

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (this “Agreement”) is entered into as of August 15, 2021 (the “Execution Date”), by and between Sunset Lakes Consulting LLC dba Infinite Care, a Delaware limited liability company with offices located at 267 Broadway, Brooklyn, NY 11211 (“Consultant”), and COUNTY OF SULLIVAN, New York, licensed under Article 28 of the New York Public Health Law to operate a skilled nursing facility (the “Facility Operator”), each a “Party” and collectively, the “Parties.”

WHEREAS, the Facility Operator transferred to Sunset Lake Local Development Corporation, Inc. (“County LDC”) and leased back the approximately 6.01 acres of land and related improvements operated by the Facility Operator under Operating Certificate No. 5220301N as the Sullivan County Adult Care Center, also known as The Care Center at Sunset Lake, a 146 bed skilled nursing facility located at 256 Sunset Lake Road, Liberty, New York 12754 (the “Facility”), which provides skilled nursing services;

WHEREAS, County LDC then issued an RFP and facilitated a process to present three qualified candidates to the legislative body of the Facility Operator for a consultant to assist in the transition of the Facility’s operating certificate to a new lessee of the County LDC, with the lease becoming effective on the date that the designated party lessee receives an operating certificate to operate the Facility (“CON Transition Date”);

WHEREAS, on February 11, 2021 the Consultant was chosen by the legislative body of the Facility Operator, both as a consultant under the terms contained herein and to be the new lessee and operator of the Facility under the lease from the County LDC dated the date hereof (“Lease”), effective upon the CON Transition Date;

WHEREAS, Consultant, either directly or through its affiliates, provides consulting and related services to skilled nursing facilities, has developed proprietary systems and techniques to enhance the operation of skilled nursing facilities and operates at 18 nursing homes in New York and Florida; and

WHEREAS, the Facility Operator and Consultant prioritize quality of patient care, and the Facility Operator desires to retain Consultant to provide certain consulting and related services to the Facility through the CON Transition Date and thereafter to be the lessee and licensed operator of the Facility, and Consultant desires to provide such services upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and undertakings of the Parties, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

Article 1 **RELATIONSHIP OF THE PARTIES**

Section 1.01 *Appointment of Consultant/License/Indemnification.*

(a) Subject to Attachment B, Subsection VII, the Facility Operator appoints Consultant as the Facility Operator's consultant with respect to those non-professional functions and services of the Facility that are described in this Agreement (collectively, the "Services"), and Consultant accepts such appointment, pursuant to the terms and conditions contained herein. The Facility Operator hereby grants to Consultant, and to any of Consultant's staff designated in accordance with Section 2.1, a non-exclusive license to access the Facility during the Term hereof for the exclusive purpose of undertaking the duties of Consultant and providing the Services outlined herein (herein, the "License").

(b) Consultant hereby protects, defends, indemnifies and holds harmless the Facility Operator and County LDC against any and all claims, costs, judgments, liens, or actions, including reasonable attorney's fees and costs of defense, for damage to property or injury to persons resulting or arising solely from Consultant's, or any member, manager, employee or agent of Consultant's, willful misconduct or negligent actions or omissions in carrying out Consultant's duties under this Agreement. Consultant's indemnification obligation shall not extend to any activities directed by the Facility Operator or County LDC or to any claims arising out of litigation that is pending as of the date hereof against the Facility or the Facility Operator. The Consultant shall further hereby protect, defend, indemnify and hold harmless the Facility Operator and County LDC against any and all claims, costs, judgments, liens, or actions, including reasonable attorney's fees and costs of defense, for claims, judgments, actions and any related liens related solely to Consultant's willful misconduct or negligent conduct in its business activities as same may affect the Facility Operator, the County LDC and/or title to the Facility, including, but not limited to any action or dispute that may give rise to a lien against the Facility, but excluding any liens that relate to actions by the Facility Operator or liens that relate to litigation that is pending as of the date hereof against the Facility or the Facility Operator or County LDC. The provisions of this paragraph shall survive termination of this Agreement.

(c) The Facility Operator hereby protects, defends, indemnifies, and holds harmless the Consultant against any and all claims, costs, judgments, liens, or actions, including reasonable attorney's fees and costs of defense, for damage to property or injury to persons resulting or arising solely from either Facility Operator's and/or County LDC's, or any member, manager, employee or agent of the Facility Operator's or County LDC's, willful misconduct or negligent actions or omissions in carrying out Facility Operator's duties under this Agreement. Facility Operator shall further hereby protect, defend, indemnify and hold harmless the Consultant against any and all claims, costs, judgments, liens, or actions, including reasonable attorney's fees and costs of defense, for claims, judgments, actions and any related liens related solely to Facility Operator's willful misconduct or negligent conduct in its business activities as same may affect the Consultant, including, but not limited to any action or dispute that may give rise to a lien against the Facility, such as liens that relate to actions by Facility Operator or liens that relate to litigation that is pending as of the date hereof against the Facility or the Facility Operator. The provisions of this paragraph shall survive termination of this Agreement.

(d) If at any point during the term of this Agreement an action or proceeding (whether coupled with a lien filing or not) is threatened or initiated by a third party against the Facility Operator and/or Facility Operator's title to the facility as a direct result of the Consultant's business activities undertaken pursuant hereto, the Consultant shall be deemed in default of this Agreement unless bonded off, released of record or otherwise remedied to the Facility Operator's reasonable

satisfaction within sixty (60) days after written demand to cure tendered by the Facility Operator, subject to successive thirty (30)-day extensions (for defaults other than monetary payment obligations) if the Consultant is working diligently in good faith to cure the default. In all events, the Consultant's indemnification of the Facility Operator and obligation to pay all of the Facility Operator's costs shall survive the termination of this Agreement.

(e) If at any point during the term of this Agreement an action or proceeding (whether coupled with a lien filing or not) is threatened or initiated by a third party against the Consultant as a direct result of the Facility Operator's business activities undertaken pursuant hereto, the Facility Operator shall be deemed in material default of this Agreement unless bonded off, released of record or otherwise remedied to the Consultant's reasonable satisfaction within sixty (60) days after written demand to cure tendered by the Consultant, subject to successive thirty (30)-day extensions (for defaults other than monetary payment obligations) if the Facility Operator is working diligently in good faith to cure the default. In all events, the Facility Operator's indemnification of the Consultant and obligation to pay all of the Consultant's costs shall survive the termination of this Agreement

Section 1.02 *Retention of Ownership and Control.* The Facility Operator shall hold all necessary licenses and permits to operate the Facility. The Facility Operator will provide to Consultant prompt notice of any termination or suspension of any necessary license or permit. In providing the Services, Consultant is to have the reasonable use of all assets of the Facility Operator that are useful or necessary for Consultant to provide the Services, to the extent permitted by applicable law.

