



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF HEALTH SERVICE REGULATION

ROY COOPER  
GOVERNOR

MANDY COHEN, MD, MPH  
SECRETARY

MARK PAYNE  
DIRECTOR

April 12, 2017

D. Gray Angell, Jr.  
142 Bermuda Village Drive  
Bermuda Run, NC 27006

**No Review**

**Record #:** 2224  
**Facility Name:** Brookstone Terrace  
**FID #:** 97069  
**Business Name:** Brookstone of Clemmons, LLC  
**Business #:** 2606  
**Project Description:** Change in operator  
**County:** Forsyth

Dear Mr. Angell:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your letter of March 28, 2017 regarding the above referenced proposal. Based on the CON law **in effect on the date of this response to your request**, the proposal described in your correspondence is not governed by, and therefore, does not currently require a certificate of need. However, please note that if the CON law is subsequently amended such that the above referenced proposal would require a certificate of need, this determination does not authorize you to proceed to develop the above referenced proposal when the new law becomes effective.

However, you need to contact the Agency's Adult and Home Care Licensure and Certification Section to determine if they have any requirements for development of the proposed project.

It should be noted that this determination is binding only for the facts represented in your correspondence. Consequently, if changes are made in the project or in the facts provided in your correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by this office. Changes in a project include, but are not limited to: (1) increases in the capital cost; (2) acquisition of medical equipment not included in the original cost estimate; (3) modifications in the design of the project; (4) change in location; and (5) any increase in the number of square feet to be constructed.

**HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION**

WWW.NCDHHS.GOV

TELEPHONE 919-855-3873

LOCATION: EDGERTON BUILDING • 809 RUGGLES DRIVE • RALEIGH, NC 27603

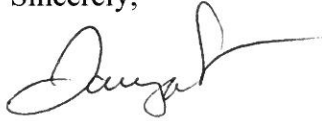
MAILING ADDRESS: 2704 MAIL SERVICE CENTER • RALEIGH, NC 27699-2704

AN EQUAL OPPORTUNITY/ AFFIRMATIVE ACTION EMPLOYER

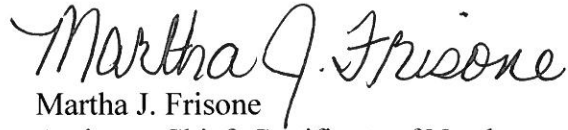


Please contact this office if you have any questions. Also, in all future correspondence you should reference the Facility ID # (FID) if the facility is licensed.

Sincerely,



Tanya S. Rupp  
Project Analyst



Martha J. Frisone  
Assistant Chief, Certificate of Need

cc: Adult Care Licensure Section, DHSR  
Paige Bennett, Assistant Chief, Healthcare Planning, DHSR

**Rupp, Tanya**

NR 2224



**From:** Gray Angell <gray.angell@yahoo.com> Ind. id 241  
**Sent:** Tuesday, March 28, 2017 4:55 PM  
**To:** Rupp, Tanya  
**Subject:** Fw: Brookstone Terrace change of licensee HAL-034-094  
**Attachments:** 20170328164918012.pdf

→ Bus id 2696

Ms. Rupp, attached is lease termination agreement for Brookstone Terrace. As of May 1st, Brookstone of Clemmons, LLC the current real estate holder will become the operator pending State approval, removing BY Peterson as operator. I am 50% owner, and my wife is the other 50% partner in Brookstone of Clemmons, LLC. Please process the CON exemption letter. My address for the letter is:

142 Bermuda Village Dr.  
Bermuda Run, NC 27006

If it is possible, please email me copy of the letter so that I may forward to licensure. Thank you once again for your help!

D. Gray Angell, Jr.  
Executive Director  
Bermuda Village Retirement Center - Bus id #152  
336-345-7118 (cell)  
336-940-2140 (fax)  
gray.angell@yahoo.com

On Tuesday, March 28, 2017 4:45 PM, "scanner@bermudavillage.net" <scanner@bermudavillage.net> wrote:

This E-mail was sent from "RNPAE64DB" (Aficio MP C2500).

Scan Date: 03.28.2017 16:49:17 (-0400)  
Queries to: [scanner@bermudavillage.net](mailto:scanner@bermudavillage.net)

Brookstone Terrace FID 970694



**LEASE TERMINATION AND  
OPERATIONS TRANSFER AGREEMENT**

THIS LEASE TERMINATION AND OPERATIONS TRANSFER AGREEMENT (this “Agreement”) is made and entered into as of March 27, 2017 by and between **BYPETERSON PROPERTIES, LLC**, a North Carolina limited liability company (“Transferor”) and **BROOKSTONE OF CLEMMONS, LLC**, a North Carolina limited liability company (“New Operator”).

RECITALS

A. Transferor is the lessee and licensed operator of that certain forty (40) bed assisted living facility known as **Brookstone Terrace Assisted Living Facility** and located at **4430 Clinard Road, Clemmons, North Carolina** (the “Facility”).

