_\_, or at such other place as may be designated by Holder, the principal sum of Two Million Five Hundred Thousand Dollars and 00/100 Dollars (\$2,500,000) together with interest, in arrears, on the outstanding principal amount at a rate of six percent (6.0%) (the "Note Rate").

Interest accrues as of the date of Closing and principal and interest shall be due and payable on a semi-annual basis beginning on **[November 1, 2012]** and continuing on the 1<sup>st</sup> day of **[May]** and **[November]** each year thereafter in the amount of two hundred fifty-one thousand one hundred fifty-five dollars and twenty-one cents (\$251,155.21) as set forth on Exhibit A. Interest shall accrue based on the actual number of days elapsed divided by the actual number of days in the period. The remaining principal balance and all accrued interest shall be due and payable **[May 1, 2018]**.

Maker shall have the right to prepay this Note, in whole or in part, at any time prior to demand without penalty. Any and all prepayments hereunder shall be credited first to accrued and unpaid interest, if any, and then to the unpaid principal sum.

There shall be an event of default if Maker fails to make any payment of interest or principal on this Note within fifteen (15) days from the date such payment becomes due and payable. In the event of default by the Maker hereof, all unpaid principal and, accrued but unpaid interest of this Note shall be immediately due and payable in full without any prior notice by the Holder. There shall be an event of default if Maker fails to make any payment of interest or principal on this Note within fifteen (15) days from the date such payment becomes due and payable.

ANY DELAY, FAILURE, EXTENSION, INDULGENCE OR OMISSION ON THE PART OF HOLDER IN EXERCISING ANY RIGHT HEREUNDER SHALL NOT CONSTITUTE A WAIVER OF SUCH RIGHT OR OTHER RIGHT UNDER THIS NOTE AT A LATER TIME OR IN THE EVENT OF A SUBSEQUENT DEFAULT. THE MAKER HEREBY WAIVES DILIGENCE, DEMAND, PRESENTMENT FOR PAYMENT, DENIAL, NOTICE OF DISHONOR, PROTEST, AND NOTICE OF PROTEST AND NOTICE OF ANY RENEWALS OR EXTENSIONS OF THIS NOTE AND AGREES THAT THE TIME FOR PAYMENT OF THIS NOTE MAY BE EXTENDED BY HOLDER WITHOUT AFFECTING THE MAKER'S LIABILITY THEREON.

Upon the happening of any event of default, interest shall accrue on the entire unpaid principal balance of this Note at a rate equal to the Note Rate plus two percent (2%) (the "Default Interest Rate") until the default has been cured. In addition, Maker shall pay all costs, expenses and attorneys' fees incurred by Holder in any proceeding for the

enforcement and collection of the debt evidenced hereby in any litigation or controversy arising from or connected with the foregoing and this Note.

This Note shall be governed by and construed in accordance with the laws of the State of Rhode Island without reference to the conflict of laws principles thereof. The invalidity of any portion of this Note shall not affect the enforceability of the remaining portions of this Note or any part thereof, all of which are inserted conditionally on their being valid in law, and in the event that any portion or portions contained herein shall be invalid, this instrument shall be construed as if such invalid portion or portions had not been inserted.

BORROWER HEREBY IRREVOCABLY SUBMITS AND CONSENTS TO THE NON-EXCLUSIVE JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT HAVING JURISDICTION OVER PROVIDENCE, RHODE ISLAND, FOR ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY MATTER ARISING FROM OR RELATED TO [I] THE LOAN EVIDENCED BY THIS NOTE; [II] THIS NOTE; OR [III] ANY LOAN DOCUMENT EXECUTED IN CONNECTION WITH THIS NOTE. BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT BORROWER MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING. BORROWER AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

BORROWER AGREES NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST LENDER OR ANY DIRECTOR, OFFICER, EMPLOYEE, AGENT OR PROPERTY OF LENDER, CONCERNING ANY MATTER ARISING OUT OF OR RELATING TO THIS NOTE OR ANY LOAN DOCUMENT IN ANY COURT OTHER THAN A STATE OR FEDERAL COURT HAVING JURISDICTION OVER PROVIDENCE, RHODE ISLAND.

BORROWER HEREBY CONSENTS TO SERVICE OF PROCESS BY LENDER IN ANY MANNER AND IN ANY JURISDICTION PERMITTED BY LAW. NOTHING HEREIN SHALL AFFECT OR IMPAIR LENDER'S RIGHT TO SERVE LEGAL PROCESS IN ANY MANNER PERMITTED BY LAW, OR LENDER'S RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER OR THE PROPERTY OF BORROWER OR ANY GUARANTOR IN THE COURTS OF ANY OTHER JURISDICTION.

TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY KNOWINGLY AND VOLUNTARILY WAIVES THE RIGHT TO A JURY TRIAL IN ANY ACTION, PROCEEDING OR COUNTERCLAIMS ARISING OUT OF OR RELATING TO THIS NOTE.

MAKER:

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**Exhibit A of Buyer Note and Guaranty**

Per diem rate: \$410.96					
<u>Date</u>	<u>Req. Bal.</u>	<u>Principal Pmt</u>	<u>Interest Pmt</u>	<u>Total Pmt</u>	<u>End Bal.</u>
4/1/2012					\$2,500,000.00
5/1/2012	\$2,500,000.00	\$0.00	\$12,328.77	\$12,328.77	\$2,500,000.00
11/1/2012	\$2,500,000.00	\$176,155.21	\$75,000.00	\$251,155.21	\$2,323,844.79
5/1/2013	\$2,323,844.79	\$181,439.87	\$69,715.34	\$251,155.21	\$2,142,404.92
11/1/2013	\$2,142,404.92	\$186,883.07	\$64,272.15	\$251,155.21	\$1,955,521.85
5/1/2014	\$1,955,521.85	\$192,489.56	\$58,665.66	\$251,155.21	\$1,763,032.29
11/1/2014	\$1,763,032.29	\$198,264.24	\$52,890.97	\$251,155.21	\$1,564,768.05
5/1/2015	\$1,564,768.05	\$204,212.17	\$46,943.04	\$251,155.21	\$1,360,555.87
11/1/2015	\$1,360,555.87	\$210,338.54	\$40,816.68	\$251,155.21	\$1,150,217.34
5/1/2016	\$1,150,217.34	\$216,648.69	\$34,506.52	\$251,155.21	\$933,568.64
11/1/2016	\$933,568.64	\$223,148.15	\$28,007.06	\$251,155.21	\$710,420.49
5/1/2017	\$710,420.49	\$229,842.60	\$21,312.61	\$251,155.21	\$480,577.89
11/1/2017	\$480,577.89	\$236,737.88	\$14,417.34	\$251,155.21	\$243,840.01
5/1/2018	\$243,840.01	\$243,840.01	\$7,315.20	\$251,155.21	\$0.00

## GUARANTY

In consideration of extensions of credit to Borrower (defined below) by the **[NAME OF SELLING ENTITY]** (the "Lender") pursuant to the Guaranteed Liabilities described below which will materially benefit the undersigned, the undersigned (referred to herein as the "Guarantor"), without reservation or qualification, guaranties to the Lender, its successors and assigns, full and prompt payment of the Guaranteed Liabilities.

The term "Borrower" means the following: **[NAME OF ACQUIRING ENTITY]** ("Borrower").

The term "Guaranteed Liabilities" means the obligation of Borrower to pay Lender the principal balance and all accrued interest payable under the Two Million Five Hundred Thousand Dollars (\$2,500,000) promissory note from **[NAME OF ACQUIRING ENTITY]** to **[SELLING ENTITY]** dated \_\_\_\_\_, which amounts the Guarantor covenants and agrees to pay when the same would have been due, whether by acceleration or otherwise. All Guaranteed Liabilities shall be immediately due and payable in full by the Guarantor to the Lenders, at the option of the Lenders, in the event of a default by Borrower on the Note.

The Guarantor hereby waives notice of the acceptance of this Guaranty and of any future advances and extensions or renewals thereof made in reliance hereon, and the Guarantor also waives notice of presentment, demand, dishonor, and protest of any note or other obligation of any of the Borrower to the Lenders, and any other notices of any description in connection with this Guaranty. The Guarantor also hereby waives any claim, right or remedy which the Guarantor now has or may hereafter acquire against the any of the Borrower that arises hereunder and/or from the performance by undersigned of their respective obligations hereunder including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, indemnification, or participation in any claim, right or remedy of Lenders against the Borrower or any security which Lenders now have or hereafter acquire, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise.

The liability of the Guarantor under this Guaranty is absolute and unconditional and shall not be reduced or terminated either in whole or in part by any of the following: (i) by the granting of one or more indulgences or releases to, or compromises or settlements with, or termination of any or all of any of the obligations, covenants or agreements of, any of the Borrower or any other persons who may be directly or contingently liable for the obligations of the Borrower to the Lenders, including the Guarantor, nor (ii) by any waiver by the Lenders to enforce their rights under any document, nor (iii) by any settlement, release, exchange, sale, substitution, impairment or loss of collateral for any obligations of Borrower or any other Guarantor whether or not commercially reasonable, nor (iv) by any changes in the terms of the Guaranteed Liabilities or in any other guaranty of the Guaranteed Liabilities, including but not limited to renewals, extensions beyond any applicable maturity date, accelerations, refinancings or modifications of the interest rate or any other changes in terms, manner

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or place of payment or performance of any of the Guaranteed Liabilities, nor (v) by the failure of the Lenders to provide any notice to any guarantor, nor (vi) by Lenders' failure or delay (a) to collect, protect or preserve any collateral or income therefrom, (b) to obtain, perfect or continue the perfection of any security interest in any collateral which secures the obligations of the Borrowers or any guarantor, (c) to obtain or record any mortgage, (d) to preserve any rights against other parties or to obtain or maintain any other guaranty or (e) to properly administer any of the loans to the Borrower.

This Guaranty is a guaranty of payment and not a guaranty of collection. The Lenders may immediately proceed under this Guaranty upon default of any of the Guaranteed Liabilities, or upon the filing of bankruptcy proceedings by or against any of the Borrower as described above, without first resorting to any other guaranty, collateral, or other source of payment.

The obligations of the Guarantor hereunder shall not be affected by any fraudulent, illegal, or improper act by any of the Borrower, nor by any release, discharge, or invalidation, by operation of law or otherwise, of the Guaranteed Liabilities or any of them.

This instrument shall inure to the benefit of the Lenders, their successors and assigns, shall be binding upon the heirs, successors, representatives, and assigns of the Guarantor, and shall apply to all Guaranteed Liabilities of the Borrower and any successor to the Borrower, including any successor by operation of law.

The rights and remedies of the Lenders under this Guaranty shall be cumulative and not exclusive of any rights or remedies which they would otherwise have. No delay or omission by the Lenders in asserting or exercising or enforcing any of such rights or remedies shall operate as, or constitute, a waiver thereof. No waiver by the Lenders of any of their rights or remedies or of any default or remedies under any other agreement with the Guarantor, or of any default under any agreement with any of the Borrower, or any other person liable or obligated for or on the Guaranteed Liabilities, shall operate as a waiver of any other of the Lenders' rights or remedies or of any default or remedy hereunder or thereunder. No exercise of any of the Lenders' rights or remedies and no other agreement or transaction of whatever nature entered into between the Lenders and the Guarantor, the Lenders and the Borrower, and/or the Lenders and any such other person at any time shall preclude any other exercise of the Lenders' rights or remedies. No waiver by the Lenders of any of the Lenders' rights or remedies on any one occasion shall be deemed a waiver on any subsequent occasion, nor shall it be deemed a continuing waiver. All of the Lenders' rights or remedies under this and any other agreement or transaction with the Guarantor, the Borrower, or any such other person shall be cumulative and not alternative or exclusive, and may be exercised by the Lenders at such time or times and in such order of preference as the Lenders in their sole discretion may determine.

This Guaranty may not be amended, modified or changed except by an instrument in writing signed by the Lenders and the Guarantor.

All notices and communications to the Guarantor shall be made in writing and shall be deemed to have been duly made or given upon delivery in hand or three (3) business days after the same is mailed by certified or registered mail or the next business day if notice is sent by recognized overnight carrier, to the Guarantor at the address set forth beneath the Guarantor's signature below or at such address as the Guarantor may designate in writing.

This instrument shall be construed according to and governed by the laws of the State of Rhode Island. All parties submit to the jurisdiction of the courts of the State of Rhode Island for all matters in connection with this instrument as well as for all purposes in connection with any other relationship between the parties. Any and all disputes or litigation proceedings between the parties shall be commenced in the state or federal courts located in Rhode Island and the Guarantor consents to service of process in any such suit being made upon the Guarantor by mail at the address specified in the preceding paragraph.

This instrument is intended by the parties as a final expression of this agreement of Guaranty and is intended also as a complete and exclusive statement of the terms of the agreement. No course of prior dealings between the parties, no usage of the trade, and no parol or extrinsic evidence of any nature, shall be used or be relevant to supplement or explain or modify any term used in this agreement of Guaranty.

Any determination that any provision herein is invalid, illegal, or unenforceable in any respect in any instance shall not affect the validity, legality, or enforceability of such provision in any other instance and shall not affect the validity, legality, or enforceability of any other provision contained herein.

This instrument shall remain in full force and effect until final payment of all Guaranteed Liabilities is received by the Lenders, including, without limitation, those Guaranteed Liabilities which are contingent or not then due and those which arise out of any check, draft, item, or paper.

All payments received on account of the Guaranteed Liabilities from whatever source shall be taken and applied by the Lenders toward the payment of such Guaranteed Liabilities, in such order of application and in such amounts as the Lenders may in their sole discretion, from time to time, elect; and this Guaranty shall apply to and secure any ultimate amount that shall remain owing to the Lenders. The Lenders shall have the exclusive right to determine how, when and what application of payments and credits, if any, whether derived from the Borrower, the Guarantor, or any other source, shall be made on the Guaranteed Liabilities and such determination shall be conclusive upon the Guarantor.

If any claim is made upon Lenders at any time for payment or recovery of any amount(s) or other value as may have been previously received by Lenders from any source in payment of or on account of any of the Guaranteed Liabilities and, as a result of such claim, the Lenders repay or otherwise become liable for all or any part of such claim by reason of (a) any judgment, decree or order of any court or administrative body

having competent jurisdiction, or (b) any settlement or compromise of any such claim, then in such event the Guarantor shall remain jointly and severally liable to Lenders hereunder, or the Guarantor's obligations hereunder shall be reinstated, as the case may be, for the amount so repaid or for which Lenders are otherwise liable to the same extent as if such amount(s) had never been received by the Lenders, notwithstanding any termination hereof or the cancellation of any note or other agreement evidencing any of the Guaranteed Liabilities of the Borrower.

This Guaranty remains fully enforceable irrespective of (a) any defense or counterclaim which the Borrower or any of them may assert to the underlying debt, including but not limited to failure of consideration, breach of warranty, fraud, payment, statute of frauds, bankruptcy, lack of legal capacity, statute of limitations, lender liability, accord and satisfaction, usury or any claims of offset or defenses involving the alleged invalidity, irregularity or unenforceability of all or any part of the Guaranteed Liabilities guaranteed hereunder, (b) any event or action that would, in the absence of this paragraph, result in the release or discharge of any guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guaranty, and (c) any other circumstances which might otherwise constitute a legal or equitable discharge or defense of a surety or a guarantor.

The Guarantor warrants to the Lenders that it has adequate means to obtain from the Borrower, on a continuing basis, information concerning the financial condition of the Borrower, and that they are not relying on the Lenders to provide such information, now or in the future.

THE GUARANTOR AND LENDERS MUTUALLY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY OR ANY OF THE GUARANTIED LIABILITIES OR OTHER LOAN DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONNECTION HEREWITH OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR LENDERS TO ACCEPT THIS GUARANTY AND EXTEND CREDIT TO THE BORROWER.

End of page. Signature page to follow.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty as a sealed instrument and acknowledges receipt of a copy of this Guaranty, this \_\_\_\_\_, 2012.

Witnessed by:

GUARANTOR

\_\_\_\_\_

**Exhibit D**

**Description of Land**

**125 Tripps Lane  
East Providence, RI**

That certain tract or parcel of land, together with all buildings and improvements thereon, located southwesterly of Tripps Lane, in the City of East Providence, County of Providence, State of Rhode Island, being bounded and described as follows:

Beginning at a granite bound in the westerly street line of Tripps Lane, said point being the most southeasterly corner of land now or formerly of Citizens Savings Bank and the most northeasterly corner of the parcel herein described;

thence running in a southerly direction, partly by and with the aforementioned Tripps Lane, and partly by other land now or formerly of Orchard View Manor, Inc. a distance of one hundred thirty and 29/100 (130.29) feet to the most southeasterly corner of the parcel herein described;

thence turning an interior angle of 86°-10'-00" and running in a westerly direction, bounded southerly by the aforementioned other Orchard View Manor, Inc. land, a distance of one hundred twenty-eight and 71/100 (128.71) feet to the southwesterly corner of the parcel herein described;

thence turning an interior angle of 90°-00'-00" and running in a northerly direction, bounded westerly by the aforementioned other Orchard View Manor, Inc. land, a distance of one hundred thirty and 00/100 (130.00) feet to the aforementioned Citizens Savings Bank land;

thence turning an interior angle of 90°-00'-00" and running in an easterly direction, bounded northerly by the aforementioned Citizens Savings Bank land, a distance one hundred twenty and 00/100 (120.00) feet to the point and place of beginning.

The last course making an angle of 93°-50'-00" with the first herein described course.

Containing, by calculation, 16,166 square feet (0.371 acres) of land.

**Property Address:**

125 Tripps Lane  
East Providence, Rhode Island 02915

Commonwealth Land Title Insurance Company

SCHEDULE C

File Number: 19941

Policy Number:

The Land referred to in this policy is described as follows:

That certain tract or parcel of land, together with all buildings and improvements thereon, located southerly of Tripps Lane, in the City of East Providence, County of Providence, State of Rhode Island, being bounded and described as follows:

Beginning at a point in the westerly street line of Tripps Lane, said point being the most southwesterly corner of the terminus of said Tripps Lane;

Thence running in an easterly direction, by and with the aforementioned terminus of Tripps Lane, a distance of sixty and 00/100 (60.00) feet to a corner, said corner being the most southeasterly corner of said terminus of Tripps Lane;

Thence turning an interior angle of 270°-00'-00" and running in a northerly direction, by and with the easterly street line of Tripps Lane, a distance of ninety-two and 89/100 (92.89) feet to a point;

Thence turning an interior angle of 166°-07'-10" and running in a northeasterly direction, by and with the aforementioned easterly street line of Tripps Lane, a distance of two and 93/100 (2.93) feet to a corner;

Thence turning an interior angle of 99°-17'-59" and running in an easterly direction, by and with land now or formerly of Mobil Oil Company, a distance of twenty-five and 05/100 (25.05) feet to a corner, said corner being the most northeasterly corner of the herein described parcel;

Thence turning an interior angle of 98°-39'-51" and running in a southeasterly direction, by and with the aforementioned Mobil Oil Company land, a distance of three hundred thirty-six and 77/100 (336.77) feet to a corner, said corner being the most southeasterly corner of the herein described parcel;

Thence turning an interior angle of 82°-05'-00" and running in a westerly direction, by and with the aforementioned Mobil Oil Company land, a distance of five hundred fifty and 00/100 (550.00) feet to a corner, said corner being the most southwesterly corner of the herein described parcel;

Thence turning an interior angle of 97°-55'-00" and running in a northerly direction, by and with land now or formerly of Citizens Savings Bank, a distance of three hundred thirty-seven and 50/100 (337.50) feet to a corner, said corner being the most northwesterly corner of the herein described parcel;

Thence turning an interior angle of 82°-05'-00" and running in an easterly direction, by and with the aforementioned Citizens Savings Bank land, a distance of three hundred forty-four and 19/100 (344.19) feet to a corner;

Thence turning an interior angle of 90°-00'-00" and running in a southerly direction, by and with other land now or formerly of this grantor, a distance of one hundred thirty and 00/100 (130.00) feet to a corner;

Thence turning an interior angle of 270°-00'-00" and running in an easterly direction, by and with the aforementioned grantor's land, a distance of one hundred twenty-eight and 71/100 (128.71) feet to a corner;

Thence turning an interior angle of 273°-50'-00" and running in a northerly direction, by and with the aforementioned grantor's land, a distance of thirty and 29/100 (30.29) feet to the point and place of beginning.

The last course making an angle of 90°-00'-00" with the first herein described course.

ALTA Loan Policy  
Exhibit A

(19941.PFD/19941/10)

**SCHEDULE C**  
**(Continued)**

**File Number: 18941**

**Policy Number:**

**Meaning and intending to describe the premises conveyed by Deeds recorded in Book 983 at Pages 279 and 283.**

**For Reference Only  
138 Tripps Lane  
East Providence, RI  
Map 408, Block 8, Lot 1**

**ALTA Loan Policy  
Exhibit A**

**(18941.PFD/18941/18)**



**Exhibit E**

**Form of Seller Certificate (Employees Hired)**

Seller hereby certifies that the attached list of employees showing wages and benefits, including accrued vacation and other paid time off due such employee is accurate and complete.

ORCHARD VIEW MANOR, INC.

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

Its:

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**Exhibit F**

**Schedule of Vehicles**

Ford '01 Wheelchair Van	Owned
Ford '09 Wheelchair Van	Paying on Loan
Mercedes '11	Lease, will not transfer to Buyer

## **Exhibit G**

### **Seller Deliverables**

- 1 All title insurance policies or other evidence of title, together with copies of all encumbrances, easements and restrictions and other matters referenced therein or otherwise affecting the property.
- 2 Current ALTA survey.
- 3 Copies of real estate tax bills and other municipal, county, state or other assessments for current and up to two prior years.
- 4 Evidence of connection and operating of all gas, water, electric, sewer and other utility services (may be shown of survey). Copies of utility invoices for prior twelve months.
- 5 All building and occupancy permits and licenses and all other governmental permits, licenses and approvals and notices of violation. This should include zoning opinions and other evidence of compliance with zoning (use, building dimensions, parking, loading and access), variances, special permits, site plan approvals, subdivision, building code, wetlands, curb cuts, historic regulations, environmental and similar land use laws and regulations as well as operational licenses for the facility.
- 6 All plans and specifications prepared in connection with the property including as-built plans, site plans, floor plans and model unit plans.
- 7 All leases, license agreements or similar agreements for use and occupancy allowing any lessees or third parties to use or occupy any portion of the property, together with all amendments, notices, estoppel certificates or agreements or documentation regarding security deposits.
- 8 All environmental reports on the property, including Phase I reports, Phase II reports; re: air quality, asbestos, lead; all logs of borings and testing wells and test results on the property. Any notices, citations or correspondence to or from the DEP, DEQE, local, state or national agencies; all environmental opinions on the property.
- 9 Property condition reports (including any PCAs required by HUD) including roof study and any other engineering or structural studies performed on the property over the past five (5) years.
- 10 Any existing geotechnical, engineering, ADA or other reports or documentation regarding the status of the land and structures and the mechanical, electrical, utility and other building systems.

- 11 A list of all personal property and equipment used in the operation and management of the property and included in the sale, including all on site vehicles.
- 12 All management contracts or other service agreements regarding maintenance or operation of the property. Agreements to include: elevator maintenance, landscaping, snow removal, fire alarm systems, and all other service agreements or contracts related to the property.
- 13 Copies of all warranties of guarantees for HVAC, roof, elevators and equipment.
- 14 Aerial photographs (if available).
- 15 List of all outstanding litigation.

#### Financial Due Diligence

- 16 Current Occupancy Report.
- 17 Current listing of ancillary revenue utilization and charges.
- 18 Current year capital budget.
- 19 Capital expenditure recap for last two years.
- 20 [Current operating budgets broken down by month, including detailed staffing schedules.
- 21 Current month and prior 12 months detailed internal operating statements.
- 22 Staffing patterns by month for past two years including hours by position, wages by position and wage totals.
- 23 Medicare Part B billing records (including all detail) and any other ancillary billing records (including all detail) for the past twenty-four (24) months.

#### Operations Due Diligence

- 24 Standard form and all residency agreements including any modifications, addendum's attachments and Resident Handbooks or House Rules.
- 25 [Incident reports for the prior one year.]
- 26 Outline of existing benefits for all employees (including health, vacation, 401k etc.).
- 27 Current site organizational chart and job descriptions.

- 28 Prior two years inspection reports and correspondence from licensing agencies; including department of health, state licensing/certification and all other regulatory agencies.
- 29 All service agreements related to the operations, including but not limited to pharmacy, beauty shop, transfer, and medical services.

#### Information Systems

- 30 An inventory of computers, hardware, software applications per community and home office.
- 31 Outline payroll process to include pay periods, process, vendors, inventory of time clocks, etc.

#### Marketing & Sales

- 32 All marketing materials including collaterals, schedule of fees, current and past one-year ads, brochures, newsletters, direct mailings and disclosure statements.
- 33 24-month occupancy trend on a monthly basis or from opening to the present.
- 34 Market feasibility studies; demographics, target markets, etc.

#### Insurance Due Diligence

- 35 General and Professional Liability.
- 36 Statement of property values by location.
- 37 Construction, protection and exposure information by property.
- 38 Vehicle schedule.
- 39 Workers Compensation remuneration, by location, by classification.
- 40 Copy of the most recent Workers Compensation experience modification and accompanying worksheets.
- 41 Detailed descriptions of all open and closed claims over \$25,000 in the last five years (minimum).
- 42 Most recent State Surveys including re-visits and compliance letters.
- 43 Admission Material and Agreements.
- 44 Copy of all Licenses.

- 45 Contracts with Vendors.
- 46 Copy of Safety Program.

Exhibit H

PERSONAL PROPERTY OWNED BY MICHAEL H. MARRA

NONE

Exhibit I

BILL OF SALE AND GENERAL ASSIGNMENT

THIS BILL OF SALE AND GENERAL ASSIGNMENT (this "Assignment") is made as of the \_\_\_ day of \_\_\_\_\_, 2012 (the "Transfer Date"), by and between \_\_\_\_\_, a \_\_\_\_\_ ("Assignor"), and \_\_\_\_\_, LLC, a \_\_\_\_\_ limited liability company ("Assignee").

A. Assignor and certain affiliates thereof, as seller, and Assignee, as buyer, entered into that certain Purchase and Sale Agreement dated as of \_\_\_\_\_, 2012 (the "Purchase Agreement") in connection with, inter alia, that certain senior housing facility commonly known as \_\_\_\_\_, located in \_\_\_\_\_ (the "Facility").

B. Assignee's rights under the Purchase Agreement with respect to the Facility have been assigned to Assignee pursuant to an assignment agreement by and between Benchmark and Assignee of even date herewith.

C. Pursuant to the Purchase Agreement, Assignor has agreed to assign, transfer and convey all of its rights, title and interest in, to and under the Personal Property with respect to the Facility to Assignee.

D. Pursuant to the Purchase Agreement, Assignor has agreed to assign, and Assignee agreed to assume, all of Assignor's rights, title, interest, obligations and liabilities in, to and under the contracts and agreements with respect to the Facility set forth on Exhibit B attached hereto (collectively, the "Contracts").

AGREEMENT

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

1. Personal Property. Assignor hereby sells, assigns, transfers and conveys unto Assignee all of Assignor's rights, title and interest in, to and under all Personal Property, including, without limitation, (i) all trade names and trademarks associated with the Facility, and (ii) all vehicles and equipment listed on Exhibit A attached hereto, subject only to the Permitted Personal Property Liens, as is, where is and without warranty, express or implied, of merchantability or fitness for a particular purpose,

except as set forth in the Purchase Agreement, TO HAVE AND TO HOLD all of said Personal Property unto Assignee, its successors and assigns, to its own use forever.

2. Assignment of Contracts. Assignor hereby assigns to Assignee all of Assignor's rights, title and interests in, to and under the Contracts, and Assignee hereby assumes Assignor's obligations under the Contracts accruing on or after the Transfer Date.

3. Indemnity by Assignor. Assignor agrees to indemnify, defend and hold Assignee harmless from and against any and all losses, costs, claims, damages, liabilities and expenses, including, without limitation, reasonable attorneys' fees and expenses, accruing prior to the Transfer Date relating to the Personal Property or the Contracts.

4. Indemnity of Assignee. Assignee agrees to indemnify, defend and hold Assignor harmless from and against any and all losses, costs, claims, damages, liabilities and expenses, including, without limitation, reasonable attorneys' fees and expenses, accruing on or after the Transfer Date relating to the Personal Property or the Contracts.

5. Prevailing Party. In the event of any legal or equitable proceeding to enforce any of the terms or conditions of this Assignment, or any alleged disputes, breaches, defaults or misrepresentations in connection with any provision of this Assignment, the prevailing party in such proceeding shall be entitled to recover its reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and costs of defense paid or incurred in good faith.

6. Binding Effect. This Assignment shall inure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

7. Severability. If any provision of this Assignment as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Assignment, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Assignment as a whole.

8. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Assignment to physically form one document.

9. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings given to such terms in the Purchase Agreement.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**ASSIGNOR:**

\_\_\_\_\_

a \_\_\_\_\_

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

a \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ASSIGNEE:**

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit J

**ASSIGNMENT AND ASSUMPTION OF LEASES AND  
RESIDENCY AGREEMENTS**

THIS ASSIGNMENT AND ASSUMPTION OF LEASES AND RESIDENCY AGREEMENTS (this "Assignment") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2012 (the "Transfer Date"), by and between \_\_\_\_\_, a \_\_\_\_\_ ("Assignor"), and \_\_\_\_\_, LLC, a Delaware limited liability company ("Assignee").

A. Assignor and certain affiliates thereof, as seller, and \_\_\_\_\_ ("Assignee"), as buyer, entered into that certain Purchase and Sale Agreement dated as of \_\_\_\_\_, 2012 (the "Purchase Agreement") in connection with, inter alia, that certain senior housing facility commonly known as \_\_\_\_\_, located in \_\_\_\_\_ (the "Facility").

B. Assignee's rights under the Purchase Agreement with respect to the Facility have been assigned to Assignee pursuant to an assignment agreement by and between Benchmark and Assignee of even date herewith.

C. Pursuant to the Purchase Agreement, Assignee has agreed to assign, and Assignee has agreed to assume, all of Assignor's rights, title, interest, obligations and liabilities in, to and under the leases and residency agreements in connection with the Facility set forth on Exhibit A attached hereto (collectively, the "Residency Agreements").

AGREEMENT

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

(A) Assignment. Assignor hereby assigns, transfers, sets over and conveys to Assignee all of Assignor's rights, title and interest in, to and under the Residency Agreements accruing from and after the Transfer Date, including, without limitation, all security deposits and prepaid rent with respect thereto.

(B) Assumption. Assignee hereby assumes and agrees to perform all of Assignor's obligations under the Residency Agreements accruing from and after the Transfer Date.

(C) Indemnity by Assignor. Assignor agrees to indemnify, defend and hold Assignee harmless from and against any and all losses, costs, claims, damages, liabilities and expenses, including, without limitation, reasonable attorneys' fees and expenses, accruing prior to the Transfer Date relating to the Residency Agreements.

(D) Indemnity of Assignee. Assignee agrees to indemnify, defend and hold Assignor harmless from and against any and all losses, costs, claims, damages, liabilities and expenses, including, without limitation, reasonable attorneys' fees and expenses, accruing on or after the Transfer Date relating to the Residency Agreements.

(E) Prevailing Party. In the event of any legal or equitable proceeding to enforce any of the terms or conditions of this Assignment, or any alleged disputes, breaches, defaults or misrepresentations in connection with any provision of this Assignment, the prevailing party in such proceeding shall be entitled to recover its reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and costs of defense paid or incurred in good faith.

(F) Binding Effect. This Assignment shall inure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

(G) Severability. If any provision of this Assignment as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Assignment, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Assignment as a whole.

(H) Counterparts. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Assignment to physically form one document.

(I) Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings given to such terms in the Purchase Agreement.

IN WITNESS WHEREOF, Assignor and Assignee have each executed this Assignment as of the date first written above as a sealed instrument.

ASSIGNOR: \_\_\_\_\_,

a \_\_\_\_\_

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

Its:

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ASSIGNEE:

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit K**

**FIRPTA Affidavit**

Section 1445 of the Internal Revenue Code of 1986, as amended, provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the Transferee (hereinafter defined) that withholding of tax is not required upon the disposition of a United States real property interest by \_\_\_\_\_, a \_\_\_\_\_ (the "Transferor") to \_\_\_\_\_, a \_\_\_\_\_ (the "Transferee"), the undersigned, being first duly sworn upon oath, does hereby depose and say, and does hereby certify the following on behalf of the Transferor:

- 1 The undersigned is the \_\_\_\_\_ of the Transferor and is familiar with the business of the Transferor;
- 2 The Transferor is not a foreign person; that is, the Transferor is not a nonresident alien, a foreign corporation, foreign partnership, foreign trust or foreign estate (as all such terms are defined in the Internal Revenue Code of 1986, as amended, and United States Treasury Department Income Tax Regulations in effect as of the date hereof);
- 3 The Transferor is a corporation duly organized, validly existing and in good standing under the laws of the State of \_\_\_\_\_;
- 4 The Transferor's United States employer identification number is \_\_\_\_\_;
- 5 The Transferor's office address and principal place of business is \_\_\_\_\_; and
- 6 This certificate and affidavit is made to induce the Transferee to consummate the transactions contemplated by the Transferor and Transferee.

The Transferor understands that this affidavit and certification may be disclosed to the United States Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, the undersigned declares that he has examined this affidavit and certificate, and to the best of the undersigned's knowledge and belief, it is true, correct and complete. The undersigned further declares that he has authority to sign this affidavit and certificate on behalf of the Transferor.

This affidavit and certificate is executed and delivered as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
a \_\_\_\_\_

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



**Exhibit M**

**Occupancy**

Orchard View Manor

Census Days by Payor

2010-2011

	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Total	Total %
Medicare	287	324	410	377	333	357	471	408	375	377	289	316	4324	7.72%
Private	335	288	385	447	463	335	371	442	448	438	392	518	4862	8.68%
Hospice	313	214	187	197	220	250	556	284	285	229	167	205	2794	4.99%
United	98	73	133	136	146	133	296	102	93	158	106	191	1552	2.77%
Veterans	89	113	177	114	93	90	200	62	60	62	60	62	1047	1.87%
Medicaid	3150	2879	3214	3160	3224	3089	3153	3193	3090	3196	3204	3207	37769	67.39%
Blue Chip	159	237	260	230	257	148	329	164	240	274	12	269	2719	4.85%
Evercare	114	98	88	25	55	59	131	69	60	68	12	71	795	1.42%
Other	10	0	0	0	24	22	0	24	0	3	30	26	183	0.33%
Total	4555	4226	4854	4697	4815	4493	4803	4748	4651	4805	4533	4865	56045	100%
% Occupancy	88.5%	90.9%	94.3%	94.3%	93.6%	90.2%	93.3%	92.3%	93.4%	93.4%	91.0%	94.5%	92.5%	

	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Total	Total %
Medicare	320	260	305	338	365	301	347	401	438	391	351	215	4032	7.19%
Private	562	498	432	389	451	404	535	464	405	419	455	490	5504	9.81%
Hospice	188	229	353	341	355	370	793	352	361	428	419	440	4172	7.44%
United	143	80	67	80	135	157	337	164	138	152	150	137	1555	2.77%
Veterans	62	56	67	98	149	124	266	147	125	97	60	101	1238	2.21%
Medicaid	3265	2890	3161	2863	3072	2889	2916	2940	2820	2971	2941	3078	35806	63.83%
Blue Chip	193	202	323	303	226	316	678	268	223	145	107	152	2745	4.89%
Evercare	156	175	112	164	67	88	189	41	19	13	23	37	959	1.71%
Other	26	0	8	6	0	15	1	0	0	0	26	6	88	0.16%
Total	4915	4350	4828	4582	4820	4664	4790	4777	4529	4616	4532	4656	56099	100%
% Occupancy	95.5%	94.4%	93.8%	92.0%	93.7%	93.7%	93.1%	92.8%	90.9%	89.7%	91.0%	90.5%	92.6%	

**Exhibit N**  
**Service Contracts**

Orchard View Manor Ancillary Contracts

Provider	Type of Service	Start Date	End Date	Term	Automatic Renewal/	Out Clause
Omnicare	pharmacy	9/4/2011	9-31-2013	2 years	Y / 1 year	30 Day
Therapy Resources Management	rehab	1/1/2006		1 Yr	Y / 1 Year	60 day
Infusion Resources	iv	1/1/2012		1 yr	N	
East Side Clinical Lab	lab	12/8/1998		1 yr	Y / 1 Year	30 day
Mobilex	xray	1/1/2004		1 yr	Y / 1 Year	30 day
Healthcare Services Group Inc.	Housekeeping	3/1/2001	none			90 day
KP Systems	IT	1/1/2012	12/31/2012		1 N	None
Sigmacare	eMAR	10/20/2008				None
Miriam	psych	5/10/2011	5/31/2012	1 yr	Y	30 days
Accumed	Software	9/1/2005	none			none
Sigmacare	License	1/1/2009	none			none
Sullivan and Co.						
Thysson Krupp						
Simplex Grinnell						
Blue Cross						
John Hancock						

**Orchard View Manor Maintenance Contracts**

<b>Provider</b>	<b>Type of Service</b>	<b>Start Date</b>	<b>End Date</b>	<b>Term</b>
KP Systems	IT			
Sheila Mulcahy	beauty & barber			
Stericycle	rubbish removal			
Glacial Energy	electric			
MetroMedia	gas			
Lightyear	telephone			
Signet	Cable TV			
ADT	security (storage)			
Healthcare Services	housekeeping			

DEPT #	POSITION	LAST NAME	FIRST NAME	HOURS PER PAY PERIOD	RATE OF PAY
	<b>Total Laundry</b>			<b>210.5</b>	
899	COOK	O'RILEY	RAYMOND	37.5	\$ 16.20
899	DIETARY	LUKIN	JILL	5	\$ 9.80
899	DIETARY	JOHNSON	JOSHUA	27	\$ 7.75
899	DIETARY	BORGES	KENNY	20	\$ 8.50
899	DIETARY	OLIVER	RYAN	37.5	\$ 8.50
899	COOK	MONIZ	JENNIFER	37.5	\$ 14.75
899	DIETARY	HABIB	ELAINE	37.5	\$ 14.30
899	DIETARY	MARSHALL	STEVEN	25	\$ 9.00
899	DIETARY	CARRIER	CHRISTOPHE	20	\$ 7.75
899	DIETARY	DORASAIN	MIRLANDA	16	\$ 7.75
899	DIETARY	LOPEZ	CHELSEA	20	\$ 7.75
899	DIETARY	KENNEDY	ROBERT	37.5	\$ 9.90
899	DIETARY	MORIN	ROBERT	37.5	\$ 10.95
899	DIETITIAN	SMITH	MILDRED	30	\$ 27.35
899	COOK	OLIVER	EDWARD	37.5	\$ 11.60
899	COOK	STANZIONE	HORACE	37.5	\$ 20.85
899	DIETARY	GONCALVES	DIVON	27	\$ 8.00
899	DIETARY	DULAC	JOHN	5	\$ 9.70
899	DIETARY	PERIQUITO	JORDAN	20	\$ 8.00
899	DIETARY	MACDONALD	SAMANTHA	5	\$ 9.75
899	DIETARY	BRADLEY	EVAN	37.5	\$ 9.50
899	DIETARY	VIEIRA	TYLER	20	\$ 7.75
899	DIR. OF FOOD SERVICE	LADISH	JOHN	37.5	\$ 31.28
899	DIETARY	CONTOIS	TED	35	\$ 8.50
899	DIETARY	VIEIRA	ALEXIS	15	\$ 7.75
899	DIETARY	LUKIN	JON	15	\$ 7.75
899	DIETARY	CANEJO	MARK	20	\$ 8.50
899	DIETARY	RICHARDS	AMANDA	37.5	\$ 10.45
899	COOK	SERBST	GERALD	0	\$ 19.00
	<b>Total Dietary</b>			<b>737.5</b>	
901	ACTIVITIES	CORVI	JESSICA	37.5	\$ 10.50
901	ACTIVITIES	BLUNT	KATHRYN	15.5	\$ 10.80
901	DIR. OF ACTIVITIES	FILLION	KAREN	30	\$ 12.60
901	ACTIVITIES	RAINVILLE	DONNA	0	\$ 12.35
901	ACTIVITIES	POISSANT	PATRICIA	37.5	\$ 14.45
	<b>Total Activities</b>			<b>120.5</b>	
902	SOCIAL SERVICE	VIANA	COLLEEN	25.5	\$ 26.00
902	DIR. OF SS	QUEENAN	MARY	37.5	\$ 30.77
902	SOCIAL SERVICE	CORNEAU	DONNA	18.5	\$ 23.90
902	SOCIAL SERVICE	LAMANUZZI	DANIELLE	18.5	\$ 25.30
	<b>Total Social Services</b>			<b>100</b>	

DEPT #	POSITION	LAST NAME	FIRST NAME	HOURS PER PAY PERIOD	RATE OF PAY
500	CNA/ACG	PLANTE	LORETTA	37.5	\$ 14.90
500	CNA	CHEICK	KADIATU	37.5	\$ 13.00
500	CNA	WARD	KRISTA	37.5	\$ 13.20
500	CNA	MCGILL	NELLY	37.5	\$ 13.95
500	CNA	BISONO	AMALIA	37.5	\$ 13.00
500	CNA	GOLAFALE	WHAYEE	37.5	\$ 12.60
500	CNA	VALDEZ	AUDRIS	37.5	\$ 13.20
500	CNA	LOMBARD	TIANNA	37.5	\$ 13.20
500	CNA	MAKOR	CHARLENE	37.5	\$ 12.25
500	CNA	ZOTTOLA	MONICA	37.5	\$ 15.45
500	CNA	TEDESCHI	ASHLYNN	30	\$ 12.60
500	CNA	HASKELL	ASHLEY	20.5	\$ 13.00
500	CNA	GOMEZ	MERCEDES	37.5	\$ 12.60
500	CNA	RUSSELL	ICEY	37.5	\$ 12.60
500	CNA	DASILVA	MELISSA	37.5	\$ 13.60
	<b>Total C.N.A.</b>			<b>3074.5</b>	
501	STAFFING	VIEIRA	SHERRY	37.5	\$ 16.90
501	NSG. CLERICAL	MARCOTRIGIANO	GAIL	37.5	\$ 15.85
	<b>Total Nursing Clerical</b>			<b>75</b>	
502	CMT	ADEWUSI	OLUFUNMILO	37.5	\$ 15.80
502	CMT	OREDIPE	PETER	15	\$ 14.50
502	CMT	BARCO	COMFORT	37.5	\$ 15.90
502	ACG	CAVALLARO	DIANE	37.5	\$ 17.00
502	CMT	RIVERA	CLARISEL	23.5	\$ 14.10
502	CMT	GRAJEDA	LUIS	30	\$ 14.50
502	CMT	AMARAL	JESSICA	0	\$ 14.50
502	ACG	OGUNDOLANI	ADEOLA	37.5	\$ 17.45
502	CMT	MELLO	COLLEEN	30	\$ 14.85
502	ACG	SWINDELL	DEBRA	37.5	\$ 16.40
502	ACG	PRAY	BARBARA	37.5	\$ 17.00
	<b>Total CMT</b>			<b>323.5</b>	
600	PAINTER	PIQUETTE	GEORGE	22.5	\$ 9.80
600	DIR. OF MAINTENANCE	NADROWSKI	BENJAMIN	37.5	\$ 25.07
600	MAINTENANCE	LOPEZ	PAUL	37.5	\$ 17.40
600	TRANSPORT	GAGNON	THOMAS	37.5	\$ 15.00
	<b>Total Maintenanc</b>			<b>135</b>	
800	LAUNDRY	LOPEZ	ANA	37.5	\$ 8.55
800	LAUNDRY	CRUZ	MERCEDES	37.5	\$ 11.10
800	LAUNDRY	BROWN	LADY	37.5	\$ 7.75
800	LAUNDRY	MARQUES	ALICE	37.5	\$ 8.25
800	LAUNDRY	MOAVERO	SHAREE	23	\$ 7.50
800	LAUNDRY	DAVID	ABEGAIL	37.5	\$ 8.00