Section 1.03 *Facility Operator Authority.* The Facility Operator shall consider and respond to all recommendations of Consultant regarding operations, policies and procedures relating to the Facility, to the extent relevant to the obligations of Consultant hereunder and permissible under applicable law. Consultant agrees not to take any actions that will interfere with the authority and responsibility of the Facility Operator which is not expressly delegated to Consultant hereunder. Notwithstanding anything contrary to the foregoing, the Facility Operator shall have final authority to accept or reject the Consultant's recommendations regarding operations, policies and procedures relating to the Facility, provided that Facility Operator shall not unreasonably reject such recommendations.

Section 1.04 *Relationship.* With respect to Facility Operator, Consultant shall at all times be an independent contractor. No provision of this Agreement shall be construed to constitute Consultant or any of its officers or employees as an employee or employees of Facility Operator. No provision of this Agreement shall be construed as creating a partnership or joint venture between Consultant and Facility Operator. Facility Operator and Consultant shall not have the power to bind the other Party except pursuant to the terms of this Agreement. Consultant shall follow the written policies of the Facility Operator that are delivered to Consultant in advance. None of Consultant's personnel providing services under this Agreement shall have a claim against the Facility Operator under this Agreement or otherwise for social security benefits, workers' compensation benefits, vacation pay, sick leave, retirement benefits, disability or unemployment benefits, or employee benefits of any kind. Facility Operator shall not withhold on behalf of Consultant personnel any sums for income tax, unemployment insurance, social security or any other purposes, and all such withholdings or obligations shall be the sole responsibility of Consultant. Notwithstanding the foregoing or any other term or condition contained herein, and in

accordance with 10 NYCRR 405.3, Facility Operator expressly retains authority over the matters set forth in the Reserved Powers section (Section VII) of Appendix B, annexed hereto.

Section 1.05 ***Professional Health Care Services.*** The Parties acknowledge and agree that Consultant is not authorized or qualified to engage in any activity that may constitute the practice of any health care profession under New York or federal law. Nothing in this Agreement is intended nor is it to be construed to allow Consultant to exercise control or direction over the manner or method by which physicians on the medical staff or other health care professionals at the Facility provide medical services or other professional health care services. To the extent that any act or service herein required of Consultant is construed to constitute the practice of any health care profession by a court of competent jurisdiction, the Facility Operator's legal counsel, or any regulatory or administrative body having oversight responsibilities regarding such professional activities, the requirement to perform that act or service by Consultant shall be deemed waived and unenforceable.

Section 1.06 ***Appointment of Medical Director and Employees.*** The Facility Operator shall have sole power and authority to appoint a Medical Director to direct the medical activities of the Facility and to perform such duties as may be assigned from time to time by the Facility Operator. Consultant shall not assume any of the Facility Operator's liabilities or obligations with respect to the Facility Operator's compliance or non-compliance with applicable federal and state laws in the securing of medical director services for the Facility.

Section 1.07 ***Restricted Powers.*** In addition to, and not in limitation of, Section 1.05 and Section 1.06 above:

(a) Recruiting, selecting, hiring and engaging all employees for the Facility shall be subject to the Civil Service Law of the State of New York and with the Rules for the Classified Civil Service of the County of Sullivan (collectively, the "Civil Service Rules").

(b) Without limiting clause (a) of this Section 1.07, job openings at the Facility shall be filled through the advertisement of such position and selection of an individual for such position by a competitive examination process, all as and to the extent contemplated by the Civil Service Rules. Notwithstanding the forgoing, with respect to job openings for non-competitive positions at the Facility, or where otherwise permitted by the Civil Service Rules, Facility Operator shall nominate (or cause to be nominated) to the Personnel Officer (as defined in the Rules for the Classified Civil Service of the County of Sullivan) such individual meeting the minimum qualifications for such position as it may deem in the best interests of the Facility, such nomination to be made only with the advice and recommendation of Consultant (provided, however, that such job opening shall only be filled with the approval of the Personnel Officer as and to the extent required by the Civil Service Rules).

(c) The elimination of any position and the termination of employees servicing in such positions shall be approved by the Sullivan County Legislature.

(d) Any former employee of Facility Operator that has retired prior to the date hereof may be hired as a private employee of Consultant, without the necessity of complying with the terms and conditions of this Section 1.07.

(e) The powers of recruiting, selecting, hiring and engaging employees specifically reserved to the Facility Operator, other appointing authority, and/or the Personnel Officer contemplated by this Section 1.07 and the Civil Service Rules (expressly excluding, however, the right of Consultant to advise and recommend individuals for such job openings as contemplated by Section 1.07(c)), and the power to approve the elimination of any position or termination of any employee at the Facility reserved to the Sullivan County Legislator by this Section 1.07 and applicable law, are sometimes collectively referred to in this Agreement as the “Restricted Powers.”

Article 2 **CONSULTING SERVICES**

Section 2.01 *Scope of Services.* Consultant shall provide certain consulting and non-professional services described in this Article II, provided, however, that Consultant and Facility Operator acknowledge and agree that Facility Operator is not delegating to Consultant any powers, duties or responsibilities that it is prohibited by law from delegating to Consultant and that Facility Operator shall retain all authority required by law to be retained by the licensed operator of the Facility. Consultant shall provide the Services described herein without discrimination as to race, creed, color, religion, national origin, sex, or disability within the Facility Operator’s treatment capacity, sexual orientation, or source of payment for residents.

Section 2.02 *Plant and Maintenance Consulting.* Consultant shall be responsible for: (i) the continued maintenance of the Facility, and (ii) reviewing all invoices to confirm correct payment. Consultant shall have no independent power or authority to incur any debt or liability of any kind or nature on behalf of the Facility Operator without the consent of the Facility Operator. Notwithstanding anything foregoing to the contrary, the Facility Operator will review, and not unreasonably reject, recommendations that the Consultant makes regarding requested purchases of commodities and services for the Facility in accordance with the New York General Municipal Law and the Sullivan County Procurement Policy (the “County Requirements”).¹ The Facility Operator shall ensure that the Sullivan County Purchasing Department welcomes all vendors recommended from the Consultant and incorporates said vendors into all areas of procurement where applicable for commodities and services (provided that such vendors meet the standards contained in the County Requirements, including being qualified to do business with Sullivan County). The Facility Operator further agrees to streamline and prioritize the purchasing process for the Facility as much as is practicable, in accordance with the law.

Section 2.03 *Billing and Collection Consulting Services.* Consultant shall submit claims for dates of service on and after the Execution Date on a monthly basis (“Post-Execution Date Claims”) and perform periodic follow-up and remittance posting for said claims and shall advise the Facility Operator in connection with administering controls and systems for the recording and collection of the revenues of the Facility, as follows:

(a) Consultant shall develop and assist the Facility Operator in implementing policies and procedures to verify patient eligibility, enrollment, Medicaid applications, and termination with respect to Medicare, Medicaid and other third party payer programs, and shall assist with fair

¹ NTD: Please provide Consultant with a copy of the procurement policy.

hearings and billing inquiries from patients, payers, Medicare, Medicaid and other governmental authorities with jurisdiction over the Facility.

(b) Consultant shall review and make recommendations to the Facility Operator regarding the charge structure of the Facility.