B. Brookstone of Clemmons, LLC (“Fee Owner”) is the fee owner of the Facility.

C. Fee Owner and Transferor entered into that certain Agreement of Lease dated August 1, 2012, as modified by Addendum to Operating Lease dated March 23, 2016 and Amendment to Lease dated September 1, 2016 (collectively, the “Lease”), with respect to the Facility.

D. The obligations of Transferor under the Lease were guaranteed by Brenda Peterson and Yvonne Peterson (“Guarantors”) pursuant to a Guaranty dated August 1, 2012 (the “Guaranty”).

E. Transferor is in default under the Lease and as a result, Transferor and Fee Owner mutually desire to terminate the Lease.

F. Concurrent with the Commencement Date, Transferor has agreed to pay to Fee Owner a settlement amount and in exchange for Transferor’s payment of the settlement amount, the parties have agreed that Transferor’s leasehold interest in the Facility will terminate and Fee Owner will release Transferor from all further liabilities, duties or obligations under the Lease; provided, however, that the indemnification obligations of Transferor and Guarantors set forth in the Lease and the Guaranty, and Transferor’s obligations under this Agreement, shall survive the execution and delivery of this Agreement and the termination of the Lease.

G. Upon termination of the Lease, New Operator shall assume the possession and operation of the Facility and accept the transfer and assignment of the Transferred Assets as of the Commencement Date (as hereinafter defined).

H. Transferor and New Operator (each, a “Party” and collectively, the “Parties”) deem it to be in their respective best interests to provide for the orderly and efficient transfer of operations of the Facility under the terms of this Agreement (the “Transaction”).



NOW, THEREFORE, in consideration of the mutual covenants, agreement, promises, representations and warranties set forth herein and for such good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to incorporate the forgoing recitals and further agree as follows:

1. Transfer of Operations.

1.1 The Transaction shall close and be effective as of 12:00:01 a.m., May 1, 2017 (the "**Commencement Date**"), unless otherwise agreed to by the parties, and within ninety days (90) days thereof Transferor shall pay to Fee Owner the sum of \$7,516.54 plus any other amounts due under the Lease (the "**Settlement Amount**"). As of the Commencement Date Transferor's leasehold interest in the Facility shall terminate and New Operator shall assume the operations of the Facility, including without limitation, financial management, regulatory and legal compliance, resident care and supervision of employees, and Fee Owner shall release Transferor from all further liabilities, duties and obligations under the Lease; provided, however, that the indemnification obligations of Transferor and Guarantors set forth in the Lease and the Guaranty, and Transferor's obligations under this Agreement, shall survive the execution and delivery of this Agreement and the termination of the Lease.

1.2 Transferor agrees to transfer possession of the Facility to New Operator on the Commencement Date.

1.3 Subject to the terms and conditions of this Agreement, on the Commencement Date Transferor will transfer to New Operator all of Transferor's right, title and interest, if any, in and to such of the following assets that are used in connection with the operation of the Facility: (A) the Personal Property, (B) the Contracts and (C) the Permits (collectively, the "**Transferred Assets**").

Transferor shall execute and deliver to New Operator a Bill of Sale in the form substantially similar to that attached hereto as Exhibit A with respect to the transfer of the Personal Property. Transferor agrees and acknowledges that no purchase price shall be required to be paid by New Operator for the Transferred Assets. Transferor further agrees and acknowledges that the transfer of the Transferred Assets shall not be treated as a sale by Transferor to New Operator for federal, state and local tax purposes, and the parties agree to prepare and file all required federal, state and local tax returns and reports in a manner that is consistent therewith.

"**Personal Property**" shall mean furniture, furnishings, fixtures, appliances, apparatus, fixed and moveable equipment, machinery, and other tangible personal property owned, in whole or in part, directly or indirectly, beneficially and/or of record, by Transferor and exclusively used in connection with the operation of the Facility, including but not limited to those listed on **Schedule 1.3(A)**.

"**Contracts**" shall mean all contracts with respect to the Facility identified in the Assignment and Assumption Agreement attached hereto as Exhibit B. Transferor has delivered true and correct copies of all Contracts to New Operator, and (A) the Contracts constitute valid

and legally binding obligations of Transferor and are enforceable in accordance with their terms; (B) the copy of each of the Contracts delivered by Transferor to New Operator constitutes the entire agreement by and between the respective parties thereto with respect to the subject matter thereof; (C) all obligations required to have been performed by Transferor under the terms of the Contracts have been performed, and no act or omission has occurred or failed to occur which, with the giving of notice, the lapse of time, or both, would constitute a default or breach of any Contract by Transferor; (D) no other party or parties to any Contract is in material default thereunder, nor has any event occurred which with the giving of notice or the lapse of time, or both, would constitute a material default by any other party, with respect to any term or condition of any of the Contracts; and (E) Transferor has not received notice to the effect that, nor has Transferor any knowledge that, any party to any of the Contracts intends to cancel, terminate or amend any of the Contracts. New Operator shall have the right to inspect the Contracts and determine in its sole discretion which, if any, of the Contracts it elects to assume. Unless New Operator notifies Transferor in writing on or before the Commencement Date that it elects to assume one or more of the Contracts, New Operator shall be deemed to have elected to assume all of the Contracts identified in the Assignment and Assumption except for those specifically listed as “**Excluded Contracts**” on **Schedule 1.3(B)**.