DEPT #	POSITION	LAST NAME	FIRST NAME	HOURS PER PAY PERIOD	RATE OF PAY
500	ACG	MONIZ	ELAINE	37.5	\$ 15.25
500	CNA/CMT	BASS	DONNA	37.5	\$ 15.00
500	CNA	MARTINEZ	MARIA	37.5	\$ 14.10
500	CNA	DANIEL	REBECCA	37.5	\$ 13.00
500	CNA	BONILLA	GLORYNETH	37.5	\$ 13.60
500	ACG	PERRON	KATIE	37.5	\$ 15.50
500	CNA	HARRIS	SHAYLENE	30	\$ 13.00
500	CNA	BELDEH	SARAH	37.5	\$ 13.60
500	CNA	MARQUEZ	TELMA	37.5	\$ 13.00
500	CNA	ETUKE	SOLANGE	37.5	\$ 12.25
500	CNA	EVORA	NADIA	0	\$ 13.00
500	CNA	SOLARES	LOURDES	37.5	\$ 13.00
500	CNA	CABRAL	THERESA	37.5	\$ 14.10
500	CNA	ASTACIO	GENESIS	30	\$ 12.60
500	CNA	TOWEH	PLASCER	37.5	\$ 12.60
500	CNA	LEE	ALLISON	23	\$ 12.60
500	RESTORATIVE AIDE	TARLUE	AJUAH	37.5	\$ 15.90
500	CNA	CABRAL	ANA	37.5	\$ 13.20
500	CNA	GEMMA	EMILY	37.5	\$ 15.00
500	CNA	DUCLAW	ROSEANNA	37.5	\$ 12.60
500	CNA/ACG	GAMA	MARY	37.5	\$ 15.95
500	CNA	LOPES	ISAURA	37.5	\$ 15.45
500	CNA	ROSE	JAQUELINE	37.5	\$ 12.60
500	CNA	MUELLER	JAMIE	37.5	\$ 14.10
500	CNA	SARTOE	DEBORAH	37.5	\$ 13.60
500	CNA/CMT/RA	PAYE	SUSANNA	37.5	\$ 13.70
500	CNA	ROSA	BEATRIZ	37.5	\$ 15.60
500	CNA	TAHYOR	UTOPIA	37.5	\$ 13.20
500	CNA	GONCALVES	CHANTEL	30	\$ 12.60
500	CNA	ST. JUSTE	SANERIA	23	\$ 15.45
500	CNA	DOUGLAS	CHARLENE	37.5	\$ 13.00
500	CNA	BRAGA	MATTHEW	37.5	\$ 12.25
500	CNA	HARRISON	GAIL	37.5	\$ 14.70
500	CNA	NIMMO-POWELL	TENNEH	37.5	\$ 13.70
500	RESTORATIVE AIDE	DELGADO	KRISTINA	37.5	\$ 13.85
500	CNA	FANNA	ANNA	30	\$ 13.00
500	CNA	LAMOUREUX	SHANNON	30	\$ 12.60
500	CNA	LYNCH	KELLY	37.5	\$ 14.75
500	CNA	RAINVILLE	DEBORAH	0	\$ 13.00
500	CNA	TAVARES	MELANIE	37.5	\$ 15.35
500	CNA	OUELLETTE	CHRISTINE	37.5	\$ 12.60
500	CNA/RA	CANEJO	MARIA	37.5	\$ 15.60
500	CNA	COOKINHAM	TINA	37.5	\$ 14.40
500	CNA/CMT	SULLIVAN	BARBARA	37.5	\$ 14.30
500	CNA	LIRIANO	MARIA	37.5	\$ 13.35
500	CNA/ACG	STEVENS	JENNIFER	37.5	\$ 15.95

DEPT #	POSITION	LAST NAME	FIRST NAME	HOURS PER PAY PERIOD	RATE OF PAY
400	LPN	CAISSE	SUSAN	30	\$ 28.40
400	LPN	NGANGA	PAULINE	0	\$ 28.90
400	LPN	MORIN	MARK	37.5	\$ 26.80
400	LPN	HEATON	KATHLEEN	33.75	\$ 26.00
400	LPN	BARROS	ARLENE	37.5	\$ 26.00
400	LPN	CHERENFANT JUMA	CAROLINE	8	\$ 26.00
400	LPN	SILVA	DEBORAH	30	\$ 28.95
400	LPN	PEZZULLO	RICHARD	37.5	\$ 27.60
400	LPN	MILLARD	SHANNON	37.5	\$ 25.85
400	LPN	KAAN	SARA	37.5	\$ 24.50
400	CASE/SA MANAGER	HARWOOD-SHADE	ALI	37.5	\$ 28.85
400	LPN	THOMASIAN	ROZANNE	37.5	\$ 24.50
400	LPN	ENRIGHT	ANNE	0	\$ 28.90
	<b>Total LPN</b>			<b>514.25</b>	
401	MDS	BAHTUOH	DENICE	37.5	\$ 28.00
	<b>Total LPN-Admin</b>			<b>37.5</b>	
500	CNA	PAYE	AGNES	37.5	\$ 12.60
500	CNA	CABRAL	ALIANA	37.5	\$ 13.35
500	CNA	STEWART	KONA	37.5	\$ 14.40
500	CNA	SABATINI	HOLLY	37.5	\$ 12.60
500	CNA	BOE	MONA	37.5	\$ 13.35
500	CNA	ARRUDA	JESUINA	37.5	\$ 13.70
500	CNA	MOAVERO	SADE	30.5	\$ 13.35
500	CNA	EUGENIO	CLARISSA	22.5	\$ 12.60
500	CNA	GREENLEE	LEWLA	37.5	\$ 13.60
500	CNA	SHERIFF	TETE	22.5	\$ 13.00
500	CNA	DALUZ	STELLA	37.5	\$ 13.60
500	CNA	CHASE	DEB	37.5	\$ 14.30
500	CNA	COSTA	JENNA	30	\$ 12.60
500	CNA	GIGLIO	GINA	37.5	\$ 13.00
500	CNA	BROWNE	HAWA	22.5	\$ 13.70
500	CNA	SANTOS	TIANA	37.5	\$ 12.25
500	CNA	AM	BRIANNA	37.5	\$ 12.60
500	CNA	BEJIDE	IRENE	37.5	\$ 13.00
500	CNA	GIGLIO	AMANDA	37.5	\$ 13.00
500	CNA/RA	ZITO	DARLENE	37.5	\$ 17.00
500	CNA	COUTO	MICHELLE	37.5	\$ 12.60
500	CNA/RA	RUSSELL	WINIFRED	37.5	\$ 13.95
500	CNA	VIEIRA	JOANNE	37.5	\$ 12.60
500	CNA	CAIRO	PATRICIA	37.5	\$ 14.40
500	CNA	DICKSON	ROCHELLE	37.5	\$ 12.25
500	CNA	VANALLEN	MIKAILA	0	\$ 13.00
500	RESTORATIVE AIDE	GILES	KATHLEEN	37.5	\$ 16.95
500	CNA	MEDEIROS	EMANUELA	37.5	\$ 15.45

**Exhibits O and P**

**List of Employees**

DEPT #	POSITION	LAST NAME	FIRST NAME	HOURS PER PAY PERIOD	RATE OF PAY
200	ADMIN SECRETARY	LEWIS	MICHELLE	22.5	\$ 14.30
200	DIR OF SUPPORT SERV.	WOLCOTT	MARIANNE	37.5	\$ 32.27
200	MEDICAL RECORDS	ENOS	BRANDI	37.5	\$ 15.45
200	ACCOUNTS RECEIVABLE	CAVACO	MARIA	37.5	\$ 16.10
200	RECEPTIONIST	TESTA	LILLIAN	22.5	\$ 12.10
200	RECEPTIONIST	RICHARDSON	PATRICIA	12	\$ 10.15
200	DIR. OF FINANCES	MATOS	SANDY	37.5	\$ 26.77
200	ACCOUNTS RECEIVABLE	DACOSTA	CONNIE	37.5	\$ 15.80
200	ADMISSIONS	DONNELLY	CATHERINE	37.5	\$ 27.20
200	PURCHASING	SPANGLER	MARY	37.5	\$ 14.80
200	DIR. OF HR	BENOIT	PAMELA	37.5	\$ 30.80
200	RECEPTIONIST	COELHO	DEBRA	37.5	\$ 14.50
200	RECEPTIONIST	DALLAIRE	MARGRIT	12	\$ 10.10
200	CHAPLAIN	CURRIE	SUSANNAH	16	\$ 22.50
200	ACCOUNTS PAYABLE	MURPHY	ALBERTA	37.5	\$ 21.00
200	ACCOUNTS PAYABLE	SIMONEAU	PAMELA	20	\$ 10.00
	<b>Total Administrative</b>			<b>480</b>	
300	SUPERVISOR	NARY	JULIANN	37.5	\$ 29.00
300	RN	SMITH	REBECCA	30	\$ 32.60
300	RN	LEFFINGWELL	JANICE	37.5	\$ 31.40
300	RN	REYNOLDS	CYNTHIA	37.5	\$ 32.60
300	RN	STONE	THERESA	37.5	\$ 28.70
300	RN	ARVIDSON	TESS	37.5	\$ 29.75
300	RN	CAMARA	DEBBIE	15	\$ 29.00
300	RN	LUTSKIY	JULIA	37.5	\$ 29.75
300	RN	JOHNSON	SHIRLEY	0	\$ 31.90
300	RN	JARDIN	ROXANNE	37.5	\$ 29.00
300	RN	KUSI	MARTHA	30	\$ 28.10
300	RN	MURZI	AMBER	37.5	\$ 29.60
300	RN	HARRIS	DAVID	30.5	\$ 32.60
300	RN	O'BRIEN	MALLORY	37.5	\$ 29.00
300	RN	DEAN	SUSILEE	37.5	\$ 32.60
	<b>Total RN</b>			<b>480.5</b>	
301	ADNS	MOMOH	CYNTHIA	37.5	\$ 33.80
301	DNS	BEAUREGARD	JAMIE	37.5	\$ 41.03
301	STAFF DEVELOPMENT	RICHARDSON	LESLIE	37.5	\$ 30.00
301	MDS	RODERICK	JAMIE	37.5	\$ 29.00
301	MDS	STEPHANOPOULOS	CYNTHIA	30	\$ 32.55
	<b>Total RN-Admin</b>			<b>180</b>	
400	LPN	BELANCE	MARIE	37.5	\$ 26.00
400	LPN	NEWMAN	KATHLEEN	37.5	\$ 26.00
400	LPN	NADROWSKI	STACEY	37.5	\$ 28.20
400	LPN	TEBANO	PAULA	37.5	\$ 26.00



SECOND AMENDMENT  
TO PURCHASE AND SALE AGREEMENT

Orchard View Manor, Inc. (“Seller”) and Athena Orchard View LLC (“Buyer”) entered into a Purchase and Sale Agreement as of January 25, 2012 (the “Agreement”) with respect to certain assets of Seller located at 135 Tripps Lane in East Providence, Rhode Island.

Buyer has requested and Seller has agreed to change the date specified in Section 4.4 of the Agreement.

Buyer and Seller hereby amend the date set forth in Section 4.4 and Section 5.2(a)(xii) from April 11, 2012 to May 31, 2012.

The Agreement is hereby otherwise confirmed in its entirety.

Effective as of the 11<sup>th</sup> day of April 2012.

Orchard View Manor, Inc.

\_\_\_\_\_  
Michael Marra, President

Athena Orchard View LLC

\_\_\_\_\_  
Lawrence G. Santilli

**FIRST AMENDMENT  
TO PURCHASE AND SALE AGREEMENT**

Orchard View Manor, Inc. ("Seller") and Athena Orchard View LLC ("Buyer") entered into a Purchase and Sale Agreement as of January 25, 2012 (the "Agreement") with respect to certain assets of Seller located at 135 Tripps Lane in East Providence, Rhode Island.

Buyer has requested and Seller has agreed to change the date specified in Section 4.4 of the Agreement.

Buyer and Seller hereby amend the date set forth in Section 4.4 and Section 5.2(a)(xii) from March 23, 2012 to April 11, 2012.

The Agreement is hereby otherwise confirmed in its entirety.

Effective as of the 16<sup>th</sup> day of March 2012.

Orchard View Manor, Inc.

\_\_\_\_\_  
Michael Marra, President

Athena Orchard View LLC

  
\_\_\_\_\_  
Lawrence G. Santilli

FIRST AMENDMENT  
TO PURCHASE AND SALE AGREEMENT

Orchard View Manor, Inc. ("Seller") and Athena Orchard View LLC ("Buyer") entered into a Purchase and Sale Agreement as of January 25, 2012 (the "Agreement") with respect to certain assets of Seller located at 135 Tripps Lane in East Providence, Rhode Island.

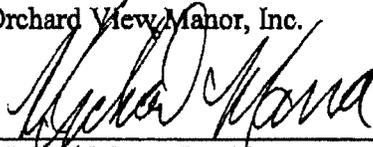
Buyer has requested and Seller has agreed to change the date specified in Section 4.4 of the Agreement.

Buyer and Seller hereby amend the date set forth in Section 4.4 and Section 5.2(a)(xii) from March 23, 2012 to April 11, 2012.

The Agreement is hereby otherwise confirmed in its entirety.

Effective as of the 16<sup>th</sup> day of March 2012.

Orchard View Manor, Inc.



\_\_\_\_\_  
Michael Marra, President

Athena Orchard View LLC

\_\_\_\_\_  
Lawrence G. Santilli



**Exhibit U**

**CONSENT OF ESCROW AGENT**

Chicago Title Insurance Company hereby joins this Agreement for the sole purpose of agreeing to be bound by the provisions of Sections 2.2 and 2.3 hereof.

The parties hereto do hereby certify that they are aware that the Federal Deposit Insurance Corporation ("FDIC") coverages apply only to a cumulative maximum amount of \$250,000 for each individual deposit for all of depositor's accounts at the same or related institution. The parties hereto further understand that certain banking instruments such as, but not limited to, repurchase agreements and letters of credit are not covered at all by FDIC insurance.

Further the parties hereto understand that Escrow Agent assumes no responsibility for, nor will the parties hereto hold Escrow Agent liable for, any loss occurring which arises from the fact that the amount of the above account may cause the aggregate amount of any individual depositor's accounts to exceed \$250,000 and that the excess amount is not insured by the Federal Deposit Insurance Corporation or that FDIC insurance is not available on certain types of bank instruments.

Chicago Title Insurance Company

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

**Exhibit T**

Included in enclosed CD

**Exhibit S**

**Excluded Assets**

1. Cash and Cash Equivalents
2. Accounts Receivable (subject to Section 6.7)
3. Insurance rebates for cancellation of policies
4. Other prepaid expenses
5. Reserve For Replacements
6. Insurance Escrows
7. Bisbano Auto (leased)
8. Life Insurance Policies:
  - a. Canada Life Policy (2653 750)
  - b. Northwest Mutual Life (14 161 762)
9. Real Estate Tax Escrows

**Exhibit R**

**Notice Addresses**

(a) Seller:

Michael H. Marra  
135 Tripps Lane  
East Providence, RI 02915  
Phone: (401)  
Fax: (401)

With a copy to:

Jim McGuirk  
Edwards Wildman Palmer, LLP  
2800 Financial Plaza  
Providence, RI 02903  
Phone: (401) 276-6550  
Fax: (401) 325-9043

(b) Buyer:

c/o Athena Health Care Associates, Inc.  
Attention: Lawrence G. Santilli  
300 Queen Street  
Southington, CT 06489  
Phone: (860) 628-5514  
Fax: (860) 620-6688

With a copy to:

Murtha Cullina LLP  
(CityPlace) 185 Asylum Street  
Hartford, CT 06103-3469  
Attention: Robert V. Giunta, Jr.  
Phone: (860) 240-6000  
Fax: (860) 240-6150

(c) Escrow Agent and Title Company:

Chicago Title  
Mark F. Comstock, Esq.  
AVP Rhode Island State Manager and  
Counsel  
Chicago Commonwealth and Fidelity  
National Title Ins. Co.  
One State Street, Suite 600  
Providence, Rhode Island 02908  
Phone: (401) 431-0900  
Fax: (401) 450-3757

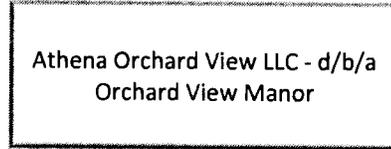
**Exhibit Q**

**No Environmental Reports Available**

15

**ORGANIZATION CHART -  
Operator/Licensee**

Operators/Licensees:



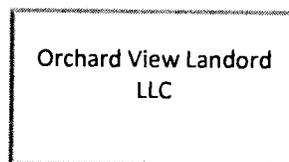
Ownership:

Member Name		Membership Percentage
Lawrence G Santilli	Manager of LLC	50.00%
Conservators for Lawrence E Santilli		10.00%
Chakalos Family Dynasty Trust f/b/o Valerie Santilli		3.00%
Chakalos Family Dynasty Trust f/b/o Elaine Chakalos		3.00%
Chakalos Family Dynasty Trust f/b/o Linda Carman		3.00%
Chakalos Family Dynasty Trust f/b/o Charlene Gallagher		3.00%
Michael E Mosier		6.00%
Debra Soucey		6.00%
Valerie Santilli		6.00%
Doreen Christiano		2.00%
Sandra Pneiwski		1.00%
Laura DoaSantos		3.00%
Diane Curtis		3.00%
Teran Wright		1.00%

Totals 100.00%

**ORGANIZATION CHART -  
Realty Owners**

Realty Entity  
Real Property Owner



Ownership:

Member Name		Membership Percentage
Lawrence G Santilli	Manager of LLC	50.00%
Conservators for Lawrence E Santilli		10.00%
Chakalos Family Dynasty Trust f/b/o Valerie Santilli		3.00%
Chakalos Family Dynasty Trust f/b/o Elaine Chakalos		3.00%
Chakalos Family Dynasty Trust f/b/o Linda Carman		3.00%
Chakalos Family Dynasty Trust f/b/o Charlene Gallagher		3.00%
Michael E Mosier		6.00%
Debra Soucey		6.00%
Valerie Santilli		6.00%
Doreen Christiano		2.00%
Sandra Pneiwski		1.00%
Laura DoaSantos		3.00%
Diane Curtis		3.00%
Teran Wright		1.00%

Totals 100.00%

Orchard View Manor, Inc.  
Current Ownership

Michael Marra, Trustee of the Michael Marra Trust- 1992,  
dated April 22, 1992

100% owner

\*

OWNERSHIP DETAIL-AS OF 5/31/2012

NAME	ATHENA HEALTH CARE ASSOC, INC
LAWRENCE G. SANTILLI	73.75000%
CONSERVATORS FOR LAWRENCE E. SANTILLI	8.16250%
JOHN D. MAHANEY	2.00000%
JOHN B. NOCERA, JR	2.00000%
O. JOSEPH BIZZOZERO, JR	2.00000%
MICHAEL E MOSIER	1.00000%
JUDITH HYLAND	1.00000%
DEBRA M SOUCEY	1.00000%
TERESA SKINNER	4.00000%
Chakalos Family Dynasty Trust f/b/o Charlene Gallagher	1.27190%
Chakalos Family Dynasty Trust f/b/o Elaine Chakalos	1.27190%
Chakalos Family Dynasty Trust f/b/o Linda Carman	1.27190%
Chakalos Family Dynasty Trust f/b/o Valerie Santilli	1.27180%
Totals	<hr/> 100.00000%

As of 7/11/2012

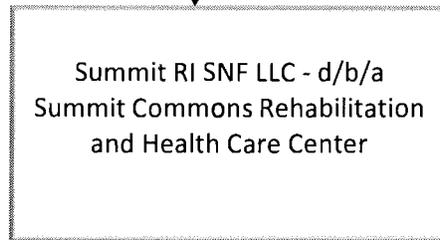
## ORGANIZATION CHART - Operators/Licensees

Master Ownership Entity:



Both Operating/Licensee facilities are owned 100% by Athena Health Care Systems RI LLC

Operators/Licensees:



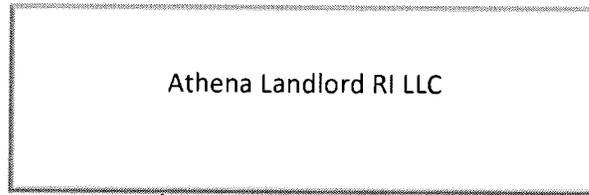
Ownership of Athena Health Care Systems RI LLC:

Member Name		Membership Percentage
Lawrence G Santilli	Manager	36.00%
Conservators for Lawrence E Santilli		7.50%
Chakalos Family Dynasty Trust f/b/o Valerie Santilli		7.50%
Chakalos Family Dynasty Trust f/b/o Elaine Chakalos		7.50%
Chakalos Family Dynasty Trust f/b/o Linda Carman		7.50%
Chakalos Family Dynasty Trust f/b/o Charlene Gallagher		7.50%
Michael E Mosier		6.25%
Debra Soucey		6.25%
Teresa Skinner		4.50%
Jean Rosa		2.00%
Karyn Iannaccone		2.00%
Doreen Christiano		2.00%
Susan Saya		2.00%
Judith Hyland		1.00%
Marybeth Hauser		0.50%
<b>Totals</b>		<u><u>100.00%</u></u>

As of 7/11/2012

## ORGANIZATION CHART - Realty Owners

Master Ownership Entity:



Both realty entities are owned  
100% by Athena RI Landlord LLC

Realty Entities:



Ownership of Athena RI Landlord LLC:

Member Name		Membership Percentage
Lawrence G Santilli	Manager	36.00%
Conservators for Lawrence E Santilli		7.50%
Chakalos Family Dynasty Trust f/b/o Valerie Santilli		7.50%
Chakalos Family Dynasty Trust f/b/o Elaine Chakalos		7.50%
Chakalos Family Dynasty Trust f/b/o Linda Carman		7.50%
Chakalos Family Dynasty Trust f/b/o Charlene Gallagher		7.50%
Michael E Mosier		6.25%
Debra Soucey		6.25%
Teresa Skinner		4.50%
Jean Rosa		2.00%
Karyn Iannaccone		2.00%
Doreen Christiano		2.00%
Susan Saya		2.00%
Judith Hyland		1.00%
Marybeth Hauser		0.50%
<b>Totals</b>		<b>100.00%</b>

Oakland Grove Associates, LP  
Current Ownership

Name	% Owner
Lawrence G. Santilli	23.0000%
Conservators for Lawrence E. Santilli	11.5000%
Rita B. Chakalos Revocable Trust	25.0000%
William S. Thomas	4.5000%
Michael E. Mosier	0.5000%
Girard Health Care Holdings	1.0000%
Athena Health Care Associates, Inc.	33.0000%
Chakalos Nursing Homes, LLC	1.5000%
TOTALS	100.0000%



## **Orchard View Manor**

### **Charity Care Policy**

1. Purpose. It shall be the policy of Orchard View Manor (“Provider”) to provide free care to patients on a case-by-case basis. Because the Provider accepts Medicaid and Medicare patients, charity care will be provided only on a limited basis in exigent circumstances in the sole discretion of the Administrator.
2. Qualifying Patients. Provider will provide free care to those patients who have a medical need to be in a skilled nursing facility, are under the care of a physician and who meet the charity care guidelines as outlined herein (“Qualifying Patients”). Accordingly, Qualifying Patients will be those uninsured or underinsured patients with incomes up to 125% of the Federal Poverty Limits and with limited assets as determined by the Administrator of the Facility. Qualifying Patients must have applied for any governmental assistance programs for which they qualify. If a Qualifying Patient is not eligible for governmental assistance or is denied governmental assistance, such patient may apply for charity care. If a Qualifying Patient is not eligible for or is denied governmental assistance because of circumstances which the Administrator determines were caused by the patient’s own actions, such patients will not be eligible for charity care.
3. Charity Care Policy. Provider agrees it will neither bill Qualifying Patients for services directly supplied by Provider nor collect any fees for provision of such services. Services that are provided under contract with an outside provider shall not be eligible for charity care and will be billed in the customary manner.
4. Monitoring. An annual summary of charity care will be drafted and provided to management on an annual basis.



## **QUALITY IMPROVEMENT**

**Goal:** The facility will strive to provide quality resident care and services through an ongoing quality improvement process.

**Policy:** Through an interdisciplinary team approach, the Quality Improvement program will be an ongoing, continuous part of the daily operations of this facility. The Quality Improvement process consists of six essential steps:

1. Objectively identify problems that exist.
2. Determine goal/desired outcome to be achieved.
3. Conduct root cause analysis to determine extent and scope of problem.
4. Develop an Improvement Plan to achieve desired goals.
5. Implement Improvement Plan to prevent or minimize negative outcomes.
6. Evaluate that the Improvement Plan has achieved desired outcome and that the positive effect is sustained.

**Procedure:**

1. The Quality Improvement Committee membership will be interdisciplinary and consist minimally of:
  - Administrator
  - A Physician (designated by Administrator, but preferably Medical Director)
  - Director of Nursing
  - 3 other staff members
2. The Quality Improvement Committee shall determine the types of ongoing quality improvement activities, ensuring that all types of services and categories of care are considered.
3. The Quality Improvement Committee will meet at least quarterly (per Federal Regulations). At any time, the Administrator may designate an Ad Hoc committee to meet more frequently as needed.
4. Minutes of the Quality Improvement Committee meetings with a record of attendees must be maintained in the Administrative Office. Any supportive documentation or data should also be maintained with the minutes. Minutes and documentation must be maintained for a minimum of two years.
5. The Administrator will chair the committee and ensure that required documentation is maintained and accessible.

6. Quality Improvement projects may include, but are not limited to, the following areas:
  - Resident Rights
  - Quality of Life
  - Quality of Care
  - Infection Control
  - Management of Environment of Care
  - Management of Human Resources
  - Education/Training
  - Management of Information
  - Corporate Compliance
  - Financial management
  
7. A Quality Improvement focus team will be selected by the Administrator to address any identified problem areas. The focus team will consist of interdisciplinary members who have close knowledge of the issues to be addressed.
  
8. Data will be collected and reported based on objective measurement. Effectiveness of corrective action will be evaluated by comparing data to a former baseline and standard.
  
9. The confidentiality of all data collected will be respected and information will be shared with only those people who require this information in order to ensure performance improvement.
  
10. Annually, the Quality Improvement Committee will review it's own performance in recognizing, prioritizing, and improving quality issues and set goals for the coming year.

# ATHENA HEALTH CARE SYSTEMS - QUALITY IMPROVEMENT PLAN

---

FACILITY NAME: \_\_\_\_\_ DEPARTMENT: \_\_\_\_\_

QI PROJECT/PLAN: \_\_\_\_\_

PROBLEM: \_\_\_\_\_

GOAL: \_\_\_\_\_

PROJECT INITIATION DATE: \_\_\_\_\_ TARGETED DATE FOR COMPLETION: \_\_\_\_\_ ACTUAL COMPLETION DATE: \_\_\_\_\_

Identified Problems	Action Steps	Responsible Person(s)	Estimated Completion Date	Status Comments/Evaluation

## ATHENA HEALTH CARE SYSTEMS QI PROCESS

---

ESSENTIAL STEPS	GUIDELINES	SOURCES
1) Problem Identification	Describe what has happened Describe what needs to change/improve	
2) Goal/Desired Outcome	Define what goal you want to achieve; define desired outcome Set an end date	
3) Analysis of Problem	Describe the current situation Conduct root cause analysis to determine why it is happening Review available data sources Identify the major cause(s) for the current situation	Review data sources: <ul style="list-style-type: none"> <li>• A&amp;I reports</li> <li>• QI/QMs</li> <li>• Communication Sheets</li> <li>• Staff Meetings</li> <li>• Satisfaction Surveys</li> <li>• Resident/Family Council Meetings</li> <li>• Survey Findings</li> <li>• Environmental Rounds</li> <li>• LTCI Visits</li> <li>• Silent Shopper Survey</li> <li>• Corporate Compliance Reports</li> <li>• Corporate TQM/Audit Findings</li> <li>• Financial Reports</li> </ul>
4) Development of Improvement Plan	Identify various solutions to achieve goal. Conduct risk assessment on each possible solution Identify "best" action from all possible solutions Provide rationale for selection. Develop improvement plan for selected action – what will be done, by whom, and by when.	
5) Implementation of Improvement Plan	Designated responsible parties carry out all steps of Improvement Plan within established timeframes	
6) Evaluation of Improvement Plan	Identify what will be measured and how often Evaluate why or why not the goal was met. Identify best practices and barriers to the process.	

# **ATHENA OPERATIONAL GOALS**

**2012**

## 2012 ATHENA CLINICAL SERVICES INITIATIVES

---

### Quality of Care

- Decrease falls to 7.16 per 1000 resident days
- Decrease restraint utilization to 1.0%
- Decrease alarm utilization to 5%
- Decrease utilization of low beds to 4%
- Decrease incident of nosocomial infections to 2.6 per 1000 resident days
- Decrease treatment of asymptomatic bacteriuria to 0.6 per 1000 resident days
- Decrease prevalence of new facility acquired pressure sores to 0.5 per 1000 resident days
- Decrease percent of residents with facility acquired pressure sores to 1.8%
- Decrease avoidable weight loss to 0.6%
- Decrease supplement utilization to
- Decrease antipsychotic utilization to
- Decrease anxiolytic utilization to 15%
- Decrease sedative/hypnotic utilization to 4.5%
- Maintain IDT attendance at Care Plan meetings at 75%
- Implement Water/Oral Care policy in all facilities
- Implement Interact/SBAR in Mass/RI homes
- Provide SBAR education in CT homes

### Nursing Documentation/Care Planning

- Improve skilled nursing documentation
- Maximize "C" level ADLs to 70%
- Streamline discharge plan documentation
- Implement Exceptional Care Planning in 5 facilities
- Implement revised ADL Flow sheet in Mass homes
- Revise ADL documentation process in 5 CT homes

### Infection Control/Wounds

- Complete implementation of Athena P&P manual in Mass/RI homes
- Implement every other month IP meetings for Mass/RI homes
- Develop/implement procedure for IV log for CT facilities
- Implement hand washing program for residents
- Implement ostomy care education program
- Implement improved Med B program in all facilities

### Computerization

- Implement Clinical Services report data base

- Implement Athena reports from Incident log
- Implement Sigmacare in 6 facilities
- Establish task force for review of computerized EMR
- Increase computerization at nurses' stations in Mass/RI homes

#### **Quality Improvement**

- Improve QI processes in facilities
- Continue involvement at Stonehedge with QAPI project
- Educate Athena QI team on the ART process and implement monthly ART (Athena Review Team) visits

#### **Staff Development**

- Implement monthly meetings for Mass/RI DSDs
- Implement Train the Trainer program for clinically complex services
- Continue monthly physical assessment programs for DSDs
- Provide educational seminar twice a year

#### **Dementia Care**

- Establish a dementia unit at Sheriden Woods
- Ensure dementia inservicing at facilities with a designated dementia unit

#### **Quality of Life**

- Continue Quality of Life initiatives
- Enhance the dining experience
- Continue Happy Hour implementation in all facilities

### **2012 REHAB & CLINICAL REIMBURSEMENT GOALS**

---

- Continue to fully integrate the Rehab/RCC Regional Team to coordinate audit tools/education and training initiatives and facility visits to avoid duplication of services.
- Enhance clinical programming within the rehabilitation departments through medical record review and education/training.
- Education/training to nursing, in collaboration with Clinical Specialists, regarding skilled documentation.

- On-going monitoring of PPS minutes to ensure targeted RUG levels are being achieved without significant overages related to operational issues and as a means to achieve optimal staffing while managing labor expense.
- Education/training to RCC Department Heads in their role/responsibility as a department head.
- On-going negotiation with contract companies on fees.

## **2012 ACCOUNTS RECEIVABLE GOALS**

---

- Consolidated Billing Policy and Procedure
- Controlling Bad Debt & Updating policies and procedures
- Quarterly regional AR audits of Aging
- Policy and procedure for administrator's monthly AR Aging review
- Billing Compliance – audits, updated policies and training
- Resident Trust Policy (update and more quality control)
- Petty Cash Policy and Procedure (more quality control)

## **2012 ADMISSIONS, SOCIAL WORK, COMPLIANCE GOALS**

---

### Admissions

- Revise Quality Improvement Tool
- Have computerized referral tracking program in place by 4/1/12
- Update policy book and distribute as a full manual

### Social Work

- Reestablish Regional Social Work positions and duties
- Update CT and RI social work policy and procedure manuals
- Develop social work policy and procedures for Massachusetts facilities
- Revise QI Tool specific to each state
- Commence quarterly or biannual meetings for MA and RI Directors of Social Service
- Continue to support social work staff via education and consultation in decreasing the use of psychotropic medications

### Clinical Evaluators

- Computerize all reporting tools
- Evaluate centralizing Allscript referrals in MA facilities

### Corporate Compliance

- Broaden knowledge base of new and revised Federal health care statutes and regulations via seminar/conference attendance and independent research.

### Miscellaneous

- Examine potential ways to aggregate Resident Satisfaction Survey results that illustrate the data in a more user friendly way.

## **2012 THERAPEUTIC RECREATION GOALS**

---

- Review Staffing Pattern in TR for effectiveness, appropriate usage and coverage.
- Review Therapeutic Recreation budgets for effectiveness of allocation on funds, how budgeted dollars are utilized, spent and tracked in areas of yearly Entertainment and Supplies.
- Review prospects of the utilization of “creative resources” at a lower cost and educate staff on how to be more financially sound within their department.
- Create and implement a Quality Assurance Program for the Massachusetts and Rhode Island Sites and create an effective QI tool and schedule for this process.
- Review, revise and implement a current Athena Health Care Systems “Dementia Unit Policy and Procedure”
- Create an effective, efficient system of providing “MANDATORY” Dementia Training to “ALL” staff at facilities and a secure appropriate way of monitoring this process to ensure staff is in fact meeting the requirement of 8 hours of dementia and pain training annually.

## 2012 ECS PROJECT PLAN

---

### **Continue to explore ways to utilize ECS to positively impact Medicare Rates**

- CNA Documentation
- Harmony Healthcare Guides
- Medical Record request tracking
- Medicare Denial management
- Medicare Charting

### **Work with Interdisciplinary Departments to make documentation screen changes**

- Nursing
- Recreation
- Rehab
- Social Work

### **Standardize ECS across facilities**

- Continue to work on standard list of reports & tasks to be available for each facility (A & I, BM, Output, etc)
- Continue to develop new clinical reports for Nursing Administration to make queries and data extraction more efficient
- IV Therapy changes
- Weight loss tasks/bulletins

### **ECS Train-the-trainer program**

- Create and distribute Training videos

### **ECS Sub-committee meeting**

- Schedule Corporate and Facility meetings in 2nd quarter 2012
- Schedule an ECS demo

### **Implement downtime/disaster recovery plan**

- Solicit input from the team regarding proposed plan
- Confirm that all ECS facilities are following backup procedures

### **Work on MDS interface with ECS and Matrix issues**

- Investigate the possibility of streamlining how MDS data gets from ECS to Matrix
- Payor source documentation
- Re-evaluate ECS to Matrix ADT interface

### **Implement the new ECS Marketing module to track referrals**

- Working with Admissions Director to develop project plan

### **Protection and Affordable Care Act (PPACA) Certified EHR Technology Grant Program for LTC facilities**

- Continue to monitor state and federal updates related to HIT programs for LTC

## **2012 FACILITIES & PROJECT MANAGEMENT GOALS**

---

- Promote cohesion throughout the department with new and existing procedures
- All pertinent contracts and Vendor data on the server for all facilities to access
- A structured bidding and budget process
- A capital improvement process and budget with immediate, 1 year , 2 year and longer plans for improvement
- Aiding the administrator and others to improve the census in buildings through fostering a improvements in Physical Plant
- A formal review process for all contracts and bids
- Purchasing and Facilities working in conjunction to provide the most cost-effective vendors and pricing
- Streamline systems to promote departmental productivity
- Continued cost savings and better payment terms for services
- Cohesive strategy that drives both long-term and short term capital expenditures

## **2012 PHYSICAL PLANT, HOUSEKEEPING, LAUNDRY GOALS**

---

- Corporate spending reduction program- Streamline capital expenditure bidding process and service contract negotiations for cost reduction initiatives with new Director of Facilities & Project Management.
- HUD financing projects (13 CT sites) - Coordinate completion of HUD mandated physical plant improvements and completion of federal inspection process upon closing.
- Newly acquired Athena managed facilities (CT, MA & RI) - Transition of corporate environment of care plan initiatives and policies to new administrators and plant managers.
- Long Term Care-Mutual Aid Plan (LTC/MAP)- Continued involvement as member of LTC/MAP Task Force committee for State of CT Emergency Disaster Planning through FEMA grant.
- Dementia units- Development and conceptual design for creation of site specific secured care units; this includes Life Safety Code compliance, renovation budget and safety committee.
- Regional Plant Manager- Hiring of a regional manager for MA & RI facilities to complete Quality Improvement reporting and auditing of code compliance items for annual licensure surveys.
- Housekeeping/ Laundry oversight- Develop departmental specific goals for infection control practices and auditing; coordinate manager meetings to review corporate policies & procedures.
- OSHA compliance- Develop system wide consistent standards of practice for Federal OSHA compliance programs being implemented through site specific inspection process.

## 2012 PURCHASING & DINING GOALS

---

### Purchasing:

- Revise the system for requests and approval of capital expenses.
- Produce individual facility one/two/five year capital expense plans.
- Continue to use and improve the RFP process toward bidding all goods and services.
- Implement monthly reviews of all budgets to actual expenses at each facility.
- Use the action plan system for holding any facility and/or department accountable for budget discrepancies.
- Improving the audit system of contract price to actual price.
- Implement systems for controlling usage and exposure in the following categories:
  - Utilities.
  - Workers Compensation
  - Incontinence product
  - Drug utilization/exclusions

### Dining:

- Implement systems and improve communication to the facility dietician's.
- Continue to work on improving the Chef training program.
- Improve our "Satisfaction Surveys" results by 5%.
- Work with facilities on an individual basis in regard to tray-less services and the dining initiative.
- Improve the Regional QI process and coverage.

## 2012 HUMAN RESOURCES OPERATIONAL GOALS

---

Transition benefit days throughout network to Athena standard (min 25 – max 40)

- Convert PTO
  - Countryside Manor
  - The Summit at Plantsville
  - Berkshire
  - Southeast
  - Stonehedge

Develop Affirmative Action Program

- Implement policy/procedures for MA facilities as well as those CT/RI facilities that meet the criteria

Educate (17) Connecticut facilities on the new CT Paid Sick Leave Act (1/1/12)

- Implement revised absent/tardy policy to meet new criteria
- Monitor tracking protocol/discipline

Transition (22) facilities to new Worker's Compensation program

- Revise "Return To Work" policy to meet new criteria
- Educate managers to new policies/procedures
- Introduce Ziad Baroody as point person for all worker's compensation claims

Update employee handbooks throughout network

- CT Paid Sick Leave
- Absent/Tardy protocol
- Benefit days

Develop Wage Scales for newly acquired facilities

- MA
- RI

Implement HR P/P Manual for newly acquired facilities

Develop Workplace Violence program

- Create policy/procedure
- Educate throughout network

Finalize Social Media policy

- Educate throughout network



**LEASE AGREEMENT**

Dated as of \_\_\_\_\_, 2012

between

Athena Orchard View Landlord LLC

“Landlord”

and

Athena Orchard View LLC

“Tenant”

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THIS LEASE AGREEMENT ("Lease") is effective as of the \_\_\_\_ day of \_\_\_\_\_, 2012, by and between ATHENA ORCHARD VIEW LANDLORD LLC (the "Landlord"), a Rhode Island limited liability company, and ATHENA ORCHARD VIEW LLC (hereinafter called the "Tenant"), a Rhode Island limited liability company.

WITNESSETH:

WHEREAS, Tenant wishes to lease from Landlord and Landlord wishes to lease to Tenant the real property described on Exhibit A attached hereto, together with all of the buildings and improvements thereon, which are all owned by Landlord.

NOW, THEREFORE, in consideration of the premises and agreements herein contained, the Tenant does hereby demise and lease to the Landlord the real property described on Exhibit A attached hereto, together with all of the buildings and improvements thereon, which are all owned by Landlord:

**INTRODUCTION**

**Definitions**

For the purpose of this Lease, unless the context otherwise requires, terms defined in the preamble hereof shall have the meanings therein indicated, and the following terms shall be defined as follows:

"Affiliate" means any individual or entity directly or indirectly through one or more intermediaries controlling, controlled by or under common control with a party. The term "control," as used in the immediately preceding sentence means the power to direct the management or policies of a entity, whether by ownership of voting securities or by contract or otherwise.

"Applicable Laws" shall mean those laws and regulations of the State of Rhode Island.

"Award" means all compensation, sums or other value awarded, paid or received by virtue of a total or partial Condemnation of the Demised Premises (after deduction of all reasonable legal fees and other reasonable costs and expenses, including, without limitation, expert witness fees, incurred in connection with obtaining any such award).

"Building", "Buildings", "building" or "buildings" shall mean any and all buildings, improvements, structures, fixtures, or appurtenances on or in the property described on Exhibit A attached hereto, or in any way affixed or attached thereto, which are all owned by Landlord, and include, without limitation, the Tenant Improvements (as defined in Article 8) whether the same were on the Demised Premises on the Commencement Date or thereafter erected or installed by Tenant, or by any other person.

"Business Day" means any day other than Saturday, Sunday, or any other day on which banking institutions in the State are authorized by law or executive action to close.