(c) Consultant shall review the Facility Operator's collection policies and provide collection services for the Facility with respect to Post-Execution Date Claims to assure that they are reasonable, appropriate and consistent with all applicable laws, regulations, and as agreed to with third party payers, as applicable, it being understood that Consultant has no control over the adoption of policies by the Facility Operator.

(d) Nothing in this Article grants Consultant authorization in any way to acquire or dispose of, or to contract for, acquire or dispose of any or all of the Facility Operator's assets.

(e) The Facility Operator shall promptly forward to Consultant copies of all documents relating to Post-Effective Date Claims for items and services provided by the Facility.

(f) The Facility Operator shall cooperate in providing to Consultant the (i) names and addresses of all third party payers, and (ii) provider numbers used by the Facility Operator with respect to Medicare, Medicaid and all other third party payers.

(g) Facility Operator uses EMR. Consultant utilizes PointClickCare ("PCC") software to perform all billing and accounting functions, including accounts payable, and for electronic medical records. Facility Operator agrees that it will enter into an agreement with PCC for its billing, accounting and medical record software (or permit Consultant to implement billing, accounting and record keeping functions at the Facility through PCC and its software); provided in the event of termination of this Agreement, Facility Operator has the right to assume or terminate PCC.

(h) Consultant shall provide open and routine communications between designated Facility Operator and County LDC representatives regarding staffing, compliance and quality of care. Consultant shall utilize Care Safely as a remote risk management/quality assurance tool for monitoring of quality of care by the Facility Operator and County LDC before and after the CON Transition Date (see www.caresafely.com). Consultant shall provide quarterly reports to the County LDC and Facility Operator in form and content to be agreed to from time to time by the Consultant, County LDC and Facility Operator representatives.

(i) Consultant shall make the capital expenditures described below in Exhibit 2.03(i) in accordance with, and within the time frame required by, Section 3.3 of the Lease.; provided, however that neither Consultant hereunder nor as lessee under the Lease shall be required to make any such expenditures unless and until Consultant or one of its affiliates and the Facility Operator enter into a Facility Transition Agreement setting forth the terms of the transition of operations of the facility on the CON Transition Date,

(j) Consultant shall submit a complete application for a Certificate of Need ("CON") to become the licensed operator of the Facility by the first (1st) anniversary of the Commencement

Date. The Consultant shall give representatives of the Facility Operator and the County LDC access to review and comment on the materials being submitted prior to the submission.

(k) Consultant shall work in an environment and in a manner that complies with existing union contracts of the Facility Operator and all applicable state pension rules applicable to the Facility Operator employees. The parties will explore structures to permit employees to remain in the current retirement and benefits system after the CON Transition Date and will negotiate in good faith contracts for its employees after the CON Transition Date.

Section 2.04 *Accounting, Financial Services, Payroll and Accounts Payable.* Consultant shall provide accounting and financial consulting to the Facility Operator for the Facility as follows:

(a) Consultant shall assist the Facility Operator in developing an annual budget (the "Budget") for the Facility with an estimate of the operating revenues and expenses and capital expenditures for the Facility for each upcoming fiscal year. The proposed Budget will contain an explanation of plans and projections regarding the operations of the Facility, utilization, services, staffing and other factors that may affect the Budget, and will include an amount equal to Consultant's direct and fixed overhead costs allocated to the Facility and the Service Fee (as defined in Section 3.01(a)) for the ensuing year. At least thirty (30) days prior to the September 1 prior to the each calendar fiscal year of Facility Operator, commencing with the fiscal year in effect as of the Commencement Date (as defined in Section 4.01), Consultant shall submit to the Facility Operator a proposed Budget for the Facility. The Facility Operator will adopt a Budget within thirty (30) days from the date on which it receives the proposed Budget from Consultant. The Facility Operator will have the sole right to reject, revise or adopt the Budget proposed by Consultant. It will also have the right to independently adopt a Budget that is completely different from the Budget proposed by Consultant. Upon adoption of the Budget by the Facility Operator, the Facility Operator shall use its commercially reasonable efforts to operate the Facility so that actual expenses and revenues are consistent with the Budget. Consultant and Facility Operator will develop for the current fiscal year a Budget within 90 days of the Commencement Date. It is expressly understood between the Parties that the final authority for adopting a Budget at all times rests with the Facility Operator, provided that Facility Operator shall not unreasonably reject Consultant's recommendations regarding the Budget.

(b) Consultant shall assist the Facility Operator in its preparation, in the name of the Facility and for the Facility Operator's signature, of all cost reports, exception requests, and other reports and data necessary for obtaining appropriate reimbursement for the items and services provided by the Facility under the Medicare and Medicaid programs and any other third party payer programs in which the Facility participates. It is expressly understood between the Parties that the final authority for the preparation of these reports and data rests with the Facility Operator, provided that Facility Operator shall not unreasonably reject Consultant's recommendations regarding such reports and data.

(c) Within sixty (60) days after the last day of each calendar month, Consultant shall prepare and submit to the Facility Operator internal unaudited financial reports which will be prepared consistent with generally accepted accounting principles for the Facility and which shall contain as an exhibit actual and budgeted revenues (based on the Budget) and expenses of the Facility for the preceding month and year to date, an analysis of accounts receivable activity, and reasonable explanations of any variances from the Budget.

(d) Consultant shall assist the Facility Operator in developing financial and accounting systems for the Facility, and shall use such accounting policies and procedures adopted by the Facility Operator for the operations of the Facility and the performance of Consultant's duties hereunder.

(e) The parties agree that the books and business records of the Facility will remain under the ownership and control of the Facility Operator at all times, and that Consultant will function in a consulting capacity in performing its obligations hereunder. Notwithstanding the foregoing, financial, purchasing, payroll and other records of Consultant shall be and remain the property of Consultant.

(f) Facility Operator shall maintain payroll and HR software that is reasonably agreeable to Consultant through the Term, and Consultant shall be permitted to use Facility Operator's payroll and HR software as needed to complete its obligations hereunder or as otherwise necessary to effectuate the terms of this Agreement.

(g) To facilitate the performance of Consultant's services hereunder, Facility Operator shall establish a new bank account where all revenue of the Facility during the Term of this Agreement shall be transferred or deposited by Facility Operator or Consultant (acting as the Facility Operator's representative) and their respective employees and representatives, as applicable, as soon as is possible after receipt. Withdrawals or transfers from such accounts shall be made solely to arrange for and direct the payment of the operating expenses of the Facility. Requests for withdrawals or transfers for payment of the Facility's operating expenses (with such detail and documentation as the Facility Operator may require) may be made by either Facility Operator or Consultant, and provided to the other Party. The Party receiving such request shall not unreasonably withhold its consent to such request, and the Parties shall use best efforts to expeditiously resolve any dispute. Ultimate authority, however, for approving requests for payment of all expenses shall rest with the Facility Operator, Subject to payment of the Service Fee (as defined in Section 3.01), it is expressly understood and agreed between the Parties that, at all times under this Agreement, title to and ownership of the assets in these accounts shall exclusively rest with the Facility Operator.