“**Permits**” shall mean all of Seller’s interest, if any, in any assignable or transferable licenses, permits and other governmental or regulatory authorizations relating to or affecting the Facility. Transferor shall execute and deliver to New Operator a General Assignment in the form substantially similar to that attached hereto as **Exhibit C** with respect to the transfer of the Permits.

Unless otherwise provided herein, the following assets of Transferor (the “**Excluded Assets**”) shall not be transferred to New Operator and are not considered “**Transferred Assets**”: (a) all cash, profit-sharing funds, pension funds and similar funds of Transferor; (b) all personnel, employment and payroll records that relate to Transferor’s employees, except such records that are required by law to be kept at the Facility; (c) purchased assets that are sold or otherwise disposed of in the ordinary course of the operation of the Facility and not in violation of any provisions of this Agreement from the date of this Agreement until the Commencement Date; (d) all of Transferor’s financial records except those required by HUD or other regulatory authorities and (e) any Contracts not assumed by New Operator, including but not limited to the Excluded Contracts.

2. **Non-Assumption of Liabilities.** New Operator shall not assume or be obligated to pay nor shall the Transferred Assets be subject to or bound by any liability of Transferor, whether fixed or contingent, recorded or unrecorded, including any of the following (collectively, the “**Excluded Liabilities**”): (A) the accounts payable of Transferor; (B) accrued expenses of Transferor; (C) unpaid claims or premiums relating to Transferor’s programs of unemployment and workers’ compensation; (D) any gain on sale and any recapture that may be recognized under third-party payor programs based on the transactions herein contemplated; (E) all employee claims made by employees of Transferor; (F) liabilities associated with any pension plan, welfare benefit plan, or any other benefit plan or arrangement sponsored by Transferor; (G) third-party payor settlements, retroactive adjustments, overpayments, recoupments, and fines, penalties, and assessments, if any, arising under third-party payor programs; (H) liabilities or

obligations arising out of any Contracts not assumed by New Operator, including but not limited to those Excluded Contracts set forth in Schedule 1.3(B) hereof, or arising out of any breach by Transferor of any Contracts assumed by New Operator; (I) the professional liability claims or other claims for acts or omissions of Transferor; (J) any unpaid franchise permit or similar fees, including fees that are accrued but not yet due and payable; (K) any survey findings and implementation of any corrective action or enforcement remedy, including fines, penalties, and assessments, if any; (L) any liabilities with respect to the excluded assets set forth in this Agreement; and (M) any other liability related to the acts or omissions of Transferor with respect to the Facility prior to the Commencement Date.

3. New Operator's Applications. Prior to the Commencement Date, New Operator shall have made application for or obtained, as applicable, the appropriate licenses, permits, certificates, certificates of need consents and/or approvals from North Carolina Department of Health and Human Services and/or any other Governmental Authority Regulatory Agency ("**Regulatory Agencies**") to permit New Operator to operate the Facility under New Operator's name ("**New Operator Licenses**"). Transferor shall reasonably cooperate with New Operator and take all reasonable action necessary to aid New Operator in connection with the obtaining of the New Operator Licenses. "**Governmental Authority**" shall mean any court, board, agency, commission, office or other authority for any governmental unit (federal, state, county, district, municipal, city or otherwise). Transferor shall cooperate with New Operator and take all reasonable action necessary to aid New Operator in connection with the obtaining of the New Operator Licenses.

4. Patient Trust Funds. On the Commencement Date, Transferor shall provide New Operator with an accounting of all patient trust funds (the "**Trust Funds**") being held by Transferor as of the most recent date available, which accounting shall be certified by Transferor as being true, complete, and accurate. On the first business day following the Commencement Date, Transferor, with the cooperation of New Operator, shall transfer the Trust Funds to a bank account designated by New Operator; provided, however, that New Operator shall not be required to assume any Trust Funds with negative balances, and Transferor shall pay New Operator an amount equal to any such negative Trust Fund balances in immediately available funds as of the Commencement Date. On the Commencement Date, New Operator will assume all such obligations and be directly accountable to the residents of the Facility for the Trust Funds transferred to it. Within fifteen (15) days after the Commencement Date, the parties shall true-up the Trust Funds as of the Commencement Date, with Transferor paying New Operator for any short-fall in the Trust Funds transferred as of the Commencement Date, or New Operator paying Transferor for any overpayments in the Trust Funds transferred as of the Commencement Date. Transferor will indemnify, defend and hold New Operator harmless from all liabilities, claims and demands, including reasonable attorney's fees relating to claims which arise from actions or omissions of Transferor with respect to the Trust Funds and other residents' property prior to the Commencement Date, or for any failure by Transferor to deliver to New Operator all monies and residents' property that Transferor was holding in trust as of the Commencement Date. New Operator will indemnify, defend and hold Transferor harmless from all liabilities, claims and demands, including reasonable attorneys' fees, in the event a claim is made against Transferor by a resident for his/her Trust Funds where such funds were transferred to New Operator pursuant to the terms hereof, and where such claim arises after the Commencement

Date, or for claims which arise from actions or omissions of New Operator after the Commencement Date with respect to Trust Funds and other residents' property actually received by New Operator.