"Casualty" shall have the meaning given such term in Section 14.1.

"CMS" shall mean Centers for Medicare and Medicaid Services.

"Commencement Date" of this lease shall mean September 1, 2011.

"Condemnation" means, with respect to the Demised Premises, (a) the exercise of any governmental power with respect to all or part of the Demised Premises, whether by legal proceedings or otherwise, by a Condemnor of its power of condemnation, (b) a voluntary sale or transfer of all or part of the Demised Premises by Landlord to any Condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending, or (c) a taking or voluntary conveyance of all or part of the Demised Premises, or any interest therein, or right accruing thereto or use thereof, as the result or in settlement of any Condemnation or other eminent domain proceeding affecting the Demised Premises, whether or not the same shall have actually been commenced.

"Condemnor" means any public or quasi-public authority, or private corporation or individual, having the power of Condemnation.

"Default" means any event, act or condition that with the giving of notice or lapse of time, or both, would constitute an Event of Default.

"Demised Premises" has the meaning described in Article 1 hereto.

"Discharge(s)" means any manner of intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Hazardous Materials as defined hereunder.

"Emergency Situations" means situations requiring repairs because of an emergency at the Demised Premises.

"Environmental Laws" means any federal, state or local law, rule or regulation (both present and future) dealing with the use, generation, treatment, storage, disposal, or abatement of Hazardous Materials, including, without limitation, (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., as amended and (b) the regulations promulgated thereunder, from time to time.

"Environmental Notice" shall have the meaning given such term in Section 10.3.

"Environmental Obligation" shall have the meaning given such term in Section 10.3.

"Expiration Date" has the meaning described in the definition of the term "Term".

"Facility" shall mean the facility located at the site of the Demised Premises (excluding any personal property owned by Tenant and located at the Demised Premises).

"Government Agencies" means any court, agency, authority, board (including, without limitation, environmental protection, planning and zoning), bureau, commission, department, office or instrumentality of any nature whatsoever of any governmental unit of the United States, the State of Rhode Island, any county, or any political subdivision of any of the foregoing, whether now or hereafter in existence, having jurisdiction over Tenant or the Demised Premises or any portion thereof, or over the operation of the Demised Premises for the Primary Intended Use, including, but not limited to, the Rhode Island Department of Health.

"Hazardous Materials" means any substance or material containing one or more of any of the following: "hazardous material," "hazardous waste," "regulated substance," "petroleum," "pollutant," "contaminant," or "asbestos," as such terms are defined in any applicable Environmental Law, in such concentration(s) or amount(s) as may impose cleanup, removal, monitoring or other responsibility under any applicable Environmental Law, or which may present a significant risk of harm to guests, invitees or employees of the Facility.

"Health Care Requirements" shall mean, relating to the Demised Premises, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions or agreements, in each case, pertaining to or concerned with the establishment, construction, ownership, operation, use or occupancy of the Demised Premises or any part thereof as a health care facility, and all material permits, licenses and authorizations and regulations relating thereto, including all material rules, orders, regulations and decrees of and agreements with health care authorities pertaining to the Demised Premises.

"Legal Requirements" means all applicable federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, and ordinances, and all applicable judicial, administrative and regulatory judgments, decrees and injunctions, affecting Tenant or the Demised Premises or the maintenance, construction, alteration or operation thereof, whether now or hereafter enacted or in existence, including, without limitation, (a) all permits, licenses, certificates of need, authorizations and regulations necessary to operate the Demised Premises for its Primary Intended Use and (b) all covenants, agreements, restrictions and encumbrances contained in any instruments either of record or actually known to Tenant (other than encumbrances hereafter created by Landlord without the consent of Tenant) at any time in force affecting the Demised Premises, including those which may (i) require material repairs, modifications or alterations in or to the Demised Premises or (ii) in any way materially adversely affect the use and enjoyment thereof.

“Mortgage” shall mean: (i) at such time that Webster Bank National Association holds a first mortgage interest in the fee title to the Demised Premises, as the same may be amended, modified or extended, and (ii) at such time that Webster Bank National Association does not hold a mortgage interest in the fee title to the Demised Premises, any mortgage or series of mortgages on the fee title to the Demised Premises held by the first mortgagee holder.

“Mortgagee” shall mean the holder of any Mortgage.

“Primary Intended Use” shall have the meaning given such term in Section 7.1.

“Rent” shall have the meaning ascribed to such term in Section 2.1.

“Rent Commencement Date” shall mean the Commencement Date, or such other date as Landlord and Tenant shall mutually agree in writing.

“State” shall mean the State of Rhode Island.

“Tenant” shall mean the Tenant named herein.

“Term” shall mean the period beginning with the Commencement Date and ending \_\_\_\_\_, 2027, unless sooner terminated pursuant to the terms of this Lease or law (such termination date hereinafter, the “Expiration Date”);

“Unsuitable for Its Primary Intended Use” means a state or condition of the Facility such that (a) following any damage or destruction involving the Demised Premises, the Demised Premises cannot reasonably be expected to be restored within three (3) months following such damage or destruction to substantially the same condition as existed immediately before such damage or destruction or (b) as the result of a partial taking by Condemnation, the Facility cannot be operated on a commercially practicable basis for its Primary Intended Use taking into account, among other relevant factors, the number of usable units, the amount of square footage, or the revenues affected by such damage, destruction, or partial taking.

## **ARTICLE 1. DEMISE**

**Section 1.1 Demise.** Landlord, for and in consideration of the rents, covenants, and agreements hereinafter reserved, mentioned and contained on the part of Tenant, its successors and assigns to be paid, kept and performed, has leased, rented, let, and demised, and by these presents does lease, rent, let and demise, unto Tenant, and Tenant does hereby take and hire, upon and subject to the terms and conditions hereinafter contained, the land, with the Buildings (hereinafter collectively called the “Demised Premises”), more particularly described on Exhibit A annexed hereto;

Together with all the right, title and interest of Landlord in and to any strips or gores of land adjoining the Demised Premises;

Together with all right, title and interest, if any, of Landlord in and to any land lying in the bed of any road, highway, street or avenue adjoining the Demised Premises to the center line thereof,

Together with the appurtenances belonging to the Demised Premises;

Subject only to:

Encumbrances as of record may appear, building restrictions and regulations now or hereafter in force, and present and future zoning laws, ordinances, resolutions and regulations of all boards, commissions and bodies of any municipal, state or federal sovereigns now or hereafter acquiring jurisdiction of the Demised Premises and the use and improvement thereof provided they are not violated by the existing structure or the use thereof.

The Lease shall be for the Term.

## ARTICLE 2. RENT

**Section 2.1 Rent.** Tenant covenants and agrees to pay to Landlord or directly to the holder of any Mortgage, from and after the Rent Commencement Date, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, at the place specified in Article 19 hereof for the giving of notices to Landlord hereunder, or at such other place or to such agent as Landlord may from time to time designate the sum of:

(a) an amount equal to all principal and interest together with all fees, expenses or other sums due and owing to Webster Bank National Association under those certain loans totaling \$\_\_\_\_\_ made pursuant to loan agreements and related documents dated as of \_\_\_\_\_, 2012 by and among Landlord, Tenant, and Webster Bank National Association (the "Webster Loans");

(b) an amount equal to the sums due and owing by Landlord to **[Athena Rhode Island Financing II LLC]** as the priority return to Class B members pursuant to that certain **[First Amendment to Operating Agreement]** of Landlord and related documents by and among the members of Landlord (the "Class B Priority Return");

(c) any amounts due by Landlord, Tenant or any Affiliate:

(i) to Webster Bank National Association by virtue of any guaranty given to support the Webster Loans, and

(ii) to **[Athena Rhode Island Financing II LLC]** by virtue of any agreement given to support the Class B Priority Return; and

(d) without duplication, all taxes, assessments, betterments, impositions or use of other charges levied or assessed or payable by or for or related to the ownership or use of the Demised Premises ("Impositions"); and

(e) the cost of any insurance coverage required to be maintained by Tenant pursuant to this Lease ("Insurance Cost"); and

(f) all costs of repairing, replacing and maintaining the Demised Premises as provided in this Lease ("RRM Cost").

All such Rent shall be payable as and when due to Webster Bank National Association and [Athena Rhode Island Financing II LLC] as provided by the instruments governing the Webster Loans and the Class B Priority Return. The Impositions, Insurance Cost and RRM Cost are only to be included in the Rent so long as the Tenant does not pay such costs directly and the Landlord must be reimbursed for such costs.

**Section 2.2 Audit.** Landlord shall have the right, on reasonable notification and at reasonable times during regular business hours, to review and audit, directly or through professional representatives, the books and records of Tenant with respect to the compliance by Tenant with the terms and conditions of this Lease. Tenant shall cooperate with, and shall use reasonable commercial efforts to accommodate and facilitate, any such review and audit.

### **ARTICLE 3. SURRENDER**

**Section 3.1 Surrender.** Upon expiration or other termination of the Term, Tenant shall peaceably and quietly quit and surrender the Demised Premises to Landlord in good order and condition, ordinary wear and tear and damage by fire, the elements, casualty or taking excepted.

**Section 3.2 Delivery Upon Surrender.** The delivery to Landlord at the place then fixed for the payment of rent of the keys to the Demised Premises shall constitute surrender of the Demised Premises by Tenant and acceptance of the keys by Landlord shall constitute acceptance by Landlord of such surrender. Such acceptance by Landlord shall not constitute a waiver of any rights to recover damages under the terms of this Lease. This method of surrender shall not be exclusive and shall be in addition to all other methods of surrender.

### **ARTICLE 4. INSURANCE**

**Section 4.1 Insurance Covenant.** Tenant shall keep the Facility and all appurtenances on the Demised Premises insured, for the mutual benefit of Landlord and Tenant and the holder of any Mortgage whose name and address shall have been given to Tenant, as their respective interests may appear, during the Term, with a property damage policy under an all-risk coverage form in accordance with the

requirements of any Mortgage and in an amount no less than the full Replacement Cost (as defined below) of the Facility, exclusive of the cost of foundations, excavations and footings below the lowest basement floor, without any deduction being made for depreciation.

**Section 4.2 Coverages.** Tenant shall also pay the cost of maintaining for the mutual benefit of Landlord and Tenant:

(a) comprehensive general public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Demised Premises and any vehicles operated or parked thereon, if any, or any equipment or fixtures therein, and on, in or about the adjoining streets, property, passageways and vaults, together with broad form endorsements covering Tenant's obligations under this Lease, with limits approved by Landlord from time to time;

(b) professional liability and/or errors and omissions insurance against claims of residents at the Facility in amounts and on terms (including deductibles and self-insured retentions) approved by Landlord from time to time;

(c) business interruption insurance in amounts and on terms (including deductibles and self-insured retentions) approved by Landlord from time to time; and

(d) such other insurance, and in such amounts, as may from time to time be reasonably required by Landlord or any Mortgage against other insurable hazards which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height and type of building, its construction, use and occupancy.

Tenant shall not violate or permit to be violated any of the conditions or provisions of any policy provided for in this Section or the preceding Section, and Tenant shall so perform and satisfy the requirements of the companies writing such policies that they shall be willing to write and/or to continue such insurance. Tenant shall provide Landlord with a complete and accurate schedule of all such insurance that is required to be kept in effect as of the date of such notice or request.

**Section 4.3 Added Insurance.** Tenant may effect for its own account any insurance not required under the provisions of this Lease, and the proceeds thereof shall be the outright property of Tenant, except that if the Facility is damaged or destroyed by a casualty not covered by insurance for the benefit of Landlord, any proceeds payable to Tenant under policies procured by Tenant for its own account and covering loss to the Demised Premises (as opposed to loss of Tenant's property), shall be assigned by Tenant to Landlord, to be held by Landlord subject to the provisions of Article 14 of this Lease. Tenant shall promptly notify Landlord of the issuance of any such insurance.

**Section 4.4 Policy Provisions.** All insurance provided for in this Article shall be affected under valid and enforceable policies containing waivers of any rights of subrogation and issued by insurers of recognized responsibility which are licensed to do

business in the State of Rhode Island. Landlord and Tenant each hereby waive, for themselves and their respective insurance carriers, any right or claim to subrogation against the other with respect to any occurrence covered by hazard, property damage or liability insurance and not due to the deliberate act of the other. Not less than thirty (30) days prior to the expiration dates of the expiring policies theretofore furnished pursuant to this Article, originals or duplicate originals of the policies (or, in the case of general public liability insurance, certificates of the insurers reasonably satisfactory to Landlord), bearing notations evidencing the payment of premiums or accompanied by other evidence reasonably satisfactory to Landlord of such payments, shall be delivered by Tenant to Landlord.

**Section 4.5 Added Provisions.** All policies of insurance provided for in this Article (other than policies that are exclusively for the benefit of Tenant as described in Section 4.3) hereof shall name Landlord and Tenant as the insureds, as their respective interests may appear. The loss, if any, under any policies provided for in this Article shall be adjusted with the insurance companies by Tenant.

All such policies shall provide that the loss, if any, thereunder, shall be adjusted and paid as hereinabove provided. Each such policy shall contain (if obtainable) a provision that no act or omission of Tenant shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained, and an agreement by the insurer that such policy shall not be cancelled without at least thirty (30) days' prior written notice to Landlord and to any Mortgagee.

**Section 4.6 Replacement Cost.** "Replacement Cost" as used herein, shall mean the actual replacement cost of the Demised Premises requiring replacement from time to time, including an increased cost of construction endorsement, if available, and the cost of debris removal less exclusions provided in the standard form of fire insurance policy. If either party believes that the then full Replacement Cost has increased or decreased at any time during the Term, such party, at its own cost, shall have the right to have such full Replacement Cost redetermined by an independent accredited appraiser approved by the other, which approval shall not be unreasonably withheld or delayed. The party desiring to have the full Replacement Cost so redetermined shall forthwith, on receipt of such determination by such appraiser, give written notice thereof to the other. The determination of such appraiser shall be final and binding on the parties hereto, and Landlord shall forthwith conform the amount of the insurance carried to the amount so determined by the appraiser.

**Section 4.7 Landlord Release.** Landlord and Tenant agree that (insofar as and to the extent that such agreement may be effective without invalidating or making it impossible to secure insurance coverage from responsible insurance companies doing business in the State) with respect to any loss covered by insurance then being carried by Tenant, Tenant releases Landlord of and from any and all claims with respect to such loss; and they further agree that Tenant's insurance companies shall have no right of subrogation against Landlord on account thereof, even though extra premium may result therefrom.

**Section 4.8 Blanket Coverage.** Notwithstanding anything to the contrary contained in this Article 4, either party's obligations to maintain the insurance herein required may be brought within the coverage of a so-called blanket policy or policies of insurance (including, as to Tenant, blanket coverage under any insurance policies maintained by any Affiliate of Tenant on Tenant's behalf), provided that, (a) the coverage thereby afforded will not be reduced or diminished from that which would exist under a separate policy meeting all other requirements of this Lease, and (b) the requirements of this Article 4 are otherwise satisfied.

**Section 4.9 Separate Insurance.** Neither Landlord nor Tenant shall take out separate insurance concurrent in form or contributing in the event of loss with that required by this Article 4, or increase the amount of any existing insurance by securing an additional policy or additional policies, unless all parties having an insurable interest in the subject matter of such insurance are included therein as additional insureds and the loss is payable under such insurance in the same manner as losses are payable under the insurance required to be carried pursuant to this Lease. If either shall take out any such separate insurance or increase any of the amounts of the then existing insurance, it shall give the other party prompt notice thereof.

#### **ARTICLE 5. LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS**

**Section 5.1 Landlord's Right.** If Tenant shall at any time fail to cause to be paid for, or maintained, any of the insurance policies provided for in Article 4 hereof, or to make any other payment or perform any other act on its part to be made or performed hereunder, then Landlord, after thirty (30) days notice to Tenant, may (but shall not be required to):

(a) pay for and maintain any of the insurance policies provided for in Article 4 hereof, or

(b) make any other payment or perform any other act on Tenant's part to be made or performed as provided in this Lease, and may enter upon the Demised Premises for the purpose thereof, and take all such action thereon as may be necessary therefor.

#### **ARTICLE 6. REPAIRS AND MAINTENANCE OF THE PROPERTY**

**Section 6.1 Covenant.** Throughout the term of this Lease, Tenant shall maintain the Demised Premises and the Facility in good condition, and Tenant shall cause to be paid the cost of the care and maintenance of the Demised Premises and the Facility, all appliances, equipment, utilities, appurtenances, and conveniences therein and thereon, except as otherwise provided in this Lease or in a written agreement between Landlord and Tenant. All repairs shall be made in a good, workmanlike and first-class manner, in accordance with all Health Care Requirements.

**Section 6.2 Cost.** Tenant shall cause to be paid the cost of putting, keeping and maintaining all portions of the Demised Premises, and the sidewalks, curbs and passageways adjoining the same, in a clean and orderly condition, free of dirt, rubbish, snow, ice, and unlawful obstructions.

**Section 6.3 Personal Property.** Tenant shall provide and maintain throughout the Term all such personal property as shall be necessary in order to operate the Facility in compliance in all material respects with applicable Health Care Requirements and the requirements of Article 4 and otherwise in accordance with customary practice in the industry for such Primary Intended Use.

All personal property leased hereunder shall remain at the Demised Premises at the expiration or earlier termination of this Lease, provided Tenant may, if it chooses, remove any and all items of personal property which it has purchased or provided for its own account (and not in substitution as above provided), including supplies and inventory not exhausted in the usual course of business.

**Section 6.4 Termination.** Upon the expiration or sooner termination of this Lease, Tenant shall vacate and surrender the Demised Premises to Landlord in the condition in which the Demised Premises was on the Commencement Date, ordinary wear and tear excepted, except as repaired, rebuilt, restored, altered or added to as permitted or required by the provisions of this Lease, ordinary wear and tear excepted. Together therewith Tenant shall surrender to Landlord any and all records and documents related to the Demised Premises and the personal property leased hereunder, together with such personal property of Tenant as may have been so permanently affixed to the realty as to constitute a fixture not readily removable without unrepairable damage to the Demised Premises.

## **ARTICLE 7. COMPLIANCE WITH LAWS, ORDINANCES AND INSURANCE**

**Section 7.1 Compliance with Laws and Regulations.** Tenant shall use the Demised Premises solely as licensed Medicare- and Medicaid-certified skilled nursing facilities, with at least the number of licensed and certified beds existing at the Facility on the applicable Commencement Date, and for no other purpose (the "Primary Intended Use"). On or before each Commencement Date, Tenant shall have acquired, and thereafter Tenant shall maintain all licenses, certificates, accreditations, approvals, permits, variances, waivers, provider agreements and other authorizations needed to operate the Demised Premises as a licensed, Medicare and Medicaid certified skilled nursing facility. Tenant hereby covenants, warrants and represents to Landlord that as of the applicable Commencement Date and throughout the Term: (a) Tenant (and any operator or manager of Tenant) shall be, and shall continue to be validly licensed and Medicare and Medicaid certified to operate a skilled nursing facility in accordance with the applicable rules and regulations of the State where each Demised Premises is located, federal governmental authorities and accrediting bodies, including, but not limited to, the United States Department of Health and Human Services ("DHHS"), CMS, and the applicable State agency; (b) Tenant shall be, and shall continue to be,

certified by and the holder of valid provider agreements with Medicare and Medicaid issued by DHHS, the applicable State agency and/or CMS and shall remain so certified and shall remain such a holder in connection with its operation of the Demised Premises as a licensed and Medicare and Medicaid certified skilled nursing facility; (c) Tenant (and any operator or manager of Tenant) shall be, and shall continue to be in compliance with and shall remain in compliance with all Applicable Laws with regard to the operation of a Facility, including, without limitation, compliance under Applicable Laws governing patient confidentiality and privacy and the confidentiality of medical records; and (d) Tenant (and any operator or manager of Tenant) shall not abandon, terminate, vacate or fail to renew any licenses, certifications, accreditations, certificates, approvals, permits, variances, waivers, provider agreements or any other authorization which relates to the operation of the skilled nursing facility business or other permitted operations on the Demised Premises or in any way commit any act which will or may cause any such licenses, certifications, accreditations, certificates, approvals, permits, variances, waivers, provider agreements or other authorization to be revoked by any Government Agencies or accrediting body having jurisdiction thereof.

**Section 7.2 Insurance.** Tenant shall likewise observe and comply with all insurance requirements at any time in force with respect to the Demised Premises.

**Section 7.3 Right to Contest.** Tenant shall have the right, after prior written notice to Landlord, to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant or Landlord or both, without cost or expense to Landlord, the validity or application of any law, ordinance, order, rule, regulation or requirement of the nature referred to in Section 7.1 hereof, subject to the following:

(a) If by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurrance of any lien, charge or liability of any kind against the Demised Premises or any part thereof and without subjecting Tenant or Landlord to any liability, civil or criminal, for failure so to comply therewith, Tenant may delay compliance therewith until the final determination of such proceeding; or

(b) If any lien, charge or civil liability would be incurred by reason of any such delay, Tenant nevertheless may contest as aforesaid and delay as aforesaid, provided that such delay would not subject Landlord to criminal liability or fine, and Tenant (i) furnishes to Landlord security, reasonably satisfactory to Landlord, against any loss or injury by reason of such contest or delay, and (ii) prosecutes the contest with due diligence.

Landlord, without cost to it, shall, subject to the foregoing, execute and deliver any appropriate papers which may be necessary or proper to permit Tenant so to contest the validity or application of any such law, ordinance, order, rule, regulation or requirement.

**ARTICLE 8.  
CHANGES AND ALTERATIONS; OWNERSHIP OF TENANT IMPROVEMENTS**

**Section 8.1 Alterations.** Tenant shall have the right, upon consultation with, and with the written prior consent of, Landlord, to make any and all additional improvements ("Tenant Improvements") as Tenant shall deem appropriate during the Term, in accordance with the applicable provisions of this Lease. In connection with and prior to such construction, Tenant shall obtain at Tenant's sole cost and expense all necessary permits (copies of which shall be furnished to Landlord within ten (10) business days of their receipt by Tenant), consents, certificates and approvals required to commence and complete construction of the Tenant Improvements. Upon completion, all Tenant Improvements shall become the property of the Landlord.

**ARTICLE 9.  
DISCHARGE OF LIENS**

**Section 9.1 Claim Against Landlord's Interest.** If, because of any act or omission of Tenant, any mechanic's lien or other lien for the payment of money shall be filed against Landlord or any portion of the Demised Premises, Tenant shall, at its own cost and expense, cause the same to be discharged of record or bonded within sixty (60) days after Tenant receives notice of the filing thereof; and Tenant shall indemnify and save harmless Landlord from and against all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting therefrom.

**Section 9.2 No Consent Implied.** Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alterations to or repair of the Demised Premises or any part thereof.

**Section 9.3 No Liens.** Tenant shall not, directly or indirectly, create or allow to remain and shall promptly discharge, at its expense, any lien on the Demised Premises, Tenant's leasehold interest therein.

**ARTICLE 10.  
USE OF PROPERTY**

**Section 10.1 Unlawful Use Prohibited.** Tenant shall not use, and shall prohibit third parties from using, the Demised Premises or the personal property for any unlawful purpose. Tenant shall not commit and shall not suffer to be committed any waste on the Demised Premises, or in the Facility, nor shall Tenant cause or permit any nuisance thereon or therein. Tenant shall not use and shall prohibit third parties from using, the Demised Premises or any portion thereof, including, without limitation, the personal property, in such a manner as (a) might reasonably tend to impair Landlord's (or Tenant's, as the case may be) title thereto or to any portion thereof or (b) may

reasonably make possible a claim or claims for adverse usage or adverse possession by the public, or of implied dedication of the Demised Premises or any portion thereof. Tenant shall not use the Demised Premises in any manner that will cause the cancellation of any insurance policy covering the Demised Premises or any part thereof (unless another adequate policy is available), nor shall Tenant sell or otherwise provide to residents therein, and shall prohibit third parties from keeping, using or selling in or about the Demised Premises, any article which may be prohibited by law or by the standard form of fire insurance policies, or any other insurance policies required to be carried hereunder, or fire underwriter's regulations.

**Section 10.2 Cost of Compliance.** Tenant, at its sole expense, shall (a) comply in all material respects with Health Care Requirements in respect of the use, operation, maintenance and repair of the Demised Premises, and (b) procure, maintain and comply in all material respects with all appropriate licenses, permits, and other authorizations and agreements required for any use of the Demised Premises and the personal property then being made, and for the proper operation and maintenance of the Demised Premises or any part thereof. Landlord shall comply in all material respects with Legal Requirements pertaining to Landlord or any of Landlord's obligations hereunder.

**Section 10.3 Hazardous Materials.** Tenant shall not store, spill upon, dispose of or transfer to or from the Demised Premises any Hazardous Materials, except that Tenant may store, transfer and dispose reasonable quantities of Hazardous Materials used or consumed in the normal day to day operation of the Facility (such as reasonable quantities of cleaning materials), in compliance with all Environmental Laws. Subject to the foregoing, Tenant shall maintain the Demised Premises at all times free of any Hazardous Materials (except such Hazardous Materials as are maintained and used in compliance with all Environmental Laws, as aforesaid). After the Commencement Date and during the Term, Tenant shall not cause or permit to occur, whether as a result of an intentional or unintentional act or omission by Tenant or any other party claiming by through or under Tenant, but not including Landlord, its agents, contractors and/or employees, a Discharge of Hazardous Materials on, at, under, about or from the Demised Premises. If Tenant or Landlord receives any notice concerning, or obtains any actual knowledge of, or reasonably suspects, the occurrence or existence of a Discharge affecting the Demised Premises, Tenant or Landlord, as the case may be, shall give immediate oral notice and written notice within five (5) days thereafter to the other detailing all relevant facts and circumstances. Tenant shall (a) transmit to Landlord copies of any demand letters, complaints or other documents initiating legal action, citations, orders, notices or other material communications asserting claims by private parties or Government Agencies with respect to Hazardous Materials received by Tenant or its agents or representatives (collectively, "Environmental Notice"), which Environmental Notice requires a written response or any action to be taken and/or if such Environmental Notice gives notice of and/or could give rise to a material violation of any Environmental Law and/or could give rise to any material cost, expense, loss or damage (an "Environmental Obligation"), (b) observe and comply with all Environmental Laws relating to the use, maintenance and disposal of Hazardous Materials and all orders or directives from any official, court or agency of

competent jurisdiction relating to the use or maintenance thereof or requiring the removal, treatment, containment or other disposition thereof, to the extent Tenant is responsible therefor, and (c) pay or otherwise dispose of any fine, charge or imposition related thereto, unless Tenant shall contest the same in good faith and by appropriate proceedings and the right to use, and the value of, the Demised Premises is not adversely affected thereby in any substantial manner.

If at any time Hazardous Materials are discovered in violation of Environmental Laws on the Demised Premises, as a result of Tenant's violation of Section 10.3, Tenant shall take all actions and incur any and all expenses (which actions and expenses shall be subject to Landlord's prior approval, not to be unreasonably withheld, conditioned or delayed except in emergency situations, in which case Landlord's prior approval shall not be required) as may be necessary or as may be required by any Government Agencies (x) to clean up and remove from and about the Demised Premises all Hazardous Materials thereon, (y) to contain and prevent any further release or threat of release of Hazardous Materials on or about the Demised Premises and (z) eliminate any further release or threat of release of Hazardous Materials on or about the Demised Premises.

**Section 10.4 Survival.** The provisions of Section 10.3 shall survive the expiration or sooner termination of this Lease.

## **ARTICLE 11. CONDITION OF AND TITLE TO PROPERTY-QUIET ENJOYMENT**

**Section 11.1 Quiet Enjoyment.** Landlord covenants and agrees that Tenant, upon paying the Rent and all additional rent and other charges herein provided for, and observing and keeping all covenants, agreements and conditions of this Lease on its part to be observed and kept, shall quietly have and enjoy the Demised Premises during the term of this Lease, without hindrance or molestation by anyone claiming by or through Landlord, subject, however, to the exceptions, reservations and conditions of this Lease.

**Section 11.2 Power to Lease.** Landlord represents and warrants to Tenant that it has the power and authority to execute and deliver this Lease and to carry out and perform all covenants to be performed by it hereunder.

**Section 11.3 Landlord's Personal Property.** Upon the expiration or termination of this Lease, Tenant shall leave all personal property leased to Tenant hereunder, as repaired, rebuilt, replaced, restored, altered or added to as permitted or required by provisions of this Lease, in or on the Demised Premises, except for ordinary wear and tear. Any and all restorations, alterations or replacements of, or repairs, reconstructions or additions to, the personal property at a Facility made by Tenant shall become part of the Landlord's personal property, and any and all security interests (except in favor of Landlord) in the Landlord's personal property and financing statements shall be cleared, terminated and/or released to the satisfaction of Landlord at Tenant's expense. Any of Tenant's additions of software, licenses, proprietary

information, policies, and procedures by the Tenant shall not become part of the Landlord's personal property, provided, however, upon request of Landlord, in consideration of a payment by Landlord or its designee of Ten Dollars (\$10.00) and any applicable lease, rent, or license fees owed to any third parties during the Transition Period (hereinafter defined), Tenant shall license Landlord or its designee(s) to utilize Tenant's software and computer hardware for a period of ninety (90) days (the "Transition Period") in connection with the transition of operations from Tenant and Landlord's new operator(s). To the extent Tenant is obligated under license agreements with third party vendors supplying software and/or computer hardware to such Tenant, Tenant shall use its best efforts to arrange for Landlord or the applicable Facility Landlord to enter into licensing agreements with such third party vendors to allow Landlord or its designee to utilize such software and computer hardware supplied by such third party vendors for the duration of the Transition Period.

**Section 11.4 Tenant's Personal Property.** At the termination of the Lease, Landlord shall have the right to purchase all or a portion of Tenant's personal property located at the Facility at their book value. To the extent any of Tenant's personal property is subject to an equipment lease, Landlord shall have the right to cause Tenant to pay in full all obligations under such equipment leases, or to assume some or all of such equipment leases at Landlord's sole cost and expense and at no additional liability to Tenant.

## **ARTICLE 12. ENTRY ON DEMISED PREMISES BY LANDLORD, ETC.**

**Section 12.1 Right of Entry.** Landlord shall have the right on reasonable notice, and at all reasonable times during usual business hours to enter the Demised Premises, (a) to exhibit the same for the purposes of mortgage financing, (b) in accordance with any requirements of any mortgage, and (c) for the purpose of showing the same to prospective tenants, either following a notice of termination of this Lease by Landlord or Tenant, given in accordance with the terms of this Lease, or within one (1) year prior to the stated expiration of the term of this Lease.

Tenant shall permit Landlord and its authorized representatives to inspect the Demised Premises during normal business hours, and to make repairs, if applicable, provided that any inspection or repair by Landlord or its representatives will not unreasonably interfere with Tenant's use and operation of the Demised Premises.

## **ARTICLE 13. INDEMNIFICATION OF LANDLORD AND TENANT**

**Section 13.1 Landlord's Indemnification.** Tenant shall indemnify and save harmless Landlord from and against any and all liability, damage, penalties or judgments arising from (a) injury to person or property sustained by anyone in and about the Demised Premises resulting from any act or acts or omission or omissions of Tenant, or Tenant's officers, agents, servants, employees, sublessee, licensees or business invitees or any person claiming through or under Tenant or its officers, agents,

servants, employees or business invitees, except to the extent that such injury to person or property is a result of the gross negligence or willful misconduct of Landlord, and (b) any failure by Tenant to observe or perform any of its obligations under the terms, covenants and conditions of this Lease. Tenant shall, at its own cost and expense, defend any and all suits or actions which may be brought against Landlord or in which Landlord may be impleaded with respect to the foregoing.

**Section 13.2 Tenant's indemnification.** Landlord shall be liable for and hereby indemnifies and agrees to reimburse and hold Tenant harmless against any and all liability, damage, penalties, costs, expenses, fines, losses, obligations, lawsuits, judgments arising from or out of the failure by Landlord to observe or perform any of its obligations under the terms, covenants and conditions of this Lease. Notwithstanding the foregoing provisions, the liability of Landlord hereunder shall not include any liability whatsoever which may be caused (intentionally or unintentionally) by the Tenant's use and operation of the Demised Premises.

#### **ARTICLE 14. DAMAGE OR DESTRUCTION**

**Section 14.1 Casualty Proceeds.** Subject to the terms of any Mortgage and Article 4 hereof, all proceeds of the insurance payable by reason of any loss, damage or destruction to the Demised Premises, or any portion thereof ("Casualty"), and insured under any policy of property or casualty insurance required by Article 4 (other than proceeds of any insurance proceeds paid with respect to any property of Tenant, which shall be paid to Tenant) shall be paid directly to Landlord, and paid out by Landlord from time to time for the reasonable costs of reconstruction or repair of the Demised Premises necessitated by such Casualty; provided, however, that so long as no Event of Default shall have occurred and be continuing, and subject to the terms of any Mortgage, all such proceeds less than or equal to \$50,000 shall be paid directly to Tenant and applied to the reasonable costs of restoration and repair of the Demised Premises necessitated by such Casualty, and such losses may be adjusted without Landlord's consent. Any excess proceeds of insurance remaining after the completion of the restoration shall be paid to Landlord. All salvage resulting from any risk covered by insurance shall belong to Landlord, except for any amount thereof paid with respect to the personal property. If Landlord is not required by the Mortgage and elects not to repair and restore as permitted under this Lease, and this Lease is terminated pursuant to Section 14.1, all such insurance proceeds shall be retained by Landlord, except for any amount thereof paid with respect to the Tenant's personal property and any amount attributable to business interruption insurance.

**Section 14.2 Destruction.** If during the Term the Demised Premises is totally or partially destroyed by a Casualty and the Facility is thereby rendered Unsuited for its Primary Intended Use, as reasonably determined by Landlord, this Lease shall terminate as of the date of the Casualty and neither Landlord nor Tenant shall have any further liability hereunder except for any liabilities which have arisen or occurred prior to such termination, and those which expressly survive termination of this Lease, and Landlord shall be entitled to retain all Casualty insurance proceeds (except for any

amount thereof paid with respect to the Tenant's personal property and any amount attributable to business interruption insurance which Tenant may have elected to procure).

If during the Term the Demised Premises is totally or partially destroyed by a Casualty, but the Facility is not thereby rendered Unsuited for Its Primary Intended Use, as reasonably determined by Landlord, Tenant shall be obligated to perform such restoration work, subject to reimbursement for the same, solely from the proceeds received by Landlord from the insurance required under Article 4. In the event no such proceeds are available, or in the event the available proceeds are insufficient to restore the Facility, Tenant, may, at its option, terminate this Lease. Except as provided herein, such damage or destruction shall not terminate this Lease.

**Section 14.3 Repair.** Tenant shall commence promptly and continue diligently to perform the repair and restoration of the Demised Premises, so as to restore the Demised Premises in compliance with all Health Care Requirements to substantially the same condition, to the extent reasonably practicable, as existed immediately before the damage or destruction and otherwise in accordance with this Lease. Landlord shall disburse the insurance proceeds to Tenant regularly during the repair and restoration period so as to permit payment for the cost of any such restoration and repair. Any such advances shall be made not more frequently than monthly within ten (10) Business Days after Tenant submits to Landlord a written requisition and substantiation therefor reasonably acceptable to Landlord. Landlord may, at its option, condition advancement of said insurance proceeds and other amounts on (a) the absence of any uncured Event of Default, (b) its approval of plans and specifications of an architect reasonably satisfactory to Landlord (which approval shall not be unreasonably withheld or delayed), (c) general contractor's estimates, (d) architect's certificates, (e) unconditional lien waivers of general contractors (if available), (f) evidence of approval by all governmental authorities and other regulatory bodies whose approval is required, and (g) such other certificates as Landlord may, from time to time, reasonably require.

Landlord's obligation to disburse insurance proceeds under this Article 14 shall be subject to the release of such proceeds by any Mortgagee pursuant to any Mortgage to Landlord, and Tenant's obligation to restore the Demised Premises pursuant to this Article 14 shall be subject to the release of available insurance proceeds by any mortgagee to Landlord or directly to Tenant.

**Section 14.4 Impact of Under-Insurance.** If during the Term the Facility is totally or materially damaged or destroyed by a risk not covered by the insurance, or if the proceeds of such insurance are not available to Landlord for restoration of the Facility, whether or not in either event such damage or destruction renders the Facility Unsuited for Its Primary Intended Use, Landlord at its option shall, subject to the provisions of any Mortgage, either, (a) restore the Facility at Landlord's sole cost and expense to substantially the same condition it was in immediately before such damage or destruction, in which case such damage or destruction shall not terminate this Lease, or (b) terminate this Lease and neither Landlord nor Tenant shall have any further

liability thereunder, except for any liabilities which have arisen or occurred prior to such termination and those which expressly survive termination of this Lease.

**Section 14.5 Payment of Insurance Proceeds.** All insurance proceeds payable by reason of any loss of or damage to any of the personal property owned by Tenant and the business interruption insurance maintained for the benefit of Tenant shall be paid to Tenant.

**Section 14.6 Lease to Remain in Force.** Any damage or destruction due to Casualty notwithstanding, this Lease shall remain in full force and effect (except as otherwise expressly provided in this Article 14) and Tenant's obligation to pay Rent required by this Lease shall remain unabated by any Casualty.

## **ARTICLE 15. CONDEMNATION**

**Section 15.1 Condemnation.** If either (a) the whole of the Demised Premises shall be taken by Condemnation or (b) a Condemnation of less than the whole of the Demised Premises renders the Demised Premises Unsuited for Its Primary Intended Use, as reasonably determined by either Landlord, this Lease shall, subject to the terms of the Mortgage, terminate as of the day of the Condemnation, and Tenant and Landlord shall seek the Award for their respective interests in the Demised Premises as provided in Section 15.4.

**Section 15.2 Partial Condemnation.** In the event of a Condemnation of less than the whole of the Demised Premises such that the Demised Premises is still suitable for its Primary Intended Use, as reasonably determined by Tenant, Landlord shall, subject to the terms of the Mortgage and to the extent that the Award and additional amounts to be contributed by Landlord are sufficient therefor, commence promptly and continue diligently to restore the untaken portion of the Facility so that the Facility shall constitute a complete architectural unit of the same general character and condition (as nearly as may be possible under the circumstances) as the Facility existing immediately prior to such Condemnation, in full compliance with all Legal Requirements. Subject to the terms hereof and the terms of any Mortgage, Landlord shall contribute to the cost of restoration that part of the Award necessary to complete such repair or restoration, together with severance and other damages awarded for the taken portion of the Facility (provided, however, that the amount of such contribution shall not exceed such cost. Landlord's obligation to restore the Demised Premises shall be subject to the release of the Award and any additional funds to be disbursed by Landlord pursuant hereto required for restoration. If Landlord has received the Award, but elects not to make the Award available for restoration, then Tenant shall have the right to terminate this Lease. If Landlord has not received the Award, or the Award is insufficient to restore the untaken portion of the Facility as provided above, then either Tenant or Landlord, in their sole discretion, shall have the right to terminate this Lease and neither Landlord nor Tenant shall have any further liability hereunder, except for any liabilities which have arisen or occurred prior to such termination and those which expressly survive termination of this Lease, and Landlord shall be entitled to retain the

entire Award; provided that Tenant shall be permitted to seek a separate award for the value of Tenant's personal property that was taken in such Condemnation.

**Section 15.3 Impact on Rent.** In the event of a partial Condemnation as described in Section 15.2 which does not result in a termination of this Lease by Landlord, no portion of the Rent paid by Tenant shall be abated, the parties having considered such possibility in setting the Rent.

**Section 15.4 Right to Award.** Except as provided in the second sentence of this Section 15.4, the total Award shall be solely the property of and payable to Landlord. Any portion of the Award made for the taking of Tenant's leasehold interest in the Demised Premises (valued without regard to any right of termination in Landlord that otherwise exists under this Article), loss of business during the remainder of the Term (determined without regard to any provision for termination that might otherwise arise under this Article), the taking of the personal property or Tenant's removal and relocation expenses shall be the sole property of and payable to Tenant (subject to the provisions of Section 15.2). Subject to the rights of any Mortgagee, in any Condemnation proceedings, Landlord and Tenant shall each seek its own Award in conformity herewith, at its own expense.

## **ARTICLE 16. ASSIGNMENT, SUBLEASING, AND MORTGAGES**

**Section 16.1 No Sale.** Neither this Lease nor the interest of Tenant in this Lease shall be sold, assigned or otherwise transferred, whether by operation of law or otherwise, nor shall Tenant sublease, or allow other similar forms of occupancy on, the Demised Premises, nor shall Tenant transfer its interest in, or control of, the Demised Premises, without the express prior written consent of Landlord which may be granted or withheld in the sole discretion of Landlord and which consent shall (i) not be construed as consent to a subsequent transfer, and (ii) not relieve Tenant from its liabilities under the Lease.

**Section 16.2 Admissions.** Tenant shall have the right in the ordinary course of its business to admit residents and to sublease commercial spaces in the Facility to commercial tenants, provided that the commercial space sublease shall be subject and subordinate to this Lease and contain such attornment and other customary provisions as Landlord and Lender shall reasonably require.

**Section 16.3 No Assignment.** Except as otherwise expressly provided in this Section 16.3, and subject to the terms of any Facility Mortgage, Tenant shall not, without the prior written consent of Landlord (which consent shall not be unreasonably withheld, conditioned or delayed), assign, mortgage, pledge, hypothecate, encumber or otherwise transfer this Lease or sublease (which term shall be deemed to include the granting of concessions, licenses and the like) all or any part of the Demised Premises, or suffer or permit this Lease or the leasehold estate created hereby or any other rights arising under this Lease to be assigned, transferred, mortgaged, pledged, hypothecated or encumbered, in whole or in part, whether voluntarily, involuntarily or by operation of

law, or permit the use or occupancy of the Demised Premises by anyone other than Tenant or any Affiliate or Tenant or permit the Demised Premises to be offered or advertised for assignment or subletting.

No subletting or assignment shall in any way impair the continuing primary liability of Tenant hereunder, and no consent to any subletting or assignment in a particular instance shall be deemed to be a waiver of the prohibition set forth in this Section 16.3. Any subletting, assignment or other transfer of Tenant's interest under this Lease in contravention of this Section 16.3 shall be voidable at Landlord's option.

## **ARTICLE 17. CONDITIONAL LIMITATIONS - DEFAULT PROVISIONS**

**Section 17.1 Default.** The occurrence of any one or more of the following events shall constitute an "**Event of Default**" hereunder:

(a) Tenant fails to make any payment of the Rent payable hereunder when due and such failure continues for a period of ten (10) days after notice of such failure.

(b) Tenant fails to maintain and/or pay for the insurance coverages that it is required to maintain under Article 4.

(c) Except as otherwise expressly provided herein, Tenant defaults in the due observance or performance of any of the terms, covenants or agreements contained herein to be performed or observed by it (other than as specified in clauses (a) and (b) above) Tenant's covenants under the Lease.

