

PURCHASE AND SALE AGREEMENT FOR ASSISTED LIVING FACILITY

For valuable consideration, the receipt and adequacy of which is hereby acknowledged, this Agreement dated 6-14, 2022 is hereby made by and between the City of Lexington and or Assignee, and/or their assigns or nominee, (hereinafter "PURCHASER") and United Partners, LLC for Seller (hereinafter "SELLER").

WITNESSETH:

WHEREAS, SELLER owns an independent and assisted living facility and improvements located at 1811 Ridgeway, Lexington, NE 68850, legally described as: Lots 1, 2 and 3, Block 1, Paulsen's First Addition to the City of Lexington, Dawson County, Nebraska, also known as Avamere at Lexington.

WHEREAS, SELLER desires to sell, transfer and assign to PURCHASER the land, together with all improvements thereon (hereinafter referred to as the "Real Estate") and personal property (hereinafter referred to as "Personal Property");

WHEREAS, PURCHASER desires to acquire from SELLER said Real Estate and Personal Property.

NOW THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

1. SALE OF REAL ESTATE AND PERSONAL PROPERTY.

Subject to the terms and conditions of this Agreement, SELLER hereby agrees to sell, convey, transfer, assign and deliver to PURCHASER, and PURCHASER agrees to purchase from SELLER, the Real Estate and Personal Property, as defined below:

Real Estate defined: The land, including all improvements, legally described and identified on Schedule A (attached hereto and made a part hereof);

Personal Property defined: The non-real estate assets described and identified on Schedule B (attached hereto and made a part hereof) are the Personal Property subject to this Agreement.

2. PURCHASE PRICE.

The total purchase price for the Real Estate and Personal Property shall be One Million Two Hundred Thousand Dollars (\$1,200,000.00), plus and/or minus the Prorations, as such term is hereinafter defined (the "Purchase Price"), which shall be paid as follows:

On behalf of PURCHASER 

On behalf of SELLER 

(a) The sum of \$10,000.00 shall be paid by check from PURCHASER within Five (5) days of the effective date of this Agreement (effective date of the agreement is the date in which both parties have signed and delivered the agreement to the other party), which amount shall serve as an earnest money deposit, subject to the provisions of this Agreement, and applied to the balance of the purchase price due at closing. Said earnest money deposit shall be held in escrow by Heldt, McKeone & Copley as escrow agent.

(b) At closing, the PURCHASER shall pay to SELLER, by wire or cashier's check, the balance of the Purchase Price in the amount of PURCHASE PRICE LESS EARNEST MONEY and PRORATIONS. Purchase Price to reflect (a) credits to PURCHASER for any liabilities or charges assumed, and (b) credits to SELLER and/or PURCHASER for any amounts prepaid or otherwise credited for the benefit of PURCHASER; provided, however, that the Prorations shall not include any adjustments for the benefit of SELLER for any unpaid rents or assessments.

(c) The Prorations shall be defined to mean prepaid rents, prepaid assessments, security deposits, prepaid or unpaid water and other utility or fuel charges, and prepaid or unpaid service contracts. The Prorations shall be adjustments to the Purchase Price to reflect (a) credits to SELLER and/or PURCHASER for any liabilities or charges assumed, and (b) credits to SELLER for amounts prepaid or otherwise credited for the benefit of PURCHASER; provided, however, that the Prorations shall not include any adjustments for the benefit of SELLER for any unpaid rents or assessments.

3. PURCHASER'S RIGHTS OF INSPECTION, CANCELLATION, OTHER CONTIGENCIES

(a) PURCHASER may inspect or cause to be inspected the condition of the Real Estate and all improvements and Personal Property;

(b) PURCHASER may inspect or cause to be inspected all other documents and materials relating to the Real Estate and Personal Property;

(c) PURCHASER may cancel this Agreement within twenty (20) days in the event that PURCHASER does not obtain a loan approval for the purchase of the Real Estate and Personal Property that is satisfactory to PURCHASER, and the determination of an acceptable loan shall be in the PURCHASER'S sole discretion.

(d) PURCHASER may cancel this Agreement in the event this Agreement is not approved by the City Council.