5. Accounts Receivable.

5.1 New Operator shall assume responsibility for the billing and collection of payments for and on account of services rendered by it on and after the Commencement Date; provided, however, that as of the Commencement Date, Transferor shall provide an accounting of all pre-paid accounts with respect to the Facility, and shall pay New Operator an amount equal to such pre-paid accounts in immediately available funds. Any payments received by Transferor or New Operator from any third party government or financial payor that are allocated to a particular receivable and time period shall be applied in payment of such receivable for the time period to which such payment has been allocated. Transferor shall retain all rights in and title to all accounts receivable for services rendered by Transferor prior to the Commencement Date including, but not limited to, any accounts receivable arising from rate adjustments which relate to periods prior to the Commencement Date, even if such adjustments occur after the Commencement Date, and shall retain full responsibility for the collection thereof. In order to facilitate the pro-ration of accounts receivable, Transferor agrees to deliver to New Operator as of the Commencement Date an accounting of all known accounts receivable prior to the Commencement Date. Except as otherwise provided herein, New Operator shall remit to Transferor any payments received by New Operator which represents payment for services rendered prior to the Commencement Date, and Transferor shall remit to New Operator any payments received by Transferor which represent payment for services rendered on or after the Commencement Date.

5.2 Payments received by Transferor or New Operator after the Commencement Date with respect to the Facility from third party payors, such as the Medicaid Program, the Veteran's Administration, or managed care companies or health maintenance organizations (except for Social Security checks, which will be credited to the payment due in the month in which such checks were received), shall be handled as follows:

(1) If the accompanying remittance advice indicates, or if the parties agree, that the payments relate solely to periods prior to the Commencement Date, then (A) in the event that such payments are received by New Operator, New Operator shall forward such payments directly to Transferor as herein provided, and (B) in the event that such payments are received by Transferor, Transferor shall retain the payments;

(2) if the accompanying remittance advice indicates, or if the parties agree, that the payments relate solely to periods after the Commencement Date, then (A) in the event that such payments are received by New Operator, New Operator shall retain the payments and (B) in the event that such payments are received by Transferor, Transferor shall forward such payments to New Operator as herein provided; and

(3) if the accompanying remittance advice does not indicate the period to which a payment relates or if there is no accompanying remittance advice and if the parties do not otherwise agree as to how to apply such payment, the payment shall be



deemed first to apply against the earliest outstanding account receivable due from such payor.

5.3 Any payments to be made by one party to the other party under this **Section 5** shall be made on the fifteenth (15th) day of the month following the month in which such receivables are collected. All amounts not remitted by a party within this time period shall bear interest at the annual rate of eight percent (8%).

5.4 New Operator shall forward to Transferor any and all remittance advices, explanations of benefits, denial of payment notices and all other correspondence related to the services provided by Transferor prior to the Commencement Date on the fifteenth (15th) day of the month following the month in which such information is received. Transferor hereby authorizes New Operator to open any correspondence addressed to Transferor and received at the Facility after the Commencement Date, provided that such correspondence is forwarded to Transferor as provided for herein.

5.5 Transferor shall be responsible for and shall pay on a timely basis, claims or charges which are owed to third parties arising from the use, operation or control of the Facility, including payroll, taxes, insurance premiums, utilities, amounts due under executory obligations, and similar obligations for all periods prior to the Commencement Date. New Operator shall be responsible for, and shall pay on a timely basis, any claims or charges which are due to such third parties arising from the use, operation or control of the Facility on and after the Commencement Date.

5.6 Nothing herein shall be deemed to limit in any way Transferor's rights and remedies to recover accounts receivable due and owing Transferor for services rendered by Transferor prior to the Commencement Date by New Operator or third parties under the terms of this Agreement or applicable law. If the parties mutually determine that any payment hereunder was misapplied by the parties, the party which erroneously received said payment shall remit the same to the other within five (5) business days after said determination is made. For a period of three hundred and sixty-five (365) days after the Commencement Date, New Operator and Transferor shall, upon reasonable notice and during normal business hours, have the right to inspect, at such party's sole cost and expense, all cash receipts and other books and records reasonably related to compliance with the terms of this **Section 5** (including, without limitation, bank statements) of the other respective party in order to confirm the other party's compliance with the obligations imposed on it under this **Section 5**.