(d) There occurs a final unappealable determination by applicable federal or State authorities of the revocation or limitation of any material license required for the material lawful operation of the Facility in accordance with its Primary Intended Use or the loss or limitation of any material license under any other circumstances under which Tenant is required to cease its operation of the Facility in accordance with its Primary Intended Use at the time of such loss or limitation.

(e) Any petition is filed by or against Tenant under the Federal bankruptcy laws, or any other proceeding is instituted by or against Tenant seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for Tenant or for any substantial part of the property of Tenant, and, in the case of any involuntary petition filed or proceeding instituted against Tenant only, such proceeding is not dismissed within sixty (60) days after institution thereof, or Tenant takes any action to authorize or effect any of the actions set forth above in this paragraph.

(f) Tenant causes or institutes any proceeding for its dissolution or termination.

(g) Tenant ceases operation of the Demised Premises for its Primary Intended Use for a period in excess of thirty (30) consecutive days, except as a result of a Casualty, other Emergency Situations, or partial or complete Condemnation of or to the Facility or of or to the immediate surroundings so as to prohibit reasonable access by patrons to the Facility.

If an Event of Default occurs, Landlord shall give Tenant a notice specifying the nature of the default. If Tenant does not, within thirty (30) days after giving of such notice, cure the default (or within five (5) days with respect to a default in the payment of Rent or other charges payable by Tenant hereunder) or if such default is of a nature that it could not reasonably be cured within such period of thirty (30) days, and Tenant does not commence and proceed to cure such default with diligence then, after the expiration of such thirty (30) day period (or longer period if such default cannot be cured within the said thirty (30) day period), Landlord shall have the rights and remedies described in this Article 17.

**Section 17.2 Remedy.** After an Event of Default occurs pursuant to Section 17.1 herein, Landlord may, at any time during the continuance of such Event of Default, at its option, (i) give notice to Tenant stating that an Event of Default has occurred and requiring that such Event of Default be cured within fifteen (15) business days of the giving of such notice (or one (1) business day of the giving of such notice with respect to a default in the payment of Rent). If such period shall expire and the Event of Default shall remain uncured, then Landlord may at any time thereafter during the continuance of such Event of Default give notice (the "Termination Notice") to Tenant that this Lease and the term shall expire and terminate on the date specified in such notice, which date shall be not less than three (3) business days after the receipt by Tenant of such Termination Notice, in which event this Lease and the term and all rights of Tenant under this Lease shall expire and terminate on the date specified in such notice or (ii) exercise any other remedy permitted by law. It is expressly understood that the remedies described in this Section 17.2 shall be cumulative and that Landlord shall not be required to elect or be deemed to have elected to pursue one remedy to the exclusion of any other remedy merely by commencing enforcement of any single such remedy.

**Section 17.3 Right to Re-Enter.** If this Lease is terminated as provided in Section 17.2, Landlord may re-enter and repossess the Demised Premises and dispossess Tenant and any other occupants thereof, remove their effects not previously removed by them, and hold the Demised Premises as if this Lease had not been made. In connection therewith, Tenant hereby waives the service of any additional notice of intention to re-enter the Demised Premises.

**Section 17.4 No Duty.** In view of the specialized nature of the Facility, Tenant expressly agrees that Landlord shall have no duty to mitigate any damages that Landlord may suffer as a result of an Event of Default, and that no attempt or failure to

attempt to mitigate damages shall diminish or affect the obligations of Tenant under Section 17.2.

**Section 17.5 Bankruptcy.** Notwithstanding anything to the contrary contained herein, if at the time of Tenant's Event of Default hereunder Tenant shall be the subject of any bankruptcy or insolvency proceedings, Landlord shall be entitled to claim against Tenant the worth, at the time of such Event of Default, of the excess, if any, of the amount of rental and charges equivalent to the Rent and estimated future Rent and other charges reserved in this Lease for the remainder of the then term of this Lease, over the aggregate rental value of the Demised Premises for the remainder of such term, all of which shall be immediately due and payable from Tenant to Landlord. If any laws shall validly limit the amount of damages provided for in the immediately preceding sentence to be less than the amount above agreed upon, Landlord shall be entitled to the maximum amount allowable under such laws. The provisions of this section are subject to any right Tenant may have available to it under the bankruptcy code.

## **ARTICLE 18. STATEMENTS**

**Section 18.1 Statements.** At any time and from time to time, Landlord, on at least twenty (20) days' prior written request by Tenant, and Tenant, on at least twenty (20) days' prior written request by Landlord, will deliver to the other party a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the same is in full force and effect as modified and stating the modifications), and the dates to which the Rent and other charges have been paid, and stating whether or not to the best knowledge of the party executing such certificate, the party requesting such statement is in default in performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which the executing party may have knowledge.

**ARTICLE 19.  
NOTICES**

**Section 19.1 Notice.** All notices, demands, requests or approvals required under this Lease shall be in writing. All such notices, demands, requests or approvals shall be deemed to have been properly given if sent by United States registered or certified mail, postage prepaid, return receipt requested, addressed as hereinafter provided or delivered by hand (if acknowledgment of receipt is obtained). All such notices, demands and requests so mailed or delivered to Landlord shall be addressed to Landlord at the address set forth below. All such notices, demands, requests and approvals mailed or delivered to Tenant shall be addressed to Tenant at the address set forth below.

Landlord: Orchard View RI Landlord LLC  
135 South Road  
Farmington, CT 06032

Tenant: Orchard View RI SNF LLC  
135 South Road  
Farmington, CT 06032

**Section 19.2 Sufficiency.** Notices, demands and requests which shall be served in the manner aforesaid, shall be deemed sufficiently served or given for all purposes hereunder at the time such notice, demand or request is received or delivery is refused.

**ARTICLE 20.  
CUMULATIVE REMEDIES**

**Section 20.1 Remedies.** The specific remedies to which either party may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any breach or threatened breach by the other party of any provision of this Lease. In addition to the other remedies provided in this Lease, either party shall be entitled to the restraint by injunction of the violation, or attempted or threatened violation of any of the covenants, conditions or provisions of this Lease or to a decree compelling performance of any of such covenants, conditions or provisions.

**ARTICLE 21.  
INVALIDITY OF PARTICULAR PROVISIONS**

**Section 21.1 Indemnity.** If any term or provision of this Lease or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Lease, 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 each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

**ARTICLE 22.  
COVENANTS TO BIND AND BENEFIT RESPECTIVE PARTIES**

**Section 22.1 Binding Parties.** It is further covenanted and agreed by and between the parties hereto that the covenants and agreements herein contained shall, subject to the provisions of this Lease, bind and inure to the benefit of Landlord, its legal representatives, successors and permitted assigns, and Tenant, its legal representatives, and its successors and permitted assigns.

## **ARTICLE 23. SIGNS**

**Section 23.1 Signs.** Tenant shall have the right to install, maintain and replace in, on or in front of any improvement or location on the Demised Premises or in any part thereof, such signs and advertising matter as Tenant may desire, and Tenant shall comply with any applicable requirements of Government Agencies having jurisdiction and shall obtain any necessary permits for such purposes. As used in this Article 23, the word "sign" shall be construed to include any placard, pylon, logo, light or other advertising symbol or object, irrespective of whether same be temporary or permanent. Tenant shall, upon notice from Landlord, remove any signs requested by Landlord upon the expiration or sooner termination of this Lease.

## **ARTICLE 24. UTILITY EASEMENTS**

**Section 24.1 Utility Easements.** Tenant shall have the right with the prior written consent of Landlord (which shall not be unreasonably withheld or delayed), to enter into agreements with utility companies creating such easements in favor of the utility companies as are required in order to service the Demised Premises and the Facility, and to enter into such reciprocal parking agreements and easements for ingress and egress as are required in order to service the Demised Premises and the Facility. Landlord covenants and agrees to consent thereto and to execute any and all documents, instruments or certificates reasonably required in connection therewith, and to take all other action, in order to effectuate the same, all at Tenant's costs and expense, with the express agreement that Landlord shall have no liability whatsoever in connection with any such agreement. In no event, however, shall Tenant have the power to enter into any easement or reciprocal parking agreement for a term in excess of the term of this Lease or sooner termination thereof.

## **ARTICLE 25. WAIVER OF DISTRAINT**

**Section 25.1 Waiver.** Landlord hereby expressly waives any and all rights granted by or under any present or future laws to levy or distrain for rent or other charges, in arrears, in advance or both, upon all goods, merchandise, equipment, fixtures, furniture and other personal property of Tenant or any nominee of Tenant in the Demised Premises, delivered or to be delivered thereto.

**ARTICLE 26.  
LIMITATION OF LIABILITY**

**Section 26.1 Limitation on Landlord Liability.** There shall be absolutely no personal liability on the part of Landlord or any individual or member of Landlord or any member, officer, employee, partner or trustee or other person or entity of Landlord with respect to the terms, covenants or conditions of this Lease, and Tenant shall look solely to the interest of Landlord in the Demised Premises for the satisfaction of each and every remedy which Tenant may have for the breach of this Lease. In the event of any sale by Landlord of its interest in the Demised Premises, the seller shall be and hereby is entirely freed and relieved of all liabilities and obligations of Landlord hereunder which accrue from or after the date of such sale, and it shall be deemed and construed, without further agreement between the parties or between the parties and the purchaser of such interest in the Demised Premises, that such purchaser has assumed and agreed to carry out any and all covenants and obligations of Landlord hereunder from and after such date.

**Section 26.2 Limitation on Tenant Liability.** The liability of Tenant under this Lease (for damages or otherwise) shall be limited to Tenant's interest in the Demised Premises and this Lease. Notwithstanding any provision to the contrary that may be contained herein, there shall be absolutely no personal liability on the part of Tenant or any individual general partner or member of Tenant or any stockholders, officer, director, trustee or other person or entity of Tenant with respect to the terms, covenants and conditions of this Lease.

**ARTICLE 27.  
NO MERGER**

**Section 27.1 No Merger.** If Landlord or Tenant shall acquire the interest of the other hereunder, this Lease shall remain outstanding and no merger of the leasehold into the fee interest shall be deemed to have occurred without the consent of the Landlord, the Tenant, and all Mortgagees.

**ARTICLE 28.  
MISCELLANEOUS**

**Section 28.1 Captions.** The captions of this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

**Section 28.2 Table of Contents.** The table of contents preceding this Lease is for the purpose of convenience and reference only, and are not to be deemed or construed in any way as part of this Lease, or as supplemental thereto or amendatory thereof.

**Section 28.3 Governing Law.** This Lease shall be construed and enforced in accordance with the laws of the State of Rhode Island.

**Section 28.4 Changes in Writing.** No agreement hereafter made shall be effective to change, modify, discharge or effect an abandonment of this Lease in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

**Section 28.5 When Bound.** It is understood and agreed that this Lease may be signed by Tenant with the understanding that it shall not bind Landlord until duly executed by Landlord and a fully executed copy is delivered to Tenant.

**Section 28.6 Brokers.** Each party represents that it has not dealt with any broker in connection with this Lease. Each party agrees to indemnify and hold the other harmless against any claims (including attorneys' fees incurred in defending any such claim) of any other broker claiming commissions or other compensation on this Lease, including any options contained herein, based upon alleged negotiations with the indemnifying party.

**Section 28.7 Jury Trial.** The parties agree that they waive trial by jury in any action brought by either party against the other, or any proceeding or counterclaim, on any matter arising out of this Lease or Tenant's occupancy of the Demised Premises (except one for personal injuries or property damage). If Landlord commences any summary proceedings for possession of the Demised Premises, Tenant shall not interpose any counterclaim of any kind in any such proceeding, unless failure to assert the same would constitute a waiver of the claim.

**Section 28.8 Entire Agreement.** This Lease contains the entire agreement between the parties with respect to the subject matter hereof and cannot be changed, modified or amended unless such change, modification or amendment is in writing and executed by both parties to this Lease.

**Section 28.9 Construction of Lease.** This Lease was prepared and negotiated by the parties hereto and all clauses and this Lease as an entirety shall be so construed regardless of, and without prejudice to, the party who actually memorializes this document in final form.

**Section 28.10 Waiver.** No failure by either Landlord or Tenant to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, and no acceptance of full or partial payment of Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term. To the maximum extent permitted by law, no waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

**Section 28.11 Rights Cumulative.** To the maximum extent permitted by law, each legal, equitable or contractual right, power and remedy of either party now or hereafter provided either in this Lease or by statute, or otherwise, shall be cumulative

and concurrent and shall be in addition to every other right, power and remedy, and the exercise or beginning of the exercise by either party of any one or more of such rights, powers and remedies shall not preclude the simultaneous or subsequent exercise by such party of any or all of such other rights, powers and remedies.

**Section 28.12 Partial Invalidity.** Any clause, sentence, paragraph, section or provision of this Lease held by a court of competent jurisdiction to be invalid, illegal or ineffective shall not impair, invalidate or nullify the remainder of this Lease, but rather the effect thereof shall be confined to the clause, sentence, paragraph, section or provision so held to be invalid, illegal or ineffective, and this Lease shall be construed as if such invalid, illegal or ineffective provisions had never been contained herein.

**Section 28.13 No Surrender.** No surrender to Landlord of this Lease or of the Demised Premises or any part thereof, or of any interest therein, shall be valid or effective unless agreed to and accepted in writing by Landlord, and no act by Landlord or any representative or agent of Landlord, other than such a written acceptance by Landlord, shall constitute an acceptance of any such surrender.

**Section 28.14 Release.** If Landlord or any successor owner of all or any portion of the Demised Premises shall convey all (but not a portion) of the Demised Premises in accordance with the terms hereof other than as security for a debt, and the grantee or transferee of the Demised Premises shall expressly assume all obligations of Landlord hereunder arising or accruing from and after the date of such conveyance or transfer, Landlord or such successor owner, as the case may be, shall thereupon be released from all future liabilities and obligations of Landlord under this Lease with respect to such of the Demised Premises arising or accruing from and after the date of such conveyance or other transfer, all such future liabilities and obligations shall thereupon be binding upon the new owner, and all references herein to Landlord thereafter shall be deemed to refer to the new owner.

**Section 28.15 Recording.** Unless required by Legal Requirements, neither Landlord nor Tenant shall record this Lease. However, Landlord and Tenant shall promptly, upon the request of the other, enter into a short form memorandum of this Lease, in form suitable for recording under the laws of the State in which reference to this Lease, and all options contained herein, shall be made. The requesting party shall bear the costs and expenses of recording such memorandum. If a memorandum of this Lease is required by Legal Requirements to be recorded, the parties shall share equally the costs and expenses of recording such memorandum.



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State of Rhode Island and Providence Plantations

**A. Ralph Mollis**  
*Secretary of State*

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

I, A. RALPH MOLLIS, Secretary of State of the State of Rhode Island  
and Providence Plantations, hereby certify that this document, duly  
executed in accordance with the provisions of Title 7 of the General Laws  
of Rhode Island, as amended, has been filed in this office on this day:  
January 09, 2012 2:05 PM

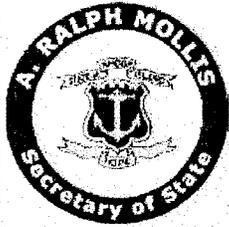
A handwritten signature in black ink that reads "A. Ralph Mollis".

A. RALPH MOLLIS

*Secretary of State*







State of Rhode Island and Providence Plantations  
Office of the Secretary of State

Fee: \$150.00

Division Of Business Services  
148 W. River Street  
Providence RI 02904-2615  
(401) 222-3040

**Limited Liability Company  
Articles of Organization**

(Chapter 7-16-6 of the General Laws of Rhode Island, 1956, as amended)

**ARTICLE I**

The name of the limited liability company is: Athena Orchard View LLC

**ARTICLE II**

The street address (post office boxes are not acceptable) of the limited liability company's registered agent in Rhode Island is:

No. and Street: 222 JEFFERSON BOULEVARD  
SUITE 200

City or Town: WARWICK

State: RI

Zip: 02888

The name of the resident agent at such address is: CORPORATION SERVICE COMPANY

**ARTICLE III**

Under the terms of these Articles of Organization and any written operating agreement made or intended to be made, the limited liability company is intended to be treated for purposes of federal income taxation as:  
*Check one box only*

a partnership     a corporation     disregarded as an entity separate from its member

**ARTICLE IV**

The address of its principal office of the limited liability company if it is determined at the time of organization:

No. and Street: 300 QUEEN STREET

City or Town: SOUTHINGTON

State: CT

Zip: 06489

Country: USA

**ARTICLE V**

The limited liability company has the purpose of engaging in any lawful business, unless a more limited purpose is set forth in Article VI of these Articles of Organization.

The period of its duration is:  Perpetual   

**ARTICLE VI**

Additional provisions, if any, not inconsistent with law, which members elect to have set forth in these Articles of Organization, including, but not limited to, any limitation of the purposes or any other provision which may be included in an operating agreement:



**ARTICLE VII**

The limited liability company is to be managed by its \_\_\_ Members or  Managers (check one)  
(If managed by Members, go to ARTICLE VIII)

The name and address of each manager (If LLC is managed by Members, DO NOT complete this section):

Title	Individual Name First, Middle, Last, Suffix	Address Address, City or Town, State, Zip Code, Country
MANAGER	LAWRENCE G. SANTILLI	300 QUEEN STREET SOUTHINGTON, CT 06489

**ARTICLE VIII**

The date these Articles of Organization are to become effective, not prior to, nor more than 30 days after the filing of these Articles of Organization.

Later Effective Date:

*This electronic signature of the individual or individuals signing this instrument constitutes the affirmation or acknowledgement of the signatory, under penalties of perjury, that this instrument is that individual's act and deed or the act and deed of the company, and that the facts stated herein are true, as of the date of the electronic filing, in compliance with R.I. Gen. Laws § 7-16.*

Signed this 9 Day of January, 2012 at 2:07:07 PM by the Authorized Person.

ROBERT V. GIUNTA, JR.

**Address of Authorized Signer:**  
MURTHA CULLINA LLP  
CITYPLACE I, 185 ASYLUM STREET  
HARTFORD, CT 06103

Form No. 400  
Revised 09/07

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**OPERATING AGREEMENT**  
**OF**  
**ATHENA ORCHARD VIEW LLC**

THIS OPERATING AGREEMENT of Athena Orchard View LLC, a Rhode Island limited liability company (the "Company") is made and entered into as of the 9th day of January, 2012, by and among the Company and those persons and entities listed as members on Schedule A attached hereto and made a part hereof as may be amended pursuant to this Operating Agreement from time to time (the "Members").

The Members desire to operate a limited liability company pursuant to the laws of the State of Rhode Island. Accordingly, in consideration of the mutual covenants contained herein, they agree and certify as follows:

**ARTICLE I**

Definitions

For purposes of this Operating Agreement, the following terms shall have the meanings specified unless the context otherwise requires:

(a) The "Act" means the Rhode Island Limited Liability Company Act, R.I.G.L. c. 7-16, as the same is in effect at the time of formation of the Company and as the same may be hereafter amended from time to time (or any corresponding provisions of succeeding law).

(b) "Additional Capital Contribution" means, with respect to any Member, any amount contributed, required to be contributed, or deemed to be contributed to the capital of the Company pursuant to Section 6.3 or 6.4 hereof.

(c) "Additional Capital Contribution Attributable To Guaranty Of Debt" means any amount paid by a Member to any creditor of the Company or any company of which the Company is the member under a guaranty of the debt of the Company or such other company by the Member.

(d) "Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant fiscal year or other period, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Operating Agreement or is deemed to be obligated to restore

pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(ii) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of the Regulations.

The foregoing definition of "Adjusted Capital Account Deficit" is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith

(e) "Bankruptcy" means, with reference to any Member:

(i) the entry of an order for relief (or similar court order) against such Member which authorizes a case brought under Chapter 7, 11 or 13 of Title 11 of the United States Code to proceed;

(ii) the commencement of a federal, state or foreign bankruptcy, insolvency, reorganization, arrangement or liquidation proceeding by such Member;

(iii) the commencement of a federal, state or foreign bankruptcy, insolvency, reorganization, arrangement or liquidation proceeding against such Member if such proceeding is not dismissed within sixty (60) days after the commencement thereof;

(iv) the entry of a court decree or court order which remains unstayed and in effect for a period of thirty (30) consecutive days:

(A) adjudging such Member insolvent under any federal, state or foreign law relating to bankruptcy, insolvency, reorganization, arrangement, liquidation, receivership or the like;

(B) approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of, or in respect of, such Member or his properties under any federal, state or foreign law relating to insolvency, reorganization, arrangement, liquidation, receivership or the like;

(C) appointing a receiver, liquidator, assignee, trustee, conservator, or sequester (or other similar official) of such Member, or of all, or of a substantial part, of such Member's properties; or

(D) ordering the winding up, dissolution or liquidation of the affairs of such Member;

- (v) the written consent by such Member to the institution against it of any proceeding of the type described in subsection (i), (ii), (iii) and (iv);
  - (v) the written consent by such Member to the appointment of a receiver, liquidator, assignee, trustee, conservator or sequester (or other similar official) of such Member, or of all, or of a substantial part, of its properties;
  - (vi) the making by such Member of an assignment for the benefit of creditors;
  - (vii) the admission in writing by such Member of its inability to pay its debts generally as they come due;
  - (viii) the taking of any action by such Member in furtherance of any of the foregoing; or
  - (ix) if such Member becomes insolvent by the taking of any act or the making of any transfer, or otherwise, as insolvency is or may be defined pursuant to the Federal Bankruptcy Code, the Federal Bankruptcy Act, the Uniform Fraudulent Conveyances Act, any state, federal or foreign act, or the ruling of any court.
- (f) “Breaching Member” has the meaning set forth in Section 11.8 hereof.
- (g) “Breach Payments” has the meaning set forth in Section 11.9 hereof.
- (h) “Capital Account” means, with respect to any Member, the capital account maintained for such Member in accordance with the provisions set forth in Section 8.1.
- (i) “Capital Contribution” shall mean, with respect to any Member, the amount of money and the initial Gross Asset Value of any property (net of liabilities secured by such property that the Company is considered to assume or take subject to under Code Section 752) contributed by a Member to the capital of the Company and any Company liabilities assumed by the Member within the meaning of Regulations Section 1.704-1(b)(2)(iv)(c).
- (j) “Cash Flow” means the gross cash receipts of the Company of any kind or description (but not including Capital Contributions) during any applicable computation period, less:
- (i) all operating or other expenses of the Company paid in cash during the period, but not including expenses paid in cash to the extent that such expenses were reserved against and funded from such reserves;

(ii) all cash payments made with respect to the discharge of Company indebtedness during the period, but not including any such payments to the extent that the amounts thereof were reserved against and funded from such reserves; and

(iii) all amounts of reserved cash as shall be determined by the Manager to be necessary and advisable for (a) the payment of Company expenses coming due at some future time, (b) the repayment of any Company indebtedness coming due at some future time, (c) reasonable increases in working capital, and (d) reasonable contingency reserves.

(k) "Cash Flow Deficit" means the amount, reasonably determined by the Manager and approved by a Majority in Interest of the Members, as of the date of any Deficit Contribution Notice, to be the excess of (1) the Company's normal projected operating cash requirements for the period set forth in such notice over (2) the aggregate projected Company cash available to fund such normal projected operating cash requirements during such period. For this purpose, the Company's normal operating cash requirements shall include amounts necessary to pay normal and ordinary costs of Company operations, emergency repairs to, or replacements or improvements of, Company assets, normal debt service on any loans secured by Company property, and amounts necessary to retire any unsecured loans incurred by the Company to pay normal operating cash requirements for periods ending prior to the date of the relevant Deficit Contribution Notice.

(l) "Company" has the meaning set forth in Section 2.2 hereof.

(m) "Company Minimum Gain Chargeback Allocation" means the allocations required by Section 1.704-2(f) of the Regulations.

(n) "Code" means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

(o) "Deficit Contribution Notice" means a written notice given by the Manager to the Members, which shall (1) state the amount that the Manager has determined to be the Cash Flow Deficit that the Company is likely to incur during the period beginning on the date of such Deficit Contribution Notice, (2) summarize with reasonable particularity the basis for such determination, (3) identify a contribution date, not sooner than fifteen days after the date of such Deficit Contribution Notice, upon which contributions to fund such Cash Flow Deficit shall be due, and (4) specify the portion of such Cash Flow Deficit Contribution for which each Member is responsible.

(p) "Delinquency Interest Rate" has the meaning set forth in Section 6.4(b) hereof.

(q) "Delinquency Loan" has the meaning set forth in Section 6.4(a) hereof.

(r) "Delinquency Loan Notice" has the meaning set forth in Section 6.4(a) hereof.

(s) "Delinquent Contribution" means, with respect to any Delinquent Member, the amount of any required Additional Capital Contribution of such Member under Section 6.3(b) hereof that is not made, when due, and remains unmade as of such time.

(t) "Delinquent Member" has the meaning set forth in Section 6.4(a) hereof.

(u) "Depreciation" means, for each fiscal year or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable for federal income taxes with respect to an asset for such fiscal year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such fiscal year or other period, the Depreciation shall be in amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such fiscal year or other period bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such fiscal year or other period is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Manager.

(v) "Dissociation" (including all variations of the verb form Dissociate and the adjective forms Dissociating and Dissociated) means (a) as to any Member, Bankruptcy; (b) as to an individual Member, the occurrence of death, adjudication of insanity or incompetence; (c) as to any legal entity Member, dissolution, or (d) as to any Member, voluntary or involuntary withdrawal as a Member for any reason. Involuntary withdrawal shall occur whenever the Member may no longer continue as a Member by law or pursuant to the terms of this Agreement.

(w) "Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(1) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Manager provided that, if a Manager is the contributing Member, the determination of the fair market value of the contributed asset shall require the consent of a Majority in Interest of the Members;

(2) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Manager (unless the Manager is the contributing member, in which case a Majority in Interest of the Members shall determine the aforesaid value), as of the following times: (w) in connection with the grant of an interest in the Company (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a Member capacity, or by a new Member acting in a Member capacity in anticipation of being a Member; (x) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (y) the distribution by the Company to a Member of more than a de minimis amount of property as consideration for an interest in the Company; and (z) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clauses (w), (x) and (y) above shall be made only if the Manager reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(3) The Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the Manager, provided that if the distributee is a Manager, the determination of fair market value of the distributed asset shall require the consent of a Majority in Interest of the Members; and

(4) The Gross Asset Values of the Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and subparagraph (6) of the definition of Net Profits and Net Losses in Article I, (ff) or Section 7.2(d); provided, however, that Gross Asset Values shall not be adjusted pursuant to this subparagraph (4) to the extent that the Manager determines that an adjustment pursuant to subparagraph (2) is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (4).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraphs (1), (2) or (3), such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Profits and Net Losses.

(x) "Involuntary Withdrawal" (including all variations of the verb form withdraw and the adjective forms withdrawing or withdrawn) means (a) as to any Member, Bankruptcy; (b) as to an individual Member, the occurrence of death, adjudication of insanity or incompetence; (c) as to any legal entity Member, dissolution; or (d) as to any Member, involuntary withdrawal as a Member for any reason. Involuntary Withdrawal shall occur whenever the Member may no longer

continue as a Member by law or pursuant to the terms of this Agreement, except that involuntary withdrawal shall not occur by means of a Transfer unless the Transfer is a Bankruptcy.

(y) "Liquidating Event" has the meaning set forth in Section 12.1 hereof.

(z) "Loan Date" has the meaning set forth in Section 6.4(a) hereof.

(aa) "Majority in Interest" means Members holding one or more Percentage Interests of the Members that are entitled to vote on a given issue which taken together exceed 50% of all Percentage Interests of the Members that are entitled to vote such interest.

(bb) "Manager" mean Lawrence G. Santilli, or his successor elected in accordance with the provisions hereof.

(cc) "Membership Interest" means a Member's entire interest in the Company including such Member's economic interest, the right to vote, if any, on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Operating Agreement or the Act.

(dd) "Member Minimum Gain Chargeback Allocations" means the allocations required by Section 1.704-2(i)(3) of the Regulations.

(ee) "Member Non-Recourse Deduction Allocations" means the allocations required by Section 1.704-2(i)(2) of the Regulations.

(ff) "Net Profits" and "Net Losses" means for each fiscal year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in calculating taxable income or loss), with the following adjustments:

(1) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits or Net Losses pursuant to this definition of Net Profits and Net Losses shall be added to such taxable income or loss;

(2) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Profits or Net Losses pursuant to this definition of Net Profits and Net Losses, shall be subtracted from such taxable income or loss;

(3) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraphs (2) or (3) of the definition of

Gross Asset Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Profits or Net Losses;

(4) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(5) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period, computed in accordance with the definition of Depreciation;

(6) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in complete liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Profits or Net Losses; and

(7) Any items which are specially allocated pursuant to Section 7.2 or 7.3 shall not be taken into account in computing Net Profits or Net Losses.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Sections 7.2 and 7.3 shall be determined by applying rules analogous to those set forth in subparagraph (1) through (6) above.

(gg) "Nondelinquent Contributing Member" has the meaning set forth in Section 6.4(a) hereof.

(hh) "Non-Recourse Deduction Allocations" means the non-recourse deductions (as defined in Section 1.704-2(c) of the Regulations) allocated to a Member pursuant to Section 7.2(c) hereof.

(ii) "Operating Agreement" means this Operating Agreement of Athena Orchard View LLC, as amended from time to time.

(jj) "Percentage Interest", or "Member's Percentage Interest" with respect to a Member, means the percentage that the Member's Interest is of the total of all the Members' Interests in aggregate as set forth on Schedule A hereto.

(kk) "Person" means any individual, partnership, corporation, trust, or other entity.

(ll) "Prime Rate" means the rate of interest most recently published in the Wall Street Journal as the prime rate.

(mm) "Regulations" means any regulations of the Department of the Treasury under the Code (whether permanent, temporary or proposed), as such regulations may be lawfully changed from time to time.

(nn) "Regulatory Allocations" has the meaning set forth in Section 7.2 hereof.

(oo) "Schedule A" means the Schedule attached to this Operating Agreement containing the names and addresses of the Members and their respective Membership Percentage Interests. The "Initial Schedule A" shall mean Schedule A as originally constituted. Schedule A shall be amended to reflect any additions or deletions of Members to the Company. Any subsequent Schedule A shall be referred to as a "Revised Schedule A" when necessary to distinguish such subsequent Schedule A from the Initial Schedule A.

(pp) "Substitute Member" has the meaning set forth in Section 11.6 hereof.

(qq) "Super Majority in Interest" means one or more Percentage Interests of the Members that are entitled to vote on a given issue which taken together equal or exceed sixty five percent (65%) of all Percentage Interests of the Members that are entitled to vote on such issue.

(rr) "Tax Matters Member" has the meaning set forth in Section 10.5 hereof.

(ss) "Transfer" means (i) when used as a verb, to give, gift, sell, exchange, redeem, transfer, pledge, hypothecate, encumber, bequeath, devise or otherwise dispose of, and (ii) when used as a noun the nouns corresponding to such verbs, in either case voluntary or involuntary, by operation of law or otherwise.

(tt) "Voluntary Withdrawal" including all variations of the verb form withdraw and the adjective forms withdrawing or withdrawn) means a Member's Dissociation from the Company by means other than by a Transfer or an Involuntary Withdrawal.

## ARTICLE II

### Formation, Name, Office, Term, Statutory Agent

2.1 Formation. The Company has been formed as a limited liability company pursuant to the Act.

2.2 Name. The name of the Company is Athena Orchard View LLC (the "Company").

2.3 Principal Office. The principal office and place of business of the Company shall be located at 135 South Road, Farmington, Connecticut 06032 or at such other place or places as the Manager may from time to time determine.

2.4 Term. The term of the Company shall continue until dissolved or terminated as provided herein or by law.

2.5 Operating Agreement. Each person who becomes a Member, from time to time, agrees to the terms and conditions set forth herein, as such terms and conditions from time to time may be modified or amended, and each such Member agrees that the terms and conditions of such Member's interest in the Company shall be governed by this Operating Agreement, the Articles of Organization and the Act.

2.6 Resident Agent. The resident agent of the Company shall be Corporation Service Company, having a business address at 222 Jefferson Boulevard, Suite 200, Warwick, Rhode Island 02888, or such other person as the Members may designate from time to time.

2.7 Title to Company Property. All assets owned by the Company whether real or personal, tangible or intangible, shall be deemed to be owned by the Company as an entity, and no Member shall have any ownership of such assets individually. Each Member hereby irrevocably waives, for the term of the Company, any rights it may have to maintain an action for partition of any asset of the Company or to compel any sale thereof. A Member's interest in the Company shall be personal property for all purposes.

2.8 Manager. The Members hereby appoint Lawrence G. Santilli as the Manager of the Company.

## ARTICLE III

### Purpose, Rights and Obligations of Members

3.1 Purpose. The purpose of the Company is to own, manage and/or operate a nursing home facility in the State of Rhode Island, whether on its own behalf or as a partner, shareholder, beneficiary, member and/or Manager of another entity, and to engage in any and all activities related or incidental thereto and to engage in any lawful act or activity for which limited liability companies may be formed under the Act.

3.2 Limitation of Liability of Member. Each Member's liability shall be limited as set forth in this Operating Agreement, the Act, and other applicable law. A Member will not be personally liable for any debts or losses of the Company beyond his respective contributions to capital.

## ARTICLE IV

### Names, Addresses and Membership Interests

The names, addresses, Capital Contributions, and Membership Interests of the Members are as set forth in Schedule A attached hereto and incorporated herein by reference.

## ARTICLE V

### Management

5.1 Management. The business and affairs of the Company shall be managed by its Manager or its Managers if there is more than one Manager. There may be one or more Manager, and any Manager may be an individual, a corporation, a limited liability company or a partnership. Except for non-waivable provisions of the Act or situations in which the approval of the voting Members is expressly required by this Operating Agreement, the Manager shall have full authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding the business, affairs and properties of the Company, and to perform any and all other acts or activities customary or incident to the management of the Company's business. At any time when there is more than one Manager, the Managers shall act by majority vote on a per capita basis (one vote per Manager). Unless authorized to do so by this Operating Agreement or in a writing signed by the Manager, no Member and no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose.

5.2 Certain Powers of the Manager. Without limiting the generality of Section 5.1, and unless otherwise directed in writing by a Super Majority in

Interest of the Members, the Manager shall have the power and authority on behalf of the Company:

(a) To purchase liability and other insurance to protect the Company's property and business;

(b) To hold and own any Company real and/or personal properties in the name of the Company;

(c) To invest Company funds temporarily in, by way of example but not limitation, time deposits, short-term governmental obligations, commercial paper or other investments;

(d) To execute on behalf of the Company all instruments and documents including, without limitation, checks, drafts, notes and other negotiable instruments, mortgages or deeds of trust, security agreements, financing statements, documents providing for the acquisition, mortgage or disposition of the Company's property, assignments, bills of sale, leases, management agreements, operating agreements or partnership agreements of other limited liability companies or partnerships, and any other instruments or documents necessary or appropriate, in the opinion of the Manager, to operate the business or manage the Company;

(e) To employ accountants, legal counsel, managing agents or other professionals to perform services for the Company;

(f) To do and perform all other acts and to enter into all other agreements on behalf of the Company as may be necessary or appropriate to the conduct of the Company's day to day business; and

(h) To borrow money not to exceed \$3,000,000 for the Company from banks, other lending institutions, the Manager, Members, or affiliates of the Manager or Members on such terms as the Manager deems appropriate, and, in connection therewith, to mortgage, hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums.

5.3 Restrictions on Manager. Notwithstanding anything in this Operating Agreement to the contrary, the Manager shall not have the authority to, and covenant and agree that they shall not, do any of the following acts on behalf of the Company without the approval of a Super Majority in Interest of the Members:

(a) To borrow money in excess of \$3,000,000 for the Company from banks, other lending institutions, the Manager, Members, or affiliates of the Manager or Members on such terms as the Manager deems appropriate, and, in connection therewith, to mortgage, hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums;

- (b) cause or permit the Company to make any loans or become a surety, guarantor, endorser, or accommodation endorser for any Person;
- (c) confess a judgment against the Company;
- (d) distribute any cash or property of the Company, other than as provided in this Operating Agreement;
- (e) agree to the merger, dissolution or sale of substantially all of the assets of the Company; and
- (f) admit a new member to the Company.

5.4 No Exclusive Duty. The Manager shall not be required to manage the Company as his sole and exclusive function, and he may have other business interests and engage in other activities in addition to those relating to the Company.

5.5 Reports. The Manager shall have physical possession of the books and records of the Company, including, specifically, those required by Section 10.3, and shall give such notices, reports and advice to the Members as may, from time to time, be required or deemed advisable, and shall perform the necessary ministerial functions of the Company. Upon reasonable request, each Member shall have the right, during ordinary business hours, to inspect and copy the Company documents held in accordance with Section 10.3 at the requesting Member's expense.

5.6 Liability; Indemnification. (a) The Manager shall not be liable to the Company or the Members for any loss or damage incurred by the Company by reason of any act or omission performed or omitted by the Manager in good faith on behalf of the Company and in a manner reasonably believed by the Manager to be within the scope of the authority granted to the Manager by this Operating Agreement or in the best interest of the Company, unless fraud, willful misconduct, gross negligence, or lack of good faith can be established by the Company or the Members.

(b) The Company shall indemnify and hold harmless the Manager from and against any claim, loss, expense, liability, action or damage incurred by the Manager by reason of any act or omission performed or omitted by the Manager in good faith within the scope of the Manager's authority as Manager, including, without limitation, reasonable fees and expenses of attorneys engaged by the Manager and such other reasonable costs and expenses of litigation and appeal in defense of such act or omission. Any indemnification, or other payments to the Manager under this paragraph, shall be paid from the assets of the Company, and no Member shall have any personal liability therefor.

(c) The Manager shall indemnify and save harmless the Company and its Members from and against any claim, loss, expense, liability, action or damage including, without limitation, reasonable costs and expenses of litigation and appeal (including, without limitation, reasonable fees and expenses of attorneys engaged by the Members and the Company) by reason of said Manager's fraud, willful misconduct, gross negligence or lack of good faith.

5.7 Removal of Manager. A Manager may be removed at any time, with or without cause, by vote of a Super Majority in Interest of the Members. The removal of a Manager who is also a Member shall not, by itself, affect the Manager's rights as a Member and shall not constitute a withdrawal of the Member.

5.8 Vacancies. In the event of the vacancy in the position of Manager, the replacement Manager shall be selected by Majority in Interest of the Members within ninety (90) days of the removal or resignation of a Manager. The removal or resignation of a Manager shall not terminate the Company.

5.9 Other Business Ventures of Members. Any Member or affiliate of a Member may engage independently or with others in other business ventures of every nature and description, except as set forth in any non-competition agreement. As a general matter, neither the Company nor any Member shall have any right by virtue of this Operating Agreement or the relationship created hereby in or to any other ventures or activities in which any Member or affiliate of a Member is involved or to the income or proceeds derived therefrom.

## ARTICLE VI

### Capital Contributions

6.1 Capital Contributions. Except as otherwise specifically set forth in this Operating Agreement, no Member shall have the right to withdraw any part of the Member's Capital Contribution, or receive any cash or other property of the Company. No interest shall be paid by the Company to any Member with respect to the Member's Capital Contribution. Additionally, no Member shall be required to make Additional Capital Contributions, lend any funds to the Company or to pay any contributions, assessments or payments to the Company except as provided in this Article VI.

6.2 Initial Capital Contribution. Each Member shall make an initial Capital Contribution as set forth on Schedule A attached hereto and made a part hereof.

### 6.3 Deficit Cash Flow Contributions

(a) The Members hereby acknowledge and agree that the obligation of any Member to make Additional Capital Contributions under Article VI

hereof is a non-recourse liability of such Member and that, in the event such Member becomes a Delinquent Member, the Company and the other Members' rights are strictly limited to those prescribed in this Article VI.

(b) Each Member shall make Additional Capital Contributions in cash to the Company, from time to time, on or before the contribution date specified in any duly given Deficit Contribution Notice, equal to his *pro rata* share of the Cash Flow Deficit identified in such Deficit Contribution Notice based on the ratio that his Percentage Interest bears to the Percentage Interest of all Members.

(c) The Manager may give any number of Deficit Contribution Notices during the term of the Company, subject to the approval of a Majority in Interest of the Members.

#### 6.4 Delinquency Loans by Nondelinquent Contributing Members.

(a) In the event that a Member is in default of his obligation to make Additional Capital Contributions as required by Section 6.3 (a "Delinquent Member"), the Manager may invoke the following procedure under which the nondelinquent Members ("Nondelinquent Contributing Members") shall be permitted to make loans ("Delinquency Loans") to the Company. Such procedure may be invoked by giving notice (the "Delinquency Loan Notice") to all of the Nondelinquent Contributing Members, with a copy to the Delinquent Member. A Delinquency Loan Notice shall state the following: (1) the amount of the Delinquent Contribution on the date of such notice; and (2) the date (the "Loan Date") on or before which each such Nondelinquent Contributing Member may elect to make a Delinquency Loan. Each Nondelinquent Contributing Member shall have the right to elect to fund such portion of the aggregate Delinquency Loans then being made to such Delinquent Member in the same ratio as its Percentage Interest bears to the aggregate Percentage Interests of all Nondelinquent Contributing Members then making Delinquency Loans to such Delinquent Member, or in such other ratio as such Nondelinquent Contributing Members shall otherwise agree. A Nondelinquent Contributing Member may elect to make a Delinquency Loan to the Company by delivery to the Company of cash or a check in the amount of the Delinquency Loan that such Member is permitted to make under the preceding sentence on or before the Loan Date. The Loan Date shall in no event be earlier than the fifteenth (15th) day or later than the thirtieth (30th) day following the date of the Delinquency Loan Notice.

(b) Each Delinquency Loan shall bear interest at the Prime Rate plus two percentage points per annum, or the applicable maximum rate permitted to be contracted for by law, whichever is less (the "Delinquency Interest Rate"), calculated on the basis of a 360 day year for the actual number of days elapsed and compounded annually. Interest on any such Delinquency Loan shall accrue from the date the funds are actually funded by the Nondelinquent Contributing Member until the date that the Delinquency Loan plus all interest thereon are

repaid in full. Recourse with respect to the Delinquency Loans shall be only against the Membership Interest of the Delinquent Member.