On behalf of PURCHASER JP

On behalf of SELLER ND

SELLER shall allow PURCHASER, or PURCHASER'S representatives, access or provide documents for review, whichever the case may be, to the Real Estate and Personal Property, at all reasonable times and cooperate with PURCHASER'S efforts to conduct the inspections permitted herein.

4. TITLE INSURANCE.

(a) Title Insurance: Within Thirty (30) days from the date of this Agreement, SELLER shall deliver a commitment for an ALTA owner's policy of title insurance that is reasonably acceptable to PURCHASER (together with legible copies of all easements and restrictions of record identified by the commitment), in the full amount of the purchase price, evidencing SELLER'S good and merchantable title to the Real Estate. Said policy to be issued by Heldt, McKeone & Copley. If title to all or part of the Property is unmarketable, as determined by relevant law, or is subject to liens, encumbrances, easements, conditions, restrictions or encroachments other than those disclosed in this Agreement, Buyer or Buyer's attorney shall give written notice of such defect to Seller within a reasonable time. Seller agrees to make every reasonable effort to perfect the title including the issuance of a title affidavit. Seller shall have a reasonable time to have such title defects removed or, such defects or exceptions which may be removed by the payment of money may be cured by deduction from the purchase price at time of closing. If Seller is unable to cure title, then Buyer shall have the option to terminate this Agreement, in which case Buyer shall be entitled to refund of the earnest money. If closing is delayed due to Seller's inability to provide marketable title, this Agreement shall continue in force and effect until either party rescinds this Agreement after making a reasonable effort to produce marketable title in the prescribed time. Furnishing a title insurance policy insuring over an exception shall constitute a cure of such exception in those cases where title is evidenced by title insurance. PURCHASER shall be responsible for the cost of the title insurance policy.

5. THE CLOSING.

Subject to PURCHASER'S right to terminate this Agreement, as set forth above, the closing of this transaction shall be held on or before August 1, 2022, unless earlier extended in writing and signed by mutual agreement of the SELLER and the PURCHASER. The time of the closing shall be a mutually convenient time for the PURCHASER and SELLER.

6. PURCHASER'S CLOSING INSTRUMENTS.

At closing, PURCHASER shall deliver to SELLER the following instruments:

On behalf of PURCHASER JP

On behalf of SELLER ND

- (a) A cashier's check, or wire transfer for the amount required by Paragraph 2.
- (b) Any other instruments reasonably necessary to complete the transaction contemplated hereby.

7. SELLER'S CLOSING INSTRUMENTS.

At the closing, SELLER shall deliver to PURCHASER the following documents:

- (a) A Warranty Deed reasonably acceptable to PURCHASER conveying good title in the Real Estate as described in Schedule A, and a Bill of Sale reasonably acceptable to PURCHASER conveying good title in the Personal Property as described in Schedule B;
- (b) Any other instruments reasonably necessary to complete the transaction herein.

8. POSSESSION.

PURCHASER shall take possession of all of the Real Estate and Personal Property at closing, subject to the rights of any tenant in possession.

9. PRORATIONS, TRANSFER TAXES, AND CLOSING COSTS.

Prorations shall take place at the time of closing. All closing costs shall be paid by PURCHASER.

10. CROSS INDEMNIFICATION.

SELLER hereby agrees to indemnify PURCHASER and hold and save PURCHASER harmless from and against all liabilities, debts, claims, actions, causes or action, losses, damages, and attorney's fees, now existing or that may hereafter arise from or grow out of SELLER'S past ownership of the Real Estate and Personal Property, that are of the subject of this Agreement, and which occurred through the date of closing. PURCHASER hereby agrees to indemnify SELLER and hold and save SELLER harmless from and against all liabilities, debts, claims, actions, or causes of action, losses, damages, and attorney's fees, that may arise from or grow out of PURCHASER'S ownership of the Real Estate and Personal Property, that are the subject of this Agreement after the date of closing.