## 6. Access to Records.

6.1 Transferor shall cause the Designated Record Set (as defined in Section 6.5 below) of the residents of the Facility and the Facility's current employee records to be either (i) located at the Facility as of the Commencement Date or (ii) if any such record is stored offsite, the New Operator and the Transferor shall mutually agree on the proper delivery of such record. Nothing herein shall be construed as precluding Transferor from removing from the Facility as of the Commencement Date (a) the originals of financial records that relate to its operations at the Facility (provided that copies thereof will be made available to New Operator) and/or to its overall corporate operations, and (b) the records of former employees of the Facility who will not be hired by New Operator. For one year following the Commencement Date, Transferor shall

allow New Operator to retain a copy of Transferor's Policies and Procedures for New Operator to use during surveys if necessary. One year following the Commencement Date, New Operator agrees to dispose of said Policies and Procedures as directed by Transferor. Notwithstanding the foregoing, in the case of the records described in clauses (a) and (b) and provided such action is in compliance with all applicable Laws, Transferor shall give New Operator reasonable access to any information in any such removed records as New Operator may reasonably demonstrate is necessary for the efficient operation, maintenance and defense of the Facility by New Operator.

6.2 Subsequent to the Commencement Date, New Operator shall allow Transferor and its agents and representatives to have reasonable access to (upon reasonable prior notice and during normal business hours), and to make copies of, at Transferor's expense, the books, records, including, but not limited to, the Designated Record Set and any employee records, and supporting material of the Facility relating to any period prior to the Commencement Date, to the extent reasonably necessary to enable Transferor to investigate and defend employee or other claims, to file or defend tax returns and to verify accounts receivable collections due New Operator, or for any other reasonable purpose.

6.3 Transferor shall be entitled, in accordance with applicable federal, state, and local statutes, codes, licensing requirements, ordinances, laws, rules, regulations, decrees or orders of any foreign, federal, state or local government and any other governmental department or agency, and any judgment, decision, decree or order of any court or governmental agency, department or authority (collectively, "Laws"), to remove the originals of any records, including, but not limited to, a Designated Record Set and any employee records, delivered to New Operator, for purposes of litigation involving a resident or employee to whom such record relates, if an officer of a court of competent jurisdiction, agency official or counsel for Transferor certifies that such original must be produced in order to comply with applicable Law or the order of a court of competent jurisdiction in connection with such litigation. Any record so removed shall promptly be returned to New Operator following its use.

6.4 New Operator agrees to maintain in accordance with applicable Laws, and shall not destroy without the prior written consent of the Transferor, such books, records, including, but not limited to, Designated Record Sets and employee records, and other material comprising records of the Facility's operations prior to the Commencement Date that have been received by New Operator from Transferor or otherwise.

6.5 For purposes of this **Article 6**, the term "**Designated Record Set**" shall mean the group of records maintained by or for the Facility that consists of the medical records and billing records of each resident who resided at the Facility during the year immediately preceding the Commencement Date and issued, in whole or in part, by or for the Facility to make decisions about such resident, including any item, collection, or grouping of information (including Protective Health Information), that is maintained, collected, used or disseminated by or for the Facility. For purposes of this Agreement, the term "**Protective Health Information**" means individually identifiable health information for each resident that is transmitted by or maintained in an electronic medium, or transmitted or maintained in any other form or medium, including oral.

7. Transferor's Representations and Warranties. Transferor represents and warrants to New Operator as follows:

7.1 Company. Transferor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of North Carolina. The execution, delivery and performance of this Agreement will not violate any provision of Transferor's organizational or governing documents.

7.2 No Breach of Statute or Contract. The execution, delivery and performance of this Agreement by Transferor will not breach any statute or regulation of any governmental authority, and will not as of the Commencement Date conflict with or result in a breach of or default under any of the terms, conditions or provisions of Transferor's Articles of Organization or other organizational or governing documents or any order, writ, injunction, decree, agreement or instrument to which Transferor is a party, or by which it or its property, may be bound.

7.3 Authorization of Agreement. The execution, delivery and performance of this Agreement has been or will be at the Commencement Date duly authorized by all necessary individual, corporate, member and/or partner action of Transferor and this Agreement constitutes the valid and binding obligation of Transferor, enforceable in accordance with its terms.

7.4 No Litigation or Adverse Events. There is no suit, claim, action or legal, administrative, arbitration, or other proceeding or governmental investigation pending or, to Transferor's knowledge, threatened, by or against Transferor, and no event or condition of any character, to Transferor's actual knowledge, which could prevent the consummation of the transactions contemplated by this Agreement or materially adversely affect Transferor's performance of the terms and conditions hereunder.

7.5 Good Title. On the Commencement Date, Transferor will transfer to New Operator title to all the Transferred Assets, free and clear of all liens, encumbrances, charges, restrictions, conditions and adverse claims.