(c) Any such Delinquency Loan by a Nondelinquent Contributing Member shall be deemed to be a loan to the Delinquent Member by the Nondelinquent Contributing Member and as an Additional Capital Contribution made by the Delinquent Member. Notwithstanding anything to the contrary contained in this Operating Agreement, at any time when any portion of a Delinquency Loan (including accrued and unpaid interest thereon) shall remain outstanding, any distributions otherwise payable by the Company to or on account of the Delinquent Member shall be paid to the Nondelinquent Contributing Member(s). Delinquency Loans shall be repaid in the same order of priority in which the Delinquency Loans were funded, with the Delinquency Loans being made first being repaid first, with each Nondelinquent Contributing Member in respect of any particular missed Additional Capital Contribution being treated in all respects with respect to such Delinquency Loans on a *pari passu* basis. Amounts paid on behalf of any Delinquency Loan shall be applied first to any accrued and unpaid interest thereon calculated at the Delinquency Interest Rate and then to the outstanding principal amount of the Delinquency Loan. Any distribution made to a Nondelinquent Contributing Member on behalf of the Delinquent Member's obligations with respect to a Delinquency Loan hereunder shall, for purposes of calculating Capital Account balances, be deemed to have been made to the Delinquent Member.

(d) Upon the making of a Delinquency Loan, automatically and without any further action by any party, as security for the prompt and complete payment of the Delinquency Loan, and any and all indebtedness, liabilities and obligations relating thereto (including without limitation any and all interest thereon as provided herein): (i) the Membership Interest of the Delinquent Member (including without limitation any and all rights of the Delinquent Member in and to distributions) shall be and hereby are pledged, assigned and hypothecated to the Nondelinquent Contributing Member(s) (on a *pari passu* basis), and (ii) the Delinquent Member shall and hereby does grant to the Nondelinquent Member(s) (on a *pari passu* basis) a continuing, perfected and priority lien upon and security interest in, to and under the Delinquent Member's Membership Interest in an amount equal to the Delinquency Loan plus accrued and unpaid interest thereon. The Members hereby irrevocably constitute and appoint the Manager as their true and lawful attorney-in-fact, with full power of substitution, in their name, place and stead, to make, execute, sign, acknowledge (including swearing to), record and file, on behalf of such Member as a Delinquent Member any UCC-1 Financing Statement or other documents necessary to perfect such lien(s) and security interest(s). The foregoing grant of authority (x) shall survive the delivery of an assignment by a Delinquent Member of the whole or any portion of its Membership Interest, (y) is a special power of attorney coupled with an interest and is irrevocable and (z) may be exercised by the Manager on behalf of the Delinquent Member by a facsimile signature.

(e) In the event that any Delinquency Loan plus accrued interest thereon is not fully repaid within five (5) years following the date the Delinquency Loan was made, the Delinquent Member agrees that he shall grant to each holder of a Delinquency Loan an option (the "Option") to purchase such Delinquent Member's Membership Interest. Each holder of a Delinquency Loan may exercise his Option to purchase such share of such Delinquent Member's Membership Interest at any time after such five year period at which such Delinquency Loan remains outstanding at a purchase price equal to the outstanding balance on the Delinquency Loan, plus all accrued and unpaid interest thereon. The value of a Delinquent Member's offered Membership Interest shall be determined in a manner similar to the determination of the purchase price set forth in Section 11.4. Each Member hereby covenants and agrees that, if any Member duly and properly exercises an Option hereunder, such Member will take such other actions and execute such instruments of transfer and other instruments, agreements, and documents as counsel to the Company may determine to be necessary or appropriate to further evidence and confirm such transfer of such Member's Membership Interest on the date of the exercise of such Option.

(f) The rights and remedies available to the Members and the Company upon the failure of any Member to make a required Additional Capital Contribution as set forth in Section 6.3 and this Section 6.4 shall be the sole and exclusive rights and remedies available for any such failure, and no Member or any Person having any direct or indirect interest in the Member shall have any other liability or obligation with respect to the making of any such Additional Capital Contribution; *provided, however*, that the foregoing shall not be deemed to limit the right of the Manager to raise any required capital by any other means available, whether by third party or related party loans or otherwise.

## ARTICLE VII

### Profits and Losses and Tax Allocations

#### 7.1 Net Profit and Loss.

(a) After giving effect to the allocations required by Sections 7.2 and 7.3 hereof, all Net Profits and Net Losses for each fiscal year or other period of the Company shall be allocated as set forth in (i) or (ii) below.

(i) For each fiscal year or other period of the Company, Net Profits shall be allocated in the following order and priority:

(A) First, to the Members in an amount equal to, and to each Member pro rata in proportion to their share of, the excess, if any, of (i) the cumulative Net Losses allocated to the Members for all prior fiscal years or other periods of the Company under Section 7.1(a)(ii)(E) over the cumulative Net Profits allocated to the Members for all prior fiscal years or other periods of the Company under this Section 7.1(a)(i)(A);

(B) Second, to the Members in an amount equal to, and to each Member pro rata in proportion to their share of, the excess, if any, of (i) the cumulative Net Losses allocated to the Members for all prior fiscal years or other periods of the Company under Section 7.1(a)(ii)(D) over the cumulative Net Profits allocated to the Members for all prior fiscal years or other periods of the Company under this Section 7.1(a)(i)(B);

(C) Third, to the Members in an amount equal to, and to each Member pro rata in proportion to their share of, the excess, if any, of (i) the cumulative Net Losses allocated to the Members for all prior fiscal years or other periods of the Company under Section 7.1(a)(ii)(C) over the cumulative Net Profits allocated to the Members for all prior fiscal years or other periods of the Company under this Section 7.1(a)(i)(C);

(D) Fourth, to the Members in an amount equal to, and to each Member pro rata in proportion to their share of, the excess, if any, of (i) the cumulative Net Losses allocated to the Members for all prior fiscal years or other periods of the Company under Section 7.1(a)(ii)(B) over the cumulative Net Profits allocated to the Members for all prior fiscal years or other periods of the Company under this Section 7.1(a)(i)(D); and

(E) Fifth, to the Members in proportion to their Percentage Interests.

(ii) For each fiscal year or other period of the Company, Net Losses shall be allocated in the following order and priority:

(A) First, to the Members in an amount equal to, and to each Member pro rata in proportion to their share of, the excess, if any, of (i) the cumulative Net Profits allocated to the Members for all prior fiscal years or other periods of the Company under Section 7.1(a)(i)(E) over the cumulative Net Losses allocated to the Members for all prior fiscal years or other periods of the Company under this Section 7.1(a)(ii)(A);

(B) Second, to the Members in an amount equal to, and to each Member pro rata in proportion to their share of, the excess, if any, of (i) the sum of (x) the aggregate initial Capital Contributions of the Members under Section 6.2 hereof and (y) the cumulative Net Profits allocated to the Members for all prior fiscal years or other periods of the Company under Section 7.1(a)(i)(D), over (ii) the cumulative Net Losses allocated to the Members for all prior fiscal years or other periods of the Company under this Section 7.1(a)(ii)(B);

(C) Third, to the Members in an amount equal to, and to each Member pro rata in proportion to their share of, the excess, if any, of (i) the sum of (x) the aggregate Additional Capital Contributions of the Members and (y) the cumulative Net Profits allocated to the Members for all prior fiscal years or other periods of the Company under Section 7.1(a)(i)(C), over (ii) the cumulative Net

Losses allocated to the Members for all prior fiscal years or other periods of the Company under this Section 7.1(a)(ii)(C);

(D) Fourth, to the Members in an amount equal to, and to each Member pro rata in proportion to their share of, the excess, if any, of (i) the sum of (x) the aggregate Additional Capital Contributions Attributable To Guaranty Of Debt of the Members and (y) the cumulative Net Profits allocated to the Members for all prior fiscal years or other periods of the Company under Section 7.1(a)(i)(B), over (ii) the cumulative Net Losses allocated to the Members for all prior fiscal years or other periods of the Company under this Section 7.1(a)(ii)(D); and

(E) Fifth, to the Members in proportion to their Percentage Interests.

(b) The Net Losses allocated pursuant to Section 7.1(a) shall not exceed the maximum amount of Net Losses that can be so allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any fiscal year or other period. In the event that some, but not all, of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Net Losses pursuant to Section 7.1(a), the limitations set forth in this Section 7.1(b) shall be applied on a Member by Member basis so as to allocate the maximum permissible Net Losses to each Member under Section 1.704-1(b)(2)(ii)(d) of the Regulations.

## 7.2 Regulatory Allocations.

(a) The Company shall make the qualified income offset allocation required by the alternate test for economic effect under Section 1.704-1(b)(2)(ii)(d) of the Regulations, provided that an allocation pursuant to this Section 7.2(a) shall be made only to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section 7 have been tentatively made as if this Section 7.2(a) were not in the Operating Agreement.

(b) In the event any Member has a deficit Capital Account at the end of any fiscal year or other period which is in excess of the sum of (i) the amount such Member is obligated to restore pursuant to any provision of this Operating Agreement, and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 7.2(b) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article VII have been made as if Section 7.2(a) and this Section 7.2(b) were not in the Operating Agreement.

(c) The Manager shall make all (1) Member Non-Recourse Deduction Allocations; (2) Member Minimum Gain Chargeback Allocations; and (3) Company Minimum Gain Chargeback Allocations. The Manager shall make all Non-Recourse Deduction Allocations to the Members in proportion to their Percentage Interests, and it is intended that the foregoing allocations shall be viewed and treated as reasonably consistent with allocations (which have substantial economic effect) of some significant item of Company income or gain within the meaning of Regulations Section 1.752-3(a)(3).

(d) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(d) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of his interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Members to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(e) Guaranteed Payments. To the extent any compensation paid to any Member by the Company is determined by the Internal Revenue Service to be a distribution rather than a guaranteed payment under Code Section 707(c) or compensation paid under Code Section 707(a), gross income of the Company shall be specially allocated to such Member in an amount equal to the amount of that compensation, and the Member's Capital Account shall be appropriately adjusted.

7.3 Curative Allocations. The allocations set forth in Sections 7.1(b), 7.2(a), 7.2(b), 7.2(c) and 7.2(d) (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 7.3. Therefore, notwithstanding any other provision of this Article VII (other than the Regulatory Allocations), the Manager shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner the Manager determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Operating Agreement and all Company items were allocated pursuant to Section 7.1(a) and Section 7.2(e). In exercising their discretion under this Section 7.3, the Manager shall take into account future Minimum Gain Chargeback Allocations and Partner Minimum Gain Chargeback Allocations under Section 7.2(c) that, although not yet made, are likely to offset Member Non-

Recourse Deduction Allocations and Non-Recourse Deduction Allocations previously made under Section 7.2(c).

7.4 Intent of Allocations. The parties intend that the foregoing allocation provisions of Sections 7.1, 7.2, and 7.3 shall produce final Capital Account balances of the Members that will permit liquidating distributions that are made in accordance with final Capital Account balances under Article XIII hereof to be made (after unpaid loans and interest thereon, including those owed to Members have been paid) in an amount equal to the amount of distributions that would have been made to the Members under Sections 9.1 but for the fact that such distributions are governed by final Capital Account balances under Article XIII. Notwithstanding anything to the contrary in this Operating Agreement, to the extent that the Manager determines that the allocation provisions of Sections 7.1, 7.2, and 7.3 may fail to produce such final Capital Account balances, (i) such provisions shall be amended by the Manager if and to the extent necessary to produce such result and (ii) Net Profit and Net Loss of the Company for the most recent open year (or items of income, gain, loss, and deduction of the Company for such year) shall be reallocated by the Manager among the Members to the extent it is not possible to achieve such result with allocations of Net Profit and Net Loss (or items of income, gain, loss, and deduction) for the current year and future years, as determined by the Manager. This Section 7.4 shall control notwithstanding any reallocation or adjustment of taxable income, taxable loss, or items thereof by the Internal Revenue Service or any other taxing authority.

7.5 Tax Allocations. For federal income tax purposes, allocations of items of income, gain, loss, and deduction shall be made in accordance with Code Section 704(c) and Regulations Section 1.704-3 or Regulations Section 1.704-1(b)(4)(i) in the same manner as under Code Section 704(c) and Regulations Section 1.704-3. Any elections or decisions relating to such allocations shall be made by the Manager in a manner that reasonably reflects the intent of the Operating Agreement. Allocations pursuant to this Section 7.4 are solely for tax purposes and shall not affect any Member's Capital Account.

## ARTICLE VIII

### Capital Accounts

8.1 Capital Accounts. A separate Capital Account will be maintained for each Member. Each Member's Capital Account will be increased by (1) such Member's initial Capital Contributions, Additional Capital Contributions, and Additional Capital Contributions Attributable To Guaranty Of Debt, without duplication; (2) allocations to such Member of Net Profits and items of income and gain; and (3) all other items properly credited to the Capital Account of such Member as required by the Regulations promulgated under Code Section 704(b). Each Member's Capital Account will be decreased by (1) the amount of money distributed by the Company to such Member; (2) allocations to such Member of Net Losses and items of loss and deduction; (3) the Gross Asset Value of any

property distributed by the Company to such Member pursuant to any provision of this Operating Agreement; (4) the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company; and (5) all other items properly charged to the Capital Account of such Member as required by the Regulations promulgated under Code Section 704(b).

8.2 Transfers of Capital Account. In the event of a permitted Transfer of a Membership Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred interest in accordance with Section 1.704-1(b)(2)(iv) of the Regulations.

8.3 Compliance. The manner in which Capital Accounts are to be maintained pursuant to this Article VIII is intended to comply with the requirements of Section 704(b) of the Code and the Treasury Regulations promulgated thereunder. If in the opinion of the Company's accountants the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Article VIII should be modified in order to comply with Section 704(b) of the Code and the Regulations promulgated thereunder, then notwithstanding anything to the contrary contained in the preceding provisions of this Article VIII, the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members.

8.4 Deficit Restoration Obligation. Except as otherwise required in the Act, no Member shall have any liability to restore all or any portion of a deficit balance in such Member's Capital Account.

## ARTICLE IX

### Distributions Prior to Dissolution

9.1 Distributions of Cash Flow. Cash Flow shall be computed by the Manager with respect to each fiscal year and distributed within sixty (60) days after the end of each such year in the following order and priority.

(a) First, to the Members in an amount equal to, and to each Member pro rata in proportion to their share of, the excess of (i) their Additional Capital Contributions Attributable To Guaranty Of Debt over (ii) the cumulative distributions made to the Members for all prior fiscal years or other periods of the Company under this Section 9.1(a);

(b) Second, to the Members in an amount equal to, and to each Member pro rata in proportion to their share of, the excess of (i) their Additional Capital Contributions over (ii) the cumulative distributions made to the Members for all prior fiscal years or other periods of the Company under this Section 9.1(b);

(c) Third, to the Members in an amount equal to, and to each Member in proportion to, the excess of (i) their initial Capital Contributions under Section 6.2 over the cumulative distributions made to the Members for all prior fiscal years or other periods of the Company under this Section 9.1(c); and

(d) Fourth, to the Members in proportion to the Percentage Interests of the Members.

Cash Flow may be computed and distributed more frequently in the discretion of the Manager.

9.2 Dissolution. Upon dissolution and winding up of the Company, the assets of the Company shall be distributed to the Members as provided in Section Article XIII.

9.3 No Priority; Property Other Than Cash. No Member shall have priority over any other Member either as to the return of his or her Capital Contribution or as to Distributions. No Member shall have the right to demand or receive property other than cash in return of his or her Capital Contribution or as to other Distributions.

9.4 Return of Distributions. The obligation of a Member to return cash or other property paid or distributed to a Member in violation of this Agreement or of applicable law may be compromised by the Manager without the consent of the Members.

9.5 Withholding (a) The Manager is authorized, and directed to cause the Company to withhold from or pay on behalf of any Member the amount of federal, state, local or foreign taxes that the Manager believes the Company is required to withhold or pay with respect to any amount distributable or allocable to such Member pursuant to this Agreement, including, without limitation, any taxes required to be paid by the Company pursuant to Code Sections 1441, 1442, 1445 or 1446 and any taxes imposed by any state or other taxing jurisdiction on the Company as an entity. Without limiting the foregoing, the Manager shall cause the Company to withhold (and remit to the appropriate governmental authority), from amounts otherwise distributable to an Member, any taxes that such Member notifies the Manager in writing should be withheld, which notice shall be given by any Member who becomes aware of any withholding obligation to which he is subject and shall specifically set forth, inter alia, the rate at which tax should be withheld and the name and address to which any amounts withheld should be remitted.

(b) If the Company is required to withhold and pay over to taxing authorities amounts on behalf of an Member exceeding available amounts then remaining to be distributed to such Member, such payment by the Company shall constitute a loan to such Member that is repayable by the Member on demand, together with interest at the applicable federal rate determined from time to time under Code Section 7872(f)(2) or the maximum rate permitted under applicable

law, whichever is less, calculated upon the outstanding principal balance of such loan as of the first day of each month. Any such loan shall be repaid to the Company, in whole or in part, as determined by the Manager in his sole discretion, either (i) out of any distributions from the Company which the Member is (or becomes) entitled to receive, or (ii) by the Member in cash upon demand by the Company (said Member bearing all of the Company's costs of collection, including reasonable attorneys' fees, if payment is not remitted promptly by the Member after such a demand for payment).

(c) Each Member agrees to cooperate fully with all efforts of the Company to comply with its tax withholding and information reporting obligations and agrees to provide the Company with such information as the Manager may request from time to time in connection with such obligations.

9.6 No Right to Distribution. Notwithstanding anything in this Operating Agreement or the Act to the contrary, no Member shall be entitled to receive any distribution of money or other property by reason of such person's ceasing to be a Member, except (i) upon dissolution of the Company, or (ii) upon affirmative vote or written consent of a Super Majority in Interest of the remaining Members.

## ARTICLE X

### Company Accounting, Books and Records

10.1 Fiscal Year. The fiscal year of the Company shall end on December 31.

10.2 Accounting. The Company shall use such basis for accounting as the Manager determines to be appropriate to reflect properly its income and expenses on an accrual basis in accordance with the generally accepted accounting principals, consistently applied, and shall determine its Net Profits and Net Losses accordingly.

10.3 Books, Records, Reports, etc. The Company shall maintain full and accurate books at its principal office, or in such offices as shall be designated for such purposes by the Manager. At a minimum the Company shall keep at its principal place of business the following records:

(a) A current and a past list setting forth in alphabetical order the full name and last known business, residence, or mailing address of each Member, both past and present;

(b) A copy of the Articles of Organization of the Company and all amendments thereto;

(c) Copies of the Company's federal, state and local income tax returns and financial statements for the three most recent years, or, if such returns or statements were not prepared for any reason, copies of the information and

statements provided to, or that should have been provided to, the Members to enable them to prepare their federal, state and local tax returns for such period;

(d) Copies of the Company's current effective written Operating Agreement and all amendments thereto and copies of any written operating agreements no longer in effect;

(e) A writing setting forth the amount of cash, if any, and a statement of the agreed value of other property or services contributed by each Member and the times at which or the events upon the happening of which any additional contributions are to be made by each Member;

(f) Other writings, if any, prepared pursuant to a requirement in this Operating Agreement;

10.4 Banking. All funds of the Company shall be deposited in its name in such account or accounts as shall be designated by the Manager. All withdrawals therefrom are to be made upon checks signed by the Manager or his designee.

10.5 Tax Matters Member. Lawrence G. Santilli shall be the Company's tax matters partner ("Tax Matters Member"). The Tax Matters Member shall have all powers and responsibilities provided in Code Section 6221, et seq. The Tax Matters Member shall keep all Members informed of all notices from governmental taxing authorities that may come to the attention of the Tax Matters Member. The Company shall pay and be responsible for all reasonable third-party costs and expenses incurred by the Tax Matters Member in performing those duties. A Member shall be responsible for any costs incurred by the Member with respect to any tax audit or tax-related administrative or judicial proceeding against any Member, even though it relates to the Company. The Tax Matters Member may not compromise any dispute with the Internal Revenue Service without the approval of the Members. Section 5.6 shall apply to any act or failure to act by Lawrence G. Santilli in his capacity as the Tax Matters Member.

## ARTICLE XI

### Restrictions on Transfer of Membership Interests and Withdrawals from the Company

11.1 Restricted Transfers. No Member shall have the right to Transfer (whether voluntarily or involuntarily) all or any part of his Membership Interest, except as otherwise specifically provided for in this Operating Agreement. Each Member hereby acknowledges the reasonableness of the restrictions on Transfers imposed by this Operating Agreement in view of the Company's purpose and the relationship of the Members. Accordingly, the restrictions on Transfers contained herein shall be specifically enforceable.

## 11.2 Permitted Transfer of Membership Interest.

(a) Permitted Transfer. Notwithstanding Section 11.1 to the contrary, a Member may Transfer (in trust or otherwise), whether on death or during life, all or any part of his Membership Interest to a Permitted Transferee. A "Permitted Transferee" of a Member is any person who is (1) a member of such Member's "Family" or in the event of a Transfer upon the death of a Member, the spouse of the deceased Member or a trust for the exclusive benefit of the spouse of the deceased Member, (2) any other Member, (3) consented to in writing by a Super Majority in Interest of the Members to be a Permitted Transferee, which consent may be withheld for any or no reason, or (4) a corporation, partnership or limited liability company in which all of the equity interests are held and will continue to be held for the term of this Operating Agreement as such term is defined in Section 2.4 herein by the Member or Member's "Family". A Member's "Family" includes only any person whom, at the time of the Permitted Transfer, is such Member's natural or adoptive lineal descendant or a trust for his or her exclusive benefit.

(b) Conditions to Permitted Transfer. Permitted Transfers are subject to the following conditions: (1) in no event shall all or any part of a Member's Membership Interest be directly Transferred to a minor or incompetent, or any other person not legally capable of being a Member in the Company; and (2) the transferee of a Member's interest shall, within sixty (60) days after such transfer, if during life, and one hundred twenty (120) days if at death, agree to be bound by this Operating Agreement, as a successor to the transferor Member to the same extent as such transferor Member would be bound with respect to such interest if such Transfer had not taken place by executing and delivering to the Company an agreement in such form as the Manager shall approve. Any Transfer otherwise permitted by Section 11.2(a) that is in violation of this Section 11.2(b) shall be null and void and of no force or effect whatsoever.

11.3 Death of a Member. Unless the legal representative of the estate of a deceased Member can establish that such Member's Membership Interest shall pass to a Permitted Transferee by testamentary disposition or under the applicable laws of intestate succession, upon the death of a Member, the following shall apply:

(a) The legal representative of a deceased Member shall offer to each surviving Member and each surviving Member shall have the right to purchase, at a purchase price equal to an amount to be determined in accordance with Section 11.4, a pro rata portion of the Membership Interest of the deceased Member in the proportion that the Membership Interest of such surviving Member bears to the Membership Interests of all surviving Members.

(b) In the event any surviving Member does not exercise his option to purchase his portion of the deceased Member's Membership Interest within thirty (30) days of the appointment of a legal representative, each surviving Member who has exercised such option shall have the right for fifteen (15) days to

purchase his pro rata portion of the unpurchased Membership Interest in the proportion that such surviving Member's Interest bears to the Membership Interests of all surviving Members exercising the option.

(c) If the surviving Members agree to purchase all (but not less than all) of the deceased Member's Membership Interest, then the legal representative of the deceased Member and the surviving Members shall close the purchase upon the terms and conditions set forth herein.

(d) If the surviving Members fail to agree to purchase all of the Membership Interests of the deceased Member within the time period set out above, the legal representative of the deceased Member shall have the right to transfer all of the deceased Member's Interest, subject to the conditions of Section 11.6.

(e) The closing of the redemption of the deceased Member's Membership Interest shall occur on a date and time mutually convenient to the Company on behalf of the surviving Members and the legal representative of the deceased Member; provided that the closing date shall occur no later than 120 days after the Company is notified of the appointment of the legal representative of the deceased Member as if such person were the owner of the entire Membership Interest of the deceased Member.

11.4 Valuation of the Interest of a Deceased or Withdrawing Member. In the event of a death of a Member or the withdrawal of a Member, the value of the Membership Interest held by the deceased Member or the withdrawing Member shall be determined by appraisal. Such appraisal shall be performed by an appraiser acceptable to the selling Member (or the selling Member's representative) and the purchasing Member(s). The cost of the appraisal shall be borne one-half by the deceased or withdrawing Member and one-half apportioned pro-rata among the purchasing Members. The determination of value as expressed by the appraiser shall be determinative as to the value of the Membership Interest being conveyed, and such determination shall be final. In the event that the parties are unable to agree upon an appraiser, each party shall select its own appraiser, at its own cost, the two selected appraisers shall appoint a third appraiser, which costs shall be shared equally by the parties, and the average of the three appraisals shall be determinative of the valuation. The foregoing shall not apply to a Breaching Member, whose interest shall be valued pursuant to Section 11.9 hereof.

11.5 Payment Terms Upon Transfer Of Member's Interest. The purchase price paid by any purchasing Member to a disposing Member shall first be reduced by the amount of any debt owed by the disposing Member to the purchasing Member, including any amount owed pursuant to Section 6.4 of this Operating Agreement.

If any remaining balance is less than or equal to ten thousand dollars (\$10,000), all of it shall be paid in cash. Otherwise, the remaining balance shall be paid as follows:

Ten percent (10%) of the remaining balance shall be paid in cash or cash equivalent at the closing.

The balance of the purchase price may, at the option of the purchaser(s), be evidenced by the purchaser(s)' promissory note(s), to be delivered with the cash payment, in an amount equal to the principal unpaid balance due, such note(s) to bear interest at the fixed annual rate equal to the rate realized at the most recent auction of U.S. government 26 week treasury bills, such rate to be adjusted semi-annually to conform to the then most recent auction. The note(s) shall also provide for equal monthly payments of principal sufficient to repay the entire principal amount over a period of not more than five (5) years. Such note(s) shall be non-negotiable and shall also provide that, at the option of the note holder, upon default of any payment of principal or interest beyond any applicable notice and grace periods, the entire unpaid balance shall become due and payable immediately, shall entitle the holder to collection costs, including attorneys' fees, and shall give the maker(s) thereof the option of prepayment in whole or in part at any time without penalty. If the purchaser(s) elect(s) to give a promissory note(s) in partial payment for the Membership Interest (or portion thereof), then such purchaser(s) shall pledge, as security for the note, the Membership Interest being acquired (unless such Membership Interest is required to be pledged to secure any obligation of the Company).

The remaining balance shall, however, be paid by the purchasing Members to the non-purchasing members on behalf of the disposing Member, instead of to the disposing Member, out of the cash and then out of the note(s) to the extent of the amount of any debt owed by the disposing member to the non-purchasing Members, including any amount owed pursuant to Section 6.4 of this Operating Agreement, based upon supporting documentation supplied to the purchasing Members by the Company and the non-purchasing Members to whom such debt is owed.

11.6 Substitute Members. A Transfer made or effected in compliance with the provisions of this Article XI entitles the transferee to receive, to the extent transferred, the Net Profits, Net Losses, items of income, gain, loss, and deduction, and distributions to which the transferor would have otherwise been entitled. No transferee of all or any percentage of a Member's Membership Interest shall become a Member in place of the transferring Member (a "Substitute Member") unless and until:

(a) The transferor has stated such intention in the instrument of transfer, provided such transferor is legally able to execute such transfer;

(b) The transferee has executed an instrument accepting and adopting the terms and provisions of this Operating Agreement;

(c) The transferor or transferee has paid all reasonable expenses of the Company in connection with the admission of the transferee as a Substitute Member; and

(d) The transferee is a Permitted Transferee under Section 11.2 or 11.3 herein.

Upon satisfaction of all of the foregoing conditions with respect to a particular permitted transferee, the Manager shall cause Schedule "A" to be amended to reflect the admission of the transferee as a Substitute Member.

11.7 Covenant Not to Withdraw. Each Member hereby covenants and agrees that the Members have entered into this Operating Agreement based on their mutual expectation that all Members will continue as Members and carry out the duties and obligations undertaken by them hereunder and that, except as otherwise expressly required or permitted hereby or upon the death of a Member, each Member hereby covenants and agrees not to make a Voluntary Withdrawal or Involuntary Withdrawal from the Company.

11.8 Consequences of Violation of Covenant Not to Withdraw. Notwithstanding anything to the contrary in the Act, if a Member (a "Breaching Member") attempts to make a Voluntary Withdrawal or Involuntary Withdrawal from the Company or Transfer his Membership Interest, except as otherwise provided in this Operating Agreement, the Company shall continue and such Breaching Member shall be subject to the provision of this Section 11.8 and Section 11.9. In such event, the following shall occur:

(a) The Breaching Member shall immediately cease to be a Member and shall have no further power to act for or bind the Company;

(b) The other Members shall continue to have the right to possess the Company's property and goodwill and to conduct its business and affairs;

(c) The Breaching Member shall be liable in damages, without requirement of a prior accounting, to the Company for all costs and liabilities that the Company or any Member may incur as a result of such breach;

(d) The Company and the Members, in that order, shall have the option to purchase the Breaching Member's interest. The Company shall have no obligation to pay to the Breaching Member his contributions, capital, or profits, but may, by notice to the Breaching Member within thirty (30) days of his withdrawal, elect to make Breach Payments (as hereinafter defined) to the Breaching Member in complete satisfaction of the Breaching Member's interest in the Company. In the event the Company chooses to not exercise its option to purchase the Breaching Member's interest, such Breaching Member's interest shall be subject to the same rights to purchase by the other Members as are accorded to the

remaining Members in the event of a death of a Member, as those rights are set forth in Section 11.3 above, the value of the interest shall be determined under Section 11.4, and the payment terms shall be determined under Section 11.5;

(e) If the Company does not elect to make Breach Payments pursuant to Section 11.9 hereof, the Company shall treat the Breaching Member as if he were an unadmitted assignee of the interest of the Breaching Member and shall make distributions to the Breaching Member only of those amounts otherwise distributable with respect to such interest hereunder;

(f) The Company may apply any distributions otherwise payable with respect to such interest (including Breach Payments) to satisfy any claims it may have against the Breaching Member;

(g) The Breaching Member shall have no right to inspect the Company's books or records or obtain other information concerning the Company's operations;

(h) The Breaching Member shall continue to be liable to the Company for any unpaid Capital Contributions or Additional Capital Contributions required hereunder with respect to such interest and to be jointly and severally liable (but only to the extent a Member is liable for the debts and liabilities of the Company) with the other Members for any debts and liabilities (whether actual or contingent, known or unknown) of the Company existing at the time the Breaching Member withdraws or dissolves; and

(i) Notwithstanding anything to the contrary hereinabove provided, unless the Company has elected to make Breach Payments to the Breaching Member in satisfaction of this interest, the Company may offer and sell (on any terms that are not manifestly unreasonable) the interest of the Breaching Member to any other Members or other Persons on the Breaching Member's behalf, provided that any Person acquiring such interest becomes a Member with respect to such interest and agrees to perform the duties and obligations imposed by this Operating Agreement on the Breaching Member and an amount equal to the amount of any debt owed by the Breaching Member to the other Member(s), including any amount owed pursuant to Section 6.4 of this Operating Agreement, shall not be paid to the Breaching Member and shall instead be paid by the Company to the other Members to whom the debt is owed on a *pari passu* basis on behalf of the Breaching Member.

**11.9 Breach Payments.** For purposes hereof, Breach Payments shall be made in four installments, each equal to one-fourth of the Breach Amount, payable on the next four (4) consecutive anniversaries of the breach by the Breaching Member, with simple interest accrued from the date of such breach through the date each such installment is paid on the unpaid balance of such Breach Amount at the Prime Rate. This Breach Amount shall be an amount equal to the greater of \$1 or 50% of the Purchase Price determined in accordance

with Section 11.4 hereof. The Company may, at its sole election, prepay all or any portion of the Breach Payments or interest accrued thereon at any time without penalty. An amount of the Breach Payments equal to the amount of any debt owed by the Breaching Member to the other Member(s), including any amount owed pursuant to Section 6.4 of this Operating Agreement, shall not be paid to the Breaching Member and shall instead be paid by the Company to such other Members on a *pari passu* basis on behalf of such Breaching Member.

11.10 Voluntary Or Involuntary Withdrawal of Member.

(a) Notwithstanding anything to the contrary herein contained, a Member may make a Voluntary Withdrawal or Involuntary Withdrawal from the Company upon the consent of a Majority in Interest of the Members.

(b) In the event of a Voluntary Withdrawal or Involuntary Withdrawal of a Member consented to pursuant to subsection (a), such Member's Membership Interest shall be subject to the same rights to purchase as are accorded to the remaining Members in the event of a death of a Member, as those rights are set forth in Section 11.3 above.

(c) The valuation of a withdrawing Member's interest under this Section shall be determined pursuant to Section 11.4 hereof, and paid pursuant to Section 11.5 hereof.

(d) In the event the interest of the Member withdrawing pursuant to this Section 11.10 shall not be purchased by existing Members, the transferee shall be subject to the provision of Section 11.6 hereof.

ARTICLE XII

Termination

12.1 Dissolution. The Company shall be dissolved and its affairs shall be wound up upon the happening of any of the first to occur of the following (the "Liquidating Events"):

(a) written consent of a Super Majority in Interest of the Members; or

(b) entry of a dissolution decree or a judicial order by a court of competent jurisdiction or by operation of law; or

(c) disposition of substantially all of the assets of the Company.

## ARTICLE XIII

### Winding Up

13.1 Liquidation. In the event of the dissolution of the Company, the Members shall proceed to the liquidation of the Company and the proceeds of such liquidation shall be applied and distributed in the following order of priority;:

(a) to the payment of all expenses of the Company incident to the liquidation and winding up.

(b) To the payment of the debts and liabilities of the Company then due and outstanding (including all debts due to any Member or for any debts of the Company paid by or on behalf of any Member other than Member loans or advances).

(c) To the setting up of any reserves that the Manager may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company or of the Members arising out of or in connection with the Company. Such reserves shall be held by the Manager for the purpose of disbursing such reserves in payment of any of the aforementioned contingencies, and, at the expiration of such period as the Manager shall deem advisable, to distribute the balance thereafter remaining in the manner hereinafter provided.

(d) To the repayment of any loans or advances that may have been made by any of the Members to the Company (other than the Delinquency Loans), or if the amount available for such repayment shall be insufficient, then pro rata on account thereof.

(e) To the distribution to each of the Members the amounts in their respective Capital Accounts or, if the amount available is less than the aggregate amount of such Capital Accounts, then pro rata to the Members in proportion to the amounts in their respective Capital Accounts.

(f) Any balance remaining shall be distributed among the Members in accordance with their respective Percentage Interests.

### 13.2 Distribution in Kind.

(a) Upon dissolution of the Company, the assets of the Company may be distributed in kind, upon the approval of a Majority in Interest of the Members. Each Member shall accept an undivided interest in such assets subject to its liabilities, provided, however, no Member shall have the right to demand or receive property other than cash in return for his Capital Contribution.

(b) In the event of a liquidating distribution of the Company's property in kind, the fair market value of such property shall be determined by an

appraiser selected by the Manager and agreed upon by a Majority in Interest of the Members.

### 13.3 Winding Up.

(a) A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of liabilities of creditors so as to enable the Members to minimize the normal losses attendant upon a liquidation.

(b) Anything herein to the contrary notwithstanding, any sale to third parties of property of the Company pursuant to the liquidation of the Company shall be made upon such terms and conditions as are approved by a Majority in Interest of the Members.

(c) Each of the Members shall be furnished with a statement prepared by the Company's then Certified Public Accountant, which shall set forth the assets and liabilities of the Company as at the date of complete liquidation.

13.4 Compliance With Certain Requirements of Regulations; Deficit Capital Accounts. In the event the Company is "liquidated" within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations (other than pursuant to Code Section 708(b)(1)(B)), (a) distributions shall be made pursuant to this Article XIII to the Members who have positive Capital Accounts in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2), and (b) if any Member's Capital Account has a deficit balance (after giving effect to all contributions, distributions, and allocations for all fiscal years, including the fiscal year during which such liquidation occurs), such Member shall have no obligation to, and shall not, contribute to the capital of the Company the amount necessary to restore such deficit balance to zero. In the discretion of the Manager, a pro rata portion of the distributions that would otherwise be made pursuant to Section 13.1 hereof may be:

(a) distributed to a trust established for the benefit of the Members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company or of the Members arising out of or in connection with the Company. The assets of any such trust shall be distributed to the Members as soon as practicable in the reasonable discretion of the Manager, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to Section 13.1 hereof; or

(b) withheld to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, provided that such withheld amounts shall be distributed to the Members pursuant to Section 13.1 hereof as soon as practicable.

13.5 Deemed Contribution and Distribution. Notwithstanding any other provisions of this Article XIII, in the event the Company is liquidated within the

meaning of Regulations Section 1.704-1(b)(2)(ii)(g) but no Liquidating Event has occurred, the Company's property shall not be liquidated, the Company's liabilities shall not be paid or discharged, and the Company's affairs shall not be wound up. Instead, solely for federal income tax purposes, the Company shall be deemed to have contributed all of the Company's property and liabilities to a new limited liability company in exchange for an interest in such new limited liability company and, immediately thereafter, the Company will be deemed to liquidate by distributing interests in the new limited liability company to the Members.

#### ARTICLE XIV

##### Adjustment of Basis Election

In the event of a transfer of a Membership Interest, or upon the death of a Member, or in the event of the distribution of property of the Company to any Member, the Company may, at the sole discretion of the Manager, file an election, in accordance with Section 754 of the Code and applicable Regulations, to cause the basis of the property of the Company to be adjusted for federal income tax purposes as provided by Sections 734 and 742 of the Code, if such election shall result in an increase in the basis of the property of the Company for federal income tax purposes.

#### ARTICLE XV

##### Notices

All notices provided for in this Operating Agreement shall be directed to the Members at the addresses herein set forth on Schedule A, or at such other places that the Company shall be so notified in writing by the Members by registered or certified mail. Notice shall be deemed given when mailed.

## ARTICLE XVI

### Arbitration

In the event of any controversy, dispute or disagreement or claim arising out of or relating to this Operating Agreement, its interpretation or breach thereof, among any parties bound by the terms of this Operating Agreement, such dispute shall be settled by arbitration in accordance with the provisions of the Connecticut General Statutes Section 52-408 et seq. and the Commercial Arbitration Rules of the American Arbitration Association then in effect in Hartford, Connecticut by a single arbitrator agreed to by the parties to the dispute. If the parties cannot agree upon an arbitrator, an arbitrator will be appointed in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. In any event, the arbitration procedure will be governed by said rules, and the decision of the arbitrator shall be final and binding and judgment upon any award so made may be entered in any court having competent jurisdiction. The cost of arbitration shall be shared equally by all parties in the arbitration. Each party shall bear the costs and expenses of such party's attorney in any arbitration proceeding.

## ARTICLE XVII

### Miscellaneous

17.1 Execution in Counterparts. This Operating Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one Operating Agreement.

17.2 Governing Law. All questions with respect to the construction of this Operating Agreement and the rights and liabilities of the parties shall be determined in accordance with the applicable provisions of the laws of the State of Connecticut, without regard to its conflict of laws principles.

17.3 Successors and Assigns. This Operating Agreement shall be binding upon and inure to the benefit of all the parties hereto and their assigns, successors in interests, personal representatives, estates and heirs.

17.4 Invalidity. The invalidity of any portion of this Operating Agreement shall not affect the validity of the remainder.

17.5 Captions. Any section or paragraph title or caption contained in this Operating Agreement is for convenience only and shall not be deemed part of the Operating Agreement.

17.6 Gender. Any use of the masculine or feminine gender shall be deemed to mean and include the male, female and the neuter gender as the context may require.

17.7 Entire Agreement. This Operating Agreement contains the entire understanding of the Members and supersedes any prior written or oral agreements by them respecting the subject matter within.

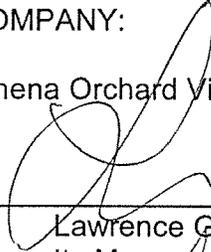
17.8 Indemnity. The Company shall indemnify each present or former Member against any judgments, settlements, penalties, fines and/or expenses relating to any liability or damage incurred in any proceeding to which such Person was a party because such Person is or was a Member including, without limitation, reasonable fees of attorneys engaged by the Member and such other reasonable costs and expenses of litigation and appeal in defense of such act or omission, provided the Member shall not be indemnified from any liability or damage for fraud, bad faith, willful misconduct, gross negligence, or a violation of the terms of this Operating Agreement, and provided further that any indemnity under this Section shall be provided out of and to the extent of Company assets only, and no Member shall have any personal liability on account thereof.

The undersigned have signed this Operating Agreement as of the day and year first above written.

COMPANY:

Athena Orchard View LLC

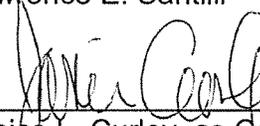
By

  
Lawrence G. Santilli  
Its Manager

MEMBERS:

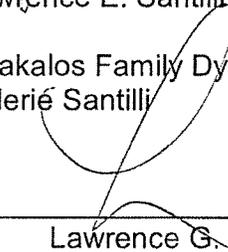
  
Lawrence G. Santilli

  
Lawrence G. Santilli, as Conservator for  
Lawrence E. Santilli

  
Janice L. Curley, as Conservator for  
Lawrence E. Santilli

Chakalos Family Dynasty Trust f/b/o  
Valerie Santilli

By

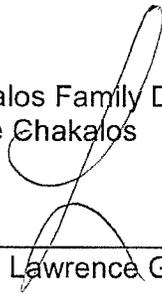
  
Lawrence G. Santilli, Trustee

By

Paul Sterczala, Trustee



Chakalos Family Dynasty Trust f/b/o  
Elaine Chakalos

By   
Lawrence G. Santilli, Trustee

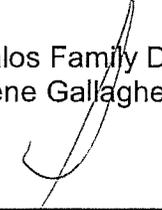
By \_\_\_\_\_  
Paul Sterczala, Trustee

Chakalos Family Dynasty Trust f/b/o  
Linda Carman

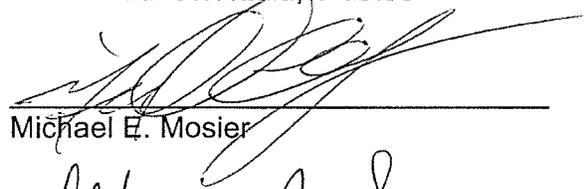
By   
Lawrence G. Santilli, Trustee

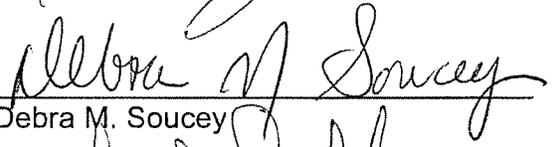
By \_\_\_\_\_  
Paul Sterczala, Trustee

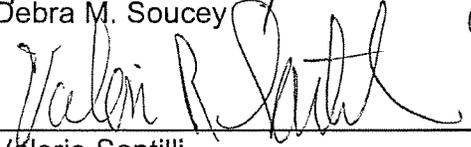
Chakalos Family Dynasty Trust f/b/o  
Charlene Gallagher

By   
Lawrence G. Santilli, Trustee

By \_\_\_\_\_  
Paul Sterczala, Trustee

  
\_\_\_\_\_  
Michael E. Mosier

  
\_\_\_\_\_  
Debra M. Soucey

  
\_\_\_\_\_  
Valerie Santilli



The undersigned have signed this Operating Agreement as of the day and year first above written.