SELLER and PURCHASER acknowledge that this contemplated transaction includes only the sale and purchase of the Real Estate and Personal Property, and that the Seller is not selling a business, nor do the parties intend that PURCHASER be deemed a successor of SELLER with respect to any liabilities

On behalf of PURCHASER OR

On behalf of SELLER MD

of SELLER to any third parties. Accordingly, PURCHASER shall, neither assume nor be liable for, any payments and benefits to past and/or present employees of SELLER in connection with the Business being conducted on or from the Property as may have accrued through the Closing Date, including, but not limited to, salaries, wages, commission, bonuses, vacation pay, health and welfare contributions, pensions, profit sharing, severance or termination pay, taxes or any other form of compensation or fringe benefit. The representations and indemnities set forth in this section shall survive the Closing or the earlier termination of this contract.

11. PURCHASER'S REPRESENTATIONS AND WARRANTIES.

PURCHASER hereby represents and warrants to SELLER as follows:

(a) PURCHASER warrants that it has full power and authority to execute, deliver and perform this Agreement;

(b) PURCHASER warrants that the execution, delivery and performance of this Agreement by PURCHASER has been duly authorized by all requisite actions on the part of PURCHASER;

(c) PURCHASER warrants that it has no judgment against it in any court of law or equity, nor does PURCHASER have knowledge of any claims that may lead to the institution of legal proceedings against it;

(d) PURCHASER warrants that all representations and warranties of PURCHASER in this Agreement are true, accurate and complete in all material respects as of the date hereof, and will be true, accurate and complete in all material respects as of the date of closing.

All representations and warranties of PURCHASER contained in this Agreement, and all remedial provisions contained herein, shall be deemed remade at closing and shall survive the closing.

12. SELLER'S REPRESENTATIONS AND WARRANTIES.

SELLER hereby represents and warrants to PURCHASER as follows:

(a) SELLER warrants that there are no claims, actions, suits or proceedings pending or threatened on account of or as a result of SELLER'S ownership of the Real Estate and Personal Property,

On behalf of PURCHASER 

On behalf of SELLER 

which, if adversely determined, would have an adverse impact on the value of the Real Estate and Personal Property, or would prevent or hinder the consummation of the transaction contemplated herein.

(b) SELLER warrants that records of the Real Estate and Personal Property that have been or will be delivered to PURCHASER for inspection constitute a true and accurate representation of the financial condition of the facility as of the date of said statements and records and no other contradictory records exist;

(c) SELLER warrants that SELLER has good and merchantable title in fee simple to the Real Estate and Personal Property, that are subject to this Agreement, and the SELLER has not entered into any leases, licenses, options, easements or other agreements, recorded or unrecorded, granting rights to any parties in any of the assets, other than to renters in the facility, and no person or other entity has any right to possession or occupancy of any of the assets, other than renters in the community;

(d) SELLER warrants that there exists no violation of any Federal, State, County, or any other laws, or ordinances, with respect to the occupancy, use and operation of the Real Estate and Personal Property as an independent and assisted living facility;

(e) SELLER warrants that SELLER is not in default under or in violation of any contract, commitment, or restriction to which they are a party or by which they are bound, which default or violation would have a material and adverse effect on this transaction;

(f) SELLER warrants that they are not aware that there has ever been or is currently any hazardous substances, generated, stored, buried, placed, held, located or disposed of on, under or at the Real Estate and the Real Estate has never been used as a dump site, and there are no, nor have there ever been any, underground storage tanks in or on the Real Estate.

The definition of "Hazardous substances" shall mean all hazardous or toxic materials, substances, pollutants, contaminants, or wastes currently identified as a hazardous substance or waste in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (commonly known as "CERCLA"), as amended, the Superfund Amendments and Preauthorization Act (commonly known as "SARA"), as amended, the Resource Conservation and Recovery Act (commonly known as "RCRA"), as amended, or any other federal, state or local legislation or ordinances applicable to the Real Estate or Personal Property;

On behalf of PURCHASER JP

On behalf of SELLER ND

(h) SELLER warrants that to the best of SELLER'S knowledge the water and sewer systems, together with all mechanical systems serving the subject Real Estate and Personal Property, are in sound operating condition, free from hidden or latent defects, and are adequate in size and performance to properly serve the needs of the existing facility in its entire developed capacity. At Closing, SELLER shall deliver and convey all architectural, structural, physical, and infrastructure plans, drawings, specifications and renderings related to the Real Estate. Additionally, SELLER shall deliver and convey original copies of all appropriate tenant files, including signed rules and leases; and

(i) SELLER warrants that to the best of SELLER'S knowledge all representations and warranties of SELLER in this Agreement are true, accurate and complete in all material respects as of the date hereof, and will be true, accurate and complete in all material respects as of the date of closing.