Section 2.05 *Clinical Policies and Procedure Review and Implementation.* At the request of the Facility Operator, Consultant shall assist with the implementation of the policies and procedures of the Facility, as adopted by the Facility Operator. During the Term (as defined in Section 4.01), Consultant will provide the Facility Operator with copies of Consultant's standard operational and technical policy and procedure manuals for a residential health care facility in New York for use by the Facility in developing its own policies and procedures. The Facility Operator reserves the right to change the Facility's policies, procedures and forms at any time, in its reasonable discretion, subject to compliance with applicable law. Upon the termination or expiration of this Agreement, the Facility Operator shall be entitled to retain and continue to use all policies, procedures, and forms prepared by Consultant for use by the Facility. Consultant shall further assist the Facility Owner in:

(a) Establishing and implementing written policies and procedures governing the admission process that ensures compliance with State and Federal anti-discrimination laws that apply to the Facility. Such laws include, but need not be limited to, the applicable provisions of Public Health Law, Section 2801-a (9); the New York State Civil Rights Law, Sections 40 and 40-

c; Article 15 (Human Rights Law) of the State Executive Law, Sections 291, 292 and 296 and Title 42 of the United States Code, Sections 1981, 2000a, 2000a-2, 2000d, 3602, 3604 and 3607, and 10 NYCRR 415.26.

(b) Establishing and implementing written policies and procedures governing the receipt, review and investigation of allegations of misappropriation of resident property by individuals in the employ of and/or whose services are utilized by the Facility. Such policies and procedures shall be coordinated with the process governing the handling of complaints as set forth in 10 NYCRR Section 415.3.

(c) Establishing and implementing a Nursing Aide Training Program and assuming the responsibility for providing a Program Coordinator who shall have the day-to-day responsibility for implementing the Facility's training program in accordance with the Facility's policies and procedures and State and Federal requirements. The instructor shall be a registered professional nurse with at least one year of experience in a nursing home who has demonstrated ability to teach adult learners.

(d) Establishing and implementing the nurses' aide competency evaluation and a clinical skills evaluation given by a certified Nurse Aide Evaluator.

Section 2.06 ***Service Contracts and Purchasing.*** Consultant shall advise and assist the Facility Operator in negotiating and maintaining contracts and arrangements with individuals or entities providing goods or services for the Facility, including, but not limited to, ancillary medical items and services (e.g., laboratory, blood, EKG, bone densitometry, pharmacy, etc.), third party payor contracts, affiliation agreements and related agreements for and in the name of the Facility Operator, and other contracts or arrangements appropriate for the Facility.

Section 2.07 ***Quality and Utilization Controls.*** Consultant shall advise and assist the Facility Operator in performing such medical record audits and in conducting utilization review and quality assurance/control review for the Facility and other related activities as are necessary and appropriate for the operation of the Facility and as permitted under applicable law. The Consultant will be required to utilize the risk management/Quality Assurance software known as CareSafely, www.caresafely.com with remote access to representatives of the Facility Operator and County LDC.

Section 2.08 ***Patient/Resident Evaluation.*** At the request of the Facility Operator, Consultant shall provide consultation and support to evaluate and document specific needs and required services of all residents.

Section 2.09 ***Social Services and Admissions.*** At the request of the Facility Operator, Consultant shall provide consultation and support with regard to admission and discharge of residents.

Section 2.10 ***Dietary Consulting.*** At the request of the Facility Operator, Consultant shall provide consultation and support to evaluate menus and dietary operations to ensure compliance and efficiencies. Consultant shall also supervise clinical dieticians.

Section 2.11 *IT Services*. It is understood between the Parties that Consultant shall be responsible for the supply and support of information and technology services, including helpdesk, network, and all infrastructure in support of voice and data communications services. Consultant shall be responsible for the Facility's information technology infrastructure.

(a) The parties acknowledge that HIPAA (as defined in Attachment B) requires the implementation of measures to protect the security of electronic protected health information that may be maintained or transmitted by the hardware, software and systems provided by Consultant for Facility's Operator's use (the "System"). All technical security features of the System shall meet the minimum standards set forth in HIPAA's security regulations. Without limiting the foregoing, Consultant shall support the System in accordance with industry best practices with regard to security and privacy protection. In addition, any and all Facility Operator's data stored or accessed by Consultant or its agents must be well protected from hackers, outside intrusion, data manipulation and other security vulnerabilities. Consultant shall include a copy of its data backup plan and disaster recovery plan as Exhibit A hereto.

(b) In the event of termination or expiration of this Agreement, Facility Operator shall be entitled to the return of all data and information that Facility Operator submits to Consultant, or that Consultant receives, accesses or uses from or on behalf of Facility Operator in connection with the Services (the "Client Data"), and upon written request Consultant shall return the Client Data to Facility Operator or otherwise make the Client Data available to Facility Operator for download within ten (10) business days of such request, at no cost. Client Data will be provided or made available in the form and/or format in which it is stored in the System.

(c) Facility Operator is the sole and exclusive owner of Facility Operator's data and Consultant acknowledges that it will not acquire any rights in Facility Operator's data. Consultant acknowledges that it may not (i) use such data for any purpose other than as necessary in fulfilling its obligations under this Agreement; (ii) duplicate the data in whole or in part other than as may be necessary to fulfill its obligations under this Agreement; nor (iii) disclose, sell, assign, lease or otherwise provide such data to third parties; except and only to the extent that such duplication or disclosure is necessary to fulfill obligations under the Agreement. In all cases, Consultant's use or further disclosure of information shall be in a manner that would not violate the requirements of HIPAA rules and regulations, if done by Facility Operator, and will not identify Facility Operator as the source of such data. Any new contracts during the Term shall be in the name of the Facility Operator or assignable thereto upon a termination of this Agreement.

Section 2.12 **Action Proposals**.

(a) Any action that Consultant proposes to undertake that is not specifically authorized by the preceding clauses of this Article II may be implemented for the Facility only by the Facility Operator pursuant to an Action Proposal (as herein defined). For purposes of this Agreement, "Action Proposal" means such business operations plans as may be delivered by Consultant to Facility Operator from time to time detailing the Consultant's proposed goals and procedures for technical, financial, and administrative activities for the Facility. Each such Action Proposal shall, to the extent permitted by applicable law, be deemed approved if no objection is made within ten (10) business days of submission to Facility Operator (or in the event of an emergency, as determined by Consultant in its sole discretion, in such shorter period of time as set forth in the applicable Action Proposal).

(b) Upon approval by Facility Operator of an Action Proposal, Consultant shall (subject to the terms and conditions hereof) use commercially reasonable efforts to assist Facility Operator in the implementation of such Reserved Power Act(s) as are set forth in such Action Proposal.