COMPANY:

Athena Orchard View LLC

By \_\_\_\_\_  
Lawrence G. Santilli  
Its Manager

MEMBERS:

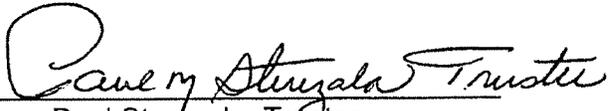
\_\_\_\_\_  
Lawrence G. Santilli

\_\_\_\_\_  
Lawrence G. Santilli, as Conservator for  
Lawrence E. Santilli

\_\_\_\_\_  
Janice L. Curley, as Conservator for  
Lawrence E. Santilli

Chakalos Family Dynasty Trust f/b/o  
Valerie Santilli

By \_\_\_\_\_  
Lawrence G. Santilli, Trustee

By  \_\_\_\_\_  
Paul Sterczala, Trustee



Chakalos Family Dynasty Trust f/b/o  
Elaine Chakalos

By \_\_\_\_\_  
Lawrence G. Santilli, Trustee

By Paul Sterczala Trustee  
Paul Sterczala, Trustee

Chakalos Family Dynasty Trust f/b/o  
Linda Carman

By \_\_\_\_\_  
Lawrence G. Santilli, Trustee

By Paul Sterczala Trustee  
Paul Sterczala, Trustee

Chakalos Family Dynasty Trust f/b/o  
Charlene Gallagher

By \_\_\_\_\_  
Lawrence G. Santilli, Trustee

By Paul Sterczala Trustee  
Paul Sterczala, Trustee

\_\_\_\_\_  
Michael E. Mosier

\_\_\_\_\_  
Debra M. Soucey

\_\_\_\_\_  
Valerie Santilli



SCHEDULE A  
ALLOCATION PERCENTAGES  
ATHENA ORCHARD VIEW LLC

Dated as of January 9, 2012

<u>MEMBERS</u>	<u>ALLOCATION PERCENTAGES</u>
Lawrence G. Santilli 31 Brunswick Avenue West Hartford, CT 06107	60.0%
Lawrence G. Santilli, and Janice L. Curley, Conservators for Lawrence E. Santilli 31 Brunswick Avenue West Hartford, CT 06107	10.0%
Chakalos Family Dynasty Trust f/b/o Valerie Santilli 52 Overlook Drive Windsor, CT 06095	3.0%
Chakalos Family Dynasty Trust f/b/o Elaine Chakalos 52 Overlook Drive Windsor, CT 06095	3.0%
Chakalos Family Dynasty Trust f/b/o Linda Carman 52 Overlook Drive Windsor, CT 06095	3.0%
Chakalos Family Dynasty Trust f/b/o Charlene Gallagher 52 Overlook Drive Windsor, CT 06095	3.0%

MEMBERS

ALLOCATION  
PERCENTAGES

Michael E. Mosier  
27 Parker Road  
Meriden, CT 06450

6.0%

Debra M. Soucey  
84 Burnham Road  
Avon, CT 06001

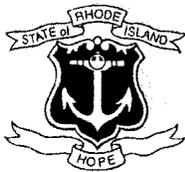
6.0%

Valerie Santilli  
31 Brunswick Avenue  
West Hartford, CT 06107

6.0%

TOTAL

100%



State of Rhode Island and Providence Plantations

**A. Ralph Mollis**

*Secretary of State*

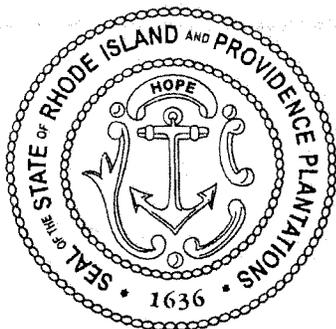
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

I, A. RALPH MOLLIS, Secretary of State of the State of Rhode Island  
and Providence Plantations, hereby certify that this document, duly  
executed in accordance with the provisions of Title 7 of the General Laws  
of Rhode Island, as amended, has been filed in this office on this day:  
January 09, 2012 2:10 PM

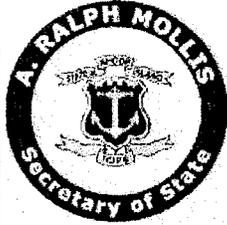
A handwritten signature in black ink that reads "A. Ralph Mollis".

A. RALPH MOLLIS

*Secretary of State*







State of Rhode Island and Providence Plantations  
Office of the Secretary of State

Fee: \$150.00

Division Of Business Services  
148 W. River Street  
Providence RI 02904-2615  
(401) 222-3040

**Limited Liability Company  
Articles of Organization**

(Chapter 7-16-6 of the General Laws of Rhode Island, 1956, as amended)

**ARTICLE I**

The name of the limited liability company is: Athena Orchard View Landlord LLC

**ARTICLE II**

The street address (post office boxes are not acceptable) of the limited liability company's registered agent in Rhode Island is:

No. and Street: 222 JEFFERSON BOULEVARD  
City or Town: WARWICK State: RI Zip: 02888

The name of the resident agent at such address is: CORPORATION SERVICE COMPANY

**ARTICLE III**

Under the terms of these Articles of Organization and any written operating agreement made or intended to be made, the limited liability company is intended to be treated for purposes of federal income taxation as:  
*Check one box only*

a partnership     a corporation     disregarded as an entity separate from its member

**ARTICLE IV**

The address of its principal office of the limited liability company if it is determined at the time of organization:

No. and Street: 300 QUEEN STREET  
City or Town: SOUTHINGTON State: CT Zip: 06489 Country: USA

**ARTICLE V**

The limited liability company has the purpose of engaging in any lawful business, unless a more limited purpose is set forth in Article VI of these Articles of Organization.

The period of its duration is:  Perpetual

**ARTICLE VI**

Additional provisions, if any, not inconsistent with law, which members elect to have set forth in these Articles of Organization, including, but not limited to, any limitation of the purposes or any other provision which may be included in an operating agreement:

**ARTICLE VII**



The limited liability company is to be managed by its  Members or  Managers (check one)  
(If managed by Members, go to ARTICLE VIII)

The name and address of each manager (If LLC is managed by Members, DO NOT complete this section):

Title	Individual Name First, Middle, Last, Suffix	Address Address, City or Town, State, Zip Code, Country
MANAGER	LAWRENCE G SANTILLI	300 QUEEN STREET SOUTHINGTON, CT 06489

#### ARTICLE VIII

The date these Articles of Organization are to become effective, not prior to, nor more than 30 days after the filing of these Articles of Organization.

Later Effective Date:

*This electronic signature of the individual or individuals signing this instrument constitutes the affirmation or acknowledgement of the signatory, under penalties of perjury, that this instrument is that individual's act and deed or the act and deed of the company, and that the facts stated herein are true, as of the date of the electronic filing, in compliance with R.I. Gen. Laws § 7-16.*

Signed this 9 Day of January, 2012 at 2:11:49 PM by the Authorized Person.

ROBERT V. GIUNTA, JR.

**Address of Authorized Signer:**

MURTHA CULLINA LLP  
CITYPLACE I, 185 ASYLUM STREET  
HARTFORD, CT 06103

Form No. 400  
Revised 09/07

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**OPERATING AGREEMENT**  
**OF**  
**ATHENA ORCHARD VIEW LANDLORD LLC**

THIS OPERATING AGREEMENT of Athena Orchard View Landlord LLC, a Rhode Island limited liability company (the "Company") is made and entered into as of the 9th day of January, 2012, by and among the Company and those persons and entities listed as members on Schedule A attached hereto and made a part hereof as may be amended pursuant to this Operating Agreement from time to time (the "Members").

The Members desire to operate a limited liability company pursuant to the laws of the State of Rhode Island. Accordingly, in consideration of the mutual covenants contained herein, they agree and certify as follows:

**ARTICLE I**

Definitions

For purposes of this Operating Agreement, the following terms shall have the meanings specified unless the context otherwise requires:

(a) The "Act" means the Rhode Island Limited Liability Company Act, R.I.G.L. c. 7-16, as the same is in effect at the time of formation of the Company and as the same may be hereafter amended from time to time (or any corresponding provisions of succeeding law).

(b) "Additional Capital Contribution" means, with respect to any Member, any amount contributed, required to be contributed, or deemed to be contributed to the capital of the Company pursuant to Section 6.3 or 6.4 hereof.

(c) "Additional Capital Contribution Attributable To Guaranty Of Debt" means any amount paid by a Member to any creditor of the Company or any company of which the Company is the member under a guaranty of the debt of the Company or such other company by the Member.

(d) "Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant fiscal year or other period, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Operating Agreement or is deemed to be obligated to restore

pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(ii) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of the Regulations.

The foregoing definition of "Adjusted Capital Account Deficit" is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith

(e) "Bankruptcy" means, with reference to any Member:

(i) the entry of an order for relief (or similar court order) against such Member which authorizes a case brought under Chapter 7, 11 or 13 of Title 11 of the United States Code to proceed;

(ii) the commencement of a federal, state or foreign bankruptcy, insolvency, reorganization, arrangement or liquidation proceeding by such Member;

(iii) the commencement of a federal, state or foreign bankruptcy, insolvency, reorganization, arrangement or liquidation proceeding against such Member if such proceeding is not dismissed within sixty (60) days after the commencement thereof;

(iv) the entry of a court decree or court order which remains unstayed and in effect for a period of thirty (30) consecutive days:

(A) adjudging such Member insolvent under any federal, state or foreign law relating to bankruptcy, insolvency, reorganization, arrangement, liquidation, receivership or the like;

(B) approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of, or in respect of, such Member or his properties under any federal, state or foreign law relating to insolvency, reorganization, arrangement, liquidation, receivership or the like;

(C) appointing a receiver, liquidator, assignee, trustee, conservator, or sequester (or other similar official) of such Member, or of all, or of a substantial part, of such Member's properties; or

(D) ordering the winding up, dissolution or liquidation of the affairs of such Member;

(v) the written consent by such Member to the institution against it of any proceeding of the type described in subsection (i), (ii), (iii) and (iv);

(v) the written consent by such Member to the appointment of a receiver, liquidator, assignee, trustee, conservator or sequester (or other similar official) of such Member, or of all, or of a substantial part, of its properties;

(vi) the making by such Member of an assignment for the benefit of creditors;

(vii) the admission in writing by such Member of its inability to pay its debts generally as they come due;

(viii) the taking of any action by such Member in furtherance of any of the foregoing; or

(ix) if such Member becomes insolvent by the taking of any act or the making of any transfer, or otherwise, as insolvency is or may be defined pursuant to the Federal Bankruptcy Code, the Federal Bankruptcy Act, the Uniform Fraudulent Conveyances Act, any state, federal or foreign act, or the ruling of any court.

(f) "Breaching Member" has the meaning set forth in Section 11.8 hereof.

(g) "Breach Payments" has the meaning set forth in Section 11.9 hereof.

(h) "Capital Account" means, with respect to any Member, the capital account maintained for such Member in accordance with the provisions set forth in Section 8.1.

(i) "Capital Contribution" shall mean, with respect to any Member, the amount of money and the initial Gross Asset Value of any property (net of liabilities secured by such property that the Company is considered to assume or take subject to under Code Section 752) contributed by a Member to the capital of the Company and any Company liabilities assumed by the Member within the meaning of Regulations Section 1.704-1(b)(2)(iv)(c).

(j) "Cash Flow" means the gross cash receipts of the Company of any kind or description (but not including Capital Contributions) during any applicable computation period, less:

(i) all operating or other expenses of the Company paid in cash during the period, but not including expenses paid in cash to the extent that such expenses were reserved against and funded from such reserves;

(ii) all cash payments made with respect to the discharge of Company indebtedness during the period, but not including any such payments to the extent that the amounts thereof were reserved against and funded from such reserves; and

(iii) all amounts of reserved cash as shall be determined by the Manager to be necessary and advisable for (a) the payment of Company expenses coming due at some future time, (b) the repayment of any Company indebtedness coming due at some future time, (c) reasonable increases in working capital, and (d) reasonable contingency reserves.

(k) "Cash Flow Deficit" means the amount, reasonably determined by the Manager and approved by a Majority in Interest of the Members, as of the date of any Deficit Contribution Notice, to be the excess of (1) the Company's normal projected operating cash requirements for the period set forth in such notice over (2) the aggregate projected Company cash available to fund such normal projected operating cash requirements during such period. For this purpose, the Company's normal operating cash requirements shall include amounts necessary to pay normal and ordinary costs of Company operations, emergency repairs to, or replacements or improvements of, Company assets, normal debt service on any loans secured by Company property, and amounts necessary to retire any unsecured loans incurred by the Company to pay normal operating cash requirements for periods ending prior to the date of the relevant Deficit Contribution Notice.

(l) "Company" has the meaning set forth in Section 2.2 hereof.

(m) "Company Minimum Gain Chargeback Allocation" means the allocations required by Section 1.704-2(f) of the Regulations.

(n) "Code" means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

(o) "Deficit Contribution Notice" means a written notice given by the Manager to the Members, which shall (1) state the amount that the Manager has determined to be the Cash Flow Deficit that the Company is likely to incur during the period beginning on the date of such Deficit Contribution Notice, (2) summarize with reasonable particularity the basis for such determination, (3) identify a contribution date, not sooner than fifteen days after the date of such Deficit Contribution Notice, upon which contributions to fund such Cash Flow Deficit shall be due, and (4) specify the portion of such Cash Flow Deficit Contribution for which each Member is responsible.

(p) "Delinquency Interest Rate" has the meaning set forth in Section 6.4(b) hereof.

(q) "Delinquency Loan" has the meaning set forth in Section 6.4(a) hereof.

(r) "Delinquency Loan Notice" has the meaning set forth in Section 6.4(a) hereof.

(s) "Delinquent Contribution" means, with respect to any Delinquent Member, the amount of any required Additional Capital Contribution of such Member under Section 6.3(b) hereof that is not made, when due, and remains unmade as of such time.

(t) "Delinquent Member" has the meaning set forth in Section 6.4(a) hereof.

(u) "Depreciation" means, for each fiscal year or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable for federal income taxes with respect to an asset for such fiscal year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such fiscal year or other period, the Depreciation shall be in amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such fiscal year or other period bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such fiscal year or other period is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Manager.

(v) "Dissociation" (including all variations of the verb form Dissociate and the adjective forms Dissociating and Dissociated) means (a) as to any Member, Bankruptcy; (b) as to an individual Member, the occurrence of death, adjudication of insanity or incompetence; (c) as to any legal entity Member, dissolution, or (d) as to any Member, voluntary or involuntary withdrawal as a Member for any reason. Involuntary withdrawal shall occur whenever the Member may no longer continue as a Member by law or pursuant to the terms of this Agreement.

(w) "Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(1) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Manager provided that, if a Manager is the contributing Member, the determination of the fair market value of the contributed asset shall require the consent of a Majority in Interest of the Members;

(2) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Manager (unless the Manager is the contributing member, in which case a Majority in Interest of the Members shall determine the aforesaid value), as of the following times: (w) in connection with the grant of an interest in the Company (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a Member capacity, or by a new Member acting in a Member capacity in anticipation of being a Member; (x) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (y) the distribution by the Company to a Member of more than a de minimis amount of property as consideration for an interest in the Company; and (z) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clauses (w), (x) and (y) above shall be made only if the Manager reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(3) The Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the Manager, provided that if the distributee is a Manager, the determination of fair market value of the distributed asset shall require the consent of a Majority in Interest of the Members; and

(4) The Gross Asset Values of the Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and subparagraph (6) of the definition of Net Profits and Net Losses in Article I, (ff) or Section 7.2(d); provided, however, that Gross Asset Values shall not be adjusted pursuant to this subparagraph (4) to the extent that the Manager determines that an adjustment pursuant to subparagraph (2) is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (4).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraphs (1), (2) or (3), such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Profits and Net Losses.

(x) "Involuntary Withdrawal" (including all variations of the verb form withdraw and the adjective forms withdrawing or withdrawn) means (a) as to any Member, Bankruptcy; (b) as to an individual Member, the occurrence of death, adjudication of insanity or incompetence; (c) as to any legal entity Member, dissolution; or (d) as to any Member, involuntary withdrawal as a Member for any reason. Involuntary Withdrawal shall occur whenever the Member may no longer

continue as a Member by law or pursuant to the terms of this Agreement, except that involuntary withdrawal shall not occur by means of a Transfer unless the Transfer is a Bankruptcy.

(y) "Liquidating Event" has the meaning set forth in Section 12.1 hereof.

(z) "Loan Date" has the meaning set forth in Section 6.4(a) hereof.

(aa) "Majority in Interest" means Members holding one or more Percentage Interests of the Members that are entitled to vote on a given issue which taken together exceed 50% of all Percentage Interests of the Members that are entitled to vote such interest.

(bb) "Manager" mean Lawrence G. Santilli, or his successor elected in accordance with the provisions hereof.

(cc) "Membership Interest" means a Member's entire interest in the Company including such Member's economic interest, the right to vote, if any, on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Operating Agreement or the Act.

(dd) "Member Minimum Gain Chargeback Allocations" means the allocations required by Section 1.704-2(i)(3) of the Regulations.

(ee) "Member Non-Recourse Deduction Allocations" means the allocations required by Section 1.704-2(i)(2) of the Regulations.

(ff) "Net Profits" and "Net Losses" means for each fiscal year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in calculating taxable income or loss), with the following adjustments:

(1) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits or Net Losses pursuant to this definition of Net Profits and Net Losses shall be added to such taxable income or loss;

(2) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Profits or Net Losses pursuant to this definition of Net Profits and Net Losses, shall be subtracted from such taxable income or loss;

(3) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraphs (2) or (3) of the definition of

Gross Asset Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Profits or Net Losses;

(4) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(5) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period, computed in accordance with the definition of Depreciation;

(6) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in complete liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Profits or Net Losses; and

(7) Any items which are specially allocated pursuant to Section 7.2 or 7.3 shall not be taken into account in computing Net Profits or Net Losses.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Sections 7.2 and 7.3 shall be determined by applying rules analogous to those set forth in subparagraph (1) through (6) above.

(gg) "Nondelinquent Contributing Member" has the meaning set forth in Section 6.4(a) hereof.

(hh) "Non-Recourse Deduction Allocations" means the non-recourse deductions (as defined in Section 1.704-2(c) of the Regulations) allocated to a Member pursuant to Section 7.2(c) hereof.

(ii) "Operating Agreement" means this Operating Agreement of Athena Orchard View Landlord LLC, as amended from time to time.

(jj) "Percentage Interest", or "Member's Percentage Interest" with respect to a Member, means the percentage that the Member's Interest is of the total of all the Members' Interests in aggregate as set forth on Schedule A hereto.

(kk) "Person" means any individual, partnership, corporation, trust, or other entity.

(ll) "Prime Rate" means the rate of interest most recently published in the Wall Street Journal as the prime rate.

(mm) "Regulations" means any regulations of the Department of the Treasury under the Code (whether permanent, temporary or proposed), as such regulations may be lawfully changed from time to time.

(nn) "Regulatory Allocations" has the meaning set forth in Section 7.2 hereof.

(oo) "Schedule A" means the Schedule attached to this Operating Agreement containing the names and addresses of the Members and their respective Membership Percentage Interests. The "Initial Schedule A" shall mean Schedule A as originally constituted. Schedule A shall be amended to reflect any additions or deletions of Members to the Company. Any subsequent Schedule A shall be referred to as a "Revised Schedule A" when necessary to distinguish such subsequent Schedule A from the Initial Schedule A.

(pp) "Substitute Member" has the meaning set forth in Section 11.6 hereof.

(qq) "Super Majority in Interest" means one or more Percentage Interests of the Members that are entitled to vote on a given issue which taken together equal or exceed sixty five percent (65%) of all Percentage Interests of the Members that are entitled to vote on such issue.

(rr) "Tax Matters Member" has the meaning set forth in Section 10.5 hereof.

(ss) "Transfer" means (i) when used as a verb, to give, gift, sell, exchange, redeem, transfer, pledge, hypothecate, encumber, bequeath, devise or otherwise dispose of, and (ii) when used as a noun the nouns corresponding to such verbs, in either case voluntary or involuntary, by operation of law or otherwise.

(tt) "Voluntary Withdrawal" including all variations of the verb form withdraw and the adjective forms withdrawing or withdrawn) means a Member's Dissociation from the Company by means other than by a Transfer or an Involuntary Withdrawal.

## ARTICLE II

### Formation, Name, Office, Term, Statutory Agent

2.1 Formation. The Company has been formed as a limited liability company pursuant to the Act.

2.2 Name. The name of the Company is Athena Orchard View Landlord LLC (the "Company").

2.3 Principal Office. The principal office and place of business of the Company shall be located at 135 South Road, Farmington, Connecticut 06032 or at such other place or places as the Manager may from time to time determine.

2.4 Term. The term of the Company shall continue until dissolved or terminated as provided herein or by law.

2.5 Operating Agreement. Each person who becomes a Member, from time to time, agrees to the terms and conditions set forth herein, as such terms and conditions from time to time may be modified or amended, and each such Member agrees that the terms and conditions of such Member's interest in the Company shall be governed by this Operating Agreement, the Articles of Organization and the Act.

2.6 Resident Agent. The resident agent of the Company shall be Corporation Service Company, having a business address at 222 Jefferson Boulevard, Suite 200, Warwick, Rhode Island 02888, or such other person as the Members may designate from time to time.

2.7 Title to Company Property. All assets owned by the Company whether real or personal, tangible or intangible, shall be deemed to be owned by the Company as an entity, and no Member shall have any ownership of such assets individually. Each Member hereby irrevocably waives, for the term of the Company, any rights it may have to maintain an action for partition of any asset of the Company or to compel any sale thereof. A Member's interest in the Company shall be personal property for all purposes.

2.8 Manager. The Members hereby appoint Lawrence G. Santilli as the Manager of the Company.

## ARTICLE III

### Purpose, Rights and Obligations of Members

3.1 Purpose. The purpose of the Company is to own, manage and/or operate a nursing home facility in the State of Rhode Island, whether on its own behalf or as a partner, shareholder, beneficiary, member and/or Manager of another entity, and to engage in any and all activities related or incidental thereto and to engage in any lawful act or activity for which limited liability companies may be formed under the Act.

3.2 Limitation of Liability of Member. Each Member's liability shall be limited as set forth in this Operating Agreement, the Act, and other applicable law. A Member will not be personally liable for any debts or losses of the Company beyond his respective contributions to capital.

## ARTICLE IV

### Names, Addresses and Membership Interests

The names, addresses, Capital Contributions, and Membership Interests of the Members are as set forth in Schedule A attached hereto and incorporated herein by reference.

## ARTICLE V

### Management

5.1 Management. The business and affairs of the Company shall be managed by its Manager or its Managers if there is more than one Manager. There may be one or more Manager, and any Manager may be an individual, a corporation, a limited liability company or a partnership. Except for non-waivable provisions of the Act or situations in which the approval of the voting Members is expressly required by this Operating Agreement, the Manager shall have full authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding the business, affairs and properties of the Company, and to perform any and all other acts or activities customary or incident to the management of the Company's business. At any time when there is more than one Manager, the Managers shall act by majority vote on a per capita basis (one vote per Manager). Unless authorized to do so by this Operating Agreement or in a writing signed by the Manager, no Member and no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose.

5.2 Certain Powers of the Manager. Without limiting the generality of Section 5.1, and unless otherwise directed in writing by a Super Majority in

Interest of the Members, the Manager shall have the power and authority on behalf of the Company:

(a) To purchase liability and other insurance to protect the Company's property and business;

(b) To hold and own any Company real and/or personal properties in the name of the Company;

(c) To invest Company funds temporarily in, by way of example but not limitation, time deposits, short-term governmental obligations, commercial paper or other investments;

(d) To execute on behalf of the Company all instruments and documents including, without limitation, checks, drafts, notes and other negotiable instruments, mortgages or deeds of trust, security agreements, financing statements, documents providing for the acquisition, mortgage or disposition of the Company's property, assignments, bills of sale, leases, management agreements, operating agreements or partnership agreements of other limited liability companies or partnerships, and any other instruments or documents necessary or appropriate, in the opinion of the Manager, to operate the business or manage the Company;

(e) To employ accountants, legal counsel, managing agents or other professionals to perform services for the Company;

(f) To do and perform all other acts and to enter into all other agreements on behalf of the Company as may be necessary or appropriate to the conduct of the Company's day to day business; and

(h) To borrow money not to exceed \$3,000,000 for the Company from banks, other lending institutions, the Manager, Members, or affiliates of the Manager or Members on such terms as the Manager deems appropriate, and, in connection therewith, to mortgage, hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums.

5.3 Restrictions on Manager. Notwithstanding anything in this Operating Agreement to the contrary, the Manager shall not have the authority to, and covenant and agree that they shall not, do any of the following acts on behalf of the Company without the approval of a Super Majority in Interest of the Members:

(a) To borrow money in excess of \$3,000,000 for the Company from banks, other lending institutions, the Manager, Members, or affiliates of the Manager or Members on such terms as the Manager deems appropriate, and, in connection therewith, to mortgage, hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums;

- (b) cause or permit the Company to make any loans or become a surety, guarantor, endorser, or accommodation endorser for any Person;
- (c) confess a judgment against the Company;
- (d) distribute any cash or property of the Company, other than as provided in this Operating Agreement;
- (e) agree to the merger, dissolution or sale of substantially all of the assets of the Company; and
- (f) admit a new member to the Company.

5.4 No Exclusive Duty. The Manager shall not be required to manage the Company as his sole and exclusive function, and he may have other business interests and engage in other activities in addition to those relating to the Company.

5.5 Reports. The Manager shall have physical possession of the books and records of the Company, including, specifically, those required by Section 10.3, and shall give such notices, reports and advice to the Members as may, from time to time, be required or deemed advisable, and shall perform the necessary ministerial functions of the Company. Upon reasonable request, each Member shall have the right, during ordinary business hours, to inspect and copy the Company documents held in accordance with Section 10.3 at the requesting Member's expense.

5.6 Liability; Indemnification. (a) The Manager shall not be liable to the Company or the Members for any loss or damage incurred by the Company by reason of any act or omission performed or omitted by the Manager in good faith on behalf of the Company and in a manner reasonably believed by the Manager to be within the scope of the authority granted to the Manager by this Operating Agreement or in the best interest of the Company, unless fraud, willful misconduct, gross negligence, or lack of good faith can be established by the Company or the Members.

(b) The Company shall indemnify and hold harmless the Manager from and against any claim, loss, expense, liability, action or damage incurred by the Manager by reason of any act or omission performed or omitted by the Manager in good faith within the scope of the Manager's authority as Manager, including, without limitation, reasonable fees and expenses of attorneys engaged by the Manager and such other reasonable costs and expenses of litigation and appeal in defense of such act or omission. Any indemnification, or other payments to the Manager under this paragraph, shall be paid from the assets of the Company, and no Member shall have any personal liability therefor.

(c) The Manager shall indemnify and save harmless the Company and its Members from and against any claim, loss, expense, liability, action or damage including, without limitation, reasonable costs and expenses of litigation and appeal (including, without limitation, reasonable fees and expenses of attorneys engaged by the Members and the Company) by reason of said Manager's fraud, willful misconduct, gross negligence or lack of good faith.

5.7 Removal of Manager. A Manager may be removed at any time, with or without cause, by vote of a Super Majority in Interest of the Members. The removal of a Manager who is also a Member shall not, by itself, affect the Manager's rights as a Member and shall not constitute a withdrawal of the Member.

5.8 Vacancies. In the event of the vacancy in the position of Manager, the replacement Manager shall be selected by Majority in Interest of the Members within ninety (90) days of the removal or resignation of a Manager. The removal or resignation of a Manager shall not terminate the Company.

5.9 Other Business Ventures of Members. Any Member or affiliate of a Member may engage independently or with others in other business ventures of every nature and description, except as set forth in any non-competition agreement. As a general matter, neither the Company nor any Member shall have any right by virtue of this Operating Agreement or the relationship created hereby in or to any other ventures or activities in which any Member or affiliate of a Member is involved or to the income or proceeds derived therefrom.

## ARTICLE VI

### Capital Contributions

6.1 Capital Contributions. Except as otherwise specifically set forth in this Operating Agreement, no Member shall have the right to withdraw any part of the Member's Capital Contribution, or receive any cash or other property of the Company. No interest shall be paid by the Company to any Member with respect to the Member's Capital Contribution. Additionally, no Member shall be required to make Additional Capital Contributions, lend any funds to the Company or to pay any contributions, assessments or payments to the Company except as provided in this Article VI.

6.2 Initial Capital Contribution. Each Member shall make an initial Capital Contribution as set forth on Schedule A attached hereto and made a part hereof.

### 6.3 Deficit Cash Flow Contributions

(a) The Members hereby acknowledge and agree that the obligation of any Member to make Additional Capital Contributions under Article VI

hereof is a non-recourse liability of such Member and that, in the event such Member becomes a Delinquent Member, the Company and the other Members' rights are strictly limited to those prescribed in this Article VI.

(b) Each Member shall make Additional Capital Contributions in cash to the Company, from time to time, on or before the contribution date specified in any duly given Deficit Contribution Notice, equal to his *pro rata* share of the Cash Flow Deficit identified in such Deficit Contribution Notice based on the ratio that his Percentage Interest bears to the Percentage Interest of all Members.

(c) The Manager may give any number of Deficit Contribution Notices during the term of the Company, subject to the approval of a Majority in Interest of the Members.

#### 6.4 Delinquency Loans by Nondelinquent Contributing Members.

(a) In the event that a Member is in default of his obligation to make Additional Capital Contributions as required by Section 6.3 (a "Delinquent Member"), the Manager may invoke the following procedure under which the nondelinquent Members ("Nondelinquent Contributing Members") shall be permitted to make loans ("Delinquency Loans") to the Company. Such procedure may be invoked by giving notice (the "Delinquency Loan Notice") to all of the Nondelinquent Contributing Members, with a copy to the Delinquent Member. A Delinquency Loan Notice shall state the following: (1) the amount of the Delinquent Contribution on the date of such notice; and (2) the date (the "Loan Date") on or before which each such Nondelinquent Contributing Member may elect to make a Delinquency Loan. Each Nondelinquent Contributing Member shall have the right to elect to fund such portion of the aggregate Delinquency Loans then being made to such Delinquent Member in the same ratio as its Percentage Interest bears to the aggregate Percentage Interests of all Nondelinquent Contributing Members then making Delinquency Loans to such Delinquent Member, or in such other ratio as such Nondelinquent Contributing Members shall otherwise agree. A Nondelinquent Contributing Member may elect to make a Delinquency Loan to the Company by delivery to the Company of cash or a check in the amount of the Delinquency Loan that such Member is permitted to make under the preceding sentence on or before the Loan Date. The Loan Date shall in no event be earlier than the fifteenth (15th) day or later than the thirtieth (30th) day following the date of the Delinquency Loan Notice.

(b) Each Delinquency Loan shall bear interest at the Prime Rate plus two percentage points per annum, or the applicable maximum rate permitted to be contracted for by law, whichever is less (the "Delinquency Interest Rate"), calculated on the basis of a 360 day year for the actual number of days elapsed and compounded annually. Interest on any such Delinquency Loan shall accrue from the date the funds are actually funded by the Nondelinquent Contributing Member until the date that the Delinquency Loan plus all interest thereon are

repaid in full. Recourse with respect to the Delinquency Loans shall be only against the Membership Interest of the Delinquent Member.

(c) Any such Delinquency Loan by a Nondelinquent Contributing Member shall be deemed to be a loan to the Delinquent Member by the Nondelinquent Contributing Member and as an Additional Capital Contribution made by the Delinquent Member. Notwithstanding anything to the contrary contained in this Operating Agreement, at any time when any portion of a Delinquency Loan (including accrued and unpaid interest thereon) shall remain outstanding, any distributions otherwise payable by the Company to or on account of the Delinquent Member shall be paid to the Nondelinquent Contributing Member(s). Delinquency Loans shall be repaid in the same order of priority in which the Delinquency Loans were funded, with the Delinquency Loans being made first being repaid first, with each Nondelinquent Contributing Member in respect of any particular missed Additional Capital Contribution being treated in all respects with respect to such Delinquency Loans on a *pari passu* basis. Amounts paid on behalf of any Delinquency Loan shall be applied first to any accrued and unpaid interest thereon calculated at the Delinquency Interest Rate and then to the outstanding principal amount of the Delinquency Loan. Any distribution made to a Nondelinquent Contributing Member on behalf of the Delinquent Member's obligations with respect to a Delinquency Loan hereunder shall, for purposes of calculating Capital Account balances, be deemed to have been made to the Delinquent Member.

(d) Upon the making of a Delinquency Loan, automatically and without any further action by any party, as security for the prompt and complete payment of the Delinquency Loan, and any and all indebtedness, liabilities and obligations relating thereto (including without limitation any and all interest thereon as provided herein): (i) the Membership Interest of the Delinquent Member (including without limitation any and all rights of the Delinquent Member in and to distributions) shall be and hereby are pledged, assigned and hypothecated to the Nondelinquent Contributing Member(s) (on a *pari passu* basis), and (ii) the Delinquent Member shall and hereby does grant to the Nondelinquent Member(s) (on a *pari passu* basis) a continuing, perfected and priority lien upon and security interest in, to and under the Delinquent Member's Membership Interest in an amount equal to the Delinquency Loan plus accrued and unpaid interest thereon. The Members hereby irrevocably constitute and appoint the Manager as their true and lawful attorney-in-fact, with full power of substitution, in their name, place and stead, to make, execute, sign, acknowledge (including swearing to), record and file, on behalf of such Member as a Delinquent Member any UCC-1 Financing Statement or other documents necessary to perfect such lien(s) and security interest(s). The foregoing grant of authority (x) shall survive the delivery of an assignment by a Delinquent Member of the whole or any portion of its Membership Interest, (y) is a special power of attorney coupled with an interest and is irrevocable and (z) may be exercised by the Manager on behalf of the Delinquent Member by a facsimile signature.

(e) In the event that any Delinquency Loan plus accrued interest thereon is not fully repaid within five (5) years following the date the Delinquency Loan was made, the Delinquent Member agrees that he shall grant to each holder of a Delinquency Loan an option (the "Option") to purchase such Delinquent Member's Membership Interest. Each holder of a Delinquency Loan may exercise his Option to purchase such share of such Delinquent Member's Membership Interest at any time after such five year period at which such Delinquency Loan remains outstanding at a purchase price equal to the outstanding balance on the Delinquency Loan, plus all accrued and unpaid interest thereon. The value of a Delinquent Member's offered Membership Interest shall be determined in a manner similar to the determination of the purchase price set forth in Section 11.4. Each Member hereby covenants and agrees that, if any Member duly and properly exercises an Option hereunder, such Member will take such other actions and execute such instruments of transfer and other instruments, agreements, and documents as counsel to the Company may determine to be necessary or appropriate to further evidence and confirm such transfer of such Member's Membership Interest on the date of the exercise of such Option.

(f) The rights and remedies available to the Members and the Company upon the failure of any Member to make a required Additional Capital Contribution as set forth in Section 6.3 and this Section 6.4 shall be the sole and exclusive rights and remedies available for any such failure, and no Member or any Person having any direct or indirect interest in the Member shall have any other liability or obligation with respect to the making of any such Additional Capital Contribution; *provided, however*, that the foregoing shall not be deemed to limit the right of the Manager to raise any required capital by any other means available, whether by third party or related party loans or otherwise.

## ARTICLE VII

### Profits and Losses and Tax Allocations

#### 7.1 Net Profit and Loss.

(a) After giving effect to the allocations required by Sections 7.2 and 7.3 hereof, all Net Profits and Net Losses for each fiscal year or other period of the Company shall be allocated as set forth in (i) or (ii) below.

(i) For each fiscal year or other period of the Company, Net Profits shall be allocated in the following order and priority:

(A) First, to the Members in an amount equal to, and to each Member pro rata in proportion to their share of, the excess, if any, of (i) the cumulative Net Losses allocated to the Members for all prior fiscal years or other periods of the Company under Section 7.1(a)(ii)(E) over the cumulative Net Profits allocated to the Members for all prior fiscal years or other periods of the Company under this Section 7.1(a)(i)(A);

(B) Second, to the Members in an amount equal to, and to each Member pro rata in proportion to their share of, the excess, if any, of (i) the cumulative Net Losses allocated to the Members for all prior fiscal years or other periods of the Company under Section 7.1(a)(ii)(D) over the cumulative Net Profits allocated to the Members for all prior fiscal years or other periods of the Company under this Section 7.1(a)(i)(B);

(C) Third, to the Members in an amount equal to, and to each Member pro rata in proportion to their share of, the excess, if any, of (i) the cumulative Net Losses allocated to the Members for all prior fiscal years or other periods of the Company under Section 7.1(a)(ii)(C) over the cumulative Net Profits allocated to the Members for all prior fiscal years or other periods of the Company under this Section 7.1(a)(i)(C);

(D) Fourth, to the Members in an amount equal to, and to each Member pro rata in proportion to their share of, the excess, if any, of (i) the cumulative Net Losses allocated to the Members for all prior fiscal years or other periods of the Company under Section 7.1(a)(ii)(B) over the cumulative Net Profits allocated to the Members for all prior fiscal years or other periods of the Company under this Section 7.1(a)(i)(D); and

(E) Fifth, to the Members in proportion to their Percentage Interests.

(ii) For each fiscal year or other period of the Company, Net Losses shall be allocated in the following order and priority:

(A) First, to the Members in an amount equal to, and to each Member pro rata in proportion to their share of, the excess, if any, of (i) the cumulative Net Profits allocated to the Members for all prior fiscal years or other periods of the Company under Section 7.1(a)(i)(E) over the cumulative Net Losses allocated to the Members for all prior fiscal years or other periods of the Company under this Section 7.1(a)(ii)(A);

(B) Second, to the Members in an amount equal to, and to each Member pro rata in proportion to their share of, the excess, if any, of (i) the sum of (x) the aggregate initial Capital Contributions of the Members under Section 6.2 hereof and (y) the cumulative Net Profits allocated to the Members for all prior fiscal years or other periods of the Company under Section 7.1(a)(i)(D), over (ii) the cumulative Net Losses allocated to the Members for all prior fiscal years or other periods of the Company under this Section 7.1(a)(ii)(B);

(C) Third, to the Members in an amount equal to, and to each Member pro rata in proportion to their share of, the excess, if any, of (i) the sum of (x) the aggregate Additional Capital Contributions of the Members and (y) the cumulative Net Profits allocated to the Members for all prior fiscal years or other periods of the Company under Section 7.1(a)(i)(C), over (ii) the cumulative Net

Losses allocated to the Members for all prior fiscal years or other periods of the Company under this Section 7.1(a)(ii)(C);

(D) Fourth, to the Members in an amount equal to, and to each Member pro rata in proportion to their share of, the excess, if any, of (i) the sum of (x) the aggregate Additional Capital Contributions Attributable To Guaranty Of Debt of the Members and (y) the cumulative Net Profits allocated to the Members for all prior fiscal years or other periods of the Company under Section 7.1(a)(i)(B), over (ii) the cumulative Net Losses allocated to the Members for all prior fiscal years or other periods of the Company under this Section 7.1(a)(ii)(D); and

(E) Fifth, to the Members in proportion to their Percentage Interests.

(b) The Net Losses allocated pursuant to Section 7.1(a) shall not exceed the maximum amount of Net Losses that can be so allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any fiscal year or other period. In the event that some, but not all, of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Net Losses pursuant to Section 7.1(a), the limitations set forth in this Section 7.1(b) shall be applied on a Member by Member basis so as to allocate the maximum permissible Net Losses to each Member under Section 1.704-1(b)(2)(ii)(d) of the Regulations.

## 7.2 Regulatory Allocations.

(a) The Company shall make the qualified income offset allocation required by the alternate test for economic effect under Section 1.704-1(b)(2)(ii)(d) of the Regulations, provided that an allocation pursuant to this Section 7.2(a) shall be made only to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section 7 have been tentatively made as if this Section 7.2(a) were not in the Operating Agreement.

(b) In the event any Member has a deficit Capital Account at the end of any fiscal year or other period which is in excess of the sum of (i) the amount such Member is obligated to restore pursuant to any provision of this Operating Agreement, and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 7.2(b) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article VII have been made as if Section 7.2(a) and this Section 7.2(b) were not in the Operating Agreement.

(c) The Manager shall make all (1) Member Non-Recourse Deduction Allocations; (2) Member Minimum Gain Chargeback Allocations; and (3) Company Minimum Gain Chargeback Allocations. The Manager shall make all Non-Recourse Deduction Allocations to the Members in proportion to their Percentage Interests, and it is intended that the foregoing allocations shall be viewed and treated as reasonably consistent with allocations (which have substantial economic effect) of some significant item of Company income or gain within the meaning of Regulations Section 1.752-3(a)(3).

(d) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(d) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of his interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Members to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(e) Guaranteed Payments. To the extent any compensation paid to any Member by the Company is determined by the Internal Revenue Service to be a distribution rather than a guaranteed payment under Code Section 707(c) or compensation paid under Code Section 707(a), gross income of the Company shall be specially allocated to such Member in an amount equal to the amount of that compensation, and the Member's Capital Account shall be appropriately adjusted.

7.3 Curative Allocations. The allocations set forth in Sections 7.1(b), 7.2(a), 7.2(b), 7.2(c) and 7.2(d) (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 7.3. Therefore, notwithstanding any other provision of this Article VII (other than the Regulatory Allocations), the Manager shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner the Manager determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Operating Agreement and all Company items were allocated pursuant to Section 7.1(a) and Section 7.2(e). In exercising their discretion under this Section 7.3, the Manager shall take into account future Minimum Gain Chargeback Allocations and Partner Minimum Gain Chargeback Allocations under Section 7.2(c) that, although not yet made, are likely to offset Member Non-

Recourse Deduction Allocations and Non-Recourse Deduction Allocations previously made under Section 7.2(c).

7.4 Intent of Allocations. The parties intend that the foregoing allocation provisions of Sections 7.1, 7.2, and 7.3 shall produce final Capital Account balances of the Members that will permit liquidating distributions that are made in accordance with final Capital Account balances under Article XIII hereof to be made (after unpaid loans and interest thereon, including those owed to Members have been paid) in an amount equal to the amount of distributions that would have been made to the Members under Sections 9.1 but for the fact that such distributions are governed by final Capital Account balances under Article XIII. Notwithstanding anything to the contrary in this Operating Agreement, to the extent that the Manager determines that the allocation provisions of Sections 7.1, 7.2, and 7.3 may fail to produce such final Capital Account balances, (i) such provisions shall be amended by the Manager if and to the extent necessary to produce such result and (ii) Net Profit and Net Loss of the Company for the most recent open year (or items of income, gain, loss, and deduction of the Company for such year) shall be reallocated by the Manager among the Members to the extent it is not possible to achieve such result with allocations of Net Profit and Net Loss (or items of income, gain, loss, and deduction) for the current year and future years, as determined by the Manager. This Section 7.4 shall control notwithstanding any reallocation or adjustment of taxable income, taxable loss, or items thereof by the Internal Revenue Service or any other taxing authority.