(j) SELLER has no actual knowledge of: (1) notice of city, county, state, federal, building, zoning, fire or health codes, regulations or ordinances filed or contemplated against the Property, (2) current pending lawsuit(s), investigation(s) inquiry(ies), action(s), or other proceeding(s) affecting the right to use and occupy the Property, (3) unsatisfied construction liens, (4) tenants in bankruptcy, or (5) pending or threatened condemnation, eminent domain, changes in grade of public streets affecting the Property or similar proceedings affecting the Property or (6) of any unfulfilled order or directive of any applicable governmental agency or casualty insurance company requiring any investigation, remediation, repair, maintenance or improvement be performed on the Property. If SELLER has any knowledge regarding the above mentioned, SELLER shall provide a listing and description of actions;

(k) SELLER to continue operation of the facility in the ordinary course of business as an independent and assisted living facility pending Closing. To that end, SELLER and PURCHASE may enter into a lease agreement for the PURCHASER to operate the facility pending Closing. The terms and conditions of said lease agreement shall be separately agreed to in writing. SELLER shall maintain the Property, including landscaping and grounds, in its present condition, ordinary wear and tear excepted. PURCHASER shall be permitted to make a final inspection prior to possession or closing, whichever is sooner, in order to determine that there has been no change in the condition of the property. SELLER agrees to remove, at its expense and prior to possession, all personal property not included in this sale, including all trash and miscellaneous items. Any such personal property remaining on the premises shall, unless otherwise agreed, be conclusively presumed to have been abandoned by and of no value to SELLER. SELLER to be liable for any costs incurred by PURCHASER for the removal of said personal property.

(l) SELLER agrees to provide PURCHASER full disclosure of any and all free, discounted or prepaid rents, rents paid in forms other than cash, and lease agreements other than the disclosed tenant

On behalf of PURCHASER AP

On behalf of SELLER ND

leases, that may be in effect currently or beyond the scheduled Closing Date. SELLER warrants that unless otherwise indicated by the rent roll provided, no other tenants are in default or arrears. SELLER hereby covenants not to terminate any existing lease or occupancy agreement. SELLER further covenants not to terminate any employees without consent of the PURCHASER.

(m) SELLER warrants that the business entity currently holding title to the Real Estate is duly organized, validly existing, and in good standing under the laws of the State of New Mexico, but is authorized to do business in the State of Nebraska;

(n) SELLER warrants that it has full power and authority to execute, deliver and perform this Agreement, no other third-party approvals are required, and that performance of this agreement will not violate any other agreements to which the SELLER is a party;

(o) SELLER warrants that the execution, delivery and performance of this Agreement by SELLER has been duly authorized by all requisite actions on the part of SELLER;

(p) SELLER warrants that there are no mortgages on the Real Estate other than those specifically listed in the public county records, and if so, SELLER will satisfy those mortgages on or before the Closing;

(q) At Closing, SELLER shall deliver all keys (master and copies) relating to the Real Estate and Personal Property;

(r) At Closing, SELLER shall deliver a listing and duration of any warranties that remain in effect relating to the Real Estate, including contractors' warranties for recent construction and repairs;

(s) SELLER warrants that to the best of SELLER'S knowledge all representations and warranties of SELLER in this Agreement are true, accurate and complete in all material respects as of the date hereof, and will be true, accurate and complete in all material respects as of the date of Closing.

All representations and warranties of SELLER contained in this Agreement, and all remedial provisions contained herein, shall be deemed remade at Closing and shall survive the Closing.

13. GENERAL TERMS.

On behalf of PURCHASER JP

On behalf of SELLER ND

SELLER shall bear the risk of loss or damage to the property prior to possession or closing, whichever first occurs. SELLER agree to place and maintain the hazard insurance on this property. In the event of substantial damage or destruction prior to closing, this Agreement shall be null and void, unless otherwise agreed by the Parties. The property shall be deemed substantially damaged or destroyed if it cannot be restored to its present condition on or before the closing date. Provided, however, PURCHASER shall have the right to complete the closing and receive insurance proceeds regardless of the extent of the damages.