(c) The Parties expressly agree that nothing in this Section shall be construed to give the Consultant the authority to undertake any actions that would infringe on the Reserved Powers to the Facility Operator, as set forth in Section VII of Attachment B herein, or may infringe on the powers reserved to the Facility Operator in accordance with 10 NYCRR 405.3

Section 2.13 Facility Operator shall fully cooperate to help achieve the purposes of this Agreement at Facility Operator's cost and expense. Facility Operator will provide the necessary records, data, information and such software for the performance of such Services by Consultant as agreed to by the parties. Facility Operator shall appoint one or more liaisons with responsibility for communicating with Consultant. Consultant, its administrators and other staff will communicate with Operator on a regular and frequent basis through such liaisons.

Article 3 **COMPENSATION AND PAYMENT OF COSTS AND EXPENSES**

Section 3.01 *Compensation.*

(a) In consideration of the provision of the Services set forth in Article 2 above, the Facility Operator shall pay Consultant, and Consultant shall accept as full and sufficient compensation therefore, a monthly service fee (the "Service Fee"). The monthly Service Fee will be equal to all revenue received by the Facility for dates of service during the Term of this Agreement (subject to the payment of the Facility's expenses in accordance with Article 2 above), PLUS amounts to reimburse Consultant for employees of Consultant who, subject to compliance of all existing union contracts and state pension rules, provide services when an employee of the County Facility is unable to provide services, MINUS the Monthly Shortfall Payment (as defined below). Any Service Fee shall be paid quarterly, on the 15th day of the month following the end of each quarter (i.e., January, April, July, and October). Consultant shall prepare an invoice for Facility Operator's review and approval documenting what it believes to be the Service Fee, if any, due and owing in accordance with the calculation methodology set forth in this Section 3.01. Notwithstanding anything contrary to the foregoing, starting on the 1st day of the month immediately succeeding the Effective Date, and continuing monthly thereafter until this Agreement is terminated, Facility Operator shall pay Consultant \$30,000 of its monthly Service Fee out of the revenue received by the Facility for dates of service during the Term of this Agreement. It is understood and agreed upon between the Parties that these \$30,000 payments shall be treated in all respects as a credit against the Service Fee due and owing Consultant.

(b) The "Monthly Shortfall Payment" shall be an amount equal to: (I) the net loss from operations of the Facility as determined by the Facility Operator including preparing meals for Meals on Wheels but not delivery costs (which preparation costs amount is \$6.00 per meal), LESS (II) an amount equal to the difference in benefits paid by the Facility Operator versus the benefits that would be paid by Consultant for a similar staff position ("Monthly Shortfall Payment").

Section 3.02 *Benefit Packages; Retained Programs.* Facility Operator shall remain responsible for and pay all costs and expenses of the Facility for employee pension, health, welfare, and other

fringe benefit plans, and for those services and programs set forth on Attachment C hereto, provided by Facility Operator.

Section 3.03 **Taxes.** All taxes and other governmental obligations properly imposed on the Facility Operator shall be the obligation of the Facility Operator, and Consultant shall have no responsibility for such liabilities. All taxes and other governmental obligations properly imposed on Consultant shall be the obligation of Consultant, and the Facility Operator shall have no responsibility for such liabilities. Each Party shall be and remain the employer of its employee personnel. Such personnel shall at no time be deemed employees of the other Party and shall not be entitled or eligible to participate in benefits or privileges provided or extended by the other Party to its employees. Consultant is not the agent, employee, joint venturer or partner of Facility Operator and has no power of authority to act in the name of Facility Operator or to incur obligations, settle claims or enter into contracts in the name of or on behalf of Facility Operator.

Article 4 **RENT**

Section 4.01 **Rent Abatement.** In consideration of the capital expenditures described in Exhibit 2.03(i), the Parties acknowledge and agree that: (a) rent under the Lease shall be abated for the first three (3) years of the term of this Agreement, and after the third (3rd) anniversary of the Commencement Date (as defined in Section 5.01), rent shall be paid at the rates set forth in the Lease; and (b) Consultant shall not be obligated to make any other payment of rent on behalf of Facility Operator, and Facility Operator shall not deduct any other payment of rent from the Service Fee (as defined in Section 3.01(a)), during the three (3) year period described in Section 4(a).

Article 5 **TERM AND TERMINATION**

Section 5.01 **Term.** The term of this Agreement will begin on the Execution Date (the “Commencement Date”) and will continue until the earlier of the CON Transition Date or August 14, 2023, subject to automatic one (1) year renewals if Consultant has failed to receive the CON by August 14, 2023 (or any subsequently extended period) due to delays outside of the reasonable control of the Consultant, and unless sooner terminated as provided in this Agreement.

Section 5.02 **Termination.** This Agreement may be terminated upon the occurrence of any of the following events:

(a) **Termination by Consultant for Cause.** Consultant may terminate this Agreement at any time in the event of a breach by the Facility Operator of any of its material obligations under this Agreement, if the Facility Operator has failed to cure such breach within thirty (30) days. Notwithstanding the foregoing, Consultant may terminate this Agreement immediately if the Facility Operator does not, within seven (7) days, cure a failure by it to comply with a material pertinent provision of any federal, state or local statute, rule or regulation in carrying out its responsibilities hereunder; provided, however, that (i) if such failure poses a material risk of imminent harm to a resident at the Facility, the aforementioned cure period shall be reduced to twenty-four (24) hours, during which time the obligations of Consultant to the Facility Operator under this Agreement shall be suspended, or (ii) if such failure does not pose a material risk of imminent harm to a resident at the Facility and reasonably cannot be cured within seven (7) days, the aforementioned cure period shall be extended for a reasonable period of time, provided the

Facility Operator, within such seven (7) day period, has commenced taking steps to effectuate a cure, and thereafter diligently and continuously takes reasonable steps to complete the cure.

(b) **Termination by Consultant for Failure to Accept Advice.** Consultant may terminate this Agreement at any time, if Consultant determines in its reasonable discretion that Facility Operator has failed or refused to accept or act on the advice of Consultant (limitations under union contracts and public employee protections shall not be a refusal to accept or act on advice) which failure or refusal may have a material adverse effect on the financial condition, quality of care, or legal compliance of the Facility. The foregoing right is subject to Consultant giving thirty (30) days prior written notice during which the Facility Operator has failed to cure such breach within thirty (30) days (or within a reasonable time thereafter in the event the breach is a type that cannot reasonably be cured within thirty (30) days, provided Facility Operator has commenced taking steps to effectuate a cure within such thirty (30) day period, and thereafter takes reasonable steps to complete the cure and such cure is effected within sixty (60) days) of its receipt of the Consultant's notice of such breach, describing the alleged breach with specificity

(c) **Automatic Termination.** This Agreement shall automatically terminate at the end of the term set forth above in Section 4.01. Notwithstanding anything foregoing to the contrary, the Parties agree that, under no circumstances, shall the term, or extended term, of this Agreement extend beyond July 31, 2027.