7.5 Tax Allocations. For federal income tax purposes, allocations of items of income, gain, loss, and deduction shall be made in accordance with Code Section 704(c) and Regulations Section 1.704-3 or Regulations Section 1.704-1(b)(4)(i) in the same manner as under Code Section 704(c) and Regulations Section 1.704-3. Any elections or decisions relating to such allocations shall be made by the Manager in a manner that reasonably reflects the intent of the Operating Agreement. Allocations pursuant to this Section 7.4 are solely for tax purposes and shall not affect any Member's Capital Account.

## ARTICLE VIII

### Capital Accounts

8.1 Capital Accounts. A separate Capital Account will be maintained for each Member. Each Member's Capital Account will be increased by (1) such Member's initial Capital Contributions, Additional Capital Contributions, and Additional Capital Contributions Attributable To Guaranty Of Debt, without duplication; (2) allocations to such Member of Net Profits and items of income and gain; and (3) all other items properly credited to the Capital Account of such Member as required by the Regulations promulgated under Code Section 704(b). Each Member's Capital Account will be decreased by (1) the amount of money distributed by the Company to such Member; (2) allocations to such Member of Net Losses and items of loss and deduction; (3) the Gross Asset Value of any

property distributed by the Company to such Member pursuant to any provision of this Operating Agreement; (4) the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company; and (5) all other items properly charged to the Capital Account of such Member as required by the Regulations promulgated under Code Section 704(b).

8.2 Transfers of Capital Account. In the event of a permitted Transfer of a Membership Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred interest in accordance with Section 1.704-1(b)(2)(iv) of the Regulations.

8.3 Compliance. The manner in which Capital Accounts are to be maintained pursuant to this Article VIII is intended to comply with the requirements of Section 704(b) of the Code and the Treasury Regulations promulgated thereunder. If in the opinion of the Company's accountants the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Article VIII should be modified in order to comply with Section 704(b) of the Code and the Regulations promulgated thereunder, then notwithstanding anything to the contrary contained in the preceding provisions of this Article VIII, the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members.

8.4 Deficit Restoration Obligation. Except as otherwise required in the Act, no Member shall have any liability to restore all or any portion of a deficit balance in such Member's Capital Account.

## ARTICLE IX

### Distributions Prior to Dissolution

9.1 Distributions of Cash Flow. Cash Flow shall be computed by the Manager with respect to each fiscal year and distributed within sixty (60) days after the end of each such year in the following order and priority.

(a) First, to the Members in an amount equal to, and to each Member pro rata in proportion to their share of, the excess of (i) their Additional Capital Contributions Attributable To Guaranty Of Debt over (ii) the cumulative distributions made to the Members for all prior fiscal years or other periods of the Company under this Section 9.1(a);

(b) Second, to the Members in an amount equal to, and to each Member pro rata in proportion to their share of, the excess of (i) their Additional Capital Contributions over (ii) the cumulative distributions made to the Members for all prior fiscal years or other periods of the Company under this Section 9.1(b);

(c) Third, to the Members in an amount equal to, and to each Member in proportion to, the excess of (i) their initial Capital Contributions under Section 6.2 over the cumulative distributions made to the Members for all prior fiscal years or other periods of the Company under this Section 9.1(c); and

(d) Fourth, to the Members in proportion to the Percentage Interests of the Members.

Cash Flow may be computed and distributed more frequently in the discretion of the Manager.

9.2 Dissolution. Upon dissolution and winding up of the Company, the assets of the Company shall be distributed to the Members as provided in Section Article XIII.

9.3 No Priority; Property Other Than Cash. No Member shall have priority over any other Member either as to the return of his or her Capital Contribution or as to Distributions. No Member shall have the right to demand or receive property other than cash in return of his or her Capital Contribution or as to other Distributions.

9.4 Return of Distributions. The obligation of a Member to return cash or other property paid or distributed to a Member in violation of this Agreement or of applicable law may be compromised by the Manager without the consent of the Members.

9.5 Withholding (a) The Manager is authorized and directed to cause the Company to withhold from or pay on behalf of any Member the amount of federal, state, local or foreign taxes that the Manager believes the Company is required to withhold or pay with respect to any amount distributable or allocable to such Member pursuant to this Agreement, including, without limitation, any taxes required to be paid by the Company pursuant to Code Sections 1441, 1442, 1445 or 1446 and any taxes imposed by any state or other taxing jurisdiction on the Company as an entity. Without limiting the foregoing, the Manager shall cause the Company to withhold (and remit to the appropriate governmental authority), from amounts otherwise distributable to an Member, any taxes that such Member notifies the Manager in writing should be withheld, which notice shall be given by any Member who becomes aware of any withholding obligation to which he is subject and shall specifically set forth, inter alia, the rate at which tax should be withheld and the name and address to which any amounts withheld should be remitted.

(b) If the Company is required to withhold and pay over to taxing authorities amounts on behalf of an Member exceeding available amounts then remaining to be distributed to such Member, such payment by the Company shall constitute a loan to such Member that is repayable by the Member on demand, together with interest at the applicable federal rate determined from time to time under Code Section 7872(f)(2) or the maximum rate permitted under applicable

law, whichever is less, calculated upon the outstanding principal balance of such loan as of the first day of each month. Any such loan shall be repaid to the Company, in whole or in part, as determined by the Manager in his sole discretion, either (i) out of any distributions from the Company which the Member is (or becomes) entitled to receive, or (ii) by the Member in cash upon demand by the Company (said Member bearing all of the Company's costs of collection, including reasonable attorneys' fees, if payment is not remitted promptly by the Member after such a demand for payment).

(c) Each Member agrees to cooperate fully with all efforts of the Company to comply with its tax withholding and information reporting obligations and agrees to provide the Company with such information as the Manager may request from time to time in connection with such obligations.

9.6 No Right to Distribution. Notwithstanding anything in this Operating Agreement or the Act to the contrary, no Member shall be entitled to receive any distribution of money or other property by reason of such person's ceasing to be a Member, except (i) upon dissolution of the Company, or (ii) upon affirmative vote or written consent of a Super Majority in Interest of the remaining Members.

## ARTICLE X

### Company Accounting, Books and Records

10.1 Fiscal Year. The fiscal year of the Company shall end on December 31.

10.2 Accounting. The Company shall use such basis for accounting as the Manager determines to be appropriate to reflect properly its income and expenses on an accrual basis in accordance with the generally accepted accounting principals, consistently applied, and shall determine its Net Profits and Net Losses accordingly.

10.3 Books, Records, Reports, etc. The Company shall maintain full and accurate books at its principal office, or in such offices as shall be designated for such purposes by the Manager. At a minimum the Company shall keep at its principal place of business the following records:

(a) A current and a past list setting forth in alphabetical order the full name and last known business, residence, or mailing address of each Member, both past and present;

(b) A copy of the Articles of Organization of the Company and all amendments thereto;

(c) Copies of the Company's federal, state and local income tax returns and financial statements for the three most recent years, or, if such returns or statements were not prepared for any reason, copies of the information and

statements provided to, or that should have been provided to, the Members to enable them to prepare their federal, state and local tax returns for such period;

(d) Copies of the Company's current effective written Operating Agreement and all amendments thereto and copies of any written operating agreements no longer in effect;

(e) A writing setting forth the amount of cash, if any, and a statement of the agreed value of other property or services contributed by each Member and the times at which or the events upon the happening of which any additional contributions are to be made by each Member;

(f) Other writings, if any, prepared pursuant to a requirement in this Operating Agreement;

10.4 Banking. All funds of the Company shall be deposited in its name in such account or accounts as shall be designated by the Manager. All withdrawals therefrom are to be made upon checks signed by the Manager or his designee.

10.5 Tax Matters Member. Lawrence G. Santilli shall be the Company's tax matters partner ("Tax Matters Member"). The Tax Matters Member shall have all powers and responsibilities provided in Code Section 6221, et seq. The Tax Matters Member shall keep all Members informed of all notices from governmental taxing authorities that may come to the attention of the Tax Matters Member. The Company shall pay and be responsible for all reasonable third-party costs and expenses incurred by the Tax Matters Member in performing those duties. A Member shall be responsible for any costs incurred by the Member with respect to any tax audit or tax-related administrative or judicial proceeding against any Member, even though it relates to the Company. The Tax Matters Member may not compromise any dispute with the Internal Revenue Service without the approval of the Members. Section 5.6 shall apply to any act or failure to act by Lawrence G. Santilli in his capacity as the Tax Matters Member.

## ARTICLE XI

### Restrictions on Transfer of Membership Interests and Withdrawals from the Company

11.1 Restricted Transfers. No Member shall have the right to Transfer (whether voluntarily or involuntarily) all or any part of his Membership Interest, except as otherwise specifically provided for in this Operating Agreement. Each Member hereby acknowledges the reasonableness of the restrictions on Transfers imposed by this Operating Agreement in view of the Company's purpose and the relationship of the Members. Accordingly, the restrictions on Transfers contained herein shall be specifically enforceable.

## 11.2 Permitted Transfer of Membership Interest.

(a) Permitted Transfer. Notwithstanding Section 11.1 to the contrary, a Member may Transfer (in trust or otherwise), whether on death or during life, all or any part of his Membership Interest to a Permitted Transferee. A "Permitted Transferee" of a Member is any person who is (1) a member of such Member's "Family" or in the event of a Transfer upon the death of a Member, the spouse of the deceased Member or a trust for the exclusive benefit of the spouse of the deceased Member, (2) any other Member, (3) consented to in writing by a Super Majority in Interest of the Members to be a Permitted Transferee, which consent may be withheld for any or no reason, or (4) a corporation, partnership or limited liability company in which all of the equity interests are held and will continue to be held for the term of this Operating Agreement as such term is defined in Section 2.4 herein by the Member or Member's "Family". A Member's "Family" includes only any person whom, at the time of the Permitted Transfer, is such Member's natural or adoptive lineal descendant or a trust for his or her exclusive benefit.

(b) Conditions to Permitted Transfer. Permitted Transfers are subject to the following conditions: (1) in no event shall all or any part of a Member's Membership Interest be directly Transferred to a minor or incompetent, or any other person not legally capable of being a Member in the Company; and (2) the transferee of a Member's interest shall, within sixty (60) days after such transfer, if during life, and one hundred twenty (120) days if at death, agree to be bound by this Operating Agreement, as a successor to the transferor Member to the same extent as such transferor Member would be bound with respect to such interest if such Transfer had not taken place by executing and delivering to the Company an agreement in such form as the Manager shall approve. Any Transfer otherwise permitted by Section 11.2(a) that is in violation of this Section 11.2(b) shall be null and void and of no force or effect whatsoever.

11.3 Death of a Member. Unless the legal representative of the estate of a deceased Member can establish that such Member's Membership Interest shall pass to a Permitted Transferee by testamentary disposition or under the applicable laws of intestate succession, upon the death of a Member, the following shall apply:

(a) The legal representative of a deceased Member shall offer to each surviving Member and each surviving Member shall have the right to purchase, at a purchase price equal to an amount to be determined in accordance with Section 11.4, a pro rata portion of the Membership Interest of the deceased Member in the proportion that the Membership Interest of such surviving Member bears to the Membership Interests of all surviving Members.

(b) In the event any surviving Member does not exercise his option to purchase his portion of the deceased Member's Membership Interest within thirty (30) days of the appointment of a legal representative, each surviving Member who has exercised such option shall have the right for fifteen (15) days to

purchase his pro rata portion of the unpurchased Membership Interest in the proportion that such surviving Member's Interest bears to the Membership Interests of all surviving Members exercising the option.

(c) If the surviving Members agree to purchase all (but not less than all) of the deceased Member's Membership Interest, then the legal representative of the deceased Member and the surviving Members shall close the purchase upon the terms and conditions set forth herein.

(d) If the surviving Members fail to agree to purchase all of the Membership Interests of the deceased Member within the time period set out above, the legal representative of the deceased Member shall have the right to transfer all of the deceased Member's Interest, subject to the conditions of Section 11.6.

(e) The closing of the redemption of the deceased Member's Membership Interest shall occur on a date and time mutually convenient to the Company on behalf of the surviving Members and the legal representative of the deceased Member; provided that the closing date shall occur no later than 120 days after the Company is notified of the appointment of the legal representative of the deceased Member as if such person were the owner of the entire Membership Interest of the deceased Member.

11.4 Valuation of the Interest of a Deceased or Withdrawing Member. In the event of a death of a Member or the withdrawal of a Member, the value of the Membership Interest held by the deceased Member or the withdrawing Member shall be determined by appraisal. Such appraisal shall be performed by an appraiser acceptable to the selling Member (or the selling Member's representative) and the purchasing Member(s). The cost of the appraisal shall be borne one-half by the deceased or withdrawing Member and one-half apportioned pro-rata among the purchasing Members. The determination of value as expressed by the appraiser shall be determinative as to the value of the Membership Interest being conveyed, and such determination shall be final. In the event that the parties are unable to agree upon an appraiser, each party shall select its own appraiser, at its own cost, the two selected appraisers shall appoint a third appraiser, which costs shall be shared equally by the parties, and the average of the three appraisals shall be determinative of the valuation. The foregoing shall not apply to a Breaching Member, whose interest shall be valued pursuant to Section 11.9 hereof.

11.5 Payment Terms Upon Transfer Of Member's Interest. The purchase price paid by any purchasing Member to a disposing Member shall first be reduced by the amount of any debt owed by the disposing Member to the purchasing Member, including any amount owed pursuant to Section 6.4 of this Operating Agreement.

If any remaining balance is less than or equal to ten thousand dollars (\$10,000), all of it shall be paid in cash. Otherwise, the remaining balance shall be paid as follows:

Ten percent (10%) of the remaining balance shall be paid in cash or cash equivalent at the closing.

The balance of the purchase price may, at the option of the purchaser(s), be evidenced by the purchaser(s)' promissory note(s), to be delivered with the cash payment, in an amount equal to the principal unpaid balance due, such note(s) to bear interest at the fixed annual rate equal to the rate realized at the most recent auction of U.S. government 26 week treasury bills, such rate to be adjusted semi-annually to conform to the then most recent auction. The note(s) shall also provide for equal monthly payments of principal sufficient to repay the entire principal amount over a period of not more than five (5) years. Such note(s) shall be non-negotiable and shall also provide that, at the option of the note holder, upon default of any payment of principal or interest beyond any applicable notice and grace periods, the entire unpaid balance shall become due and payable immediately, shall entitle the holder to collection costs, including attorneys' fees, and shall give the maker(s) thereof the option of prepayment in whole or in part at any time without penalty. If the purchaser(s) elect(s) to give a promissory note(s) in partial payment for the Membership Interest (or portion thereof), then such purchaser(s) shall pledge, as security for the note, the Membership Interest being acquired (unless such Membership Interest is required to be pledged to secure any obligation of the Company).

The remaining balance shall, however, be paid by the purchasing Members to the non-purchasing members on behalf of the disposing Member, instead of to the disposing Member, out of the cash and then out of the note(s) to the extent of the amount of any debt owed by the disposing member to the non-purchasing Members, including any amount owed pursuant to Section 6.4 of this Operating Agreement, based upon supporting documentation supplied to the purchasing Members by the Company and the non-purchasing Members to whom such debt is owed.

11.6 Substitute Members. A Transfer made or effected in compliance with the provisions of this Article XI entitles the transferee to receive, to the extent transferred, the Net Profits, Net Losses, items of income, gain, loss, and deduction, and distributions to which the transferor would have otherwise been entitled. No transferee of all or any percentage of a Member's Membership Interest shall become a Member in place of the transferring Member (a "Substitute Member") unless and until:

(a) The transferor has stated such intention in the instrument of transfer, provided such transferor is legally able to execute such transfer;

(b) The transferee has executed an instrument accepting and adopting the terms and provisions of this Operating Agreement;

(c) The transferor or transferee has paid all reasonable expenses of the Company in connection with the admission of the transferee as a Substitute Member; and

(d) The transferee is a Permitted Transferee under Section 11.2 or 11.3 herein.

Upon satisfaction of all of the foregoing conditions with respect to a particular permitted transferee, the Manager shall cause Schedule "A" to be amended to reflect the admission of the transferee as a Substitute Member.

11.7 Covenant Not to Withdraw. Each Member hereby covenants and agrees that the Members have entered into this Operating Agreement based on their mutual expectation that all Members will continue as Members and carry out the duties and obligations undertaken by them hereunder and that, except as otherwise expressly required or permitted hereby or upon the death of a Member, each Member hereby covenants and agrees not to make a Voluntary Withdrawal or Involuntary Withdrawal from the Company.

11.8 Consequences of Violation of Covenant Not to Withdraw. Notwithstanding anything to the contrary in the Act, if a Member (a "Breaching Member") attempts to make a Voluntary Withdrawal or Involuntary Withdrawal from the Company or Transfer his Membership Interest, except as otherwise provided in this Operating Agreement, the Company shall continue and such Breaching Member shall be subject to the provision of this Section 11.8 and Section 11.9. In such event, the following shall occur:

(a) The Breaching Member shall immediately cease to be a Member and shall have no further power to act for or bind the Company;

(b) The other Members shall continue to have the right to possess the Company's property and goodwill and to conduct its business and affairs;

(c) The Breaching Member shall be liable in damages, without requirement of a prior accounting, to the Company for all costs and liabilities that the Company or any Member may incur as a result of such breach;

(d) The Company and the Members, in that order, shall have the option to purchase the Breaching Member's interest. The Company shall have no obligation to pay to the Breaching Member his contributions, capital, or profits, but may, by notice to the Breaching Member within thirty (30) days of his withdrawal, elect to make Breach Payments (as hereinafter defined) to the Breaching Member in complete satisfaction of the Breaching Member's interest in the Company. In the event the Company chooses to not exercise its option to purchase the Breaching Member's interest, such Breaching Member's interest shall be subject to the same rights to purchase by the other Members as are accorded to the

remaining Members in the event of a death of a Member, as those rights are set forth in Section 11.3 above, the value of the interest shall be determined under Section 11.4, and the payment terms shall be determined under Section 11.5;

(e) If the Company does not elect to make Breach Payments pursuant to Section 11.9 hereof, the Company shall treat the Breaching Member as if he were an unadmitted assignee of the interest of the Breaching Member and shall make distributions to the Breaching Member only of those amounts otherwise distributable with respect to such interest hereunder;

(f) The Company may apply any distributions otherwise payable with respect to such interest (including Breach Payments) to satisfy any claims it may have against the Breaching Member;

(g) The Breaching Member shall have no right to inspect the Company's books or records or obtain other information concerning the Company's operations;

(h) The Breaching Member shall continue to be liable to the Company for any unpaid Capital Contributions or Additional Capital Contributions required hereunder with respect to such interest and to be jointly and severally liable (but only to the extent a Member is liable for the debts and liabilities of the Company) with the other Members for any debts and liabilities (whether actual or contingent, known or unknown) of the Company existing at the time the Breaching Member withdraws or dissolves; and

(i) Notwithstanding anything to the contrary hereinabove provided, unless the Company has elected to make Breach Payments to the Breaching Member in satisfaction of this interest, the Company may offer and sell (on any terms that are not manifestly unreasonable) the interest of the Breaching Member to any other Members or other Persons on the Breaching Member's behalf, provided that any Person acquiring such interest becomes a Member with respect to such interest and agrees to perform the duties and obligations imposed by this Operating Agreement on the Breaching Member and an amount equal to the amount of any debt owed by the Breaching Member to the other Member(s), including any amount owed pursuant to Section 6.4 of this Operating Agreement, shall not be paid to the Breaching Member and shall instead be paid by the Company to the other Members to whom the debt is owned on a *pari passu* basis on behalf of the Breaching Member.

11.9 Breach Payments. For purposes hereof, Breach Payments shall be made in four installments, each equal to one-fourth of the Breach Amount, payable on the next four (4) consecutive anniversaries of the breach by the Breaching Member, with simple interest accrued from the date of such breach through the date each such installment is paid on the unpaid balance of such Breach Amount at the Prime Rate. This Breach Amount shall be an amount equal to the greater of \$1 or 50% of the Purchase Price determined in accordance

with Section 11.4 hereof. The Company may, at its sole election, prepay all or any portion of the Breach Payments or interest accrued thereon at any time without penalty. An amount of the Breach Payments equal to the amount of any debt owed by the Breaching Member to the other Member(s), including any amount owed pursuant to Section 6.4 of this Operating Agreement, shall not be paid to the Breaching Member and shall instead be paid by the Company to such other Members on a *pari passu* basis on behalf of such Breaching Member.

#### 11.10 Voluntary Or Involuntary Withdrawal of Member.

(a) Notwithstanding anything to the contrary herein contained, a Member may make a Voluntary Withdrawal or Involuntary Withdrawal from the Company upon the consent of a Majority in Interest of the Members.

(b) In the event of a Voluntary Withdrawal or Involuntary Withdrawal of a Member consented to pursuant to subsection (a), such Member's Membership Interest shall be subject to the same rights to purchase as are accorded to the remaining Members in the event of a death of a Member, as those rights are set forth in Section 11.3 above.

(c) The valuation of a withdrawing Member's interest under this Section shall be determined pursuant to Section 11.4 hereof, and paid pursuant to Section 11.5 hereof.

(d) In the event the interest of the Member withdrawing pursuant to this Section 11.10 shall not be purchased by existing Members, the transferee shall be subject to the provision of Section 11.6 hereof.

## ARTICLE XII

### Termination

12.1 Dissolution. The Company shall be dissolved and its affairs shall be wound up upon the happening of any of the first to occur of the following (the "Liquidating Events"):

(a) written consent of a Super Majority in Interest of the Members; or

(b) entry of a dissolution decree or a judicial order by a court of competent jurisdiction or by operation of law; or

(c) disposition of substantially all of the assets of the Company.

## ARTICLE XIII

### Winding Up

13.1 Liquidation. In the event of the dissolution of the Company, the Members shall proceed to the liquidation of the Company and the proceeds of such liquidation shall be applied and distributed in the following order of priority;:

(a) to the payment of all expenses of the Company incident to the liquidation and winding up.

(b) To the payment of the debts and liabilities of the Company then due and outstanding (including all debts due to any Member or for any debts of the Company paid by or on behalf of any Member other than Member loans or advances).

(c) To the setting up of any reserves that the Manager may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company or of the Members arising out of or in connection with the Company. Such reserves shall be held by the Manager for the purpose of disbursing such reserves in payment of any of the aforementioned contingencies, and, at the expiration of such period as the Manager shall deem advisable, to distribute the balance thereafter remaining in the manner hereinafter provided.

(d) To the repayment of any loans or advances that may have been made by any of the Members to the Company (other than the Delinquency Loans), or if the amount available for such repayment shall be insufficient, then pro rata on account thereof.

(e) To the distribution to each of the Members the amounts in their respective Capital Accounts or, if the amount available is less than the aggregate amount of such Capital Accounts, then pro rata to the Members in proportion to the amounts in their respective Capital Accounts.

(f) Any balance remaining shall be distributed among the Members in accordance with their respective Percentage Interests.

### 13.2 Distribution in Kind.

(a) Upon dissolution of the Company, the assets of the Company may be distributed in kind, upon the approval of a Majority in Interest of the Members. Each Member shall accept an undivided interest in such assets subject to its liabilities, provided, however, no Member shall have the right to demand or receive property other than cash in return for his Capital Contribution.

(b) In the event of a liquidating distribution of the Company's property in kind, the fair market value of such property shall be determined by an

appraiser selected by the Manager and agreed upon by a Majority in Interest of the Members.

### 13.3 Winding Up.

(a) A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of liabilities of creditors so as to enable the Members to minimize the normal losses attendant upon a liquidation.

(b) Anything herein to the contrary notwithstanding, any sale to third parties of property of the Company pursuant to the liquidation of the Company shall be made upon such terms and conditions as are approved by a Majority in Interest of the Members.

(c) Each of the Members shall be furnished with a statement prepared by the Company's then Certified Public Accountant, which shall set forth the assets and liabilities of the Company as at the date of complete liquidation.

13.4 Compliance With Certain Requirements of Regulations; Deficit Capital Accounts. In the event the Company is "liquidated" within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations (other than pursuant to Code Section 708(b)(1)(B)), (a) distributions shall be made pursuant to this Article XIII to the Members who have positive Capital Accounts in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2), and (b) if any Member's Capital Account has a deficit balance (after giving effect to all contributions, distributions, and allocations for all fiscal years, including the fiscal year during which such liquidation occurs), such Member shall have no obligation to, and shall not, contribute to the capital of the Company the amount necessary to restore such deficit balance to zero. In the discretion of the Manager, a pro rata portion of the distributions that would otherwise be made pursuant to Section 13.1 hereof may be:

(a) distributed to a trust established for the benefit of the Members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company or of the Members arising out of or in connection with the Company. The assets of any such trust shall be distributed to the Members as soon as practicable in the reasonable discretion of the Manager, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to Section 13.1 hereof; or

(b) withheld to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, provided that such withheld amounts shall be distributed to the Members pursuant to Section 13.1 hereof as soon as practicable.

13.5 Deemed Contribution and Distribution. Notwithstanding any other provisions of this Article XIII, in the event the Company is liquidated within the

meaning of Regulations Section 1.704-1(b)(2)(ii)(g) but no Liquidating Event has occurred, the Company's property shall not be liquidated, the Company's liabilities shall not be paid or discharged, and the Company's affairs shall not be wound up. Instead, solely for federal income tax purposes, the Company shall be deemed to have contributed all of the Company's property and liabilities to a new limited liability company in exchange for an interest in such new limited liability company and, immediately thereafter, the Company will be deemed to liquidate by distributing interests in the new limited liability company to the Members.

#### ARTICLE XIV

##### Adjustment of Basis Election

In the event of a transfer of a Membership Interest, or upon the death of a Member, or in the event of the distribution of property of the Company to any Member, the Company may, at the sole discretion of the Manager, file an election, in accordance with Section 754 of the Code and applicable Regulations, to cause the basis of the property of the Company to be adjusted for federal income tax purposes as provided by Sections 734 and 742 of the Code, if such election shall result in an increase in the basis of the property of the Company for federal income tax purposes.

#### ARTICLE XV

##### Notices

All notices provided for in this Operating Agreement shall be directed to the Members at the addresses herein set forth on Schedule A, or at such other places that the Company shall be so notified in writing by the Members by registered or certified mail. Notice shall be deemed given when mailed.

## ARTICLE XVI

### Arbitration

In the event of any controversy, dispute or disagreement or claim arising out of or relating to this Operating Agreement, its interpretation or breach thereof, among any parties bound by the terms of this Operating Agreement, such dispute shall be settled by arbitration in accordance with the provisions of the Connecticut General Statutes Section 52-408 et seq. and the Commercial Arbitration Rules of the American Arbitration Association then in effect in Hartford, Connecticut by a single arbitrator agreed to by the parties to the dispute. If the parties cannot agree upon an arbitrator, an arbitrator will be appointed in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. In any event, the arbitration procedure will be governed by said rules, and the decision of the arbitrator shall be final and binding and judgment upon any award so made may be entered in any court having competent jurisdiction. The cost of arbitration shall be shared equally by all parties in the arbitration. Each party shall bear the costs and expenses of such party's attorney in any arbitration proceeding.

## ARTICLE XVII

### Miscellaneous

17.1 Execution in Counterparts. This Operating Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one Operating Agreement.

17.2 Governing Law. All questions with respect to the construction of this Operating Agreement and the rights and liabilities of the parties shall be determined in accordance with the applicable provisions of the laws of the State of Connecticut, without regard to its conflict of laws principles.

17.3 Successors and Assigns. This Operating Agreement shall be binding upon and inure to the benefit of all the parties hereto and their assigns, successors in interests, personal representatives, estates and heirs.

17.4 Invalidity. The invalidity of any portion of this Operating Agreement shall not affect the validity of the remainder.

17.5 Captions. Any section or paragraph title or caption contained in this Operating Agreement is for convenience only and shall not be deemed part of the Operating Agreement.

17.6 Gender. Any use of the masculine or feminine gender shall be deemed to mean and include the male, female and the neuter gender as the context may require.

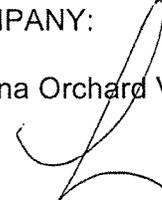
17.7 Entire Agreement. This Operating Agreement contains the entire understanding of the Members and supersedes any prior written or oral agreements by them respecting the subject matter within.

17.8 Indemnity. The Company shall indemnify each present or former Member against any judgments, settlements, penalties, fines and/or expenses relating to any liability or damage incurred in any proceeding to which such Person was a party because such Person is or was a Member including, without limitation, reasonable fees of attorneys engaged by the Member and such other reasonable costs and expenses of litigation and appeal in defense of such act or omission, provided the Member shall not be indemnified from any liability or damage for fraud, bad faith, willful misconduct, gross negligence, or a violation of the terms of this Operating Agreement, and provided further that any indemnity under this Section shall be provided out of and to the extent of Company assets only, and no Member shall have any personal liability on account thereof.

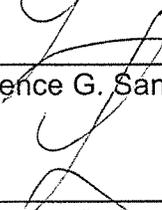
The undersigned have signed this Operating Agreement as of the day and year first above written.

COMPANY:

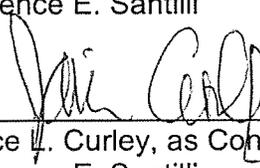
Athena Orchard View Landlord LLC

By  \_\_\_\_\_  
Lawrence G. Santilli  
Its Manager

MEMBERS:

 \_\_\_\_\_  
Lawrence G. Santilli

\_\_\_\_\_  
Lawrence G. Santilli, as Conservator for  
Lawrence E. Santilli

 \_\_\_\_\_  
Janice L. Curley, as Conservator for  
Lawrence E. Santilli

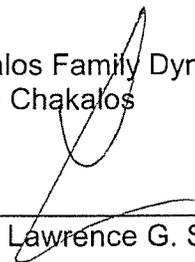
Chakalos Family Dynasty Trust f/b/o  
Valerie Santilli

By  \_\_\_\_\_  
Lawrence G. Santilli, Trustee

By \_\_\_\_\_  
Paul Sterczala, Trustee

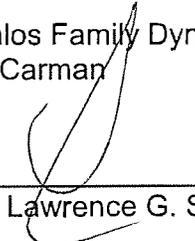


Chakalos Family Dynasty Trust f/b/o  
Elaine Chakalos

By   
Lawrence G. Santilli, Trustee

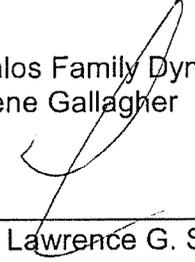
By \_\_\_\_\_  
Paul Sterczala, Trustee

Chakalos Family Dynasty Trust f/b/o  
Linda Carman

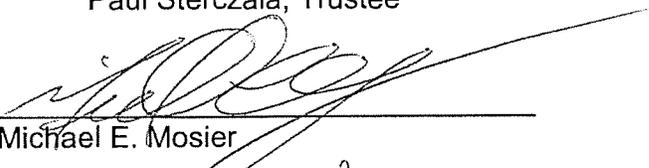
By   
Lawrence G. Santilli, Trustee

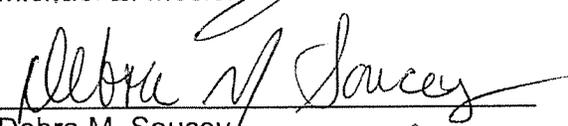
By \_\_\_\_\_  
Paul Sterczala, Trustee

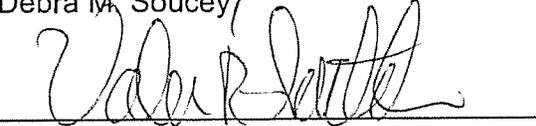
Chakalos Family Dynasty Trust f/b/o  
Charlene Gallagher

By   
Lawrence G. Santilli, Trustee

By \_\_\_\_\_  
Paul Sterczala, Trustee

  
\_\_\_\_\_  
Michael E. Mosier

  
\_\_\_\_\_  
Debra M. Soucey

  
\_\_\_\_\_  
Valerie Santilli



The undersigned have signed this Operating Agreement as of the day and year first above written.

COMPANY:

Athena Orchard View Landlord LLC

By \_\_\_\_\_  
Lawrence G. Santilli  
Its Manager

MEMBERS:

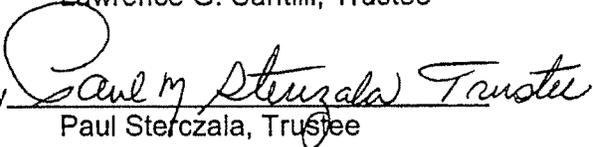
\_\_\_\_\_  
Lawrence G. Santilli

\_\_\_\_\_  
Lawrence G. Santilli, as Conservator for  
Lawrence E. Santilli

\_\_\_\_\_  
Janice L. Curley, as Conservator for  
Lawrence E. Santilli

Chakalos Family Dynasty Trust f/b/o  
Valerie Santilli

By \_\_\_\_\_  
Lawrence G. Santilli, Trustee

By  \_\_\_\_\_  
Paul Sterczala, Trustee



Chakalos Family Dynasty Trust f/b/o  
Elaine Chakalos

By \_\_\_\_\_  
Lawrence G. Santilli, Trustee

By *Paul M. Sterczala Trustee*  
Paul Sterczala, Trustee

Chakalos Family Dynasty Trust f/b/o  
Linda Carman

By \_\_\_\_\_  
Lawrence G. Santilli, Trustee

By *Paul M. Sterczala Trustee*  
Paul Sterczala, Trustee

Chakalos Family Dynasty Trust f/b/o  
Charlene Gallagher

By \_\_\_\_\_  
Lawrence G. Santilli, Trustee

By *Paul M. Sterczala Trustee*  
Paul Sterczala, Trustee

*[Signature]*  
Michael E. Mosier

\_\_\_\_\_  
Debra M. Soucey

\_\_\_\_\_  
Valerie Santilli



SCHEDULE A  
ALLOCATION PERCENTAGES  
ATHENA ORCHARD VIEW LANDLORD LLC

Dated as of January 9, 2012

<u>MEMBERS</u>	<u>ALLOCATION PERCENTAGES</u>
Lawrence G. Santilli 31 Brunswick Avenue West Hartford, CT 06107	60.0%
Lawrence G. Santilli, and Janice L. Curley, Conservators for Lawrence E. Santilli 31 Brunswick Avenue West Hartford, CT 06107	10.0%
Chakalos Family Dynasty Trust f/b/o Valerie Santilli 52 Overlook Drive Windsor, CT 06095	3.0%
Chakalos Family Dynasty Trust f/b/o Elaine Chakalos 52 Overlook Drive Windsor, CT 06095	3.0%
Chakalos Family Dynasty Trust f/b/o Linda Carman 52 Overlook Drive Windsor, CT 06095	3.0%
Chakalos Family Dynasty Trust f/b/o Charlene Gallagher 52 Overlook Drive Windsor, CT 06095	3.0%

MEMBERS

ALLOCATION  
PERCENTAGES

Michael E. Mosier  
27 Parker Road  
Meriden, CT 06450

6.0%

Debra M. Soucey  
84 Burnham Road  
Avon, CT 06001

6.0%

Valerie Santilli  
31 Brunswick Avenue  
West Hartford, CT 06107

6.0%

TOTAL

100%

26

# **Orchard View Manor, Inc.**

**Financial Statements and Supplementary Schedules**

**December 31, 2011 and 2010**

**With Independent Auditors' Report**

**ORCHARD VIEW MANOR, INC.**

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Mr. Michael Marra, President  
Orchard View Manor, Inc.  
East Providence, Rhode Island

#### Independent Auditors' Report

We have audited the accompanying balance sheets of Orchard View Manor, Inc. as of December 31, 2011 and 2010, and the related statements of income and retained earnings, and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Orchard View Manor, Inc. as of December 31, 2011 and 2010, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Our audits were conducted for the purpose of forming an opinion on the basic financial statements taken as a whole. The schedules of operating expenses and comments on operations are presented for purposes of additional analysis and are not a required part of the basic financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.

*Sullivan & Company CPAs LLP*

February 15, 2012

**ORCHARD VIEW MANOR, INC.  
BALANCE SHEETS**

	<u>DECEMBER 31, 2011</u>	<u>DECEMBER 31, 2010</u>
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash and Cash Equivalents	\$ 1,370,155	\$ 1,487,705
Cash - Escrow	164,553	34,615
Accounts Receivable, Net	1,451,478	1,523,114
Inventory of Food and Supplies	52,440	57,720
Prepaid Expenses and Other Current Assets	53,186	83,107
Total Current Assets	<u>3,091,812</u>	<u>3,186,261</u>
PROPERTY AND EQUIPMENT, Net	<u>3,124,553</u>	<u>3,178,791</u>
<b>OTHER ASSETS</b>		
Reserve For Replacements	226,640	220,797
Deferred Finance Charges, Net of Accumulated Amortization of \$39,308 and \$35,060, respectively	110,939	115,187
Other Assets	92,443	84,823
Total Other Assets	<u>430,022</u>	<u>420,807</u>
Total Assets	<u>\$ 6,646,387</u>	<u>\$ 6,785,859</u>
<b>LIABILITIES AND STOCKHOLDER'S EQUITY</b>		
<b>CURRENT LIABILITIES</b>		
Accounts Payable	\$ 530,853	\$ 564,163
Accrued Payroll and Payroll Taxes	155,889	128,527
Accrued Vacation Wages	154,598	152,408
Accrued Expenses and Other Current Liabilities	211,544	304,866
Current Maturities of Long-Term Debt	95,202	122,809
Current Obligations Under Capital Leases	17,437	14,810
Total Current Liabilities	<u>1,165,523</u>	<u>1,287,583</u>
DEFERRED COMPENSATION	1,088,136	760,616
LONG-TERM DEBT	3,808,827	3,911,625
OBLIGATIONS UNDER CAPITAL LEASES	9,904	28,096
Total Liabilities	<u>6,072,390</u>	<u>5,987,920</u>
<b>STOCKHOLDER'S EQUITY</b>		
Capital Stock, \$0.01 Par Value; 300,000 Shares Authorized; 100,000 Issued and Outstanding	1,000	1,000
Additional Paid in Capital	12,917	12,917
Retained Earnings	560,080	784,022
Total Stockholder's Equity	<u>573,997</u>	<u>797,939</u>
Total Liabilities and Stockholder's Equity	<u>\$ 6,646,387</u>	<u>\$ 6,785,859</u>

See Accompanying Notes.

**ORCHARD VIEW MANOR, INC.  
STATEMENTS OF INCOME AND RETAINED EARNINGS**

	YEARS ENDED			
	DECEMBER 31, 2011	PER DIEM AVERAGES	DECEMBER 31, 2010	PER DIEM AVERAGES
<b>OPERATING INCOME</b>				
Daily Service Revenue - Private	\$ 1,442,737		\$ 1,222,519	
Daily Service Revenue - Medicaid	8,203,423		8,075,788	
Daily Service Revenue - Medicare	2,307,976		2,362,678	
Daily Service Revenue - VA	305,386		240,678	
Daily Service Revenue - Other	1,934,333		1,845,718	
Ancillary Services	989,043		985,119	
Total Operating Income	<u>15,182,898</u>	\$ 270.64	<u>14,732,500</u>	\$ 262.87
<b>OPERATING EXPENSES</b>				
Administrative and General	3,519,302	62.73	3,424,639	61.12
Property Related	753,604	13.43	740,171	13.21
Plant Operations and Maintenance	625,290	11.15	603,409	10.77
Housekeeping	285,087	5.09	288,992	5.16
Dietary	1,032,686	18.40	1,008,667	17.99
Patient Activities	98,107	1.75	93,225	1.66
Laundry and Linen	141,152	2.52	145,504	2.60
Nursing and Ancillary	7,046,662	125.63	7,020,253	125.25
Other Special Services	169,481	3.02	153,744	2.74
Health Care Provider Assessment	836,963	14.92	808,829	14.43
Total Operating Expenses	<u>14,508,334</u>	<u>258.64</u>	<u>14,287,433</u>	<u>254.93</u>
<b>INCOME FROM OPERATIONS</b>	<u>674,564</u>	<u>12.00</u>	<u>445,067</u>	<u>7.94</u>
<b>OTHER INCOME (EXPENSE)</b>				
Interest Income	2,307	.04	9,708	.17
Deferred Compensation	(327,520)	(5.84)	(140,745)	(2.51)
Loss on Disposal of Assets	(17,316)	(.31)	0	.00
Miscellaneous Income	54,023	.96	171,012	3.05
Total Other Income (Expense)	<u>(288,506)</u>	<u>(5.14)</u>	<u>39,975</u>	<u>0.71</u>
<b>NET INCOME</b>	386,058	\$ 6.86	485,042	\$ 8.65
<b>RETAINED EARNINGS - BEGINNING OF YEAR</b>	784,022		423,980	
<b>DISTRIBUTIONS</b>	<u>(610,000)</u>		<u>(125,000)</u>	
<b>RETAINED EARNINGS - END OF YEAR</b>	\$ <u>560,080</u>		\$ <u>784,022</u>	

See Accompanying Notes.

**ORCHARD VIEW MANOR, INC.  
STATEMENTS OF CASH FLOWS**

	YEARS ENDED	
	DECEMBER 31, 2011	DECEMBER 31, 2010
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net Income	\$ 386,058	\$ 485,042
Items Which Do Not Affect Cash:		
Depreciation and Amortization	272,434	261,616
Loss on Disposal of Equipment	17,316	0
(Increase) Decrease in Operating Assets:		
Cash - Escrow	(129,938)	97,493
Accounts Receivable	71,636	96,656
Inventory of Food and Supplies	5,280	(5,531)
Prepaid Expenses and Other Current Assets	29,921	(45,128)
Other Assets	(7,620)	(7,620)
Increase (Decrease) in Operating Liabilities:		
Accounts Payable	(33,310)	56,739
Accrued Expenses and Other Current Liabilities	(93,322)	20,317
Accrued Payroll and Payroll Taxes	27,362	28,610
Accrued Vacation Wages	2,190	3,240
Deferred Compensation	327,520	140,745
Net Cash Provided From Operating Activities	<u>875,527</u>	<u>1,132,179</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Acquisitions of Property and Equipment	(231,263)	(144,551)
Deposits to Reserve For Replacements	(49,072)	(41,567)
Withdrawals from Reserve For Replacements	43,228	17,360
Net Cash Used By Investing Activities	<u>(237,107)</u>	<u>(168,758)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Payments of Long-Term Debt	(95,793)	(76,128)
Payments on Obligations Under Capital Leases	(50,177)	(22,279)
Distributions	(610,000)	(125,000)
Payment of Deferred Financing Fees	0	(22,607)
Net Cash Used By Financing Activities	<u>(755,970)</u>	<u>(246,014)</u>
<b>INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>	<b>(117,550)</b>	<b>717,407</b>
<b>CASH AND CASH EQUIVALENTS - BEGINNING OF YEAR</b>	<b><u>1,487,705</u></b>	<b><u>770,298</u></b>
<b>CASH AND CASH EQUIVALENTS - END OF YEAR</b>	<b>\$ <u>1,370,155</u></b>	<b>\$ <u>1,487,705</u></b>

See Accompanying Notes.