7.6 Compliance with Laws. To Transferor's knowledge, Transferor has complied in all material respects with all Laws relating to the Facility and the Transferred Assets, including without limitation, environmental Laws, tax Laws, and Medicaid Laws, Laws relating to an assisted living license, Laws relating to the conditions of participation of the Medicaid program, and Laws relating to Federal and State fraud and abuse and billing issues. Transferor has no actual knowledge of any assertion of any violation of the foregoing or of any claim for compensation or damages or otherwise arising out of any violation of the foregoing. Transferor has not received any notification of any asserted present or past failure to comply with any of the foregoing which has not been satisfactorily responded to in the time period required thereunder.

7.7 Tax Compliance. Transferor has filed or caused to be filed, within the times and within the manner prescribed by law, all Federal, State, local and foreign tax returns and tax reports which are required to be filed by, or with respect to, Transferor. Such returns and reports reflect accurately all liability for taxes of Transferor for the periods covered thereby. All federal,

state, local and foreign income, profits, franchise, sales, use, occupancy, excise and other taxes and assessments (including interest and penalties) payable by, or due from, Transferor have been fully paid or adequately disclosed and fully provided for in the books and financial statements of Transferor.

7.8 Labor Issues. No unfair labor practice complaint against Transferor is pending before the National Labor Relations Board or similar State agency; there is no labor strike, dispute, organizational activities, slowdown or stoppage actually pending or to Transferor's knowledge, threatened against or involving Transferor or the Facility; no collective bargaining agreement is now, or to Transferor's knowledge, has ever been in effect with respect to the Transferor or the Facility; to Transferor's knowledge, no representation question exists respecting the employees of the Transferor; and no grievance which might have an adverse effect upon the Transferor or the conduct of its business exists, no arbitration proceeding arising out of or under any collective bargaining agreement is pending and no claim therefor has been asserted.

7.9 Health Care Compliance. Transferor and the Facility are duly licensed by North Carolina Department of Health and Human Services as an assisted living facility, and Transferor has a current and valid assisted living license and provider agreement for any other third-party reimbursement source from which Transferor receives reimbursement, inclusive of managed care organizations. Transferor has not received any pending notice of recoupment from and has no knowledge of any liability for reimbursements of any excess payments made by any third-party reimbursement source, inclusive of managed care programs, and each is not aware of any basis for the assertion of any such recoupment claim against Transferor. The Facility is not certified for participation in the Medicare program at any time.

8. New Operator's Representations and Warranties. New Operator represents and warrants to Transferor as follows:

8.1 New Operator is a limited liability company duly organized, validly existing and in good standing under the laws of the State of North Carolina. New Operator has the power and authority to own the property and assets now owned by it and to conduct the business presently being conducted by it.

8.2 New Operator has the full company power and authority to make, execute, deliver and perform this Agreement and the other instruments and documents required or contemplated hereby. Such execution, delivery, performance and consummation have been duly authorized by all necessary action, company or otherwise, on the part of New Operator, its members.

9. Employees.

(A) Transferor shall be responsible for the payment to all of the employees at the Facility all salaries, wages, and bonuses due or accrued for periods prior to the Commencement Date. Transferor timely shall pay to all applicable governmental and regulatory authorities all employment-related taxes due with respect to the employees at the Facility for periods prior to the Commencement Date, including Transferor's share of all Federal Insurance Contributions Act ("FICA"), state and federal unemployment taxes and workers compensation insurance



premiums. As of 11:59:59 p.m. on the day prior to the Commencement Date, Transferor shall have terminated each then-current employee of Transferor. Prior to the Commencement Date, New Operator may offer employment, on a probationary basis, to such employees of Transferor as New Operator may elect in its sole discretion, to be effective at 12:01 a.m. on the Commencement Date. Such offers of employment shall be on terms, conditions, salary or wage and benefit levels as New Operator may determine in its sole discretion. Anything to the contrary notwithstanding, this Agreement shall not be deemed to create any third party beneficiary rights to any third party.

(B) Transferor shall be liable for any and all covered claims for unemployment and workers' compensation benefits by employees to the extent such claims are for actions or omissions occurred prior to the Commencement Date, and shall be responsible for any and all unpaid premiums with respect to such program of unemployment and workers' compensation. Transferor hereby represents and warrants that Transferor has not maintained a self-insured or retrospective rated program of unemployment and workers' compensation during Transferor's period of operation of the Facility.

(C) Transferor shall be responsible for all earned but unpaid sick, vacation, holiday, and any other paid time off as of the Commencement Date for all employees employed by New Operator, and including Transferor's share of all FICA, state and federal unemployment taxes and workers compensation insurance premiums (collectively, "Accrued Benefits"). Transferor shall pay the Accrued Benefits as part of Transferor's final payroll after the Commencement Date, and shall provide New Operator with written evidence that such Accrued Benefits have been paid. Notwithstanding the foregoing, New Operator agrees to be responsible for all earned but unpaid vacation days of each employee of Transferor offered new employment by New Operator, but only if such employee is offered continued employment by New Operator after completion of a 90-day probationary period.