(d) **Termination by the Facility Operator for Cause.** The Facility Operator may terminate this Agreement at any time in the event of a breach by Consultant of any of its material obligations under this Agreement, provided Consultant has failed to cure such breach within thirty (30) days (or within a reasonable time thereafter in the event the breach is a type that cannot reasonably be cured within thirty (30) days, provided Consultant has commenced taking steps to effectuate a cure within such thirty (30) day period, and thereafter takes reasonable steps to complete the cure and such cure is effected within sixty (60) days) of its receipt of the Facility Operator's notice of such breach, describing the alleged breach with specificity. Notwithstanding the foregoing, the Facility Operator may terminate this Agreement immediately if Consultant does not, within seven (7) days, cure a failure by it to comply with a material pertinent provision of any federal, state or local statute, rule or regulation in carrying out its responsibilities hereunder; provided, however, that (i) if such failure poses a material risk of imminent harm to a resident of the Facility, the aforementioned cure period shall be reduced to twenty-four (24) hours, during which time the obligations of the Facility Operator to Consultant under this Agreement shall be suspended, or (ii) if such failure does not pose a material risk of imminent harm to a patient at the Facility and reasonably cannot be cured within seven (7) days, the aforementioned cure period shall be extended for a reasonable period of time, provided Consultant, within such seven (7) day period, has commenced taking steps to effectuate a cure, and thereafter diligently and continuously takes reasonable steps to complete the cure.

Article 6 **RESERVED.**

Article 7 **COVENANTS**

Section 7.01 *Nondisclosure of Proprietary Information.*

(a) Consultant acknowledges and agrees that during the Term it will have access to Confidential Information (as defined below) and other proprietary information of the Facility Operator relating to the operation of the Facility and the Facility Operator and its affiliates, all of which are hereby deemed confidential. Consultant shall not, nor shall its members, managers, employees, representatives or agents, except as may be required under applicable law or by any lawful subpoena, court order or legal process, at any time without the Facility Operator's prior written consent: (i) disclose any such information to any third party, or (ii) reproduce or utilize any such information in furtherance of any other business venture. If Consultant is required under applicable law or by lawful subpoena, court order, or legal process to disclose any Confidential Information or other proprietary information of the Facility Operator, Consultant shall provide sufficient notice thereof to the Facility Operator to enable it to seek a protective order or other appropriate legal or equitable remedy to prevent such disclosure. Consultant shall also keep medical records of the Facility Operator and its residents confidential in accordance with all applicable state and federal laws.

(b) The Facility Operator acknowledges and agrees that during the Term it will have access to Confidential Information (as defined below) and other proprietary information of Consultant relating to Consultant and its affiliates, all of which are hereby deemed confidential. The Facility Operator shall not, nor shall its Board of Directors, employees, representatives and agents, except as may be required under applicable law or by any lawful subpoena, court order or legal process, at any time without Consultant's prior written consent: (i) disclose any such information to any third party, or (ii) reproduce or utilize any such information in furtherance of any other business venture. If the Facility Operator is required under applicable law or by lawful subpoena, court order, or legal process to disclose any Confidential Information or other proprietary information of Consultant, the Facility Operator shall provide sufficient notice thereof to Consultant to enable it to seek a protective order or other appropriate legal or equitable remedy to prevent such disclosure.

(c) For purposes of this Article 6.01, the term "Confidential Information" shall mean the non-public information of a Party, or any entity with which a Party contracts to provide any of the Services, including, but not limited to, formulae, patterns, compilations, programs, devices, methods, systems, techniques, processes, financial information, business strategies, costing data, patient lists, payer lists, manuals, policies and procedures, forms, and contractual arrangements. Confidential Information shall not include information which: (i) is known to the receiving Party prior to receiving it from the other Party; (ii) is generally known to the public; (iii) is disclosed to one Party at any time by a third-party who had the legal right to disclose it; or (iv) is independently developed by the other Party in compliance with law. The provisions of this Section 6.01 shall survive the termination or expiration of this Agreement.

Section 7.02 ***Reasonableness of Restrictions.*** The Parties acknowledge that the restrictions in Section 6.01 are reasonable and necessary to protect the legitimate interests of the Parties and that any violation would result in irreparable injury to the non-disclosing Party. The Parties further acknowledge that, in the event of a violation of any such restrictions, the non-disclosing Party shall be entitled to preliminary and permanent injunctive relief without having to prove actual damages or immediate or irreparable harm or to post a bond. The non-disclosing Party shall also be entitled to an equitable accounting of all earnings, profits and other benefits arising from such violation, which rights shall be cumulative and in addition to any other rights or remedies to which the non-

disclosing Party may be entitled to at law or in equity. Notwithstanding the foregoing, if the restrictions specified in Article 6.01 are adjudged unreasonable in any court proceeding, the Parties hereby agree to the reformation of such restriction by the court to such limits as it finds reasonable, and neither Party will assert that such restrictions should be eliminated in their entirety by such court.

Section 7.03 ***Insurance.***

(a) During the Term, Consultant shall (subject to the terms hereof) continue to maintain insurance policies with substantially the same coverages as its present insurance coverage and shall name the Facility Operator as an additional insured.

(b) During the Term, the Facility Operator shall continue to maintain insurance policies with substantially the same coverages as its present insurance coverage and shall name Consultant as an additional insured.

(c) On or before the Commencement Date (and thereafter annually upon request by one Party to the other), each Party shall provide the other with certificates of insurance evidencing the insurance required to be maintained under this Agreement. The certificates of insurance required hereunder shall state that each Party shall be provided with notice of changes in carriers or material terms of the coverage. Each Party shall also require appropriate levels of coverage from all subcontractors, shall maintain in its files evidence of all subcontractors' insurance coverage, and shall provide proof of such coverage to the other Party upon request. The cost of the Facility Operator's insurance will be an expense related to the operation of the Facility. The terms of this Section shall not be deemed to limit the liability of the Parties, or to limit any rights the Parties may have, including, without limitation, any rights of indemnity and contribution.

Section 7.04 ***Compliance with HIPAA.*** The Parties agree to execute and deliver the Business Associate Addendum attached hereto as Attachment A as of the Commencement Date.

Section 7.05 ***Compliance with Legal Requirements.*** The Parties agree to comply with the Compliance Addendum attached hereto as Attachment B.

Article 8 **MISCELLANEOUS**

Section 8.01 ***Attachments Incorporated by Reference.*** If there are any Attachments to this Agreement they are a part of this Agreement as if set forth at length verbatim where reference is made to them in this Agreement.

Section 8.02 ***Change in Law.*** If there is a change in Medicare, Medicaid or other federal or state statutes or regulations or in the interpretation thereof, which renders any of the material terms of this Agreement unlawful or unenforceable, this Agreement shall be amended by the Parties as a result of good faith negotiations to the least extent necessary in order to carry out the original intention of the Parties in compliance with such law or regulation. In the event such law or regulation is subsequently amended or interpreted in such a way as to make any provision of this Agreement that was formerly invalid valid, such provision shall be considered valid from the effective date of such interpretation or amendment.

Section 8.03 **Approvals.** Where the agreement, approval, acceptance or consent by either Party is required under this Agreement, such action shall not be unreasonably delayed or withheld.