**ORCHARD VIEW MANOR, INC.**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2011 AND 2010**

**NOTE 1 - NATURE OF BUSINESS**

Orchard View Manor, Inc. (the Company) was a 180-bed nursing facility located in East Providence, Rhode Island. Effective January 1, 2010, the facility temporarily took 14 beds out of service. The home is licensed by the Rhode Island Department of Health and participates in the Medicare and Medicaid programs.

**NOTE 2 - RECENT ACCOUNTING DEVELOPMENTS**

**PRESENTATION OF INSURANCE CLAIMS AND RELATED INSURANCE RECOVERIES**

In August, 2010 the FASB issued Accounting Standards Update (ASU) 2010-24, *Health Care Entities (Topic 954) Presentation of Insurance Claims and Related Insurance Recoveries*. ASU No. 2010-24 requires health care entities to present on the balance sheet the amount of the accrued liability for malpractice and similar claims and any related insurance recovery receivable on a gross basis; thus, offsetting one against the other is not permitted. ASU 2010-24 is effective for fiscal years beginning after December 15, 2010. The adoption of this guidance did not have a material effect on the accompanying financial statements.

**NOTE 3 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**USE OF ESTIMATES**

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Estimates also affect the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**CASH AND CASH EQUIVALENTS**

The Company considers all highly liquid investments with original maturities of three months or less to be cash equivalents.

**ACCOUNTS RECEIVABLE**

The Company carries its accounts receivable at cost, less an allowance for doubtful accounts of \$120,927 at December 31, 2011 and 2010. On a periodic basis, management evaluates its accounts receivable and adjusts the allowance for doubtful accounts based on current credit conditions. Accounts are written off based on management's evaluation of the collectability of each account resulting from collection efforts.

**PROPERTY, EQUIPMENT AND DEPRECIATION**

Property and equipment are recorded at cost. Depreciation is calculated on the straight-line and accelerated methods over the expected useful lives of the assets.

**IMPAIRMENT OF LONG LIVED ASSETS**

The Company reviews long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized for the amount by which the carrying amount of the asset exceeds the fair value of the asset.

**ORCHARD VIEW MANOR, INC.**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2011 AND 2010**

**NOTE 3 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

**NET PATIENT SERVICE REVENUE**

Net patient service revenue is reported at the estimated net realizable amounts from patients, third-party payors, and others for services rendered. Revenue consists primarily of reimbursement through the Medicaid and Medicare programs as well as revenue from private paying patients. Revenue under third-party payor agreements is subject to audit and adjustments to rates are applied on a prospective basis. Revenue from the Medicare and Medicaid programs accounted for approximately 15% and 54%, respectively, of the facility's net patient revenue for the year ended December 31, 2011.

Certain regulations under third-party reimbursement provisions may allow for retroactive reimbursement or payment which is recorded as an estimated third-party settlement in the period earned or incurred. Differences between estimated amounts accrued and actual settlements are reported as a settlement adjustment in the year the final settlement is received or paid.

**DEFERRED FINANCE CHARGES**

Deferred finance charges represent costs which were incurred to obtain financing. The costs have been capitalized and are being amortized over the life of the related loan using the straight-line method. Amortization expense charged to operations totaled \$4,248 for each of the years ended December 31, 2011 and 2010.

**INCOME TAXES**

Orchard View Manor, Inc. has elected to be taxed as an S Corporation under the provisions of the Internal Revenue Code. Under these provisions, the Company is not required to pay federal and state corporate income taxes on its taxable income. Instead, the stockholder is liable for individual federal and state income taxes on the Corporation's taxable income. The Company is subject to federal and state examinations by taxing authorities for the tax years 2008 through 2010.

The Company adopted the guidance in ASC 740, *Income Taxes*, relating to uncertain tax positions. This guidance prescribes a two step process for the measurement of uncertain tax positions that have been taken or are expected to be taken on a tax return. The first step is a determination of whether the tax position should be recognized in the financial statements. The second step determines the measurement of the tax position. ASC 740 also provides guidance on de-recognition of such tax positions, classification, potential interest and penalties, and disclosure. No uncertain tax positions within the scope of ASC 740 exist as of December 31, 2011 and 2010.

The Company reports tax-related interest and penalties, if any, as a component of income tax expense.

**SUBSEQUENT EVENTS**

Subsequent events have been evaluated through February 15, 2012, the date the financial statements are available to be issued.

**ORCHARD VIEW MANOR, INC.**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2011 AND 2010**

**NOTE 4 - PROPERTY AND EQUIPMENT**

The following is a summary of property and equipment - at cost, less accumulated depreciation at December 31:

	2011	2010
Land	\$ 509,564	\$ 509,564
Buildings	2,517,956	2,517,956
Building Improvements	2,218,070	2,098,351
Departmental Equipment	730,316	686,053
Furniture and Fixtures	115,315	113,707
Motor Vehicles	67,554	67,554
Property Held Under Capital Leases	83,283	83,283
	6,242,058	6,076,468
Less: Accumulated Depreciation	3,117,505	2,897,677
	\$ 3,124,553	\$ 3,178,791

Depreciation expense charged to operations was \$268,186 and \$257,368 for the years ended December 31, 2011 and 2010, respectively.

**NOTE 5 - LONG-TERM DEBT**

The following is a summary of long-term debt at December 31:

	2011	2010
Mortgage payable to mortgage company insured by the Federal Housing Administration; payable in monthly installments of \$27,985, including interest at 6.27%; secured by land and building located at 135 Tripps Lane, East Providence, Rhode Island; final payment due October, 2032.	\$ 3,892,923	\$ 3,988,816
Note payable to finance company; payable in monthly installments of \$793, including interest at 9.19%; secured by an automobile; final payment due March, 2013.	11,106	19,143
Note payable to finance company; payable in monthly installments of \$1,343, including interest at 7%; secured by computer equipment; final payment made December, 2011.	0	26,475
	3,904,029	4,034,434
Less: Current Maturities Included in Current Liabilities	95,202	122,809
	\$ 3,808,827	\$ 3,911,625

**ORCHARD VIEW MANOR, INC.  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 2011 AND 2010**

**NOTE 5 - LONG-TERM DEBT (CONTINUED)**

The following are maturities of long-term debt for each of the next five years and in the aggregate:

<u>DECEMBER 31,</u>	<u>AMOUNT</u>
2012	\$ 95,202
2013	102,226
2014	106,446
2015	113,316
2016	120,628
Beyond 2016	3,366,211
	<u>\$ 3,904,029</u>

The Company incurred interest costs of \$256,461 and \$262,410 for the years ended December 31, 2011 and 2010, respectively. The Company paid interest costs of \$277,302 and \$241,569 for the years ended December 31, 2011 and 2010, respectively.

**NOTE 6 - OBLIGATIONS UNDER CAPITAL LEASES**

The Company leases equipment under capital leases expiring in various years through 2014. The assets and liabilities under the capital leases are recorded at the lower of the present value of minimum lease payments or the fair value of the assets. Depreciation of the assets under the capital leases is included in total depreciation expense for the year ended December 31, 2011. Minimum future lease payments under the capital leases as of December 31, 2011 through the remainder of the lease terms are as follows:

<u>DECEMBER 31</u>	<u>AMOUNT</u>
2012	\$ 20,382
2013	8,264
2014	3,680
Total Minimum Lease Payments	32,326
Less: Amount Representing Interest	4,985
Present Value of Net Minimum Lease Payments	27,341
Less: Current Portion	17,437
Long-Term Portion	<u>\$ 9,904</u>

**NOTE 7 - DEFERRED COMPENSATION PLAN**

The Company has a deferred compensation plan covering a key member of management. Compensation under the plan is based on the operating results of the Company. Payment shall commence upon the earlier of termination of employment or change of control of the facility. Accrued deferred compensation totaled \$1,088,136 and \$760,616, respectively, as of December 31, 2011 and 2010. Deferred compensation expense totaled \$327,520 and \$140,745, respectively, for the years ended December 31, 2011 and 2010.

**ORCHARD VIEW MANOR, INC.**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2011 AND 2010**

**NOTE 8 - CONCENTRATION OF CREDIT RISK**

**OPERATING CASH AND ESCROW DEPOSITS**

The Company maintains operating cash and escrow deposits at various federally insured financial institutions. The Company's credit risk with respect to such balances is all amounts on deposit in excess of federally insured limits.

**RECEIVABLES**

The mix of receivables from patients and third-party payors is as follows at December 31:

	<u>2011</u>	<u>2010</u>
Private	11%	14%
Medicaid	42%	40%
Medicare	18%	17%
Other	31%	29%

**NOTE 9 - PENSION PLAN**

The Company has a 401(k) pension plan. Contributions for 2011 and 2010 were \$37,913 and \$37,371, respectively.

**NOTE 10 - RELATED PARTY TRANSACTIONS**

**MANAGEMENT FEES**

Management fees charged by a company related by common ownership are based upon a fee approved by HUD of up to 6% of gross income. The Company incurred and paid management fees of \$910,000 and \$835,000 for the years ended December 31, 2011 and 2010, respectively.

**RENT EXPENSE**

The Company entered into a month to month lease in September 2006 with a company related by common ownership for a storage facility. The Company is not responsible for any costs associated with the leased storage facility. Rent expense charged to operations was \$17,500 for each of the years ended December 31, 2011 and 2010.

**NOTE 11 - CONTINGENCY**

The Company is involved in one unresolved legal matter relating to patient care. Although it is not possible to predict with any certainty the outcome of these matters, management believes that any potential loss would be covered by the Company's insurance.

**NOTE 12 - SUBSEQUENT EVENT**

The Company has signed a letter of intent to sell the assets of the Company to an unrelated party for an amount in excess of book value.

**ORCHARD VIEW MANOR, INC.  
SCHEDULES OF OPERATING EXPENSES**

	YEARS ENDED			
	DECEMBER 31, 2011	PER DIEM AVERAGES	DECEMBER 31, 2010	PER DIEM AVERAGES
<b>ADMINISTRATIVE AND GENERAL</b>				
Salaries - Administrative	\$ 477,681	\$ 8.51	\$ 469,393	\$ 8.38
Management Fees	910,000	16.22	835,000	14.90
Office Supplies	56,170	1.00	42,781	.76
Payroll Services	18,385	.33	18,798	.34
Communications	23,444	.42	23,635	.42
Advertising	16,335	.29	25,692	.46
Licenses and Dues	40,816	.73	39,010	.70
Health Insurance	837,251	14.92	832,653	14.86
Professional Services	110,500	1.97	105,436	1.88
Payroll Taxes	584,620	10.42	549,818	9.81
Insurance – General	114,440	2.04	134,474	2.40
Insurance – Workers' Compensation	130,085	2.32	131,641	2.35
Miscellaneous Expense	76,161	1.36	88,503	1.58
Travel Expense	9,039	.16	8,850	.16
Employee Fringe Benefits	114,375	2.04	118,955	2.12
Total Administrative and General Expenses	<u>3,519,302</u>	<u>62.73</u>	<u>3,424,639</u>	<u>61.12</u>
<b>PROPERTY RELATED</b>				
Real Estate Taxes	121,588	2.17	118,022	2.11
Personal Property Taxes	26,003	.46	27,432	.49
Interest Expense	256,461	4.57	262,410	4.68
Rent Expense	17,500	.31	17,500	.31
Lease of Equipment	59,618	1.06	53,191	.95
Amortization Expense	4,248	.08	4,248	.08
Depreciation Expense	268,186	4.78	257,368	4.59
Total Property Related Expenses	<u>753,604</u>	<u>13.43</u>	<u>740,171</u>	<u>13.21</u>
<b>PLANT OPERATIONS AND MAINTENANCE</b>				
Salaries	133,390	2.38	119,315	2.13
Gas	48,291	.86	60,068	1.07
Electric	165,533	2.95	184,140	3.29
Water and Sewerage	67,206	1.20	52,727	.94
Purchased Services	149,394	2.66	145,104	2.59
Supplies and Other Expenses	61,476	1.10	42,055	.75
Total Plant Operations and Maintenance Expenses	<u>625,290</u>	<u>11.15</u>	<u>603,409</u>	<u>10.77</u>
<b>HOUSEKEEPING</b>				
Purchased Services	233,738	4.17	233,137	4.16
Supplies and Other Expenses	51,349	.92	55,855	1.00
Total Housekeeping Expenses	<u>285,087</u>	<u>5.09</u>	<u>288,992</u>	<u>5.16</u>

**ORCHARD VIEW MANOR, INC.  
SCHEDULES OF OPERATING EXPENSES**

	YEARS ENDED			
	DECEMBER 31, 2011	PER DIEM AVERAGES	DECEMBER 31, 2010	PER DIEM AVERAGES
<b>DIETARY</b>				
Salaries	536,368	9.56	540,894	9.65
Food	433,902	7.73	416,569	7.43
Supplies and Other Expenses	62,416	1.11	51,204	.91
Total Dietary Expenses	<u>1,032,686</u>	<u>18.40</u>	<u>1,008,667</u>	<u>17.99</u>
<b>PATIENT ACTIVITIES</b>				
Salaries	80,993	1.44	79,817	1.42
Supplies and Other Expenses	17,114	.31	13,408	.24
Total Patient Activities Expenses	<u>98,107</u>	<u>1.75</u>	<u>93,225</u>	<u>1.66</u>
<b>LAUNDRY AND LINEN</b>				
Salaries	110,278	1.97	113,240	2.02
Linen and Bedding	14,151	.25	12,613	.23
Supplies and Other Expenses	16,723	.30	19,651	.35
Total Laundry and Linen Expenses	<u>141,152</u>	<u>2.52</u>	<u>145,504</u>	<u>2.60</u>
<b>NURSING AND ANCILLARY SALARIES</b>				
Registered Nurses	1,254,792	22.37	1,151,403	20.54
Licensed Practical Nurses	922,412	16.44	898,668	16.03
Other Nursing Personnel	2,853,558	50.87	2,778,201	49.57
Total Salaries	<u>5,030,762</u>	<u>89.68</u>	<u>4,828,272</u>	<u>86.14</u>
Purchased Services - Nursing	47,054	.84	137,206	2.45
Supplies and Other Expenses	333,034	5.94	326,049	5.82
PEN Supplies and Expenses	1,546	.03	571	.01
Purchased Services - Physical Therapy	433,513	7.73	517,454	9.23
Speech Therapy	326,251	5.82	322,252	5.75
IV Therapy	40,545	.72	39,318	.70
Occupational Therapy	492,312	8.78	454,473	8.11
Supplies - Ancillaries	341,645	6.09	394,658	7.04
Total Nursing and Ancillary Expenses	<u>7,046,662</u>	<u>125.63</u>	<u>7,020,253</u>	<u>125.25</u>
<b>OTHER SPECIAL SERVICES</b>				
Physicians' Fees	15,590	.28	15,575	.28
Pharmacists' Fees	11,737	.21	7,360	.13
Salaries - Social Services	142,154	2.53	130,809	2.33
Total Special Services	<u>169,481</u>	<u>3.02</u>	<u>153,744</u>	<u>2.74</u>
<b>HEALTH CARE PROVIDER ASSESSMENT</b>				
	836,963	14.92	808,829	14.43
Total Operating Expenses	<u>\$ 14,508,334</u>	<u>\$ 258.64</u>	<u>\$ 14,287,433</u>	<u>\$ 254.93</u>

**ORCHARD VIEW MANOR, INC.  
COMMENTS ON OPERATIONS**

COST CENTER	YEAR ENDED DECEMBER 31, 2011			DECEMBER 31, 2011	
	ACTUAL COST PER DAY	MEDICAID ADJUSTMENTS*	ADJUSTED COST PER DAY	MEDICAID ASSIGNED PER DIEM	MEDICAID MAXIMUM PER DIEM
Pass Through Expenses	\$ 8.48	\$ (0.04)	\$ 8.44	\$ 9.23	N/A
Fair Rental Value	10.80	(1.13)	9.67	15.13	N/A
Direct Labor	162.95	(23.40)	139.55	137.33	144.47
Other Operating	61.49	(21.89)	39.60	36.93	38.21
	<u>243.72</u>	<u>(46.46)</u>	<u>197.26</u>	<u>198.62</u>	
Acuity Adjustment				(0.51)	
Health Care Provider Assessment	14.92	0.00	14.92	11.53	
	<u>\$ 258.64</u>	<u>\$ (46.46)</u>	<u>\$ 212.18</u>	<u>\$ 209.64</u>	

\*Medicaid adjustments include amounts reimbursed by other programs and estimates of unallowable Medicaid costs, as well as reclassifications between cost centers.

OCCUPANCY DATA	YEARS ENDED	
	DECEMBER 31, 2011	DECEMBER 31, 2010
Bed Days Available	60,590	60,590
Bed Days Provided	56,099	56,045
Unoccupied Beds	4,491	4,545
Occupancy Percentage	92.6%	92.5%

PATIENT MIX DATA	YEARS ENDED			
	DECEMBER 31, 2011		DECEMBER 31, 2010	
	BED DAYS	PERCENT TO TOTAL	BED DAYS	PERCENT TO TOTAL
Private	5,504	9.8	4,833	8.6
Medicaid	39,860	71.1	40,453	72.2
Federal Medicare	4,150	7.4	4,463	8.0
Veterans Administration	1,238	2.2	1,047	1.9
Other	5,347	9.5	5,249	9.4
	<u>56,099</u>	<u>100.0</u>	<u>56,045</u>	<u>100.0</u>

# **Orchard View Manor, Inc.**

**Financial Statements and Supplementary Schedules**

**December 31, 2010 and 2009**

**With Independent Auditors' Report**

ORCHARD VIEW MANOR, INC.

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Mr. Michael Marra, President  
Orchard View Manor, Inc.  
East Providence, Rhode Island

#### Independent Auditors' Report

We have audited the accompanying balance sheets of Orchard View Manor, Inc. as of December 31, 2010 and 2009, and the related statements of income and retained earnings, and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Orchard View Manor, Inc. as of December 31, 2010 and 2009, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Our audits were conducted for the purpose of forming an opinion on the basic financial statements taken as a whole. The accompanying supplementary schedules are presented for purposes of additional analysis and are not a required part of the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

February 6, 2011

**ORCHARD VIEW MANOR, INC.  
BALANCE SHEETS**

	<u>DECEMBER 31, 2010</u>	<u>DECEMBER 31, 2009</u>
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash and Cash Equivalents	\$ 1,487,705	\$ 770,298
Cash - Escrow	34,615	132,108
Accounts Receivable, Net	1,523,114	1,619,770
Inventory of Food and Supplies	57,720	52,189
Prepaid Expenses and Other Current Assets	83,107	37,979
Total Current Assets	<u>3,186,261</u>	<u>2,612,344</u>
PROPERTY AND EQUIPMENT, Net	<u>3,178,791</u>	<u>3,291,608</u>
<b>OTHER ASSETS</b>		
Reserve For Replacements	220,797	196,590
Deferred Finance Charges, Net of Accumulated Amortization of \$35,060 and \$30,812, respectively	115,187	96,828
Other Assets	84,823	77,203
Total Other Assets	<u>420,807</u>	<u>370,621</u>
Total Assets	<u>\$ 6,785,859</u>	<u>\$ 6,274,573</u>
<b>LIABILITIES AND STOCKHOLDER'S EQUITY</b>		
<b>CURRENT LIABILITIES</b>		
Accounts Payable	\$ 564,163	\$ 507,424
Accrued Payroll and Payroll Taxes	128,527	99,917
Accrued Vacation Wages	152,408	149,168
Accrued Expenses and Other Current Liabilities	304,866	284,549
Current Maturities of Long-Term Debt	122,809	105,244
Current Obligations Under Capital Leases	14,810	12,829
Total Current Liabilities	<u>1,287,583</u>	<u>1,159,131</u>
DEFERRED COMPENSATION	760,616	619,871
LONG-TERM DEBT	3,911,625	4,015,649
OBLIGATIONS UNDER CAPITAL LEASES	28,096	42,025
Total Liabilities	<u>5,987,920</u>	<u>5,836,676</u>
<b>STOCKHOLDER'S EQUITY</b>		
Capital Stock, \$0.01 Par Value; 300,000 Shares Authorized; 100,000 Issued and Outstanding	1,000	1,000
Additional Paid in Capital	12,917	12,917
Retained Earnings	784,022	423,980
Total Stockholder's Equity	<u>797,939</u>	<u>437,897</u>
Total Liabilities and Stockholder's Equity	<u>\$ 6,785,859</u>	<u>\$ 6,274,573</u>

See Accompanying Notes.

**ORCHARD VIEW MANOR, INC.**  
**STATEMENTS OF INCOME AND RETAINED EARNINGS**

	DECEMBER 31, 2010	PER DIEM AVERAGES	YEARS ENDED DECEMBER 31, 2009	PER DIEM AVERAGES
<b>OPERATING INCOME</b>				
Daily Service Revenue - Private	\$ 1,222,519		\$ 1,300,221	
Daily Service Revenue - Medicaid	7,545,283		6,934,599	
Daily Service Revenue - Medicare	2,310,333		2,638,518	
Daily Service Revenue - VA	240,678		106,717	
Daily Service Revenue - Other	2,428,568		2,504,225	
Ancillary Services	985,119		736,708	
Total Operating Income	<u>14,732,500</u>	\$ <u>262.87</u>	<u>14,220,988</u>	\$ <u>253.09</u>
<b>OPERATING EXPENSES</b>				
Administrative and General	3,424,639	61.12	3,149,191	56.06
Property Related	740,171	13.21	749,645	13.35
Plant Operations and Maintenance	603,409	10.77	607,285	10.80
Housekeeping	288,992	5.16	298,861	5.32
Dietary	1,008,667	17.99	998,793	17.78
Patient Activities	93,225	1.66	103,019	1.83
Laundry and Linen	145,504	2.60	151,901	2.70
Nursing and Ancillary	7,020,253	125.25	6,943,154	123.56
Other Special Services	153,744	2.74	149,843	2.67
Health Care Provider Assessment	808,829	14.43	781,202	13.90
Total Operating Expenses	<u>14,287,433</u>	<u>254.93</u>	<u>13,932,894</u>	<u>247.97</u>
<b>INCOME FROM OPERATIONS</b>	<u>445,067</u>	<u>7.94</u>	<u>288,094</u>	<u>5.12</u>
<b>OTHER INCOME (EXPENSE)</b>				
Interest Income	9,708	.17	3,333	.06
Deferred Compensation	(140,745)	(2.51)	(200,903)	(3.58)
Loss on Disposal of Assets	0	.00	(15,352)	(.27)
Miscellaneous Income	171,012	3.05	60,294	1.07
Total Other Income (Expense)	<u>39,975</u>	<u>0.71</u>	<u>(152,628)</u>	<u>(2.72)</u>
<b>NET INCOME</b>	485,042	\$ <u>8.65</u>	135,466	\$ <u>2.40</u>
<b>RETAINED EARNINGS - BEGINNING OF YEAR</b>	423,980		438,514	
<b>DISTRIBUTIONS</b>	<u>(125,000)</u>		<u>(150,000)</u>	
<b>RETAINED EARNINGS - END OF YEAR</b>	\$ <u>784,022</u>		\$ <u>423,980</u>	

See Accompanying Notes.

**ORCHARD VIEW MANOR, INC.  
STATEMENTS OF CASH FLOWS**

	YEARS ENDED	
	DECEMBER 31, 2010	DECEMBER 31, 2009
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net Income	\$ 485,042	\$ 135,466
Items Which Do Not Affect Cash		
Depreciation and Amortization	261,616	247,549
Loss on Disposal of Equipment	0	15,352
(Increase) Decrease in Operating Assets:		
Cash - Escrow	97,493	(29,556)
Accounts Receivable	96,656	(283,749)
Inventory of Food and Supplies	(5,531)	(1,422)
Prepaid Expenses and Other Current Assets	(45,128)	(3,607)
Other Assets	(7,620)	(9,104)
Increase in Operating Liabilities:		
Accounts Payable	56,739	34,592
Accrued Expenses and Other Current Liabilities	20,317	103,113
Accrued Payroll and Payroll Taxes	28,610	18,775
Accrued Vacation Wages	3,240	11,256
Deferred Compensation	140,745	200,903
Net Cash Provided From Operating Activities	1,132,179	439,568
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Acquisitions of Property and Equipment	(144,551)	(113,605)
Proceeds From Sale of Property and Equipment	0	4,500
Deposits to Reserve For Replacements	(41,567)	(45,267)
Withdrawals from Reserve For Replacements	17,360	0
Net Cash Used By Investing Activities	(168,758)	(154,372)
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Payments of Long-Term Debt	(76,128)	(83,974)
Payments on Obligations Under Capital Leases	(22,279)	(14,122)
Distributions	(125,000)	(150,000)
Financing Fees	(22,607)	0
Net Cash Used By Financing Activities	(246,014)	(248,096)
<b>INCREASE IN CASH AND CASH EQUIVALENTS</b>	717,407	37,100
<b>CASH AND CASH EQUIVALENTS - BEGINNING OF YEAR</b>	770,298	733,198
<b>CASH AND CASH EQUIVALENTS - END OF YEAR</b>	\$ 1,487,705	\$ 770,298

See Accompanying Notes.

**ORCHARD VIEW MANOR, INC.**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2010 AND 2009**

**NOTE 1 - NATURE OF BUSINESS**

Orchard View Manor, Inc. was a 180-bed nursing facility located in East Providence, Rhode Island. Effective January 1, 2010, the facility temporarily took 14 beds out of service. The home is licensed by the Rhode Island Department of Health and participates in the Medicare and Medicaid programs.

**NOTE 2 - RECENT ACCOUNTING DEVELOPMENTS**

**PRESENTATION OF INSURANCE CLAIMS AND RELATED INSURANCE RECOVERIES**

In August, 2010 the FASB issued Accounting Standards Update (ASU) 2010-24, *Health Care Entities (Topic 954) Presentation of Insurance Claims and Related Insurance Recoveries*. ASU No. 2010-24 requires health care entities to present on the balance sheet the amount of the accrued liability for malpractice and similar claims and any related insurance recovery receivable on a gross basis; thus, offsetting one against the other is not permitted. ASU 2010-24 is effective for fiscal years beginning after December 15, 2010. Management is evaluating the effects of the new guidance on the Company's financial statements, but does not believe it will have a material effect.

**NOTE 3 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**USE OF ESTIMATES**

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Estimates also affect the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**CASH AND CASH EQUIVALENTS**

The Company considers all highly liquid investments with original maturities of three months or less to be cash equivalents.

**ACCOUNTS RECEIVABLE**

The Company carries its accounts receivable at cost less an allowance for doubtful accounts of \$120,927 and \$117,240 at December 31, 2010 and 2009, respectively. On a periodic basis, management evaluates its accounts receivable and adjusts the allowance for doubtful accounts based on current credit conditions. Accounts are written off based on management's evaluation of the collectability of each account resulting from collection efforts.

**PROPERTY, EQUIPMENT AND DEPRECIATION**

Property and equipment are recorded at cost. Depreciation is calculated on the straight-line and accelerated methods over the expected useful lives of the assets.

**IMPAIRMENT OF LONG LIVED ASSETS**

The Company reviews long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized for the amount by which the carrying amount of the asset exceeds the fair value of the asset.

**ORCHARD VIEW MANOR, INC.**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2010 AND 2009**

**NOTE 3 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

**NET PATIENT SERVICE REVENUE**

Net patient service revenue is reported at the estimated net realizable amounts from patients, third-party payors, and others for services rendered. Revenue consists primarily of reimbursement through the Medicaid and Medicare programs as well as revenue from private paying patients. Revenue under third-party payor agreements is subject to audit and adjustments to rates are applied on a prospective basis. Revenue from the Medicare and Medicaid programs accounted for approximately 16% and 52%, respectively, of the facility's net patient revenue for the year ended December 31, 2010.

Certain regulations under third-party reimbursement provisions may allow for retroactive reimbursement or payment which is recorded as an estimated third-party settlement in the period earned or incurred. Differences between estimated amounts accrued and actual settlements are reported as a settlement adjustment in the year the final settlement is received or paid.

**DEFERRED FINANCE CHARGES**

Deferred finance charges represent costs which were incurred to obtain financing. The costs have been capitalized and are being amortized over the life of the related loan using the straight-line method. Amortization expense charged to operations totaled \$4,248 for each of the years ended December 31, 2010 and 2009.

**INCOME TAXES**

Orchard View Manor, Inc. has elected to be taxed as an S Corporation under the provisions of the Internal Revenue Code. Under these provisions, the Company is not required to pay federal and state corporate income taxes on its taxable income. Instead, the stockholder is liable for individual federal and state income taxes on the Corporation's taxable income. The Company is subject to federal and state examinations by taxing authorities for the tax years 2007 through 2009.

The Company adopted the guidance in ASC 740, Income Taxes, relating to uncertain tax positions. This guidance prescribes a two step process for the measurement of uncertain tax positions that have been taken or are expected to be taken on a tax return. The first step is a determination of whether the tax position should be recognized in the financial statements. The second step determines the measurement of the tax position. ASC 740 also provides guidance on de-recognition of such tax positions, classification, potential interest and penalties, and disclosure. No uncertain tax positions within the scope of ASC 740 exist as of the year ended December 31, 2010. The adoption of ASC 740 had no effect on the financial statements.

The Company reports tax-related interest and penalties, if any, as a component of income tax expense.

**SUBSEQUENT EVENTS**

Subsequent events have been evaluated through February 6, 2011, the date the financial statements are available to be issued.

**ORCHARD VIEW MANOR, INC.**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2010 AND 2009**

**NOTE 4 - PROPERTY AND EQUIPMENT**

The following is a summary of property and equipment - at cost, less accumulated depreciation at December 31:

	<u>2010</u>	<u>2009</u>
Land	\$ 509,564	\$ 509,564
Buildings	2,517,956	2,517,956
Building Improvements	2,098,351	2,034,249
Departmental Equipment	686,053	627,678
Furniture and Fixtures	113,707	91,633
Motor Vehicles	67,554	67,554
Property Held Under Capital Leases	<u>83,283</u>	<u>83,283</u>
	6,076,468	5,931,917
Less: Accumulated Depreciation	<u>2,897,677</u>	<u>2,640,309</u>
	<u>\$ 3,178,791</u>	<u>\$ 3,291,608</u>

Depreciation expense charged to operations was \$257,368 and \$243,301 for the years ended December 31, 2010 and 2009, respectively.

**NOTE 5 - LONG-TERM DEBT**

The following is a summary of long-term debt at December 31:

	<u>2010</u>	<u>2009</u>
Mortgage payable to mortgage company insured by the Federal Housing Administration; payable in monthly installments of \$27,985, including interest at 6.27%; secured by land and building located at 135 Tripps Lane, East Providence, Rhode Island; final payment due October, 2032.	\$ 3,988,816	\$ 4,064,943
Note payable to finance company; payable in monthly installments of \$793, including interest at 9.19%; secured by an automobile; final payment due March, 2013.	19,143	25,950
Note payable to finance company; payable in monthly installments of \$1,343, including interest at 7%; secured by computer equipment; final payment due December, 2011.	<u>26,475</u>	<u>30,000</u>
	4,034,434	4,120,893
Less: Current Maturities Included in Current Liabilities	<u>122,809</u>	<u>105,244</u>
	<u>\$ 3,911,625</u>	<u>\$ 4,015,649</u>

**ORCHARD VIEW MANOR, INC.  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 2010 AND 2009**

**NOTE 5 - LONG-TERM DEBT (CONTINUED)**

The following are maturities of long-term debt for each of the next five years and in the aggregate:

<u>DECEMBER 31,</u>	<u>AMOUNT</u>
2011	\$ 122,809
2012	102,807
2013	102,167
2014	106,446
2015	113,316
Beyond 2015	<u>3,486,889</u>
	<u>\$ 4,034,434</u>

The Company incurred interest costs of \$262,410 and \$ 267,776 for the years ended December 31, 2010 and 2009, respectively. The Company paid interest costs of \$241,569 and \$267,776 for the years ended December 31, 2010 and 2009, respectively.

**NOTE 6 - OBLIGATIONS UNDER CAPITAL LEASES**

The Company leases equipment under capital leases expiring in various years through 2014. The assets and liabilities under the capital leases are recorded at the lower of the present value of minimum lease payments or the fair value of the assets. Depreciation of the assets under the capital leases is included in total depreciation expense for the year ended December 31, 2010. Minimum future lease payments under the capital leases as of December 31, 2010 through the remainder of the lease terms are as follows:

<u>DECEMBER 31</u>	<u>AMOUNT</u>
2011	\$ 20,382
2012	20,382
2013	8,264
2014	<u>3,680</u>
Total Minimum Lease Payments	52,708
Less: Amount Representing Interest	<u>9,802</u>
Present Value of Net Minimum Lease Payments	42,906
Less: Current Portion	<u>14,810</u>
Long-Term Portion	<u>\$ 28,096</u>

**NOTE 7 – DEFERRED COMPENSATION PLAN**

The Company has a deferred compensation plan covering a key member of management. Compensation under the plan is based on the operating results of the Company. Payment shall commence upon the earlier of termination of employment or change of control of the facility.

**ORCHARD VIEW MANOR, INC.  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 2010 AND 2009**

**NOTE 8 - CONCENTRATION OF CREDIT RISK**

**OPERATING CASH AND ESCROW DEPOSITS**

The Company maintains operating cash and escrow deposits at various federally insured financial institutions. The Company's credit risk with respect to such balances is all amounts on deposit in excess of federally insured limits.

**RECEIVABLES**

The mix of receivables from patients and third-party payors is as follows at December 31:

	<u>2010</u>	<u>2009</u>
Private	14%	10%
Medicaid	40%	38%
Medicare	17%	21%
Other	29%	31%

**NOTE 9 - PENSION PLAN**

The Company has a 401(k) pension plan. Contributions for 2010 and 2009 were \$37,371 and \$39,943, respectively.

**NOTE 10 - RELATED PARTY TRANSACTIONS**

**MANAGEMENT FEES**

Management fees charged by a company related by common ownership are based upon a fee approved by HUD of up to 6% of gross income. The Company incurred and paid management fees of \$835,000 and \$640,000 for the years ended December 31, 2010 and 2009, respectively.

**RENT EXPENSE**

The Company entered into a month to month lease in September, 2006 with a company related by common ownership for a storage facility. The Company is not responsible for any costs associated with the leased storage facility. Rent expense charged to operations was \$17,500 for each of the years ended December 31, 2010 and 2009.

**NOTE 11 - CONTINGENCY**

The Company is involved in one unresolved legal matter relating to patient care. The Company is also involved in an unresolved legal matter relating to a former employee. Although it is not possible to predict with any certainty the outcome of these matters, management believes that any potential loss would be covered by the Company's insurance.

**ORCHARD VIEW MANOR, INC.**  
**SCHEDULES OF OPERATING EXPENSES**

	YEARS ENDED			
	DECEMBER 31, 2010	PER DIEM AVERAGES	DECEMBER 31, 2009	PER DIEM AVERAGES
<b>ADMINISTRATIVE AND GENERAL</b>				
Salaries - Administrative	\$ 469,393	\$ 8.38	\$ 489,073	\$ 8.70
Management Fees	835,000	14.90	640,000	11.39
Office Supplies	42,781	.76	46,415	.83
Payroll Services	18,798	.34	18,424	.33
Communications	23,635	.42	21,773	.39
Advertising	25,692	.46	18,003	.32
Licenses and Dues	39,010	.70	18,741	.33
Health Insurance	832,653	14.86	783,015	13.94
Professional Services	105,436	1.88	82,746	1.47
Payroll Taxes	549,818	9.81	552,706	9.84
Insurance – General	134,474	2.40	133,153	2.37
Insurance – Workers' Compensation	131,641	2.35	163,320	2.91
Miscellaneous Expense	88,503	1.58	43,571	.78
Travel Expense	8,850	.16	8,010	.14
Employee Fringe Benefits	118,955	2.12	130,241	2.32
Total Administrative and General Expenses	<u>3,424,639</u>	<u>61.12</u>	<u>3,149,191</u>	<u>56.06</u>
<b>PROPERTY RELATED</b>				
Real Estate Taxes	118,022	2.11	121,392	2.16
Personal Property Taxes	27,432	.49	27,432	.49
Interest Expense	262,410	4.68	267,776	4.77
Rent Expense	17,500	.31	17,500	.31
Lease of Equipment	53,191	.95	67,996	1.21
Amortization Expense	4,248	.08	4,248	.08
Depreciation Expense	257,368	4.59	243,301	4.33
Total Property Related Expenses	<u>740,171</u>	<u>13.21</u>	<u>749,645</u>	<u>13.35</u>
<b>PLANT OPERATIONS AND MAINTENANCE</b>				
Salaries	119,315	2.13	119,149	2.12
Gas	60,068	1.07	55,294	.98
Electric	184,140	3.29	188,356	3.35
Water and Sewerage	52,727	.94	55,811	.99
Purchased Services	145,104	2.59	145,378	2.59
Supplies and Other Expenses	42,055	.75	43,297	.77
Total Plant Operations and Maintenance Expenses	<u>603,409</u>	<u>10.77</u>	<u>607,285</u>	<u>10.80</u>
<b>HOUSEKEEPING</b>				
Purchased Services	233,137	4.16	238,888	4.25
Supplies and Other Expenses	55,855	1.00	59,973	1.07
Total Housekeeping Expenses	<u>288,992</u>	<u>5.16</u>	<u>298,861</u>	<u>5.32</u>

**ORCHARD VIEW MANOR, INC.  
SCHEDULES OF OPERATING EXPENSES**

	DECEMBER 31, 2010	PER DIEM AVERAGES	YEARS ENDED DECEMBER 31, 2009	PER DIEM AVERAGES
<b>DIETARY</b>				
Salaries	540,894	9.65	535,361	9.53
Food	416,569	7.43	405,677	7.22
Supplies and Other Expenses	51,204	.91	57,755	1.03
Total Dietary Expenses	<u>1,008,667</u>	<u>17.99</u>	<u>998,793</u>	<u>17.78</u>
<b>PATIENT ACTIVITIES</b>				
Salaries	79,817	1.42	86,638	1.54
Supplies and Other Expenses	13,408	.24	16,381	.29
Total Patient Activities Expenses	<u>93,225</u>	<u>1.66</u>	<u>103,019</u>	<u>1.83</u>
<b>LAUNDRY AND LINEN</b>				
Salaries	113,240	2.02	111,949	1.99
Linen and Bedding	12,613	.23	15,610	.28
Supplies and Other Expenses	19,651	.35	24,342	.43
Total Laundry and Linen Expenses	<u>145,504</u>	<u>2.60</u>	<u>151,901</u>	<u>2.70</u>
<b>NURSING AND ANCILLARY SALARIES</b>				
Registered Nurses	1,151,403	20.54	1,034,670	18.41
Licensed Practical Nurses	898,668	16.03	1,046,678	18.63
Other Nursing Personnel	2,778,201	49.57	2,820,236	50.19
Total Salaries	<u>4,828,272</u>	<u>86.14</u>	<u>4,901,584</u>	<u>87.23</u>
Purchased Services - Nursing	137,206	2.45	46,759	.83
Supplies and Other Expenses	326,049	5.82	329,705	5.87
PEN Supplies and Expenses	571	.01	3,681	.07
Purchased Services - Physical Therapy	517,454	9.23	485,044	8.63
Speech Therapy	322,252	5.75	236,106	4.20
IV Therapy	39,318	.70	74,497	1.33
Occupational Therapy	454,473	8.11	432,284	7.69
Supplies - Ancillaries	394,658	7.04	433,494	7.71
Total Nursing and Ancillary Expenses	<u>7,020,253</u>	<u>125.25</u>	<u>6,943,154</u>	<u>123.56</u>
<b>OTHER SPECIAL SERVICES</b>				
Physicians' Fees	15,575	.28	15,590	.28
Pharmacists' Fees	7,360	.13	4,915	.09
Salaries - Social Services	130,809	2.33	129,338	2.30
Total Special Services	<u>153,744</u>	<u>2.74</u>	<u>149,843</u>	<u>2.67</u>
<b>HEALTH CARE PROVIDER ASSESSMENT</b>				
Total Operating Expenses	<u>\$ 14,287,433</u>	<u>\$ 254.93</u>	<u>\$ 13,932,894</u>	<u>\$ 247.97</u>

**ORCHARD VIEW MANOR, INC.  
COMMENTS ON OPERATIONS**

COST CENTER	YEAR ENDED DECEMBER 31, 2010			DECEMBER 31, 2010	
	ACTUAL COST PER DAY	MEDICAID ADJUSTMENTS*	ADJUSTED COST PER DAY	MEDICAID ASSIGNED PER DIEM	MEDICAID MAXIMUM PER DIEM
Pass Through Expenses	\$ 9.36	\$ (0.04)	\$ 9.32	\$ 9.08	N/A
Fair Rental Value	10.61	(1.05)	9.56	14.57	N/A
Direct Labor	160.89	(24.15)	136.74	132.19	144.47
Other Operating	59.64	(21.80)	37.84	35.75	38.21
	<u>240.50</u>	<u>(47.04)</u>	<u>193.46</u>	<u>191.59</u>	
Acuity Adjustment				0.14	
Medicaid Rate Adjustment				(3.37)	
Health Care Provider Assessment	14.43	0.00	14.43	10.96	
	<u>\$ 254.93</u>	<u>\$ (47.04)</u>	<u>\$ 207.89</u>	<u>\$ 199.32</u>	

\*Medicaid adjustments include amounts reimbursed by other programs and estimates of unallowable Medicaid costs, as well as reclassifications between cost centers.  
Effective February 1, 2010, the Department of Human Services applied a rate cut to all nursing facilities in Rhode Island

OCCUPANCY DATA	YEARS ENDED	
	DECEMBER 31, 2010	DECEMBER 31, 2009
Bed Days Available	60,590	65,700
Bed Days Provided	56,045	56,190
Unoccupied Beds	4,545	9,510
Occupancy Percentage	92.5%	85.5%

PATIENT MIX DATA	YEARS ENDED			
	DECEMBER 31, 2010		DECEMBER 31, 2009	
	BED DAYS	PERCENT TO TOTAL	BED DAYS	PERCENT TO TOTAL
Private	4,833	8.6	5,358	9.5
Medicaid	37,798	67.4	36,219	64.5
Federal Medicare	4,324	7.7	5,161	9.2
Veterans Administration	1,047	1.9	446	0.8
Other	8,043	14.4	9,006	16.0
	<u>56,045</u>	<u>100.0</u>	<u>56,190</u>	<u>100.0</u>