#### 10. Conditions Precedent to Commencement Date.

10.1 The obligations of Transferor to consummate the transactions contemplated under this Agreement are (unless waived in writing by Transferor) subject to the satisfaction of all of the following conditions at or before the Commencement Date:

(1) New Operator shall have performed and complied in all material respects with all agreements, undertakings, obligations, and covenants which are required to be performed or complied with by it at or prior to the Commencement Date, and shall have delivered to Transferor a certificate to such effect if requested by Transferor.

(2) New Operator shall have received all necessary licenses, provider agreements and other governmental consents, approvals and certifications required in connection with the transactions contemplated by this Agreement and as a condition to or in connection with the operation of the Facility by New Operator as an assisted living facility with the number of licensed beds set forth in Recital A of this Agreement, without any waivers or conditions, and any and all necessary governmental inspections required in connection with the transactions contemplated hereby shall have been favorably completed.

10.2 The obligations of the New Operator to consummate the transactions contemplated under this Agreement are (unless waived in writing by New Operator) subject to the satisfaction of all of the following conditions at or before the Commencement Date:

(1) Each of the representations and warranties of Transferor set forth in this Agreement as of the date of execution of this Agreement shall be true, complete and correct in all material respects as of the date of the Commencement Date as if made at that time, and Transferor shall have delivered its certificate to such effect.

(2) Transferor shall have performed and complied in all material respects with all agreements, undertakings, obligations, and covenants which are required to be performed or complied with by it at or prior to the Commencement Date, and shall have delivered to New Operator its certificate to such effect.

(3) As of the Commencement Date, Transferor shall deliver or cause to be delivered any documents required to be delivered by Transferor under this Agreement.

(4) No notice shall have been received as to litigation commenced or threatened against any party, by any person, firm, corporation, or other entity or enterprise, or any governmental agency or authority with regard to this Agreement, or the transactions provided for in this Agreement, and Transferor shall have delivered to New Operator its certificate that to its knowledge no such notice has been received.

(5) There shall not have occurred any material adverse change in the condition of the Facility following the date of this Agreement.

(6) New Operator shall have received all necessary licenses, provider agreements and other governmental consents, approvals and certifications required in connection with the transactions contemplated by this Agreement and as a condition to or in connection with the operation of the Facility by New Operator as an assisted living facility with the number of licensed beds set forth in Recital A of this Agreement, without any waivers or conditions, and any and all necessary governmental inspections required in connection with the transactions contemplated hereby shall have been favorably completed.

(7) Transferor shall have paid the Settlement Amount to the Fee Owner.

11. Utilities. Transferor shall arrange for a final statement with respect to all utilities serving the Facility prior to the Commencement Date and shall pay all costs identified thereon. All prepaid expenses and/or deposits held by utility providers in the name of Transferor and/or the Facility, shall remain the separate property of Transferor. New Operator shall arrange for all such utilities to be billed in its name on and after the Commencement Date, and shall pay all fees due therefor on and after the Commencement Date. Transferor agrees to (a) assist (with no disruption to the operation of the Facility prior to the Commencement Date) in the orderly transfer of utilities, phone systems, alarm systems, and any other specialized equipment requiring dedicated lines and to provide to New Operator contact information for all requested services,

and (b) not terminate any critical services including, but not limited to, electricity, gas, water, telephone, fire alarm and internet service.

12. Further Assurances. Each of the Parties hereto agrees to execute and deliver any and all further agreements, documents, forms or instruments necessary or reasonably desirable to effectuate this Agreement and the transactions referred to herein or contemplated hereby or reasonably requested by the other party to perfect or evidence their rights hereunder.

13. Indemnification. Each party agrees to defend, indemnify, and hold harmless the other party and its officers, directors, agents, affiliates, representatives, and employees from any and all third party claims, demands, liabilities, costs and expenses, including reasonable attorneys' fees, costs and expenses resulting from the indemnifying party's material breach of any duty, representation, or warranty under this Agreement.

14. Intentionally omitted.

15. Covenants of Transferor. Transferor hereby covenants and agrees as follows:

15.1 Prior to the Commencement Date, Transferor shall use commercially reasonable efforts to continue to operate the Facility in a manner consistent with past practices and in accordance with Law and to preserve for New Operator the goodwill of suppliers, employees, distributors, residents and others having business relations with Transferor with respect to the Facility.

15.2 Transferor shall engage only in transactions or other activities with respect to the Facility which are in the ordinary course of its business and the business of the Facility, shall maintain the Facility's inventory in a manner consistent with past practices and in accordance with Law and shall not sell or remove any personal property except in the ordinary course of business.

15.3 Transferor shall keep in full force and effect, and shall maintain levels of insurance coverage consistent with past practices.

15.4 Transferor shall maintain in force all permits required for operation of the Facility, and shall renew any such permit which expires prior to the Commencement Date. If, prior to the Commencement Date, Transferor receives notice that any permit has expired and is not renewed, or has been suspended or revoked, Transferor shall promptly notify New Operator and shall use reasonable efforts to have such permit reinstated or extended.