The following other general provisions shall also apply to this Agreement:

(a) All notices that may be required by this Agreement shall be sent to the respective parties at the addresses appearing below:

"PURCHASER"

City of Lexington
PO Box 70
Lexington, NE, 68850

"SELLER "

United Partners, LLC
9 Charing Cross Court
Roswell, NM 88201

Any such notices shall be (i) personally delivered to the office set forth above, in which case they shall be deemed delivered on the date of delivery to said offices, (ii) sent by certified mail, return receipt requested, in which case they shall be deemed delivered three (3) days after deposit in the U.S. mail, postage prepaid, (iii) sent by facsimile, in which case they shall be deemed delivered on the date of transmission (if before 5:00 p.m. CST) or (iv) sent by air courier (Federal Express or like service), in which case they shall be deemed delivered on the date of actual delivery or (v) sent via email with confirmation from the receiving party that such email was received. Either party may change the address to which any such notice is to be delivered by furnishing written notice of such change to the other party via one of the above methods in compliance with the foregoing provisions;

(b) In the event the transaction contemplated hereby does not close or is terminated due to a default by SELLER, PURCHASER shall be entitled to immediate return of the Earnest Money and may pursue all its rights and remedies at law and in equity, including, without limitation, specific performance. In the event the transaction contemplated hereby does not close or is terminated due to a default by PURCHASER in the performance of its obligations under the Agreement, SELLER, as their sole remedy, either at law or in equity, shall be entitled to retain the Earnest Money as liquidated damages. In the event of a default by either party hereto, the party not in default shall give notice thereof to the defaulting party and an

On behalf of PURCHASER 

On behalf of SELLER 

opportunity to cure for a period of five (5) days following the delivery of notice, prior to exercising any right or remedy to which the party not in default may be entitled;

(c) PURCHASER may nominate and/or assign its rights under this Agreement to a third party without SELLER's consent.

(d) This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements or representations whether written or oral;

(e) This Agreement may only be modified if the modification is made in writing and signed by both PURCHASER and SELLER. No oral modifications shall be permitted;

(f) This Agreement is binding upon, and inures to the benefit of the parties hereto and their heirs, executors, administrators, successors, and assigns;

(g) Each party, by its execution of this Agreement, represents that by signing this Agreement, they are acting on the PURCHASER'S or SELLER'S behalf, whichever shall apply, and they are duly authorized and empowered by any necessary acts to make this Agreement binding;

(h) For purposes of this Agreement, the term "Day" shall mean calendar day, unless otherwise specified. The time in which any act provided by this Agreement is to be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or Holiday, in which case it also shall be excluded. If any deadline set forth herein falls on a Saturday, Sunday, or Holiday, the deadline shall be extended to the next business day;

(i) This Agreement is intended to be performed in accordance with, and only to the extent permitted by all applicable laws, ordinances, rules and circumstances. If for any reason and to any extent any portion of this Agreement shall be held to be invalid or unenforceable, the remainder of this Agreement shall be enforced as if such invalid or unenforceable provision did not exist, and such valid and enforceable remainder shall be enforced to the greatest extent as permitted by law;

(j) Time is of the essence of this Agreement, and of each provision thereof;

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, and agree to its terms.

On behalf of PURCHASER *JP*

On behalf of SELLER *JS*

[Handwritten Signature]

Purchaser's Signature

6-14-22

Acceptance Date

[Handwritten Signature]

Seller's Signature

6/15/22

Acceptance Date

Work/City of Lexington/United Partners

On behalf of PURCHASER *[Signature]*

On behalf of SELLER *[Signature]*

EXHIBIT A – Legal Address of Property

**Lots 1, 2 and 3, Block 1, Paulsen's First Addition to the City of Lexington, Dawson
County, Nebraska**

On behalf of PURCHASER JP
Page 12 of 13

On behalf of SELLER ND

EXHIBIT B – Personal Property to be Included

All personal property associated with the operation of the facility.