Section 8.04 **Assignment.** Neither Party may assign its interest in, subcontract, or delegate the performance of its obligations under, this Agreement without obtaining the prior written consent of the other Party.

Section 8.05 **Force Majeure.** If either Party is delayed or prevented from fulfilling any of its obligations under this Agreement, by force majeure, such Party shall not be liable under this Agreement for the delay or failure for so long as such event continues. "Force majeure" means any cause beyond the reasonable control of a Party, including but not limited to an act of God, act or omission of civil or military authorities of a state or nation, fire, strike, flood, riot, war, delay of transportation, or inability due to any of these causes to obtain necessary labor, materials or facilities.

Section 8.06 **Amendment.** This Agreement may not be modified except by an agreement in writing signed by both Parties.

Section 8.07 **Entire Agreement.** This Agreement supersedes all agreements previously made between the Parties relating to its subject matter. There are no other understandings or agreements between the Parties with respect to the subject matter hereof except for the Lease. If there is a conflict between the Lease and this Agreement this Agreement shall control.

Section 8.08 **Confidentiality of Services Agreement.** The terms and conditions of this Agreement, as well as any documents or information (not publicly available) provided in connection with the negotiation and preparation of this Agreement, are Confidential Information.

Section 8.09 **Non-Waiver.** No delay or failure by a Party to exercise any right under this Agreement, and no partial or single exercise of that right, will constitute a waiver of that or any other right.

Section 8.10 **Headings.** Headings in this Agreement are for convenience only and are not to be used to interpret or construe its provisions.

Section 8.11 **Governing Law.** This Agreement is to be construed in accordance with and governed by the laws of the State of New York, without regard to such state's conflict of laws principles.

Section 8.12 **Notice.** Any notice required or desired to be given hereunder shall be in writing and delivered personally, by nationally recognized overnight delivery service, or by certified mail, return receipt requested, postage prepaid, or portable document format (pdf) acknowledged by the receiving party addressed as follows:

If to Consultant, to:

Solomon Klein
Infinite Care Centers LLC
267 Broadway
Brooklyn, New York 10211
Email: sol@infinitecare.com

With copies to: Daniel Gottesman, Esq.
Ulmer & Berne LLP
1660 West 2nd Street, Suite 1100
Cleveland, Ohio 44113-1406
Email: dgottesman@ulmer.com

If to the Facility Operator, to: Michelle L. Huck, CHPC
Assistant County Manager
Corporate Compliance Officer
HIPAA Privacy Officer
Sullivan County Manager's Office
100 North Street, P.O. Box 5012
Monticello, NY 12701
845-807-0450 Office
Email Michelle.Huck@sullivanny.us

With copies to: Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn: Shawn M. Griffin
(M) 585-750-7364
Email SGriffin@HarrisBeach.com

AND

Lowell S Feldman, LNHA
lowellsfeldman@gmail.com
631-944-2608

Alternatively, at such other address and to the attention of such other person as either Party shall designate by notice. Notice shall be deemed to have been given when received if delivered personally or by overnight delivery service, or three business days after being postmarked, if sent by certified mail, and upon receipt if sent by facsimile transmission, provided that such receipt is acknowledged by the other Party or the other Party's agent.

Section 8.13 *Representation by Counsel.* The Parties agree that each has had the benefit of representation by legal counsel in negotiating this Agreement. No Party is to be construed as the drafter of this Agreement for purposes of determining the meaning of any provision of this Agreement, or for allocating the benefit of any future ambiguity.

Section 8.14 *Compliance with Law.* Each of Consultant and the Facility Operator agrees that it shall comply with all pertinent provisions of federal, state and local statutes, rules and regulations in carrying out its responsibilities hereunder.

Section 8.15 *Arbitration.* In the event that any dispute or controversy arises between the Parties out of or relating to this Agreement, a Party shall notify the other Party in writing of the existence

of the dispute or controversy, and the Parties shall meet and negotiate in good faith to attempt to resolve the matter. If such efforts do not resolve the dispute or controversy, the parties shall submit the dispute to arbitration, and the parties shall mutually agree on an arbitrator as soon as practical with time of the essence. The proceedings shall be governed by the Commercial Rules of the American Arbitration Association then in effect, and the arbitration will take place in New York, New York. The arbitrator may not award punitive or exemplary damages, nor ignore or vary the terms of this Agreement; and must apply controlling law. Arbitration will be binding and the remedy for the settlement of the dispute or controversy. The Party who prevails on entry of the award of judgment shall be entitled to its costs and expenses, including reasonable attorneys' fees incurred in connection therewith.


Section 8.16 *Severability*. In the event any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of this Agreement or any other application thereof shall not in any way be affected or impaired thereby.

Section 8.17 *Counterparts*. This Agreement may be executed in multiple counterparts, and all so executed will constitute one agreement, binding on both parties hereto, even though both parties are not signatories to the original or same counterpart. Any counterpart of this Agreement will for all purposes be deemed a fully executed instrument.


[Remainder of page intentionally left blank. Signature page and attachments follow.]

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Consulting Agreement as of the date first above written.

COUNTY OF SULLIVAN

By: 
Name: Joshua Petusk
Title: County Manager

SUNSET LAKES CONSULTING LLC
DBA INFINITE CARE

By: 
Name: Solomon Klein
Title: Authorized Representative

Attachment “A”

Business Associate Addendum

Attachment "B"

Compliance Addendum - Contracted Services (NYS)

The following are hereby incorporated by reference to the extent applicable to Consultant's services ("Services") hereunder and not otherwise expressly stated in the Agreement. Facility Operator and Consultant are sometimes referred to herein individually as a "Party" and together as the "Parties".

I. Standards of Performance and Quality Assurance.

- (a) Consultant agrees to perform Services in accordance with applicable Facility policies (including but not limited to the corporate bylaws, the bylaws, rules and regulations of the medical staff, and other Facility policies ("Facility Policies"), to extent that copies of the Facility Policies are provided to Consultant prior to the Commencement Date, and applicable federal, state and local rules and regulations (including but not limited to Article 28 of the Public Health Law and the Medicare and Medicaid Programs) ("Applicable Law").
- (b) Consultant shall participate in mandatory educational programs sponsored by Facility Operator, if requested by Facility Operator.
- (c) Consultant shall participate in and cooperate with Facility's performance improvement, patient safety, quality assurance and risk management programs, with respect to its Services, if requested by Facility Operator.
- (d) Quality of Services including mortality and morbidity, adverse drug reactions, and infection rate will be monitored as part of Facility Operator's ongoing professional practice evaluation process and will be monitored on an ongoing basis and at the time of reappointment by Facility Operator, if applicable to Consultant and/or its employees and contractors.

II. The Anti-Kickback Law and Similar Laws. The Parties acknowledge and agree that compensation to be paid to Consultant pursuant to the Agreement has been determined by the Parties through good faith negotiations to be commercially reasonable and reflect fair market value and not to be based in any way upon the volume or value of patient referrals or any other business generated between the Parties and their respective affiliates and subsidiaries. Consultant and Facility Operator intend to comply with Applicable Law, including without limitation, the Section 1128B(b) of the Social Security Act and Section 1877 of the Social Security Act).