16. Covenants of New Operator. New Operator hereby covenants and agrees as follows:

16.1 Subsequent to the Commencement Date, upon reasonable prior notice, New Operator shall allow Transferor and its agents and representatives to have reasonable access to, and to make copies of, the books, records, and supporting materials of the Facility relating to any period prior to the Commencement Date to the extent reasonably necessary to enable Transferor to investigate and defend malpractice or employee claims, to file or defend cost reports and tax returns, and to perform similar matters. In addition, Transferor shall be entitled to remove a

copy of any such record for purposes of litigation involving a resident or employee to whom such record refers, provided the original document(s) is left at the Facility if involving a then-current resident or staff member. Any record so removed shall be returned promptly following its use.

16.2 New Operator agrees to accept the resident trust funds in trust for the residents in accordance with applicable statutory and regulatory requirements. New Operator further agrees to continue to maintain the records for the resident trust funds present at the Facility as of and subsequent to the Commencement Date for regulatory auditing purposes.

17. Notices. Any notice, demand or communication required, permitted or desired to be given hereunder shall be addressed and delivered to the Parties at their respective addresses below and be deemed effectively given when personally delivered if hand delivered, three (3) business days after mailing if mailed by prepaid certified mail, return receipt requested, or one (1) day after dispatch if sent for overnight delivery by a nationally recognized courier:

If to New Operator: Brookstone of Clemmons, LLC  
142 Bermuda Village Drive  
Advance, North Carolina 27006  
Attention: D. Gray Angell, Jr.

With a copy to: Blanco Tackabery & Matamoros, P.A.  
110 South Stratford Road, Suite 500  
Winston-Salem, NC 27104  
Attention: George E. Hollodick

If to Transferor: BYPeterson Properties, LLC  
149 Yadkin Valley Road  
Suite 207  
Advance, North Carolina 27006

or such other address, and to the attention of such other person as either party may designate by written notice.

18. Governing Law. This Agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of North Carolina.

19. Waiver of Breach. The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be a waiver of, any subsequent breach of the same or other provision hereof.

20. Legal Fees. In the event either Party resorts to legal action to enforce the terms and provisions of this Agreement, the prevailing Party shall be entitled to recover the costs of such action incurred, including, without limitation, reasonable attorneys' fees.



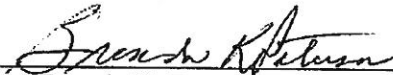
21. Gender and Number. Whenever the context hereof requires, the gender of all words shall include the masculine, feminine, and neuter, and the number of all shall include the singular and plural.
22. Severability. In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms.
23. Entire Agreement; Amendments. This instrument contains the entire agreement between the Parties hereto with respect to the subject matter hereof. All representations, promises and prior or contemporaneous undertakings between such Parties are integrated into and expressed in this instrument, and any and all prior agreements between such Parties are hereby canceled. The agreements contained in this instrument shall not be amended, modified, or supplemented except by a written agreement duly executed by both Transferor and New Operator.
26. Counterpart Execution; Facsimile Execution. This Agreement may be executed in any number of counterparts with the same effect as if the Parties hereto had signed the same document. All counterparts will be construed together and shall constitute one lease. Signatures transmitted by facsimile shall have the same effect as original signatures.


*[Separate Signature Page Follows]*

**SEPARATE SIGNATURE PAGE  
OPERATIONS TRANSFER AGREEMENT**

**TRANSFEROR:**


**BYPETERSON PROPERTIES, LLC**

By:   
Brenda K. Peterson

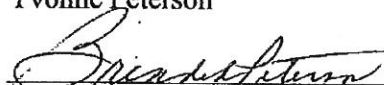
By:   
Yvonne D. Peterson

**NEW OPERATOR:**

**BROOKSTONE OF CLEMMONS, LLC**


By:   
D. Gray Angell, Jr., Manager

**GUARANTORS:**

\_\_\_\_\_  
Yvonne Peterson  
  
Brenda Peterson

**Approved and Consented To By Fee Owner:**

**BROOKSTONE OF CLEMMONS, LLC**


By:   
D. Gray Angell, Jr., Manager

**SEPARATE SIGNATURE PAGE  
OPERATIONS TRANSFER AGREEMENT**

**TRANSFEROR:**

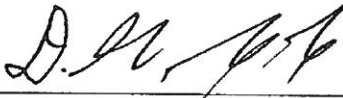
**BYPETERSON PROPERTIES, LLC**

By:   
Brenda K. Peterson

By:   
Yvonne D. Peterson

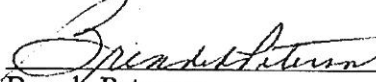
**NEW OPERATOR:**

**BROOKSTONE OF CLEMMONS, LLC**

By:   
D. Gray Angell, Jr., Manager


**GUARANTORS:**

\_\_\_\_\_  
Yvonne Peterson

  
Brenda Peterson

**Approved and Consented To By Fee Owner:**

**BROOKSTONE OF CLEMMONS, LLC**

By:   
D. Gray Angell, Jr., Manager