III. No Disqualified or Excluded Parties. Consultant represents and warrants to Facility Operator that, during the term of the Agreement, Consultant and each employee, contractor and/or agent of Consultant providing Services to Facility Operator **has not been**: (i) convicted of a criminal offense that falls within the ambit of 42 USC 1320a-7(a) (e.g., a conviction relating to services or supplies paid for by Medicare, Medicaid or other federal healthcare program), or (ii) excluded,

debarred, suspended or otherwise ineligible to participate in a federal health care program, including but not limited to Medicare and Medicaid.

Consultant agrees to confirm, before employing or contracting (and periodically thereafter as required by Applicable Law), its employees, contractors and/or agents whose salaries are directly or indirectly paid for by a federal health care program against the exclusion lists maintained by the following (which exclusion lists shall be updated automatically herein by notice from governmental authorities): (a) the Department of Health and Human Services, Office of Inspector General; (b) the General Services Administration; and (c) the New York State Office of Medicaid Inspector General.

Consultant shall immediately notify Facility Operator in writing in the event any of its employees, contractors or agents appears on an exclusion list (an “Exclusion Listing”). The Parties recognize that an Exclusion Listing may not be accurate and may require verification. However, while such verification occurs, if reasonably required, the person on the Exclusion Listing shall be removed immediately from providing Services hereunder.

- IV. **Federal Access to Records.** To the extent Section 1861(v)(1)(I)(ii) of the Social Security Act, 42 USC § 1395x(c)(1)(i), is applicable, the parties agree to make available, upon the written request of the Secretary of the Department of Health and Human Services or upon the request of the Comptroller General, or any of their duly authorized representatives, this Agreement, and any other books, records and documents that are necessary to certify the nature and extent of costs incurred by them for services furnished under this Agreement. The obligations hereunder shall extend until the expiration of four (4) years after the services are furnished under the Agreement. The parties shall notify each other of any such request for records. This paragraph shall survive the expiration or termination of the Agreement.
- V. **Compliance with HIPAA.** The Parties shall comply with the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 and related regulations promulgated by the Secretary (commonly referred to as the “HITECH Act”) and the Health Insurance Portability and Accountability Act of 1996, 42 USC §1320d (“HIPAA”) and the regulations promulgated thereunder, including, without limitation, the federal privacy regulations (45 CFR Parts 160 and 164), the federal security standards (45 CFR Part 142), and the federal standards for electronic transactions (45 CFR Parts 160 and 162). To the extent required, Consultant shall execute a HIPAA Business Associate Agreement, which may be annexed hereto and made a part hereof.
- VI. **Compliance with the New York State Health Code.** To the extent applicable, in accordance with Section 400.4 of Title 10 (Health) of the Codes, Rules and Regulations of the State of New York: (i) each of the Parties shall comply with those provisions of Chapter V of Title 10 (Health) of the New York Codes, Rules and Regulations which are binding on that Party under the laws of the State of New York; and (ii) Notwithstanding any other provision in the Agreement, the Facility

Operator remains responsible for ensuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, State and local statutes, rules and regulations. The Parties acknowledge that the foregoing provision is not intended to increase or decrease either Party's respective obligations under the Agreement.

VII. Reserved Powers.

- (a) Notwithstanding anything to the contrary set forth in the Agreement or this Addendum, Facility Operator will retain the following powers (collectively, the "Reserved Powers"):
1. direct, independent authority over the appointment and/or dismissal, in its sole discretion, of the Facility's management level employees (including but not limited to, the Facility/Service Administrator/Director, the Medical Director, the Director of Nursing, the Chief Executive Officer, the Chief Financial Officer and the Chief Operating Officer) and all licensed or certified health care staff;
 2. the right to adopt and approve, at its sole discretion, the Facility's operating and capital budgets;
 3. independent control over and physical possession of the Facility's books and records;
 4. independent control over and physical possession of the Facility's operating policies and procedures;
 5. full authority and responsibility for, and control over, the operations and management of the Facility;
 6. the right and authority to independently adopt and, approve and enforce, in its sole discretion, policies affecting the Facility's delivery of health care services;
 7. the right to independently adopt, approve and enforce, at its sole discretion, the disposition of assets and authority to incur debts;
 8. the right to approve, at its sole discretion, contracts for management and/or clinical services;
 9. the right to approve, at its sole discretion, any Facility debt; and
 10. the right to approve, at its sole discretion, settlements of administrative proceeding or litigation to which the Facility is a party.

- (b) No powers specifically reserved to the Facility Operator in this Agreement may be delegated to, or shared by, Consultant or any other person or entity.

VIII. Controlling Provision (Conflicts Clause). In the event of any disagreement between the Facility Operator and Contractor regarding control, **Section 7** of this Addendum shall control; provided, however, that Section 1.07 shall control with respect to any power constituting a Restricted Power.

EXHIBIT 2.03(i)

Consultant shall make the following capital expenditures in accordance with the provisions of Section 2.03(i) of this Agreement, and Section 3.3 of the Lease:

2. Undertake Domestic Hot Water Project.
3. Upgrade Fire Alarm System.
4. Install AC Rooftop Units.
5. Upgrade PTAC Wall Units.
6. Replace Windows (those in need of replacement).
7. Perform required maintenance on Refrigeration Units.
8. Update Showers and Washrooms in Units 3 and 4.
9. Upgrade Internet/WiFi Service.
10. Install Combination Door Locks on all Common Area Rooms in the Units.
11. Install Emergency Power Outlets in all Resident Rooms.
12. Install Video Cameras at all exits, entrances, basement, parking lots, and the rooftop.
13. Install new Front Door.
14. Purchase Electric Beds for Resident Rooms.
15. Install Pot Machine.

The Parties agree to discuss and in good faith arrive at a conclusion as whether Consultant shall make the following additional capital expenditures in accordance with the provisions of Section 2.03(i) of this Agreement, and Section 3.3 of the Lease:

1. Finish replacement of worn Water Lines.
2. Replace worn Doors.
3. Analyze Exterior Waterproofing and apply Sealant, as needed.
4. Replace Slides into Manholes.
5. Upgrade Lighting to LED.
6. Install ventilation (AC or fan) in elevators.
7. Install Conveyor Toaster.

8. Install New Floor in Dish Room
9. Install Whirlpool Bathtubs in each Unit.
10. Purchase Vital Sign Monitoring Machines with External Temporal Thermometry for each Unit.
11. Purchase Tilt Table.
12. Install Harness lift system for Gait Training and Standing.
13. Purchase Nustep.
14. Purchase Weight System.
15. Purchase Biodex Balance System.
16. Purchase new Ultrasound E-Stim System (assuming current System cannot be repaired).
17. Purchase Rechargeable TENS Unit.
18. Purchase Exercise Therapy Mat.
19. Purchase Functioning Kitchen for OT Use.
20. Install TVs in Resident Rooms.
21. Purchase Ice Machine for Staff Dining Room.